Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
July 2007	)	WCB/Pricing File No. 07-10
Annual Access Charge Tariff Filings	)	
	)	
Elsie Communications, Inc.	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	
	)	

Reply of Elsie Communications, Inc. to Petitions to Suspend and Investigate

Elsie Communications, Inc.

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Date: June 26, 2007

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Summary

Four petitions have been sought to suspend and investigate the Elsie Communications, Inc. (the "Company") regarding its June 15, 2007 Traffic Sensitive tariff filing (the "June 15th Filing") with the Federal Communications Commission (the "Commission"). The Company respectfully submits that the petitioning entities have failed to carry their burden established under Section 1.773 of the Commission's Rules. The challenges to the Company's June 15th Filing, apparently based primarily on actions of certain local exchange carriers other than the Company, effectively suggest that the Commission should impose requirements upon the Section 61.39 tariff filing made by Company that are "prospective" in nature and aimed at addressing future events. Granting these requests would contradict the "historical" basis upon which the Company's June 15th Filing was made and are not required or envisioned by Section 61.39(b)(1)(i) of the Commission's Rules under which the Company's June 15th Filing was made. No specific claims have been made that the Company's filed rates were not developed in accordance with Section 61.39(b)(1)(i), even though two of the petitioning entities were provided the underlying support information by the Company. Moreover, the Company respectfully submits that there has been no showing that the Company's tariff is unlawful, could cause the petitioning entities irreparable harm, or that suspension and investigation is in the public interest.

Assuming that the Commission is inclined to otherwise suspend and investigate the Company's June 15th Filing on its own motion or to pursue Section 61.39(c), the Company specifically requests that the Commission reject the overly broad monitoring approach proposed in the petitions. Rather, consistent with Section 204(a)(3), the Company will agree to make any necessary mid-course rate adjustments based upon then existing historical costs and demand to ensure that its rates are set at just and reasonable levels.

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Reply of Elsie Communications, Inc. to Petitions to Suspend and Investigate

Pursuant to the Commission's "Order" released March 29, 2007 establishing the procedures with respect to the July, 2007 access charge tariff filings,[1] Elsie Communications, Inc. (the "Company") hereby submits this reply to the "Conditional Petition to Suspend and Investigate" of Qwest Communications Corporation ("Qwest") filed on June 19, 2007 (the "Qwest Petition"), the "Petition of Verizon to Suspend and Investigate Tariff Filings" filed by the regulated, wholly-owned subsidiaries of Verizon Communications, Inc. ("Verizon") on June 19, 2007 (the "Verizon Petition"), the "Petition of AT&T Corp. To Suspend and Investigate LEC Tariffs Filed Pursuant to Section 61.39" of AT&T Corp. ("AT&T") filed on June 22, 2007 (the "AT&T Petition"), and the "Petition to Suspend and Investigate of Sprint Nextel Corporation" of Sprint Nextel Corporation ("Sprint") filed on June 22, 2007 (the "Sprint Petition").[2]

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1 *See In the Matter of July 2007 Annual Access Charge Tariff Filings, Order,* WCB/Pricing File No. No. 07-10, DA 07-1483, released March 29, 2007 at ¶7.

2 As used herein, Qwest, Verizon, AT&T and Sprint will be collectively referred to as "Petitioners" and the Qwest Petition, Verizon Petition, AT&T Petition and Sprint Petition will be collectively referred to as the "Petitions." The Company notes that the Petitions address only the switched access rate portions of the Company's June 15, 2007 tariff filing (the "June 15th Filing").

For the reasons stated herein, the Company respectfully submits that the Petitioners have failed to carry their burden established under Section 1.773 of the Commission's Rules[3] that the Company's June 15th Filing should be suspended and investigated.[4] As demonstrated herein, the Petitioners' requests, apparently based primarily on actions of certain local exchange carriers other than the Company,[5] effectively suggest that the Commission should impose requirements upon the Section 61.39 tariff filing made by Company, that are "prospective" in nature and aimed at addressing future events. Granting these requests would contradict the "historical" basis upon which the Company's June 15th Filing was made and are not required or envisioned by Section 61.39(b)(1)(i) of the Commission's Rules.[6] None of the Petitioners make specific claims that the Company's filed rates were not developed in accordance with Section 61.39(b)(1)(i). Thus, the rates as filed and the rate development employed by the Company are

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3 47 C.F.R. §1.773.

4 The Company made its June 15th Filing pursuant to the requirements of Section 61.39 of the Commission's Rules. *See* 47 C.F.R. § 61.39; *see also* Elsie Communications, Inc. Transmittal No. 1, FCC Tariff No. 1, filed June 15, 2007. Accordingly, Section 1.773(a)(iii) of the Commission's Rules apply to the pending Petitions and that rule states that:

> For the purpose of this section, any tariff filing by a local exchange carrier filed pursuant to the requirements of §61.39 will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows that the cost and demand studies or average schedule information was not provided upon reasonable request. If such a showing is not made, then the filing will be considered prima facie lawful and will not be suspended by the Commission unless the petition requesting suspension shows each of the following:
>
> (A) That there is a high probability the tariff would be found unlawful after investigation;
>
> (B) That any unreasonable rate would not be corrected in a subsequent filing;
>
> (C) That irreparable injury will result if the tariff filing is not suspended; and
>
> (D) That the suspension would not otherwise be contrary to the public interest.

47 C.F.R. § 1.773(a)(iii).

5 *See, e.g.*, AT&T Petition at 4-5; Sprint Petition at 4 n.2.

6 *See* 47 C.F.R. §61.39(b)(1).

appropriate. If there were any question regarding this conclusion, then AT&T and Verizon, which were each provided the underlying support information by the Company as requested and as required by the Section 61.39(b),[7] would have made specific allegations as to the Company's rates, and this is not the case.[8] Moreover, the Company respectfully submits that the Petitioners have not made a showing that the Company's tariff is unlawful, could cause Petitioners irreparable harm, or that suspension and investigation is in the public interest.

Assuming that the Commission is inclined to otherwise suspend and investigate the Company's June 15th Filing on its own motion or to pursue Section 61.39(c), and in lieu of such action, the Company specifically requests that the Commission reject the overly broad monitoring approach proposed by certain of the Petitioners.[9] Rather, consistent with Section 204(a)(3),[10] the Company will agree to make any necessary mid-course rate adjustments based upon then existing historical costs and demand to ensure that its rates are set at just and reasonable levels.[11] Such filing, in turn, would have an effective date of July 1, 2008.[12]

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7 *See* 47 C.F.R. § 61.39(b).

8 AT&T, through its petition, demonstrates that it is fully capable of analyzing company-specific data and making specific arguments related to an entity's rates regarding the extent to which it believes issues are raised. *See* AT&T Petition at 22-23, 25-26.

9 *See, e.g.,* AT&T Petition at 7, 19-21; Qwest Petition at 9; Sprint Petition at 3, 11.

10 *See* 47 U.S.C. § 204(a)(3).

11 47 U.S.C. § 201(b).

12 Attached hereto is the Declaration of David Shipley, General Manager of the Company attesting to the commitment to make this filing should the Commission determine it appropriate.

I. THE PETITIONS DO NOT MAKE THE REQUIRED SHOWING FOR SUSPENSION PURSUANT TO SECTION 1.773(A)(III).

A. Petitioners have not Demonstrated that there is a High Probability the Company's June 15th Filing would be Found Unlawful After Investigation.

The Petitioners recognize that, in order to meet their respective burden under the Commission's rules, they must demonstrate "that there is a high probability the tariff would be found unlawful after investigation."[13] Setting aside the over heated rhetoric of the Petitions, no Petitioner challenges the *actual* ratemaking methodology required of the Company and used in the June 15th Filing and as required by the Commission's Section 61.39 rules.

> (1) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Traffic Sensitive rates based on the following:
>
> (i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.[14]

The Company followed these requirements and the Petitioners have not demonstrated otherwise. AT&T and Verizon were provided with the underlying supporting information requested from the Company, and Qwest and Sprint chose not to request such information. Consequently, the information demonstrating the Company's compliance with Section 61.39(b)(1)(i) has been in the possession of AT&T and Verizon, but these Petitioners failed to demonstrate that the Company's rate development is not in compliance with Section 61.39(b)(1)(i). Thus, the Company's compliance with Section 61.39(b)(1)(i) has not been questioned and its utilization of those requirements to make its June 15th Filing was reasonable and proper.

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13 47 C.F.R. § 1.773(a)(iii)(a); *see also* Qwest Petition at 12; Verizon Petition at 8.

14 47 C.F.R. §§ 61.39(b)(1)(i).

Notwithstanding this lack of demonstration of the specific requirements of Section 61.39(b)(1)(i), the Petitioners base their request for action against the Company's June 15th Filing on the prior conduct of other carriers.[15] The Company does not believe it is reasonable to have its future operations tied to the past actions of other carriers.[16]

In any event, each Petitioner focuses on what may happen in the future, not the standards of Section 61.39.[17] Petitioners' claims are difficult to rationalize with Section 61.39(b)(1)(i) which request: "[A] cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period."[18] In effect, then, Petitioners seek to merge the specific requirements of Section 61.39(b)(1)(i) with the "projected" data requirements of Section 61.38 of the Commission's Rules.[19] Such an approach would be inappropriate in light

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15 *See, e.g.,* Qwest Petition at 6-7; Verizon Petition at 8-12.

16 Verizon references the fact that one of the affiliates of the Company – Dalton Telephone Company – has reentered the National Exchange Carrier Association, Inc. ("NECA") pool. *See* Verizon Petition at 10. Dalton reentered the NECA pool 4 years after it first filed its Section 61.39 tariff. Verizon has not, however, demonstrated that this election was impermissible or contrary to existing Commission practice that permitted such action.

17 *See, e.g.,* Qwest Petition at 9 ("It is only once the carrier's volumes have increased substantially - likely after the tariff has taken effect - that its rates are revealed to be unreasonably high in light of increased demand."); Verizon Petition at 3 ("The Commission should also suspend these tariffs for the additional reason that they are based on traffic-demand data that are likely to prove false or misleading.")

18 47 C.F.R. §§ 61.39(b)(1)(i).

19 Section 61.38(b) of the Commission's rules states:

> b) *Explanation and data supporting either changes or new tariff offerings.* The material to be submitted for a tariff change which affects rates or charges or for a tariff offering a new service, must include an explanation of the changed or new matter, the reasons for the filing, the basis of ratemaking employed, and economic information to support the changed or new matter.
>
> (1) For a tariff change the carrier must submit the following, including complete explanations of the bases for the estimates.
>
> (i) A cost of service study for all elements for the most recent 12 month period;
>
> (ii) A study containing a projection of costs for a representative 12 month period;

of the Commission's previous findings in this regard: "[A] hybrid filing using some historical data and some prospective data would present most of the same issues as a normal filing, with far less assurance that the rates can be considered *prima facie* reasonable and self-correcting. Determining what future events are 'known and measurable,' and then adjusting past actual figures to reflect these changes, is likely to be contentious and difficult."[20]

In sum, the Petitioners do not provide or suggest a basis upon which the Company's *actual* filed rates should be suspended and investigated. To the contrary, the Petitioners' silence as to the actual filing that was made implies that the Company has followed all of the proper procedures and the rate-setting requirements set forth in Section 61.39(b)(1)(i).[21] Accordingly, Petitioners have not demonstrated "that there is a high probability the tariff would be found unlawful after investigation,"[22] and therefore, the Petitions should be denied.

> (iii) *Estimates of the effect of the changed matter on the traffic and revenues from the service to which the changed matter applies, the carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in (ii) above.*

47 C.F.R. § 61.38(b) (emphasis added).

20 *In the Matter of Regulation of Small Telephone Companies, Report and Order*, 2 FCC Rcd 3811, (1987) ("*Small Company Order*") at 3813, ¶16. Verizon asserts that "[w]hen the carriers seeking to leave the NECA pool file tariffs based on historical demand levels, they necessarily are implicitly representing that historical demand is a reasonable proxy for future demand." Verizon Petition at 3. A similar proposition appears to be proffered by AT&T. *See* AT&T Petition at 13. These Petitioners cite no references in Section 61.39 of the Commission Rules that stands for this proposition. Moreover, it appears that the logic of these positions is akin to the "hybrid filing" construct that the Commission rejected in the *Small Company Order*. *See Small Company Order* at 3812, ¶12.

21 To the extent that there may be inferences in the various Petitions that the Company may not have been truthful or accurate with respect to the documentation underlying the June 15th Filing (*see, e.g.,* Verizon Petition at 14), there is no basis for such inference. As explained above, a company filing a tariff under Section 61.39 is required to base rates on historical data and therefore cannot have engaged in an unreasonable or unlawful practice in having done so.

22 47 C.F.R. § 1.773(a)(iii)(A).

B. Petitioners have not Demonstrated that Any Unreasonable Rate would not be Corrected in a Subsequent Filing.

Petitioners have not demonstrated that if an unreasonable rate was created by a future change in expenses or demand that this rate cannot be corrected in a subsequent filing. Petitioners offer a variety of concerns regarding the inability to ensure that any demonstrated unreasonable rates could not be corrected in a subsequent filing. These concerns include such contentions as "deemed lawful" status precludes relief, that the Company may reenter the NECA pooling process, and that there would be some smaller amount of traffic upon which the adjusted rates would be based.[23] These assertions should not be permitted as a basis for the Petitioners to sustain their burden. *See also* Section I.A, *supra.*

With respect to "deemed lawful" status, the Petitioners have not demonstrated that the filing of complaint would not adequately address their concerns. Although the Petitioners raise concerns regarding entities reentering the NECA pools, it is not known at this time whether any company will be reentering the NECA pool in 2009 even though the Commission has permitted that practice to occur in the past. Finally, even if Verizon is correct that there would be a reduced level of traffic in the future that would not recover any over earnings by a company,[24] that outcome would provide incentives for Verizon to monitor the traffic and file a complaint should it believe it has the basis to do so. Thus, if a carrier believes that it is improperly charged, that belief would, in turn, provide the incentive to that carrier to file a complaint. However, that action would be based on the *future facts* which are not required pursuant to Section

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23 *See*, e.g., Qwest Petition at 13, AT&T Petition at 17; Verizon Petition at 15-16.

24 *See id.*

61.39(b)(1)(i) of the Commission's Rules to be utilized by the Company with respect to its June 15th Filing.

For these reasons, Petitioners' logic and purported demonstrations do not sustain their burden that "any unreasonable rate would not be corrected in a subsequent filing,"[25] including any that may be required as a result of a complaint proceeding. Accordingly, the Petitions should be denied.

At the same time, the Company understands that the Commission has the authority to monitor earnings under Section 61.39(c).[26] Assuming the Commission is inclined to otherwise suspend and investigate the Company's June 15th Filing on its own motion or to pursue Section 61.39(c), and in lieu of such action, the Company will agree to make mid-course rate adjustments if a change is necessitated by future events, and consistent with Section 204(a)(3),[27] the Company will agree to make any necessary mid-course rate adjustments based upon then existing historical costs and demand to ensure that its rates are set at just and reasonable levels.[28] As stated above, any such tariff filing would be made with an effective date of July 1, 2008. The

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25 47 C.F.R. § 1.773(a)(iii)(B).

26 Section 61.39(c) states as follows:

> (c) *Maximum allowable rate of return.* Local exchange carriers filing tariffs under this section are not required to comply with §§65.700 through 65.701, inclusive, of the Commission's Rules, except with respect to periods during which tariffs were not subject to this section. The Commission may require any carrier to submit such information if it deems it necessary to monitor the carrier's earnings. However, rates must be calculated based on the local exchange carrier's prescribed rate of return applicable to the period during which the rates are effective.

47C.F.R. § 61.39(c).

27 *See* 47 U.S.C. § 204(a)(3).

28 47 U.S.C. § 201(b).

Company believes this approach is inherently more administratively reasonable than the overly broad approach proposed by certain of the Petitioners.[29]

C. The Petitioners have not Demonstrated that Irreparable Injury will result if the Company's June 15th Filing is not Suspended.

The Petitions contain no factual allegations to support an assertion that the Company's rates as filed will cause irreparable injury. Thus, Petitioners have each failed to meet their burden to demonstrate that "irreparable injury will result if the tariff filing is not suspended."[30] To be sure, none of the Petitioners can demonstrate the unavailability of the complaint process to address any impacts upon their operations arising from the Company charging the rates developed pursuant to Section 61.39(b)(1)(i) of the Commission's Rules.[31]

Moreover, none of the Petitioners have demonstrated that they were incapable of taking ameliorative actions before the filing of the Company's June 15th Filing or after such filing to minimize and/or avoid any potential harm they believe they may experience such as those suggested by Sprint.[32] Thus, in addition to complaints, Petitioners have not taken potential actions available to them that would protect them from the harm they allege.

Some Petitioners' further suggestion of a reduced standard for "irreparable injury" referenced by the Commission in the *Report and Order and Second Further Notice of Proposed*

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29 *See, e.g.,* AT&T Petition at 7, 19-21; Qwest Petition at 9; Sprint Petition at 3, 11.

30 47 C.F.R. § 1.773(a)(iii)(C).

31 Qwest claims that, absent suspension of the Company's June 15th Filing, Section 204(a)(3)'s "deemed lawful" status "will foreclose any recourse for carrier-customers that might be overcharged . . . ." Qwest Petition at 14. Qwest's position (and those of other Petitioners) appears to be premised on its interpretation that suspension is appropriate for a Section 61.39 tariff filing based on possible future events. That premise is akin to the use of projected data which, for the reasons provided in Section I.A, *supra,* is in error.

32 Sprint states, for example, that it "is also conceivable that wireline carriers facing access expenses that exceed revenues by millions of dollars a month might seek waivers of the rate averaging requirements" in areas where such carrier believes issues may arise. *See* Sprint Petition at 6. Verizon's concerns regarding improper costs being passed on to its customers (*see* Verizon Petition at 16) actually provides it an incentive to monitor any access charge invoices and take action to ensure that it is not over charged.

Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873 (1989) (the "*Price Cap Decision*") cannot be reconciled with the circumstances and facts at issue in that decision. Specifically, Verizon suggests that

> [a]s the Commission has recognized, the requirement of "irreparable injury" under Rule 1.773 is not applied as stringently as when a preliminary injunction is sought. *See, e.g., Report and Order and Second Further Notice of Proposed Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873, 3099, ¶ 457 (1989) (noting that, even if refunds were available, the "logistics of ordering a refund, or other factors, could constitute 'irreparable harm'" in this context).[33]

AT&T cites to the same decision.[34] However, neither Verizon nor AT&T have demonstrated that the *Price Cap Decision* should be applicable here.

First, within the FCC's Price Cap Decision, the FCC was addressing entities that operate under "price caps" and file tariffs pursuant to Section 61.41 of the Commission's Rules.[35] The Company is subject to "rate of return regulation" and filed under the specific requirements of Section 61.39(b)(1)(i) of the Commission's Rules. Second, in the sentences following the one Verizon cites in their Petition, the Commission states,

> In the case of telecommunications rates, there may well be instances in which the logistics of ordering a refund, or other factors, could constitute 'irreparable harm.' We also acknowledge that a large user will probably find it especially difficult to make a credible argument that it would be irreparably harmed by a rate increase.[36]

While the issue is not one of refunds but rather the filing of complaints, the Petitioners are, from a resource perspective, in the same position as the "large users" referenced by the Commission in the *Price Cap Decision* as they are a few of the largest carriers utilizing switched access. Thus,

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33 *See id.*, n 15.

34 *See* AT&T Petition at 17.

35 *See* 47 C.F.R. § 61.41.

36 Verizon Petition at 16; *Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice of Proposed Rulemaking*, 4 FCC Rcd 2873, 3099, ¶457 (1989).

the Petitioners have the internal resources to manage the "logistics" of any alleged improper charges that they individually believe that the Company may assess.

The Petitioners have not met their individual burdens under Section 1.773(a)(iii)(C) regarding irreparable injury if the Company's June 15th Filing is permitted to go into effect. Consequently, the Petitions should be rejected by the Commission.

D. The Petitioners have not Demonstrated that Suspension would not Otherwise be Contrary to the Public Interest.

Petitioners' claims that the public interest would be served by the suspension of the Company's June 15th Filing reiterates their previous claims and rhetoric.[37] Those claims do not support suspensions for the reasons provided in Section I.A through C, *supra*, and, therefore, should not form a basis for the public interest showing necessary for Petitioners to sustain their burden that "the suspension would not otherwise be contrary to the public interest."[38]

Likewise, some of the Petitioners suggest that it is appropriate for certain entities to be precluded from offering services within their respective service areas[39] and to add requirements that are not required by Section 61.39 of the Commission's Rules. While Verizon goes one step further and suggests that short notice filings be used for tariffs found not to be unlawful,[40] Verizon's suggestion is premised upon future facts that are not relevant to the Section 61.39 "historical" basis upon which the Company's June 15th Filing was based.

No demonstration has been made that such results serve the public interest. The Petitioners' statements would, in effect, employ new procedures that are beyond the specific Section 61.39(b)(1)(i) requirements as written and to which the Company has complied. Absent

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37 *See* AT&T Petition at 18; Qwest Petition at 14; Verizon Petition at 16-18.

38 47 C.F.R. § 1.773(a)(iii)(D).

39 *See, e.g.,* AT&T Petition at 7, Qwest Petition at 6, 14; Sprint Petition at 3, 11.

40 *See* Verizon Petition at 18.

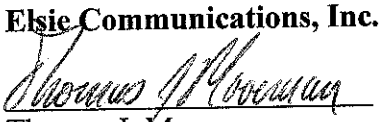
such conclusion, the Company is concerned that the result of the Petitioners' statements could undermine the ability of a company to rely upon the Commission's Rules as written, a result inconsistent with the public interest. Consequently, the Petitioners' public interest arguments should be deemed insufficient to justify suspension of the Company's June 15th Filing. Any claim to the contrary should be rejected.

II. CONCLUSION

For the reasons stated herein, the Company respectfully submits that the Petitioners have failed to satisfy their burden to provide any basis under Section 1.773 of the Commission's Rules that the Company's June 15th Filing should be suspended and investigated. Accordingly, the Company respectfully requests that the Commission deny the Petitions and allow the Company's June 15th Filing to go into effect on June 30, 2007, as filed.

Respectfully submitted,

Elsie Communications, Inc.

By: 

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DECLARATION

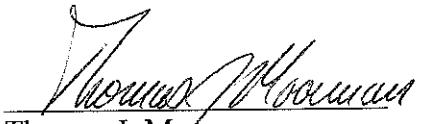
I, David Shipley, General Manager of Elsie Communications, Inc. (the "Company"), do hereby declare under penalty of perjury that I have read the foregoing "Reply of Elsie Communications, Inc. to Petitions to Suspend and Investigate" submitted in WCB/Pricing File No. 07-10, and the information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.

Date: 6/26/07

David Shipley
General Manager

Certificate of Service

I, Thomas J. Moorman, do hereby certify that on this 26th day of June, 2007 copies of the foregoing "Reply of Elsie Communications, Inc. to Petitions to Suspend and Investigate" was served as noted.



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