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April 17, 2007

RECEIVED
APR 18 2007
OFFICE OF
HEARING EXAMINERS

Ms. Julie Johnson
Office of Hearing Examiners
210 East 4th Street
Pierre, SD 57501

Re: In the Matter of the Petition of Venture Communications Cooperative
For Suspension or Modification of Local Dialing Parity Reciprocal
Compensation Obligations
PUC 07-01

Dear Ms. Johnson:

Enclosed for filing please find Venture Communication's Motion to Compel. I have enclosed the original as well as a courtesy copy.

All parties were provided electronic versions of this document today.

Very truly yours,

RITER, ROGERS, WATTIER & BROWN, LLP
By: 
Darla Pollman Rogers

DPR-wb
Enclosures
Cc: Ben H. Dickens, Jr.
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SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PETITION OF) PUC 7-01
VENTURE COMMUNICATIONS COOPERATIVE) VENTURE
FOR SUSPENSION OR MODIFICATION) COMMUNICATION'S
OF LOCAL DIALING PARITY RECIPROCAL) MOTION TO COMPEL
COMPENSATION OBLIGATIONS.)

Venture Communications ("Venture"), by and through its undersigned attorneys, pursuant to ARSD 20:10:01:22:01, hereby moves for an Order compelling Alltel Communications, Inc. ("Alltel") to respond to certain Interrogatories and Document Requests identified below.

BACKGROUND

Venture filed a Petition for Suspension or Modification of Local Dialing Parity and Reciprocal Compensation Obligations with the South Dakota Public Utilities Commission ("Commission"), pursuant to 47 U.S.C. §251(f)(2) and SDCL §49-31-80, on or about October 24, 2006. Petitions to Intervene were filed by the South Dakota Telecommunications Association ("SDTA") (November 6, 2006); Alltel (November 13, 2006) and Rural Cellular Corporation (November 15, 2006), all of which Petitions were granted by the Commission. On January 12, 2007, Alltel requested that the case be transferred to the Office of Hearing Examiners ("OHE"), which request was granted by the Commission on February 6, 2007.

Alltel submitted its first set of Interrogatories and Document Requests to Venture on January 22, 2007, and Venture submitted its first set of Interrogatories and Document Requests to Alltel on February 2, 2007. No procedural schedule has been adopted by the OHE, but Venture responded to unobjectionable interrogatories and document production requests on February 26, 2007. Alltel responded to very few of

Venture's Interrogatories and Requests for Production of Documents on March 12, 2007. The parties have attempted to resolve discovery disputes, and it is Venture's position that more time should be devoted to informal resolution, since the parties have agreed to a delayed hearing date in August of 2007. Alltel has filed a Motion to Compel in order to bring unresolved issues before the OHE. Venture therefore files this Motion to Compel, so that all unresolved discovery issues as of the current date are before the OHE.

DISCOVERY AT ISSUE

1. Venture moves the Hearing Examiner to enter an Order compelling Alltel to fully and accurately respond to Interrogatory No. 4 and Interrogatories 9 through 41, copies of which, with the answers submitted, are attached hereto as Exhibit 1.

2. Venture further moves the Hearing Examiner to enter an Order compelling Alltel to fully and accurately respond to Requests for Production ("RFP") 2, 5 and 16; to provide a complete response to RFP 1 and RFP 4; and to provide clarifying information to Alltel's response to RFP 7. Copies of these RFP's and Alltel's responses are attached as Exhibit 2.

3. In Alltel's Responses to Venture's First Set of Interrogatories, Alltel refused or failed to respond to questions that Venture posed concerning Alltel's costs to terminate Venture's calls. A complete response to the discovery requests set forth above is relevant to Venture's claim that the costs of transport and termination for wireless carriers such as Alltel are different, and lower, than Venture's costs to terminate Alltel's calls. Venture has appropriately applied for a suspension of its obligation of symmetrical reciprocal compensation. The FCC requires reciprocal compensation to be determined by a forward looking economic cost study ("FLEC" study). Once a local exchange carrier

such as Venture has completed a FLEC study, the LEC and the requesting interconnecting carrier (i.e. Alltel) must compensate each other for reciprocal compensation based upon Venture's FLEC study. That is one of the requirements from which Venture is requesting relief in this docket.

4. It is Venture's position, as stated in its Petition, that for purposes of reciprocal compensation, wireline networks and wireless networks are different. Alltel's network allows for economies of scale that it is impossible for a rural carrier such as Venture to achieve. Therefore, forward looking costs for Venture are different, and higher, than forward looking costs of a large wireless network such as Alltel. Venture has alleged that in its Petition for Suspension (see page 14 of the Petition). Thus, the data requested in Venture's Interrogatories is relevant to Venture's claim that the costs of transport and termination for wireless carriers such as Alltel are different than Venture's costs, and under applicable discovery laws, is discoverable.

5. Contrary to Alltel's repeated assertions (Petition to Intervene, ¶2; Motion to Dismiss, pp. 3, 9, 10), Venture is not asking the OHE to order Alltel to perform its own FLEC study. In its discovery, Venture requested Alltel to provide information and data on its costs of transport and termination of Venture's calls. Venture can do its own analysis of the information requested of Alltel to support the allegations in its Petition that Venture's costs to transport and terminate calls are higher than Alltel's, and thus symmetrical reciprocal compensation is unduly economically burdensome for Venture and ultimately for its subscribers.¹

¹ In its discovery, Venture has requested existing data from Alltel. Venture will analyze this data to determine Alltel's forward looking costs.

6. Alltel also appears to purport the position that as the moving or petitioning party, the entire evidentiary burden to support its Petition must be met upon filing, and if not, the Petition must be dismissed:

Venture's request for specific Alltel cost information is premature. In order to grant Venture's request for suspension/modification, 47 U.S.C. 251(f)(2) requires a specific showing by Venture of the (i) the (sic) adverse economic impact of (sic) users of telecommunication services generally as a result of Venture's compliance with its current obligations; or (ii) the (sic) unduly burdensome economic effect of the current reciprocal compensation obligation. An examination of Alltel's specific costs is irrelevant to each analysis. Such information is not relevant or discoverable unless and until the suspension petition with respect to asymmetrical compensation is ultimately determined in favor of Venture . . . Response to Interrogatory 10 and repeated thereafter.

(See also Motion to Dismiss, p. 3). Thus, according to Alltel's interpretation, Alltel would not be required to respond to discovery unless and until Venture's Petition is sustained. That position is contrary to the federal act and to the general rules of discovery in South Dakota. 47 U.S.C. 251(f)(2) affords LECs such as Venture the opportunity to petition a State commission for a suspension or modification of the application of requirements of subsections (b) and (c) of the Act. That is exactly what Venture has done. Adverse economic impact on users of telecommunications services generally and imposition of unduly economically burdensome requirements are some of the criteria that the State commission considers in granting of such a petition. Any evidence that is introduced in the docket relating to those factors can be considered by the commission, regardless of the source of said evidence.

That interpretation is also consistent with the general discovery rules in South Dakota. Under SDCL 15-6-26 (b)(1) a party may obtain discovery of anything relevant to the subject matter "whether it relates to the claim or defense of the party seeking

discovery”. The language authorizing discovery is therefore very broad. One of the subject matters of the Petition is relief from the requirement of symmetrical compensation. The information requested above is relevant to that matter, as it will allow Venture to support its claim that Alltel’s costs to transport and terminate Venture’s traffic are less than Venture’s costs. The information sought is discoverable under South Dakota’s discovery rules.

Alltel’s contention that “such information (Alltel’s specific costs) is not relevant or discoverable unless and until the suspension petition with respect to asymmetrical compensation is ultimately determined in favor of Venture” is also untenable under South Dakota law. SDCL 15-6-11(b)(3) states generally that when a party files pleadings with the Court that it is representing to the best of the person’s knowledge, formed after inquiry reasonable under the circumstances, that the allegations and factual contentions have evidentiary support or are likely to have that support “after a reasonable opportunity for further investigation or discovery.” Hence, it is clear that South Dakota rules anticipate that for purposes of pleading, a person need only have facts developed upon inquiry reasonable under the circumstances before commencement of the case, but can thereafter utilize the discovery process to obtain the information necessary to prove the claim.

Conclusion

Venture respectfully requests an order compelling complete responses to the above Interrogatories and data requests, for all of the reasons set forth herein.

Respectfully submitted this 17th day of April, 2007.

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Certificate of Service

The undersigned, attorney for Venture Communications, Inc., hereby certifies that a true and correct copy of the foregoing Venture Communication's Motion to Compel was sent electronically on this 17th day of April, 2007, upon:

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