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RECEIVED
MAY 03 2007
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HEARING EXAMINERS

May 2, 2007

VIA EMAIL: JulieM.Johnson@state.sd.us
and U.S. Mail
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
SDPUC Docket File Number TC 06-181 (PUC07-01)
GPGN File No. 5925.060651

Dear Ms. Johnson:

Enclosed for filing please find Alltel's Response to Venture Communications' Motion to Compel and the Affidavit of Sean R. Simpson in the above-entitled matter. I have enclosed the originals for the file and a courtesy copy for your convenience via U.S. Mail.

All parties have been provided electronic versions of these documents.

Sincerely,



Talbot J. Wiczorek

TJW:klw

c: Patricia Van Gerpen via email
Kara Van Bockern/Harlan Best/Rolayne Wiest via email
Darla Rogers via email
Mary Sisak/Ben Dickens via email
Rich Coit via email
Steve Rowell via email
Sean Simpson via email
Elizabeth Kohler via email

SOUTH DAKOTA

OFFICE OF HEARING EXAMINERS

In the Matter of the Petition of Venture)
Communications Cooperative for suspension or) PUC 7-01
modification of local dialing parity and reciprocal) Docket No. TC06-181
compensation obligations.)

**ALLTEL COMMUNICATIONS, INC.'S RESPONSE TO VENTURE
COMMUNICATIONS' MOTION TO COMPEL**

Alltel Communications, Inc. ("Alltel"), by and through its undersigned attorneys, hereby files this Response to Venture Communications Cooperative's ("Venture") Motion to Compel. Denial of Venture's Motion is appropriate because Venture seeks onerous and unduly burdensome discovery of irrelevant cost information within the current proceeding for suspension of Venture's dialing parity and reciprocal compensation obligations under 47 U.S.C. § 251(f)(2). Moreover, Venture's Motion to Compel is untimely, seeks information not readily available, and production of such irrelevant information would require extraordinary measures by Alltel.

BACKGROUND

On October 24, 2006, Venture filed the current Petition, pursuant 47 U.S.C. § 251(f)(2) and SDCL § 49-31-80, seeking the extraordinary relief of suspension or modification of *its* long-standing dialing parity and reciprocal compensation obligations. Alltel intervened as an interested party on November 13, 2006. After the matter was transferred to the Office of Hearing Examiners on February 6, 2007, the parties began to discuss a stipulated scheduling order with an ultimate hearing date in August 2007. On April 2, 2007, Alltel and Venture agreed

upon a stipulated procedural schedule.¹ (the “Scheduling Order”). *See* Simpson Affidavit, Exhibit 1.

While discussing the agreed upon procedural schedule the parties exchanged discovery requests and responses.² Alltel served its responses and appropriate objections to the Venture discovery requests on March 12, 2007. Pursuant to the agreed upon Scheduling Order, Motions to Compel were to be filed by April 13, 2007. Despite its agreement on, and prior adherence to the Scheduling Order; Venture now seeks to pursue its Motion to Compel which was filed after the agreed upon deadline of April 13, 2007. Moreover, prior to the deadline of April 13, 2007, Venture failed to make any effort to follow-up or identify the information it sought in light of the previous relevancy objections of Alltel.

DISCUSSION

Through its Motion to Compel Venture seeks a significant amount of information related to “Alltel’s costs to terminate Venture’s calls.” *See* Venture Motion to Compel, p. 2. However, such information with respect to one competitor’s costs, namely Alltel’s, is irrelevant as to whether or not the current reciprocal obligations imposed under the Act result in a significant adverse economic impact or unduly economically burdensome requirement that warrant avoidance under section 251(f)(2). Venture must first demonstrate that its compliance with the current reciprocal compensation obligation imposed under section 215(b)(5) of the Act results in significant adverse economic impact to it or an unduly economically burdensome requirement on it. The statutory test is not whether some other alternative would have less impact.

Notwithstanding the same, Venture is attempting skip this requisite statutory burden and move

¹ The ultimate date for a Commission decision was later changed due to input from Commission Staff. *See* Simpson Affidavit .

² Following receipt of Venture’s discovery responses Alltel made several attempts to obtain further disclosure short of its timely filed Motion to Compel, now pending before the OHE.

instead to trying to prove a benefit, apparently assuming as it asserted in its Petition that Alltel's costs would be lower than its own.

I. Alltel's Cost Information is Not Relevant to the Current Petition for Suspension.

Alltel's costs are irrelevant to the statutory analysis required under 47 U.S.C. § 251(f)(2). In order to grant the suspension/modification relief requested, Venture must affirmatively demonstrate that its request is necessary (i) to *avoid* a significant adverse economic impact of telecommunication users; or (ii) to *avoid imposing a requirement* that is unduly economically burdensome; and (iii) the exercise of such relief must be consistent with the public interest. *See* 47 U.S.C. § 251(f)(2). (*emphasis added*). The plain language of the statute is clear – Venture must first demonstrate the significant adverse economic impact resulting from its compliance with its current reciprocal compensation obligations – which includes an examination of symmetrical rates based upon Venture's forward looking costs, not Alltel's. Only in the event Venture demonstrates severe economic impact as a result of compliance with its current reciprocal compensation obligation is avoidance or modification relief appropriate. Proving that the current requirements are significant and economically harmful to Venture has nothing to do with an examination of Alltel's costs, but instead has everything to do with an analysis of the economic impact the current requirement imposed by the FCC of symmetrical rates based upon Venture's costs.

Currently, Venture has an obligation. "...to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). Venture's reciprocal compensation obligation is furthered outlined in the FCC's rules. These rules provide that an incumbent LEC's (Venture's) rates for transport and termination of telecommunications traffic shall be established on the basis of its forward-looking economic

costs of such offering or a bill-and-keep-arrangement. 47 C.F.R. § 51.705. Therefore, the proper statutory analysis under section 251(f)(2) involves assessing the economic impact on Venture's financial condition of reciprocal compensation rates based upon Venture's forward looking economic costs. Such an analysis plainly does not involve an analysis of Alltel's costs.

It would be difficult to argue that if Venture is allowed to pay lower reciprocal compensation rates to competitors, and bill a higher rate to its competitors for the same services, then Venture's costs will be lower than if it bills and pays the same symmetrical rate. Therefore, understanding Alltel's costs is not in issue at present. Rather, the Act requires Venture to establish the significant adverse impact of continued compliance with its current reciprocal compensation obligation - an impact analysis of continued billing and payment of rates based upon Venture's own costs – not Alltel's.

Alltel's specific costs are also irrelevant because through its Petition, Venture seeks general relief from its reciprocal compensation obligations not just with respect to Alltel, but relief from its obligations with respect to all competitors who may seek reciprocal compensation arrangements. Therefore, its attempt to support its claims for relief only upon only an analysis of Alltel's costs is clearly inappropriate when it requests relief from all competitors who are entitled to establish reciprocal compensation arrangements. This is further evidence of section 251(f)(2)'s requirement to examine the economic impact of the current obligation on the petitioning party (Venture). Alltel's costs are only relevant in an arbitration proceeding and then only if Alltel has under FCC rules attempted to demonstrate its costs are higher than Ventures. Again, Venture's request for Alltel's cost information is not relevant in this proceeding. Even assuming Venture did meet the statutory burden of showing that the current FCC rules would result in significant economic harm to it and the rules were suspended, Alltel's costs would only

be relevant in a subsequent arbitration between the parties, not this proceeding for suspension relief under section 251(f)(2).

II. Venture's Motion to Compel is not timely and seeks information not readily available.

Venture failed to serve and file its Motion to Compel prior to the agreed upon date within the Scheduling Order of April 13, 2007. On April 2, 2007, the parties agreed to the Scheduling Order with an agreed upon deadline for Motions to Compel on April 13, 2007. Despite this deadline, Venture did not file its current Motion to Compel until April 17, 2007. Moreover, prior to April 13, 2007, Venture made no attempt to identify the discovery requests it sought additional information on over the previous relevancy objections of Alltel. *See Simpson Affidavit.* Accordingly, Venture's Motion to Compel is not timely, nor did it comply with the good faith resolution requirements imposed under SDCL 15-6-37(a)(2), and must be denied.

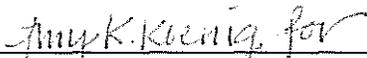
Finally, Venture's requests for Alltel's cost data within the South Dakota MTA is overbroad and unduly burdensome. (Interrogatory Nos. 4, 9-31; RFPs 1, 2, 4, 5, 16). Unlike incumbent local exchange carriers like Venture, Alltel has never been required to compile and submit any cost information for the purposes of establishing reciprocal compensation arrangements. Therefore, Alltel does not gather, record and/or report the detailed information Venture seeks through the discovery request identified. In order for Alltel to gather the vast amount of cost information requested it would have to undertake an unprecedented, expensive and time-consuming audit, data search and collection effort. This extremely burdensome effort is entirely unnecessary given the irrelevant nature of the information sought. As a result, Alltel requests denial of Venture's Motion to Compel pursuant to S.D.C.L. § 15-6-26(b).

CONCLUSION

For all the above-stated reasons, Alltel respectfully requests that Venture's Motion to Compel be denied in its entirety.

Dated this 2nd day of May, 2007.

ATTORNEYS FOR ALLTEL
COMMUNICATIONS, INC.



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Fax: 605-342-0480
Email: tjw@gpgnlaw.com

and

Sean R. Simpson (Admitted Pro Hac Vice)
One Allied Drive
Little Rock, Arkansas 72202
Phone: 507-385-2455
Fax: 507-385-2200
Email: sean.simpson@alltel.com

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of May, 2007, a true and correct copy of **Alltel Communication, Inc.'s Response to Venture Communications' Motion to Compel** was sent electronically to:

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RITER ROGERS WATTIER & BROWN
LLP
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PIERRE SD 57501-0280

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Talbot J. Wieczorek for
Talbot J. Wieczorek

SOUTH DAKOTA

OFFICE OF HEARING EXAMINERS

In the Matter of the Petition of Venture)
Communications Cooperative for suspension or) PUC 7-01
modification of local dialing parity and reciprocal) Docket No. TC06-181
compensation obligations.)

AFFIDAVIT OF SEAN R. SIMPSON

STATE OF MINNESOTA)
) SS
COUNTY OF BLUE EARTH)

Sean R. Simpson, being first duly sworn, states as follows:

1. I am currently the Senior Counsel for Alltel Communications, Inc. ("Alltel").
2. I submit this Affidavit on behalf of Alltel in support of its Response to Venture Communications' Motion to Compel.
3. I was involved in and have personal knowledge with respect to the negotiations/discussions regarding the Scheduling Order in this proceeding as well as the discovery issues between the parties.
4. On April 2, 2007, the parties (Venture and Alltel) agreed to the Scheduling Order which included a deadline for submission of Motions to Compel by April 13, 2006.
5. Subsequent to the parties' agreement to the Scheduling Order, Commission staff requested that the final ruling be moved to late October. The parties' agreement to move the date for final ruling to November 1, 2007. The other dates previously agreed to remain the same.
6. Attached as Exhibit 1, is a true and correct copy of an email string beginning on April 2, 2007, that demonstrates the parties agreement on the Scheduling Order.
7. On April 3, 2007, Venture counsel sent a copy of the revised Scheduling Order to me for execution and ultimate filing with the OHE.
8. Local counsel Talbot Wiczorek executed the Scheduling Order on behalf of Alltel, and sent to Venture for filing with the OHE.
9. On April 9, 2007, I contacted counsel for Venture inquiring on whether or not it was more efficient to have the hearings on the Motion to Compel and Motion for Dismissal

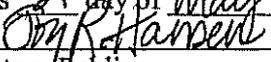
on one day rather than 2 days, as provided for in the agreed upon Scheduling Order. I did not revoke my prior agreement on the dates identified in the Scheduling Order. I simply inquired as to the need for one hearing date instead of two separate dates.

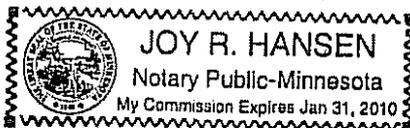
10. Consistent with the parties' agreement on the Scheduling Order, Venture served and filed its Response to the Alltel Motion to Dismiss on April 6, 2007.
11. At no point in time prior to the April 13, 2007, deadline for Motions to Compel, did Venture identify the specific discovery requests that it sought additional information on over the previously stated Alltel objections.
12. Venture did not identify the specific discovery requests it sought additional information on until April 14, 2007 – one day after the agreed upon deadline for the filing of a Motion to Compel.
13. Attached as Exhibit 2, is a true and correct copy of the email string on April 13, 2007, between myself and Venture counsel on the issue of adhering to the previously agreed upon Scheduling Order.
14. Prior to the Motion to Compel deadline of April 13, 2007, I made several inquiries on behalf of Alltel attempting to gain additional discovery responses from Venture. At no time during those conversations did Venture seek similar information with respect to the Alltel responses.

FURTHER YOUR AFFIANT SAITH NAUGHT.


Sean R. Simpson

Subscribed and sworn to before me
this 2 day of May, 2007.


Notary Public



Sean Simpson

From: Margo Northrup [M.Northrup@riterlaw.com]
Sent: Tuesday, April 03, 2007 9:09 AM
To: Sean Simpson; mjs@bloostonlaw.com; richcoit@sdtaonline.com; tjw@gpgnlaw.com; Darla Rogers; Stephen B Rowell
Cc: Kara.VanBockern@state.sd.us
Subject: RE: Venture Procedural Schedule Stipulation
Attachments: Stipulation for Procedural Schedule (final).doc

Attached is the revised Procedural Schedule with the November 1, 2007 date.

Please execute and return to me for filing.

Thanks
Margo D. Northrup
Riter, Rogers, Wattier and Brown LLP

From: Sean Simpson [mailto:Sean.Simpson@alltel.com]
Sent: Tuesday, April 03, 2007 8:52 AM
To: Margo Northrup; Sean.Simpson@alltel.com; mjs@bloostonlaw.com; richcoit@sdtaonline.com; tjw@gpgnlaw.com; Darla Rogers; Stephen B Rowell
Subject: RE: Venture Procedural Schedule Stipulation

November 1, 2007 is acceptable to Alltel.

Thanks

Sean R.Simpson
Counsel for Alltel Communications, Inc.
2000 Technology Drive
Mankato, Minnesota 56001
507-385-2455 (Direct)
507-327-2455 (Mobile)
507-385-2200 (Fax)

From: Margo Northrup [mailto:M.Northrup@riterlaw.com]
Sent: Monday, April 02, 2007 3:38 PM
To: Sean.Simpson@alltel.com; mjs@bloostonlaw.com; richcoit@sdtaonline.com; tjw@gpgnlaw.com; Darla Rogers; Stephen B Rowell
Subject: FW: Venture Procedural Schedule Stipulation

FYI- Staff is asking us to extend the decision date until November 1, 2007. Please advise as to your thoughts.

Margo D. Northrup
Riter, Rogers, Wattier and Brown LLP

From: Kara.VanBockern@state.sd.us [mailto:Kara.VanBockern@state.sd.us]
Sent: Monday, April 02, 2007 3:32 PM
To: Margo Northrup
Subject: RE: Venture Procedural Schedule Stipulation

Margo - Rolayne would prefer November 1 as her decision date.

Let me know if this delay is workable, or if we need to look for an earlier date.
thanks and sorry for the inconvenience.

Kara Van Bockern

-----Original Message-----

From: Margo Northrup [mailto:M.Northrup@riterlaw.com]
Sent: Monday, April 02, 2007 2:52 PM
To: VanBockern, Kara; Sean.Simpson@alltel.com; richcoit@sdtaonline.com;
mjs@bloostonlaw.com; tjw@gpgnlaw.com; Darla Rogers; Stephen.B.Rowell@alltel.com
Subject: RE: Venture Procedural Schedule Stipulation

Venture does not object to a later date. Do you have a date to propose?

Margo D. Northrup
Riter, Rogers, Wattier and Brown LLP

From: Kara.VanBockern@state.sd.us [mailto:Kara.VanBockern@state.sd.us]
Sent: Monday, April 02, 2007 2:43 PM
To: Margo Northrup; Sean.Simpson@alltel.com; richcoit@sdtaonline.com; mjs@bloostonlaw.com;
tjw@gpgnlaw.com; Darla Rogers; Stephen.B.Rowell@alltel.com
Subject: RE: Venture Procedural Schedule Stipulation

I spoke with Rolayne Weist, Commission Counsel, regarding the schedule.
She has several major decisions and projects recently scheduled on or near the October 19 time
frame. Is it possible to move the October 19 Commission Final Ruling date to a day later in
October?

Thank you.

Kara Van Bockern
SD Public Utilities Commission, Staff Attorney
500 E. Capitol
Pierre, SD 57501

(605)773-8182

-----Original Message-----

From: Margo Northrup [mailto:M.Northrup@riterlaw.com]
Sent: Monday, April 02, 2007 11:48 AM
To: Sean Simpson; Rich Coit ; Mary Slsak; Talbot J. Wiczorek; VanBockern, Kara; Darla
Rogers; Stephen B Rowell
Subject: Venture Procedural Schedule Stipulation

Attached is a Stipulation for Procedural Schedule in the Venture Suspension docket. Alltel
and Venture are in agreement with the proposed document. If it is acceptable to the rest of
the parties, please execute the signature page and return to me. I will file the Stipulation
once we have a final agreement.

Thank you,

Margo D. Northrup
Riter, Rogers, Wattier and Brown LLP

Sean Simpson

From: Sean Simpson [Sean.Simpson@midwestwireless.com]
Sent: Friday, April 13, 2007 2:58 PM
To: Darla Rogers; Sean Simpson; Stephen B Rowell; Ron Williams
Cc: Talbot J. Wiczorek; Margo Northrup; Mary J Sisak
Subject: RE: Venture Suspension docket discovery issues

My suggestion on moving hearing dates relates to the issue that it may make more sense to have 1 hearing date instead of multiple dates and I did not know if the dates selected were even open with the OHE. (That is still an item for discussion). My earlier call inquiring on the status of your disclosure suggested the idea of a later filing of the motion to compel because I had not yet received any materials from you despite several assurances otherwise. It did not make sense to file a Motion to Compel on Friday if you were providing the requested information on Thursday/Friday. Again, despite assurances of materials being provided via federal express – I have received nothing. Accordingly, any previous rationale for a later filing of the Motion to Compel is gone as you have not provided anything prior to the agreed-upon deadline. Bottom line there was no agreement to extend the deadline on the Motion to Compel.

With respect to Venture's failure to follow-up on discovery prior to the deadline for filings of a Motion to Compel, it is my understanding SDCL 20:10:01:02 incorporates SD rules of civil procedure which incorporates the federal requirement that the parties attempt to work through the various discovery disputes before filing a motion to compel. This would necessarily include Venture identifying the actual requests, objections posed and basis for disclosure despite stated objections. Beyond the existence of any actual requirement, it would seem basic to me that unless I know what specific objections and/or discovery responses you have issue with, I cannot respond in any meaningful way. Alltel believes its stated objections to the various Venture discovery requests are valid and has not been provided any basis or grounds to act otherwise. On the other hand, Alltel identified specific discovery requests it sought additional disclosure on. Additionally, Alltel supplied the basis and relevancy grounds for its requests orally and in writing on many occasions. Venture simply did nothing to relay its concern (s) with the Alltel responses. To seek further disclosure (which Venture has yet to do) 2-3 days before a deadline on a motion to compel is not reasonable.

The fact the stipulated scheduling order has not yet been filed does not mean that the parties should not be operating under the proposed deadlines. Alltel has made it clear it intends to develop the record in this matter in order to properly address/rebut the allegations and claims for relief within the Venture Petition. Alltel has also made it clear that it believes Venture is not moving this case forward – to the detriment of Alltel.

Alltel's primary goal is to move this matter towards resolution. To that end, Alltel has proposed settlement discussions on several occasions – we are still open to discussing mutual resolutions of the issues as it appears from the recent Response to the Motion to Dismiss that the parties may not be far off in suggesting and abiding by real world alternatives. Short of settlement, Alltel must prepare for hearing – which includes development of the issues through rigorous discovery.

I am not trying to be uncompromising or combative but my inability to move this matter towards resolution through settlement or obtain necessary information basic to the claims in this matter puts Alltel in a spot where it must take seek intervention by the OHE.

The filing of the Motion to Compel does not foreclose Alltel's willingness to discuss settlement, nor does it preclude Alltel from withdrawing portions of its motion/argument if adequate disclosures are received prior to the Motion hearing. Alltel is simply operating under the current timelines in order to protect its position in this proceeding.

Sean R. Simpson
Counsel for Alltel Communications, Inc.
2000 Technology Drive
Mankato, Minnesota 56001
507-385-2455 (Direct)
507-327-2455 (Mobile)
507-385-2200 (Fax)

5/2/2007

EXHIBIT 2

From: Darla Rogers [mailto:dprogers@riterlaw.com]
Sent: Friday, April 13, 2007 2:19 PM
To: Sean Simpson
Cc: Talbot J. Wieczorek; Margo Northrup; Mary J Sisak
Subject: RE: Venture Suspension docket discovery issues

Dear Sean:

I am confused by our recent correspondence. Let me recap my understanding of where we are:

1. The procedural schedule has not been filed or approved/adopted by the Office of Hearing Examiners yet. In fact, based upon our recent correspondence, it was my understanding that your client and Venture wanted to make a few revisions to the schedule as proposed:
 - a. On April 9 you requested that we move the hearing on the Motion to Dismiss (currently April 23) to the same date as the hearing on the Motion to Compel.
 - b. In a voice mail message, you suggested postponing the deadline of the Motion to Compel to next Tuesday, to enable you to review our supplemental materials.
 - c. On Thursday, April 12, 2007, I concurred with your suggestion of pushing back the Motion to Compel date.
2. In light of this, and the fact that we just received one of the signature pages, the proposed procedural schedule has not been filed, and thus we do not have a procedural schedule or any filing deadlines.
3. We can continue to try to tweak the schedule as circulated, which should be possible. Otherwise, we can each submit a procedural schedule to the Office of Hearing Examiners, and she can set the schedule.

Also, I am not aware of anything under South Dakota law that requires us to provide you with any additional basis for disclosure prior to filing a motion to compel. We can certainly do so if that is your preference, which is a further reason to extend the proposed deadline in the current schedule.

I think we can accommodate all of the changes we have discussed. Please advise.

Darla Pollman Rogers

From: Sean Simpson [mailto:Sean.Simpson@alltel.com]
Sent: Friday, April 13, 2007 1:08 PM
To: Darla Rogers; Sean Simpson
Cc: Talbot J. Wiczorek; Margo Northrup
Subject: RE: Venture Suspension docket discovery issues

Darla:

In follow-up to our call, I am somewhat surprised by the need for an extension by Venture as it has not to my knowledge objected to or provided a basis for additional disclosure by Alltel. Therefore, I wasn't aware Venture would even by filing such a motion.

Sean R. Simpson
Counsel for Alltel Communications, Inc.
2000 Technology Drive
Mankato, Minnesota 56001
507-385-2455 (Direct)
507-327-2455 (Mobile)
507-385-2200 (Fax)

From: Darla Rogers [mailto:dprogers@riterlaw.com]
Sent: Friday, April 13, 2007 11:42 AM
To: Sean Simpson
Cc: Talbot J. Wiczorek; Margo Northrup
Subject: Venture Suspension docket discovery issues

Sean:

I have tried to call you a couple of times this morning and left voice messages, but to date we have not had a chance to talk. I wanted to confirm with you that we have agreed to extend the deadline for filing of motions to compel in order to allow parties more time to attempt to resolve some or all of the outstanding issues. I have to leave the office shortly for a meeting, but I would appreciate your confirmation of this as soon as possible. I was originally scheduled to be out of the office Monday-Wednesday of next week, but I have adjusted my schedule and will be available to talk on Monday morning. It is my understanding that Talbot is out of his office until Tuesday.

Please contact me as soon as you can.

Darla

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents or attachments, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message (and attachments, if any).
