

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Aventure Communication    )  
Technology, LLC d/b/a Aventure                    )  
Communications' Access Tariff No. 3            )            Docket No. TC11-010

**MOTION TO COMPEL DISCOVERY RESPONSES FROM AVENTURE  
COMMUNICATION TECHNOLOGY, LLC**

AT&T Communications of Midwest, Inc., (“AT&T”) pursuant to A.R.S.D. 20:10:01:22.1 and SDCL 15-6-37(a) hereby files this motion to compel Aventure Communication Technology, LCC, (“Aventure”) to respond to certain discovery requests.

**I. BACKGROUND**

On March 17, 2011, Aventure filed a request for approval of its Switched Access Services Tariff No. 3 which cancelled and replaced in its entirety it South Dakota Tariff No. 2. Aventure’s Tariff No. 3 raised many issues related to how it would operate its business in South Dakota. Many of the changes mirror language in other tariffs that are used to facilitate traffic pumping. AT&T and several other parties filed Motions to Intervene and Suspend the Tariff Pending Investigations. The Motions to Intervene and Suspend the Tariff were granted on April 19, 2011. Pursuant to the Procedural Schedule adopted by the Commission, AT&T served its First Set of Discovery Requests to Aventure on July 1, 2011.

On August 9, 2011, AT&T received Aventure’s Objections and Responses. Aventure provided no answers to Requests 1-1 to 1-67 on the basis of relevancy. It provided limited answers to Requests 1-68 to 1-91.

AT&T’s counsel has had an email exchange with Aventure’s counsel in an effort to obtain the requested information without Commission involvement as required by

SDCL 15-6-37(a)(2). However, Aventure still refuses to respond. Accordingly AT&T moves to compel responses. AT&T attaches hereto as Exhibit A, its Discovery Requests and as Exhibit B, Aventure's Responses and Objections.

## **II. STANDARD FOR A MOTION TO COMPEL**

Pursuant to A.R.S.D. 20:10:01:22.01, the Commission may issue an order to compel discovery "for good cause shown by a party." The South Dakota Supreme Court has explained that the "scope of pretrial discovery is for the most part, broadly construed." Kaarup v. St. Paul Fire and Marine Ins. Co., 436 N.W.2d 16, 19 (S.D. 1989). "A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery: (1) narrow the issues; (2) obtain evidence for use at trial; and (3) secure information that may lead to admissible evidence at trial." Id. SDCL 15-6-26(b) "implies a broad construction of 'relevancy' at the discovery stage because one of the purposes of discovery is to examine information that may lead to admissible evidence at trial." Id., 436 N.W.2d at 20.

The heart of this tariff investigation centers on what type of service Aventure will provide in South Dakota and whether the provisions in the tariff are applicable and/or appropriate to that service. Aventure has made no claims that its planned service for South Dakota will differ from the service it currently offers in Iowa. Consequently, an understanding of Aventure's business operations in Iowa as well as its planned operations in South Dakota is relevant to its South Dakota tariff. However, many of Aventure's objections are based on claims that it has no customers in South Dakota and its operations in Iowa are irrelevant.

As outlined below there is no question that the questions asked are reasonably expected to lead to discoverable evidence for use at hearing.

### **III. AVENTURE MUST PROVIDE SUBSTANTIVE RESPONSES TO THE DISCOVERY REQUESTS.**

#### **A. Requests 1-1 to 1-67**

Aventure objects to this series of questions about its business in general and its operations in Iowa and planned operations in South Dakota on the basis of relevancy, burdensomeness, broadness, trade secret privilege and equally available, noting that many of the discovery requests were served in a proceeding pending in Iowa which is not a tariff investigation.<sup>1</sup> It states that “those requests with respect to information that pertains to Aventure’s Iowa service has no relevance to this proceeding.”<sup>2</sup> As noted above, the changes in its South Dakota Tariff No. 3 are similar or identical to tariff provisions of companies that engage in traffic pumping. All questions about its general business are relevant to this proceeding and its planned activities in South Dakota and it should be compelled to answer the questions noted above fully. Aventure should not be permitted to evade answering these questions or producing the requested documents.

If the standard for discovery relevancy is that it *may* lead to admissible evidence in trial a quick reading of the law and rules governing the Commission clearly indicates that the practices of Aventure in Iowa are relevant to the proceeding at hand.

The Commission is compelled to inquire into complaints and allegations of violations of law by a company in its state of operation. SDCL 49-31-3. This required inquiry makes the most common of sense if Aventure is before the South Dakota Commission in its general supervisory role. To ask the Commission to operate in a vacuum ignoring other proceedings and/or complaints against the very company before it does not make sense under SDCL 49-31-3. Further, under A.R.S.D. 20:10:32:03(16), in obtaining its Certificate of Authority, Aventure is

---

<sup>1</sup> Aventure’s Objections to AT&T’s First Set of Discovery Requests, pp. 1-2.

<sup>2</sup> *Id.* at p. 2.

required to inform the Commission if its Certificate in Iowa is in good standing. Aventure's Certificate of Authority is in jeopardy at this point as there is a pending Order to Show Cause from the Iowa Utilities Board as to why it's Certificate of Public Convenience should not be revoked. (See, FCU-07-2).

Moreover, the type of business that Aventure is conducting in Iowa is relevant to its plans for South Dakota. Aventure has given no indication that it plans service offerings in South Dakota that differ from those in Iowa. The Iowa Utilities Board has concluded that it is not lawful for Aventure to collect higher-priced switched access charges associated with low traffic volume in rural areas.<sup>3</sup> The South Dakota Commission has not addressed this issue. While its rulemaking, RM05-002, Switched Access Rates for Competitive Local Exchange Services, allows Competitive Local Exchange Carriers ("CLECs") to mirror the switched access rates of Qwest, it did not examine whether that rate is appropriate for a service that is not equivalent to Qwest's. Part of the issue in this tariff investigation is configuration of the service Aventure intends to provide in South Dakota and whether the service is equivalent to Qwest's. Consequently, information about its current operations in Iowa is also directly relevant and it should be compelled to respond to those questions that reference its operations in Iowa.

It is not clear that Aventure even read Discovery Requests 1-1 to 1-67 carefully. For example, Request 1-4 asked for a copy of Aventure's original business plans and any subsequent plans. While Aventure declined to answer AT&T's Request, it provided a business plan in response to Qwest's Request 1-10 which asked for information on planned capital and expenses for service in South Dakota in years 2011-2015. However, it is not clear if that is its sole or original business plan. In the Direct Testimony of Jim McKenna, Public Version, in Iowa

---

<sup>3</sup> Qwest Communications Corp. v. Superior Tel. Corp. et al, 2009 WL 305 2208, (Iowa Utils. Bd. Sept. 21, 2009). \*27 recon. denied (Feb. 4, 2011).

Docket No. FUC-2011-0002, Mr. McKenna references “our very first business plan”,<sup>4</sup> implying that there were additional plans. In the Directory Testimony of Brad Chapman in the same proceeding, Mr. Chapman refers to a “current business plan.”<sup>5</sup> AT&T requested a copy of “original business plans and any subsequent business plans.” Aventure must not be permitted to fail to respond to requests for information that it clearly has its possession and which is relevant to this proceeding.

In conclusion, Aventure’s business operations, the type of service it is currently providing in Iowa and its plans for its operations in South Dakota are all directly relevant to this tariff investigation and Aventure should be compelled to answer the Request as stated below.

AT&T in the interest of moving this docket along and in review of the discovery requests of other parties, would ask that the Motion to Compel cover all data requests and requests for production unless specifically noted here. AT&T is not asking for production or for Aventure to be compelled to answer or produce documents relating to or regarding requests: 1-3, 1-5, 1-6 through 1-19, 1-22, 1-25 through 1-31, 1-33, 1-34, 1-41 through 1-43, 1-48 through 1-62, 1-64, 1-65, 1-68 through 1-71, 1-78 through 1-81, 1-84. For ease of review, Exhibit A has the requests it seeks to compel highlighted.

As stated above and as noted on the highlighted Request for Production and Interrogatories marked on the attached Exhibit A, the threshold question before the Commission on this Motion to Compel is whether or not the actions and business practices of Aventure in Iowa are relevant to the current proceeding. It is AT&T’s contention that those matters clearly are relevant in the Tariff proceeding before the Commission. Further, the attached and

---

<sup>4</sup> Direct Testimony of Jim McKenna, Public Version, State of Iowa Department of Commerce, Docket No. FCU-2011-0002, Line 33, filed May 16, 2011.

<sup>5</sup> Direct Testimony of Brad Chapman, Public Version, State of Iowa Department of Commerce, Docket No. FCU-2011-0002, Line 126, filed May 16, 2011.

highlighted Request for Production and Interrogatories have been paired down to lessen any burden placed on Aventure in responding to the same, and most of the information should be readily available to Aventure and is not of a complicated or convoluted nature.

**B. Requests 1-72 to 1-77**

This series of questions focuses on how Aventure routes calls to its end users and its billing of end users. Aventure responds with general objections and states that it has no end users in South Dakota.<sup>6</sup> Aventure should be compelled to respond with respect to its end users in Iowa. As previously noted, its operations in Iowa are relevant to its plans for South Dakota.

**C. Request 1-82** Request: Section 2.13.1 references termination charges. Provide the basis for, the amount of and an explanation of when termination charges apply for service purchased pursuant to the suspended tariff. Response: The request was in error, Section 2.13.2 should have been referenced and Aventure should be compelled to answer.

**D. Request 1-83** Request: Explain why under Section 2.24.2(A) it is appropriate for Aventure to cancel service without any liability when an amount is being withheld pursuant to a legitimate dispute regarding the charge. Response: The request was in error, Section 2.14 should have been referenced and Aventure should be compelled to answer.

**E. Requests 1-85 through 1-88** See attached Exhibit A. In an attempt to mask or correct what is clearly improper tariff language Aventure added a general savings clause to its tariff. See Aventure Communication Technology South Dakota Tariff No. 3 Section 2.10.4(h) filed with the Commission on July 18, 2011. The attempted use of the savings clause creates more uncertainty and ambiguity in the billing sections of the tariff and thus Aventure should be compelled to answer the original requested items.

---

<sup>6</sup> Id. at pp. 4-5.

**F. Request 1-90** Request: Please describe the basis in your tariff for the definition of “constructive order” and the rationale on which it should be approved by the PUC. Please provide the basis for the definition itself and any case law or regulatory ruling that will allow for such a definition to be utilized in a tariff or any instance in which such language was utilized or approved either by a court of law or regulatory body. Response: See generally response to Objection 1-72 to 1-77. Simply stating that the tariff was designed to mirror its interstate tariff is not a sufficient answer to the interrogatory. Aventure should be compelled to answer the question.

**G. Request 1-91** Request: Please describe the basis in your tariff for the definition of “access tandem” or “tandem switch” and the rationale on which it should be approved by the PUC. Please provide the basis for the definitions themselves and any case law or regulatory ruling that will allow for such definitions to be utilized in a tariff or any instance in which such language was utilized or approved either by a court of law or regulatory body. Response: See generally response to Objection 1-72 to 1-77. Again, simply stating that the tariff was designed to mirror its interstate tariff is not a sufficient answer to the interrogatory. Aventure should be compelled to answer the question.

#### **IV. CONCLUSION**

For the foregoing reasons, AT&T respectfully requests that the Commission grant its Motion to Compel and order Aventure to produce the documents and information sought therein.

Respectfully submitted this 7<sup>th</sup> day of September, 2011.

**Olinger, Lovald, McCahren & Reimers, P.C.**

/s/ signed electronically

William M. Van Camp

PO Box 66-Pierre SD 57501

Telephone: (605)224-8851

*Attorneys for AT&T Communications of the Midwest, Inc.*

## CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 7th day of September, 2011, he served the foregoing AT & T's Motion to Compel Discovery Responses from Aventure Communication Technology, LLC, electronically with the Aventure's counsel of record with copies of the same to the following persons electronically:

Ms. Patricia Van Gerpen  
Executive Director SD Public Utilities Commission  
500 E Capitol  
Pierre SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)  
(605)773-3201- voice  
(605)773-6031 – fax

Ms. Kara Semmler  
Staff Attorney SD Public Utilities Commission  
500 E Capitol  
Pierre SD 57501  
[kara.semmler@state.sd.us](mailto:kara.semmler@state.sd.us)  
(605)773-3201- voice  
(605)773-6031 – fax

Mr. Chris Daugaard  
Staff Analyst SD Public Utilities Commission  
500 E Capitol  
Pierre SD 57501  
(605)773-3201- voice  
(605)773-6031 – fax  
[chris.daugaard@state.sd.us](mailto:chris.daugaard@state.sd.us)

Ms. Sharon Thomas  
Consultant – Technologies Management, Inc.  
Ste 300  
2600 Maitland Center Parkway  
Maitland FL 32751  
[stthomas@tminc.com](mailto:stthomas@tminc.com)  
(407)740-3031 – voice  
(407)740-0613 – fax



Ms. Kathryn Ford Attorney at Law  
Davenport Evans Hurwitz & Smith LLP  
PO Box 1030  
Sioux Falls SD 57104  
[kford@dehs.com](mailto:kford@dehs.com)  
(605)357-1246 – voice  
(605)251-2605 – fax

Talbot J. Wiczorek Attorney at Law  
Gunderson Palmer Goodsell & Nelson  
PO Box 8045  
Rapid City SD 57709-8045  
[tjw@gpgnlaw.com](mailto:tjw@gpgnlaw.com)  
(605)342-1078 – voice  
(605)342-0480 – fax

Jason D. Topp  
Corporate Counsel  
Qwest Corporation  
200 S. Fifth Street, 2200  
Minneapolis MN 55402  
[Jason.Topp@Qwest.com](mailto:Jason.Topp@Qwest.com)  
(612)672-8905 – voice  
(612)672-8911 – fax

Paul D. Lundberg: Representing Aventure Communications  
Lundberg Law Office  
Ste. 906  
600 Fourth St.  
Sioux City IA 51101  
712-234-3030 – voice  
712-234-3034 – fax  
[paull@terracentre.net](mailto:paull@terracentre.net)

Brett Koenecke: Representing Verizon Business Services  
May Adam Gerdes and Thompson LLP  
PO Box 160  
Pierre SD 57501  
605-224-8803 – voice  
605-224-6289 – fax  
[koenecke@magt.com](mailto:koenecke@magt.com)

/s/ signed electronically  
William M. Van Camp