

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

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| IN THE MATTER OF THE PETITION OF MCCOOK COOPERATIVE TELEPHONE COMPANY FOR ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH ALLTEL COMMUNICATIONS, INC. |)))))))) | ORDER GRANTING MOTION TO COMPEL IN PART TC07-112 |
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On October 19, 2007, McCook Cooperative Telephone Company (McCook) filed a petition for arbitration of certain unresolved terms and conditions of a proposed Interconnection Agreement between McCook and Alltel Communications, Inc. (Alltel), pursuant to section 252 of the Telecommunications Act of 1996 (Act), SDCL 49-31-81, and ARSD 20:10:32:29. McCook filed a list of unresolved issues consisting of:

- (1) Is the reciprocal compensation rate for IntraMTA Traffic proposed by McCook appropriate pursuant to 47 U.S.C. section 252(d)(2)?
- (2) What is the appropriate Percent InterMTA Use factor to be applied to non-IntraMTA traffic exchanged between the parties?
- (3) What is the appropriate manner by which the minutes of use of IntraMTA Traffic terminated by the parties, one to the other, should be calculated and billed?
- (4) What is the obligation of the parties with respect to dialing parity?
- (5) What is the appropriate effective date and term of the Agreement?

McCook requested the following relief:

- A. Issuance of an Order requiring arbitration of any and all unresolved issues between McCook and WWC;
- B. Issuance of an Order directing McCook and Alltel to submit to this Commission for approval of an interconnection agreement reflecting:
 - (i) the agreed-upon language in Exhibit A, and
 - (ii) the resolution of any unresolved issues in accordance with the positions and recommendations made by McCook as set forth herein at the arbitration hearing to be scheduled by this Commission;
- C. Issuance of an Order directing the parties to pay interim compensation for transport and termination of telecommunications traffic from January 1, 2007 (the Effective Date set forth in Exhibit A) to the date on which the Commission approves the parties' executed interconnection agreement in accordance with section 252(e) of the Act;
- D. Issuance of an Order asserting this Commission has jurisdiction over this arbitration until the parties have submitted an executed interconnection agreement for approval by this Commission in accordance with section 252(e) of the Act; and
- E. Any other, further and different relief as the nature of this matter may require or as may be just, equitable and proper to this Commission.

In accordance with ARSD 20:10:32:30, a non-petitioning party may respond to the petition for arbitration and provide additional information within 25 days after the Commission receives the petition. On November 13, 2007, the Commission received a Response of Alltel Communications, Inc. to Petition for Arbitration of McCook Cooperative Telephone Company. Alltel included two additional issues for resolution:

- (6) What is the appropriate definition of intraMTA and interMTA traffic?
- (7) Which party can initiate a direct interconnection request?

On November 26, 2007, the Commission received a Proposed Scheduling Order from McCook. On November 28, 2007, the Commission received a Proposed Scheduling Order Response from Alltel. On December 17, 2007, the Commission received a Stipulation for Scheduling Order and Stipulation and Confidentiality Agreement signed by the parties.

At its January 29, 2008, meeting, the Commission considered the assessment of filing fees and the Stipulation for Scheduling Order. The Commission voted to require the parties to make a deposit not to exceed \$75,000, pursuant to SDCL 49-31-44, and approved the Stipulation and Scheduling Order.

On March 17, 2008, the Commission received Alltel's Motion to Compel Responses to Discovery Requests. On March 24, 2008, the Commission received a Response to Motion to Compel and Postpone Deadlines and a Motion to Extend Deadline for Filing of Direct Testimony from McCook.

At its March 25, 2008, meeting, the Commission considered the Motion to Compel Responses to Discovery Requests. After listening to the arguments of the parties, the Commission voted to grant the motion (Commissioner Hanson, dissenting). The Commission found that the discovery requested appeared reasonably calculated to lead to the discovery of admissible evidence. The Commission directed Staff to work with the parties regarding possible revisions to the procedural schedule. On May 20, 2008, the Commission received an Extension Agreement signed by the parties extending the Commission's decision date. On June 10, 2008, the Commission received a Stipulation for Amended Scheduling Order and Decision Date signed by the parties. At its July 8, 2008, meeting, the Commission unanimously voted to approve the Stipulation for Amended Scheduling Order and Decision Date.

A hearing on this matter was held July 29, 2008 through July 31, 2008. On November 14, 2008, the Commission received a Stipulation to Supplement Record of Consolidated Arbitration Hearing signed by the parties. At its regularly scheduled meeting of November 25, 2008, the Commission unanimously voted to approve the Stipulation to Supplement Record of Consolidated Arbitration Hearing. At its January 27, 2009, meeting, the Commission decided the unresolved issues as presented by the parties. On February 27, 2009, the Commission issued its Findings of Fact; Conclusions of Law; Notice of Entry of Order.

On March 30, 2009, the Commission received a Petition for Reconsideration from Alltel. On April 14, 2009, the Commission received Petitioner's Opposition to Alltel's Petition for Reconsideration. At its May 19, 2009, meeting, the Commission voted unanimously to deny the Petition for Reconsideration. Pursuant to ARSD 20:10:01:29, the Commission found Alltel failed to provide sufficient reasons for granting reconsideration. On June 9, 2009, the Commission received a Motion to Compel from Alltel. On June 12, 2009, the Commission received a Stipulation for Amended Scheduling Order signed by the parties. At its June 23,

2009, meeting, the Commission voted unanimously to approve the Stipulation for Amended Scheduling Order. On July 13, 2009, the Commission received a Response to Alltel's Motion to Compel from McCook.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, including 49-31-3 and 49-31-81, and 47 U.S.C. Sections 251 and 252. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its July 14, 2009, meeting, the Commission considered the Motion to Compel. Commission Staff recommended granting the Motion. The Commission voted unanimously to grant the Motion to Compel in part as it relates to cost information for CALEA, Centrex and Web Self-Care, that such information shall be handled confidentially and that McCook shall work with the vendors to make sure that Alltel receives the information it needs. It is therefore

ORDERED, that the Motion to Compel is hereby granted in part as it relates to cost information for CALEA, Centrex and Web Self-Care, that such information shall be handled confidentially and that McCook shall work with the vendors to make sure that Alltel receives the information it needs.

Dated at Pierre, South Dakota, this 21st day of July, 2009.

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| CERTIFICATE OF SERVICE |
| The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically. |
| By: <u>Alaine Kalbo</u> |
| Date: <u>7/21/09</u> |
| (OFFICIAL SEAL) |

BY ORDER OF THE COMMISSION:

Austin M. Johnson
DUSTIN M. JOHNSON, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner