

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.

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st 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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