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April 17, 2007

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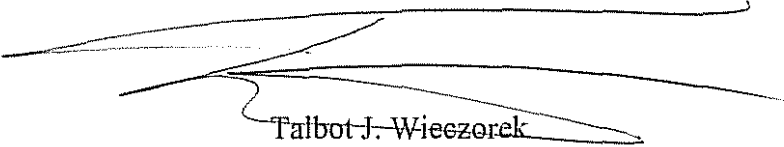
RE: IN THE MATTER OF THE PETITION OF VENTURE COMMUNICATIONS  
COOPERATIVE FOR SUSPENSION OR MODIFICATION OF LOCAL DIALING  
PARITY RECIPROCAL COMPENSATION OBLIGATIONS  
SDPUC Docket File Number TC 06-181 (PUC07-01)  
GPGN File No. 5925.060651

Dear Ms. Johnson:

Enclosed for filing please find Alltel's Motion to Compel, including Attachment 1, and Alltel and RCC's Reply Memorandum in Support of the Motion to Dismiss the Venture Petition in the above-entitled matter. I have enclosed the originals for the file and a courtesy copy for your convenience.

All parties were provided electronic versions of these documents last Friday. Further, by copy of same, all parties are being served.

Sincerely,

  
Talbot J. Wieczorek

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

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

**ALLTEL AND RCC'S REPLY MEMORANDUM TO THE MOTION TO  
DISMISS THE VENTURE PETITION FOR SUSPENSION OR MODIFICATION**

COMES NOW Alltel Communications, Inc. ("Alltel") and Unicel ("RCC") jointly submit this Reply Memorandum to the Motion for Dismissal of the Venture Petition for Suspension or Modification. (the "Petition"). Alltel and RCC continue to rely upon the arguments and support put forth in their initial Response and Motion for Dismissal as the principal basis for immediate dismissal of certain claims for relief as a matter of law or in the alternative ultimate denial of the entire Petition as it fails to meet the necessary showing under 47 U.S.C. § 251(f)(2). However, some of the arguments raised and support provided by Venture within its Response to the Motion to Dismiss warrant additional comment.

**INTRODUCTION**

Throughout its Response, Venture relies upon the notion that "251(f)(2) is very broad", hence it may seek relief from its dialing parity and reciprocal compensation obligation "as it sees fit". *See Venture Response*, pp. 3-4. The reality is, although Venture's claims for relief are "very broad" the scope and actual relief afforded by 47 U.S.C. §251(f)(2) are limited. Specifically, section 251(f)(2) provides:

A local exchange carrier with fewer than 2 percent of the Nations'

subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of *subsection (b) or (c)* of this section to telephone exchange service facilities specified in such petition. The State commission shall grant such petition *to the extent that, and for such, duration as, the State commission determines that such suspension or modification--*

(A) *is necessary--*

- (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
- (ii) to avoid imposing a requirement that is unduly economically burdensome; or
- (iii) to avoid imposing a requirement that is technically infeasible, *and*

(B) *is consistent with the public interest, convenience, and necessity.*

47 U.S.C. §251(f)(2). (emphasis added).

Despite Venture's attempt to strip any restrictions or limitations from the scope of, or relief afforded by, Section 251(f)(2) – Congress provided otherwise. Relief from all competitive obligations under the Act is not available– only those obligations imposed under 47 U.S.C. § 251(b) and (c) are subject to suspension or modification relief. Nor is such relief available simply by request – an actual showing of *significant adverse economic impact, undue economic burden, or technical infeasibility* coupled with an independent public interest demonstration.

Venture's broad claims for relief are clearly identified within the Petition. With respect to modification of its dialing parity obligation under 47 U.S.C. § 251 (b)(3)

Venture seeks the following:

- No requirement to provide local dialing;
- No requirement to transport traffic outside of its service territory or beyond the wireline local calling area;

*See Petition*, pp. 4, 20.

In attempting to avoid its reciprocal compensation obligation under 47 U.S.C. § 251(b)(5) Venture seeks the following modifications:

- No requirement to pay reciprocal compensation on traffic terminating to a wireless carrier within the same MTA that is handed off to an IXC in accordance with Venture's wireline local calling areas;
- No symmetrical compensation requirement – base compensation for wireless carriers on the wireless carrier's forward looking cost study.

*Id.*

While as demonstrated in Alltel and RCC's Response and Motion to Dismiss the Petition, to-date Venture has failed to provide the necessary support entitling it to any suspension or modification relief under 47 U.S.C. § 251(f)(2), without any determination of the lack of factual support in this matter, certain Venture claims for relief warrant immediate dismissal as a matter of law. Specifically, Venture's modification request under the guise of dialing parity that it not be "required to transport traffic outside of its service territory or beyond the wireline local calling area" seeks relief and suspension beyond its dialing parity obligation and would deprive the parties' of their independent right to interconnect and exchange telecommunications traffic indirectly – an obligation imposed under section 251(a)(1) of the Act. Section 251(a)(1) obligations to interconnect is not subject to suspension/modification relief.

Additionally, Venture's request for asymmetrical compensation – a request that the wireless carrier's rates must be based on the wireless carrier's own forward looking cost studies, is also beyond the scope of suspension relief that may be provided under section 251(f)(2) of the Act and corresponding FCC rules. Finally, despite its broad

request for relief, Venture argues it is simply seeking to maintain the status quo and not extend its dialing parity or reciprocal compensation obligations. However, that is not what its Petition seeks and, further, the realworld application of granting Venture's broad requests for relief provide Venture the right, incentive and opportunity to avoid any further dialing parity or reciprocal compensation obligations regardless of the costs, if any, involved.

**I. Venture Cannot Avoid its Independent Duty To Indirectly Interconnect for the Exchange of Traffic Through Suspension of its Dialing Parity Obligation.**

Dialing Parity requires a local exchange carrier, like Venture, to permit its “customers within a local calling area to dial the same number of digits to make a local telephone call notwithstanding the identity of the customer’s or called party’s telecommunications service provider.” *See* 47 C.F.R. § 51.207. In order to avoid this *dialing* requirement, Venture asks that it not be required to provide local calling. *See Venture Petition*, pp. 4, 22. This broad request – no requirement to provide local calling – would, if granted, undoubtedly relieve Venture of *any* further dialing parity obligation under the Rule cited above. The reality of such broad relief is that Venture will be able to treat all calls from its customers to customers of competitors as toll calls – requiring 10 digit dialing and subject to toll/long distance charges.

However, despite the broad range of its first modification request - not to provide local calling – Venture also seeks to relieve itself of its interconnection obligation under the guise of dialing parity– no requirement to transport traffic outside of its service territory or beyond the wireline local calling area. *See Venture Petition*, pp. 4, 20. Its obligation related to the interconnection of networks and transport of traffic is

independent of the specific dialing parity obligation and can not be suspended. This interconnection obligation is the subject of section 251(a)(1) of the Act which provides:

Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunication carriers.

47 U.S.C. § 251(a)(1). The obligation to interconnect indirectly under section 251(a) of the Act cannot be suspended under section 251(f)(2). Only those obligations imposed under sections 215 (b) and (c) can be suspended or modified. Venture's request to relieve itself of transport and network connectivity obligations goes well beyond the scope of section 251(f)(2) of the Act.

In attempting to support its commingling of dialing parity and network connectivity obligations, Venture refers to *WWC License, L.L.C. v. Pub. Serv. Comm'n*. Such reliance is misguided. Like Venture, the local exchange carrier in *WWC* argued that the duty to provide local dialing parity is dependent on the existence of a direct point of interconnection such that the duty to provide local dialing parity stops at the physical edges of the local exchange networks. *See WWC License, L.L.C. v. Pub. Serv. Comm'n*, 459 F.3d 880, 886-887 (2006). However, the *WWC* court disagreed with the ILEC, and rather than commingling the issues as Venture attempts, it undertook a separate analysis of each contested issue: dialing parity, network connectivity and reciprocal compensation as each obligation is separate under the Act and must be treated as such. *See WWC License, L.L.C.*, 459 F.3d at 884. The court determined very clearly that analysis of the issue required the interpretation of 47 U.S.C. § 251(a) (regarding the duty to interconnect directly or indirectly) and § 251(b)(3) (regarding the duty to provide local dialing parity). *Id.* at 890. In disposing of the issue, the Court noted that the requirement of dialing parity

“does not specifically deal with issues of routing or interconnection.” *Id.* at 891. In other words, issues of routing or interconnection are not controlled by the dialing parity obligation but are obligated pursuant to section 251(a).

Finally, in rejecting the notion that dialing parity is conditioned upon direct connectivity the Court determined that “the structure of the Act suggest that we should reject a direct connection requirement as a condition of local dialing parity” such a requirement would run afoul of the separate obligations of dialing parity and indirect connectivity under the Act. *Id.* at 893. Venture is simply using the guise of dialing parity as a means to force direct connectivity for the exchange of traffic – an outcome clearly beyond the scope of relief afforded under section 251(f)(2) of the Act and otherwise prohibited under section 251(a)(1).

**II. Venture’s Request for Asymmetrical Compensation is Beyond the Scope of Suspension Relief under Section 251(f)(2) of the Act.**

Additionally, rather than seeking suspension or modification of its reciprocal compensation obligation as contemplated under 251(f)(2) of the Act, Venture seeks to impose duties on its competitors to submit forward-looking cost studies in order to seek reciprocal compensation. Venture seeks relief not available under the Act. Venture’s sole justification for such a request is that “the plain language of Section 251(f)(2) contains no such limitation.” *See Venture Response*, p. 11. Venture is wrong. The plain language of section 251(f)(2) provides for a modification or suspension of the *petitioning* local exchange carrier obligations – not an imposition of obligations on competitors.

Additionally, although FCC Rules do provide for the establishment of asymmetrical rates, such a practice is only available to carriers other than the incumbent local exchange carrier (“ILEC”) and only when the costs of the non-ILEC exceed the

costs of the ILEC – so that a higher rate to the competitor is justified. *See* 47 C.F.R. § 51.711(b). Venture’s request for asymmetrical compensation is not only beyond the plain language of section 251(f)(2) but also contrary to the long-standing and heavily tested rules and practice related to symmetrical reciprocal compensation. Accordingly, Venture’s request for modification of its reciprocal compensation obligation is beyond the scope of section 251(f)(2) of the Act and must be immediately dismissed as a matter of law.

**III. Venture’s Broad Requests for Relief Will Adversely Effect Competition.**

Venture’s requests for suspension/modification of its dialing parity and reciprocal compensation obligations are undeniably and unnecessarily broad. The practical effect of granting Venture’s request is (i) the complete elimination of local number treatment for competitors; and (ii) the elimination of any obligation to pay reciprocal compensation to competitors for the exchange of traffic. If Venture is granted the broad relief requested (no requirement to provide local calling and no obligation to compensate for traffic handed off to an IXC) it can simply treat all calls to competitors as toll/long-distance calls and hand such traffic to an IXC provider – thereby avoiding any reciprocal compensation obligation to competitors. In short, Venture will have no obligation, or incentive for that matter, to provide local numbers or exchange compensation with competitors. Competitors will simply continue to compensate Venture and receive nothing in return for Venture originated traffic.

Despite its requests for broad relief within the Petition, Venture now claims it “will provide local calling in the same manner as it is provided today.” *See Venture*



*Response*, p. 6. However, a blanket grant of the current requests for relief as stated in the Petition, without any limitations, would allow Venture to avoid any further obligations – not just those obligations that represent an expansion of the obligations it adheres to today. For example, Alltel currently has wireless numbers (NPA-NXXs) that are rated local to the Venture exchange area (Britton, S.D.). Alltel also maintains a direct connection with Venture for the exchange of traffic. However, given the broad unlimited nature of Venture suspension request, Venture could, if successful in this proceeding, begin to treat the Alltel numbers as non-local to the Venture exchange and thus require 10 digit dialing. This practice would also allow Venture to hand such calls off to an IXC and thereafter avoid any reciprocal compensation obligation for the exchange of such traffic – even though the Alltel numbers are rated local to the Venture exchange and delivered via direct interconnection facilities between the parties.

Currently if a husband in Britton S.D. uses his Venture landline to call his wife on her Alltel wireless phone at her office 3 blocks away in Britton S.D. – the call is treated as a local call by Venture subject to reciprocal compensation from Venture to Alltel. If the relief as requested by Venture is granted, that same call could become a toll/long-distance call requiring 10 digit dialing subject to toll/long-distance charges and Venture would owe no compensation to Alltel for the call. Despite Venture’s indications that it simply seeks to maintain the status quo and not expand its obligations or costs, it undeniably seeks broad relief that if granted would give Venture the ability and incentive to avoid any reciprocal compensation or dialing parity obligation regardless of the actual increased cost, if any of such a practice. This outcome – which amounts to complete

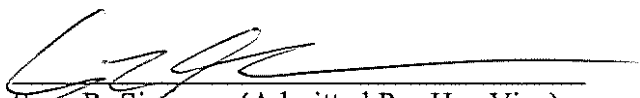
protection from local competition – is not contemplated, encouraged or acceptable under the pro-competitive nature of the Act.

**CONCLUSION**

For all the above-stated reasons, Alltel and RCC respectfully request dismissal and/or denial of the Venture Petition for Suspension or Modification.

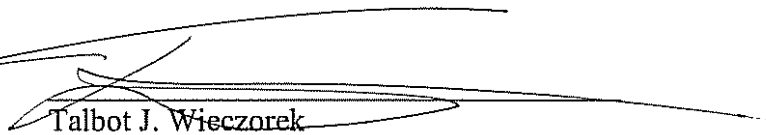
Dated this 13 day of April, 2007.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of April, 2007, a true and correct copy of **Alltel and RCC's Reply Memorandum to the Motion to Dismiss the Venture Petition for Suspension or Modification** was sent electronically and by first-class, U.S. Mail, postage paid to:

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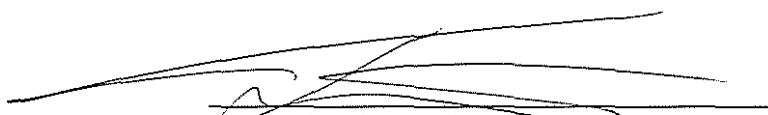
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