

**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 )  
compensation obligations. )

Docket No. TC06-181

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

Alltel Communications, Inc. ("Alltel"), pursuant to SDCL § 20:10:01:22.01, hereby moves for an Order compelling Venture Communications Cooperative ("Venture") to adequately and timely respond to certain identified Interrogatories and Document Requests. Alltel only seeks the disclosure of such information as discussed below that is directly relevant to the statutory burden of proof assigned to petitioners and therefore is necessary in order to allow Alltel to analyze, confirm or rebut the numerous allegations and claims for relief made by Venture within its Petition for Suspension or Modification of Local Dialing Parity and Reciprocal Compensation Obligations. (the "Petition").

**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. In order to grant the relief requested, Venture must affirmatively demonstrate that its request is necessary (i) to avoid a significant adverse economic impact of telecommunication users; or (i) to avoid imposing a requirement that is unduly

economically burdensome; and the exercise of such relief must be consistent with the public interest. *See 47 U.S.C. § 251(f)(2)*. (emphasis added). Absent such a demonstration by Venture on the record, the extraordinary relief may not be granted.

Within its Petition Venture makes various statements in support of the relief requested, which include but are not limited to the following:

- The Petitioner will experience substantial costs to implement local dialing parity and reciprocal compensation and a decline in revenues, rendering the provision of dialing parity and reciprocal compensation unduly economically burdensome. *See Petition*, p. 5;
- Dialing parity, as requested by Alltel, would impose a significant cost on Venture and its cooperative members because it would require Venture to either build transport facilities that currently do not exist or lease such facilities from others, both within the Venture service territory and beyond the Venture service territory. *See Petition*, p. 7;
- Venture would be required to incur costs associated with facilities, stranded investment, jurisdictional shifts in expense and increased reciprocal compensation. *See Petition*, p. 7;
- The number of additional DS1s that would be needed was based in the increase in local traffic that would result from making all existing land-to-mobile tolls that originate and terminate in Venture's service territory as local calls. *See Petition*, p. 9-10;
- Venture believes that the cost of call termination for Alltel and other wireless carriers is significantly less than Venture's cost...*See Petition*, p. 14;
- As a small telephone company, the Petitioner has a limited customer base over which to spread its costs. *See Petition*, p. 15;
- The dialing parity and reciprocal compensation requirements would impose significant costs on Venture, which ultimately would be borne by its subscribers. *See Petition*, p. 16.

On January 31, 2007, pursuant to SDCL § 20:10:01:01.02, Alltel served its discovery on Venture inclusive of interrogatories and requests for documents. In responding to the Alltel discovery requests on February 26, 2007, Venture refused to

respond to various requests primarily on the grounds of relevancy. Venture's objections to disclosure (identified below) on relevancy grounds are wholly without merit and unsupportable given the issues that must be addressed by Venture in order to meet its burden per the statutory standard discussed above and the broad, conclusory allegations made by Venture within its Petition that it will incur substantial economic harm, increased costs, loss of revenues, shifts in telecommunications traffic levels, and that it does not have the ability to financially absorb increased costs without immediate impact on subscribers. Again, Alltel only seeks directly relevant information and as discussed below sought only readily available information in the possession of Venture in order to prepare its case and fully develop the factual record in this matter.

### **DISCOVERY AT ISSUE**

Specifically Alltel seeks disclosure of the following relevant information to which Venture objects and refuses to provide:

**Interrogatory 2:** Provide the information requested on the form attached as Discovery Template 1 (Network data), for each end office exchange in which Venture is certificated to provide telecommunications service. Provide your response in electronic form.

**Venture Objection:** The information requested in columns titled "Switched Capacity", "Lines in Use" and DSL Lines" are not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence...

**Relevancy:** The "Lines in Use" information requested is directly relevant to Ventures claims of increased levels of traffic that Venture contends will occur unless the suspensions are granted and similarly, the associated costs of the increase in traffic. Lines in Use information is necessary to provide a baseline/historical information with which the assumption and allegations of Venture can be analyzed, confirmed or rebutted. Further, lines in use is required for each switch location in Venture's network to determine the specific quantity of traffic and the distance that traffic must be transported from each switch on Venture's network.

**Interrogatory No. 3:** Provide a network diagram for your network and identify Venture switches, transmission add/drop nodes and/or multiplexors, interoffice

routes, intercompany transmission facilities, and call record data collection points. Identify capacity and in-service plant associated with each switch, node, route, and/or facility.

**Venture Objection:** The information requested seeks proprietary and competitive information that is highly confidential and is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** Such information is relevant to analyze Ventures alleged increased costs of transport. Venture is seeking to preclude the use of indirect interconnection, a form of interconnection assured and required by law. Understanding Venture's network and interconnection assumptions that underlie its alleged increases in costs and traffic are directly relevant to analyzing and rebutting the Petition. Alltel must have access to the information that will allow it to analyze the most efficient means of routing traffic and the costs involved and applicable to transport of voice traffic across Venture's multi-functional transport network. Additionally, the objection on confidentiality grounds is wholly without merit and should be rejected as the parties entered into a confidentiality agreement protecting the use and disclosure of any sensitive information.

**Interrogatory No. 4:** Identify any overlap routes and interface points between Venture's network and the SDN network. To the extent that Venture utilizes any of the SDN network or SDN utilizes any of the Venture network, identify the SDN network SONET rings(s) associated with such usage and the purpose of any such utilization.

**Venture Objection:** The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** Such information is relevant to the issue of increased costs of transport as Alltel must have access to information that will allow it to analyze the most efficient means of routing traffic and the costs involved. SDN is known to have a fiber optic facilities to and/or through Venture's service area that are capable of providing transport for the traffic that Venture claims will impose significant costs on its operations. SDN makes its transport facilities available to other carriers and, in so doing, the presence and ability to interconnect with the SDN network provides a readily available and potentially more economic alternative for the transport of Venture traffic. Further, Venture is believed to be a part owner of SDN and the presence of SDN network overlap with Venture network may create potential cross-subsidization that would have bearing on Venture's economic impact claims.

**Interrogatory No. 6:** Identify all communications you sent to any consultants or possible experts regarding any reports or studies that you contend support your requests for suspension or provided information that was used in coming up with the exhibits and studies attached to your Petition for Suspension.

**Venture Response:** Venture does not have the information requested collected at this time and will supplement at a later date.

**Disclosure Status:** Venture has not objected to this request and yet still has not produced this information in spite of repeated requests from Alltel and Venture's repeated assurances of its timely disclosure.

**Interrogatory No. 10:** Identify the volume of access minutes, messages, and revenue by month by jurisdiction for each Venture exchange for the period January 2002 through December 2006.

**Venture Objection:** The information requested seeks proprietary and competitive information that is highly confidential and is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** The information requested is directly relevant and necessary to analyze and rebut the Venture allegations and claims that without the suspensions it will incur decreased levels of traffic by Venture and the associated increased costs of and corresponding loss of revenue. Such information is necessary to provide baseline and historical trending information with which the assumption and allegations of Venture can be analyzed, confirmed or rebutted. Additionally, the objection on confidentiality grounds is wholly without merit given the existence of a confidentiality agreement among the parties protecting the use and disclosure of such sensitive information.

**Interrogatory No. 11:** Identify the volume of toll minutes, messages, revenue, and lines served by month by jurisdiction for each Venture exchange for Venture's retail long distance for the period January 2002 through December 2006.

**Venture Objection:** The information requested seeks proprietary and competitive information that is highly confidential and is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** The information requested is directly relevant and necessary to the claims of decreased levels of toll traffic by Venture and the corresponding loss of revenue. Such information is necessary to provide baseline and historical trending information with which the assumptions and allegations of Venture can be analyzed, confirmed or rebutted. In

order to test the allegations by Venture it is necessary to isolate Venture's retail long distance operations and profit margins from its access revenue to understand the true and relevant impact of Venture's claimed shifts of traffic from long distance to local. Additionally, the objection on confidentiality grounds is wholly without merit given the existence of a confidentiality agreement among the parties protecting the use and disclosure of such sensitive information.

**Interrogatory No. 15:** Identify any and all Affiliates of Venture, and explain the terms and conditions on which you exchange traffic with each such Affiliate and describe the ownership structure of Venture and each of its Affiliates

**Venture Objection:** Venture objects to the definition of "Affiliates" provided in the definition section of interrogatories provided by Alltel as it is contrary to the definition of "affiliates" in 47 USC 153(1). The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** The requested information is relevant to the claim of overall economic harm and loss of revenue as such information is probative of the issue of Venture's overall allocation of financial obligations among itself and affiliates as well as the financial condition of Venture in light of its treatment of its Affiliates and its corresponding ability to absorb or spread increased costs and the impact of doing so.

**Interrogatory No. 31:** Admit that Venture currently provides basic local exchange services at less than the costs of those services as reflected on the books of Venture. If you deny this request in whole or in part, explain in detail the basis of that denial.

**Venture Objection:** The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome. Without waiving said objection, the statement is denied.

**Relevancy:** The requested information is relevant to the claim by Venture of overall economic harm without the suspensions and the Venture allegation that the increase in cost will ultimately be borne by Venture subscribers. Additionally, Venture failed to explain the basis for its denial as called for in the interrogatory.

**Request for Production 24:** Provide any RUS filings made by or on behalf of Venture on or subsequent to January 1, 2002.

**Venture Objection:** The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

**Relevancy:** As a result of the filing of the petition and the applicable statutory standard that Venture must meet, Venture has alleged and must show that it and or its end users will incur substantial economic harm unless the suspensions are granted. Therefore Venture's current economic and financial condition is directly relevant and must be known in order to understand whether, as it alleges, without suspensions its current economic condition will be substantially and adversely affected. It is very basic that the parties and the Commission must know what is the starting point for then determine what will be the impact and will it be "substantial". As previously indicated, Alltel is seeking readily available information. The RUS is a federal agency or entity. Because Venture may obtain low cost funding from this federal entity, it is required to file certain standard financial information with the RUS. It will not be burdensome for Venture to provide this information as it is readily available and will provide Alltel and the Commission data to analyze the Venture allegations. By filing the petition and making the allegations contained in its petition, Venture has opened the door to such information and can not now refuse to back up its allegations unless it chooses to withdraw its petition. Such information requested is relevant to the issue of significant economic harm to Venture and will provide easily obtainable financial and operational baseline/historical information with which the assumptions and allegations of Venture can be analyzed, confirmed or rebutted.

**Request for Production 25:** Provide any IRS filings related to exemption under IRC 501(c)(12) made by or on behalf of Venture on or subsequent to January 1, 2002.

**Venture Objection:** The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** Again, the requested information is directly relevant to the issue of significant economic harm to Venture, and will provide baseline/historical or current information with which to assess the income sources and the capital credits provided to Venture members to compare with the assumptions and allegations made by Venture. Also, again the information is readily available to Venture.

**Request for Production 26:** Provide any FCC Form 499 filings made by or on behalf of Venture on or subsequent to January 1, 2002.

**Venture Objection:** The information requested is not relevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence and the request is unduly burdensome.

**Relevancy:** FCC Form 499 filings are filings with the FCC that contain specific and detailed revenue information. Once again a readily available source of financial/revenue information to enable the parties and Alltel to determine whether Venture's allegation can be substantiated. Such information requested is relevant to the issue of significant economic harm to Venture as well as its claim related to loss of revenue. Such information will provide baseline/historical revenue information with which the assumptions and allegations of Venture can be analyzed, confirmed or rebutted.

**Request for Production 32:** Provide all part 36/Part 69 cost studies submitted to SD LECA by or on behalf of Venture since January 1, 2002, including all supporting work papers and inputs.

**Venture Objection:** The information requested is proprietary and competitive information that is highly confidential and is not relevant nor will it lead to the discovery of relevant information in this proceeding.

**Relevancy:** As a local exchange carrier regulated by the state commission and the FCC, Venture is required to conduct cost studies in accordance with FCC rules. These studies also allocate costs between the federal and state jurisdictions. In this proceeding Venture is alleging that it will incur additional costs without the suspension and that such will result in substantial economic harm as well as its end users. It is very basic and logical that it is therefore necessary for the parties to understand Venture's costs intrastate costs as they currently exist in order to understand how they may be affected without the requested suspension. Such information is therefore necessary to provide baseline/historical revenue and costs information with which the assumptions and allegations of Venture can be analyzed, confirmed or rebutted. Additionally, the objection on confidentiality grounds is wholly without merit given the existence of a confidentiality agreement among the parties protecting the use and disclosure of such sensitive information.

#### **EFFORTS TO RESOLVE ISSUES SHORT OF MOTION TO COMPEL**

Prior to filing of the current Motion to Compel, Alltel conducted several phone conferences with counsel for Venture and has sent several emails in an attempt to resolve the objections. Alltel has repeatedly requested the disclosure of such information and explained the relevance as stated herein. Despite repeated assurances to review the matter, Venture has failed to produce the requested information. Alltel sent email



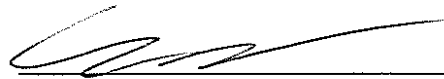
correspondence on March 12, 16, 19, 21 and April 5, 9, and 11 requesting disclosure of the information identified above. *See Attachment 1.* Despite repeated assurances that certain additional information would be provided Alltel has to-date not received any further disclosure of the requested information. In light of the April 13, 2007 deadline for filing of a Motion to Compel, Alltel is forced to seek the Hearing Examiner's intervention into this dispute. By the nature of the allegations within the Petition and the broad requests for suspension/modification relief, Venture has put its cost, traffic, revenue and financial information at issue. Alltel has only sought readily available sources of such information and yet Venture continues to fail to respond. Accordingly, Alltel must be provided an adequate opportunity to develop a factual record in this matter in order to review, confirm or rebut the extraordinary claims made by Venture of significant economic impact.

#### CONCLUSION

For all the above-stated reasons, Alltel respectfully requests an Order compelling the information identified above be provided and that if Venture fails to timely produce such information that the Petition be dismissed.

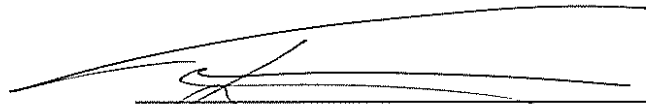
Dated this 13 day of April, 2007.

Attorneys for Alltel Communications, Inc.



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## CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of April, 2007, a true and correct copy of **Alltel Communication, Inc.'s Motion to Compel** was sent electronically and by first-class, U.S. Mail, postage paid to:

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