

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING	:	
BY AVENTURE COMMUNICATION	:	
TECHNOLOGY, L.L.C. d/b/a	:	DOCKET NO. TC11-010
AVENTURE COMMUNICATIONS'	:	
ACCESS TARIFF NO. 3	:	

**AVENTURE'S RESISTANCE TO AT&T'S MOTION TO
COMPEL DISCOVERY RESPONSES**

Aventure Communication Technology, L.L.C. ("Aventure"), for its resistance to AT&T's Motion to Compel Discovery Responses, states:

1. This proceeding has as its sole purpose a determination by the Commission as to whether Aventure's Intrastate Switched Access Services Tariff No. 3 should be approved. In the Order for and Notice of Procedural Schedule and Hearing of June 22, 2011, the Commission stated:

"The issue at the hearing is whether the Commission shall approve Aventure's Switched Access Services Tariff No. 3 in whole or part".

The Commission's determination whether to approve the tariff involves consideration of the tariff language and whether the tariff provisions are fair and reasonable and not contrary to South Dakota law, regulations or rules. The discovery requests of AT&T, to which Aventure objected, seek to expand this inquiry without any authorization to do so by the Commission, by statute, or by Commission rule.

2. AT&T's motion makes clear that it seeks to collaterally attack issuance of Aventure's South Dakota Certificate of Authority. At page 3 of its motion, AT&T states:

"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."

Of course, this is not a proceeding under SDCL 49-31-3 which is the statute governing application for and issuance of a Certificate of Authority. Aventure has already gone through that process as its Certificate was previously issued by the Commission and the Certificate is in good standing.

In applying for a Certificate of Authority, Aventure had to prove it had sufficient technical, financial and managerial capabilities to offer the services described in its application before the Commission could grant the Certificate. SDCL 49-31-3. There is no statute or Commission rule that authorizes AT&T, and the other IXCs, to wage a collateral attack on Aventure's "technical, financial or managerial capabilities" in this proceeding.

3. Aventure's discovery requests 1 through 67 are addressed to Aventure's financial, managerial and technical experience and capabilities and are not directed to the only issue in this case of whether Aventure's tariff should be approved in whole or part. Section 49-31-12.4 provides that at the hearing the Commission shall receive evidence "pertinent to the investigation". Evidence that any provision of Aventure's tariff does or does not conform to South Dakota law would be admissible. Evidence as to whether any provision of Aventure's tariff is fair and reasonable would be admissible. A collateral attack on Aventure's financial, technical or managerial capabilities, its business relationships with end user customers, and non-tariff proceedings pending against it in Iowa, would not be admissible. AT&T cannot

demonstrate that discovery requests 1 through 67 are reasonably calculated to lead to the discovery of admissible evidence on the tariff issues, as opposed to collateral issues.

4. It is also clear from AT&T's Motion to Compel that AT&T wants to expand this tariff investigation proceeding into a proceeding to debate "access stimulation" or as the IXCs like to call it "traffic pumping". In rulemaking RM05-002, Switched Access Rates for Competitive Local Exchange Services, the Commission adopted a rule allowing CLECs to mirror the switched access rates of Qwest. In that proceeding, AT&T and the other IXCs who are parties to this tariff investigation proceeding filed comments urging the Commission to address "access stimulation" within the context of the switched access rates for competitive local exchange services. Some of the IXCs objected to the new rule to the extent it would permit "access stimulation" at the Qwest rate. The Commission in adopting the rule disregarded the IXCs' comments and implicitly declined the invitation to modify the rule being adopted. AT&T now wants another opportunity to debate "access stimulation", and through its discovery requests to Aventure, seeks to inject this issue into a simple tariff investigation proceeding. It should go without saying that any consideration of a different rule for CLEC switched access rates should be addressed in another rulemaking proceeding and not in a contested case where the only issue is whether Aventure's tariff should be approved in whole or in part.

5. On page five of its motion, AT&T states:

"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...."

Aventure denies AT&T's argument for relevance as quoted. Its business operations, the type of service it is currently providing in Iowa and its plans for operations in South Dakota are all issues that would have been, or could have been, addressed in Aventure's application for a

Certificate of Authority in South Dakota. AT&T's collateral attack on Aventure's South Dakota Certificate is obviously not "relevant" in an investigation of whether Aventure's tariff is lawful and fair and reasonable.

6. The hearing in this tariff investigation is currently scheduled for two days. If the Commission permits AT&T and the other IXCs to obtain discovery, and submit evidence on all of Aventure's financial records, business relationships, Iowa network configuration, and Iowa proceedings pertaining to Aventure, then Aventure respectfully submits that the hearing will take a week. It is especially true if the Commission accepts AT&T's invitation to open up a debate on "access stimulation" in South Dakota.

7. Aventure has responded to AT&T discovery requests that address specific portions of Aventure's proposed tariff. Aventure stands by its objections to AT&T's other requests consistent with the arguments presented in this resistance.

Respectfully submitted,

LUNDBERG LAW FIRM, P.L.C.

By: /S/ PAUL D. LUNDBERG

**PAUL D. LUNDBERG, 3403
600 FOURTH STREET, SUITE 906
SIOUX CITY, IA 51101
712/234-3030
712/234-3034 (FAX)
E-MAIL: paull@terracentre.net**

**ATTORNEY FOR
AVENTURE COMMUNICATION
TECHNOLOGY, L.L.C.**

Copy to:

Olinger, Lovald, McCahren & Reimers, P.C.
William M. Van Camp
P.O. Box 66
Pierre, SD 57501

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Ms. Kara Semmler
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Mr. Chris Dugaard
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Ms. Sharon Thomas
Consultant
Technologies Management, Inc.
2600 Maitland Center Parkway, Suite 300
Maitland, FL 32751

Jason D. Topp
Corporate Counsel
Qwest Communications Company
200 South Fifth St., Room 2200
Minneapolis, MN 55402

Ms. Kathryn Ford
Davenport Evans Hurwitz & Smith LLP
P.O. Box 1030
Sioux Falls, SD 57104

Talbot J. Wieczorek
Gunderson Palmer Goodsell & Nelson
P.O. Box 8045
Rapid City, SD 57709

Brett Koenecke
May Adam Gerdes and Thompson, LLP
P.O. Box 160
Pierre, SD 57501

Brad Chapman
Aventure Communication Technology, L.L.C.
d/b/a Aventure Communications
401 Douglas St., Suite 409
Sioux City, IA 51101

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on September 29, 2011.

BY: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail ECF

/S/ PAUL D. LUNDBERG