

# GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

## ATTORNEYS AT LAW

J. CRISMAN PALMER  
G. VERNE GOODSSELL  
JAMES S. NELSON  
DANIEL E. ASHMORE  
TERENCE R. QUINN  
DONALD P. KNUDSEN  
PATRICK G. GOETZINGER  
TALBOT J. WIECZOREK  
JENNIFER K. TRUCANO  
DAVID E. LUST  
THOMAS E. SIMMONS

ASSURANT BUILDING  
440 MT. RUSHMORE ROAD  
POST OFFICE BOX 8045  
RAPID CITY, SOUTH DAKOTA 57709-8045  
TELEPHONE (605) 342-1078 • FAX (605) 342-0480  
www.gundersonpalmer.com

ATTORNEYS LICENSED TO PRACTICE IN  
SOUTH DAKOTA, NORTH DAKOTA, IOWA, NEBRASKA  
COLORADO, CALIFORNIA, WYOMING & MINNESOTA

TERRI LEE WILLIAMS  
SARA FRANKENSTEIN  
AMY K. KOENIG  
JASON M. SMILEY  
JONATHAN M. OOSTRA  
MATTHEW E. NAASZ  
MATTHEW R. MCGOVERN  
QUENTIN L. RIGGINS  
JEFFREY R. CONNOLLY

WYNN A. GUNDERSON  
*Of Counsel*

March 17, 2008

### E-FILING

Patricia Van Gerpen  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 East Capitol Avenue  
Pierre SD 57501-5070

RE: In the Matter of the Petition of **Beresford Municipal Telephone Company** for  
Arbitration to Resolve Issues relating to an ICA with Alltel Communications, Inc.  
TC07-113 GPGN File No. 5925.070781

Dear Ms. Van Gerpen:

Enclosed please find Alltel Communications, Inc.'s Motion to Compel Responses to Discovery Requests, with Certificate of Service, in the above-entitled matter. Exhibit 2 to the Motion contains confidential information. By copy of same, parties have been served.

If you have any questions, please call me.

Sincerely,

  
for Talbot J. Wieczorek

TJW:klw

Enclosures

c: Keith Senger via email  
Karen Cremer via email  
Meredith Moore via email  
Clients

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

**IN THE MATTER OF THE PETITION )  
OF BERESFORD MUNICIPAL TELEPHONE )  
COMPANY, FOR ) Docket No. TC07-113  
ARBITRATION PURSUANT TO )  
THE TELECOMMUNICATIONS ACT OF )  
1996 TO RESOLVE ISSUES RELATING TO )  
INTERCONNECTION WITH ALLTEL, INC. )**

**ALLTEL'S MOTION TO COMPEL RESPONSES  
TO DISCOVERY REQUESTS**

Alltel Communications LLC ("Alltel"), pursuant to A.R.S.D. 20:10:01:22:01, hereby moves the South Dakota Public Utilities Commission ("Commission") for an order compelling Beresford Municipal Telephone Company ("Petitioner") to respond fully and completely to the discovery requests identified below.

**INTRODUCTION**

The Petitioner bears the burden of establishing appropriate cost-based rates in this proceeding, and has attempted to do so based on the methodology and cost studies employed by its consultants and expert witnesses. It has become clear that certain inputs, assumptions and conclusions made in the Petitioner's costs model are not supported or otherwise appropriately documented. Therefore, Alltel has conducted specific and targeted discovery seeking to understand the basis for and nature of these inputs, assumptions and conclusions, and to determine what data exist that support or contradict these assumptions. (It should be noted that similar discovery requests have been fully and appropriately responded to in prior arbitrations in South Dakota involving the same or similarly situated Rural ILECs).

Notwithstanding Alltel current attempts, a number of key discovery requests remain essentially unanswered. Petitioner's continued refusal to fully respond to such discovery requests greatly prejudices Alltel ability to appropriately understand the inputs, assumptions and conclusions of the costs studies. In addition, Petitioner's continued refusal to respond to other requests takes away the opportunity for Alltel to validate the reasonableness of the cost study and ultimately the proposed rate.

Direct Testimony is currently due on March 24, 2008. Alltel asks that the Commission extend the date for filing of Direct Testimony and order the Petitioner to respond fully and completely to these requests so that Alltel and the Commission have a full opportunity to understand the basis and reasonableness of Petitioner's proposed rates.

### **BACKGROUND**

The Stipulated Procedural Schedule approved by the Commission in this matter states that on or before December 14, 2007, the Petitioner was required to provide Alltel with its cost study demonstrating its proposed rate for transport and termination of local telecommunications traffic exchanged between the parties. The cost study was to be accompanied by all underlying data, formulae, computations and software associated with the model. The inputs were to be fully documented, and source data provided. The cost data was to be provided in a form that would allow Alltel to examine and modify the critical assumptions and engineering principles. Additionally, the Petitioner was to also provide responses to Alltel's discovery requests (served on February 8, 2008) on or before February 29, 2008.

Upon receipt of Petitioner's discovery responses Alltel identified several responses that were either inappropriately objected to as irrelevant or not fully responded to. Alltel then contacted Petitioner's counsel and requested a conference to discuss the responses. Alltel also

provided a detailed correspondence identifying the inadequate responses, what information would appropriately complete the response or what information was clearly lacking from the response and why such information was relevant to the issues in dispute. The parties initially discussed these issues by telephone on March 11, 2008. After that discussion the parties had a follow-up conversation on March 13, 2008, wherein Petitioner provided verbal follow-up responses to numerous discovery requests. At that time Petitioner's counsel also stated that it was continuing to gather information with respect to individual responses and would provide further responsive information to the outstanding discovery requests sometime during the week of March 17, 2008. However, given the current lack of responsive information and Petitioner's continued refusal to disclose certain information on relevancy grounds, Alltel seeks the Commission's assistance in extending the deadline for Direct Testimony and ordering full responses to the below identified discovery requests.

### **DISCUSSION**

The outstanding discovery requests that remain in issue are of two types. Information that Petitioner has failed to disclose that support the inputs, assumptions and conclusions of the cost study and information that Alltel seeks in order to validate the reasonableness of the proffered cost study. Such information is crucial in developing the Direct Testimony in this case and should not be withheld from scrutiny. In prior arbitrations within the State of South Dakota, Alltel has utilized the same types of discovery requests and has received responsive information from rural ILECs similarly situated as Petitioner. As in this case, such information in prior cases was clearly found to be relevant and necessary for a full understanding of the issues in dispute.

With respect to several Alltel discovery requests (**DRs 11, 12 and 21**) the Petitioner has not provided Alltel with complete responses. In responding to such requests the Petitioner failed

to provide the supporting documentation and/or work papers that support the information contained within the cost study. Specifically, DR 11 asks:

**DR 11 Provide complete cost study models, cost schedules, work papers or other documentation underlying switching “price inputs” contained in the “Price Inputs” spreadsheet of your FLEC Model. This documentation should identify:**

- (a) Composition of Switch Processor prices in terms of quantities and unit investments for hardware and software. (Provide separately quantities and unit investments for standalone, host and remote switches.)**
- (b) Composition of Trunk Card prices in terms of quantities and unit investments for hardware and software, if any.**
- (c) Various “loading” factors used, such as engineering and installation factors, sales tax factors, miscellaneous cost factors and others.**
- (d) Composition of other switch investments if any.**

The Petitioner failed to provide adequate response to these requests. See attached Motion Exhibit 1, Petitioner’s Responses to Alltel’s discovery and Motion Exhibit 2, Petitioner’s attachment to its responses. Petitioner’s response was less than a page in length and included a portion of a spreadsheet that simply identified aggregate switch costs with no indication or other reference as to what the made up the aggregate figure. For example, the total amount of common costs is identified as one lump sum, yet there is no indication of what that aggregate number is made up of, or what the component parts of that number are.

In asking for cost models, cost schedules, work papers, etc., the request is seeking the details underlying the price inputs (total investments) entered in the FLEC model – which were not provided. The response (Petitioner’s Exhibit E) does not constitute “complete cost models, cost schedules, work papers or other documentation underlying switching price inputs ... in

Petitioner's FLEC model." Petitioner or its experts undoubtedly have more information supporting the ultimate price inputs or total switching investments entered in the FLEC model. For example, Petitioner's Exhibit E to the discovery contains a table that appears to be from an Excel model. See attached Motion Exhibit 2.<sup>1</sup> If there is such a model providing more details, the model should be provided. Additionally, Exhibit E shows quantities of demand variables and total investments, but does not show how the quantities were applied to unit investments to arrive at total investments. Such supporting information with respect to the FLEC model is certainly within the possession of Petitioner or its experts and, thus, must be disclosed pursuant to Alltel basic discovery request.

Similarly DR 12 asks:

**DR 12 Provide the sources of unit investment identified in DR 11. These may include analyses of actual switch investments, analyses of vendor quotes, analyses based on vendor switch configuration models used for construction estimates or others.**

In responding, Petitioner simply stated that "the source of unit investment associated with the switch electronics estimates is based upon actual proposals received from vendors..." Petitioner failed to actually respond with any analyses of other identification of the actual investment information. The unit investments (prices) requested in DR11 and referenced in DR 12 are numbers that had to come from somewhere. Certainly, Petitioner or its experts must have used such information in formulating and completing the FLEC study and as such are part of the work papers or other documents requested supporting the unit investments. Despite reference to vendor quotes used – Petitioner failed to actually produce any.

---

<sup>1</sup> Motion Exhibit 1 contains the Petitioner's Responses to Alltel's Interrogatories. Motion Exhibit 2 contains the exhibits that were attached to Petitioner's responses to interrogatories. Because the exhibits were marked confidential, for the purposes of this Motion, the confidential responses to Alltel's Interrogatories were placed in a separate Motion Exhibit.

The information requested in DR 21 is similar to that requested in DRs 11 and 12.

**DR 21 Provide the complete cost models, cost schedules, work papers or other documentation underlying switched transport electronics by exchange and for the three equipment categories. This documentation should identify:**

- (a) Composition of the investment (by exchange and equipment category) in terms of equipment items (name and description), quantities and unit investments.**
- (b) Basis for equipment item quantities in terms of total demand and the engineering parameters used to determine quantities needed to serve total demand.**
- (c) Source of unit investments; e.g., analyses of actual switched transport electronics installations, analyses of vendor quotes, analyses based on vendor configuration models or other.**

Similar to the responses for DRs 11 and 12, Petitioner's Exhibit F (attached here as part of Motion Exhibit 2) was less than a page in length and simply identified aggregate numbers with no other breakdown of information. Despite the request for all documentation underlying the FLEC model the response The response does not provide (1) the specific equipment items included in switch transport electronics, (2) the associated quantity of each item, (3) its unit investment and (4) a summation of the extended amounts totaling to the Base, Line and Tributary investments in the FLEC model. Nor does the response provide the calculations showing the derivation and source data used to determine the DS-1 and 10/100 Base T quantities. Finally, the response does not provide the source data (vendor, prices, etc. found in copies of quotes, vendor configuration models or actual construction projects) used to compute the unit investments underlying Base, Line and Tributary investments. Disclosure of such information represents an adequate response.

In addition to seeking the work papers and other basic documentation that supports

Petitioner's FLEC Model, Alltel sought specific usage information (**DRs 23, 25, 28, 38 and 39**) from Petitioner that would allow it to test the reasonableness of the FLEC model conclusions.

**DR 23 Provide your current or most recent measure of interoffice trunk utilization (annual MOU/trunk) and the supporting work papers used to compute the measure.**

**DR 25 For each special circuit bandwidth describe the proportion of OC-192 equipment capacity consumed by one circuit of each bandwidth. Provide capacity consumption separately for common equipment and plug-ins. (For example, a DS0 special circuit may consume 1/(24 X % engineering fill) of a DS1, a DS1 may consume 1/(84 X % engineering fill) of an OC3 plug-in; and, an OC3 plug-in may require one slot on the OC-192 common equipment. Likewise, an OC3 special circuit may require one OC3 plug-in and consume one slot of common equipment.)**

**DR 28 Provide the bandwidth of the additional transiting circuits (463) for you.**

**DR 38 Provide the current or most recent average quantity of trunks or DS0 circuits per DS1. Provide source data and supporting calculations.**

**DR 39 Provide the current or most recent average quantity of switched lines per common transport trunk or DS0 circuit.**

Petitioner refused to respond to all these requests on grounds of relevancy. Most recently, Petitioner states its consultants/experts did not have the requested information. Petitioner claims that because such information was not utilized in its FLEC model such information is irrelevant.

There is no question such information is within the possession of Petitioner and is readily available – Petitioner simply thinks use of such information is not necessary for review by its experts and therefore refuses to disclose such information. However, Alltel intends to use such information to test the reasonableness of the FLEC model. Simply because the Petitioner's experts did not use such information does not preclude Alltel from utilizing such readily available information in its analyses of the disputed issues. Ultimately, Alltel believes that a full and complete response will demonstrate significant flaws in Petitioner's FLEC model. The type

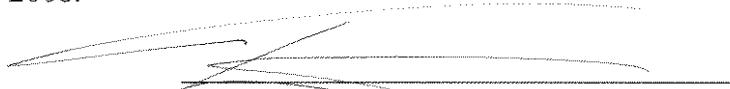
of information requested above is relevant to the determination of total demand per FCC rule 51.511 and the use of “paths” as a measure of total demand, capacity consumption and cost causation. Accordingly, such relevant information must be provided as requested.

The South Dakota Courts have long recognized that the scope of discovery is extremely broad and discovery is to be liberally allowed. Kaarup v. St. Paul Fire & Marine Ins. Co., 436 N.W.2d 17, 19 (SD 1989). The Court has interpreted this liberal discovery standard to include any information “that may lead to admissible evidence.” Id. 20. Certainly, information that can support testimony regarding the reasonableness of the FLEC model is discoverable, especially when Petitioner does not claim it lacks the information, but simply rests on the fact that because its experts did not use the information, it does not have to provide it.

**CONCLUSION**

Alltel has worked diligently to obtain information to understand the Petitioner’ case and make its own case. Accordingly, Alltel requests the Commission issue an order compelling the Petitioner to comply fully and completely with the discovery requests set forth above.

Dated this 17<sup>th</sup> March, 2008.



Talbot J. Wiczorek  
Gunderson, Palmer, Goodsell & Nelson, LLP  
Attorneys for Alltel Communications  
PO Box 8045  
Rapid City, SD 57709  
605-342-1078

I hereby certify that pursuant to SDCL 15-6-37(a)(2), Alltel has in good faith conferred with the Petitioner’s counsel regarding the information being sought and has been unable to obtain the information from Petitioner.



Talbot J. Wiczorek

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of March, 2008, a true and correct copy of **Alltel Communication, Inc.'s MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS TO BERESFORD** was sent electronically to:

Meredithm@cutlerlawfirm.com  
MEREDITH MOORE  
Cutler & Donahoe, LLP  
100 N Phillips Avenue - 9th Floor  
Sioux Falls, SD 57104-6725

Keith.senger@state.sd.us  
KEITH SENGER  
STAFF ANALYST  
SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION  
500 EAST CAPITOL  
PIERRE SD 57501

Karen.cremer@state.sd.us  
KAREN CREMER  
STAFF ATTORNEY  
SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION  
500 EAST CAPITOL  
PIERRE SD 57501



Talbot J. Wiczorek