

Nebraska Technologies & ) FORMAL COMPLAINT No. 1277  
Telecommunications, Inc., )  
)  
Complainant, )  
)  
vs. ) COMPLAINT DISMISSED  
) WITHOUT PREJUDICE  
)  
Aliant Communications Company dba )  
ALLTEL, )  
)  
Respondent. ) Entered: July 11, 2000

On January 31, 2000, Nebraska Technologies & Telecommunications, Inc. (NT&T) filed a formal complaint with this Commission against Aliant Communications Company, dba ALLTEL (Respondent or ALLTEL) alleging that ALLTEL failed to comply with the terms of their voluntarily-negotiated service resale interconnection agreement (agreement), pursuant to Section 252(a) of the federal Telecommunications Act of 1996.

NT&T further alleged that ALLTEL's failure to honor the terms of the agreement as specified are dilatory and anti-competitive and in violation of the rules of this Commission, state law, the federal Telecommunications Act (the Act), and the express terms of the agreement.

A) Meet via weekly telephone calls and/or in person at the request of either party, to discuss provisioning, billing, and other issues arising out of their interconnection agreement;

- Within five business days of complainant's submission of a LSR, the respondent must
  - inform NT&T in writing of any errors, omissions, or deficiencies in the LSR that prevent
  - timely processing;
- 
- A series of requirements governing firm order commitment and jeopardy notices when
  - necessary as determined by the terms of the stipulation;
- 
- NT&T will provide ALLTEL with 7- and 30-day forecasts of anticipated LSR
  - submissions and update those forecasts on a weekly basis.
- 
- On a biweekly basis, the parties shall mutually submit a Statement of Compliance to this
  - Commission detailing ALLTEL's compliance or noncompliance with the joint stipulation which
  - was to continue on a biweekly basis until ALLTEL's compliance has been achieved for six
  - consecutive biweekly periods; if noncompliance occurs, the calculation for the six consecutive
  - reports begins anew.
- 
- Upon successful completion of the required six-consecutive biweekly reporting, the
  - complainant will file a motion to dismiss this formal complaint without prejudice.

Recognizing that the terms of the stipulation would conceivably allow the "clock" measuring compliance with the terms of the stipulation to "restart" indefinitely, this Commission, on May 2, 2000, entered an order setting a hearing for the end of June to determine if the

complaint should be sustained or dismissed. The hearing was held June 29, 2000, in the Commission Hearing Room. Notice of the hearing was sent to the interested parties by the executive director of the Commission on May 16, 2000. Appearing at the hearing for the complainant, NT&T, was Mark Fahleson; appearing for the respondent was Paul Schudel, representing ALLTEL. Michael Loeffler appeared for the Commission.

Gene Fitzpatrick, vice-president for customer relations, NT&T, testified for the complainant that both parties had remained in compliance with the terms of the stipulation including its main provisions of periodic meetings, notices of deficiencies between the parties, notification requirements of ALLTEL to report problems in form order commitments, and the obligation of NT&T to provide ALLTEL with forecasting.

Mr. Fitzpatrick further noted that one of the main reasons that the parties were able to remain in compliance with the terms of the stipulation was due to the significantly decreased numbers of orders placed with ALLTEL by NT&T. He noted that his company had largely discontinued direct sales in the ALLTEL area, testifying that he had reduced their Lincoln sales force from seven full-time persons to two. He cited delays in order conversion from ALLTEL which had resulted in considerable damage to the professional reputation and business goodwill of his company. He explained that, because of the delays he encountered by placing orders with ALLTEL, his clients, including his largest customer, had lost faith with NT&T. As a result, the company has voluntarily reduced the aggressiveness of their marketing efforts to allow for a "cooling down" time.

He went on to testify that the delays that he encountered were unique to his business dealings with ALLTEL specifically. He reported that he has not had the same problems in ordering service on a wholesale basis from other incumbent local exchange carriers in the state, specifically citing GTE and US West. He stated,

"Never in dealing with US West, throughout all of the exchanges we have dealt with or in dealing with GTE, even in the waning hours with their company up for sale, never did we experience anything like the negative impact on us and on the customers, the prospective customers, as we did with the protracted delays with ALLTEL. Nothing akin to it all."

*Testimony of Mr. Fitzpatrick, Tr. at 15-16.*

Joe Schuele, government relations manager for ALLTEL, testified for the respondent. He testified that both parties had been in full compliance with all of the terms of the stipulation and that letters of compliance had been sent to the Commission on a biweekly basis as called for in the stipulation. He further testified for the record that ALLTEL would voluntarily continue to comply with all terms of the stipulation.

#### F I N D I N G S

The Commission has already noted that a similar formal complaint (FC-1271) had been filed and dismissed just prior to the hearing before the Commission. We have also found that,

...the delays, and held orders represents inexcusable behavior of an incumbent toward an existing competitive local exchange carrier. *Order entered May 2, 2000, at 4.*

This Commission cannot stress enough our dismay over the conduct of ALLTEL. Not only have the actions of ALLTEL damaged a new entrant to the marketplace and their customers, but these actions have had the apparent desired effect of stifling competition within the ALLTEL territory.

ALLTEL has argued that the delays stemmed from their attempts to cope with a market that is transforming from a monopolistic environment to a competitive one. Mr. Schuele, in response to questioning from the Commission, indicated that ALLTEL has been operating as a competitive local exchange carrier themselves in other markets in the state. However, as we noted in our May 2 order,

In short, as a competitor themselves, they should inherently know of the needs of a competitive carrier and by this point in the game, cannot be excused from proper provisioning of services to its wholesale customers. *Order of May 2, at 4.*

Since there is agreement that both parties have remained in compliance with the terms of the stipulation, we find that the formal complaint should be dismissed. But our duty to the subscribers of the state does not end there.

This Commission requires adherence to the terms of the stipulation even given the

dismissal of this complaint. Such adherence should impose no undue hardship on either party.  
Joe Schuele, government relations manager for ALLTEL, committed his company's efforts to continue complying with the terms of the stipulation during the course of this hearing, not once, but several times. (See Tr. at 28, 28-29, 30, 32, 33, 34, and 35.)

This Commission expects continued compliance even without the threat of imminent Commission action. If noncompliance were to recur, or if ALLTEL were to engage in other non-specified dilatory actions toward NT&T or toward any of its other wholesale customers, they can expect that this Commission will investigate all possible sanctions that could be employed to enforce the Commission's duty to ensure a competitive environment, acting under the auspices of state law and the Commission's own regulations.

Accordingly, we find that the formal complaint should be dismissed without prejudice. Further, the parties, particularly ALLTEL, are placed on notice that we will continue to monitor their actions and stand ready to move quickly, if need be, to enforce the terms of the stipulation. Given ALLTEL's repeated commitment to abide by its terms, we expect that such action will not be necessary.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Formal Complaint No. 1277 should be, and is hereby, dismissed without prejudice.

MADE AND ENTERED in Lincoln, Nebraska, on this 11th day of July, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director

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