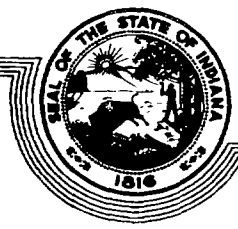
STATE of INDIANA



INDIANA UTILITY REGULATORY COMMISSION
302 W. WASHINGTON STREET, SUITE E-306
INDIANAPOLIS, INDIANA 46204-2764

http://www.state.in.us/iurc/
Office: (317) 232-2701
Facsimile: (317) 232-6758

IN THE MATTER OF THE INVESTIGATION ON THE COMMISSION'S OWN MOTION, UNDER INDIANA CODE § 8-1-2-72, INTO ANY AND ALL MATTERS RELATING TO THE COMMISSION'S MIRRORING POLICY ARTICULATED IN CAUSE NO. 40785 AND THE EFFECT OF THE FCC'S MAG ORDER ON SUCH POLICY, ACCESS CHARGE REFORM, UNIVERSAL SERVICE REFORM, AND HIGH COST OR UNIVERSAL SERVICE FUNDING MECHANISMS RELATIVE TO TELEPHONE AND TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF INDIANA.	)	**FILED** DEC 0 2 2002 INDIANA UTILITY REGULATORY COMMISSION **CAUSE NO. 42144**

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") made the following entry in this Cause.

On October 4, 2002, Clay County Rural Telephone Cooperative, Inc. ("CCRTC") filed its *Motion to Compel AT&T Wireless, PCS, LLC, Nextel West, Inc. and VoiceStream Wireless Corporation to Response to Clay County Rural Telephone Cooperative, Inc.'s First set of Data Requests* and its *Motion to Compel Cellco Partnership, a Delaware General Partnership d/b/a Verizon Wireless, to Respond to Clay County Rural Telephone Cooperative, Inc.'s First Set of Data Requests* (collectively "*Motions to Compel*"). On October 16, 2002, Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless") filed its response to CCRTC's motion to compel. Also on October 16, 2002, AT&T Wireless PCS, LLC ("AWS"), Nextel West, Inc. ("Nextel"), and VoiceStream Wireless Corporation ("T-Mobile") filed its response to CCRTC's motion to compel (collectively, responding parties are referred to as "Wireless Carriers")[1]. On October 22, 2002, CCRTC replied to Wireless Carriers' responses to the motions to compel.

1. **Issues Presented.** In its *Motions to Compel*, CCRTC indicates that Wireless Carriers failed to provide information in response to discovery requests propounded upon them in the first set of data requests. The propounded data requests relate to the amount of traffic the Wireless Carriers handle within CCRTC's service territory. In response to these data requests, through general objections, Wireless Carriers objected arguing that the "First Data Request[s were] not relevant to any issue properly before the Commission and [were] not reasonably calculated to lead to the discovery of

[1] Although the positions of the Wireless Carriers are aligned, for purposes of clarity, it is noted that Verizon Wireless provided a separate response to discovery and a separate response to the motion to compel.

admissible evidence under Rule 26 of the Indiana Rules of Trial Procedure . . ."*Objections and responses of Nextel West, Inc. to Clay County Rural Telephone Cooperative's First Data Request.*

In its *Motion to Compel*, and in response to the objection of Wireless Carriers, CCRTC alleges, That it is its objective to determine if Indiana has reached the point in which wireless service constitutes a substitute for land-line telephone exchange service for a substantial portion of the communications within the State. In response to the *Motion to Compel*, Verizon Wireless notes that CCRTC was not able to specifically link its data request to the issues listed in the Phase II issues list and that CCRTC's discovery is beyond the scope of permissible discovery. In its reply, CCRTC states that it is not representing the entire state of Indiana, and that the subject of its questions are specific to CCRTC's network and to the issue of whether CCRTC is losing revenue because of wireless traffic within their territory.

2. **Legal Analysis and Conclusions.** Early in this proceeding, the Presiding Officers sought input from the Parties to determine the scope of this proceeding. Specifically, the Presiding Officers indicated that the Parties should form an Executive Committee, comprised of representatives of the various Parties and required the Executive Committee to submit an issues list for this proceeding. *See, May 15, 2002 Docket Entry.* On June 19, 2002, the Executive Committee submitted an issues list for this cause. The non-exclusive issues list addresses six general areas: (1) Does the IURC have legislative authority to create a state Universal Service Fund; (2) What is the purpose of the state Universal Service Fund; (3) Is there a necessity for a state Universal Service Fund in Indiana; (4) Who are the potential contributors and/or recipients of a state Universal Service Fund; (5) How will "reasonably comparable" and "just, reasonable, and affordable rates" be assured; and (6) How would a state Universal Service Fund be administered. The Presiding officers' analysis of the merits of the *Motion to Compel* centers around the issue of whether the propounded data requests fall within the scope of the Commission's investigation. [2]

The Commission's procedural rules provide that parties are entitled to all discovery provisions of Rules 26 through 37 of the Indiana Rules of Trial Procedure. *See* 170 IAC 1-1.1-16. Trial Rule 26 describes the scope of discovery:

> *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject-matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of the party seeking discovery or the clam or defense of any other party including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the

[2] Because CCRTC's *Motion to Compel* is denied on grounds that the underlying data requests were not reasonably within the scope of discovery, the Presiding Officer does not address the Wireless Carrier's alternative general objections to the *Motion to Compel.*

information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Ind. T.R. 26 (B)(1).

Thus, the issue presented to the Presiding Officers can properly be rephrased as whether the carrier-to-carrier specific information requested by CCRTC is reasonably calculated to lead to the discovery of admissible evidence.

The Presiding Officers have reviewed CCRTC's *Motion to Compel*, and the responses thereto, and hereby find the information requested by CCRTC is not properly within the scope of this cause, and does not appear to be reasonably calculated to lead to the discovery of admissible evidence in this cause. The information requested by CCRTC is extremely specific information relating to the amount of traffic one-carrier carries within a particular incumbent carrier's territory. Although this information in a general form and on a statewide basis might be relevant to the issues presented in this cause, the information requested, the Presiding Officer hereby concludes that, at the level of detail in which it is requested, it does not appear that the information can reasonably be calculated to lead to evidence relevant and admissible in this cause. Accordingly, CCRTC's motion to compel is hereby DENIED.

IT IS SO ORDERED.

Scott R. Storms, Chief Administrative Law Judge

12/02/02

Date

Nancy E. Manley, Secretary to the Commission