

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	No. 4:09MC00016 SWW
	*	
AMERICAN SOCIETY OF COMPOSERS,	*	
AUTHORS AND PUBLISHERS,	*	
	*	
Defendants.	*	
	*	

ORDER

Before the Court is a motion filed by the American Society of Composers, Authors and Publishers (“ASCAP”) for an order compelling Alltel Communications LLC (“Alltel) to comply with a subpoena duce tecum issued pursuant to Fed.R.Civ.P. 45(a) in connection with a proceeding pending in the United States District Court for the Southern District of New York.¹ MobiTV, Inc. (“Mobi”) is seeking a “through-to-the-audience” license from ASCAP that would cover the transmissions by Mobi through to wireless telephone customers via wireless carrier partners, including Alltel. Alltel customers access Mobi services through their voice plans with Alltel. Through discovery, ASCAP seeks to determine the value of ASCAP performances Mobi provides to customers of Alltel on a percentage of revenue basis.

The Court held a telephone hearing on June 10, 2009, with counsel for ASCAP and

¹*United States of America v. American Society of Composers, Authors and Publishers, In the Matter of the Application for the Determination of Reasonable License Fees for Performances via Wireless and Internet Transmissions by MobiTV Inc. f/k/a Idetic, Inc.*, Civ. No. 41-1395 (WCC).

Alltel. As stated at the conclusion of the hearing, the Court grants the motion as follows.

The Court finds the subscription revenue data for Alltel's voice plans is within the scope of the subpoena. Alltel is directed to provide ASCAP with aggregate total amounts by month or year of voice plan revenue, casual usage (or overage) revenue, and the causal usage (or overage) by minutes or hours. Because Alltel, a non-party, already has cooperated extensively in providing confidential business data to ASCAP, the Court directs ASCAP to pay Alltel for its reasonable expenses incurred in producing the additional information.

IT IS THEREFORE ORDERED that the motion to compel [docket entry 1] is granted in accordance with the directions of the Court.²

DATED this 11th day of June, 2009.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE

²ASCAP and Alltel state they have resolved the issues concerning Alltel providing a witness to authenticate the documents Alltel provides and answer questions about those documents.