

BEFORE THE STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
BERESFORD MUNICIPAL TELEPHONE)	
COMPANY, KENNEBEC TELEPHONE COMPANY,)	Docket Nos.
MCCOOK COOPERATIVE TELEPHONE)	TC 07-112
COMPANY, SANTEL COMMUNICATIONS)	TC 07-113
COOPERATIVE, INC., AND WEST RIVER)	TC 07-114
COOPERATIVE TELEPHONE COMPANY FOR)	TC 07-115
ARBITRATION PURSUANT TO THE)	TC 07-116
TELECOMMUNICATIONS ACT OF 1996 TO)	
RESOLVE ISSUES RELATING TO AN)	
INTERCONNECTION AGREEMENT WITH ALLTEL)	
COMMUNICATIONS, LLC)	

ALLTEL COMMUNICATIONS, LLC’S BRIEF IN SUPPORT OF ITS PETITION FOR RECONSIDERATION

COMES NOW, Alltel Communications (“Alltel”) by and through its attorney of record, Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLC, and hereby submits this Brief in Support of its Petition for Reconsideration of Commission’s Findings of Fact and Conclusions of Law and Order, dated February 27, 2009, in the above-entitled matter.

PROCEDURAL HISTORY

This matter was heard by the Commission on July 29 through July 31, 2008. in a unified hearing of similar dockets After briefing on the matter to the Commission, the Commission entered an Order with Findings of Fact and Conclusions of Law on February 27, 2009, determining some issues, ordering the Petitioner to recalculate and resubmit its cost study reflecting changes to the cost study as ordered by the Commission and requiring the parties to

work together to set a procedural schedule regarding refiling of the cost study with adjustments required by the Commission.¹

The Commission's Order is not a Final Order. Still, A.R.S.D. 20:120:01:29 provides that a Petition to Reconsider an Order should come within thirty (30) days of the Order, even if it is not a Final Order. Therefore, Alltel submits this Brief in Support of its Petition for Reconsideration of various determinations made by the Commission in its February 27, 2009 Order.²

Issue One: The Commission should reconsider its Findings of Facts 25 through 27³ by adopting as part of the rate equivalency method, a finding that 24 DS-0s are equivalent to one DS-1 as DS-0s are introduced into the network at the DS-1 level and such a finding is supported by the record.⁴

This issue was presented as a subset to the issues under the reciprocal compensation rate. In the issues outlined and presented by Commissioner Johnson for purposes of the decision, the issue was labeled as Issue 1b. As recognized by the Commission in Finding of Fact 25, Alltel expressed a willingness, if the rate equivalency method was used, to agree that DS-3 cost circuits could be seen as the rate equivalent of seven DS-1 circuits. However, the Commission's Findings of Fact do not adapt a rate equivalency between DS-0s and DS-1s. Finding of Fact 27 references Alltel's position of 24 DS-0s to one DS-1 when discussing Alltel's cost equivalent method and uses it as an example of concerns the Commission had with the cost equivalent method.

¹ No procedural schedule has yet been adopted as Petitioner's counsel has requested the Petitioner's experts to give an estimate of how long the operation will take and, at this point, no information has been received.

² While Alltel does not move for reconsideration of all issues, it does reserve its right to appeal all determinations of the South Dakota Public Utilities Commission.

³ All cites to Findings of Fact are to the McCook proceeding. A matrix of the corresponding Findings of Fact in the other proceedings will be filed as a separate document.

⁴ This issue does not apply to Beresford Municipal as the issue was settled prior to hearing.

However, in findings regarding the rate equivalent method, the Commission does not make a determination of how many DS-0s are rate equivalent to a DS-1. Alltel's testimony at the hearing was that the 24 DS-s to one DS-1 should be used in a rate equivalency analysis also because DS-0s are introduced into the network at the DS-1 level. Essentially, when some one puts in a DS-1, they have available 24 DS-0s.

Petitioner, in prefiled testimony, has suggested using a DS-0 signaling link. A DS-0 signaling link is a special circuit. Under cross-examination, Mr. Eklund, who presented the testimony regarding the signaling link, testified he could not provide an explanation of the difference between a signaling link and a voice DS-0. HT 269, lns 1-7.

QUESTION: Okay. So you don't know whether that is an accurate comparison to use a signaling link DS-0 versus a voice trunk DS-0?

ANSWER: I believe this is a fair comparison.

QUESTION: Well, you can't even tell me what a signaling link is.

ANSWER: Well, I believe this is a fair comparison.

QUESTION: Okay, but you have no idea what a signaling link is.

ANSWER: I am not a technical person.

Testimony by Mr. Conwell showed that the "RLECS have provided data to indicate that the number of DS-0s that are combined onto their DS-1s range between 20 and 24 [DS-0s per DS-1]". HT 399, lns 3-8. As Conwell then noted, "the key point, though, is a switch puts these voice trunks together and introduces them to the network at a DS-1 level. And so what that means is is [sic] that you don't see a DS-0 on the SONET system." HT 399, lns 8-11.

While the Commission acknowledged Alltel's acceptance of a 7 DS-1s to DS-3 rate equivalency, the Commission was silent as to any determination of what the appropriate number of DS-0s is per DS-1. Given the RLECs' own information reflects that DS-0s are introduced at a

minimum of 20 DS-0s per DS-1, the Commission should make a determination that this minimum should be used for the rate equivalency for DS-0s to DS-1s. If it is the Commission's intent not to make this determination without further information, then Alltel requests a clarification that a signaling link is inappropriate to derive a rate equivalency comparison and the Commission provide the parties with direction whether the Commission is seeking additional information to make this rate equivalency determination.

Issue Two: The Commission should adopt the corrected interMTA factors supplied by Alltel as the Commission's Conclusions for rejecting Alltel's corrections to the 2004 study are contrary to the evidence.

The Commission has relied upon Petitioner's position in Finding of Fact 40 that the interMTA factor tends to increase with time because as wireless network carriers become larger, there can be more intermachine trunking and interconnection. The Commission further relied on the conclusions set forth in Finding of Fact 41 that Alltel failed to count additional NPA NXXs that were Alltel NPA NXXs prior to the purchase of Western Wireless since the acquisition. The actual 2004 studies were based on Western Wireless' numbers. Both of these conclusions are contrary to the evidence.

The statement by Mr. Thompson that interMTA factors tend to increase because there are more interconnections amongst switches with intermachine trunks might be true in some cases, but it is clearly incorrect in the facts presented to the Commission in this situation.

As explained by Ron Williams, the divestiture of Western Wireless assets required as part of the acquisition of Western Wireless by Alltel included divestiture of operations in Minnesota and Nebraska. *See Williams' Prefiled Reply, pg 2, lns 17-27.* This included the divestiture of Western Wireless' Minnesota operations that were picked up by RCC. Therefore, any intermachine trunking from those Minnesota operations no longer exist.

The Nebraska operations were divested also and now belong to US Cellular. *See* Williams' Prefiled Rebuttal, pg 3, lns 9-23. Further, all Alltel switches in Colorado and Montana route traffic to South Dakota by IXCs eliminating any intermachine trunking that may have pre-existed from Western Wireless. The end result of these divestitures and the adoption of the Alltel network is the lack of any intermachine trunking into South Dakota from these other NPA NXXs. This results in third party, IXCs, delivering these calls to Petitioner and this third party pays access fees for delivering the calls.

Both of Petitioner's experts, Mr. Davis and Mr. Thompson, testified that Petitioners are not seeking to collect access from the IXCs delivering all these calls and then access from Alltel for these vary some calls. *See* HT 40: HT 355, lns 9-13. Essentially, Petitioners are not so brazen to "double dip" and ask they access charges twice for these calls.

The Petitioner's testimony and Petitioner's Exhibit 72, that shows the new NPA NXXs of Alltel's current status versus what might have existed for Western Wireless is inherently misleading regarding the impact of the new Alltel NPA NXX.

The fact that there are additional NPA NXXs in other states has absolutely no bearing on the interMTA factor. Since those NPA NXXs are being delivered by third parties, the third parties are paying the access charges already and Alltel is not obligated to pay them by the Petitioner's experts' own admissions.

Moreover, the fact that there may be more NPA NXXs in South Dakota makes no difference either. Since Petitioner's SS7 study considered the NPA NXXs calling from where the number is rated as local, additional NPA NXX in an area is just as likely to increase the intraMTA number of calls as the interMTA number of calls, in some cases more so. The South Dakota rated NPA NXXs have nothing to do with intermachine trunking and no testimony

supports that they somehow increased interMTA factors without intermachine trunking. Rather, the exact opposite is in the testimony showing that Alltel is using less intermachine trunking and delivering less of even the South Dakota NPA NXXs directly than Western Wireless did.

Issue Three: The Commission should reconsider Findings of Fact 44 and 45 and the subsequent Conclusions of Law and allow a netting of the interMTA factor as the Commission has determined for reciprocal compensation netting is appropriate for intraMTA calls.

The Commission has determined for intraMTA billing that netting through the use of traffic factors is an acceptable procedure. The netting prevents the Petitioner from being able to deliver calls to Alltel for termination without paying any costs to Alltel for handling the termination of those calls.

While the Commission in the Order adopted a netting through use of traffic factors for intraMTA traffic, the Commission wrongfully rejected netting of interMTA factors based solely on an argument that this would mean that Alltel is collecting switch access rates.

In a situation with intraMTA traffic, the Commission does not obligate Alltel to perform an independent study of what its termination costs may be. The interconnection agreement should be consistent in this regard and allow netting on all factors. The failure to allow netting results in the Petitioner not having to pay or account for traffic delivered to Alltel.

CONCLUSION

Alltel requests that the Commission reconsider various determinations it has made in its February 27, 2009 Order and conclude that:

1. The rate equivalency of DS-0s to DS-1s is 20 to 24 DS-0s to one DS-1;
2. InterMTA traffic study be updated for the changes made in the network and the factor adjusted accordingly; and
3. That netting of interMTA factors occur.

Dated this 30th day of March, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of March, 2009, a true and correct copy of **Alltel Communication, Inc.'s Brief in Support of Its Petition for Reconsideration**, was sent electronically to:

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