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September 30, 2009

E-Filing
Patricia Van Gerpen
SDPUC
500 East Capitol
Pierre SD 57501

RE: Alltel Alliance Arbitration TC07-112, TC07-114, TC07-115 and TC07-116
GPNA File No. 05925.0042

Dear Ms. Van Gerpen:

Enclosed for filing in the above-entitled matter, please find the Public version of Alltel's Reply Brief. I will be filing the Confidential version under separate cover. By copy of same, counsel have been served.

If you have any questions, please call me. Thank you.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosure
c: Clients
Service Party list via e-mail

BEFORE THE STATE OF SOUTH DAKOTA

PUBLIC UTILITIES COMMISSION

In The Matter Of The Petition Of Kennebec Telephone Company, McCook Cooperative Telephone Company, Santel Communications Cooperative, Inc., and West River Cooperative Telephone Company For Arbitration Pursuant To The Telecommunications Act Of 1996 To Resolve Issues Relating To An Interconnection Agreement With Alltel Communications, LLC	)	Docket Nos. TC 07-112 TC 07-114 TC 07-115 TC 07-116 **PUBLIC VERSION**

ALLTEL COMMUNICATIONS, INC.'S 2009 REPLY BRIEF

COMES NOW, the above-named Alltel Communications, LLC , formerly know as Alltel Communications, Inc., by and through its attorney of record, Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, and hereby submits this reply brief in the above-referenced arbitrations.

PRELIMINARY STATEMENT

Alltel hereby submits this reply brief to address issues and arguments raised by the RLECs in their Post Hearing Memorandum of Law in Support of their Arbitration Positions. In Alltel's 2009 Post Hearing Brief, Alltel first addressed the transport rate issue pending before the Commission. Alltel followed with its request that the Commission reconsider the switching determinations it made, in light of the new evidence which showed a significant drop in switch usage with no corresponding reduction in switching costs. As the majority of the 2009 hearing dealt with the transport issue, Alltel hereinafter responds to the post hearing arguments raised by the RLECs in the order presented in Alltel's 2009 Post Hearing Brief.

ARGUMENT AND ANALYSIS

I. The Transport Costs Propounded By The RLECs' FLEC Studies Are Properly Rejected Because The RLECs: (1) Failed To Project A Forward-looking Demand That Would Justify An OC-192 Interoffice Transport Network And, (2) Overstated The Proper Apportionment Of Costs Of The Network By Improperly Weighting Demand Based Upon A Rate Equivalence Analysis That Treated Voice Traffic As DS-0 Special Circuits.

A determination of the appropriate interoffice transport rate requires the resolution of two issues. The first issue requires a determination of the network necessary to efficiently service the forecasted future demand level. In this instance, the RLEC's have impermissibly understated total demand. In particular, Weber opined that an OC-192 network is necessary to appropriately service the demand he believes will exist in the future. Contrary to Weber's thoughts on demand, Eklund actually forecasted demand at less than 10% of an OC-192 network. Tellingly, when pressed, Weber conceded that the demand forecasted by Eklund would render the OC-192 network he suggests impermissibly inefficient.

The RLECs make no efforts to reconcile the inherent conflict in the forecasted demand with the demand necessary to render the OC-192 network efficient. Instead, the RLECs argue that it is not possible to accurately predict demand that will be realized beyond 2010. In light of the legal authority cited by the RLECs, their claim that they can not accurately forecast demand past one year is unpersuasive. This failure to properly forecast demand to justify the network results in the future demand, the demand Weber said justifies the OC-192 network, paying none of the costs of the network. The RLECs improper reliance upon Eklund's demand forecast over an OC-192 network results in voice traffic bearing the risk and cost burden for the majority of the network, even though growth in other services creates the need for the larger network.

Notwithstanding the total absence of a demand forecast that justifies the network the RLECs want this Commission to consider, the second issue requires a determination of how the various types of demand are properly weighted when apportioning the cost of the network. The Commission has already determined that demand weighting is properly analyzed under a rate equivalency methodology. However, the RLECs improperly overstated the transport costs assigned to voice traffic. Specifically, they based their rate equivalency analysis upon voice traffic being treated as DS-0 special circuit rather than like a DS-1 special circuit even though the common voice traffic is placed by the switch on interoffice transport network at the DS-1 level.

There is no dispute that a forward-looking network must be efficient and representative of the lowest cost network configuration. Moreover, the parties agree that the final rates must be both justified and reasonable. *See* RLECs' Brief at page 24, citing Verizon Pennsylvania, Inc. v. Pennsylvania Public Utilities Commission, 380 at F.Supp. 2d at 627, 648 (E.D. Pa. 2005). The RLECs inconsistent use of demand results in a FLEC study that fails to propose an efficient network and is not representative of the lowest cost network configuration. Further, the RLECs' treatment of voice traffic under the rate equivalency unreasonably over allocates cost of the transport network to voice traffic. The interoffice transport rate proffered by the RLECs is as a consequence unjustified, unreasonable, and therefore properly rejected.

a. The RLECs' FLEC studies are properly rejected because the projected demand does not justify the network the RLECs' claim is necessary and efficient.

As illustrated in Alltel's 2009 Post Hearing Brief, the RLECs' witnesses are in conflict regarding the appropriate demand forecasts. In particular, Eklund projected demand at less than 10% of the OC-192 level in his FLEC studies. Conversely, Weber testified that the OC-192 network is justified because he believes the RLECs have exceeded or will exceed the

OC-48 network capacity during the life of the equipment. HT 92, lns 1-4. Eklund ignored Weber's testimony on the demand forecast. Notably, the RLECs failed to even acknowledge this inconsistency. They rely, for the purposes of determining an appropriate network, upon Weber's belief that the RLECs will exceed the demand capacity of an OC-48. However, the RLECs then for purposes of allocating cost, tell the Commission they must use Eklund's forecasted demand which does not justify the OC-192 network, because that increases the rate of the transport in the reciprocal compensation formula.[1]

In proffering this position, they tellingly ignore Weber's testimony regarding the justification for his conclusion that an OC-192 constituted an efficient network configuration. *See* RLECs' Brief (Post-Hearing Memorandum of Law), page 12. To illustrate, Weber testified, repeatedly, that in designing the network and determining efficiency, he assumed the RLECs already had or will have transport demands that exceed the capacity of an OC-48 network. HT 34, lns 16-20. In fact, in a direct question from the RLECs' own counsel, Weber confirmed that the OC-192 network was efficient because these companies were going to exceed the OC-48 capacity level during the life of the equipment. HT 92, lns 1-4. Weber also acknowledge, when pressed about the demand levels projected by Eklund, that Eklund's demand forecast, which was were less than 10% of network capacity, would render the network inefficient due to low utilization. HT 36, lns 16-23. Essentially, Weber noted that at 10% of utilization, the network is inefficient because a smaller network could be used to adequately service the demand. Id. Therefore, to justify an OC-192, capacity demands must exceed the capacity of an OC-48 network. HT 34, lns 16-20.

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[1] As will be addressed below, the Commission should also reject Eklund's forecast for the alternative run he did for an OC-48 network. Rejecting this model is appropriate because Eklund removed demand in that calculation and as a result lowered demand to less than 10% of the capacity of an OC-48 network for all companies. *See* Alltel Hearing Exhibit 20.

Furthermore, Eklund's projections on demands are not credible. To illustrate, in his April 2009 testimony, Eklund used the OC-192 network to divide costs over his "projected demand" into 2010. When he provided his testimony and did his runs for an OC-192 network, his demand included transiting circuits over the RLECs' networks.[2] The transiting demand he forecasted exists today. Intuitively, the demand forecast should remain the same regardless of whether Eklund is considering an OC-48 network or an OC-192 network. Without a credible justification, Eklund utilized a different demand in his consideration of an OC-48 cost structure alternative. *See* Conwell Reply Testimony, page 4.

Therein, Eklund disregarded all transiting circuits in his determination of the costs associated with an OC-48 network. He attempted to justify this change in demand by stating Weber told him that someday the transiting circuits would probably go away. However, he admitted Weber did not give him any kind of dates or timeline for this change. HT 119, lns 16-22. In other words, when changing the network size, Eklund simply adjusted his demand forecast to keep the reciprocal compensation rate high.[3]

A legitimate demand forecast should not be adjusted simply because Eklund changed the cost and size of the transport network that must be divided between the services. If the forecasted demand was legitimate to begin, it clearly should remain constant despite the size of the network. The absurdity of Eklund's actions are demonstrated through the Kennebec

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[2] McCook, Kennebec and West River had transiting circuits. When calculating the impact of the transiting circuits, even in the April 2009 testimony, Eklund counted them as paths and he did not use rate equivalency. *See* Conwell's Reply Testimony, July 3, 2009 at page 12, lines 4-10 and Eklund's Reply Testimony at page 8. The inappropriateness of this activity will be addressed later in this brief when discussing rate equivalency.

[3] Eklund's own exhibit, TE-SR-5, shows that [CONFIDENTIAL – [redacted] – END CONFIDENTIAL]

numbers. For Kennebec, Eklund forecasted transiting by paths when he calculated demand from the OC-192 network. When he used the significantly lower cost of the OC-48 network, he threw out the Kennebec transiting demand even though the OC-48 network had sufficient capacity. This resulted in the rate actually going up for Kennebec under the OC-48 network, a less expensive network. Eklund's jockeying of factors considered in his demand projections brings into question the validity of the demand he forecasted for the OC-192 network. As a result, Eklund's demand projections are properly disregarded as unreliable and manipulated to obtain an unnecessarily high rate.[4] In the absence of any credible demand projections, the RLECs have failed to satisfy their obligations to project demand necessary to ascertain the efficient and lowest cost network configuration.

b. The RLECs' assertion that it is not possible to predict future demand accurately is properly deemed unpersuasive.

FCC rules require forecasting include "a reasonable measuring period." 47 C.F.R. § 51.511(a). Eklund failed to use a reasonable forecasting period when he only projected to 2010, next year, and projected a demand level that would make the network inefficient.

The RLECs attempt to justify the miniscule amount of demand used in the FLEC study by Eklund and his decision only to forecast into 2010 by generally repeating Eklund's mantra that "forecasting demand is hard." In essence, they claim that the difficulty in forecasting demand justifies limiting the demand forecast to one year. *See* RLEC's Brief, page 21. This proposition is not supported by the legal authority proffered by the RLECs.

The RLECs attempt to support Eklund's one year forecast, and related decision not to forecast over the life of the equipment, through a 1980 FCC decision dealing with rulemaking

[4] If the Commission wondered why the total demand on the network when Eklund changed it from an OC-192 to an OC-48 still did not exceed 10% for any of the companies, this is why. Eklund threw out significant transiting demand he had forecasted for the OC-192 network when he apportioned cost for the OC-48 network.

regarding Atlantic Cable Construction is without merit. *See* In the Matter of Inquiry into the Policies to Be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Need During the 1985-1995 Period, Notice of Proposed Rulemaking, CC Docket 79-184, 82 FCC.2d 407 (November 6, 1980). In citing this case, the RLECs argue that it stands for the proposition that it is difficult to accurately forecast demand. However, the decision does not in any way support a forecast limited to one year. Rather, the 1980 decision addresses the difficulty in making 15 year projections, but acknowledges that 15 year forecasts had been made. Id. ¶¶ 56-77. While the FCC talked about the difficulty making the forecasts, it was in the context of discussing various forecasts that had been made over the life of the equipment. If in 1980, companies could forecast demand 15 years out for North Atlantic cables, it would seem that Eklund should have been able to project demand further than just next year.

The other FCC decisions cited by the RLECs also fail to justify only projecting demand into next year. The most recent of the decisions addresses the construction and operation of a high capacity digital submarine cable network. *See* In the Matter of American Telephone and Telegraph, et al., joint application, 7 FCC Rcd. 7758 (November 12, 1992). In that case, the demand had been forecasted by telecommunications companies through 2010. Id. ¶ 7. Again, the FCC acknowledged that forecasting is not an exact science, but the FCC did so in discussing various forecasts made for the life of the equipment. The RLECs argument that FCC decisions that project demand 15 to 20 years out somehow support Eklund's assertion that he should only have to project into next year is unfounded. These decisions undeniably demonstrate that long-term demand forecasts for the life of equipment exist and have historically been used in the industry.

Furthermore, the RLECs suggestion that Alltel's methodology for demand forecasts is impractical because there is no "certainty" in demand is without merit. Alltel provided a reasonable way to estimate future usage based on network size. Craig Conwell provided extensive testimony that concerned forecasting demand. *See* pages 65-69 of Reply Testimony of Craig Conwell, July 3, 2009. Conwell's testimony answered the RLECS' complaint of the risk of forecasting long-term. He weighted the forecast so the forecast discounted demand the further out one would go. Id. 66. He even started at the minuscule amount of demand used by Eklund in the beginning of the calculations. Id. [5] This engineering modeling assumes at the end of the useful life, capacity demands had reached the 80% to 85% level at the end of the network's life. This projection is a reasonable methodology to calculate demand necessary to make the network efficient. 47 CFR, §51.511(a). Projections like Conwell's are acceptable.

The Illinois Commerce Commission used a similar fill factor approach that was approved by the District Court when it took a fill factor and adjusted it upward to make the network efficient. *See* Empower Communications Corporations v. Hurley, 381 F.Supp.2d at 738, 746 (N.D. Ill. 2005)(District Court Opinion vacated under the grounds at 457 F.3d at 625 (7th Cir. of Appeals, 2006)). Conwell's approach is also analogous to the FCC's requirement in unbundled networks of using reasonable fill factors for the network to make the network efficient. *See* In re Implementation of Local Competition Provisions in the Telecommunications Act of 1996, 1996 WL 452885, 11 FCCR 15499, ¶ 682 (1996). *See* for example TDS Metrocom, LLC v. Bridge, 387 F.Supp. 935, 944 (W.D. Wi. 2005) (Finding that a Commission's adoption of a 65% fill rate

[5] Calculations were based on an OC-48 network because of the minuscule amount of the forecasted demand made by Eklund for 2010 could be satisfied by the smaller capacity of an OC-48 network, even assuming substantial growth in demand. If one were to use an OC-192 network that satisfies the test for efficiency, the total demand and growth rate utilized must be consistent with a level sufficient to justify the OC-192.

dealing with high capacity cables from central wire centers to neighborhoods justified the network.)

The RLECs have failed to provide the Commission any legal authority to justify Eklund's failure to project demand beyond 2010. They have also failed to provide the Commission a reasonable justification to disregard the demand projection methodology proposed by Alltel. As a result, the RLECs' suggestion that their obligation to project demand is limited to one year is properly rejected by this Commission.

c. The RLECs impermissibly apportioned costs of the desired network by improperly weighting demand through a rate equivalency analysis that (1) improperly incorporated a demand that failed to justify an OC-192 network, (2) incorrectly treated voice DS-1s as equivalent to 24 DS-0 special circuits, and (3) failed to reflect efficient demand in the transport outside office costs.

The RLECs bear the burden of proof to show the FLEC study they proffered utilizes a forward-looking efficient network. 47 CFR § 51.505(e). The RLECs admit they bear the burden. RLECs' Brief, p. 24. Related thereto, the RLECs acknowledge, TELRIC methodology is not a mathematical formula, but it must be based on rates that are "both just and reasonable." Verizon Pennsylvania, Inc. v. Pennsylvania Public Utilities Commission, 380 at F.Supp. 2d at 648. However, the apportionment of transport costs proposed by the RLECs is neither just nor reasonable.

i. Improper utilization of a projected demand fails to justify an OC-192 network.

Eklund's FLEC model using the cost from the OC-192 network and dividing it over demand that is less than 1/10 of the capacity of an OC-192 is not just or reasonable. The RLECs cannot escape the conflict between the FLEC study inputs and Weber's testimony and, in fact, do not attempt to reconcile it in their brief. Weber designed an efficient network based on his conclusion that transport demand for the RLECs will exceed an OC-48 during the life of this

equipment. He without question did not design a network for the minimal transport demands that Eklund proposes the Commission use to calculate transport costs. On the one hand, the RLECs ask this Commission to adopt the network designed by Weber, but then use demand forecast that is insufficient to justify Weber's network for apportionment of costs. If the Commission adopts this suggestion, the Commission is essentially allowing the RLECs to use voice traffic to underwrite their costs in expanding their networks for special services.

The unreasonableness of the RLECs' position only becomes more evident when you tie it back to the RLECs' argument that the OC-192 is needed because growth in special services requires and justifies the OC-192 network. The RLEC's brief admits: "There is no dispute in this proceeding that demand for voice service is declining. There is also no dispute that demand for special services is increasing." RLEC's Brief, page 21. With voice traffic not growing, the RLECs admit that the capacity of an OC-3 is sufficient to carry voice traffic now and into the future.[6] Weber has testified he needed to design an OC-192 because these companies will exceed or have exceeded the amount of traffic an OC-48 can carry. The remaining demand Weber has forecasted to make his network efficient is over 93% of the demand level that justifies his network.[7] The growing demand for the special services drive the size of a network.

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[6] The example on the capacity that voice takes up should not be confused by the argument the RLECs make that Alltel is advocating for a voice network. Alltel is not advocating for a voice only network and acknowledges that a voice only network would certainly be inefficient. Rather, Alltel's complaint is the RLECs are essentially creating a network that disregards the expected growth in all other services forcing voice to pay for that cost and allow those special services to ride for free. Essentially, the RLECs are designing a network to be paid for by voice traffic.

[7] The capacity of an OC-3 is 6.25% of an OC-48 network. Therefore, if one assumes voice traffic can be handled by the capacity of an OC-3, the other services demand that Weber used to justify his OC-192 constitute 93.75% of the OC-48 capacity that Weber said would be exceeded.

The RLECs now claim that voice traffic should pay in excess of [CONFIDENTIAL - [redacted] – END CONFIDENTIAL][8] of the interoffice network. RLECs' Brief, page 27. Under projecting demand for special services results in voice traffic paying for a disproportionate amount of the network. Had the RLECs properly projected the other demand that is driving the size of this network and apportioned the cost over that extra demand; the rate would go down substantially. *See* Alltel Hearing Exhibit 20, page 3.

The RLECs have manipulated the forecasted demand, and at the same time refused to project demand for special services. As a result, the RLECs have in essence forced a majority of the cost of the network onto voice services by failing to apportion a future demand for special services. As an analogy, the RLECs know voice traffic only needs a simple bicycle path. The RLECs have projected they are going to need extra capacity in the future for special services, in this analogy semi tractor trailers. However, they are unwilling to forecast use by semi trucks, so they are going to apportion [CONFIDENTIAL - [redacted] - END CONFIDENTIAL] of the costs of the super highway on bicycle users who only need 6.25% of the road. Ultimately, the RLECs must be precluded from relying on FLEC studies that claim a demand for an OC-192 network but then base the costs on a demand that could be serviced by a smaller network.

ii. DS-1 voice carrying trunks are properly treated like DS-1 special circuits for a rate equivalency analysis.

The RLECs argue three points in support of a rate equivalency of 24 DS-0 special circuits for one DS-1 of voice traffic. First, they argue this Commission should accept their rate equivalency argument simply because Nebraska allegedly adopted such a position in an unrelated case. Secondly, they incorrectly suggest Weber testified that almost all DS-0 voice

[8] The RLECs claim the following percentages should be all the costs assigned to special services: [CONFIDENTIAL – [redacted] – END CONFIDENTIAL]

trunks need extra interface. Lastly, they suggest that somehow, by not following the RLECs' rate of equivalency, the result will be a DS-1 equivalency. The RLECs arguments are not persuasive because this Commission is not bound to follow a Nebraska decision that had factually different issues. In addition, the remainder of the RLECs' arguments represent misstatements of the record and the law.

Beginning with the Nebraska decision, this Commission is not bound to follow the same. Disregarding the Nebraska decision is appropriate because the decision fails to provide the Commission any analysis of its rationale for its determination of the proper rate equivalency. Rather, the issue of whether the RLECs in the Nebraska case could use their own retail tariffs in deriving a rate equivalency was only one of several issues. *See* WWC License, LLC v. Boyle, 459 F.3d 880, 888 (8th Cir. 2006). Notably, upon review the Eighth Circuit did not address the issue of whether rate equivalency retail rates were appropriate because it concluded the rate the Nebraska Commission adopted was between the rates proposed by the RLECs and Western Wireless. Id. As a consequence, the Nebraska decision fails to provide this Commission any persuasive analysis that would support the result the RLECs seek in this case. Contrary to Eklund's assertions, in the appeals, no specific analysis was set forth as proper. Id. Further, a review of the Appellate decisions does not provide any indication that the Nebraska Commission faced the specific issue in front of this Commission.

Moreover, the implication that Alltel is bound by a possible argument, made in a totally different arbitration, by a different company whose assets Alltel subsequently purchased; is

meritless and absent support in law. Suffice it to say the Nebraska matter had different facts, different issues, different rates and different arguments.[9]

Turning to the RLECs' second argument, they assert that Weber testified that it is "highly unlikely that the DS-0 voice trunk will interface with a switch without the aid of some additional equipment." *See* RLECs' Brief, page 28. Such a statement is contrary to the record and Weber's own testimony. Weber's testimony, in responding to Mr. Rislov's questions, was that his best guess was that voice DS-1s need for additional equipment may only happen on two to four voice DS-1s out of 28. HT 80, lns 1-4. Conversely, the RLECs now ask this Commission to adopt a finding that almost every voice trunk will need extra equipment to interface with a switch. This proposition is a fallacy promoted by the RLECs in an attempt to justify treating DS-1 voice circuits as 24 DS-0 special circuits rather than DS-1 special circuits. This is clearly in error in light of Weber's actual testimony.

Contrary to the position taken by RLECs', Weber acknowledged that he did not design any DS-1s carrying voice traffic that needed this extra interface when he designed the network. HT 59, lns 1-10. One does not need special equipment to handle voice traffic in an efficiently designed network. Rather, there is switch trunk equipment, which is part of the switch cost, that is used to combine voice traffic and introduce it to the transport network at the DS-1 level. Conwell Reply Testimony, page 26, lines 5 through 6. In fact, the RLECs requested and received a cost allocation for the switch trunk equipment that performs this task during the hearing in 2008. Id.

The FCC rules require a design of an efficient network. 47 C.F.R. § 51.505(b)(1). It is the efficient network one looks to when trying to calculate allocations of cost. Since the switch

[9] A full review of the appeal from the Nebraska Commission also reveals a number of other issues not at issue here, such as dialing parity and tandem routing. WWC License, LLC v. Boyle, 459 F.3d, 886. The tandem routing question was the primary issue in the case and was certainly the graveman of the appeal.

provides an efficiency of combining voice traffic received from end users as a switch function to introduce voice at a DS-1 level to the transport network, designing a network to handle voice traffic using multiplexing and extra equipment would result in an inefficient network. Essentially, the RLECs are advocating that this Commission accept an inefficient design as justification for treating the DS-1s carrying voice traffic on the interoffice network as 24 DS-0 special circuits.

Furthermore, contrary again to the RLECs' allegations, Weber also acknowledged he is not aware of any instances where these RLECs currently run voice trunks through a multiplexing system. HT 57-58. Even assuming that some DS-1 special circuits carry DS-0 special circuits and DS-0 voice circuits, such design is an inefficient use of the RLECs' historical network. Inefficiencies of the RLECs' historical network cannot be used to drive up the network cost. Using an inefficient design as an argument to support the position that a DS-1 carrying voice trunk should be treated as 24 DS-0s is inappropriate.

Finally, the RLECs again claim that Alltel is advocating a DS-1 equivalent calculation. The RLECs are incorrect. As Conwell stated in his testimony, the only place the parties differ is how to treat DS-1s carrying voice traffic. HT 166, ln 6. This Commission directed the RLECs to come up with a rate equivalency method. *See* Findings of Fact 27. This Commission did not provide any specific direction on how to establish the rate equivalency. Inherent in determining a rate equivalency is making the determination of what is equivalent.

The RLECs turned to Qwest SGATS UNE rates. UNE rates provide rates for a special access lines. Given the RLECs have looked to the special access wholesale UNE costs, the obvious question then becomes what is the equivalent, or at least most similar, to how common voice traffic is transported on the network at issue. Specifically, do voice trunks travel on the

network more like a DS-1 special circuit or DS-0 special circuit? To make this determination, it is entirely appropriate to look at how the network has been designed and actually operates.

It appears to be undisputed that this efficient network provided sufficient DS-1s designated and designed to carry all common voice traffic. As part of switching it appears undisputed that all individual voice trunks are combined to a DS-1 before entering the transport network and the switch trunk that performs this service is part of the reciprocal compensation switching cost. Reply Testimony, page 29, lines 5-6.[10] It also appears to be undisputed that DS-0 special circuits have to go through multiplexing requiring additional equipment not part of the switch. This adds costs and complexity to DS-0 special circuits not needed for voice traffic based on this networks design. Certainly, given these comparisons the DS-1s carrying voice traffic on the transport network appear to be similar to DS-1 special circuits. The practicality of this conclusion is reflected in a full examination of even the RLECs' testimony.

Eklund's prefiled testimony demonstrates the frailty of the RLECs' argument that voice traffic is the equivalent of DS-0 special circuits. In explaining the pricing mechanism efficiencies he used to come up with equivalencies between a DS-1 special circuit and a DS-0 special circuit, Eklund provided the following:

> A CLEC can purchase a DS-0 unbundled dedicated interoffice transport ("UDIT") circuit or a DS-1 UDIT from Qwest. The CLEC can use that UDIT to transport voice traffic between central offices although the CLEC can purchase a DS-1 UDIT and put 24 times the amount of voice traffic over the transport route using a DS-1 than using a DS-0, the DS-1 only cost a CLEC 3.4 times the amount than the DS-0.

See Eklund Supplemental Rebuttal Testimony, July 17, 2009, pgs 9-10 (emphases added). Thus, Eklund admits that if a CLEC wanted 24 voice trunks for interoffice transport under the UDIT rates, the CLEC would purchase a DS-1 and only pay 3.5 times the amount of a DS-0 special

[10] For example, the switch trunk cost for McCook was [CONFIDENTIAL - [redacted] – END CONFIDENTIAL]. Conwell Reply Testimony page 26, lns 5-8.

circuit. This DS-1 would then be reserved for the CLEC. This is the exact same circuit, a DS-1 with capacity of 24 voice trunks, that the RLECs used to carry common voice traffic over their networks. The voice trunks for this common traffic run over a DS-1 that has 24 times the capacity of a special circuit DS-0. Using the DS-1 for transport of voice traffic is more efficient, both in terms of engineering and in terms of cost, than using DS-0s. As a result, a reasonable telecommunication carrier would proceed with a DS-1.

By way of example, assume a CLEC approaches Qwest and needs capacity for 90 simultaneous calls. That CLEC would not purchase 90 DS-0s as that model would be inefficient both from network management and from a cost standpoint. As noted by Eklund, the CLEC would purchase DS-1s that could carry up to 24 calls at a time rather than purchasing 90 DS-0 special circuits. Ultimately, the CLEC would purchase 4 DS-1s. This would give the CLEC capacity for 98 calls at any one time, slightly more than is necessary. What the CLEC has done is the exact same thing Weber did in designing a system to handle voice traffic. In particular, he took the amount of voice trunks necessary and then derived the number of DS-1s needed to carry that capacity by dividing that number by 24 and rounding up to ensure sufficient capacity.

As Eklund explains, the CLEC does not want to buy individual DS-0s for voice traffic if the demand exceeds 4 DS-0s as 4 DS-0s cost more than a DS-1 that has the capacity to carry 6 times the traffic. However, the way Eklund has set up the rate equivalency, he is essentially telling this Commission that the RLECs would elect to purchase DS-0s rather than DS-1s. The RLECs therefore create an inherent inefficiency that foregoes the economics of scale by insisting upon using only DS-0s. Imagine one of the RLECs entering into a Qwest area as a CLEC. If they needed capacity for 90 voice trunks, they would not order 90 DS-0s from Qwest. They would order 4 DS-1s.

For the common voice transport for this network, the rate to be derived through reciprocal compensation is for a shared network. The transport capacity is not exclusively granted to Alltel or any other carrier. Other carriers will use the transport for which we are trying to apportion cost. The RLEC has to design an efficient network. Delivery of Alltel calls across this common network does not force the RLECs to lose its economics of scale of using DS-1s for transport.

In setting forward-looking economic cost, a reasonable allocation of a common cost must be made. 47 C.F.R. § 51.505(a)(2). It is unreasonable to, in essence, convert the DS-1s carrying voice traffic to 24 DS-0s for the purposes of calculating as costs. Treating the RLECs' voice traffic network as the inefficient CLEC that buys a DS-0 for all of its voice traffic as opposed to upgrading to obtaining efficiency is inappropriate. The natural comparison between the RLECs' voice traffic to how a CLEC would purchase sufficient DS-1s to carry the voice traffic is proper as it is representative of the appropriate equivalent.

Eklund's attempt to have this Commission treat voice traffic in a way to make the network inefficient and economically prohibitive is not the only game he played with the rate equivalency. Eklund freely admits that the FLEC cost runs that he ran and provided to this Commission as part of his initial 2009 testimony counted transiting circuits as paths and not using a rate equivalency analysis. *See* Eklund's Reply Testimony, July 17, 2009, page 8. Then, when he ran the FLEC study using the cost structure of an OC-48 network, he removed even the path counts he had inserted for the transiting and simply assumed that transiting would go to zero in 2010 for all carriers. HT 120. He did this even though for one carrier transiting had increased between 2006 and 2008 and for one carrier remained constant.[11] Thus, Eklund forecasted

[11] Three of the four carriers have transiting circuits today on their network.

transiting circuits when calculating the total demand for the OC-192 network but did not use the rate equivalency to calculate the cost to be apportioned to transiting, thus understating transiting's obligation to carry cost on that network.

Alltel pointed out his error in prefiled testimony, the counting of transiting circuits as paths, and also pointed out that transiting DS-1s are similar to voice DS-1s on the network and should be treated the same. *See* Conwell's Reply Testimony, July 3, 2009, pages 52-53, Eklund avoided these points by simply pulling out all transiting and forecasting no transiting in his final round of testimony. Because of these manipulations, Eklund's FLEC study for the OC-192 network is not credible and based on his reforecasting for less demand if he used a smaller network, the OC-48 FLEC analysis are not credible.

As a result of the network design, and the manner in which the switch introduces voice traffic at a DS-1 level, DS-1s carrying voice traffic over the transport network are similar to a DS-1 special circuit and are not similar to 24 DS-0 special circuits. Therefore, the DS-1s for voice traffic should be treated as DS-1s and reduced to a DS-0 level based on the same rate equivalency that the DS-1 special circuits are adjusted.[12]

iii. The size of the transport outside office costs must reflect efficient demand.

Regarding the transport outside office costs, the RLECs seek solace in the fact that downsizing the outside office only eliminates part of the costs. What the RLECs fail to grasp is Alltel's complaint centers around the fact that efficiency and utilization is the key. If one projects demand sufficient to justify a 48 fiber network, then the argument over cost or fractions

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[12] Alltel has provided the necessary calculations for the FLEC model for both demand inputs and apportionment of the cost based on rate equivalency. These can be found as set out in full in Alltel Hearing Exhibit 20, page 9.

of cost begins to evaporate. If one does not project appropriate efficiency of use, then the cost is over allocated to voice and that is what the RLECs have done.

First, it must be remembered that the RLECs' cost studies failed to project future demand for cable fibers. Conwell's Reply Testimony, page 23, lines 17-18. This results in under utilization of the fiber by reflecting no future growth of use. The RLECs should have projected fiber demand over a reasonable portion of the fiber cable life. Id.

Rather than address the failure to forecast, the RLECs argue that because the 24 cable fiber is not much cheaper than the 48 cable fiber, you might as well use the 48 cable fiber. This position misses the fundamental issue. By not projecting growth in the use of fiber cable, you consistently over allocate the cable cost to voice. Id. ¶ 26, lines 4 through 13. By way of example, if only four of the 48 fibers are in use today and two are for voice and two are for special access, the RLECs would contend that voice traffic should pay for the majority of that network even though voice usage will not grow. If demand is properly projected and calculated to show that those future fibers would be used by other services, the cost then becomes allocated to those other services that require the additional fibers.

To obtain necessary efficiencies, Alltel adjusted the utilization to 50% of the available fibers and recalculated the costs. In a utilization of 50%, the fiber cable reaches an efficiency level that is appropriate. *See* Alltel Hearing Exhibit 20, pg 9 for calculations. Alltel requests the Commission adopt its methodology.

II. It Is Appropriate For The Commission To Revisit And Revise Its Prior Decision Regarding Switch Related Costs Given The New Information Provided By The RLECs That Shows A Significant Drop In Usage With No Corresponding Drop In Switching Costs.

The RLECs have taken the position that because Alltel's traffic goes over a switch processor, and the FCC allows usage based switching rates; that all the switching costs are

properly incorporated. There is no question that Alltel traffic goes across a switch processor. Further, there is no question that the FCC rules permit usage based switching rates. The question before this Commission is whether the new evidence showing that substantial decrease in minutes of use with no corresponding reduction in the switching costs, justifies this Commission revisiting its prior determination regarding the inclusion of certain switching costs. More particularly, the issue is whether the switching costs included constitute usage-sensitive costs because the FCC determined that usage based rates only apply to usage-sensitive costs. In the Matter of Implementation of the Local Competition provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15,499, ¶ 1057, 1063 (released August 8, 1996), hereinafter "First Report and Order."

As Alltel has consistently acknowledged, there are some costs related to switching, such as trunk cards, that vary with volume and are includable because they are usage-sensitive. *See* Alltel Hearing Exhibit 10, Template for Resolving Cost Issues-Switching Costs. Alltel's acknowledgment that there are some usage-sensitive costs includable when setting the switch cost component of the reciprocal compensation rate does not mean all switch related costs are recoverable. Rather, if the cost is not usage sensitive, in other words, fluctuating with use, it is not recoverable. Given the RLECs now are projecting [CONFIDENTIAL - [redacted] - END OF CONFIDENTIAL] redaction in minutes of use with no switch component investment change, there is evidence to show that various component costs the Commission previously included are not usage sensitive.

Perhaps recognizing the dilemma the RLECs find themselves in, Weber now suggests that when the switches were ordered they were "designed off of usage-sensitive basis of the number of the concurrent call attempts it could handle, not necessarily the minutes of use." *See*

HT 69, lns 3-10. However, the RLECs face the same issues with non-usage sensitive costs with the concurrent call attempts that they have when arguing for the switch processors as a whole. The smallest METAswitch used in the FLEC study has the ability to handle 2,304 concurrent calls per switch. *See* Alltel Exhibit 8, page 2. The RLECs admit that they have multiple switches in their proposed designs yet none of the RLECs have more than 5,000 subscribers in their entire network. Weber previously acknowledged that, based on subscriber growth projections, there was no need to add future switches. 2008 HT 213, lns 6-8. Therefore, the concurrent call portion of the switch cannot be exhausted and become part of the getting started cost. As has been previously noted, getting started costs are not includable as a usage-sensitive component of the reciprocal compensation rate. *See* Virginia Arbitration Cost Order, 18 FCC Rcd. 17722, 17871, footnote 988.

Turning to concurrent calls, there appears to be a possible usage-sensitive cost related to the concurrent call license. A review of Weber's testimony at the First Hearing shows as a cost component of the switch a concurrent call license. The number of concurrent call licenses appears to differ on each switch based on the numbers of subscribers on the network as reflected in the RLECs' HT 2008, Exhibits 27 through 30.[13] If this is indeed a usage-sensitive cost, then this licensing could properly be broken out as a separate cost with the nonusage-sensitive remaining items excluded.

The drop in the minutes of usage without a corresponding drop in switch costing is appropriately taken into consideration by the Commission. In light of the new evidence, the Commission has authority to revise its determination on what switching costs are usage-sensitive

[13] [CONFIDENTIAL – [redacted] .– END CONFIDENTIAL]

and includable and should do so. The remaining nonusage-sensitive costs, also considered getting started costs, are not properly included as part of the switch cost component of the reciprocal compensation rate. *See* Virginia Arbitration Cost Order, 18 FCC Rcd. 17722, 17871 at footnote 988. Alltel therefore requests the Commission revisit its prior determination regarding usage-sensitive switching costs and remove the nonusage-sensitive costs as set out by Alltel in its 2008 Post Hearing Brief at pages 7-15.

CONCLUSION

Based on the inherent errors in the FLEC analysis, the Commission should reject in its entirety the FLEC analysis performed by the RLECs. As noted in Alltel's recent brief, the RLECs' failure to properly forecast to justify the network returns the Commission to almost the same position it was at last year. This leaves the Commission various options to resolve reciprocal compensation based on the record in front of it.

Option One: The Commission could find that the RLECs' failure to provide a proper FLEC analysis for transport means the parties should go to a bill and keep situation for the purposes of reciprocal compensation.

Option Two: The Commission could make a determination that the RLECs' failure to provide a proper forecast to justify the transport network bars the RLECs from receiving a transport component cost for the reciprocal compensation rate and set the reciprocal compensation rate only using cost sensitive switching components.

Option Three: The Commission could accept the recalculations performed by Alltel, as set forth in Alltel Hearing Exhibit 20, and set the reciprocal rates based on those calculations.[14]

[14] An outline of the cells must be adjusted and the adjustments that have to be made is set forth in Alltel Hearing Exhibit 29, page 9.

Dated this 30th day of September, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2009, a true and correct copy of **Alltel Communication, Inc.'s 2009 Reply Brief,** was sent electronically to:

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