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October 10, 2008

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

RE: Alltel Alliance Arbitration TC07-112 through 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 Brief in Support of Its Opposition. 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 BERESFORD MUNICIPAL TELEPHONE COMPANY, 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 07-113 TC 07-114 TC 07-115 TC 07-116 **PUBLIC VERSION**

ALLTEL COMMUNICATIONS, INC'S BRIEF IN SUPPORT OF ITS POSITIONS ON INTERCONNECTION TERMS

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 brief in support of its positions in the above-referenced arbitrations.

PRELIMINARY STATEMENT

The arbitrations in the above five dockets proceeded under a consolidated record. The arbitrations originally involved six companies with one of the companies, Alliance Communications, Inc., resolving all issues with Alltel Communications, LLC prior to hearing.

For the purposes of this brief, Alltel Communications, LLC. will be referred to as "Alltel." McCook Cooperative Telephone Company will be referred to as "McCook." Beresford Municipal Telephone Company will be referred to as "Beresford." Kennebec Telephone Company will be referred to as "Kennebec." Santel Communications Cooperative, Inc. will be referred to as "Santel." West River Cooperative Telephone Company, Inc. will be

referred to as "West River." When referring to all five incumbent local exchange carriers or the remaining companies contesting an issue, they will be referred to as "RLECs."

Citations made to prefiled testimony will be cited by providing the name of the witness followed by the initials "PF", identification of the testimony round (direct or rebuttal) and a page and line number to the testimony. Citations to the Hearing Transcript will be made by the designation of "HT" followed by a page and line number.

Given that the factual testimony regarding each contested issue is generally distinct from other issues, this brief will examine the issues in order, providing both the factual and legal analysis under each issue.

PROCEDURAL HISTORY

These arbitrations come before the South Dakota Public Utilities Commission (hereinafter "Commission") to arbitrate certain unresolved terms and conditions of a proposed Interconnection Agreement between RLECs and Alltel. The arbitrations are presented to the Commission pursuant to Section 252 of the Telecommunications Act (the "Act"), SDCL § 49-31-81 and A.R.S.D. 20:10:32:29.

The RLECs and Alltel previously were parties to interconnection agreements that were negotiated prior to Alltel acquiring Western Wireless, Inc. By letters to the RLECs dated October 30, 2006, Alltel notified the RLECs it was Alltel's intent to terminate the then existing interconnection agreements as of December 31, 2006. By correspondence dated December 21, 2006, the RLECs requested Alltel to engage in negotiation for development of a new interconnection agreement.

The RLECs filed petitions for arbitration on October 19, 2007 and Alltel responded to the petitions on November 13, 2007. The petitions and responses initially presented seven issues, including certain sub-issues. The general issues presented were as follows:

1. What is the appropriate reciprocal compensation rate;
2. What is the appropriate interMTA factor and interMTA rate;
3. Should there be factor billing and, if so, what should be the traffic factor;
4. How should dialing parity be handled;
5. What would be the effective date of the interconnection agreement;
6. What would be the definition of the MTA; and,
7. What would be the terms of any direct connect and point of interconnect.

The question as to how to true-up any back payments was also raised in the context of the entire agreement.

At the time of the hearing, Alliance and Alltel had settled all issues regarding their interconnection agreement. Issue 4, dialing parity, and Issue 5, effective date, had been settled as to all parties. The true-up process had also been settled as to all parties. During the course of the hearing, Issue 7, regarding direct connections and point of interconnect, appears to have been resolved as to all parties through the testimony of Mr. Davis and Mr. Williams. *See* HT 25, ln1; HT 471, ln 4.

Issue 1, the reciprocal compensation rate, has now been resolved between Beresford and Alltel, but remains open with respect to the remaining four companies. Issue 3, concerning whether to allow the option to use of factor billing, has been settled with Beresford, Kennebec and West River, and only remains open as to McCook and Santel. As each issue is addressed below, the parties with whom Alltel has not yet resolved the issue will be again identified.

ISSUES PRESENTED

I. Is the reciprocal compensation rate for intraMTA traffic proposed by each RLEC appropriate under 47 U.S.C. § 252(d)(2) and the regulations adopted by the Federal Communications Commission?

The reciprocal compensation rate issue remains unresolved with respect to Kennebec, McCook, Santel and West River. While these remaining RLECs claim that their proposed reciprocal compensation rates are appropriate, their proposed rates are improper as they do not comply with FCC rules for establishing cost-based transport and termination rates in accordance with 47 C.F.R. 51.505 and 51.511, in particular because they include nonusage-sensitive switching costs (termination costs), fail to properly calculate transport costs, and are not based on a properly performed forward-looking cost analysis.

A. Legal Standard

Reciprocal compensation consists of the RLECs' costs for two network elements, transport and termination. In establishing a reciprocal compensation rate, the Federal Communication Commission (hereinafter "FCC") specified that "incumbent LECs' rates for transport and termination of telecommunications traffic shall be established" based on the "forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511." *See* 47 C.F.R. § 51.705(a)(1). For these studies, commonly referred to as "FLEC" studies, the FCC placed the burden of proving any proposed rates meet the forward-looking economic costs per unit on the incumbent carrier (the RLECs in this case). This is set forth in 47 C.F.R. § 51.505(e), which provides as follows:

> An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511.

The FCC also expressly requires that in any state proceeding, where a Commission considers a cost study, the cost study must be included as part of the record. 47 C.F.R. § 51.505(e)(2).

As part of these rules, the FCC does not permit an RLEC's reciprocal compensation rate to exceed the RLEC's forward-looking economic cost associated with the rate. The FCC clearly defined forward-looking economic cost in 47 C.F.R. § 51.505(a), as the sum of:

> (1) The total element long-run incremental cost of the element, as described in paragraph (b); and
> (2) A reasonable allocation of forward-looking common costs, as described in paragraph (c).

Total long run incremental cost under subpart (1) is defined as the "forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taken as a given the incumbent LEC's provision of other elements." 47 C.F.R. § 51.505(b). Specific items are excluded and may not be considered in calculating forward-looking costs. Specifically, the following must be excluded: embedded costs, retail costs, opportunity costs and revenues to subsidize other services. *See* 47 C.F.R. § 51.505(d)(1) through (4).

The first of the two costs components of a reciprocal compensation rate, the transport component, is defined under 47 C.F.R. § 51.701(c) as "the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party." Termination, the second cost component, is defined in 47 C.F.R. § 51.701(d) as "the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises."

Congress specified that transport and termination rates may only recover "the additional cost of terminating such calls." 47 USC § 252(d)(2)(A)(ii). Implementing this directive, the FCC concluded that the additional cost standard required under the Act limits recovery of the

RLECs to usage-sensitive costs. In the First Report and Order, the FCC acknowledged that the "usage-sensitive charges should be limited to situations where costs are usage-sensitive." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15,499, ¶1063 (released August 8, 1996) (hereinafter "First Report and Order).

In looking at the additional cost standard, the FCC further determined that

> "We find that, once a call has been delivered to the incumbent LEC end office serving the called party, the 'additional cost' to the LEC of terminating a call that originates on a competing carrier's network primarily consists of the traffic-sensitive component of local switching. ...[N]on-traffic sensitive cost should not be considered 'additional cost' when a LEC terminates a call that originated on network of a competing carrier."

Id. ¶ 1057. Thus, it is not enough that a cost is simply a network cost. Rather, the network cost must be shown to vary with usage, i.e. it must be traffic sensitive not non-traffic sensitive, to be includable in the costs to be recovered under a reciprocal compensation rate.

B. The Reciprocal Compensation Termination Rate Component Proposed by Each of the RLECs Is Overstated As It Includes Non Traffic-Sensitive Costs And Getting Started Costs.

Regarding the termination component of the reciprocal compensation rates, the parties disagree as to what costs should be included in calculating that component.[1] Alltel identified certain costs related to the termination of the call that were recoverable and could be charged for as part of the termination component of a reciprocal compensation rate. This included investments and costs associated with switch trunk cards, which vary with the volume of

[1] Most witnesses used the terms switching and termination interchangeably in their testimony. "Switching" costs recoverable in reciprocal compensation rates are limited to those components of switching or termination whose costs vary with telecommunications traffic volume or usage. RLEC witnesses, however, include in switching or termination components that are not usage sensitive, and in some cases, not even necessary for terminating traffic. *See* RLECs' Hearing Exhibit 26, Weber's Switching Network Investment Allocation Diagram.

interoffice traffic (including the transport of Alltel's telecommunications traffic). *See* for example, Alltel Hearing Exhibit 10, Template for Resolving Cost Issues – Switching Costs.[2] Alltel raises five issues regarding the RLECs' calculation of this component as set forth in Conwell's Rebuttal Exhibit WCC-R-1 and attached to the Appendix hereto, as Issues 1.1 – 1.5.

In testimony and in Alltel's Proposed Template, Alltel Hearing Exhibit 10, discussion of Issues 1.1 and 1.3 are intermixed because the factual underpinnings of the issues are inter-related. Therefore, these issues are presented together below.

Issues 1.1 and 1.3: What switch investment, by switch category and exchange, should be used in the RLEC cost study and what percentage of the switch investments is usage-sensitive and recoverable as part of the reciprocal compensation rate?[3]

The RLECs essentially argue all switching investment and costs (except a meager five percent for 'vertical services') are recoverable from rates assessed to other carriers. This is simply contrary to what the FCC allows. The RLECs' witness's attempt to justify why *all* costs should be contained is rather simplistic and amazing in its disregard of law. Ms. Vanicek stated that because the "T" in TELIC stands for a total, this commission must allow the RLECs to recover all their costs for the entire network. Vanicek HT 99, lns 14-15. RLECs' witnesses are essentially arguing because a network has to exist to deliver calls, all network components are usage sensitive. This therefore assumes that no component of the network is non traffic sensitive. However, as much of the switching network investment is unrelated to terminating calls that Alltel would be delivering, and additional parts of the network were not usage-sensitive

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[2] Alltel Hearing Exhibit 10 provides the trunk card investments that Alltel agrees are recoverable for West River. For the remaining companies the trunk interface totals can be found in RLECs' Hearing Exhibits 27, 28 and 29 at the trunk interface category, lines 28 and 29 for each switch location.

[3] *See* Conwell PF Direct pages 26-31 for full discussion of Issues 1.1 and page 39-46 regarding Issue 1.3

(as admitted by Mr. Weber at HT 209-210), inclusion of all costs is not logical or permitted. As determined by the FCC, "for the purposes of setting rates under Sec. 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes 'an additional cost' to be recovered through termination charges." First Report and Order at ¶ 1057.

The threshold and controlling issue is whether the items are usage-sensitive. If a cost item is not usage-sensitive, it cannot, by law, be included as part of the costs recovered in the switching or the termination component costs. This analysis begins with the types of switches used in developing the FLEC study.

The RLECs' argument is that all of their switch related costs are recoverable because a switch is used in terminating a call and switches have some theoretical capacity limitation. Yet, the RLECs' witnesses admit that the switches they projected to use are sized such that they can never be exhausted during their useful life. *See* Weber HT 213, lns 6-8.

The smallest switch used in the FLEC study can handle as many as 250,000 busy hour calls and 15,000 subscriber lines. *See* Alltel Hearing Exhibit 8 and HT 203, lns 12-15. The RLECs freely admit they have multiple switches in their proposed designs[4], yet none of the RLECs have more than 5,000 subscribers in their entire network and Weber, based on subscriber growth projections, admitted he did not foresee a need to add additional switches. HT 213, lns 6-8.

When looking at the cost of a switch, the FCC's Common Carrier Bureau determined that none of the "getting started costs" of today's switches are usage-sensitive. Virginia Arbitration Cost Order, 18 FCC Rcd 17722, 17871, 17903-04, ¶ 463. The Common Carrier Bureau defined

[4] Kennebec has two switches, McCook has six switches, Santel has ten switches, and West River has eight switches. *See* RLECs' Hearing Exhibits 27 through 30.

getting started costs, or first cost, of a switch as "the cost of the central processor, memory, maintenance, administrative, test, and spare equipment, and other common equipment. Similarly, 'getting started' investment refers to investment for such equipment and 'getting started' equipment refers to this equipment." Id. 17871, FN 988.

The Common Carrier Bureau explained the reasons for its conclusions as follows:

> We conclude above, for the purposes of determining the appropriate discount, that the "getting started" cost of the switches is a fixed cost, meaning that it does not vary with the number of ports or the level of usage on the switch. We find here that the "getting started" cost of the switch should be recovered on a per line port basis. "Getting started" costs are incurred for capacity that is shared among subscribers. [The ILEC] incurs these costs to be ready to provide service upon demand. Given the record evidence that modern switches typically have a large amount of excess central processor and memory capacity, usage by any one subscriber or group of subscribers is not expected to press so hard on processor or memory capacity at any one time as to cause call blockage, or a need for additional capacity to avoid such blockage. Thus, no one subscriber or group of subscribers is any more or less causally responsible for the processor or memory capacity cost.

Id. 17903-4 (footnotes omitted).

The Eighth Circuit Court of Appeals also agreed that switch costs may not be included in the termination charge component when they are not usage sensitive. *See* Ace Telephone Association v. Koppendrayer, 433 F.3d, 876, 881 (*See* 8th Cir. 2005). The Minnesota Public Utilities Commission determined that a FLEC analysis for Unbundled Network Elements (UNE)[5] for reciprocal compensation showed usage-sensitive termination costs to be zero. Id. 879. The Minnesota Commission relied upon the Act's requirement that reciprocal compensation should only be the reasonable approximation of additional cost for terminating calls. Id. 880. The Eighth Circuit upheld the commission while concluding that "telephone

[5] RLEC's expert Vanicek acknowledge the FLEC analysis for unbundled network elements and reciprocal compensation are the same test per FCC rules. HT 96, lns 2-7.

companies have to establish ways to pay one another their additional costs, if no additional costs are incurred, there is nothing to pay." Id. 881.

It should be noted as well that the RLECs have attempted to include components of switch investment and costs that are not necessary or involved in the termination of a mobile-to-land call. This includes, for example, the Web Self-Care System, Centrex software and others. The RLECs' engineering expert confirmed this. Thus, if these components are not used in termination, they too cannot be usage-sensitive, and their costs are not recoverable in reciprocal compensation rates. The investment and costs for these components should be excluded.

The RLECs also attempt to include costs that they have designated "common,"[6] as reflected on RLECs' Hearing Exhibits 27 through 30, are essentially the costs to outfit the switch. The RLECs' Hearing Exhibits 27 through 30, feature the switch detailed estimates including a category referred to as "common" items 1 through 27. The majority of these items feature or consist of such things as the central processor, memory and common equipment that the Common Carrier Bureau specifically defined as "getting started" costs and, therefore, as non usage-sensitive costs. Virginia Arbitration Cost Order, 18 FCC Rcd 1787, Fn 988. As noted by both the Eighth Circuit and the Common Carrier Bureau, these types of switching costs constitute "getting started" costs that are not usage-sensitive and not recoverable.

What has been recognized by the Eighth Circuit and the Common Carrier Bureau is the mere fact that switches being designed today are of such a size and efficiency that even the most basic model, a required cost for any incumbent local exchange carrier, is not expected to exhaust

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[6] The term "common" used by the RLEC should not be confused with "common costs" that are recoverable. HT 427, lns 7-12. Common costs that are recoverable are "things like executive, legal, human resources, finance, and the general and administration functions at the business." In fact, "[e]ven the RLECs' cost studies don't include switching in common." HT 427, line 15-19.

over its life, and therefore, there is no additional cost for usage – or cost avoided by not having additional usage. In the case of these RLECs, the number of subscriber lines the RLECs have is further evidence that the switches will never come close to exceeding capacity. One switch per RLEC would be of sufficient capacity to service all subscriber lines of each RLEC if all the subscribers were in one community throughout the life of the switch. By adding a number of extra switches, you simply increase capacity and confirm that during the useful life of these switches, capacity will not be approached. The Common Carrier Bureau found that these non-usage sensitive costs should be recovered in per-line charges.

Furthermore, the RLECs own witnesses acknowledged that certain items included in this common category would never be used for terminating an Alltel call. Under examination, Mr. Weber, the RLECs' witness and engineer, agreed when asked about the Web Self-Care system as part of his common category of costs that the RLECs are claiming as usage-sensitive, is actually not usage-sensitive. He stated: "I would agree that it is not required for the termination of that call." HT 203, lns 14-21. Mr. Weber further agreed that CALEA is not necessary to terminate a call. The Web Self-Care license, an additional cost item to Web Self-Care, is not necessary to terminate Alltel's call and that the Web Self-Care system-non-NEVS, DC is not necessary to terminate Alltel calls. HT 209, ln 3 through 210, ln 2. If a component is clearly not necessary to terminate a call, it cannot by definition be usage-sensitive to that call. Thus, Mr. Weber agrees that Alltel calls do not need Items 6, 9, 11 and 15 to be terminated.

While none of the common items are usage-sensitive, even if the Commission were to decide that some of the common category items set forth in the RLECs' exhibits were usage-sensitive, the Commission cannot simply remove non usage items and recalculate the expenses. The RLECs determined they would not provide the costing for each item for which they now

claim a right of recovery. Therefore, because the RLECs failed to provide a detailed accounting of claimed common costs that even the RLECs admit are not usage-sensitive, the RLECs failed to meet their burden to establish the termination rate, a burden their witnesses acknowledged must be met by them under 47 C.F.R. § 51.505(e). Vanicek HT 80, lns 4-6.

The RLECs failed to prove that the switching investments and costs included in their cost studies are usage-sensitive and directly attributable to terminating Alltel's mobile-to-land traffic. Furthermore, the RLEC engineering expert witness admitted that the vast majority of switching investments and costs, which the RLECs attempt to recover in their proposed rates, are not usage-sensitive or necessary for termination. Given no other facts than these, the Commission cannot adopt the switching costs and resulting RLEC proposed rates as the rates do not comply with FCC rules. The non usage-sensitive portion of switching investment and costs cannot be included when calculating the termination component of the reciprocal compensation rate. The cost considered has to be restricted to those costs that Alltel agrees are usage-sensitive, the trunk interface cost on the switches. The Commission, therefore, should reject the RLEC rates entirely or alternatively, direct each RLEC to modify its switching investments for each exchange to include (1) only those components necessary to terminate telecommunications traffic and (2) only those components that are usage-sensitive; i.e., likely to be exhausted by growth in usage over the expected plant life.

Issue 1.2: What switching annual cost factor should be used?

The second question is what annual cost factors should be used. As set forth in Conwell Exhibit WCC-R-1, courtesy copy attached hereto, Alltel did not challenge the switching annual cost factors of McCook, Santel and West River. However, Kennebec claimed an exceedingly high cost factor that is improper. Kennebec's current cost factor is in [redacted]

[redacted] This amount is significantly higher than the other RLECs. As noted by Conwell, in calculating the percentage, Kennebec's witnesses failed to take into consideration the fact that Kennebec as a corporation is entitled to certain income tax effects – the deductibility of interest expenses and the effects of deferred income taxes from accelerated tax depreciation.. These tax effects are relevant because in the FLEC analysis, the Kennebec witness assumed no debt with 100 percent equity. However, Kennebec has more long-term debt than it has in current equity. This debt to equity ratio allows an interest deduction against income. By assuming no debt in Kennebec's capital structure, the Kennebec witness wrongfully neglected to include a deduction of interest for tax purposes thereby resulting in inflated taxes relative to Kennebec. *See* Conwell PF Direct 33 lns 8 - 22.

Additionally, Kennebec switching direct expense was more than twice the level of any other RLEC without any justification or explanation. Although Alltel requested account level expense on this information, Kennebec failed to produce any information in the record sufficient to demonstrate why Kennebec would incur the extra cost. *See* Conwell Direct Testimony 36 lns 11 through 19.

Alltel recommends that an annual cost factor not exceed 31 percent which would allow for 15 percent for capital cost, 6 percent for direct expenses, 6 percent for other operating expenses and corporate operation expenses loading at 12 percent (15%+6%+6%) x (1+12%). *See* Conwell PF Direct 39 lns 14 -18. This is a reasonable percentage of investment for recurring annual capital costs and operating expenses for switching plant and, importantly, is consistent with the percentages of several of the RLECs. To permit RLECs to utilize annual cost factors above 31 percent is a violation of FCC rules, because such factors would be based on

embedded cost data and without demonstration that these cost data are forward-looking and efficient.

Issue 1.4: The annual minutes per voice trunk should be established consistent with FCC Benchmark Rule 47 C.F.R. § 51.513(c)(4).

An analysis of the annual minutes actually used in the RLECs' studies show annual minutes per voice trunk much less than the FCC recommended efficiency benchmark. Conwell Direct PF 68, lns 11-16. 47 C.F.R. § 51.513 establishes proxies for forward-looking economic costs and, under subpart (c)(4), shared transmission facilities between tandem switches and end offices. When applying these rules, the proxy costs are based on an efficiency benchmark of 9,000 minutes per month per voice circuit, equating to 108,000 annual minutes per voice trunk. Another benchmark comes from parameters of the HAI 5.0a which indicates approximately 120,500 annual minutes per voice trunk assuming average utilization of voice trunks at reasonable forward-looking levels. A review of these benchmarks shows that the RLECs' FLEC studies assumed significant underutilization of their voice circuits.

While the benchmarks provide guidance and show underutilization of voice lines in the RLECs' studies, the ratio of the RLEC minutes per voice trunks are not directly comparable. Therefore, on behalf of Alltel, Mr. Conwell adjusted the benchmarks to fit the design of the RLECs' networks. Exhibit WCC-6.6 to Conwell's Direct Testimony provides this adjustment.

After the adjustment, the RLEC annual minutes per trunk that should be used are still significantly higher than the annual minutes used in the cost study. As the RLECs are required to design an efficient network per FCC rules, the efficiency of their voice trunks must be taken into consideration. Therefore, at a minimum, the following annual minutes per voice trunk should be used when calculating per minute costs [redacted]

[redacted] *See* Conwell Direct Exhibit WCC-6.6, column G.

Issue 1.5: The Commission should reject the RLECs' proposed cost per minute for switching as being unsupported by appropriate forward-looking analysis and inclusion of non usage-sensitive cost.

As examined above, the switching costs as proposed by the RLECs are fatally flawed by including non usage-sensitive costs and costs associated with switching hardware and software not even necessary for termination. Additionally, the annual minutes used by the RLECs should also be adjusted to reflect reasonably efficient utilization based on the recommended minimum proxies developed by the FCC.

The results and calculations that occur when correcting these errors are reflected in WCC Exhibit 5.5 attached to Conwell's Direct Testimony. The corrected calculations show the cost per minute for termination, even when using the RLECs' inefficient minutes of use levels, of not more than [redacted]

C. The RLECs' transport calculations must be rejected as the RLECs failed to properly perform the forward-looking analysis and used a methodology that overstated the actual costs of transport for voice traffic.

Regarding transport, Alltel set forth the distinct sub issues that existed with transport cost as Issues 2.1 through 2.7 and 3.1 through 3.5. *See* Conwell Exhibit WCC-R-1. Of these issues, the one perhaps having the greatest impact on the transport cost equations concerns the size of the proposed forward-looking network and the RLECs' use of past demand in place of forward-looking demand. In the FLEC analysis, the RLECs claimed the most efficient network would

require an OC-192 network for every RLEC and every interoffice transport system, but then claimed the forward-looking demand that should be used to allocate the cost should only be the 2006 demand levels. The RLECs asserted this even though they acknowledged voice traffic was decreasing and broadband usage was the driving force requiring this larger network.[7] Alltel's position in this regard is logically straightforward and, more importantly, consistent with FCC Rule 51.511, which explicitly requires that forward-looking economic costs per unit of demand be based on projected demand over a reasonable measuring period.

Since the obligation on the RLECs is to present an efficient network and to determine appropriate forward-looking costs, if the RLECs assert there is a need for capacity of an OC-192 transport system, then there must be forward-looking demand to justify that amount of capacity (and the cost of that capacity should be shared proportionately among all services to be provided). Alternatively, if the forward-looking demand the RLECs project can readily be satisfied by a smaller efficient network, then the smaller network cost must be used to calculate the transport component of the reciprocal compensation amount. *See* Conwell's HT 452.

Issue 2.1: What transport electronics base, line and tributary investments can be included in the RLEC cost study?

The RLECs have an obligation to propose an efficient forward-looking network. However, the RLECs have proposed a network of a high capacity, high cost nature. The cost of this network cannot be justified as efficient given the forward-looking demand the RLECs then use in their FLEC analysis. The demand used by the RLECs was a fraction of the capacity this network would provide. To calculate the per minute transport components of the reciprocal

[7] As examined below, there are other difficulties with the RLECs' proposed forward-looking demand. The RLECs' engineer testified that current demand is already significantly larger than what Mr. Eklund used to project forward-looking demand. *See* HT 173, ln 24 through HT 174, ln 5.

compensation rate, the cost of an efficient network must be divided among the forward-looking demand per DS-1 circuit and then the cost per DS-1 circuit divided by the quantity of voice trunks per DS-1 circuit and the quantity annual minutes per voice trunk to produce a per minute charge. As such, the RLECs are required to show that the network they are projecting in the FLEC analysis is reasonable in the context of the future demand projected.

The RLECs' witness Mr. Eklund testified that he used the 2006 demand and did not adjust the demand for future growth. HT 259, ln 20 through HT 260, ln 16. Rather, he asserted that it was too hard to predict forward-looking demand so he did not attempt to do so. He acknowledged his demand numbers were lower than current demand but still used the 2006 information. HT 263, lns 9-13. By definition, this is not forward-looking demand and fails the requirements of a forward looking economic cost study.

The 2006 demand used by Mr. Eklund can be satisfied by a small fraction of the capacity of the network used by the RLECs to project its cost. In fact, the transport needs used in the RLECs' FLEC study could be satisfied by a transport system less than [redacted] the size of the network proposed in the RLECs' analysis. HT 451. *See also* Exhibit WCC-6.4 attached to Conwell PF Direct. In fact, the RLECs' engineer, Mr. Weber, confirmed that the demand Mr. Eklund used as forward-looking demand for Santel could be satisfied by a network less than [redacted] the size of the network he had designed for the cost study. *See* HT 181, lns 3 through HT 182, ln 5.

Even if one were to assume a robust 20 percent growth per year in the 2006 demand used by the RLECs to represent future demand in their analysis, after ten years, the demand would not be equivalent to [redacted] of the capacity the RLECs are proposing this Commission accept as the most efficient, lowest cost, network as required

under 47 C.F.R. § 51.505(b)(1) to establish transport costs. *See* Alltel Hearing Exhibit 12, copy attached to Appendix for the Commission's convenience.

To provide the Commission a way to address the issue, Alltel submitted a sample template calculation for West River. *See* Alltel Hearing Exhibit 1, pages 5-7 attached hereto as part of the Appendix for the Commission's convenience. In those templates, Alltel set forth an acceptable proposition that could be used by the Commission to calculate the appropriate network by providing the base and line investment of a smaller transport network that would still satisfy the demand projected by Mr. Eklund with annual growth of 20 percent. This network's transport capacity would not be exceeded even if there were 20 percent growth over the next ten years of the demand the RLECs use in the FLEC analysis.

Alternatively, Alltel's witness Conwell stated the Commission could assume forward-looking transport demand to justify the OC-192 transport network as being properly utilized, and thus efficient, some where between 60 and 66 percent utilization. In other words, the Commission should either reduce the numerator by adjusting the cost of the network down by [redacted] and then divide by a proper measure of demand, recognizing Mr. Weber's testimony of sharply increased demand for broadband services, or the Commission must increase the denominator to a forward-looking demand amount that legitimizes the projected transport network. In either case, one of these adjustments must be made given the evidence presented at the hearing.

Mr. Weber, the engineer for the RLECs, testified he did not provide the capacity demand information to Mr. Eklund. Mr. Eklund obtained this demand from another source. Clearly, there is a huge chasm between the designed broadband multi-media network demand and the

relatively paltry demand used to allocate the costs of the network. Mr. Eklund's forward-looking demands are not accurate of even the RLECs' current demand. Mr. Weber testified as to Santel, the RLEC had already established [redacted] Given that Weber, the engineer for these companies has already testified that their demand exceeds the demand used by Eklund in the FLEC analysis, the FLEC analysis transport component rate cannot stand. Thus, based on the RLECs' witnesses' own testimony, either the size or corresponding cost of the network must be significantly lowered or a forward-looking demand significantly increased in any calculations.

Issues 2.2 through 2.4: Forward-looking economic cost per unit for transport should be based on DS-1 equivalent circuits as the RLECs' path method disproportionately charges voice traffic for transport.

Sub issues 2.2 through 2.4 address how one calculates and apportions demand between uses. Sub issue 2.3, whether a transiting circuit should be include in total demand for transport

[8] (2.8 = (12 DS-3 / OC-12 X 28 DS-1 / DS-3) / 121 DS-1)

has been resolved as Mr. Eklund testified at the hearing that Mr. Conwell was correct and transit circuits must be included. HT 269, ln 20. As to allocation of the capacity between future demand, the parties are in disagreement.

The RLECs have proposed a path method to measure transport demand. This path method counts every voice trunk as one transport path. However, the RLECs admit there are as many as 24 voice trunks carried by a single DS-1 interoffice circuit. Thus, the RLECs would count a 24 voice trunks as 24 paths even though they are carried by one DS-1 circuit. Conversely, the RLECs' path method essentially treats a DS-1 used for other special circuits, as one path even though these DS-1s may contain multiple DS-0s. This disproportionately places the burden of paying for the network on voice traffic. It implies that a voice trunk has the same cost as a DS-1 circuit, which is incorrect. It is a simple fact that voice trunks – as many as 24 – are combined on a DS-1 circuit, and therefore, the cost of a voice trunk is as little as $1/24^{th}$ the cost of a DS-1 circuit, whether than circuit is used for voice traffic or special circuits (private lines or other dedicated circuits).

Alltel Hearing Exhibit 9 illustrates these disproportionate results. The RLECs' position is that the voice trunks, represented in the top half of the exhibit, would count as 1,824 paths. The DS-1s for special circuits and the DS-1s transit circuits would only count as 76 paths even though these DS-1s may contain as many voice trunks (or DS-0 circuits). Thus, with the RLECs' path method, the DS-1 for special circuits and for DS-1s for transit circuits would constitute only four percent of the paths and require 96 percent of the cost of the transport be borne by the traffic on the voice trunks. The path method of cost allocation, when combined with overstating capacity and understating total demand, exponentially inflates the cost of the transport component of reciprocal compensation.

Additionally, using the alleged 2006 demand numbers that Mr. Eklund advocates additionally punishes voice traffic and shifts upon it extra costs that should correctly be placed on other services in the forward-looking analysis. The RLECs' witnesses have clearly said that the growing demand is for broadband and not for voice traffic. In fact, Mr. Eklund has gone as far to say that voice traffic minutes are dropping while broadband demand is increasing. *See* HT 260, ln 18 through HT 261, ln 5.[9] Thus, the RLECs use broadband growth as a rationale for investment in the larger network but seek to have the Commission force voice traffic to pay for the network. The manipulations of the calculations by the RLECs; study results in an overcharge to voice traffic and a subsidy to other services being offered by the RLECs in violation of 47 C.F.R. § 51.505(d)(4).

A more appropriate approach would be to use a DS-1 equivalent to calculate and apportion traffic. In an interoffice transport network, DS-0s are combined onto a DS-1. HT 399, lns 3-6. These voice trunks are multiplexed together and introduced to the network at a DS-1 level. Id. at lns 7-10. There are no separate DS-0 circuits introduced into the interoffice transport network.

As illustrated in Alltel Exhibit 9, if one takes the total DS-0 voice trunks and divide them by the agreed upon DS-0s number for DS-1s, 24, one can convert the voice trunks to a DS-1 level. The traffic can then be divided across a level playing field of demand resulting in voice demand being apportioned its cost responsibility and other cost causers (e.g., special access, broadband data, and video) that need a larger network their cost responsibility. Since the RLECs have acknowledged that the broadband applications are their justification for building an over-

[9] Also, as noted above, under Issue 2.1, Eklund has not even properly stated the current demand that exists for these RLECs.

sized network, broadband demands, as the cost causer of the network, need to carry its proportional cost.[10]

If the Commission were to determine that the OC-192 network is the correct efficient network to be used, then the Commission must divide the cost of the system by a reasonable amount of transport demand to justify such system capacity. Mr. Conwell suggested system capacity utilization between 60 and 65 percent. Sixty-five percent of an OC-192 system equates to 3,494 DS-1s (192 DS-3s times 28 DS-1s per DS-3 times 65%)[11]. In the case of West River by way of example, the voice trunks of West River currently carries at a DS-1 equivalent of a total [redacted] Alternatively, if the Commission determines as the FCC directs, that a network be sized efficiently in any FLEC analysis, and determines to use the cost of a network that would provide for the 2006 level of transportation when assuming a 20 percent growth pattern for the next ten years, one would divide the cost of the smaller network by the 2006 demand (although the RLECs' own engineer says the 2006 numbers as suggested do not reflect current traffic demands). The template for calculating the cost structure as set forth in Alltel's Hearing Exhibit 1 at pages 5 and 6 presents this second approach. *See also* Conwell PF Direct

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[10] As noted above in the discussion on sub issue 1.1, the network size should be reduced to a [redacted] as at that size of a network, even when projecting 20 percent growth year for the next ten years, would be sufficient to service the demand the RLECs have chosen to use.

[11] There was some argument at the Hearing and in the prefiled rebuttal of Mr. Eklund that a DS-1 analysis would not be appropriate because it would misrepresent the price DS-3s as one would not be obtaining any discount on costs per volume. From the information provided by the RLECs, this issue applies only to McCook as it has DS-3s. As a proxy for the ratio of DS-1s to DS-3s from a proportion of cost standpoint, Eklund provided tariffing information produced by Qwest. *See* Eklund PF Rebuttal Testimony Exhibit 9. Alltel did not agree to a ratio of the DS-0 to a DS-1 or a DS-3 as proposed in the exhibit as a DS-0 cost being used by Eklund as a signaling link which is not the same as a standard voice trunk DS-0. However, apportionment of a DS-3 ratio at 6.8 DS-1s per one DS-3 could serve as a proxy in McCook's case and provide economies of scale for a DS-3 over a DS-1.

Exhibit WCC-6.4 providing Transport Electronic Unit Investment Costs based on DS-1 equivalents.[12] *See also* Conwell PF Direct Exhibit WCC-6.5 including Transit Circuits for those companies' transit circuits could be determined.

Before concluding, the RLECs argue that expressing transport demand on the basis of equivalent DS-1s is using the "bandwidth equivalence" method – that is, a voice trunk is 1/24th of a DS-1, a DS-3 equates to 28 times a DS-1 in terms of bandwidth, etc. As Mr. Conwell stated during cross-examination, this is not his position. Given that voice trunks are combined on a DS-1 circuit for interoffice transport, it is appropriate to divide the demand quantity of voice trunks by 24 or the forward-looking, efficient quantity of voice trunks per DS-1. However, Mr. Conwell recognizes that a DS-3 circuit cost is not 28 times that of a DS-1. The cost depends on the specific tributary card costs and port utilizations for the different transport circuits. Mr. Eklund produced information on the ratio of DS-3 and DS-1 common transport rates indicating a ration of 7:1 for DS-3 and DS-1 rates. Alltel would agree to expressing DS-3 circuits as equivalent to seven DS-1 circuits in developing total demand in equivalent DS-1 circuits. If the RLECs include higher bandwidth circuits (OC-3, OC-12, etc. for their own or transit circuits) in their revised demand projections, appropriate, cost-based ratios should be developed for these circuits.

Issue 2.4: The annual cost factor for transport electronics should be capped at a reasonable percent.

Alltel does not contest McCook's and Santel's current Transport Electronics Annual Cost Factor of 32.4 percent and 31.1 percent, respectively. Kennebec's and West River's Annual Cost Factors should be recalculated. Annual cost factor should not be greater than 32.5 percent,

[12] It may be noted that the DS-1 equivalents in Conwell's Direct do not match those contained in Alltel Hearing Exhibit 9. This was due to the fact that the RLECs initially had not included transiting circuits, but later agreed that transiting circuits should be included.

which allows 17 percent for capital costs, 6 percent for direct switching and expenses, 6 percent for other operating expenses and 12 percent as a corporate operation expense loading. (17% + 6% +6%) x (1% + 12%). *See* Conwell PF Direct 67-68.

Issue 2.6: The annual minutes per voice trunk should be recalculated to meet efficient network standards and benchmarks.

As discussed in Issue 1.4 above, the RLECs made their calculations on the assumption of an inefficient network based on minutes per voice trunk. To be consistent with benchmarks, the benchmarks should be used as adjusted to fit the RLECs' network to have an efficient network and the minutes of use recalculated as explained above and under Issue 1.5.

Issue 2.7: The forward-looking economic costs per minute of transport electronics should be calculated as described above and cost per minutes determined.

Because the transiting portion of McCook and West River was provided during the process of the proceeding, the actual transport electronic unit investment amount could be determined after apportioning traffic at the DS-1 level and then calculating the cost per minute on efficient minutes of use per line. The resulting McCook and West River cost per minutes for transport electronics is [redacted] *See* Conwell Direct PF Exhibit WCC-6.7. The cost for the other RLECs after adjustments for the issues above are not expected to exceed [redacted]

Issue 3.1: Interoffice mileage to be used by the RLEC Cost study should not exceed existing mileage of interoffice cable routes used to transport Alltel traffic.

Transport outside plant costs are the interoffice fiber cable used in connecting RLEC host switches to meet points with other carriers. *See* Conwell PF Direct 72, lns 4-10. These costs

include such items as capital costs on cable investment, operating expenses, and allocation of corporate operation expenses.

Concerning the interoffice mileage, the RLECs in this case are using interoffice mileage that exceeds their current actual mileage of cable to transport with the exception of McCook. The additional mileage claimed by Kennebec, Santel and West River should not be included as the RLECs have failed to show that pursuant to 47 C.F.R. § 51.505(b)(1), the extra miles in the forward-looking cost study create a more efficient network. *See* Conwell PF Direct 75-76.

In addition, these three RLECs also included mileage in their cost study for links that do not appear to be used for the transport of Alltel delivered traffic. *See* Conwell PF Direct 77, lns 12-14. As to West River specifically, testimony regarding the fact that West River specifically includes a cable that goes to SDN for delivery of West River traffic of approximately 57 miles was included though it is not used to deliver mobile-to-land traffic – that is transport traffic as defined by FCC rules. *See* HT 214, lns 21-24.

Unless shown by the RLECs that these networks created a more efficient network or that these additional miles include transport facilities that will be utilized in transporting mobile-to-land traffic, these mileages should be excluded in calculating costs. To include them is patently contrary to the FCC definition of transport for the purposes of reciprocal compensation.

Issue 3.2: The outside plant annual cost factors should be capped at a reasonable level.

Alltel does not dispute the Santel and West River current transport outside plant annual cost factors [redacted] McCook's and Kennebec's are significantly higher [redacted] There is no showing that the annual cost factors need to exceed [redacted]

[redacted]

See Conwell PF Direct 79.

Issue 3.3: Transport outside plant cost calculations should also use DS-1 equivalent circuits to avoid over allocating costs to voice traffic and ensuring that the cost causer of the needs for larger networks pays a proportional share.

As discussed above under Issues 2.2 to 2.4, the RLECs' path method disproportionately allocates transport costs to voice traffic. As the RLECs acknowledged that the need for their proposed network is being driven by broadband, broadband should pay its proportional share. To calculate the proportional share, transport costs should be divided based on the DS-1 circuit equivalent.

Issue 3.4: The annual minutes per voice trunk should reflect an efficient network.

As discussed above under Issue 1.4, annual minutes for voice trunk should be calculated based on efficient network finding and the transport outside costs attributable to DS-1 voice traffic divided over the adjusted annual minutes per voice trunk.

Issue 3.5: Forward-looking economic cost for transport outside plant should not exceed that of West River's cost for transport.

Based on the information provided, the final calculations for McCook and West River could be made for transport outside costs based on a DS-1 circuit equivalency and using FCC efficiency standards to calculate appropriate minutes of use by trunk. These are reflected in Conwell Direct Exhibit WCC-7.3. McCook's and West River's costs per minute for this portion of the transport are [redacted]

D. Total Reciprocal Compensation Rate Should Not Exceed [redacted] per minute for any of the RLECs.

As a result of the lack of complete information provided by the various RLECs and their failure to include the FLEC studies in the record, the final calculations based on the necessary revisions to meet FCC requirements can only be made for McCook and West River. For the switching, the highest switching cost to any RLEC was added to the actual calculated cost from McCook and West River for the transport components, both transport electronic base line and tributary and outside plant costs. Based on this, McCook's reciprocal compensation rate would be [redacted]

In no case does it appear that any of the other RLECs' reciprocal compensation rates would exceed [redacted] per minute.

The final calculations of some of the RLECs are complicated by the RLECs' failure to meet the requirement of 47 C.F.R. § 51.505(e)(2), to place the actual FLEC study into evidence at the hearing so it can be properly reviewed by the Commission and during any appeal. Failure to enter into the record the actual study makes the reciprocal compensation rates suggested by the RLECs effectively bars the Commission from adopting those rates as their calculations cannot be verified because the prefiled testimony and testimony submitted at hearing lacks the records and detail to verify the RLECs' calculations. Because the detail of the calculations cannot be verified, the RLECs have failed to meet their burden of proof of proving their entitlement to the reciprocal compensation rates as suggested. *See* 47 C.F.R. § 51.505(e)(2).

E. Resolution of Rates

FCC rules require that reciprocal compensation rates not exceed forward-looking economic costs of transport and termination. In this case, it is clear that there are fundamental flaws in the RLEC cost studies – inclusion of non usage-sensitive switching investment and costs, misallocation of transport costs due to the path method, inefficient sizing of transport plant, failure to use projected demand and others. Each of these is a major issue. Based on these errors, the Commission has a choice, if it does not adopt the rates above, to a) reject the RLEC cost study in its entirety for failure to comply with requirements and order bill and keep or b) to correct and rerun the cost study to establish appropriate rates consistent with FCC rules. To rerun the study, the Commission should address each of the issues identified above and direct the RLECs to modify their studies accordingly. The RLECs should identify the specific changes to be made to the studies, and Alltel should have the opportunity to confer on these changes and provide feedback to the RLECs and the Commission. Once changes have been resolved, the studies should be re-run and appropriate rates determined.

II. What Are The Appropriate InterMTA Use Factors To Be Applied To Determine Non IntraMTA Traffic Exchange Between The Parties.

The parties dispute the appropriate language on interMTA Use Factors as found under Sections 7.2.4 of the proposed Interconnection Agreement ("ICA"), located on page 12 of the Interconnection Agreement. Encapsulated within this issue is also what rate should be used to determine interMTA charges. *See* ICA Appendix A. This is an open issue for all five RLECs.

The term "MTA" refers to a major trading area. A major trading area is a geographic area based on the Rand McNally 1992 Commercial Atlas and Marketing Guide. *See* Williams PF Direct 3, lns 26-27. The FCC used this area to establish a geographic area in relation to the exchange of traffic between wireless and wireline carriers. The FCC determined the traffic

exchanged between carriers that originates and terminates within a MTA, even if the traffic exchanged is through an indirect connection, is subject to reciprocal compensation. Id. at lns 28-31. *See also* Atlas Telephone Company v. Oklahoma Corp. Commission, 400 F.3d 1256, 1265(10th Cir. 2005)(holding that reciprocal compensation is due to a wireless carrier even if the call is routed to the wireless carrier over an IXC). *See also* WWC License, LLC v. Boyle, 2005 WL 3676515(D. Neb., 2005) appealed under on other grounds and affirmed, WWC License, LLC v. Boyle, 453 F.3d 880 (8th Cir. 2006)(holding that as a matter of law reciprocal compensation is due to wireless carrier for all calls originated by the RLEC and terminated to the wireless carrier in the same MTA whether or not the call is delivered through an intermediate carrier.)

Regarding interMTA calls, calls that originate in one MTA and terminate in another, the FCC has provided little guidance. No FCC rules address interMTA calls. No FCC rules impose rate requirements for interMTA traffic. *See* HT 462, lns 2-6. The question of interMTA issues arise out of references in the First Report and Order at paragraph 1044 of that Order, wherein the FCC discussed the difficulty in determining the origination point of a call and suggests location of a cell site or the point of interconnect be used as an origination point.

Alltel proposes a POI analysis or point of interconnection analysis be used to determine the interMTA factors. The POI analysis provides an easy approach to a study and results in a cost causer basis for billing. The RLECs have proposed an analysis using SS7 data. Alltel objects to the use of the SS7 analysis as it is (1) dated because the studies for the RLECs were done in October 2004 with the exception of Kennebec which was completed in the first quarter of 2005; (2) inaccurate because the SS7 analysis counts calls from ported numbers controlled by other carriers; and (3) was based on the Western Wireless network and fails to take into account

significant differences in the Alltel network and changes since 2007. Should the SS7 analysis be considered, the analysis should also be netted to offset interMTA calls delivered to Alltel by the RLECs and updated to reflect the changes to the Alltel network.

A. The POI InterMTA Factors Proposed By Alltel Should Be Adopted And Made Part Of The Agreement In Appendix (A) As These Factors Follow A Cost Causer Approach.

A Point of Interconnect (POI) factor is appropriately utilized in this analysis. As recognized by the RLECs in testimony, the FCC in the First Report and Order recommended the POI method as an alternative to complex, difficult studies to determine interMTA factors using point of origin. The proposal set forth in the First Report and Order suggested the local exchange carrier and the CMRS carrier "use the point of interconnection between the two carriers at the beginning of the call to determine the location of the mobile caller or called party." First Report and Order ¶ 1044.

The Point of Interconnect or POI approach, in addition to avoiding difficult and expensive studies, has the benefit of only requiring the payment of the cost caused by the carrier sending an interMTA call. For example, an interMTA call from an Alltel customer to Santel is delivered to Santel at the same meet point that an intraMTA call is delivered; the meet point between Santel and Qwest. Santel then transports the call from that meet point to each of its end offices; all of which are in the same MTA as the meet point. Alltel pays all costs to carry that call to the meet point. *See* Williams PF Direct 6, ln 6. Under the POI method, Santel would then collect reciprocal compensation from Alltel to deliver all calls as a POI method would treat all calls as delivered to that meet point the same resulting in a zero interMTA factor. This is consistent with cost causer principles as Santel does nothing different and incurs no additional

expense to deliver a call received at the same meet point. Santel is compensated the same amount for the same call transport and termination on their network for all calls.

The RLECs' position is an interMTA call should be charged in-state long distance or interstate long-distance access rates depending on the home location of the NPA NXX. However, there are three fundamental flaws with this position: 1) There is no basis in FCC rules or in fact for associating NPANXX with a call origination point in a wireless network, 2) There is no basis in the RLEC tariff services to assess tariff rates for this kind of traffic, and 3) The LECA tariff (intrastate access) assumes a call delivery path and transport that are different than the actual call path.

True long-distance calls are delivered differently to Santel and other RLECs in South Dakota. For those calls, Santel assumes the responsibility for the call at the SDN meet point in Sioux Falls and has to carry the traffic to Santel, incurring an additional expense. If Alltel were delivering a call over an IXC and it took that route, all parties are in agreement that Santel would bill the IXC for termination and the call would not be counted as an Alltel interMTA call. A call delivered directly by Alltel to Santel should not be charged this rate as Alltel assumes the cost to bring the call to the same POI where it delivers regular intraMTA calls. Thus, the POI method results in the parties paying for the costs caused by it as opposed to paying built in transport costs associated with different pick up points.

In all cases for the five remaining companies, the POI method shows that whenever Alltel delivers interMTA traffic to these companies, Alltel assumes the cost responsibility to deliver the calls at a POI within the MTA. From that point, the RLEC is being compensated to transport and terminate that traffic based on reciprocal compensation rate. The POI method is a preferred

method in relationship to placing the costs on a party that creates the cost and is more directly connected to the actual transport system used by Alltel.

B. Should The Commission Decide To Adopt A Traffic Study Using A NPA NXX/SS7 Methodology, The RLECs' Proposed Factor Cannot Be Used Unless Adjusted To Account For Changes In the Wireless Network That Occurred Since The Study Was Performed In 2004 And The Commission Should Establish A Net Factor.

The RLECs' SS7/NPA NXX study is inaccurate because it contains call records that are not relevant, incorrectly assumes calls are delivered directly as opposed to over an IXC, counts calls from NPA NXXs that were divested by Alltel, and does not account for routing changes made by Alltel. Therefore, the interMTA factors proposed by the RLECs cannot be used. If the Commission should determine that the POI methodology should not be used and a NPA NXXs analysis be used, the RLECs numbers must be adjusted to account for these mistakes.

Mr. Thompson testified on behalf of the RLECs regarding the interMTA factor. He acknowledged that the records used to make the determination of the interMTA factor date to the fall of 2004 as to Beresford, Santel and McCook. *See* RLECs' Hearing Exhibits 64 and 66-68. As to Kennebec, the information was taken from February 1st through March 31st, 2005. *See* RLECs Hearing Exhibit 65. However, the network conditions Thompson used to prepare his study no longer exists. As explained by Ron Williams, since the purchase of Western Wireless, Alltel made changes to the routing of traffic it originates. These changes were required because some switches and service areas were divested and multiple modifications were made to routing protocols by Alltel. The divestiture included divesting operations in Minnesota and Nebraska. *See* Williams PF Reply 2, lns 17-27. Therefore, a number of the calls the RLECs counted in their 2004 SS7 analysis performed by Mr. Thompson were never Alltel numbers and Alltel

numbers in these states are routed over IXCs to these RLECs contrary to the 2004 routing by Western Wireless.

The RLECs' witnesses, David and Thompson, agreed that calls routed over an IXC should not be considered in calculating the interMTA factor. *See* HT 40; HT 355, lns 9-13. Thus, the RLECs' own witness acknowledged their study is flawed. Further, since this was an SS7 study which uses the RLECs' call records, the RLECs possessed the ability to update the study while this action was pending. *See* HT 339, lns 5-12. The RLECs chose not to do so resulting in the RLECs proposing invalid numbers to the Commission.

Alltel performed an examination of how the divesture of properties and reassignment of routing protocol impacted interMTA calls being delivered to the RLECs in this case. A summary of the results of that study is contained on the second page of Alltel's Hearing Exhibit 5 (attached hereto for the Commission's convenience). *See also* Williams PF Rebuttal 8, ln 15 and Exhibit RW-5.

Alltel updated the 2004 NPA NXX/SS7 study to reflect current operations and traffic exchange conditions. Alltel considered the divestiture of WWC's Nebraska switch, Minnesota operations and the modification of routing translations of calls in Sioux Falls and Rapid City and reviewed the call information provided by the RLECs' expert. *See* Williams PF Rebuttal 2, lns 14-27. After reviewing the numbers, Alltel removed inconsistencies with the current conditions. *See* Williams' PF Rebuttal Exhibit RW-5. The changes from the 2004 conditions were noted on the exhibit. For example, Alltel's divestiture of certain Minnesota operations were noted and the calls counted by the RLECs removed since the traffic now originates from RCC (the company that purchased Western Wireless' Minnesota operations) and is therefore not applicable to an Alltel traffic scenario. The same type of notations were made for the divestiture of the various

Nebraska operations and the numbers were then noted as now belonging to US Cellular. *See* Williams PF Rebuttal 3, lns 9-23. These corrections resulted in a decrease in interMTA traffic that, in turn, resulted in a lower interMTA factor. *See* Williams PF Rebuttal4, lns 1-12; *See also* Alltel's Hearing Exhibit 5.

Given that the adjusted NPA NXX routes are based on the changes that occurred to the network since the Alltel purchase, which required divestiture of certain Western Wireless operations, the updated numbers clearly are more accurate than the numbers from a study performed four years ago. Once Mr. Thompson's study was corrected for the changes in the Alltel network from the days of the Western Wireless network, the interMTA calls being delivered to the RLECs as part of total calls derive a factor as follows: Beresford 11.6 percent, Kennebec 2.1 percent, McCook 3.2 percent, Santel 5.2 percent and West River 4.4 percent. *See* Williams PF Rebuttal 4, lns 1-3. These numbers though do not take into consideration the fact that Alltel is receiving interMTA calls from most of the RLECs.

The next step in the analysis is netting interMTA calls. A net factor should be determined so an equitable offset for the exchange of this traffic can occur (i.e., land-to-mobile interMTA traffic should be offset against mobile-to-land traffic). The RLECs' witness, Mr. Davis, acknowledged this Commission has the inherent power to decide the appropriate methodology to determine interMTA traffic factors. *See* HT 32. Davis further acknowledged that the Commission could provide for an offset to produce a net interMTA factor. *See* HT 40.

Netting out the factors prevents cost causers from getting a free ride and is consistent with the calling party's network pays principle. If the RLECs can originate and deliver interMTA traffic to Alltel but escape paying a similar rate as they charge Alltel, the field of competition becomes unbalanced. Symmetrical payments are preferred in reciprocal

compensation. *See* 47 C.F.R. § 51.711(a). This policy should follow through for interMTA traffic. Netting out the traffic factor allows Alltel to be compensated for terminating the interMTA traffic delivered by the RLECs. Without such netting, Alltel would receive no compensation for terminating those calls.

Alltel calculated this net factor by determining the traffic factor of land calls to mobile calls. *See* Williams' Direct Testimony Exhibit RW-4. From this traffic factor of land to mobile, one can determine the interMTA land to mobile calls and determine a net interMTA factor. *See* Williams PF Reply Testimony 8, lns 10-20. The net interMTA factors are as follows: Beresford 9 percent, Kennebec 2.1 percent, McCook 2.1 percent, Santel 3.4 percent and West River 3.4 percent. *See* Alltel Hearing Exhibit 5, page 2.

If the Commission adopts the POI method and factors, Alltel pays the reciprocal compensation rate on all calls delivered at the meet point. If the Commission chooses to follow the SS7 method with the necessary adjustments to make it accurate for how the traffic is delivered since the Western Wireless buyout and by netting the traffic, Alltel would still pay for all calls delivered. For Santel, Alltel would pay the reciprocal compensation rate for 96.6 percent of calls delivered and an interMTA rate on 3.4 percent of the calls delivered.

Should the Commission use the POI analysis, interMTA factors should be set at zero. If the Commission determines that interMTA factors should be determined not using the POI method, adjustments must be made to the interMTA factors proposed by the RLECs to adjust for modifications and changes to the network since the RLECs originally performed the tests when the network was owned by Western Wireless. Adjustments must also be made to account for a net factor.

C. The InterMTA Rate Should Be Set Using The Interstate Access Rate Elements Applicable To Actual Traffic Routes As The RLECs' LECA Tariffs Have No Applicable Tariff For Delivery Of CMRS InterMTA Traffic And Use Of The Interstate Access Rate Elements Corresponding To The Actual Traffic Route Prevents A Windfall To RLECs.

As previously noted, the FCC has no rules imposing a rate for interMTA traffic. *See* HT 462, lns 2-6. Here, the RLECs propose the use of a blended rate between their intrastate tariff and interstate tariff based on a weighted calculation of the intrastate interMTA and interstate interMTA traffic. However, the RLECs can point to no language in the LECA tariff service or rate structure applicable to the traffic routing scenarios for interMTA CMRS traffic Alltel delivers to the RLECs. Traffic is not within Feature group A, B, C or D services described in the tariff, nor are there operator services that would apply. *See* HT 462, lns 9-15. As there is no relevant service in the LECA tariff that supports charging of intrastate long distance to CMRS calls, the tariff rate(s) cannot be charged.

Moreover, the intrastate access tariff rate is inappropriate as it was developed without this type of traffic in mind. *See* Williams' PF Direct 10, lns 1-3. The current intrastate access rate the RLECs use is a bundled rate developed for a different traffic routing application which assumes use of a Centralized Equal Access (CEA) tandem operated by SDN in Sioux Falls, and associated transport routes from that tandem to RLEC service areas. This is not how Alltel terminates traffic to petitioner. Id. 10, lns 14-18. In this situation, Alltel is taking the responsibility to carry traffic to the RLECs' Qwest meet point, or at a direct interconnection with Alltel. Conversely, the intrastate access rate as a bundled rate assumes and charges for all traffic being delivered to the RLEC in Sioux Falls at the SDN tandem and the RLEC having the responsibility to pay to transport that traffic to its own network. *See* HT 462, lns 20-25.

Further, the LECA tariff includes a subsidy for local loop carrier common line charge. This subsidy is not a FCC recognized charge. *See* HT 463, lns 19-21. In the federal regime, such subsidies cannot be used for transport or termination of access traffic or through any other method. *See* HT 464, lns 1-4. Thus, the LECA rate is problematic and inappropriate given this type of traffic is not addressed under the tariff, the tariff is a bundled rate assuming a transport route that is not used in this situation, and loop subsidies not endorsed for CMRS traffic by the FCC.

A rate that could be used as a compromise is the interstate access rate elements found in the RLECs interstate access tariffs. There are separate rate components, such as transport, tandem switch and termination. These elements can be applied to the way the traffic is actually being routed from Alltel to the RLECs. *See* HT 464, lns 5-9. The traffic route could then be calculated using the various components, such as transport, to fit the actual routes. By using the actual route, Alltel would not be overcharged for a transport component, up to several hundred miles in West River's case, and the cost caused by delivering this traffic to the RLEC would be recovered and paid by Alltel. Therefore, the applicable elements of the interstate rate should be used.

D. The Anomaly of An MTA Line Going Through The Middle Of Beresford Should Not Be Used To Make Calls From Numbers Rated Locally Long-Distance Calls.

One of these carriers has a unique set of circumstances. Beresford has a MTA line that goes right through the middle of the town. *See* HT 482, lns 7-16. The Alltel cell site is on one side of the MTA and the Beresford switch is on the other. Historically the calls were rated and routed as local. Id. Beresford has argued that it should be able to charge in-state long-distance for these previously locally rated calls simply because of a quirk of the cell site being on one side of the road and the switch on the other. However, the FCC has opposed this type of approach.

The First Report and Order acknowledged that at the time of the issuance of the First Report and Order, "that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges from traffic that is currently subject to interstate access charges." First Report and Order ¶ 1043. Essentially, if calls were not subject to long-distance charges prior to the First Report and Order, those calls should not suddenly be long-distance.

It is non-sensible to think calls that are routed locally and that have historically been rated as local calls, are now in-state long-distance calls simply because the tower sits on one side of the road and the switch on the other. Therefore, as to Beresford, the Commission should make clear that calls to Beresford subscribers from Alltel numbers rated to Beresford should not be treated as anything but local calls subject to reciprocal compensation.

III. The Commission Should Allow Alltel To Bill Reciprocal Compensation Using Factor Billing And Adopt Alltel's Traffic Factor As It Is Uncontested.

As to the factor billing issue, Alltel requests the Commission adopt its language as proposed in the Interconnection Agreement as Alltel's language allows Alltel to use a traffic exchange factor to determine the reciprocal compensation Alltel is due under the symmetrical payment requirements of reciprocal compensation. *See* Williams PF Direct 11, lns 14-25. The RLECs desire that billing only be allowed using actual traffic delivered in a month through the use of actual recorded terminating traffic each party receives from the other, based on records the parties may have or be able to obtain through third-party transit providers. *See* HT 23, ln 24 through page 24, ln 9. The factor billing and traffic factor question is left open for only McCook and Santel.

Alltel lacks a system that can adequately capture traffic records and produce accurate intercarrier bills for the purposes of generating bills to individual RLECs for reciprocal compensation purposes. *See* Williams PF Direct 11, ln 21. As explained at the hearing, intraMTA traffic, or traffic subject to reciprocal compensation, can be delivered to Alltel from an RLEC in a variety of ways. *See* Alltel Hearing Exhibit 5, page 4. A call can be delivered over a direct interconnect between the RLEC and Alltel, it can be delivered over indirect routing through a tandem, or it can be delivered by the RLEC routing the call to an IXC. *See* HT 464, ln 11 through 465, ln 24. Alltel does not have the ability to capture the billable data for all intraMTA traffic delivered to it by the RLECs, especially that traffic carried or delivered over an interexchange carrier. *See* HT 466, lns 10-17. Alltel is unable to obtain this information because when the traffic is handed off to an IXC and then delivered to a tandem,[13] the tandem operator's call records indicate the IXC as the originating carrier for the traffic. This prevents Alltel from being able to bill for this traffic even if Alltel would purchase call records from the tandem operator. Historically this issue has been resolved with the RLECs by an agreement as to a traffic factor. It is Alltel's understanding that these RLECs still have agreements with other carriers allowing factor based billing. *See* HT 467, lns 8-12.

The factor billing method would allow Alltel to use the traffic factor to calculate a bill to RLECs based on the volume of traffic RLECs' bill to Alltel. *See* Williams PF Direct 12, lns 16-17. To come up with the appropriate traffic factors, Alltel performed a traffic study on calls delivered and exchanged during January 2008. *See* Williams PF Direct 14, lns 6-19. From these

[13] In the case of IntraMTA calls, the RLECs have the responsibility to pay reciprocal compensation for all local traffic transmitted from the RLEC to the CMRS provider for delivery within the MTA even when the call is delivered through a third-party. *See* First Report and Order ¶ 1041; *See also* Atlas Telephone Company v. Oklahoma Corp. Commission, 400 F.3d 1256, 1265 (19th Cir. 2005).

numbers, Alltel was able to derive a traffic factor for all the RLECs. *See* Exhibit RW-4 to Williams PF Direct for Santel and McCook; *See also* Alltel Hearing Exhibit 5, page 5. The 2005 factors in the prior agreement for both Santel and McCook was a 77/23 factor. The 2008 study revealed the McCook factor as 67/33 and a Santel factor of 66/34. In other words, if Santel would bill Alltel for 66 minutes, Alltel would bill Santel 34 minutes.

Without the ability to use factor billing, Alltel will be effectively barred from charging for all intraMTA traffic and the RLECs will be relieved of an obligation to pay reciprocal compensation under symmetric billing arrangements. Certainly, the RLECs by delivering traffic to Alltel cause Alltel to incur costs in delivering that traffic to the end user. The RLECs request that the ICA require each side bill for actual traffic delivered is really a disingenuous argument. The RLECs understand and know that Alltel's network is not set up to capture such information and, given the way calls are delivered, the RLECs know Alltel cannot bill or track all these calls. Essentially, the RLECs seek to avoid symmetrical reciprocal compensation by advocating language for the ICA that makes it impossible for Alltel to receive compensation.

Regarding the traffic factor to actually be used, the RLECs have not proposed a different factor. The RLECs' witness on this issue, Mr. Davis, stated the RLECs instead simply looked at Mr. Williams' analysis to determine whether his analysis was accurate. *See* HT 41, lns 17-20.

Alltel requests the ability to factor bill and that the Commission adopt Alltel's proposed language under Section 5.1 and Section 7.2. of the ICA. Adoption of factor billing will allow Alltel to receive reciprocal compensation for calls delivered by the RLECs to Alltel and prevent a situation where the RLECs do not incur a cost for traffic delivered to Alltel.

IV. Alltel's Proposed Definition Of InterMTA and IntraMTA Traffic Should Be Accepted As The Definition Proposed By The RLECs Is Contrary To The Traffic Studies Performed And Would Lead to Future Disputes.[14]

The definition of interMTA and intraMTA remains an open issue as to all the RLECs. Alltel proposes using the standard definitional language of what constitutes interMTA traffic and IntraMTA traffic. *See* Definitions on page 3 of Interconnection Agreement. The RLECs seek to add to the definition to include the originating cell site as being determinative of the MTA call location of a wireless subscriber and the location of the end office serving the wireline user as determinative of the wireline MTA location.

Neither the interMTA study conducted by Alltel, the POI study, or the RLECs' SS7 study, actually used this definition in completing the study. Given that neither side is actually using the definitions proposed by the RLECs to perform studies, it is inappropriate to define these terms in such a way to make the studies to determine the factors violate the Interconnection Agreement's definitions.

Alltel's proposed language is an accurate definition and given that the Commission will be deciding the interMTA factor question as part of resolution of Issue 2, the definitional issue should not become relevant in any further proceedings under this Interconnection Agreement if Alltel's language is adopted.

V. Alltel's Proposed Locations For POI Locations Should Be Adopted And Placed In Appendix B As Alltel Should Be Allowed To Directly Interconnect With The RLEC At Any Point The RLECs Have a Meet Point With Another Carrier.[15]

In the Prefiled Testimony this issue was originally set up as two sub issues, Issue A and Issue B. Pursuant to Alltel's testimony, Alltel is no longer proposing its language under Section

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[14] This issue is Issue 6 as set forth and discussed by the parties at the hearing. Issues 4 and 5 had been resolved as to all parties.

[15] This issue was presented at the hearing as Issue 7.

3.1.3 and, thus, eliminates the first sub issue. That language would have allowed Alltel to require the parties to implement a two-way interconnection facility.

The testimony of the second sub issue does not clearly resolve this issue. The second sub issue arises under Appendix B definitions, setting forth where the parties may directly interconnect. This issue remains open as to all the remaining carriers.

The RLECs' position is any direct interconnect must be on its network. *See* HT 42, lns 1-9. Alltel's desire is to define locations for direct interconnect so there is not a future argument as to the extent of the RLECs' network.

47 U.S.C. § 251(c)(2), establishes a right for a direct interconnect. That right provides the ability to connect at any technically feasible location on the RLECs' network. *See* HT 470, lns 6-11. Alltel seeks to define those technically feasible areas as part of the agreement to avoid confrontation on this issue in the future. Essentially, Alltel has had experience with RLECs that will have a point of interconnect outside their traditional service area with another carrier, but will refuse to allow Alltel to connect to the RLEC network at that point of interconnect. Given the meet point already provides an interconnect with another carrier, the point is without question technically feasible.

It appears the RLECs' witness on this issue, Mr. Davis, has agreed with Alltel's proposed language to Appendix B as he stated both that he believed Issue 7 was resolved based on the prefiled testimony, *See* HT 25, lns 1-7, and agreed that it was the RLECs' position the point of interconnect is to be made on the LECs' network. *See* HT 42, lns 1-9.

Alltel proposes the following language be added to Appendix B to clarify POI locations for direct interconnect for Alltel originated traffic:

1. Any RLEC meet point with SDN;
2. Any RLEC meet point with Qwest tandem switch;

3. Any RLEC end office; and
4. Any mutually agreed upon location.

Regarding POI locations for RLECs' originated traffic, Appendix B should have the following locations designated:

1. Alltel meet point with SDN tandem switch;
2. Alltel meet point with Qwest tandem switch;
3. Alltel MSC; and
4. Any mutually agreed upon location.

See Williams PF Direct 19, lns 8-20. Such language would allow one way point of interconnects at sites 1 through 3, and a point of interconnect anywhere else if both parties agree. This will avoid disputes between the parties as to where a direct point of interconnect can occur. This language would not allow Alltel to force a RLEC to establish a point of interconnect anywhere but where the RLEC already has a point of interconnect or at their end office.

To avoid any questions as to where a POI may be allowed, Alltel's language for Appendix B should be adopted.

CONCLUSION

The arguments set forth above, Alltel requests the Commission make the following findings in relation to the disputed Interconnection Agreement terms.

As to Issue 1, the amount of reciprocal compensation, the Commission should set reciprocal compensation rates in the amount set forth above under Section I (D) or, in the alternative, the bill and keep or make the determinations of the necessary changes to the study and have the study rerun under the supervision of Alltel.

As to Issue 2, interMTA factors and rates, the point of interconnection or a POI methodology should be used to set an interMTA factor and the interMTA factor set at zero. Should the Commission desire to use the SS7 methodology, the RLECs' methodology must be

rejected as it was a network study of a previous company and, therefore, invalid without adjustments as set forth by Alltel under section II.B above that would result in interMTA factors of Beresford 9%, Kennebec 2.1%, McCook 2.1%, Santel 3.4% and West River 3.4%. If the Commission determines an interMTA rate needs to be established, only interstate rate components should be used as they are the only components that can actually be applied to how the traffic is being delivered in this situation.

As to Issue 3, traffic factor, Alltel's traffic factor should be adopted to ensure the RLECs have to bear some costs in the calls they deliver to Alltel. Moreover, since the RLECs looked at Alltel's traffic factors and did not find them inaccurate, Alltel's factors should be adopted..

As to Issue 6, definition of interMTA and IntraMTA traffic, Alltel's language should be adopted as being the correct definition of this type of traffic and be the only proposed definition that the studies followed.

Finally, as to Issue 7, given the RLECs agree that Alltel can connect anywhere on their network at a technically feasible point, the locations for interconnection should include the RLECs' meet points with Qwest and SDN.

Dated this 10th day of October, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2008, a true and correct copy of **Alltel Communication, Inc.'s Brief in Support of Its position,** was sent electronically to:

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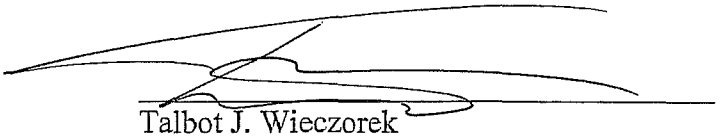

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