

GUNDERSON, PALMER, NELSON & ASHMORE, LLP

ATTORNEYS AT LAW

J. CRISMAN PALMER
JAMES S. NELSON
DANIEL E. ASHMORE
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK
JENNIFER K. TRUCANO
DAVID E. LUST
THOMAS E. SIMMONS

ASSURANT BUILDING
440 MT. RUSHMORE ROAD
POST OFFICE BOX 8045
RAPID CITY, SOUTH DAKOTA 57709-8045
TELEPHONE (605) 342-1078 · FAX (605) 342-0480
www.gundersonpalmer.com
ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA
COLORADO, WYOMING & MINNESOTA

TERRI LEE WILLIAMS
SARA FRANKENSTEIN
AMY K. KOENIG
JASON M. SMILEY
MATTHEW E. NAASZ
QUENTIN L. RIGGINS
JEFFREY R. CONNOLLY
REBECCA L. MANN
WYNN A. GUNDERSON
Of Counsel

November 14, 2008

E-FILING

Patricia Van Gerpen
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre SD 57501-5070

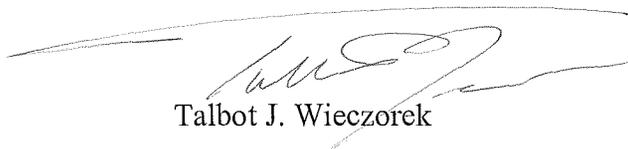
RE: Alltel Communications, Inc.
In the Matter of the Petition of CRST for Arbitration
TC08-122 GPNA File No. 05925.0050

Dear Ms. Van Gerpen:

Attached please find Alltel's Response to Cheyenne River Sioux Tribe Telephone Authority's Petition for Arbitration. By copy of same, counsel have been served.

If you have any questions, please contact me.

Sincerely,



Talbot J. Wiczorek

TJW:klw
Enclosure
c: Service List
Client

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Petition of Cheyenne River Sioux)
Tribe Telephone Authority for Arbitration Pursuant to)
the Telecommunications Act of 1996 to Resolve Issues) Docket No. TC 08-122
Relating to an Interconnection Agreement with Alltel)
Communications, Inc.)

**RESPONSE OF ALLTEL COMMUNICATIONS, INC. TO PETITION FOR
ARBITRATION OF CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY**

Alltel Communications, Inc. (“Alltel”) hereby files this response to the Petition of Cheyenne River Sioux Tribe Telephone Authority (“CRST” or “Petitioner”) for resolution of issues relating to the negotiation of an interconnection and reciprocal compensation agreement under the terms of the Telecommunications Act of 1996 (the “Act”).

1. On October 21, 2008, Petitioner filed a Petition with the South Dakota Public Utilities Commission (“Commission”) to arbitrate issues that were unresolved through negotiations with Alltel. (the “Petition”). The Petition and filing were made pursuant to 47 U.S.C. § 252.

2. Alltel is a commercial mobile radio services (“CMRS”) provider serving, among other areas, the State of South Dakota. Alltel holds federal licenses to provide cellular telecommunications service in SD1, SD2, SD3, SD4, SD5, SD6, SD7, SD8 and SD9 Rural Service Areas (“RSAs”) as well as the Rapid City and Sioux Falls Metropolitan Service Areas (“MSAs”) within the State of South Dakota.

3. Alltel files this Response to the Petition for Arbitration pursuant to 47 U.S.C. § 252(b)(3). In this Response, Alltel will clarify its position on the issues identified by the Petition and identify additional open issues not included in the Petition. All allegations and statements in the Petition not expressly admitted herein are specifically denied.

4. Alltel admits the allegations in paragraphs 1 and 2 of the Petition.

5. Alltel confirms, with respect to paragraph 3, that Exhibit A attached to the Petition represents terms and conditions the parties discussed during the negotiation process. Alltel denies that Exhibit A to the Petition identifies all contested issues and fully represents the position of Alltel on the identified issues. Regarding Exhibit B attached to the Petition, Petitioner has not previously shared Exhibit B with Alltel and Alltel denies that Exhibit B contains any agreements reached between the parties.

6. Alltel admits the allegations in paragraphs 4 and 5 of the Petition.

7. Alltel admits, with respect to paragraph 6, that it had an interconnection and reciprocal compensation agreement with CRST that was terminated as of January 1, 2007

9. As to paragraph 7, Alltel admits to making good faith payments to CRST until April of 2007. Alltel denies that the payments continued the old agreement or that CRST was entitled to the funds and Alltel affirmatively requests that it receive a credit for the funds as any traffic exchanged from January 1, 2007 through May 14, 2008 (160-days prior to the filing for their arbitration) should be treated as bill and keep.

10. As to paragraph 8, the paragraph is admitted except to the extent that it implies the new agreement should take effect on January 1, 2007 and compensation be retroactively applied as federal law does not allow a backward extension of an interconnection agreement beyond 160-days from an arbitration filing.

11. Alltel admits the allegations in paragraphs 9 and 10 of the Petition.

ARBITRATION ISSUES RAISED BY PETITIONER

12. **Issue 1: What are the appropriate definitions to be included in the Agreement between the Parties (Section 1.0 of Exhibit A (Alltel Agreement) and Section 3 of Exhibit B (CRST Agreement)).**

13. **(a) The definition of InterMTA traffic:** As to Petition paragraph 13, Alltel denies the paragraph and Alltel asserts that its definition of InterMTA Traffic contained in Exhibit A to the Petition is the appropriate definition to use given the methods the parties are proposing to use to determine InterMTA factors.

14. **(b) The definition of Local Traffic, Telecommunications Traffic, and Third Party Provider.** As to paragraph 14 of the Petition, Alltel denies the contents thereof. CRST asserts a definition of “local traffic” and asserts additional requirements upon Alltel not recognized under the Act and Eighth Circuit rulings. The definition should be as set forth in Alltel’s proposed reciprocal compensation agreement attached as Exhibit A to the Petition. The Eighth Circuit has recognized that Alltel is entitled to reciprocal compensation for all calls that originate with CRST and terminate to an Alltel number in the same MTA even if the call is routed through an interexchange carrier. Additionally, it is inappropriate for CRST to obligate Alltel to maintain a direct connect with CRST as a condition to characterize traffic as being subject to reciprocal compensation.

15. **(c) Definition of Wireline Local Calling Area:** As to paragraph 16, Alltel denies the paragraph. The definition that CRST seeks to incorporate through its proposed agreement seeks to avoid the obligations placed on CRST by the Act as interpreted by the Eighth Circuit Court of Appeals to pay reciprocal compensation to Alltel. Accordingly, the language and definition as contained in Alltel’s proposed reciprocal compensation agreement should be used.

16. **(d) Other definition differences:** As to paragraph 17, it is denied. While it is admitted that there are differences between languages, Alltel’s language in Exhibit A to the Petition should be used. Those terms not appearing in the Alltel proposed document, are either defined under the Act, or terms that the Petitioner is seeking to define in such a way to avoid its

obligations under the Act and applicable case law. Therefore, the definitions as set forth in Exhibit A to the Petition should be used.

17. **Issue 2: What is the appropriate scope of Reciprocal Compensation Traffic (Section 2.0 of Exhibit A (Alltel Agreement) and Section 3 of Exhibit B (CRST Agreement)).** Regarding paragraph 18 of the Petition, Alltel admits that the parties' proposed language is in conflict. Alltel believes its language should be adopted as the description of traffic is the language the parties have previously used except for slight modifications and Petitioners attempt to add that no reciprocal compensation should be paid for traffic delivered via and IXC is simply an attempt by Petitioners to avoid its obligations to pay reciprocal compensation for calls originated by Petitioner and delivered to Alltel within the MTA.

18. **Issue 3: What is the appropriate treatment of ISP bound traffic? (Section 2.2 of Exhibit A (Alltel Agreement) and Section 3.2 of Exhibit B (CRST Agreement)).** As to Petition paragraphs 19 and 20, Alltel agrees that the parties differ on what is the appropriate treatment of both parties' local traffic should the Petitioner invoke the FCC rate for ISP bound traffic. Alltel's language allows traffic to be exchanged at this rate should CRST invoke the cap and Alltel requests the Commission adopt its language.

19. **Issue 4: What are the appropriate interconnection facilities between the Parties (Sections 3.0 through 4.3 of Exhibit A (Alltel Agreement) and Section 4 of Exhibit B (CRST Agreement)).** As to paragraphs 21 through 24, Alltel admits those paragraphs to the extent that they set forth the indirect connections rights. Regarding direct connects, Alltel should have the right, but not the obligation, to direct connect with CRST at any of the points that are described on Appendix B to Exhibit A. This includes meet points that CRST has established with Qwest and SDN, even though the meet points may be outside of what is viewed as the traditional territory of CRST. Given that CRST has brought its network to those meet points,

those meet points should be valid as meet points for other carriers, including Alltel. Further, CRST is attempting to, in its agreement, require Alltel to have a direct connect and pay the great majority of the direct connect even though CRST wants to use the direct connect to deliver all its traffic to Alltel. Alltel has made the determination that it no longer desires to terminate to traffic to CRST using a direct connect because of the facility cost charged by CRST and other meet-point circuit providers are exorbitant and, therefore, an uneconomic transport solution. Alltel does not object and Alltel's proposed interconnection agreement provides for CRST to establish a direct connect with Alltel at Alltel's switch or a mutually agreed upon location for CRST to deliver its traffic to Alltel. CRST's attempt to obligate Alltel to be financially responsible for a direct connect used by CRST to deliver its traffic to Alltel is in violation of the Act and applicable case law and, therefore, must be denied. Alltel requests the Commission adopt its language on direct interconnection facilities and its language on what locations can be used for a direct connect.

20. **Issue 5: Is the inclusion of SS7 messages appropriate? (Section 4.6 of Exhibit B (CRST Agreement)).** Alltel does not object to including SS7 messaging field regularly populated under industry standards. If there is no industry wide standard for population of a field, the language should make clear Alltel has no obligations to populate the field.

21. **Issue 6: What is the obligation of the parties with respect to dialing parity? (Section 7.4 of Exhibit A (Alltel Agreement) and Section 5.4 of Exhibit B (CRST Agreement)).** In regards to Petition paragraph 26, Alltel agrees that the language that deals with the obligations under dialing parity is different between the parties. On the face of the language, it does appear that the language is similar in intent. Alltel believes the Commission should adopt its language.

22. **Issue 7: Should compensation for Telecommunications Traffic be symmetrical? (Section 5.1 of Exhibit A (Alltel Agreement) and Section 6.1 of Exhibit B (CRST Agreement)).** In regards to Petition paragraph 27 of the Petition, Alltel's language allowing symmetrical compensation should be allowed as it is provided for under the Act and CRST's language trying to obligate Alltel to complete a forward-looking cost study of "Alltel's network" be denied.

23. **Issue 8: What is the appropriate compensation rate for InterMTA Traffic? (Section 5.1.1 and Appendix A of Exhibit A (Alltel Agreement) and Sections 6.2, 6.3 and Attachment A of Exhibit B (CRST Agreement)).** Regarding Petition paragraph 28, the position of CRST is denied. The interstate rate is a more appropriate rate given the way the traffic is delivered by Alltel to CRST. Moreover, the intrastate tariff rates are not applicable given how CMRS traffic does not fall within the Petitioner's intrastate rate tariff. If a rate for InterMTA traffic is to be different than the intraMTA rate, Alltel's proposed rate should be adopted.

24. **Issue 9: What is the appropriate manner by which the minutes of use of IntraMTA Traffic terminated by the parties, one to the other, should be calculated and billed? (Section 5.0 and Appendix A of Exhibit A (Alltel Agreement) and Sections 6 and 7 and Attachment A of Exhibit B (CRST Agreement)).** As to paragraph 29 of the Petition, the Petitioner misstates the record. The parties have not agreed to bill based on actual usage. Alltel has proposed pursuant to Section 5.0 and Appendix A to Exhibit A to the Petition a factor billing and credits be used.

25. Concerning Petition paragraph 30, Alltel denies this paragraph and affirmatively sets forth it would not be Alltel's responsibility to acquire information from a transiting carrier so CRST can use that information for billing.

26. As to Petition paragraph 31, Alltel is not opposed to the use of the language as it appears in Section 7.4 through 7.13 of the Petitioner's interconnection agreement. These items could be included in Section 7.2 of Alltel's original proposed agreement. However, Alltel is still reviewing these definitions and the impact they might have on other sections of the interconnection agreement and reserves the right to seek clarifications to the language to bring it into compliance with the rest of the agreement.

27. **Issue 10: Are the reciprocal compensation rates for IntraMTA Traffic and the Traffic Factors proposed by CRST appropriate pursuant to 47 U.S.C. § 252(d)(2)? (Section 5 and Appendix A of Exhibit A (Alltel Agreement) and Section 6 and Attachment A of Exhibit B (CRST Agreement)).** As Alltel has not had an opportunity to review the FLEC study conducted by CRST's consultants, Alltel denies paragraphs 32 through 34 of the Petition.

28. Furthermore, FCC rules require that an incumbent LEC "must prove to the State commission that the rates [for call termination] do not exceed the forward-looking economic cost per unit of providing [call termination] using a cost study that complies with [FCC TELRIC] methodology."¹

29. Alltel has not had the opportunity to review or conduct discovery of Petitioner's alleged cost study. Therefore, a detailed assessment and response to Petitioner's proposed rates in Exhibit B is not possible. However, the rate appears to exceed cost justifications presented in prior dockets and it exceeds, by more than twice, the compensation rate in the Parties prior interconnection agreement. Alltel specifically denies that the proposed rate in Exhibit B of the Petition represents the forward-looking economic cost per unit for call termination as required under the Act. Alltel estimates CRST's costs to be less than \$.005.

¹ 47 C.F.R § 51.505(e).

30. Concerning the InterMTA language in Petition paragraph 31, InterMTA use factors are often used to designate an amount of traffic exchanged between two carriers that are estimated to originate and terminate in different MTAs. Alltel has not had the opportunity to review or conduct discovery on Petitioner's proposed InterMTA use factor or measurement methodology. Additionally, Petitioner's proposal on use of interstate versus intrastate access rates for such InterMTA traffic is also unsupported. It is Alltel's position that, to the extent an InterMTA use factor is included at all, that factor should reflect the net amount of InterMTA traffic exchanged between the Parties. A net InterMTA use factor provides for each party to realize compensation for termination of InterMTA traffic originated by the other Party. In other words, Petitioner should be required to compensate Alltel for its originated InterMTA traffic just as Alltel would compensate Petitioner for Alltel originated InterMTA traffic. Alltel specifically denies that the InterMTA use factors as proposed by Petitioner and the corresponding access rate for such InterMTA traffic is supported or otherwise appropriate. A POI analysis to determine the InterMTA factor is more appropriate given it follows a cost causer analysis.

31. **Issue 11: What is the appropriate time frame for bringing claims for disputes arising under the Agreement? (Section 10.0 of Exhibit A (Alltel Agreement)).** Alltel's language proposing claims may be brought no more than 24-months from the date of occurrence or beyond the applicable statute of limitations, whichever is shorter, is more appropriate than CRST's position that any arguable statute of limitations should control. One may be able to argue that a statute of limitations that control is SDCL 15-2-13, which would allow a party to bring in an action up to six years after the termination of the agreement. Given that in the industry records are not kept for such lengthy time periods, providing for such a lengthy statute of limitations would be unnecessarily burdensome to both parties.

32. **Issue 12: What is the appropriate effective date and term of the Agreement?**

Section 14.0 of Exhibit A (Alltel Agreement) and Section 10 of Exhibit B (CRST

Agreement)). Alltel disagrees with an effective date of January 1, 2007. As noted in the Petition, the previous interconnection agreement was terminated on January 1, 2007. CRST's BFR was not sent until August 17, 2007 and negotiations were extended a number of times. The filing date of the arbitration was October 21, 2008. As the Act only provides for 160-day look-back period for an agreement from the filing of an arbitration, the agreement should commence on May 14, 2008 and Alltel should receive credit for any payments previously made for traffic delivered after January 1, 2007.

ADDITIONAL ISSUES FOR RESOLUTION

33. **Issue 13: Language of Exhibit A to the Petition not directly disputed as part of the Petition should be used as that agreement formed the basis of the negotiations prior to the filing of the arbitration.** The language that is not directly disputed by Petitioner that is contained in Alltel's agreement, Exhibit A, should be used. That agreement was used as the basis for negotiations and most closely follows previous agreements negotiated by the parties. Therefore, the parties have operated under this language previously and the parties possess knowledge and understanding of what various sections mean.

34. As to Petition's paragraphs 38 and 39, Alltel admits.

35. As to Petition's paragraph 41, CRST's request for Protective Order, Alltel has no objection to a Protective Order.

36. As to Petition's paragraph 42, referencing the Procedural Schedule, Alltel provides hereto as Exhibit A its proposed Procedural Schedule. The primary differences between this scheduling order and CRST's scheduling order is the result of pushing back discovery filings and all other deadlines by a couple of weeks, as Alltel is requesting the

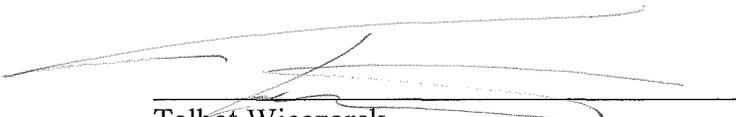
scheduling order require CRST to provide in advance of the first round of discovery the cost studies and traffic studies referenced in its Petition to allow Alltel the ability to review those studies prior to serving the first round of discovery. Having the studies beforehand will assist in clarifying what discovery may be necessary.

REQUEST FOR RELIEF

Alltel respectfully requests that the Commission:

1. Arbitrate the unresolved issues between Alltel and Petitioner;
2. At the conclusion of this proceeding, issue an Order approving and Interconnection and Reciprocal Compensation Agreement between Alltel and Alliance reflecting Alltel's position with respect to the unresolved issues as described above; and
3. Issue such orders as are just and proper.

Dated this 14 day of November, 2008.



Talbot Wiczorek
Gunderson, Palmer, Goodsell & Nelson, LLP
440 Mt Rushmore Road
PO Box 8045
Rapid City, South Dakota 57709
Phone: (605) 342-1078
Fax: (605) 342-0480
Email: tjw@gpgnlaw.com

ATTORNEYS FOR
ALLTEL COMMUNICATIONS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **Alltel's Response to CRST's Petition for Arbitration** was electronically mailed this 14th day of November, 2008 to the following:

patty.vangerpen@state.sd.us
MS PATRICIA VAN GERPEN
EXECUTIVE DIRECTOR
SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION
500 EAST CAPITOL
PIERRE SD 57501

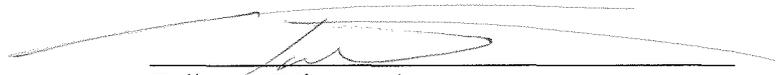
Jon.thurber@state.sd.us
Mr. Jon Thurber
Staff Analyst
SDPUC
500 East Capitol
Pierre SD 57501

rogeroldenkamp@gmail.com
Roger Oldenkamp
210 East Lincoln
Spearfish SD 57783

karen.cremer@state.sd.us
Ms Karen Cremer
Staff Attorney
SDPUC
500 East Capitol
Pierre SD 57501

dprogers@riterlaw.com
Darla Pollman Rogers
319 S. Couteau Street
PO Box 280
Pierre SD 57501-0280

m.northrup@riterlaw.com
Margo Northrup
319 S. Couteau Street
PO Box 280
Pierre SD 57501-0280


Talbot J. Wiczorek

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Petition of Cheyenne River Sioux)	
Tribe Telephone Authority for Arbitration Pursuant to)	Docket No. TC 08-122
the Telecommunications Act of 1996 to Resolve Issues)	
Relating to an Interconnection Agreement with Alltel)	ALLTEL'S PROPOSED
Communications, Inc.)	SCHEDULING ORDER

Comes Now, Alltel Communications, Inc. (“Alltel”), by and through its undersigned counsel, pursuant to A.R.S.D. 20:10:32:29(9), and sets forth the following proposed schedule for the governance of the proceedings in the above-captioned matter.

PROPOSED PROCEDURAL SCHEDULE

1. On or before November 24, 2008, Petitioner shall provide copies of the cost studies, traffic studies and FLEC analysis referenced in the Petition to Alltel. Electronic portions of the studies or analysis shall be provided in native format that will allow the studies to be searched and adjusted for testing purposes. If the electronic information is subject to a password protection, the password shall also be provided.

2. On or before December 8, 2008, the first round of discovery requests shall be served by all parties and responses shall be due on or before December 22, 2008.

3. On or before January 7, 2009, the second round of discovery requests shall be served by all parties and responses shall be due on or before January 23, 2009.

Discovery requests and responses shall not be filed with the Commission unless necessary in connection with a motion to compel or if introduced as a hearing exhibit.

4. On or before February 9, 2009, all parties shall serve and file direct testimony, including exhibits.

5. On or before February 23, 2009, all parties shall serve and file rebuttal testimony, including exhibits.

6. No witness shall be allowed to testify at the hearing unless that witness has prefiled testimony pursuant to this procedural schedule with the exception of witnesses offering live testimony regarding issues first raised in rebuttal testimony. Such testimony shall not be duplicative of prefiled testimony. In the event that a party determines that it will present testimony in response to rebuttal testimony from one or more witnesses that have not prefiled testimony, the names and personal resumes of such witnesses, and a general description of the facts and testimony to be offered by such witnesses shall be provided to the other party and the Commission not later than March 3, 2009.

7. Exhibits offered through a Party's witness that are not summary in nature shall be attached to prefiled testimony. Any exhibit not previously produced that may be used on cross-examination shall be disclosed to the other party on or before March 9, 2009, with a copy provided upon request. Should an exhibit not previously attached to prefiled testimony or produced through discovery be deemed necessary to cross-examine a witness who has not filed prefiled testimony, that exhibit shall be disclosed to the other party on or before March 13, 2009.

Documents served or filed are served on the date they are received. All documents shall be served by e-mail, in .pdf format unless the document is a spreadsheet then it will be produced unprotected in its native format. Service by e-mail is effective when received pursuant to South Dakota Administrative Rules.

8. The hearing shall be held after March 16, 2009 or as soon thereafter as the Commission shall be able to hear this matter, in the State Capitol Building, Pierre, South Dakota.

The hearing will begin at _____ a.m. CDT on _____. Parties shall arrive prior to the commencement of the hearing to mark exhibits.

9. The parties shall simultaneously serve and file post hearing briefs 20 days following receipt of the hearing transcript, along with proposed language for the disputed issues in the interconnection agreement. The parties shall simultaneously serve and file reply briefs 14 days following the receipt of the initial post hearing briefs.

10. The Commission shall issue its decision resolving the issues in the arbitration on or before May 20, 2009. The decision shall establish a procedure and schedule for filing a confirmed arbitrated agreement for consideration by the Commission. The Commission's resolution of the issues presented in the arbitration shall not be according to "final offer" or "baseball" arbitration in which the Commission must accept the final offer of one or the other party, but rather shall be according to "traditional" arbitration in which the Commission may resolve issues presented as it determines to be proper consistent with the facts presented and applicable legal requirements.

Dated this 14 day of November, 2008.



Talbot Wiczorek
Gunderson, Palmer, Nelson & Ashmore, LLP
440 Mt Rushmore Road
PO Box 8045
Rapid City, South Dakota 57709
Phone: (605) 342-1078
Fax: (605) 342-0480
Email: tjw@gpgnlaw.com

ATTORNEYS FOR
ALLTEL COMMUNICATIONS, INC.