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

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| **IN THE MATTER OF THE PETITION OF MCCOOK COOPERATIVE TELEPHONE COMPANY FOR ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH ALLTEL, INC.**<br><br>**IN THE MATTER OF THE PETITION OF KENNEBEC TELEPHONE COMPANY FOR ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH ALLTEL, INC.**<br><br>**IN THE MATTER OF THE PETITION OF SANTEL COMMUNICATIONS COOPERATIVE, INC. FOR ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH ALLTEL, INC.**<br><br>**IN THE MATTER OF THE PETITION OF WEST RIVER COOPERATIVE TELEPHONE COMPANY FOR ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AN INTERCONNECTION AGREEMENT WITH ALLTEL, INC.** | **TC 07 – 112**<br>**TC 07 - 114**<br>**TC 07 - 115**<br>**TC 07 - 116**<br><br>**PETITIONERS' BRIEF IN SUPPORT OF THEIR APPLICATION FOR RECONSIDERATION (PUBLIC)** |

COME NOW Kennebec Telephone Company ("Kennebec"), McCook Cooperative Telephone Company, Santel Communications Cooperative, Inc. and West River Cooperative Telephone Company, all rural local exchange carriers ("RLEC") (collectively the "Petitioners"), and pursuant to A.R.S.D. 20:10:01:29 and 20:10:01:30.01, hereby submit this Brief in support of

their Application for Reconsideration of certain portions of the Commission's January 15, 2010 Second Decision and Order, Findings of Fact, Conclusions of Law and Notice of Entry of Order (the "Second Order").

## BACKGROUND

On January 15, 2010, this Commission issued its second written ruling on the final remaining unresolved issue between these parties: Issue 1: (Section 5.0): Is the reciprocal compensation rate for IntraMTA Traffic proposed by Telco appropriate pursuant to 47 U.S.C. § 252(d)(2)? In its analysis of this issue, the Commission focused on the Petitioners' proposed switching and transport rate. The Petitioners' Application for Reconsideration focuses on two sub-issues necessarily implicated by the Commission's ruling on the appropriate reciprocal compensation rate. The first sub-issue relates to the Commission's ruling regarding the transport rate, and more specifically, the Commission's ruling regarding the inclusion of certain outside transport plant costs in the proposed transport rates. The second sub-issue relates to the method utilized by the parties for the appropriate allocation of costs between switched and special services, i.e., the path method, the rate equivalency method or the bandwidth method.

**Transport Rate**

The transport rate consists of those costs associated with interoffice transport facilities, which include switched transport electronics and switched transport outside plant costs. See Hearing Exhibits 46-49, p. 11, lines 4-8. After the special services circuit portions of the transport costs are eliminated from the cost calculations, the total transport and termination rate is calculated by dividing the total costs associated with switched transport electronics and switched transport outside plant costs by the total demand in minutes of use. Id. All of the costs included in the

transport rate must be shown to be associated with the most efficient and cost effective technology currently available so as to prove that the resulting proposed network is cost efficient. Id.

In reaching its decision on what outside plant costs are includable in the Petitioners' transport rate, the Commission noted the following in two of its Findings of Fact:

Finding of Fact No. 13:

> Alltel's second change to the forecasted demand used in Kennebec's July 2009 FLEC study was to the transport outside plant. Kennebec did not forecast the fibers and based the fibers on 2006 quantities. Tr. at 175. *Alltel extended the forecast for cable fibers in service to achieve a 50% utilization of a 24-fiber cable.* Alltel Ex. 19 at 27.

See TC 07-114, Second Order, ¶13 (emphasis added).[1]

Finding of Fact No. 16:

> The Commission finds that Alltel's projected demand is reasonable. *Alltel projected demand to 2016, which reflects a more reasonable measuring period for the useful life of transport electronics.* In addition, Alltel's levelized demand gives demand in the later years less weight than demand in the earlier years, resulting in a demand forecast that takes into consideration the risks of forecasting into the future. The reasonableness of this levelized demand is demonstrated by the fact that it shows a [CONFIDENTIAL: [redacted]] utilization of an OC-48 and, for an OC-192, which is the transport system that one of Kennebec's witnesses stated Kennebec would need in the future, the levelized demand shows a [CONFIDENTIAL: [redacted]] utilization of an OC-192, which is the transport system that one of Kennebec's witnesses stated Kennebec would need in the future, the levelized demand shows a [CONFIDENTIAL: [redacted]] utilization of an OC-192. Alltel Ex. 20 at 4. *In addition, the Commission finds that Alltel's proposed revision that extends the forecast for cable fibers in service to achieve a 50% utilization of a 24-fiber cable is also reasonable. See* Alltel Ex. 19 at 27. The Commission directs Kennebec to make these changes to its July 2009 FLEC study.

Id. at ¶16, emphasis added.

[1] For the purpose of their Application, the Petitioners refer to the January 15, 2010, Second Decision and Order; Findings of Fact and Conclusions of Law and Notice of Entry of Order enter in Docket No. TC07-114, which is styled as *In the Matter of the Petition of Kennebec Telephone Company for Arbitration Pursuant to the Telecommunications Act of 1996 to Resolve Issues Relating to an Interconnection Agreement with Alltel Communications, Inc.* The Findings of Fact to which the Petitioners refer in their Application are numbered identically in Docket Nos. TC 07-112, TC07-115 and TC 07-116.

As set forth below, the Petitioners submit that practical application of this Commission's determination regarding the appropriate forecasted demand and inclusion of certain fiber cable costs results in a consequence to the total transport and termination rate which this Commission did not intend.

**Allocation Methodology**

In reaching its decision on what outside plant costs are includable in the Petitioners' transport rate, the Commission noted the following in two of its Findings of Fact:

> Finding of Fact No. 17:
>
> Another issue was how to calculate and apportion demand among uses. Kennebec advocated the use of the path method. The Commission explained the path method in finding 24 of its February 2009 Decision:
>
> This method counts each DS-0 as a path, each DS-1 as a path, and each DS-3 as a path. Tr at 270. A DS-1 is equivalent to 24 DS-0s and a DS-3 is equivalent to 28 DS-1s. Tr. at 271; Alltel Ex. 2 at 58. Thus under the path method, a path is considered to be one circuit regardless of the bandwidth of the circuit. Id.

Id. at ¶17.

> Finding of Fact No. 18:
>
> Alltel opposed the path method and instead advocated the use of the DS-1 equivalent method in which DS-0 voice trunks would be converted to a DS-1 level by taking the total DS-0 voice trunks and dividing by 24. *See February 2009 Decision*, Finding 27; Alltel Ex. 9.

Id. at ¶18.

> Finding of Fact No. 19:
>
> The Commission rejected both methods as flawed, finding they either over-allocated or under-allocated special circuits. *See February 2009 Decision*, Finding 29. The Commission required Kennebec to revise its cost study to reflect a rate equivalency method. *Id.* The rate equivalency method allocates costs based on the ratio of rates for the services. *See February 2009 Decision*, Finding 28; Pet. Ex. 56 at 21.

Id. at ¶19.

Finding of Fact No. 23:

> The Commission finds that Kennebec's proposed rate equivalency method is reasonable with the exception of how the proposed method treats voice trunks. The Commission finds that the evidence demonstrates that, in most instances, a DS-0 special circuit is more expensive than a DS-0 voice trunk. Thus, as a general rule, a DS-0 special circuit costs more than a voice trunk. Given the cost differential between a voice trunk and a DS-0 special circuit, the question then becomes whether there is a way to use the rate equivalency method that more accurate reflects the cost of a voice trunk. The Commission finds that Alltel's solution of taking the number of voice trunks and dividing the voice trunks by 24 to obtain the corresponding DS-1 common transport circuit produces, in most instances, a more accurate rate equivalency method. Moreover, Alltel's solution reflects how networks are generally deployed by recognizing that voice trunks are consolidated to DS-1 circuits at the switch. Alltel Ex. 19 at 11.

Id. at ¶23.

Finding of Fact No. 24:

> The Commission will also take into account the evidence presented by Kennebec that, in a few instances, voice trunks and DS-0 special circuits may be combined resulting in mixed traffic on a DS-1 circuit. Kennebec's witness stated that he would expect that 2 to 4 out of 20 DS-1s would be mixed traffic. Tr. at 80. Using three as the median number, the Commission finds that for 15% of voice trunks, a voice trunk will be considered equivalent to a DS-0 special circuit. The remaining 85% of voice trunks will be treated consistent with Alltel's proposed treatment of voice trunks. The result is that for 85% of voice trunks, the number of voice trunks will be divided by 24 to express switched circuits demand in terms of DS-1 circuits. The resulting DS-1 circuit quantity will then be multiplied by the DS-1 to DS-0 rate equivalent. The Commission directs Kennebec to make these changes to its July 2009 FLEC study.

Id. at ¶24.

As set forth below, the Petitioners submit that practical application of this Commission's determination regarding the appropriate allocation methodology produces a hybrid methodology which results in consequences to the total transport and termination rate which this Commission did not intend and which are neither supported by the record nor by the FCC's rules and regulations.

## ARGUMENT AND ANALYSIS

### 1. Legal Standard.

Administrative Rules 20:10:01:29 through 20:10:01:30:02 set forth this Commission's procedure for reconsideration. Specifically, A.R.S.D. 20:10:01:29 provides:

> A party to a proceeding before the commission may apply for a rehearing or reconsideration as to any matter determined by the commission and specified in the application for the rehearing or reconsideration. *The commission may grant reconsideration or rehearing* on its own motion or pursuant to a written petition i*f there appears to be sufficient reason* for rehearing or reconsideration.

(emphasis added). A.R.S.D. 20:10:01:30:01 provides in relevant part:

> An application for rehearing or reconsideration based upon claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the ground of error. An application for rehearing or reconsideration based upon newly discovered evidence, upon facts and circumstances arising subsequent to the hearing, or upon consequences resulting from compliance with the decision or order, shall set forth fully the matters relied upon. The application shall show service on each party to the proceeding.

### 2. There is sufficient reason to support reconsideration or rehearing on both issues identified by Petitioners in their Application.

Petitioners do not rely upon facts or circumstances arising subsequent to the hearing nor do they rely upon the discovery of new evidence as support for their Motion. Rather they rely upon the consequences to the reciprocal compensation rate which result from compliance with this Commission's January 15 Second Order. The consequences of compliance with this Commission's Second Order are significant. The cumulative effect of the required revisions to the FLEC study results in more than a 75% reduction in the transport rate. This consequence is not a sustainable one because the theory upon which it is based does not find support in the evidence presented at hearing. While the Commission's Findings may make sense on their face, they produce an unpredictable and unintended result in practice, and one which should not be upheld when the weight of the evidence presented at hearing establishes that such a result is

unjust and inequitable. Only in its practical application, i.e., the revisions to the transport rate, is this fully evident.

**A. Transport Rate: There is no reasonable correlation between the extended demand forecast period and the Commission's revision to the Petitioners' outside plant costs.**

In its Second Order, this Commission ordered that the Petitioners revise their FLEC studies by using a forecasted demand through year 2016. See Second Order, Finding of Fact No. ¶16. The Commission determined that this increased forecast period represented a more reasonable measuring period for the life of transport electronics. Id. Correspondingly, the Commission ordered the Petitioners to revise their respective FLEC studies by effectively eliminating a significant portion of their previously included fiber component. Id. (holding: "In addition, the Commission finds that Alltel's proposed revision that extends the forecast for cable fibers in service to achieve a 50% utilization of a 24-fiber cable is also reasonable.").

In accordance with the Commission's directive, the Petitioners have revised the demand period utilized in their respective FLEC studies so as to extend the demand forecast period through year 2016. The Commission believed that the extended demand period would better account for the costs associated with Petitioners' proposed transport electronics and the demand necessary to justify use of a transport system with greater capacity such as an OC-48. While the Petitioners do not necessarily agree with it, the correlation between the longer forecast period, demand for switched services and the size of the transport electronics is ascertainable. However, what is not ascertainable is the correlation between a longer forecast period, demand for switched or special services, and the amount of cable included in the Petitioners' outside plant costs. The Petitioners submit that there is in fact no correlation between the lengthened demand period and the future use of a certain size of fiber. Simply stated, there is a disconnect between

the necessary demand to support a certain size of transport electronics and the demand necessary to support a greater fiber count. These are two very different analyses. Lengthening the demand period does not necessarily lead to an increase in the number of fibers that will be used by the Petitioners for various services in 2016, or at the very least, certainly not to the extent as ordered by the Commission. The Commission's decision does not provide any rationale as to the correlation between the demand period and the cable use.

Petitioners' respective FLEC networks included outside plant cable sized with 48-fiber cable. The Petitioners' expert witness, Nathan Weber, explained that cable of this size was used because it is considered standard for interexchange transport routes. See Hearing Exhibit 79, p. 5, lines 16-17. The rationale underpinning this choice is that of good engineering practice: the low incremental cost difference between the various sizes of cable ensures that a company can put in the fiber it needs in the event that some becomes damaged or degraded. Id. at lines 18-19. As illustrated by Mr. Weber's testimony, a company's concern is not necessarily whether they have sufficient fiber for the provisioning of various switched or special services. Rather, it is whether they have sufficient cable in the ground to withstand problems caused by bad fiber, fiber cuts or other damage.

There is but a slight difference in cost between the 24-fiber and 48-fiber cable.[2] Moreover, the majority of the cost associated with the fiber is in the construction, i.e., placing it in the ground. As Mr. Weber explained, 65-70% of the cost is construction. See Hearing

[2] Mr. Weber explained that the unit pricing for 48-count buried fiber optic cable ranges from [redacted] to [redacted] per foot, resulting in an average cost of [redacted] per foot. See Hearing Exhibit 79, p. 6, lines 5-7. The cost for 24-count buried fiber optic cable ranges from [redacted] per foot, with an average cost of [redacted] per foot. Id. at lines 7-9. The difference between the costs of the two cables is [redacted] Id. at line 10. Construction costs associated with the installation of the two sizes of cable are also not significant. The average cost per foot for 48-count fiber for town construction is [redacted]. Construction with 24-count fiber would reduce that cost by [redacted] Id. at lines 12-16.

Transcript, p. 26, lines 14-25.; p. 27, lines 1-25; p. 28, lines 1-9.[3] Given the significant cost associated with construction, no rational and business-minded company would put in fewer fibers now, only to have to incur those same, if not increased, construction costs a few years down the road in the event that they would need to increase their fiber count.

The bottom line is that each Petitioner can place an almost infinite amount of traffic on a fiber pair as long as it possesses a sufficient transport system to carry it. In other words, the amount of traffic that can be placed upon the fiber is limited only by the size of the electronics available. Fiber count has nothing to do with demand. It has everything to do with the cost of laying fiber and the transport system in place to make the most efficient use of the fiber in the

[3] At the time of hearing, Mr. Weber testified as follows:

> A. Yes. And I provided rebuttal testimony to this particular example as well. And, you know, specific to the size of the fiberoptic cable, when we take a look at, you know, placing cable in the ground, you know, just for general rules of thumb, you can make the assumption that approximately 70 percent of the cost with putting a fiberoptic cable in the ground is just the labor itself. The cost for opening up the ground and putting the cable in. The remaining 30 percent is really the materials, the cable, you know. So that's really what's affected by, you know, going from a 48 fiber to a 24 fiber. When you break that 30 percent down further, typically speaking, about 65 percent of that cost is associated with the outer jack of the cable, the sheath. Has nothing to do with, you know, how many fiber strands are in there. The remaining 35 percent is typically what's associated with the, you know, number of fibers inside that sheath. So what we really get down to is a very -- you know, when you look at things as a whole relatively low percentages of costs are influenced by changing from a 48 fiber to a 24 fiber. In fact, I believe Mr. Conwell has an exhibit where he shows the price reduction for that, you know, where he shows that moving from a 48 fiber to a 24 fiber for Santel would be approximately a 7.3 percent reduction in the costs of the outside plant cable construction for Santel, and on the high range for West River it would be a 9.6 percent reduction in cost. The reason why I feel this is negligible, it really, you know, pertains to the fact that outside plant cable construction increases every year. There's an inflationary factor there. You know, as I had previously testified in -- approximately a year ago, you know, outside plant cable construction typically increases by a factor of approximately 5 to 10 percent per year. You know, in the normalizing effect that we used to come up with our per mile rate for rural construction we used a 1 5 percent normalizing factor to bring them up to 2007 numbers. So if you really put this in context, we're 2009 today. You look at 5 percent increases over the last two years, the construction of a 24 fiber cable today likely costs more than the construction of a 48 fiber cable two years ago when this FLEC study was originally done. So to me it's just really a matter of splitting hairs at that point in time.

See Hearing Transcript, p. 26, lines 14-25.; p. 27, lines 1-25; p. 28, lines 1-9.

ground. Under these circumstances, when one looks at the slight difference in cost between the various fiber counts, unlike with the size of the transport system, there is simply no way to correlate the lengthened demand period with a corresponding increase in the number of fibers used.

Alltel's argument against the inclusion of these costs was that the cable was over-sized, under-utilized and therefore resulted in higher transport outside plant costs per minute. This argument should carry no weight. The only record evidence in support of this proposition is a two sentence statement made by Alltel's witness, Craig Conwell, in his pre-filed testimony. See Alltel Hearing Exhibit 19 at p. 27. It is also a proposition which simply does not make sense. As Mr. Weber explained, his responsibility as an engineer is to construct network with sufficient electronics so that the capacity of that network is not exhausted for at least the life of the equipment. However, if that is the basic premise by which the network is engineered, it is illogical to conclude then that additional fiber will need to be added during that same time period.

Mr. Conwell repeatedly testified that he has never designed a network. See Hearing Transcript, p. 194, lines 14-24. Mr. Conwell also failed to provide citation to any other commission or agency decision whereby that agency had reached a similar decision. Id. at p. 211, lines 2-25; p. 212, lines 1-4. It is not only counterintuitive, but in fact plain error, to determine that an unsupported, two-sentence statement given by a partisan professional witness can somehow overwhelmingly outweigh the well-supported testimony of the Petitioners' expert witness on this subject.

Ultimately, the practical implication of the Commission's Findings is to mandate to any company performing a FLEC study that they must include only those costs associated with a 6-

fiber or fewer count cable. Such an edict is not only impractical and inefficient, but is also a violation of the FCC's rules and regulations. The FCC never intended for a professional engineer to design a network that he would ***never*** implement in practice. See 47 C.F.R. §51.505(b)(1) (defining an efficient network configuration as "The total element long-run incremental cost of an element should be measured based on the *use of the most efficient telecommunications technology currently available* and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.").[4] While it may seem that the Commission's directive will have only a small impact on the resulting rate, it actually has the effect of reducing the transport rate significantly. It appears that the Commission arrived at its decision based on a misunderstanding of the correlation, or lack thereof, between fiber count and demand. More importantly, it arrived at a decision which is wholly lacking in evidentiary support and which flies in the face of significant evidence presented by the Petitioners prior to

[4] As Mr. Weber testified:

> A When we are looking at, you know, specifically fiber that's used to connect between exchanges, so interexchange fiber transport, the standard size that we typically use in our engineering designs is 48 fiber cable, and that's really due to the fact that the incremental cost to go from, you know, another standard size of fiber like 24 to 48 is very negligible.
>
> Q. What was your goal in designing the proposed FLEC networks that had been shown in the FLEC study and which had been provided to the Commission in this case?
>
> A. Really ultimately it comes down to the definition of FLEC, and that's a forward-looking economic cost. You know, we designed this network based on how this would truly be built if we were starting and designing this network today. You know, doing things like undersizing the fiberoptic transporting electronics, undersizing the fiberoptic cable itself, you know, tends to cause increased costs long run because you end up going back and doing that work again. You know, to go through and have them construct additional fiber because you were shortsighted and undersized it costs the company money in the long run. Same thing with the transport. If you undersize the transport and have to not only make a certain investment and before the depreciable life of the equipment have to increase that investment because you were shortsighted, that also costs money and increases the total life cycle cost of that equipment.

See Hearing Transcript, p. 28, lines 13-25; p. 29, lines 1-15.

and at the time of hearing.[5] Under these circumstances, the Petitioners respectfully request that this Commission reverse that portion of its Findings of Fact and Conclusions of Law which require the Petitioners' to reduce the costs associated with their fiber investment.

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[5] The following exchange occurred between members of the Commission and Petitioners' expert witness, Mr. Weber, at the time of the hearing:

> COMMISSIONER KOLBECK: Yes. Mr. Weber, you spoke of 24 and 48 fiber capacity. Do you know what the difference is? I think you said 70 percent of laying the cable is labor, and then 35 percent -- well, you divided up the other 30 percent. Do you have an idea of what the hard number is apples to apples, cable to cable from 24 to a 48 is, disregarding the sheath and everything if you were just to compare two like cables? And you don't have to be very specific. Is it tens of dollars, hundreds of dollars, thousands of dollars?
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> THE WITNESS: Specifically to the cable investment?
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> COMMISSIONER KOLBECK: Yes.
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> THE WITNESS: You know, if you look at just on a per unit basis as I provided in my testimony, you know, based off of the costs that we used to estimate the town construction, the difference between the 48 and a 24 fiber averaged out to be about 20 cents a foot.
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> COMMISSIONER KOLBECK: 20 cents a foot. Okay. But that's including everything; correct?
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> THE WITNESS: That's –
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> COMMISSIONER KOLBECK: The sheath, the –
>
> THE WITNESS: Exactly.
>
> COMMISSIONER KOLBECK: -- labor. Everything like that.
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> THE WITNESS: Exactly.
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> COMMISSIONER KOLBECK: So it's probably even less than that if you were just going to change the type of cable.
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> THE WITNESS: Possibly.
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> COMMISSIONER KOLBECK: Okay. And also -- well, that's more of an accounting question. But thank you.
>
> THE WITNESS: Okay.
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> COMMISSIONER HANSON: No thank you.
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> CHAIRMAN JOHNSON: To piggyback on Commissioner Kolbeck's question, you had indicated, Mr. Weber, that the 20 cents was based on materials and labor, I thought.
>
> THE WITNESS: Based on materials. The labor to put the cable in the ground is the cost to put the cable in the ground. I mean, physically the size of a 24 fiber cable from an outer, you know,

### B. There is sufficient reason to reconsider the Commission's decision as it relates to the allocation methodology.

As both parties have acknowledged throughout the entirety of this process, a methodology by which to reduce the total transport costs is necessary to distinguish cost-causitive transport functions from costs that are not related to the provisioning of per-minute, usage based services. And, as has also been recognized by all involved in this process, one of the fundamental overarching distinctions between the parties' positions was what costs should be excluded from the calculation and how. The three potential methods of performing the necessary calculation are: (1) the path or circuit method, (2) the bandwidth method, and (3) the rate equivalency method.

In its February 27, 2009 Findings of Fact and Conclusions of Law, the Commission directed the Petitioners to revise their respective FLEC studies utilizing the rate equivalency method for the allocation of costs. In its most recent Second Order, the Commission seemingly accepted the Petitioners' proposed rate equivalency method, but then added certain elements from Alltel's methodology, essentially resulting in an unusual hybrid of the rate equivalency and bandwidth allocation methodologies. Much like with the first issue identified above, the impact of the Commission's directive upon the Petitioners' transport rates, is great. And again, much like the first issue, the consequence is likely one which this Commission did not intend.

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> diameter perspective is really no different than a 48 fiber cable, unless the labor to lay it in the ground is different.
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> CHAIRMAN JOHNSON: So the 20 cents per foot is just the material cost.
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> THE WITNESS: That's the material cost.
>
> CHAIRMAN JOHNSON: Okay. Just wanted to make sure that that matched up with your testimony. Thanks.

See Hearing Transcript, pp. 74, lines 13-25; p. 75, lines 1-25; 76, lines 1-12.

As outlined in the Findings of Fact issued by the Commission, the Commission directed the Petitioners to revise their respective FLEC studies by treating 15% of voice trunks as equivalent to a DS-0 special circuit and 85% of voice trunks in the manner advocated by Alltel. Such treatment effectively means that the 85% of voice trunks will be divided by 24 in order to "express switched circuits demand in terms of DS-1 circuits." See Second Order, Finding of Fact, ¶24. Quite simply, this results in an endorsement of Alltel's original bandwidth method because it drives the resulting transport rate to nearly zero. While the Commission's Findings as to how it arrived at its conclusions are quite detailed, unfortunately, in relying upon the evidence that it did (i.e., Mr. Weber's testimony elicited in response to questions from Staff Analyst Greg Rislov), the Commission blurred the line between a DS-0 circuit and a DS-1 circuit in that it misunderstood that Mr. Weber's testimony addressed DS-1s, not DS-0s. In other words, Mr. Weber's testimony was never intended to indicate that he believed that a DS-0 special circuit is more expensive than a DS-0 voice trunk 85% of the time.

The Petitioners' original FLEC model employed the use of the path method. The purpose of the path method is to remove the cost of special access circuits from the total cost of transport facilities prior to the development of the transport rate. The path method ultimately better allocates the costs associated with fiber optic cable because its cost is driven by the distance that a path travels, not the capacity of the path that is traveling on the cable. As previously explained, DS-1 and DS-3 services incur the same provisioning, maintenance and testing costs as does one DS-0. Most significantly, the National Exchange Carrier Association uses the path method for allocation.[6] Therefore, any methodology which, at its core defines the bandwidth of a circuit as indicative of cost causation, is not appropriate. See Hearing Transcript, Volume II, p. 226, lines

[6] NECA has articulated that the bandwidth or DS-1 equivalent method is not a valid methodology because the allocation of plant costs is not representative of the actual costs associated with the service. See NECA Cost Guidelines Paper, November 5, 2007, pp. 2-3.

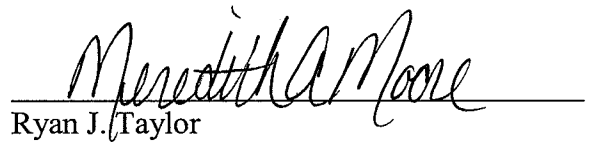
1-25; p. 226, lines 1-25; p. 227, lines 1-25; p. 228, lines 1-3. Unfortunately, the current hybrid methodology does just this and should therefore be rejected just as this commission previously rejected Alltel's bandwidth method.

## CONCLUSION

A party seeking reconsideration must present facts which are sufficient to establish that this Commission misapprehended or misunderstood the facts or that its decision produced an unintended consequence. In this instance, despite its best intentions, the Commission's directives to the Petitioners did just that: they resulted in a 75-85% reduction in the Petitioners' previously proposed transport rates. Under these circumstances, and based upon the record established to date, the Petitioners have met their burden to show that Reconsideration is justified. Accordingly, the Petitioners respectfully request that this Commission grant their Application for Reconsideration and reverse and modify those Findings of Fact set forth herein.

Dated this 16th day of February, 2010.

CUTLER & DONAHOE, LLP
Attorneys at Law



Ryan J. Taylor
Meredith A. Moore
100 N. Phillips Ave., 9th Floor
PO Box 1400
Sioux Falls, SD 57101-1400
*Attorneys for Petitioners*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 16th day of February, 2010, upon the following:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
patty.vangerpen@state.sd.us
Telephone: 605-773-3201

Mr. Bob Knadle
Staff Analyst
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
bob.knadle@state.sd.us
Telephone: 605-773-3201

Ms. Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
karen.cremer@state.sd.us
Telephone: 605-773-3201

Mr. Talbot J. Wieczorek
Gunderson, Palmer, Nelson & Ashmore, LLP
PO Box 8045
Rapid City SD 57709
tjw@gpnalaw.com
Telephone: 605-342-1078

Meredith A. Moore
One of the Attorneys for the Petitioners