

BEFORE THE STATE OF SOUTH DAKOTA

PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITIONS OF)	DOCKET NOS:
)	
MCCOOK COOPERATIVE TELEPHONE COMPANY,)	TC07-112
KENNEBEC TELEPHONE COMPANY,)	TC07-114
SANTEL COMMUNICATIONS COOPERATIVE, INC., AND)	TC07-115
WEST RIVER COOPERATIVE TELEPHONE COMPANY)	TC07-116
FOR ARBITRATION PURSUANT TO THE)	
TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE)	
ISSUES RELATING TO AN INTERCONNECTION)	
AGREEMENT WITH ALLTEL COMMUNICATIONS, LLC)	

ALLTEL’S BRIEF IN SUPPORT OF MOTION TO COMPEL

COMES NOW, the above-named Alltel Communications, LLC, (hereinafter “Alltel”) by and through its counsel of record, Talbot J. Wiczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, hereby submits this Brief in Support of its Motion to Compel in the above-entitled matters.

FACTUAL BACKGROUND

This motion arises out of petitions for arbitration that had been filed and were consolidated for hearing. After the hearing in this matter, the Commission ordered that further evidence be submitted concerning the reciprocal compensation issue. Specifically, the Commission left open the determination regarding the final calculation of the reciprocal compensation based on the rate equivalency, forecasted traffic and size of network.

The four remaining Petitioners, McCook Cooperative Telephone Company (“McCook”), Kennebec Telephone Company (“Kennebec”), Santel Communications Cooperative, Inc.

(“Santel”) and West River Cooperative Telephone Company (“West River”) (collectively “the Companies”) submitted supplemental testimony and revised cost studies.¹

After providing supplemental testimony and an updated FLEC study, Petitioners subsequently supplemented discovery responses to discovery questions that had been served prior to the initial hearing. Counsel for the companies and counsel for Alltel are currently working on the request by Alltel to provide additional information to that discovery. This motion is being filed to ensure the motion can be timely heard prior to the hearing in this matter should counsel be unable to resolve their differences. The Motion to Compel seeks additional information from the Companies regarding the supplemented responses and updated responses from some of the questions served prior to the initial hearing.

The information sought is information that should be readily available to the Companies because it is information its experts should have relied upon in forming their testimony. Providing this information will also aid in hearing this matter. Without this information being provided prior to hearing, the Companies’ witnesses must be subjected to a much more extensive cross-examination on the technical questions to ensure the witnesses for Alltel have all the necessary information to defend their testimony under cross-examination.

The Companies’ supplemental Objections and Responses to Alltel’s First Set of Interrogatories and Requests for Production of Documents is attached hereto as Exhibit A. Because the responses by each of the remaining companies were identical with the exception of different numbers in the attachments, Exhibit A consists of only the McCook responses.

Alltel is requesting an Order to Compel Petitioners to answer Data Requests.

¹ The other two companies settled the reciprocal compensation question with Alltel prior to the initial hearing and, therefore, the issue was resolved at the time of the initial hearing.

ANALYSIS

Under Public Utilities Commission Administrative Rule 20:10:01:22.01, an order to compel may be granted by the Commission upon the showing of good cause by a party to the proceeding. Additionally, this rule sets forth that discovery is to proceed “in the same manner as in the circuit courts of this state.” A.R.S.D. 20:10:01:22.01 (1998).

In South Dakota circuit court discovery is governed by SDCL § 15-6-26(b):

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The discovery rules are to be accorded a “broad and liberal treatment.” Kaarup v. St. Paul Fire and Marine Insurance Co., 436 N.W.2d 17, 21 (S.D. 1989). “A broad construction of the discovery rules is necessary to satisfy the three distinct purposes of discovery (1) narrow the issues; (2) obtain evidence for use at trial; (3) secure information that may lead to admissible evidence at trial.” *Id.* at 19 (citing 8 C. Wright and A. Miller, Federal Practice and Procedure, § 2001 (1970)).

Alltel has set out below the specific questions where it seeks an Order Compelling discovery. Attached as Exhibit A are the Supplemental Responses of the Companies. The explanation below sets forth the question, the material being sought and why the material is relevant. Of the questions set forth below, questions DR6, DR 22 and DR 34 were not supplemented by Petitioners from Alltel’s original interrogatories in this matter.

DR2 Provide 2007 minute of use data by Petitioner terminating CLLI code. State the type of traffic (i.e., intra-exchange voice traffic, intra-exchange dial-up ISP traffic, inter-exchange local and/or EAS, CMRS, intrastate toll, and interstate toll) whether the reported data are actual measured or estimated, and identify the records that support the responses. If 2007 usage is not available provide data for the most current period measured for each type of traffic.

- (a) To the extent the MOU data provided differs from the MOU data used in Petitioner's cost study filed in this proceeding, explain and reconcile the differences.**
- (b) To the extent the MOU data provided herewith are actual, identify all usage terminating to an ISP trunk group.**
- (c) To the extent the MOU data are actual, identify all usage originated to Alltel and the trunk group that carries that traffic to Alltel.**
- (d) To the extent the MOU data provided is an estimate, explain the method by which ISP-bound traffic (i.e., dial-up internet traffic) estimate was derived.**

Alltel seeks documents supporting minutes of use, input and/or working papers.

Since these minutes of use are actual, there must be additional detail supporting the rolled-up numbers made for the entire year (typically this would be based on one or more short term traffic studies conducted by RLEC during the course of the reporting year. Alternatively, the data would be gathered from different reports and compiled to produce the aggregate traffic volumes). The detail contains information relevant to capacity utilization of RLEC transport network.

Essentially, the Companies have provided the past minutes of use in a summary input format, but failed to provide any breakdown on those minutes of use or documents supporting the minutes of use. Alltel is unable to make a determination of where these minutes of use came from or the reliability of the numbers. Obviously, there must be something, work papers, history of traffic reports or some other supporting documentation that backs up the minutes of use data. As DR 10, listed below, notes request has been made for production of documents upon which

the parties would rely. Coupled with DR2, the Companies should provide some foundational documents for their past minutes of use and projected minutes of use.

DR6 Provide a copy of Petitioner's 2005, 2006, and 2007 Rural Utility Service ("RUS") Annual Report.

Alltel seeks an order compelling RLECs to provide 2007 RUS Annual report.

Among other things, these reports provide evidence of broadband (DSL) deployment within an RLEC network. RLECs have been required to report DSL only since 2006. Some RLECs either did not report in 2006 or deployed DSL subsequent to 2006. Access to 2007 RUS reports may provide evidence of broadband deployment not in 2006 reports and would provide evidence of demand trends for those RLECs reporting deployment in 2006 which can assist in assessing forward looking demand assumptions.

DR8 Confirm or deny if any Petitioner Affiliate or any entity not affiliated with Petitioner is occupying any building space, land or is utilizing any equipment or property owned or provided by Petitioner. If this statement is confirmed, identify the building, land, or power and provide a copy of any cost study and any methodology used to allocate costs between the affiliated entities.

No exhibit F provided for McCook, Kennebec. Alltel requests those companies provide the information

DR10 Provide copies of all documents upon which you rely to support your answers to all Data Requests.

This data request is included because it incorporates documents from materials needed to respond to the previous data requests. If the Companies do not provide the supporting documents, the Companies should be required to produce the documents. As noted in the explanation following DR2 above, the Companies clearly have to have some foundational documents for minutes of use and those should be produced to test their numbers.

DR22 Provide your current or most recent measure of interoffice trunk utilization (annual MOU/trunk) and the supporting work papers used to compute the measure.

The detail would contain important information relevant to capacity utilization and efficiency of RLEC transport network. This information provides the Commission the ability to determine whether the Companies' transport networks are efficient because if carriers are simply adding trunks and over sizing their network without demand, low trunk utilization will result. Higher trunk utilization would be evidence that could support a larger network.

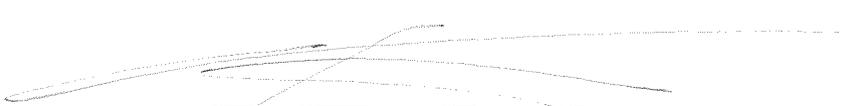
DR34 Provide the current or most recent average quantity of trunks or DS0 circuits per DS1. Provide source data and supporting calculations.

This is needed to determine how transport is actually deployed within the RLEC network. The Companies only provided such data in their model for SS7 signaling circuits (a unique application that is only a small percentage of transport network) and not for the circuits actually used for the transport of Alltel or voice traffic.

CONCLUSION

The production of the above information is well within the broad scope of discovery. This information is clearly within the scope of discoverable material and does not contain any items that would be considered privileged. Furthermore, the acquisition of this information should narrow the issues before the Commission.

Dated this 8 day of June, 2009.



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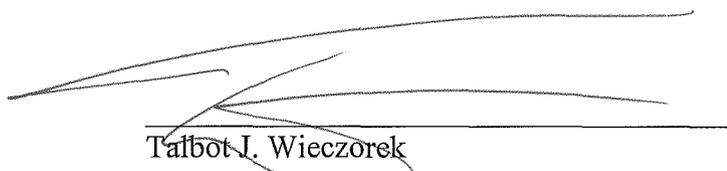
CERTIFICATE OF SERVICE

I hereby certify that on the 8 day of June, 2009, I sent electronically a true and correct copy of **ALLTEL'S BRIEF IN SUPPORT OF MOTION TO COMPEL** to:

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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.

TC 07 - 112
TC 07 - 114
TC 07 - 115
TC 07 - 116

IN THE MATTER OF THE PETITION OF
KENNEBEC TELEPHONE COMPANY
FOR ARBITRATION PURSUANT TO
THE TELECOMMUNICATIONS ACT OF
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AGREEMENT WITH ALLTEL, INC.

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.

PETITIONERS' SUPPLEMENTAL
RESPONSES TO ALLTEL
COMMUNICATIONS, LLC'S
DISCOVERY REQUESTS

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.

PETITIONERS' SUPPLEMENTAL RESPONSES TO
FIRST SET OF INTERROGATORIES MADE BY ALLTEL

DR 1

For each Data Request, identify each person who assisted in the preparation of these responses, or who provided information for the purpose of preparing these responses.

RESPONSE: These responses were prepared by Consortia Consulting, Vantage Point Solutions and undersigned counsel. Consortia Consulting assisted with those responses pertaining to the development and inputs used in the revised FLEC study. Vantage Point Solutions assisted with those responses pertaining to those costs removed from the revised FLEC study per the Commission's January 27, 2009 oral ruling and February 27, 2009 Findings of Fact and Conclusions of Law.

DR 2

Provide 2007 minute of use data by your terminating CLLI code. State the type of traffic (i.e., intra-exchange voice traffic, intra-exchange dial-up ISP traffic, inter-exchange local and/or EAS, CMRS, intrastate toll, and interstate toll) whether the reported data are actual measured or estimated, and identify the records that support the responses. If 2007 usage is not available provide data for the most current period measured for each type of traffic.

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- (d) To the extent the MOU data provided is an estimate, explain the method by which ISP-bound traffic (i.e., dial-up internet traffic) estimate was derived.

OBJECTION AND RESPONSE: Petitioner re-states its original objection to this request on the basis that it is overly broad and unduly burdensome. Without waiving this objection, Petitioners Kennebec Telephone, McCook Cooperative and West River Telephone used transport demand data from years 2006 through 2008. That same data was not available for Santel Communications and, therefore, Santel used circuit demand for 2006 through 2008 and transport demand for 2004 and 2005 in its revised FLEC study.

The responses to the specific subparts of DR 2 remain the same as those answers previously provided by the Petitioners in their original discovery responses. See below.

- (a) N/A
- (b) The captured minute of use data does not separately identify ISP trunk usage from local usage.
- (c) The captured minute of use data does not separately identify traffic originating to Alltel.

(d) N/A

Additionally, see Tables 7 through 10 Tim Eklund's Testimony, which were prepared in response to the Commission's January 27, 2009 oral ruling and February 27, 2008 Findings of Fact and Conclusions of Law. See also Kennebec 2009 FLEC 00013, McCook 2009 FLEC 000017, Santel 2009 FLEC 00021, West River 2009 FLEC 00019, which documents were included with the work papers accompanying the revised FLEC study. All of the referenced documents were served upon Alltel on April 24, 2009.

DR8 Provide copies of all documents upon which you rely to support your answers to all Data Requests.

RESPONSE: See exhibits attached hereto and identified herein. See also the revised FLEC studies, accompanying work papers and supporting testimony served on Alltel on April 24, 2009.

DR 11 Provide complete cost models, cost schedules, work papers or other documentation underlying switching "price inputs" contained in the "Price Inputs" spreadsheet of each of your FLEC Model. This documentation should identify:

- (a) Composition of Switch Processor prices in terms of quantities and unit investments for hardware and software. (Provide separately quantities and unit investments for standalone, host and remote switches.)
- (b) Composition of Trunk Card prices in terms of quantities and unit investments for hardware and software, if any.
- (c) Various "loading" factors used, such as engineering and installation factors, sales tax factors, miscellaneous construction cost factors and others.
- (d) Composition of other switch investments, if any.

RESPONSE: See Exhibit G.2 produced with Petitioners' Supplemental Responses to Alltel's Discovery requests, which were served on Alltel on May 16, 2008. Additionally, see Exhibits NW-S-1 through NW-S-4 in Nathan Weber's supplemental testimony and Table 6 in Tim Eklund's supplemental testimony, both of which were served on Alltel on April 24, 2009. The attached exhibits represent the Petitioners' respective switching cost estimates which were revised pursuant to the Commission's January 27, 2009 oral ruling and February 27, 2009 Findings of Fact and Conclusions of Law. Pursuant to the Commission's ruling, the revised cost estimates exclude the costs associated with Web Self-Care, CALEA and Centrex.

DR 12

Provide the sources of unit investments identified in DR11. These may include analyses of actual switch investments, analyses of vendor quotes, analyses based on vendor switch configuration models used for construction estimates or others.

RESPONSE: Petitioners' responses to this request have not changed from those discovery responses served on Alltel on February 29, 2008, and May 16, 2008. The source of the unit investment associated with the switch electronics estimates is based upon actual proposals received from vendors for entities other than the Petitioners. The pricing utilized is specific to projects of similar size and scope to the Petitioners' respective networks. As previously described, the engineering design was based on a commonly deployed packet switching platform. Details concerning unit descriptions, unit quantities, and category pricing can be found in Exhibits NW-S-1 through NW-S-4 in Nathan Weber's supplemental testimony and Table 6 in Tim Eklund's supplemental testimony, both of which were served on Alltel on April 24, 2009.

DR 21

Provide the complete cost models, cost schedules, work papers or other documentation underlying switched transport electronics by exchange and for the three equipment categories. This documentation should identify:

- (a) Composition of the investment (by exchange and equipment category) in terms of equipment items (name and description), quantities and unit investments.
- (b) Basis for equipment item quantities in terms of total demand and the engineering parameters used to determine quantities needed to serve total demand.
- (c) Source of unit investments; *e.g.*, analyses of actual switched transport electronics installations, analyses of vendor quotes, analyses based on vendor configuration models or other.

RESPONSE: See those work papers served with the revised FLEC study on April 24, 2009.

DR 23

Provide your current or most recent measure of interoffice trunk utilization (annual MOU/trunk) and the supporting work papers used to compute the measure.

OBJECTION: Petitioners re-state those objections previously made to this request, including: that it is overly broad and unduly burdensome; it seeks information which is not required in conformance with the development of a FLEC analysis, and it improperly suggests that the Petitioner has a duty to continuously update its FLEC study as each input becomes more currently available. Without waiving these objections, see Tables 7 through 10 of Tim

Eklund's Testimony prepared in response to the Commission's January 27, 2009 oral ruling. See also Kennebec 2009 FLEC 00013, McCook 2009 FLEC 000017, Santel 2009 FLEC 00021, West River 2009 FLEC 00019, which documents were included with the work papers accompanying the revised FLEC study.

DR 51

If a person named is to provide testimony, affidavit, or whose opinion will be used in this arbitration, state the:

- (a) Subject matter of any testimony expected to be given by such person.
- (b) The substance of the facts and opinions to which that person is expected to testify.
- (e) A summary of the grounds for each of the opinions held by that person.
- (f) Whether that person is to be compensated for work and efforts in connection with the above-entitled action, and, if so, how much is to be paid.
- (g) Whether that person is to receive additional compensation if Claimant is successful in this action; and if so, state the terms of the additional compensation.

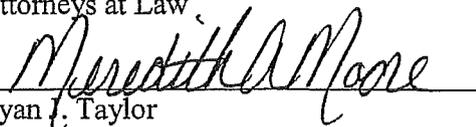
RESPONSE: Petitioners have filed testimony for the following individuals and anticipates filing rebuttal testimony for the same individuals:

Tim Eklund, Consortia Consulting – Engineering, FLEC Study
Nathan Weber, Vantage Point Solutions – InterMTA Study

Petitioner reserves the right to identify any other witnesses based on Alltel's testimony filed in rebuttal to that filed by the Petitioners on April 24, 2009, and/or to rebut or respond to testimony proffered by Alltel's identified witnesses.

Dated this 11th day of May, 2009.

CUTLER & DONAHOE, LLP
Attorneys at Law



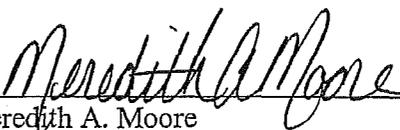
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served electronically on the 11th day of May, 2009, upon the following:

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