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. **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.** **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.** **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** **TC 07 - 114** **TC 07 - 115** **TC 07 - 116** **PETITIONERS' POST-HEARING MEMORANDUM OF LAW IN SUPPORT OF THEIR ARBITRATION POSITIONS (PUBLIC)**

This matter came on for arbitration before this Commission on July 29, 30 and 31, 2008, and again on August 3, 2009. 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"), hereby respectfully submit this Memorandum of Law[1] in summary and support of those positions which they advocated at the time of the hearing and which they believe should be appropriately memorialized in their final respective interconnection agreements with Alltel, Inc.[2] Where appropriate this Memorandum will denote any issues which are unique to one particular company.

FACTUAL BACKGROUND

On October 19, 2007, each of the above-referenced Petitioners filed with this Commission a Petition for arbitration with Alltel of all unresolved issues relating to ongoing negotiations between the parties for the development of an interconnection agreement. Specifically, Petitioners raised the following issues:

1. **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)?**

2. **Issue 2 (Section 7.2.4): What is the appropriate Percent InterMTA Use Factor to be applied to non-IntraMTA traffic exchanged between the parties?**

3. **Issue 3. (Section 5.0 and Appendix A): 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?**

4. **Issue 4. What is the obligation of the parties with respect to dialing parity?**

5. **Issue 5. What is the appropriate effective date and term of the Agreement?**

On November 13, 2007, Alltel filed its Response to all of the Petitions for Arbitration, wherein it identified two additional issues. Specifically, Alltel asked this Commission to determine the following:

[1] Confidential information has been designated through yellow highlighting in this Memorandum.

[2] Beresford Municipal Telephone Company ("Beresford") also filed a Petition for Arbitration and presented testimony and argument at the time of the July 29, 30 and 31, 2008 hearing. Beresford and Alltel, however, reached a settlement on Issue 1 prior to the hearing itself. Therefore, all issues relating to Beresford have been either settled or resolved through the Commission's February 27, 2009 Findings of Fact, Conclusions of Law and Order, and Beresford does not join in the arguments made in this submission.

6. **Issue 6. What is the appropriate definition of IntraMTA and InterMTA Traffic?**

7. **Issue7. (Section 3.1.3) Which party can initiate a direct interconnection request?**

Prior to the July 2008 hearing in this matter, Alltel and the Petitioners settled several of the outstanding issues, including Issues 4, 5 and 7. Kennebec and West River also reached settlement with Alltel on Issue 3. Issue 3 remained open for McCook and Santel. The issues presented at the time of the July 2008 hearing were Issues 1 and 2 as identified by all of the Petitioners and Issue 6 as identified in Alltel's Response.

On February 27, 2009, this Commission issued Findings of Fact and Conclusions of Law on Issues 1, 2 and 6. Issues 2 and 6 were resolved in their entirety; however, the Commission Ordered that the Petitioners revisit certain sub-issues of Issue 1 and revise their respective FLEC studies accordingly. Specifically, the Commission ordered that each Petitioner:

> [S]hall revise and refile its cost study reflecting the following: (1) the elimination of the costs associated with the Web-Self Care system, including the Web Self-Care License and Web Self-Care system-non-NEVS, the CALEA license, and the Centrex license; (2) the use of a rate equivalency method basis of cost assignment for transport costs; and (3) a new forecasted demand[.]

See Findings of Fact, Conclusions of Law and Order in Dockets TC 07-112, TC 07-114, TC 07-115, TC 07-116, all of which are dated February 27, 2009.

In accordance with the Commission's directive, the Petitioners revised their respective FLEC studies and submitted Supplemental Pre-Filed Direct Testimony from expert witnesses Nathan Weber and Tim Eklund on April 24, 2009, and Supplemental Pre-Filed Rebuttal Testimony from both witnesses on July 17, 2009. A hearing on the remaining sub-issues within Issue 1 was held on August 3, 2009.

ARGUMENT AND ANALYSIS

As previously identified in Petitioners' Pre-Filed Testimony, its initial Memorandum of Law dated October 10, 2008, and in the Commission's Findings of Fact and Conclusions of Law,

this Commission, as the arbitrating body, has jurisdiction over this matter to determine the reasonableness of Petitioners' proposed reciprocal compensation rates and the methodology used to arrive at those rates. Those rules set out by the Federal Communications Commission ("FCC") in 47 C.F.R. § 51.505[3] and §51.511 form the framework for the Commission's analysis.

[3] 47 C.F.R. § 51.505 provides:

(a) In general. The forward-looking economic cost of an element equals the sum of:
  (1) the total element long-run incremental cost of an element, as described in paragraph (b); and
  (2) a reasonable allocation of forward-looking common costs, as described in paragraph (c).

(b) Total element long-run incremental cost. The total long-run incremental cost of an element is the forward-looking cost over the long run of the total quantify of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.
  (1) Efficient network configuration. 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.
  (2) Forward-looking cost of capital. The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.
  (3) Depreciation rates. The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) Reasonable allocation of forward-looking common cost.
  (1) Forward-looking common costs. Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.
  (2) Reasonable allocation.
    (i) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.
    (ii) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:
  (1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts.
  (2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609 of this part.
  (3) Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements.
  (4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which the rate is being established.

As previously agreed to by the Parties and found by the Commission, the Petitioners are to use the FLEC methodology for a determination of their respective rates.

I. 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)?

There are two components of the proposed FLEC rate: the switching rate and the transport rate. See 47 CFR § 51.509. The Commission's Findings of Fact and Conclusions of Law and Order touched on both components in an effort to ensure that the rates proffered by Petitioners are reasonable and ultimately compliant with the FCC's rules and regulations. At the outset of this proceeding the Petitioners submitted expert testimony on the development of their rates. Nathan Weber testified as to the proposed network he designed for each of the Petitioners and the various investments that comprised that rate. Tim Eklund testified as to the FLEC model ultimately used to determine the appropriate rates for transport and termination for each of the Petitioners. Following issuance of the Commission's Findings of Fact and Conclusions of Law, both Nathan Weber and Tim Eklund refined their initial testimony and produced additional testimony pursuant to the Commission's February 27 Order.

A. The Petitioners switching costs were properly includable in the FLEC model and produce a reasonable switching/termination rate.

In its Findings of Fact and Conclusions of Law, the Commission addressed three sub-issues related to the switching rate: (1) what switch investment should be included in the cost study; (2) what is the appropriate switching annual cost factor, and (3) what percentage of switch investment is usage sensitive and recoverable. See Findings of Fact, ¶¶17-20. Significantly, the Commission determined that the Petitioners' proposed switch investment was properly includable. See id. at ¶17. It further concluded that the Petitioners' annual switching cost factors were reasonable. Id. at ¶¶19-20. However, the Commission did find that some of the switch components were not usage sensitive and were, therefore, not properly included in the total switch investment. Id. at ¶18. Accordingly, the Commission ordered the Petitioners to remove

from their FLEC studies those costs associated with Centrex, CALEA, and the web self-care system/license and to recalculate the switching cost per minute once these three switching items were removed from the total switch investment cost. Id.

1. The costs associated with Centrex, CALEA and Web Self-Care have been removed from the switching investment.

In his Supplemental Pre-Filed Direct and Rebuttal Testimony, Nathan Weber addressed the revised cost estimates for the switching networks designed for each of the four remaining Petitioners.[4] See Hearing Exhibit 78, p. 3, lines 7-10; Hearing Exhibit 79, p. 4, lines 1-25, p. 5, lines 1-11; Transcript p. 15, lines 14-25; p. 17, lines 8-25, p. 18-19, p. 20, line 1. Through exhibits to his Direct and Rebuttal Testimony, Mr. Weber provided a bid from the manufacturer of the switch used in the Petitioners' proposed FLEC networks. See Exhibit 79, NW-R2-3. The bid detailed the precise costs of the switch components removed from the revised FLEC study. Id.

In its reply testimony, Alltel's witness, Craig Conwell, initially quibbled that he was unable to determine whether Petitioners had in fact removed the appropriate switching costs from its revised FLEC study because the Petitioners did not disclose the unit investment price associated with Web-Self Care, Centrex and CALEA. However, once the individual unit investments were disclosed, Alltel took no issue with the bid proposal, unit investment costs or Mr. Weber's testimony regarding the same. See Exhibit 19, p. 29, lines 14-25. Accordingly, the switching rates proposed by the Petitioners comport with this Commission's February 2009 Order. See Hearing Exhibit 81, p. 13, Table 6.[5]

[4] The revised switching numbers for the remaining Petitioners are as follows:

Kennebec: [redacted]
McCook:
Santel:
West River:

[5] Table 6 of Mr. Eklund's Pre-Filed Supplemental Direct Testimony illustrates the following switching rates:

2. No adjustment to the remaining switch investment is required.

Because Alltel cannot argue with the Petitioners' removal of the above-referenced switch investments, Alltel found a new point of attack, or really, rather an old one. In its testimony, Alltel argued that Petitioners opened the door for reconsideration of this Commission's February 27, 2009 ruling validating the inclusion of certain costs, most notably the switch processor, in Petitioners' total proposed switching investment. See Findings of Fact, ¶¶16-20. The Commission approved the inclusion of the costs of the switch processor on the basis that the switch processor is usage sensitive. Id. Alltel now argues that the Petitioners' revised FLEC studies and supporting testimony establish that the switch processor was not in fact usage sensitive because the revised FLEC study assumed a decline in switched demand. This, however, is not the case.

As explained in Mr. Eklund's Supplemental Rebuttal Testimony, the FCC has specifically found that switching costs may be recovered through per minute usage charges. See Exhibit 80, p. 11 (citing 47 C.F.R. § 51.509; Finding of Fact, ¶17); see also WWC License, L.L.C. v. Boyle, 459 F.3d 880, 895 (8th Cir. 2006) (citing 47 C.F.R. § 51.505(a)(2) (identifying forward looking costs as a combination of TELRIC and a "reasonable allocation of forward-looking common costs"); 47 C.F.R. § 51.509(b) (providing that "[l]ocal switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute

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	Switching Investment with CALEA, Centrez and Web Self-Care	Switching Investment with CALEA, Centrex and Web-Self-Care Removed	Rates Presented at August 2008 Hearing	Rates Presented at July 2009 Hearing
McCook	[redacted]	[redacted]	[redacted]	[redacted]
Kennebec	[redacted]	[redacted]	[redacted]	[redacted]
Santel	[redacted]	[redacted]	[redacted]	[redacted]
West River	[redacted]	[redacted]	[redacted]	[redacted]

See Hearing Exhibit 80, p. 13, Table 6.

usage charges for the switching matrix and for trunk ports[.]")). He further explained that in no way does a reduction in switch minutes violate the FCC's statement that switching costs may be recovered through per minute usage charges. While a reduction in switched access demand is assumed in the revised FLEC model, it does not change the fact that a switch processor is a required investment for calls to be placed between the subscribers of Alltel and the respective Petitioners. See Exhibit 80, p. 11.

Moreover, the switch processor is necessarily a shared component in the switch. As previously explained by Petitioners' expert witness Sue Vanicek:

> The FCC rules require that the costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Mr. Conwell is suggesting that others, for example consumers subscribing to basic local exchange service and interexchange carriers that provide long-distance service, should be required to pay for the use of the switch processor, while wireless carriers such as Alltel should not. Such a pricing regime, that is, requiring consumers and long-distance carriers to pay for the switch processor while not requiring Alltel to do so, would not efficiently apportion costs among users. If Alltel was not required to pay for the use of the switch processor, it would encourage Alltel to maximize its termination to the RLECs, as Alltel would likely receive revenues from its end users for doing so, while not incurring termination costs for the use of switch components.

Hearing Exhibit 11, p. 8, lines 11-25.

Finally, the fact remains that the switch is sized for usage and is, therefore, usage sensitive and includable in the switching investment used in the FLEC study.[6] Ultimately, nothing has changed since the time of this Commission's ruling regarding switching costs. Alltel

[6] On cross-examination, Mr. Weber agreed that the switch investments, beyond the removal of certain costs as Ordered by the Commission, were not adjusted. He also explained why it was not adjusted:

> [A]nd the reason for that is because when you look at the switch itself, the switch was designed off of usage-sensitive basis of the number of concurrent call attempts it could handle, not necessarily minutes of use. So while minutes of use may decline, that's not indicative of the requirements for the concurrent call attempts.

See Hearing Transcript, p. 69, lines 3-10.

is simply trying to once again eliminate whatever costs it can from the FLEC study. Other than a few brief references, Alltel did little at the time of the hearing to substantiate its own position.

As evidenced by the testimony and exhibits in the record, the Petitioners properly complied with the Commission's directive to remove from the FLEC study those costs associated with specific unit investment pricing which pricing was based upon a recent bid for a company similarly situated to those involved in these proceedings. Alltel took no issue with the unit investment or Mr. Weber's explanation as to how those costs were determined, calculated and ultimately removed from the total switch investment. Alltel should not now be allowed, particularly given the paltry and conclusory statements on which its arguments are based, to challenge this Commission's February ruling regarding switching costs. As such, Petitioners respectfully request that this Commission uphold their proposed switching rates as reasonable and compliant with FCC rules.[7]

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[7] By way of review, the Petitioners' proposed switching rates were arrived at through the following process:

1. The total forward-looking switch investment was obtained from Vantage Point. The switch investment for the Petitioners was established by Vantage Point and was compared to recent switch invoices purchased by rural LECs of various sizes to verify its reasonableness. The switch investment amount for the Petitioners was based on the location of existing wire centers, current subscribers, and engineering trunking guidelines.
2. The total forward-looking switching costs also include:
   - Power, land and building investment amounts which are based on account relationships in Petitioners' current financial statements.
   - Common investment amounts which include motor vehicles, work equipment, furniture, office equipment and general purpose computers. Using Petitioners' current financial statements, a ratio of common investment to direct investment was calculated. This ratio was then applied to the projected direct investment amounts to calculate the common investment amounts.
   - Annual charges were calculated as an annuity based on the prescribed life of each asset account, a rate of return of 11.25 percent, and income tax rates. Since Petitioners are cooperatives (with the exception of Kennebec, whose rate was adjusted accordingly), the study uses a federal tax rate of 0 percent.
3. Adjustments eliminating switching termination investment:
   - 25 percent of the total forward-looking switch investment was excluded for the non-traffic sensitive line portion.
   - 5 percent of the switch matrix and processor was excluded for their use in the provision of vertical services.
   - The unit investments associated with CALEA, Web Self-Care and Centrex were removed from the total switching investments.
4. The summation of items 1 and 2 less 3 results in the annual net FLEC investment switching or termination cost for the Petitioners.

B. Petitioners' Proposed Transport Rates Are Reasonable.

Because of the import and complexity of this issue, it is helpful to revisit how the transport rates were and are calculated. As previously explained by Tim Eklund, transport costs include the cost of interoffice transport facilities, which are then further broken down into sub-categories of switched transport electronics and switched transport outside plant costs. See Hearing Exhibits 46-49, p. 11, lines 4-8. Before developing the cost per minute for each transport sub-category, the special services (dedicated) circuit portions of the transport costs are eliminated from the cost calculations. The total costs associated with the remaining categories are then divided by the total demand in minutes of use so as to arrive at the total transport and termination rate. Id. Just as with switching costs, all of the costs identified 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.

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5. In calculating expenses, the direct expenses are first calculated. The direct expenses include the labor costs associated with maintenance and repair of plant and equipment. These amounts were calculated by applying a ratio, based on account relationships in Petitioners' current financial statements, to the total forward-looking switch investment amounts.
6. The common expenses were then calculated. The common expenses include support expenses, marketing expenses split between wholesale and retail, customer services expenses split between wholesale and retail and corporate expense. Common expenses were calculated by applying the relationship of common expenses to direct expenses, based on account relationships in Petitioners' current financial statements to the total forward-looking switch investment amounts.

See Hearing Exhibits 46-49. p. 13, lines 15-28; p. 14, lines 1-28. p. 15, lines 1-2.

Based upon the outline above, the switching rates presented by the Petitioners at the time of the August 2009 hearing are as follows:

Kennebec:
McCook:
Santel:
West River:

See Hearing Exhibit 81, TE-SR-5.

All of the costs identified must also be based on a forward-looking network design.[8] See generally 47 C.F.R. §§ 51.505 and 51.511.

1. The Commission's Directives.

In its February 2009 Findings of Fact and Conclusions of Law and Order, the Commission ordered that Petitioners do two things:

1. Recalculate the Transport Rate in order to redistribute cost between special/dedicated circuits and switched circuits using the "Rate-Equivalent" method instead of the Path method as advocated by the Rural LECs or the DS1/Bandwidth method as associated by Alltel; and

[8] For purposes of further brief review:

The total forward-looking transport investment also includes:

1. Power, land and building investment which are based on account relationships in Petitioners' current financial statements for transmission only.
2. Common investment amounts, which include motor vehicles, work equipment, furniture, office equipment and general purpose computers. Using Petitioners' current financial statements, a ratio of common investment to direct investment was calculated. This ratio was then applied to the projected direct investment amounts to calculate the common investment amounts.
3. Annual charges were calculated as an annuity based on the prescribed life of each asset account, a rate of return of 11.25 percent and income tax rates. Since Petitioners are cooperatives (with the exception of Kennebec), the study uses a federal tax rate of 0 percent.

See Hearing Exhibits 46-49, p. 15, lines 7-19.

The following adjustments to transport investment were made:

1. A portion of total forward-looking transport investment was eliminated for facilities not used in inter-office transport.
2. Special transport for inter-office electronics and inter-office plant was eliminated.
3. The summation of items 1 and 2 less 3 results in the annual net FLEC investment transport cost.
4. In calculating expenses, the direct expenses are first calculated. The direct expenses include the labor costs associated with maintenance and repair of plant and equipment. These costs were calculated by applying a ratio, based on account relationships in Petitioners' current financial statements, to the total forward-looking transport amounts.
5. The common expenses were then calculated. The common expenses include support expenses, marketing expenses split between wholesale and retail, customer services expenses split between wholesale and retail and corporate expense. These expenses were calculated by applying the relationship of common expenses to direct expenses, based on account relationships in Petitioners' current financial statements to the total forward-looking transport amounts.

See Hearing Exhibits 46-49, p. 15, lines 20-22; p. 16, lines 1-16.

2. Update the forecasted demand for transport and recalculate the transport rate per minute using the updated transport demand.

See Hearing Exhibits 46-49, p. 15, lines 1-22; p. 16, lines 1-16.

a. Petitioner's proposed transport network is consistent with TELRIC principles.

Implicit within the Commission's directive is an inquiry into the Petitioners' proposed transport system and the costs associated therewith. The Petitioners' proposed transport rates included those costs associated with the transmission of telecommunications traffic: switched transport electronics and switched transport outside plant costs. See 47 C.F.R. § 51.701. The includable costs were and are again based upon the forward-looking network design described by Nathan Weber. The efficient network configuration has two components: (1) "[I]t requires that the network configuration be based on the most efficient technology currently available, and (2) it requires that the lowest cost network configuration be used given the existing location of the ILEC's wire centers." § 51.505(b)(1). Therefore, the question is whether the transport system designed for use in the Petitioners' respective FLEC models is efficient and the lowest cost based upon Petitioners' current network configurations.

Alltel has argued from the inception of this proceeding that the Petitioners' proposed transport system is oversized. It now argues even more strenuously that the Petitioners cannot justify their use of the proposed OC-192 transport system. However, Alltel's argument ignores both the reality of the telecommunications industry and the FCC's own rules.

At the time of the August 2009 hearing, Nathan Weber testified that he designed the FLEC networks with all services, both switched and special, in mind. He assumed, as he must, that the network would be used for multimedia services. See Hearing Transcript, p. 62, lines 15-16. As Mr. Weber testified, the networks proposed by the Petitioners, and actually used by the Petitioners, must provide for a variety of services and the design is based upon a single network

for the provisioning of those services. See Hearing Transcript, p. 35, lines 14-16. Simply stated, it is wholly inefficient to construct two separate networks for the handling of voice and special services. Such an undertaking would result in a significant increase in costs, which is not what the FCC intended nor is it likely what Alltel desires. This premise remains true regardless of whether one is engineering an actual network for implementation tomorrow or a hypothetical one which is being used for purposes of a FLEC model. As Mr. Weber explained:

> When you look at engineering this thing on paper it's about engineering a network that you would truly put in place, that you believe is necessary for these companies. And when I put together the original FLEC engineering model the reason why I used OC-192 is because I fully believe that these companies need to have an OC-192 for the next 7-10 years of useful life of that equipment.

See Hearing Transcript, p. 82, lines 25; p. 84, lines 1-7.

While the OC-192 transport system provides significant capacity, it is not an unjustified amount of capacity under all of the circumstances. As Mr. Weber explained, if at any one point in time, the bandwidth requirement on the Petitioners' network exceeds an OC-48, an OC-192 is required. See Hearing Transcript, p. 24, lines 18-25; p. 25, lines 1-15.[9] The Petitioners in this case currently utilize transport systems that are larger than an OC-12 or OC-48. As testified to by Mr. Weber, West River currently has an OC-192 in place. Santel uses the equivalent of an OC-192 in its network. Kennebec has a node in its network that resides in an OC-192 ring.

[9] In response to questioning from Commission Staff as to what happens if bandwidth exceeds the capacity of the OC-48 system, Mr. Weber responded as follows:

> A: Well, the problem is is that, you known, an OC-48 has a finite, limited amount of traffic it can carry. If for some reason the traffic demand, you know, rises above the capacity of an OC-48 by even a DS-0, then you need to increase the size of the network to an OC-192 to support it. I mean, any time if that spikes above an OC-48, it means the OC-48 physically can't carry that traffic.
>
> Q: But what happens to the traffic? Does it carry 10 seconds later?
>
> A: It would never be put on the network because there is just physically no way to interface it with the network.

See Hearing Transcript, p. 71, lines 22-25; p. 72, lines 1-4.

McCook is currently in the planning phrase of implementing a network with an OC-192 equivalent transport system. Id., p. 25, line 25; p. 26, lines 1-3. The Petitioners' respective proposed networks include an OC-192 transport system because they expect to exceed the capacity of an OC-48 within the life of the equipment. See Hearing Transcript, p. 91, lines 14-25; p. 92, lines 1-4.

Mr. Weber further testified that ninety-percent of the networks he has engineered over the past nine years have used an OC-192 transport system or its equivalent. He testified that he has never put in a network that uses an OC-3 transport system. See Hearing Transcript, p. 88, lines 1-8. Significantly, he testified that he does not think an OC-3, OC-12 or even an OC-48 transport system is sufficient for any of the Petitioners. Id., at p. 88, lines 9-23. It seems nonsensical that the FCC would require companies like these RLECs to construct a future, *forward-looking* network that utilizes a smaller transport system that what they currently have.[10] Such a proposition is even more nonsensical in light of the fact that the cost is not significantly greater when purchasing an OC-192 system than an OC-48 or OC-12 transport system. Id. at p. 89, lines 17-25; p. 90, lines 1-14. Indeed, the use of an OC-48 transport system rather than an OC-192 transport system results in only an 11% savings. Even more tellingly, the use of the OC-12 system rather than an OC-48 system results in only a savings of 1%. See Footnote 12 infra; see also MCI Worldcom Communications, Inc. v. BellSouth Telecommunications, Inc., 446 F.3d 1164, 1175 (11th Cir. 2006) (holding that as long as a rational carrier would utilize a particular

[10] Mr. Weber also testified on the efficiency considerations present when designing a network:

Q: In your professional experience is it efficient to design a network – whether it's one on paper or whether it's one that will be ultimately implemented for a company, is it efficient to design a network using a transport system that is smaller or has less capacity than what these four companies are using today?

A: I don't believe so.

See Hearing Transcript, p. 90, lines 15-21.

technology and can support use of the same, it is not a violation of TELRIC if that technology is not the least expensive of the varying options available).

Moreover, it can hardly be considered consistent with FCC principles to suggest using technology that is considered out-of-date by standard engineering practice. See Hearing Transcript, pp. 84, lines 15-25l p. 85, lines 1-24; p. 87, lines 1; p. 88, lines 1-23; p. 89, lines 1-16; p. 90, lines 15-21. The network is based on the concept of TELRIC, which is a forward-looking cost methodology that assumes that carriers, such as these Petitioners, will design a network using the most advanced and efficient technology available. See 47 C.F.R. 51.505(b). See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* 11 FCC Rcd 15499, *modified on recon.,* 11 FCC Rcd 13042 (1996); AT&T Communications of Illinois, Inc. v. Illinois Bell Telephone Co., 349 F.3d 402, 405 (7th Cir. 2003) ("Any sensible carrier builds more network capacity than can be used at the moment; that way capacity will be available as additional customers demand service, without waiting for the arrival of new equipment, excavating streets to lay new wire and so on."). It also assumes that a single network will be constructed and that such network may be used for other services than just voice. See WWC License, LLC v. Boyle, 459 F.3d 880 (8th Cir. 2006) (noting that "the forward-looking network proposed by Great Plains for the purpose of rate calculations is a network that provides functions over different kinds of circuits, including functions above and beyond those necessary to carry traditional usage based services."). One need only look to the FCC rules themselves to establish that federal law does not require that the network used in the FLEC study be designed exclusively for voice traffic. See 47 U.S.C. § 51.505(a) (providing: "The forward-looking economic cost of an element equals the sum of: (1) the total element long-run incremental cost of an element, as described in paragraph (b); and (2) a reasonable allocation of forward-looking common costs, as described in paragraph (c)); see also 51.505(c)(1) (defining common costs as "economic costs efficiently incurred in providing a group of elements or

services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.").

While Alltel argues that the demand for voice traffic alone will not exceed an OC-12, this is not the reality in which Mr. Weber designs networks.[11] Even Mr. Conwell admits that an OC-48 transport system is likely necessary for McCook and other of the Petitioners. See Hearing Transcript, p. 191, lines 21-25; p. 192, lines 1-13; see also Alltel's Post-Hearing Brief dated October 10, 2008 (noting that the Petitioners' FLEC studies should be revised to include the costs of an OC-48 transport system). Mr. Weber, utilizing standard engineering practice, may not know exactly what demand is for any particular service when designing that network, but he knows that whatever network he designs will require sufficient capacity to carry both the known and the unknown services. This is the very definition of a forward-looking network and the one advanced by the Petitioners in this case. Mr. Weber also understands that the incremental cost between an OC-192 and an OC-48 is not so significant as to cause a material difference in the resulting rate.[12] Accordingly, contrary to Alltel's assertions, there is ample evidence in the record to support the use of a forward-looking and technologically advanced and efficient OC-192 transport system in the proposed FLEC model.

b. Petitioner's proposed fiber transport investment is consistent with TELRIC principles.

[11] In response to questioning from Commission Johnson, Mr. Weber also explained that there may be certain instances where a larger transport system such as an OC-192 may be required even though all traffic could be handled by a smaller transport system, such as an OC-3 or OC-12,. Mr., Weber explained that a company may choose to migrate services to their transport network which were at one time provided over a different infrastructure. He indicated this is not unusual and a matter of business planning by the company. In the instance of the Petitioners in this arbitration, Mr. Weber testified that some of the Petitioners were in fact in the process of transitioning video service from one type of video to another and planning on migrating that service to their transport system. See Hearing Transcript, p. 72, lines 1-25; p. 74, lines 1-10.

[12] By way of example, for McCook, the costs of a network employing an OC-192 transport system are [redacted] The costs of a network employing an OC-48 transport system are [redacted] The costs of a network which uses an OC-12 transport system are [redacted] See Hearing Transcript, p. 183, lines 9-22.

The other transport costs which Alltel argued should either not be included or were overstated in the FLEC study are those associated with fiber cable costs. In his testimony, Mr. Weber discussed the fiber cable cost per mile associated with interoffice transport. See Hearing Exhibits 52-55, p. 3, lines 20-23; p. 4, lines 1-2; p. 11, lines 20-25; p. 12, lines 1-13; pp.13-14; Hearing Exhibit 79, p. 5, lines 13-22; p. 6, lines 1-16; see also Hearing Transcript, p. 26, lines 14-25; p. 27, p. 28, lines 1-22; p. 74, lines 13-25; p. 75; p. 76, lines 1-10. Mr. Weber again designed the network and utilized cable in that design using a forward-looking network design. This design includes miles of plant required for EAS, Toll, and CMRS traffic and which were designed by Mr. Weber so as to reflect the most efficient routing as determined by the forward-looking network design. Id.

Petitioners' respective FLEC networks included outside plant cable sized with 48-fiber cable. Mr. Weber explained that this was done because cable of such size is considered standard for interexchange transport routes. See Hearing Exhibit 79, p. 5, lines 16-17. Good engineering practice dictates that cable be sized in such a manner as to ensure there are reserve fibers available in the event that a fiber is in use, damaged or degraded. Id. at lines 18-19. Simply stated, it is not only standard engineering practice, but also smart engineering practice. Alltel argued that the cable was over-sized, under-utilized and therefore resulted in higher transport outside plant costs per minute. However, much like with the incremental cost difference between the various transport system, there is but a slight difference in cost between the 24-fiber and 48-fiber cable.[13]

Alltel's argument as it relates to the entirety of Petitioners' transport costs consistently and predictably focuses on cost, which is ultimately only part of the equation. While the FLEC

[13] 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.

network is a hypothetical network, it is highly unlikely that the FCC ever 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."). However, Alltel, through its witness who has admittedly never designed a network, suggests that such an approach is more than consistent with the premise that the network be efficient and forward-looking. From the standpoint of both practicality and efficiency, it is difficult to fathom why a carrier would base its costs on a network it would not itself use and one which would be obsolete before the time at which it was even it was even paid for. This is particularly the case when the cost of which Alltel complains has little impact on the resulting investment cost and transport rate.

c. The Petitioners' forecasted demand is appropriate.

In its Findings of Fact and Conclusions of Law, the Commission ordered the Petitioners to update their forecasted demand for transport and recalculate the transport rate per minute using the updated transport demand. The Petitioners initially used their respective demand for calendar year 2006. However, the Commission determined that 2006 demand was not a "credible projection of forward looking demand and the use of 2006 demand is inconsistent with the proposed use of an OC-192 network." See Findings of Fact and Conclusions of Law, ¶25.

In light of the Commission's Order and concerns, the Petitioners prepared a forecasted demand for the period of 2006 through calendar year 2010. In forecasting this demand, Tim Eklund used all available data from the Petitioners, which data included demand for transport circuits and transport minutes. See Hearing Transcript, p. 103, lines 13-22; p. 151, lines 18-25; p. 152, lines 1-15. For Kennebec, McCook, and West River, Mr. Eklund analyzed transport demand data from calendar years 2006 through 2008. See Hearing Transcript, p. 103, lines 13-

18. Because that same demand was not available for Santel, Mr. Eklund analyzed the available circuit demand from 2006 through 2008 and transport minutes for 2004 through 2005. Id. at lines 19-22. Mr. Eklund further analyzed transport minute growth and decline rates from the other RLECs to project transport minute demand for Santel. Id. Trends evident in these years were used to project demand through 2010, which demand was then input into the FLEC model. See Hearing Exhibit 80, Table 7 through Table 10.

Alltel has consistently complained that the demand period utilized by the RLECs is too short. However, one must put Alltel's criticism in perspective. Negotiations for this interconnection agreement commenced in 2006. As evidenced by Mr. Eklund's testimony, the Petitioners utilized all data available to them to forecast demand through 2010, which is a year after the current agreement is scheduled to expire.[14] See Verizon Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, et al., 380 F.Supp.2d 627, 656 (E.D. Pa. 2005) (validating a 1996 study to determine a daily usage feed rate which was based on message demand through calendar year 2000). This is a five-year period, which even Mr. Conwell indicates is acceptable. See Hearing Transcript, p. 207, lines 11-16. To forecast extensively beyond that period and to have some level of confidence in that forecast is almost an impossibility.[15]

The FCC has itself acknowledged on numerous occasions the difficulties inherent in forecasting usage and demand for future services. While these cases are not directly on point with the inquiry in this case, they do address processes used for forecasting demand for other

[14] Section 12.2.1 of the parties' proposed Interconnection Agreement provides as follows:

> This Agreement shall remain in effect for three (3) years after January 1, 2007. This Agreement shall continue in force and effect thereafter, on a month-to-month basis, until replaced by another agreement or terminated by either Party upon sixty (60) days written notice to the other.

See respective Petitioners for Arbitration filed in Dockets TC 07-112, TC 07-114, TC 07-115 and TC 07-116, Exhibit A.

services. The FCC's decisions deal primarily with the construction and operation of high capacity digital optical fiber submarine cable. While not factually analogous, these decisions are instructive. See *In the Matter of Inquiry into the Policies to Be Followed in the Authorization of Common Carrier Facilities to Meet North Atlantic Telecommunications Needs During the 1985–1995 Period, Notice of Proposed Rulemaking,* CC Docket No. 79–184 (November 6, 1980); *In the Matter of American Telephone and Telegraph Co., et al., Application for authorization under Section 214 of the Communications Act of 1934, as amended, to construct and acquire a high capacity, digital, submarine cable system between the United States and both the United Kingdom and France*, 98 F.C.C.2d 440, ¶70, (May 24, 1984) 1984 WL 251099, *19; *In the Matter of American Telephone and Telegraph Company, et al., Joint Application*, 7 F.C.C. Rcd. 7758, 7760, (November 12, 1992), 1992 WL 6908547; *In the Matter of American Telephone and Telegraph, et al*., 4 F.C.C. Rcd. 8042, 8046. In all of these instances, the FCC specifically noted the great uncertainty involved in forecasting demand. See 7 F.C.C. Rcd. 7758, 7760 (noting FCC's comments: "We recognize that there are uncertainties inherent in long-range traffic projections, but new technology that increases capacity, reliability and quality is likely to spur demand for new digitized services and could very well stimulate circuit demand beyond . . . projected traffic forecasts."); 82 F.C.C.2d 407, 1980 WL 121494, *18 (noting "the art of traffic demand forecasting has not progressed to the point where one can reasonably expect to be provided with forecasts of the desired degree of accuracy for a time horizon of 5-15 years into the future-the planning period under consideration in this proceeding. The results depend crucially on the assumptions made in generating the forecasts, and it is difficult to ascertain the accuracy of these assumptions. Therefore, in general, the further into the future one is forecasting, the less reliable is the resulting forecast."); 98 F.C.C.2d 440, ¶70, 1984 WL 251099 (emphasizing "that long-range traffic forecasting is an inherently uncertain undertaking. As we stated in our Docket 790184 NPRM, predictions as to traffic, projected costs, and system

capacities are especially difficult in an industry as technologically volatile as telecommunications.").

The standard fore forecasting demand, as articulated in the applicable FCC rule, is one of reasonableness. See 47 C.F.R. § 51.511(a). This standard in no way requires, as Alltel seemingly implies, that the forecast period must track perfectly with the useful life of the equipment. Simply stated, Alltel expects too much. While Alltel's position that the forecast period should be commensurate with the life of the equipment has visceral appeal, it is in actuality a deceptive comment as the analysis only makes sense where there is certainty as to future demand. It is one thing to argue that the Petitioners have not properly forecast demand, it is another to actually forecast demand, which Alltel did not do. Alltel cannot show that the forecast made by the RLECs is unreasonable nor has it proffered alternatives supported by practice or case law. The forecast period utilized by the Petitioners is a *reasonable* period for voice and for special access circuits. The Petitioners have produced evidence and a reasoned methodology which is consistent with 47 C.F.R. § 51.511(a). Alltel has offered argument and that argument is effectively that the Petitioners' proposal is forward-looking, but just not forward-looking enough.

There is no dispute in this proceeding that demand for voice service is declining. There is also no dispute that demand for special services is increasing. Because multimedia and other similar services have not previously been carried on the Petitioners' networks, or have been carried on the networks for such a short period of time, there is little to no historical data upon which to draw. Additionally, there are services which may in the future be carried on Petitioners networks that are as of yet unknown. There is little historical or future demand upon which to base a lengthy projection. This makes it exceedingly difficult to forecast future usage for non-voice applications with a high degree of certainty beyond what the Petitioners have done. If one cannot look to history to establish trends, one cannot possibly look seven to ten years into the

future and be reasonably confident in a forecast. See Hearing Transcript, p. 104, lines 2-25; p. 105, line 1. The range of possible outcomes is so large that the forecast itself becomes virtually worthless. Such speculation is not consistent with FCC rules nor is it required.

There can be no question but that forecasting is an imperfect process. As such, the forecast period used by the Petitioners is reasonable: both in the sense that it comports with the time frame of the negotiations and the effective period of this resulting agreement (January 1, 2007 through December 31, 2009) and in that it provides a more meaningful forecast period because it does not include myriad unknowns which cannot be properly accounted for at this juncture. See Hearing Transcript, p. 151, lines 18-25; p. 152, lines 1-11, 21-25; p. 153, line 1. In determining whether the Petitioners' proposed forecast is reasonable, which is the applicable FCC standard, one must recognize the inherent difficulties of forecasting without the availability of any significant historical, trending data.

Petitioners do understand the perceived disconnect between the proposed use of an OC-192 transport system and the forecasted decline in switched services. There is certainly testimony in the record that an OC-192 is necessary in order to satisfy the Petitioners' needs for all services. See Hearing Transcript, p. 91, lines 14-25; p. 92, lines 1-4. There is also testimony in the record that a smaller transport system may adequately handle only voice traffic. As such, while the Petitioners used the OC-192 because it is the most forward-looking and efficient transport system, the Petitioners also submitted a FLEC analysis using an OC-48 because it allows a compromise of sorts. See Hearing Exhibits 86-89.

As an initial comment, the Petitioners do not believe that the OC-192 in the proposed network must be abandoned. Even when demand for special services is carved out of the FLEC model using the allocation methodology, what remains is demand sufficient to support an OC-192 or an OC-48. Again, Mr. Weber testified that 25% utilization is all that is required to support use of an OC-192. See Hearing Transcript, p. 24, lines 18-25; p. 25, lines 1-15; p. 71,

lines 22-25; p. 72, lines 1-4. If the Petitioners fail to have sufficient capacity, the end user will not even have access to services.

However, in an effort to quell some of the perceived concerns, the Petitioners re-ran the FLEC studies using an OC-48 transport system investment. Because of the data that actually is available, Petitioners are able to forecast with reasonable confidence demand through calendar year 2010. What the Petitioners therefore did was to engineer a network that will allow for use through that time period: an OC-48. However, it should be understood that this network is expected to reach the limit of its capacity prior to the end of its useful life, thus causing the need to replace the system with a larger capacity network. It is not reasonable, both from a practical and legal standpoint, to advocate for the use of anything less than an OC-48 in 2010. Frankly, it is not even entirely reasonable to propose use of a network that would not even be installed for these Petitioners at this juncture. Given Nathan Weber and Tim Eklund's testimony, respectively, that they have not engineered networks or performed cost studies with OC-12 transport systems in the last decade surely provides support for the proposition that one should not advocate for the use of such equipment in the future. See Hearing Transcript, p.146, lines 11-18. Again, it is difficult to fathom that the FCC intended that a forward looking network would include effectively obsolete technology. By including the costs associated with an OC-48 in the FLEC model, the Petitioners, in response to Alltel's concerns, have matched the investment and type of transport system with the demand period. Simply stated, they are in sync.

The FCC in the various dockets identified herein adopted a similar validation process which was based on the concept of demand flexibility. These dockets again dealt with circuit demand for cable, but notably, they endorsed a concept of 20-percent demand flexibility or "the ability to accommodate a circuit demand 20 percent larger than that forecast." The FCC specifically noted that such a concept was "a reasonable measure of adequate demand flexibility" because it allowed for and recognized "a need to ensure sufficient demand flexibility and to

avoid service disruptions caused by saturated facilities." See 4 F.C.C. Rcd. 8042, 8046 (citing North Atlantic Facilities Planning, 3 F.C.C. Rcd. 3979, 3984 (1988)).

The Petitioners bear the burden of proof, but Alltel cannot sustain a viable challenge to the Petitioners' position by simply arguing against it. Such an approach is not only wrong, but results in an arbitrary decision. "TELRIC methodology . . . requires not the rigid adherence to a mathematical formula but rather the use of forward-looking principles to arrive at cost-based rates that are both judge and reasonable." See Verizon Pennsylvania, Inc., 380 F.Supp.2d at 648 (citing 47 U.S.C. § 252(d)(1); AT&T Corp. v. FCC, 220 F.2d 607, 615 (D.C. Cir. 2000)). The law requires that the Petitioners use a "reasonable measuring period" and they have demonstrated that their forecasted period is not only reasonable, but one which produces a reasonable result.[16] See 47 C.F.R. § 51.511(a).

d. The Rate Equivalency Method is a reasonable method by which to allocate costs between switched and special services.

There is no dispute that once transport costs are determined they need to be allocated between switched services and special services. While there are obvious disputes between the parties as to what network investment should be included in the FLEC study, the primary point of contention remains the allocation process to be utilized. The Petitioners have utilized a method that has been subjected to and withstood appellate scrutiny: the Rate Equivalency Method. The method has been applied in the exact same manner as it was in those FLEC studies submitted to the Nebraska Public Service Commission for approval. See Hearing Exhibit 81, pp. 6-7. Notably, in the proceeding before the Nebraska PSC and on appeal, Alltel's primary

[16] FCC Rule 51.511 provides:

> The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in § 51.505, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.

47 C.F.R. § 51.511(a).

argument against the use of the Rate Equivalency Method was its inclusion of retail rates. See WWC License, LLC, 459 F.3d at 897. Because of that complaint, Petitioners removed any evidence of retail rates from the cost studies presented to this Commission. See Hearing Exhibit 81, p. 7. However, Alltel now attacks the cost study on different, yet equally unavailing, grounds.

As previously discussed in great detail, the forward-looking networks that have been proposed by the Petitioners are networks that provide multiple functions and services, including special access services, through different types of circuits. Because of the provision of such services, the Petitioners' FLEC model must include a method by which to reduce the total transport costs by distinguishing cost-causative transport functions from costs that are not related to the provisioning of per-minute, usage based services. Ultimately, it is the Petitioners' allocation method which provides additional foundation for the switching and transport investment and the forecasted demand. It is also important to remember that even before the Rate Equivalency Method is applied to the costs in this case, a number of costs were eliminated from the initial investment input into the FLEC model.[17] Once those costs are removed, an allocation percentage is developed and that percentage effectively acts as a weighting which is given to the forecasted demand.

The Commission's directive to utilize the Rate Equivalency Method was driven by its concerns that both the previously proposed Path and Bandwidth Methods improperly allocated costs to either voice or special circuits, respectively.[18] See Findings of Fact, ¶¶26-29. Unlike the

[17] Adjustments were made at the outset to eliminate certain transport investment, which adjustments included the removal of a portion of total forward-looking transport investment for facilities not used in inter-office transport. See Exhibits 46-49, p. 14, lines 7-11; p. 15, lines 20-22, p. 16, lines 1-2.

[18] All three methods have been used in other arbitration proceedings and all three methods have been discussed by the Eighth Circuit Court of Appeals. In its decision, the Eighth Circuit noted the following:

> The three possible methods for determining a proper allocation are identified as (1) the circuit count method, (2) the rate equivalency method, and (3) the bandwidth method. It suffices to note

Path Method which equated each circuit or trunk to a path or the Bandwidth Method that focused on the bandwidth of a particular type of circuit or trunk, the Rate Equivalency Method focuses on allocating costs based on the ratio of rates for the various services provisioned on the RLECs' transport facilities or cable routes. See id. at ¶28; see also Hearing Exhibit 80, pp. 4-5.

Using the Rate Equivalency method, circuit cost is allocated according to the relative price of circuits of different bandwidths. See Hearing Transcript, p. 97, lines 4-5. Prices were determined through review and use of those rates contained in the South Dakota Qwest SGAT. Id. at lines 7-14. The SGAT identifies both a fixed cost per circuit and a variable cost per mile per circuit. Id., see also Hearing Exhibit 80, p. 4; see also Hearing Exhibit 80, Table 1. The variable cost per mile was determined using the average length per special access circuit which was based upon the Petitioners' NECA 4 entries. Id. The NECA 4 entries provide the airline mileage of special access circuits for different RLEC networks. See Hearing Exhibit 80, Table 2. The airline mileage was then used as a surrogate for the average length of the special circuits. Id. at p. 5. Once the average circuit length is calculated, circuit length is multiplied by the special access per mile rates, which result is the variable component cost per circuit. Id. The SGAT's fixed cost per circuit is then added to that variable component in order to arrive at the respective pricing for a DS-0, DS-1 and DS-3. See Hearing Transcript, p. 98, lines 3-16. Petitioners then divided the total cost for each DS-3 circuit by the total cost for each DS-0 circuit which calculation yields the total weighting or rate equivalency for each DS-3 circuit. The same calculation is used to arrive at the weighting for a DS-1 circuit. Id. at lines 17-21. The final step in the process is to multiply the DS-3 and DS-1 special access circuits by their weight to determine the allocation between switched and special services. Id. at lines 22- 25; see also

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> that Great Plains and Western agree that there is no legal impediment to the use of the circuit count or bandwidth methods.

WWC License, LLC, 459 F.3d at 897. The decision further explains the use of the rate equivalency method and how it was utilized by the petitioner in the case to allocate costs. Id.

Hearing Exhibit 80, p. 12, Table 4. Using the Rate Equivalency Method, the Petitioners recommended the allocation of the following percentages to special services:

Kennebec: [redacted]

McCook: [redacted]

Santel: [redacted]

West River: [redacted]

Petitioners then removed the respective percentages from the total cost of transport facilities prior to the development of the transport rate.

Alltel's argument in regard to the use of the Rate Equivalency Method has been an evolving one. Notably, Alltel does not disagree with the application of the Rate Equivalency Method as it relates to DS-0, DS-1 and DS-3 *special* circuits. See Hearing Transcript, p. 195.[19] It does, however, disagree with the application of the Rate Equivalency Method to DS-0 voice circuits. Both parties agree that DS-0 special access circuits and DS-0 voice trunks are combined by the switch to a DS-1 level. However, Alltel makes the argument that the price of a DS-0 switched or voice circuit is not the same as a DS-0 special access circuit because the DS-0 special circuit does not interface with the switch without the aid of circuit conditioning or multiplexing equipment. This argument, however, is not a sound basis for drawing a distinction between a DS-0 voice circuit and a DS-0 special access circuit.

As specifically explained in Nathan Weber's testimony, there are instances in which switched traffic may actually require more circuit conditioning and multiplexing equipment that the special circuits, thereby increasing the cost of the DS-0 voice trunk. See p. 3, lines 4-23; p.

[19] Mr. Conwell testified as follows:

> Q: And if I'm hearing your testimony correctly, Alltel has agreed with the use of the rate equivalency method for use with the DS-0, DS-1, and the DS-3 for special access; correct?
>
> A: Yes. Excuse me. I'm sorry. For special circuits, not special access.

4, lines 1-4. Mr. Weber explained that it is highly unlikely that the DS-0 voice trunks will interface with the switch without the aid of some additional equipment. See Hearing Transcript, p. 21, lines 13-25; pp. 22-23; p. 24, lines 1-8. Moreover, Alltel's assertions were not supported by citations to any specific examples, equipment bids or other pricing information. Interestingly, Alltel's predecessor, Western Wireless, did not make this argument in the arbitration before the Nebraska Public Service Commission nor did it raise the issue on appeal. See WWC License, LLC, 459 F.3d at 896-898. The LEC in that proceeding afforded the same treatment to DS-0 voice and special circuits that has been given to those circuits in this case. See Hearing Transcript, p. 153, lines 6-15.

Alltel draws this arbitrary distinction because it more easily allows it to avail itself of the disallowed Bandwidth method which it advocated during the August 2008 hearing. See Hearing Exhibit 81, p. 10. Even if there is a cost difference between the two, it in no way justifies Alltel's position that a DS-0 special circuit costs more than 7 times a DS-0 voice trunk and that they must therefore be treated different in the allocation analysis. See Hearing Exhibit 79, p. 3, lines 21-25; p. 4, lines 1-4. This argument simply does not make sense, economic or otherwise.

As evidenced by its Findings of Fact and Conclusions of Law, the Commission was concerned that the allocation processes initially advocated by both parties did not result in a proper allocation of cost between switched and special services. The Petitioners' proposed Rate Equivalency Method allocates more costs to special access services than that which the Path Method did. Accordingly, there is a corresponding decrease in the resulting transport rate. See Hearing Exhibit 80, p. 13, Table 5.[20]

[20] Table 5 of Mr. Eklund's Pre-Filed Supplemental Direct Testimony illustrates the following transport rates, which rates were arrived at using an OC-192 transport system:

	Transport Rate: Path Method			**Transport Rate: Rate Equivalency Method**		
McCook		[redacted]			[redacted]	
Kennebec		[redacted]			[redacted]	

It is the forecasted demand which ultimately caused the rates to increase. However, as explained above, the Petitioners attempted to account for the decline in switched or voice demand by syncing it with an OC-48 transport system rather than anOC-192. Accordingly, the Petitioners submitted two sets of rates to the Commission for comparison. Petitioners' proposed rates for transport and termination, where the investment includes the use of an OC-192 transport system, are as follows:

Kennebec: [redacted]

McCook: [redacted]

Santel: [redacted]

West River: [redacted]

See Hearing Exhibit 80, Table 13; see also Hearing Exhibits 82-85.

The Petitioners' proposed rates for transport and termination, where the investment includes the use of an OC-48 transport system and the use of 24-cout fiber rather than 48, are as follows:

Kennebec: [redacted]

McCook: [redacted]

Santel: [redacted]

West River: [redacted]

See Hearing Exhibit 81, Table 5; see also Hearing Exhibits 86-89.

Use of the Rate Equivalency Method results in the proper allocation and subsequent removal of those costs related to special services. Alltel's argument has all along been that the Petitioners' proposed rates are too high. This, however, is an unsustainable argument and one that should not be afforded great weight. Interestingly and improbably, Alltel's application of its

Santel		[redacted]			[redacted]	
West River						

See Hearing Exhibit 80, p. 13, Table 5.

version of the Rate Equivalency Method results in an even lower rate than what it originally presented to this Commission. Alltel originally presented transport and termination rates which did not exceed [redacted] for any of the Petitioners. See Alltel Post-Hearing Brief dated October 10, 2008, p. 27. Alltel now presents rates which range from [redacted]. See Hearing Exhibit 19, p. 28, lines 13-21; p. 29, lines 1-4. A brief review of this result yields the inescapable conclusion that Alltel's proposed revisions to the FLEC study pull too much cost out of the FLEC investment and then further allocates too much of the remaining cost to special services.

The 1996 Telecommunications Act, as amended, and the governing FCC rules require "just and reasonable rates that provide for 'the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier.' 47 U.S.C. § 252(d)(2)(A)(i). The 1996 Act effectively defines a reasonable rate as one that is 'a reasonable approximation of the additional cost of terminating such calls,' and prohibits any regulatory proceeding to establish such costs 'with particularity.'" SBC Inc. v. Federal Communications Com'n, 414 F.3d 486, 490 (3rd Cir. 2005) (quoting 47 U.S.C. §§ 252(d)(2)(A)(ii), 252(d)(2)(B)(ii)). The FCC rules require that the rates be developed according to a FLEC model, which is designed to be forward-looking. Costs are to be calculated based upon the Total Element Long Run Incremental Costs ("TELRIC") method. The total costs of an element are then added to a reasonable calculation of forward-looking costs to arrive at the transport and termination rate. See 47 C.F.R. § 51.505. The Petitioners in this case have established that they have followed the process set out by the FCC. They have utilized a forward looking model and a reasonable forecast and allocation process so as to determine the reasonable approximation called for by the FCC.

CONCLUSION

It is easy to get caught up in the minutia of this proceeding; however, one must keep in mind that what is at issue is the total process and resulting rate presented to this Commission. A FLEC study is not an exact science, but a process influenced by numerous considerations. When one looks at the FLEC model proposed by the Petitioners in this case in its entirety there is no question but that the Petitioners took great care to comply with FCC rules and regulations and to take into consideration this Commission's comments and concerns. The Petitioners have produced evidence to establish that the rates, and process used to arrive at the proposed rates, are forward looking, based upon a reasonable forecast period and are ultimately accurate. One need only look to the corresponding rates which Alltel proposes to know that its rates are not reasonable. Accordingly, Petitioners respectfully request that this Commission reject the series of adjustments suggested by Alltel in the testimony of Mr. Conwell and accept the FLEC model and resulting rate offered by the Petitioners.

Dated this 18th day of September, 2009.

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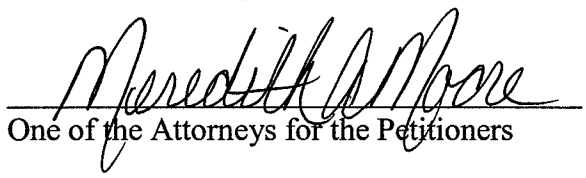

One of the Attorneys for the Petitioners