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September 18, 2009

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

RE: Alltel Alliance Arbitration TC07-112, TC07-114, TC07-115 and TC07-116
GPNA File No. 05925.0042

Dear Ms. Van Gerpen:

Enclosed for filing in the above-entitled matter, please find the Public version of Alltel's Post Hearing Brief. I will be filing the Confidential version under separate cover.

I have also enclosed a Motion for Reconsideration to ensure the Commission can procedurally review the issue raised concerning the new evidence on switching.

By copy of same, counsel have been served.

If you have any questions, please call me. Thank you.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosure
c: Clients
Service Party list via e-mail

BEFORE THE STATE OF SOUTH DAKOTA

PUBLIC UTILITIES COMMISSION

In The Matter Of The Petition Of Kennebec Telephone Company, McCook Cooperative Telephone Company, Santel Communications Cooperative, Inc., and West River Cooperative Telephone Company For Arbitration Pursuant To The Telecommunications Act Of 1996 To Resolve Issues Relating To An Interconnection Agreement With Alltel Communications, LLC	)))))))	Docket Nos. TC 07-112 TC 07-114 TC 07-115 TC 07-116 **PUBLIC VERSION**

ALLTEL COMMUNICATIONS, INC.'S 2009 POST HEARING BRIEF

COMES NOW, the above-named Alltel Communications, LLC , formerly know as Alltel Communications, Inc., by and through its attorney of record, Talbot J. Wieczorek of Gunderson, Palmer, Nelson & Ashmore, LLP, and hereby submits this brief in the above-referenced arbitrations.

PRELIMINARY STATEMENT

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

For the purposes of this brief, Alltel Communications, LLC will be referred to as "Alltel." McCook Cooperative Telephone Company will be referred to as "McCook." Kennebec Telephone Company will be referred to as "Kennebec." Santel Communications Cooperative, Inc. will be referred to as "Santel." West River Cooperative Telephone Company, Inc. will be referred to as "West River." The four incumbent local exchange carriers, or the

remaining companies contesting an issue, will collectively be referred to as "RLECs." The South Dakota Public Utilities Commission will be referred to as the "Commission."

Citations made to prefiled testimony will be cited by providing the name of the witness followed by identification of the testimony round (direct or rebuttal) and a page and line number to the testimony. Citations to prefiled testimony will be to the second round of prefiled testimony. When citing to prefiled testimony filed for the 2008 hearing, the 2008 testimony will be designated as "2008." Citations to the Hearing Transcript will be made by the designation of "HT" followed by a page and line number. Citations to the Hearing Transcript for the First Hearing shall be designated as "2008 HT" followed by a page number and line number.

PROCEDURAL HISTORY

The parties' previous Interconnection Agreements terminated on December 31, 2006. The objective of the subject proceeding was a determination of the terms for the exchange of traffic between the Parties subsequent to that date. The arbitrations in the above-captioned dockets proceeded under a consolidated record. The arbitrations originally involved six companies. Alliance Communications, Inc., resolved all issues with Alltel Communications, LLC, prior to the First Hearing. Originally, there were seven issues in dispute at the July 29-31, 2008 hearing (hereinafter "First Hearing"). At the conclusion of the First Hearing, the matters were briefed in full and submitted to the Commission. On February 27, 2009, the Commission entered Findings of Fact and Conclusions of Law. The Commission decided all issues except for the reciprocal compensation matter.

Of the five RLECs, in the First Hearing four had presented FLEC studies to justify reciprocal compensation rates. The Beresford Municipal Telephone Company, while a participant at the First Hearing, had previously settled the reciprocal compensation issue with

Alltel. Thus, it presented no cost study concerning reciprocal compensation issues and was not involved in the Second Hearing.

In its decision, the Commission directed these RLECs to resubmit cost studies. Regarding switching expenses, the Commission ordered the removal of various switch cost items from the RLECs' FLEC studies. *See* Findings of Fact 18 for McCook, Santel, Kennebec and West River. In the Findings, the Commission also specifically concluded that the RLECs' reciprocal compensation FLEC study failed to prove there was sufficient demand to justify the proposed use of an OC-192 network. Accordingly, the Commission directed the RLECs "to file a new projection of forward-looking demand." *See* Findings of Fact 23 for the McCook, West River and Santel companies and Findings 25 for Kennebec Telephone Company. The Commission based this conclusion on the fact that the 2006 demand could not be considered the RLECs' forward-looking demand, and the amount of demand was "inconsistent with the proposed use of an OC-192 network." Id.

Addressing the way that transport costs had been allocated between voice traffic and special circuits, the Commission found the allocation of transport network cost to voice trunks in the cost study to be an inappropriate over allocation to voice traffic. The Commission directed that each RLEC "revise and refile its cost study to reflect a rate equivalency method as a basis for the assignment of transport costs." *See* Findings of Fact 27 for McCook, Santel and West River companies and Findings of Fact 29 for Kennebec Telephone.

During the filing of prefiled testimony and at the Second Hearing, the RLECs submitted testimony that revised the cost study by revising the forecast traffic out to 2010, but failed to provide any testimony justifying the network size in relation to the projected demand. Regarding

the network transport cost allocation to voice traffic, the RLECs treated voice trunks as though each voice trunk was the equivalent of a DS-0 special circuit.

Alltel's prefiled testimony explained that treating voice trunks as DS-0 special circuits was inconsistent, illogical and resulted in an inefficient network given voice trunks are automatically combined at the switch and introduced to the transport network at the DS-1 level. With respect to the projected demand and the size of the network, Alltel described how the projected demand did not match the RLECs' engineer's conclusions that an OC-192 was necessary because, it appears, growth in broadband services were not properly projected. Alltel proposed a capacity fill rate for the life of the equipment as a reasonable projection. Alltel also proposed the DS-1s carrying voice trunks be treated as the equivalent of a DS-1 special circuit as opposed to 24 DS-0 special circuits. Additionally, Alltel requested the Commission, through its continuing jurisdiction on this case, revisit its determination on the inclusion of contested switching costs. Such a review is appropriate in light of the new evidence that was presented by the RLECs. In particular, the marked decrease in voice traffic with no decrease in costs based on the reduced usage, thus, proving that the switching costs were not usage sensitive.

ISSUES PRESENTED

I. What Is The Appropriate Reciprocal Compensation Rate For IntraMTA Traffic Under 47 U.S.C. § 252(d)(2) And The Regulations Adopted By The Federal Communications Commission?

During the 2008 hearing, the RLECs presented a FLEC study for each of their companies asserting that the FLEC studies accurately allocated costs of an efficient network pursuant to Federal Communication Commission (FCC) rules. This Commission determined that the FLEC studies presented by the RLECs could not be adopted and the FLEC studies must be revised. Specifically, this Commission concluded that certain switching costs included were invalid, that

the projected demand could not support the size of the network, and that the RLECs had inappropriately calculated the amount of cost attributable to voice traffic. The RLECs submitted new FLEC studies as part of the 2009 hearing. However, even with the changes, their proposed rates are improper as the FLEC studies still do not comply with FCC rules for establishing cost-based transport and termination rates in accordance with 47 C.F.R. 51.505 and 51.511. In particular, the studies failed to remedy issues identified by the Commission in the previous FLEC.

A. Legal Standard

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

In establishing a reciprocal compensation rate, the FCC specified that "incumbent LECs' rates for transport and termination of telecommunications traffic shall be established" based on the "forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511." *See* 47 C.F.R. § 51.705(a)(1). The burden of proving proposed rates satisfy the forward-looking economic costs per unit is on the incumbent carrier, the RLECs. 47 C.F.R. § 51.505(e).

As part of these rules, the RLECs' reciprocal compensation rate may not exceed the RLECs' forward-looking economic cost. The FCC defined forward-looking economic cost in 47 C.F.R. § 51.505(a), as the sum of:

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

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

Reciprocal compensation rates may only recover "the additional cost of terminating such calls." 47 USC § 252(d)(2)(A)(ii) (*emphasis added*). This additional cost standard required under the Act limits recovery of the RLECs to usage-sensitive costs. In the First Report and Order, the FCC acknowledged that the "usage-sensitive charges should be limited to situations where costs are usage-sensitive." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15,499, ¶1063 (released August 8, 1996) (hereinafter "First Report and Order").

B. The RLECs' FLEC Studies Must Be Rejected As The RLECS Failed To Project Forward-Looking Demand That Would Justify The Size Of The Interoffice Transport Network And, In Apportioning The Cost Of The Transport Network, Inappropriately Treated DS-1 Voice Circuits As 24 DS-0 Special Circuits.

1. As with the 2008 FLEC analysis rejected by the Commission, the 2009 FLEC analysis must also be rejected as the RLECs failed to provide a forward-looking demand analysis that could be reconciled with the size of the proposed transport network.

In the 2008 FLEC analysis and hearing, the RLECs claimed the most efficient network would require an OC-192 network for every RLEC interoffice transport system. However, they also claimed the forward-looking demand that should be used to allocate the cost should only be the 2006 demand levels, a demand for all companies that was less than [CONFIDENTIAL - [redacted] - END CONFIDENTIAL] of the proposed network. Alltel's response was straightforward and, more importantly, consistent with FCC Rule 51.511. Specifically, explicit requirements that forward-looking economic costs per unit of demand be based on projected demand over a reasonable measuring period and the costs only include those of an efficient network were not met. 47 C.F.R. § 51.505(b)(1); 47 C.F.R. § 51.511.

Alltel pointed out the RLECs' obligation to present an efficient network to determine appropriate forward-looking costs required the RLECs show forward-looking demand proving a need for an OC-192 transport network. 47 C.F.R. § 51.505(b)(1). There must be forward-looking demand justifying capacity and the cost of that capacity must be shared proportionately among all services to be provided. Alternatively, if the forward-looking demand the RLECs project can readily be satisfied by a smaller efficient network, then the smaller network cost must be used to calculate the transport component of the reciprocal compensation amount. *See* 2008 HT 452. The Commission agreed with Alltel's position.

In its Findings of Fact entered February 28, 2009, the Commission noted that the RLECs had failed to properly project demand. The RLECs failed in this projection in a number of ways. Eklund had not projected future demand at all at the time of the First Hearing. Rather, he had used what he represented to be the 2006 demand and simply said it was too hard to project demand into the future. The Commission found this unconvincing.

First, the Commission noted that the RLECs' "witnesses gave differing testimony regarding forward-looking demand." *See* Findings of Fact 22.[1] The Commission went on to note that one of the RLECs' witnesses testified it was too hard to project forward-looking demand, Mr. Eklund, while RLECs' engineer, Nathan Weber, testified that if an OC-48 was deployed today "it is highly likely that the capacity of the systems will be exhausted well within the 7 to 10 year life of the equipment." Id. [CONFIDENTIAL – [redacted] – END CONFIDENTIAL] Based on this information, the Commission went on to find the RLECs had "failed to show that the use of the 2006 demand should be considered to be [the RLECs] 'forward-looking' demand." The Commission therefore concluded that the demand being used by the RLECs in the 2008 hearing was "inconsistent with the proposed use of an OC-192 network." Based on this, the Commission directed the RLECs to file new projections for forward-looking demand.

Eklund and the RLECs seized upon the rejection of the 2006 demand and concluded they had to simply project demand out into the future sometime to satisfy the Commission. Eklund did this by projecting demand to 2010. In Eklund's initial prefiled testimony in April 2009, his projected demand did not appreciably increase and, in fact, decreased for at least one of the

[1] Citations in the brief to the Findings of Fact will be to the Findings of Fact as they appear in the McCook, West River and Santel opinion. The same Findings of Fact appear in the Kennebec decision. In the Kennebec decision, the Findings are essentially identical but appear as two findings later.

companies from his 2006 projections for all traffic. As to voice traffic, he projected decreases for every company.

Eklund then, in his rebuttal testimony, revised the demand projections again. In his last projection, where he assumed an OC-48 network, he further lowered the forward-looking demand by assuming all transiting traffic would disappear by 2010.[2] For all of Eklund's projections, his projected forward-looking demand never exceeds ten percent (10%) of the capacity of any network he proposes. For all RLECs in every FLEC run performed by Eklund, projected demand run in single digits in relation to the network size. *See* Eklund PT, April 24, 2009, Tables 7-10; and *See also* Alltel Hearing Exhibit 20, pg 4, attached as Appendix A – CONFIDENTIAL.

The fallacy with Eklund's testimony in 2009, both prefiled and at the hearing, is his conclusion that the Commission was only concerned about his previous failure to project into the future. This was not the only failure the Commission noted in its Findings. The Commission also clearly recognized the 2006 demand used in the First Hearing failed to justify the network. The Commission stated "the record does not contain 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 23. The Commission without question determined the amount of total demand in the FLEC study failed to justify the size of the network.

Findings of Fact 22 and 23 specifically noted that the testimony between Eklund and Weber conflicted. Weber testified at the 2008 hearing that some companies were already exceeding the need for an [CONFIDENTIAL - [redacted]

[2] Eklund's only explanation for taking out transiting when he assumes the OC-48 network is that he said Weber told him at some point that the transiting will probably go away. It is interesting to note, Eklund did not remove transiting for any of the OC-192 network analysis. It would appear that the only reason he removed the transiting for the OC-48 analysis, the one OC-48 analysis that he conducted, was to ensure that the majority of the costs stayed allocated to voice traffic.

- END CONFIDENTIAL]. Conversely, none of Eklund's demand, either at the 2008 hearing, the 2009 prefiled testimony, or the 2009 hearing, comes anywhere close to reaching that size and demand. Rather, Eklund still projects no further demand approaching even 10% usage of an OC-192 just as he did in the rejected 2008 study. This usage has already been found by the Commission to be inconsistent with the OC-192 network.

The Commission rightfully recognized in its Findings this conflict between Eklund and Weber cannot be reconciled. Tellingly, the RLECs' engineer who is designing the efficient network to meet the FLEC standards testified that the OC-192 network is necessary because some of these companies are already exceeding an [CONFIDENTIAL - [redacted] – END CONFIDENTIAL] network, Findings 23, or will be in the useful life of this equipment. However, another RLEC witness projected demand at less than 10% of the OC-192 network for use in calculating the reciprocal compensation rate. The RLECs chose to ignore this inconsistency. The RLECs thought they could simply project essentially the same or even less demand two years out, call it projected, and still use the same network size and costs because now the demand was in the future. The RLECs' FLEC studies are essentially the same studies the Commission had a year ago in regards to projected demand in relation to the size of network. The Commission, a year ago, found the same projected demand cannot justify the OC-192 network. A similar finding is properly extended to the existing studies.

After filing two more rounds of testimony and having another hearing, the RLECs unwillingness to address the Commission's findings places the parties and the Commission right back where they were at the conclusion of the hearing in 2008. The network designed by Weber cannot be reconciled with the alleged forecasted demand of Eklund.

Weber has testified that it was not his job to forecast demand. However, it is clear from his testimony that he did forecast demand to determine what would be an efficient network in his opinion. It is only logical that one cannot design what they perceive to be an efficient network without first understanding what the network needs to service.

In several places, Weber testified both in the 2008 hearing and the 2009 hearing, that he designed an OC-192 network based on his knowledge or projections that the companies were already exceeding an OC-48 capacity demand or would be during the useful life of the network. He made it clear in response to a question from the RLECs' own counsel that during the useful life these networks would exceed the capacity for an OC-48.

> Question by Ms. Moore: And so to the need to need the OC-192 network in the 7-10 year life of the equipment, do you expect them to exceed capacity for the OC-48?
>
> Answer: That would be correct.

HT 92, lns 1-4. *See also* HT 84, lns 4-8; HT 76; HT 59, lns 19-21; HT 34, lns 16-20; and 2008 HT 173. Mr. Weber did not base the network on what Mr. Eklund projected for demand. HT 86, lns 10-12. Rather, he justified the network he designed on his projections that an OC-192 is the appropriate network because the threshold of an OC-48 will be exceeded, HT 37, lns 2-6, or [CONFIDENTIAL – [redacted] – END CONFIDENTIAL] 2008 HT 173.

As is clear from the above testimony and numerous other locations in the transcripts, the network designed by Weber was not designed to service the demand projected by Eklund, but to service demand in excess of an OC-48. While and how Eklund could not project this demand or capture all this demand is unclear. What is clear is that Eklund's projections for future demand are not credible, given Weber's testimony.

The RLECs' engineer presented a network that is efficiently designed on the projection demand will exceed an OC-48 capacity, (1,344 DS-1s of bandwidth), but then the RLECs' witness Eklund present a FLEC analysis done with an assumption that no company's demand will ever reach 10% of an OC-192 system.[3] Eklund has failed to provide an appropriate FLEC study that takes into consideration an efficiently configured network for the forward-looking demand. Weber himself has testified that if projected demand will be less than 10% of the size of a network, the network is inefficient because a smaller network can be used. HT 36, lns 16-23. The Commission cannot use Eklund's FLEC studies and meet the requirements of 47 C.F.R. § 51.505, based on the testimony of the RLECs' other witness Weber. Given that Eklund has chosen not to provide a FLEC study that answers this Commission's previous objections to the 2008 study, the question may be asked what is to be done now.

Alltel proposed various options a year ago. First, the Commission could simply conclude that the RLECs' failure to provide a proper FLEC study puts the party in a "bill and keep" situation. The Commission previously rejected this and ordered the RLECs to correct the study (another option Alltel listed). At this time, the RLECs' failure to actually listen to the Commission should result in a finding that "bill and keep" is appropriate. After all, it is the RLECs' burden to prove the rates meet federal requirements. 47 C.F.R. § 51.505(e). Failure to meet this requirement not once, but twice, provides sufficient grounds to impose "bill and keep."

If the Commission rejects "bill and keep," Alltel proposed an approach of using a reasonable fill ratio for the OC-192 network. As testified by Conwell, it is not Alltel's position

[3] [CONFIDENTIAL – [redacted] - END OF CONFIDENTIAL]

that an OC-192 network is necessarily needed. Rather, if the RLECs are going to propose an OC-192 network, projected demand must justify the network so that the denominator (transport demand) divides the cost over the demand that necessitates network size. HT 165, ln 11. Weber projected that minimum demand to make the OC-192 efficient at the OC-48 level or 1,344 DS-1s of bandwidth. Moreover, Weber provided testimony that some of these companies [CONFIDENTIAL – [redacted] - END OF CONFIDENTIAL] 2008 HT 173, ln 24 through HT 174, ln 5. Weber has further testified that these companies are currently installing OC-192 networks because they expect that demand to exceed the level of an OC-48 during the lifetime of the equipment. HT 25, ln 16. Thus, it is impermissible under the FCC rules to assert a demand level to divide the cost of what Weber says is an efficiently designed network, designed for future demand that will exceed 1,344 DS-1s, over a small fraction of this demand level.[4]

Given these facts, Alltel witness Craig Conwell has provided a way to analyze and come up with an appropriate denominator. In his testimony in the 2008 hearing, Conwell provided a summary of how to reasonably forecast demand to use as the denominator when someone is asserting that an efficient network would be the size of an OC-192. Conwell stated the Commission could assume forward-looking transport demand to justify the OC-192 transport network as being properly utilized, and thus efficient, some where between 60 and 66 percent utilization.

[4] As noted by Weber, Eklund's demands cannot justify an OC-192 as they fall below 10% utilization (HT 36, lns 16-23) in the FLEC studies that use an OC-192 cost. Nor can the OC-48 analysis, which was the last FLEC run performed by Eklund, be used. Again, projected demand used when running the OC-48 analysis shows utilization for all companies below 10% of an OC-48 network because Eklund removed some projected demand he used for the OC-192 cost runs. *See* Alltel Confidential Hearing Exhibit 20 attached as Appendix A.

Conwell again advocated a reasonable projected demand, using an assumed fill rate, at the 2009 hearing. HT 165. Based on these methods, the Commission can develop an appropriate denominator to divide the cost of the network. For the purposes of the 2009 hearing, Conwell provided his testimony at the hearing and in prefiled testimony. His testimony reflected a reduction for the increase denominator based on a reasonable fill rate of the capacity. HT 165; *See also* Alltel Exhibit 20, page 4 attached hereto as Confidential Appendix A.[5]

The Commission has two options to resolve this issue. First, as Eklund's FLEC study cannot be reconciled with the network designed by Weber, the Commission can simply throw out the FLEC study by finding that the RLECs have the obligation and burden to prove their costs under federal statutes and have failed to do so placing the parties at bill and keep. Alternatively, the Commission could use the OC-192 network configuration designed by Weber, and Alltel's reasonable fill rate, to reach an efficiency level of that network. If the second alternative is adopted, the additional DS-1s demand required to meet the appropriate demand level justify the network and can be used to allocate cost. Conwell has already provided these calculations as part of Alltel Hearing Exhibits 1 and 20.[6]

2. Voice trunks should not be treated the same as DS-0 special circuits because an efficient network groups voice trunks over the switch to a DS-1 level for transport purposes to provide common transport for all users and telecommunications companies.

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[5] Conwell's exhibit is based on the last FLEC run cost completed by the RLECs that was for an OC-48 system. If using an OC-192 system, the cost would change as would the amount of demand.

[6] In Alltel Hearing Exhibit 20, Conwell discusses the fact that a utilization rate would continue to climb closer to capacity towards the end of the useful life. You cannot project all the way to the end of the useful life. As a result, the projection should be approximately half-way through the useful life or at about 40% of capacity. Alltel Hearing 20 shows that capacity examination for an OC-48. For an OC-192, 40% of the capacity would be 2,150 DS-1s (5,376 DS-1s in an OC-192 times 40%). *See also* HT 168, ln 5.

As noted by Mr. Conwell, in calculating equivalency for voice trunks, the parties only differ in one matter, whether a voice trunk is the same as a DS-0 special circuit. HT 166, ln 6. The RLECs claim a voice trunk and a DS-0 special circuit are identical cost items, while Alltel's position is that a voice trunk is not the same as a DS-0 special circuit and the network is not designed to treat voice trunks as DS-0 special circuits.

The calculation for the number of voice trunks has nothing to do with Alltel traffic. To establish the number of DS-1s needed to carry voice traffic on the network, Mr. Weber took the number of RLEC subscribers on the RLECs end user side of a switch and then divided that amount by 5. To then calculate how many DS-1s Weber needed for the interoffice transport network, he divided that network by 24. HT 39, ln 3. Weber used this number then to calculate the number of DS-1 cards that would be necessary on the backside transport part of the switch. *See* for example, RLECs' Exhibit 19 from 2008 Hearing. All the costs getting the voice traffic from where the call is picked up on the end user side of the switch to the transport network at a DS-1 level is part of switching. Thus, no individual voice trunk ever gets to the interoffice transport network. Rather, only DS-1s carrying voice traffic exist on the interoffice transport network. HT 39, lns 15-17. *See also* 2008 HT 399, lns 3-6. Even though the interoffice transport of voice traffic is at the DS-1 level, Eklund argues that to allocate costs of the interoffice transport network to voice traffic, he can (1) take the voice traffic DS-1s from the transport network; (2) turn them into DS-0 special circuits (24 per DS-1); (3) and give the DS-1s the same rate equivalencies as 24 DS-0 special circuits. This is inappropriate.

As explained by Conwell, a "DS-0 special circuit typically is a voice grade, dedicated private line or digital data service dedicated circuit. DS-0 special circuits do not pass through the switch. Instead, they are connected to the interoffice transport system, after circuit conditioning

and multiplexing from DS-0 to DS-1 level or higher." Reply Testimony of W. Craig Conwell, July 3, 2009, page 23, lns 3 through 7, citing Qwest Technical Publication 77389, Section 6 (emphasis added). Voice trunks are not special dedicated circuits. None of the voice trunks discussed by Eklund are being reserved exclusively for Alltel or any one customer's use. These carry transportation for any multiple of telecommunications companies, including the RLECs themselves, to switches on the RLECs' network. These voice trunks leave switches at a DS-1 level and come into switches at the DS-1 level. This is undisputed.

> The DS-1 circuit carrying voice trunks are connected to a DS-1 port (tributary interfaces) on the transport system, without the need for circuit conditioning and multiplexing from DS-0s to the DS-1 level. In addition, a voice trunk would not require the provisioning activities of a DS-0 special circuit. Without the requirement for additional transport electronic equipment and provision activities there is less cost. Thus, DS-0 special circuits have a higher cost than voice trunks.

Conwell Reply Testimony, pg 23, ln 13 through pg 24, ln 3. *See* also 2008 HT 399, lns 7-10 (voice trunks are multiplexed together by the switch and introduced to the network at a DS-1 level). There are no separate DS-0 circuit voice trunks introduced into the interoffice transport network. While the RLECs do not dispute Conwell's testimony concerning the fact that DS-1 circuits carry voice trunks on the transport network from switch to switch, the RLECs attempt to argue that there could be multiplexing required for voice trunks under various circumstances. The RLECs desire to assert this argument is an attempt to make voice trunks look like DS-0 special circuits in cost. Examination of this argument shows it both to be incorrect based on how it is designed and contrary to common sense.

Weber presented an exhibit in his testimony of a DS-1 special circuit carrying both special circuits and voice trunks on the interoffice transport network. In such a situation the

voice trunks may have to be multiplexed. This is an intentional distraction from what is actually occurring and what has been done in this situation.

Weber, however, admitted that his efficiently designed network contains no such situations. *See* HT 59, lns 1-10. Furthermore, he could not point to one situation where such multiplexing occurs on the RLECs' existing networks. *See* HT 57-58. The closest he could come was in responding to a question posed by Commission Analyst Rislov.

Commission Analyst Rislov asked whether the multiplexing example, wherein voice lines would have to be multiplexed because they would be joined with a DS-0 special circuit on the one DS-1 special circuit, happens often. Weber could only speculate that out of 20 DS-1s carrying voice traffic, multiplexing might occur on two to four of the DS-1s. HT 80, lns 1-4. This was simply a guess and had no basis in fact. More importantly, Weber's acknowledgment that his efficiently designed network contains none of these scenarios destroys his example as, by his own admission, his efficiently designed network would not have these situations. 47 C.F.R. § 51.505(b)(1), requires an efficiently designed network. The RLECs cannot use an inefficient design argument to justify allocation of transport costs.

Moreover, the fact that no such multiplexing examples exist in an efficient network as designed by Weber has its logical roots in how Weber calculates the number of DS-1s to carry the voice traffic. It must be remembered the amount of DS-1s necessary to only carry voice traffic over the interoffice transport network is calculated by taking the number of end users the RLECs have, dividing it by 5, taking the end result and dividing it by 24, rounding the answer up to arrive at the number of DS-1s necessary to carry the voice traffic. Thus, Weber in his own design provided inputs of a sufficient number of DS-1s to carry all the voice traffic without an obligation to multiplex interoffice voice traffic. HT 39, ln 3. Weber in turn used these numbers

of DS-1s to determine the cost of DS-1 ports cards on the switch, which were included in the switching costs. Therefore, Weber's design of the network has already done away with any voice traffic multiplexing like the example he provided. He has already included the necessary costs so that all voice trunks are combined by the switch to a DS-1 level before being placed on the interoffice transport network. He has additionally designed the network with sufficient DS-1s to carry all voice traffic without the need to add voice traffic onto the DS-1 special circuits that are carrying DS-0 special circuits. The RLECs cannot argue inefficiencies of the network now to justify treating DS-1s carrying voice traffic as 24 DS-0 special circuits by creating an inefficient network.

Further, common sense prevails on this issue. A DS-1 carrying voice traffic on the transport network is equivalent to a DS-1 special circuit in form and substance rather than 24 DS-0 special circuits. The RLECs' basic argument is that the same cost occurs to use a common transport element as it is for a carrier to acquire a special circuit DS-0 dedicated exclusively to a single user. Such a conclusion flies in the face of common sense. If true, then it would be just as cost efficient for the RLECs to run 24 DS-0 special circuits in place of a single DS-1 circuit to carry voice traffic on a transport network. If such were true, when designing the system, one would not divide the voice trunks calculations by 24 to come up with DS-1s and then round up. Rather, one would use DS-0 special circuits to catch the excess.[7]

While Mr. Weber would not admit that the switches function of bundling and placing voice traffic onto a transport network at a DS-1 level was more efficient than having 24 DS-0 special circuits, common sense certainly leads to that conclusion. Certainly the switch is seeking

[7] For example, assume 300 subscribers. In such a situation, the RLECs configured network as proposed by Weber would assume one needs 60 voice trunks (300 divided by 5) and, coming off the switch at the DS-1 level, one needs 3 DS-1s (60 divided by 24 equals 2.5 DS-1s rounded up to 3 DS-1s). If the cost equivalent was the same between a DS-0 special circuit and a voice trunk, the RLEC would add 2 DS-1s and 12 DS-0 special circuits rather than rounding up.

efficiencies and introducing voice traffic at a DS-1 level to the transport network is one of those efficiencies.

Finally, if accepted, the RLECs' argument results in Alltel paying under the switch component cost of the reciprocal compensation rate for the efficiency of the DS-1 voice traffic. It also results in Alltel paying for an inefficiency by having to pay for the equivalent 24 DS-0 special circuits for that DS-1 voice traffic circuit established on the switch. The RLECs' argument essentially has Alltel paying for switching efficiency and then paying the cost of an inefficient interoffice network transport.

An efficient network is designed for voice traffic to travel over the interoffice transport network on a DS-1 circuit. Alltel is paying as part of switch component for that efficiency. As a DS-1 voice circuit is equivalent to a DS-1 special circuit, rather than 24 DS-0s special circuits, Alltel's calculation of voice demand on a network should be used. In other words, the DS-1 voice transportation should be reduced to the DS-0 level not by taking the DS-1 times 24, but by taking the voice DS-1s circuits times the ratio established between a DS-1 special circuit and a DS-0 special circuit. Calculations of such were presented by Conwell in testimony and presented in Alltel Confidential Exhibit 20 attached hereto as Appendix A. *See* Conwell Supplemental Rebuttal Testimony dated July 27, 2009 at page 27.

3. The transport outside plan costs must also be adjusted so that the utilization of the fibers is justified by demand.

The RLECs have proposed a 48 fiber transport outside plan configuration when advocating for the OC-192 network. In the last FLEC run for just the OC-48, the fiber cable was dropped to 24. However, in both situations the fiber cable is under utilized.

The increase demand that is necessary to justify the network must also apply to transport outside plant costs, otherwise, you have under utilization. For example [CONFIDENTIAL - ■

[redacted] - END CONFIDENTIAL]. An assumption of 50% utilization is assumed to be achieved. *See* Conwell Supplemental Rebuttal, page 27, ln 15 through page 28, ln 2.

This utilization is necessary and reasonable. The testimony was clear that the need for the size of the network was based on other services and the voice traffic. Voice traffic is not growing. Yet, the FLEC study would have voice traffic pay for essentially half of these fibers and voice traffic will not use any of these fibers in the future. In the future these dark fibers will be used by these other services. Thus, a 50% utilization assumption is a reasonable assumption to properly allocate costs.

C. The Commission Should Revisit Its Previous Findings Regarding Usage- Sensitivity Of Switch Costs Given The New Evidence Showing A Substantial Drop In Switch Minutes But No Drop In Cost For The Switch Elements Show The Elements Are Non-Usage Sensitive And Should Not Be Included In The Rates.

In Findings of Fact 17, the Commission determined that getting started cost of a switch should not be excluded as that would exclude switching costs that were usage-sensitive and properly recovered. It is not Alltel's intent to fully rebrief this issue as the argument for why various aspects of the switch are non usage-sensitive and not properly included in establishing the switching rate component was fully briefed in Alltel's Brief In Support Of Position On Interconnection Terms dated October 10, 2008 at pages 6 through 15, and the authority remains the same.

Alltel is asking the Commission to reconsider the Findings as the Commission has the right to revisit previous decisions particularly when new evidence has an impact on previous decisions. The new information presented is the testimony submitted by Eklund showing that

the total switch minutes of use dropped for these companies from [CONFIDENTIAL – [redacted] - END CONFIDENTIAL] yet no corresponding drop occurred in the cost of the switch processor component investments. *See* Conwell Supplemental Rebuttal Testimony, pg 29, lns 12 through 33. Weber, who was responsible for providing the switch cost information, acknowledged that these costs are the same at the time of the 2009 hearing as they were at the 2008 hearing. HT 69.

As explained in Alltel's original brief, the threshold and controlling question is whether the items are usage-sensitive. If a cost item is not usage-sensitive, it cannot, by law, be included as part of the costs recovered in the switching or the termination component costs. As determined by the FCC, "for the purposes of setting rates under Sec. 252(d)(2), only that portion of the forward-looking, economic cost of end-office switching that is recovered on a usage-sensitive basis constitutes 'an additional cost' to be recovered through termination charges." First Report and Order at ¶ 1057. *See also*, Virginia Arbitration Cost Order, 18 FCC Rcd 17722, 17871, 17903-04, ¶ 463. (Getting started costs of a switch are non usage sensitive.) *See also* Ace Telephone Association v. Koppendrayer, 433 F.3d, 876, 881 (*See* 8th Cir. 2005).

As this new testimony shows the switch components are not usage-sensitive, they should not be included. Therefore, Alltel requests the Commission revisit this issue and recalculate the switch component cost based on the new testimony and information provided by the RLECs' witnesses.

CONCLUSION

FCC rules require that reciprocal compensation rates not exceed forward-looking economic costs of transport and termination. In this case, there are fundamental flaws in the RLEC cost. Based on these errors, the Commission should: a) reject the RLEC cost study in its

entirety for failure to comply with requirements and order bill and keep or, b) correct the study as set forth by Alltel and calculate rates consistent with FCC rules. If the Commission determines to correct the study, the Commission must make an adjustment by increasing the projected transport demand to legitimize the proposed network and then, using that increased transport demand, calculate and apportion demand over services. When calculating and apportioning the demand, DS-1s carrying voice traffic should be treated as the equivalent to a DS-1 special circuit and not as 24 DS-0 special circuits.

Dated this 18th day of September, 2009.

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CERTIFICATE OF SERVICE

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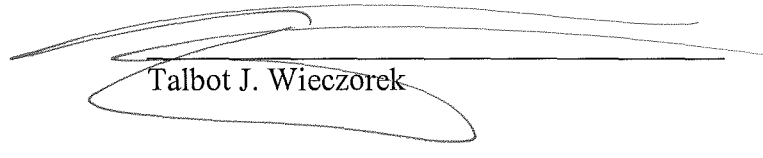

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