

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  
COMMUNICATIONS, INC.

Docket No.

TC07-112

1  
2 **DIRECT TESTIMONY OF DAN DAVIS**  
3 **ON BEHALF OF MCCOOK COOPERATIVE TELEPHONE COMPANY**  
4

5 **Introduction**  
6  
7

8 **Q. Please state your name, employer and business address.**  
9

10 A. My name is Dan Davis. I am employed with Consortia Consulting ("Consortia"),  
11 formerly known as TELEC Consulting Resources Inc. My business address is 233 South  
12 13<sup>th</sup> Street, Suite 1225, Lincoln, Nebraska, 68508.

13 **Q. On whose behalf are you testifying?**

14 A. I am testifying on behalf of McCook Cooperative Telephone Company, ("McCook").  
15 McCook provides local telephone exchange service and exchange access service  
16 predominantly in the more rural parts of South Dakota.

17 **Q. What is your current position?**

18 A. I am a senior consultant at Consortia.

19 **Q. What are your duties and responsibilities at Consortia?**



1 A. I am responsible for consulting with clients regarding regulatory, financial and  
2 interconnection issues. I testify on behalf of clients, predominately rural ILECs, on the  
3 foregoing issues before state commissions and provide written comments before the  
4 Federal Communications Commission (“FCC”) and state commissions on regulatory and  
5 interconnection dockets.

6 **Q. What was your professional experience prior to your current position?**

7 A. I have worked in the telecommunications industry for 23 years, the last seven years of  
8 which have been at Consortia. Prior to my position with Consortia, I worked at ALLTEL  
9 (formerly known as Aliant Communications prior to merging with ALLTEL) as the  
10 Regulatory/Financial manager of their Nebraska competitive local exchange carrier  
11 (“CLEC”) operations. Prior to that position, I worked for Aliant Communications in the  
12 areas of Regulatory Policy and Separations and Access.

13 **Q. What is your educational background?**

14 A. I have a Master’s degree in Finance and a Bachelor’s degree in Business from the  
15 University of Nebraska.

16 **Q. Have you previously testified before the South Dakota Public Utilities Commission?**

17 A. Yes I have. In June of 2004, I testified on behalf of several rural incumbent local  
18 exchange carriers (“ILECs”) in which I presented data supporting each of the rural  
19 ILEC’s requests for suspension of Local Number Portability (“LNP”) requirements. In  
20 December 2005, I testified on behalf of rural ILECs in support of the Joint Petition for  
21 Extension of the LNP suspension date. I have also provided written testimony on behalf  
22 of rural ILECs in interconnection proceedings that were resolved prior to hearing.

23

1 **Q. Will you please identify the areas of dispute raised in this proceeding for which you**  
2 **will be providing testimony and identify issues raised in which direct testimony will**  
3 **be provided on behalf of McCook by other witnesses?**  
4

5 **A.** Yes, I will identify those issues for which I will provide direct testimony as well as  
6 identify those issues for which direct testimony will be provided by other witnesses on  
7 behalf of McCook. Some of these areas are identified as issues in the Petition for  
8 Arbitration filed by McCook (the "Petition") and the Response to the Petition filed by  
9 Alltel (the "Response"). I would define other issues as sub-issues as they are discussed  
10 under the main topical issues identified in the Petition and Response. In either case, I  
11 have identified the topics for my testimony by reference to the issue numbers as  
12 contained in either the Petition or in the Response. Sub-issues relating to a particular  
13 numbered issue are assigned sub-issue numbers, i.e. "first sub-issue," etc.

14 **Summary of Issues**  
15

16 **A. Issue 1:** Issue 1 from the Petition is: "Is the reciprocal compensation rate for  
17 IntraMTA Traffic proposed by the Telco appropriate pursuant to 47 U.S.C. §252(d)(2)?"  
18 Tim Eklund of Consortia Consulting and Nathan Weber of Vantage Point Solutions will  
19 address this issue in each of their testimonies.

20 **B. Issue 2:** The second issue from the Petition is: "What is the appropriate percent  
21 InterMTA use factor to be applied to non-IntraMTA traffic exchanged between the  
22 parties?" Larry Thompson of Vantage Point Solutions will provide testimony on this  
23 issue. Mr. Thompson will also provide testimony on the proportion of non-IntraMTA  
24 traffic exchanged between the parties that is intrastate traffic and the proportion that is  
25 interstate traffic.

1           **C. Issue 2, First Sub-issue:** My first area of testimony concerns Issue 2. I will  
2 address as the first sub-issue to Issue 2 Alltel's statement that "Petitioner's proposal on  
3 the use of interstate versus intrastate access rates for such InterMTA traffic is also  
4 unsupported." I will provide support for McCook's proposal that its intrastate access  
5 tariff shall be used to provide the rate for intrastate InterMTA traffic and its interstate  
6 access tariff shall be used to provide the rates for interstate InterMTA traffic.

7           **D. Issue 2, Second Sub-Issue:** Alltel also presents a second sub-issue in connection  
8 with Issue 2. I will discuss Alltel's claim that a net InterMTA factor should be used  
9 between Alltel and McCook. I will demonstrate that such an approach would only be  
10 appropriate in those limited situations where McCook delivers InterMTA traffic directly  
11 to Alltel on a direct connection and only if McCook agrees to assume billing  
12 responsibility for Alltel. In addition, Alltel would need to provide data indicating the  
13 amount of InterMTA traffic that McCook is terminating on the direct connection.  
14 Assuming that McCook does not agree to assume Alltel's billing responsibility, Alltel  
15 would need to establish the appropriate rate for billing InterMTA traffic.

16           **E. Issue 3:** Issue 3 in the Petition is: "What is the appropriate manner by which the  
17 minutes of use of IntraMTA Traffic terminated by the parties, one to the other, should be  
18 calculated and billed?" I will address why it is appropriate for each party to measure and  
19 bill the other for the minutes of use terminating to its network from the other party.

20           **F. Issue 4:** Issue 4 in the Petition is: "What is the obligation of the parties with  
21 respect to dialing parity?" I will testify that McCook will provide dialing parity as  
22 required by the Act and applicable FCC Rules.

1           **G. Issue 5:** Issue 5 in the Petition is: “What is the appropriate effective date and  
2 term of the agreement?” Since Alltel states that it accepts the effective date and term of  
3 the Agreement as proposed by McCook, no testimony is needed for this issue.

4           **H. Issue 6** in Alltel’s Response is: “What is the appropriate definition of IntraMTA  
5 and InterMTA Traffic?” I will testify that Alltel’s recommendation to strike the phrase  
6 “based on the location of the connecting Cell Site serving the wireless End User at the  
7 beginning of the call and the location of the End Office serving the wireline End User” is  
8 inconsistent with the FCC’s previous finding.<sup>1</sup>

9           **I. Issue 7:** I will provide testimony regarding Issue 7 in the Response, which is:  
10 “Which party can initiate a direct interconnection request?” I will testify that contrary to  
11 Alltel’s assertion, McCook’s proposed language in Section 3.1.3 of the agreement does  
12 not give either party the right to require a direct interconnection facility in order to  
13 terminate Traffic. Alltel proposes language that would give it the right to unilaterally  
14 dictate a two-way direct connection.<sup>2</sup> McCook does not agree to Alltel’s proposed  
15 language as it is inconsistent with other language in both McCook’s and Alltel’s  
16 proposed Agreements.

17           **Testimony-Issue 2 – Issue 7**

18  
19           **Issue 2: What is the appropriate InterMTA use factor to be applied to interMTA traffic**  
20           **exchanged between the parities?**

21  
22           **Issue 2, First Sub-Issue: Alltel’s claim that McCook’s use of interstate versus intrastate**  
23           **access rates for InterMTA traffic is unsupported.**

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<sup>1</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, First Report and Order, FCC 96-325, Released August 8, 1996, at para. 1044 (“*First Report and Order*”).

<sup>2</sup> According to paragraph 22 of Alltel’s Response, Alltel states that it has the unilateral right to seek indirect interconnection, pursuant to 47 U.S.C. § 251(a)(1).

1  
2 **Q. Do you agree with Alltel's claim that McCook's use of interstate versus intrastate**  
3 **access rates for InterMTA traffic is unsupported?**

4  
5 A. No I do not. McCook proposes that its applicable intrastate access tariff shall be used as  
6 the basis to provide the rate for intrastate InterMTA traffic and its applicable interstate  
7 access tariff shall be used as the basis to provide the rates for interstate InterMTA traffic.  
8 Calls that originate in South Dakota and terminate to one of the McCook exchanges are  
9 intrastate calls and are properly subject to the rates as established in the intrastate tariff  
10 pursuant to South Dakota Administrative Rule 20:10:29:04. Likewise, calls that are  
11 originated outside of the state that are terminated to a McCook exchange are interstate  
12 calls and are subject to the rates established in the interstate tariff pursuant to Section 69  
13 of the FCC rules. The FCC recognized that intrastate interMTA traffic would be assessed  
14 intrastate access charges and interstate interMTA traffic would be assessed interstate  
15 access charges in its *First Report and Order*. There, the FCC stated that "the  
16 geographical locations of the calling and the called party determine whether a particular  
17 call should be compensated under the transport and termination rates established by one  
18 state or another, or under interstate or intrastate access charges . . . for administrative  
19 convenience, the location of the initial cell site when a call begins shall be used as the  
20 determinant of the geographical location of the mobile customer."<sup>3</sup> Had the FCC  
21 determined that either intrastate access charges or interstate access charges do not apply  
22 to interMTA traffic, it would not have referred to intrastate and interstate access charges  
23 in paragraph 1044 of the *First Report and Order*.

24 Further, pursuant to South Dakota Administrative Rule 20:10:29:04, intrastate switched  
25 access charges are billed for the provision of intrastate telecommunications services.

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<sup>3</sup> See *First Report and Order* at para. 1044.

1 Thus, it is clear that the jurisdiction of the call determines the appropriate tariff under  
2 which to bill the carrier terminating traffic onto McCook's network. Therefore, contrary  
3 to Alltel's assertion, intrastate access charges are properly applied to intrastate interMTA  
4 traffic terminated by Alltel to McCook's network and interstate access charges are  
5 properly applied to interstate interMTA traffic terminated by Alltel to McCook's  
6 network.

7 **Issue 2, Second Sub-Issue: Alltel's claim that to the extent an InterMTA factor is included,**  
8 **that factor should reflect the net amount of InterMTA traffic exchanged between the**  
9 **parties.**

10  
11 **Q. Will you please identify the deficiencies of Alltel's claim that the InterMTA factor**  
12 **shall reflect the net amount of InterMTA traffic exchanged between the parties?**

13  
14 A. McCook routes most originating InterMTA traffic to subscribers' preferred  
15 Interexchange Carriers ("IXCs"). Consistent with 47 U.S.C. § 251(g) and 47 C.F.R. §  
16 51.701(b)(1), telecommunications traffic that that is routed and carried by IXCs is subject  
17 to interstate or intrastate exchange access and must be charged to and recovered from the  
18 IXC that carries the call.<sup>4</sup> McCook assesses IXCs exchange access charges and the IXC  
19 assesses and receives compensation from the subscriber that originated the call. Since it  
20 is the IXC that terminates these calls onto the Alltel network, Alltel must seek  
21 compensation from the IXC for these InterMTA IXC-terminated calls and not from  
22 McCook.

23 **Q. Under what circumstance does McCook route InterMTA traffic to Alltel without**  
24 **the use of an IXC?**

25  
26 A. McCook routes InterMTA Traffic to Alltel without using an IXC only when Alltel has an  
27 NPA-NXX code that is rated as local to the rate center from which the land line

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<sup>4</sup> See *First Report and Order* at para. 1043.

1 subscriber originated the call. As an example, Alltel has the 605-240 NPA-NXX code  
2 rated as local to the Salem rate center of McCook. When one of McCook's end user  
3 subscribers in Salem dials and calls an Alltel subscriber with the Salem 605-240 NPA-  
4 NXX code belonging to Alltel, it is routed over a direct connection in Salem to Alltel  
5 without the use of an IXC. This is true even if Alltel's subscriber is located in an MTA  
6 outside that of the MTA which Salem is located.

7 **Q. Has Alltel provided any data regarding the amount of InterMTA traffic originating**  
8 **from Salem over the direct connection?**

9  
10 A. No, they have not. Thus, a net amount can not be developed.

11  
12 **Q. Even if Alltel had data regarding the proportion of the total traffic originating from**  
13 **the Salem rate center on the direct connection that was InterMTA Traffic, does**  
14 **McCook have any obligation under the Act or FCC rules that requires it to apply a**  
15 **credit to Alltel for such Traffic?**

16  
17 A. No, I'm not aware of any provisions in the Act or FCC rules which would place such a  
18 requirement upon McCook. If Alltel wishes to bill for traffic terminating on its network,  
19 it should establish the appropriate means to measure and bill for such traffic. If Alltel  
20 had data to determine the InterMTA percent, it could measure traffic terminating on that  
21 direct connect from McCook's Salem exchange and apply the InterMTA percent in order  
22 to bill for InterMTA Traffic. Since Alltel has not provided any InterMTA data in its  
23 Response or otherwise, there is no basis to even determine the appropriate InterMTA  
24 billing percentage for Alltel to bill McCook.

25 **Q. If Alltel had data indicating the amount of InterMTA Traffic that was terminating**  
26 **on the direct connection to Alltel from the Salem rate center, at what rate would**  
27 **Alltel bill?**

28  
29 A. It is my understanding that Alltel could bill rates based upon any terminating access tariff  
30 that Alltel has filed with the FCC or the South Dakota Commission, or based upon an



1 other publicly available price or rate list. Alltel's suggestion to use a net InterMTA  
2 amount in effect allows Alltel to simply use the access rates as filed by McCook even  
3 though Alltel has filed no such rate of their own.

4 **Issue 3: What is the appropriate manner by which the minutes of use of IntraMTA Traffic**  
5 **terminated by the parties, one to the other, should be calculated and billed?**

6  
7 **Q. What is McCook's position regarding the billing and payment for the IntraMTA**  
8 **Traffic?**

9  
10 A. McCook recommends that each party to the agreement should bill the other party to the  
11 agreement based upon actual recorded terminating traffic it receives from the other party  
12 or based upon billing records it has obtained from a third party transit provider. This is  
13 how McCook currently determines the amount of terminating traffic it receives from  
14 Alltel. McCook believes that Alltel should also be capable of recording terminating  
15 traffic it receives on the direct connect and can obtain billing records from the third party  
16 transit provider in order to bill McCook.

17 **Q. Alltel states that its position is that the interconnection agreement should allow for a**  
18 **net billing approach. What is your understanding of the net billing approach?**

19  
20 A. Instead of both parties measuring and billing for the traffic that terminates on its  
21 respective network from the other party, under Alltel's net billing approach, only  
22 McCook would be required to obtain the necessary billing records in order to bill Alltel  
23 for traffic that Alltel terminates to McCook. McCook would then give Alltel a credit for  
24 the traffic that McCook terminates to Alltel assuming the parties can agree to the  
25 appropriate offset percentage. McCook submits that if the parties can not agree on the  
26 appropriate offset percent, the most accurate and fair compensation methodology is for  
27 each of the parties to obtain the necessary data in order to bill the other party.

1 **Q. Are there any obligations in the Act or FCC rules that require an ILEC to measure**  
2 **its originating traffic or to purchase billing records when the terminating carrier**  
3 **chooses not to measure traffic terminating onto its network or purchase billing**  
4 **records in order to determine a net billing percentage?**  
5

6 A. There is no requirement in Section 251 of the Act or FCC Rules which shifts the  
7 obligation to McCook to measure traffic originating on its network or requires McCook  
8 to assume responsibility to perform an analysis of traffic on behalf of Alltel. In Alltel's  
9 proposed agreement, Alltel recommends deleting McCook's proposed language that  
10 "Each party shall bill the other party for IntraMTA Traffic actually terminated to its  
11 network by the other party." Instead, Alltel proposes that it "may elect to use a  
12 Reciprocal Compensation Factor Billing Method in lieu of actual traffic recording."  
13 McCook has not agreed to Alltel's election to "allow" for a reciprocal compensation  
14 credit. Since this net billing approach is not a requirement pursuant Section 251 of the  
15 Act or the regulations prescribed by the FCC pursuant to Section 251 and McCook has  
16 not agreed thereto, McCook believes such a requirement should not be imposed in this  
17 proceeding.

18 Another reason to have each party measure the traffic terminating on its network from the  
19 other party is that by doing so, there will be no dispute regarding the proper "net factor"  
20 amount. McCook therefore recommends its proposed language be adopted.

21 **Issue 4: What is the obligation of the parties with respect to dialing parity?**  
22

23 **Q. Is it your understanding that this issue has been resolved?**  
24

25 A. Yes, it is. McCook understands that it has a dialing parity obligation pursuant to Section  
26 251(b) of the Act and McCook therefore will comply with such requirement.

27 **Issue 5: What is the appropriate effective date and term of the agreement?**  
28

29 **Q. Is it your understanding that this issue has been resolved?**

1  
2 A. Yes, it is. McCook proposed that the Agreement be deemed effective as of January 1,  
3 2007, and remain in full force and effect for a period of three years after January 1, 2007.  
4 Alltel, in its Response to the Petition, states that it accepts the effective date and term of  
5 the Agreement as proposed by the Petitioner. Therefore, I understand that this issue has  
6 been resolved.

7 **ADDITIONAL ISSUES RAISED BY ALLTEL IN THE RESPONSE**

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

9  
10 **Q. How does McCook propose to differentiate traffic that is subject to access charges**  
11 **(InterMTA) versus which traffic is subject to transport and termination charges**  
12 **(IntraMTA)?**

13  
14 A. McCook proposes that the location of the initial site when the call begins should be used  
15 as the determinant of the geographical location of the mobile customers for use in  
16 determining which traffic is subject to access charges (InterMTA) versus which traffic is  
17 subject to transport and termination charges (IntraMTA).

18 **Q. Why did the FCC conclude that the location of the initial cell site when the call**  
19 **begins shall be used as the determinant of the geographic location of the mobile**  
20 **customers for use in determining which traffic is subject to access charges**  
21 **(InterMTA) versus which traffic is subject to transport and termination charges**  
22 **(IntraMTA)?**

23  
24 A. In the *First Report and Order*, the FCC concluded that traffic between an incumbent LEC  
25 and a CMRS network that originates and terminates within the same MTA (defined based  
26 on the parties' location at the beginning of the call) is subject to the transport and  
27 termination rate under section 251(b)(5), rather than interstate or intrastate access  
28 charges.<sup>5</sup>

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<sup>5</sup> See, *First Report and Order* at para. 1043.

1 The FCC recognized that since CMRS customers may travel from location to location  
2 during the course of a single call, it would be difficult to determine the applicable  
3 transport and termination rate or access charge.<sup>6</sup> According to the FCC, “This could  
4 complicate the computation of traffic flows and the applicability of transport and  
5 termination rates, given that in certain cases, the geographic locations of the calling party  
6 and the called party determine whether a particular call should be compensated under  
7 transport and termination rates established by one state or another, or under interstate or  
8 intrastate access charges.”<sup>7</sup> In acknowledging the complexity of ascertaining the CMRS  
9 subscriber’s location, the FCC concluded that parties could calculate the overall  
10 compensation amounts by extrapolating from traffic studies and samples by using the  
11 CMRS subscriber’s originating cell site location to determine the proportion of traffic  
12 exchanged between CMRS providers and LECs that was subject to reciprocal  
13 compensation or access charges.<sup>8</sup>

14 **Q. The FCC stated that as an alternative to using the location of the initial cell site**  
15 **when the call begins as a surrogate for the location of the cellular parties’ locations**  
16 **at the beginning of the call, “LECs and CMRS providers can use the point of**  
17 **interconnection between the two carriers at the beginning of the call to determine**  
18 **the location of the mobile caller or called party.” Why doesn’t the Agreement**  
19 **proposed by McCook use this as a way to determine the location of the cellular**  
20 **subscriber at the beginning of the call?**

21  
22 A. The Point of Interconnection in the Agreement proposed by McCook and as well as the  
23 Agreement proposed by Alltel is defined as “a physical location where the exchange of  
24 traffic between the Parties takes place thereby establishing the technical interface and

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<sup>6</sup> Id. at para. 1044.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

1 points for operational and financial division of responsibility.” It is obvious by this  
2 definition that it in no way relates to all of the possible locations of the CMRS subscriber  
3 when the call originates. Using the Point of Interconnection as the surrogate for the  
4 location of the wireless subscriber would assume that all calls to or from the wireless  
5 subscriber are originated from or terminated to that specific location. Appendix B of the  
6 proposed Agreement defines the locations for Point of Interconnection for direct  
7 connects, which are McCook’s host and stand alone end offices. It would be ridiculous  
8 to assume that these are the only locations in which cellular subscribers can be located  
9 when they place or receive calls. By means of an example, currently Alltel and McCook  
10 have a Point of Interconnection at the Salem host switch. Using this Point of  
11 Interconnection at Salem as the surrogate for the location of the cellular subscriber would  
12 in effect assume that when any Alltel subscriber calls a McCook subscriber, all such calls  
13 are placed from Salem regardless of whether the subscriber is likely at a location other  
14 than the Point of Interconnection.

15 **Q. Has Alltel, in its proposed Agreement, defined the location of the cellular subscriber**  
16 **at the beginning of the call to be the Point of Interconnection between McCook and**  
17 **Alltel?**

18  
19 A. No, it has not.

20 **Q. In defining IntraMTA and InterMTA Traffic, Alltel recommends deletion from**  
21 **McCook’s proposed definition of references to the locations of the connecting cell**  
22 **site serving the wireless End User as the basis for determining the location of the**  
23 **wireless subscriber. Does Alltel, in its proposed Agreement, offer an alternative or a**  
24 **proxy for determining or deciding the location of the wireless subscriber?**

25  
26 A. No. Alltel’s definition provides no basis on which to determine the location of the  
27 wireless subscriber at the beginning of a call in order to determine whether the call is an  
28 IntraMTA call or an InterMTA call. I believe the Agreement must include the basis for

1 McCook's proposed language does not in any way dictate that Alltel must use direct  
2 facilities in order to terminate its traffic to McCook's subscribers. It is Alltel's proposed  
3 language that would allow Alltel to unilaterally require the use of a two-way direct  
4 interconnection at Alltel's request. I believe that Alltel's proposal to dictate that McCook  
5 must utilize these facilities if requested by Alltel is inconsistent with the language in  
6 Section 4.5 of McCook's and Alltel's proposed agreement. According to Section 4.5,  
7 either Party may choose to route its originating Traffic on an indirect basis through the  
8 use of a Third Party Provider. Given Alltel's acceptance of the language of Section 4.5  
9 and the inconsistency created through Alltel's suggested language in Section 3.1.3,  
10 McCook submits that the Commission accept the language in Section 3.1.3 as proposed  
11 by McCook.

12 **Q. Does this conclude your testimony?**

13 **A. Yes, it does.**