

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITIONS OF ALLIANCE COMMUNICATIONS COOPERATIVE, INC., MCCOOK COOPERATIVE TELEPHONE COMPANY, BERESFORD MUNICIPAL TELEPHONE COMPANY, KENNEBEC TELEPHONE COMPANY, SANTEL COMMUNICATIONS COOPERATIVE, INC., WEST RIVER COOPERATIVE TELEPHONE COMPANY, INC. (COLLECTIVELY THE "RLECS") FOR ARBITRATION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES RELATING TO AGREEMENTS WITH ALLTEL COMMUNICATIONS, INC.	Docket Nos. TC07-111 TC07-112 TC07-113 TC07-114 TC07-115 TC07-116
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**REBUTTAL TESTIMONY OF SUE VANICEK
ON BEHALF OF THE SOUTH DAKOTA RLECS**

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Q. Please State your Name, Employer, Business Address and Telephone Number.

A. My name is Sue Vanicek. I am employed with Consortia Consulting ("Consortia"), formerly known as TELEC Consulting Resources Inc. My business address is 233 South 13th Street, Suite 1225, Lincoln, Nebraska, 68508.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Alliance Communications Cooperative, Inc., McCook Cooperative Telephone Company, Beresford Municipal Telephone Company, Kennebec Telephone Company, Santel Communications Cooperative, Inc., and West River Cooperative Telephone Company, Inc., which collectively I'll refer to



1 as the RLECs. Each RLEC provides local telephone exchange service and
2 exchange access services predominantly in the more rural parts of South Dakota.

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

4 A. I am a Senior Consultant at Consortia Consulting, Inc. (“Consortia”) which assists
5 local exchange telephone companies in regulatory analysis and representation, as
6 well as evaluation of financial and operational decisions.

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

8 A. I monitor and analyze state and federal regulatory proposals that could affect our
9 client’s operations, and advise them of potential impacts. I work with our clients
10 to develop responses to regulatory proposals, including comments and testimony.
11 The most common issues I work with are universal service and a host of
12 regulations that have resulted as the Telecommunications Act of 1996 has been
13 implemented. I have provided expert testimony on universal service issues in
14 both Nebraska and South Dakota. I also testified in a wireline-wireless arbitration
15 proceeding in Nebraska, and have filed written testimony in a wireline-wireless
16 arbitration proceeding in South Dakota that reached a negotiated settlement prior
17 to hearing.

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

19 A. I have worked in the telecommunications industry for 23 years. Prior to my
20 position at Consortia, I was employed by Lincoln Telephone/Aliant
21 Communications. I held a variety of positions specializing in regulatory and
22 legislative analysis and strategic planning. My most recent position at Aliant
23 Communications was Economic Costs and Analysis Manager. In that position I

1 was responsible for managing the development of cost information, both forward-
2 looking and historical, and for analyzing and developing responses to state and
3 federal regulatory proposals on issues such as universal service.

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

5 A. I have a Master of Arts degree in Economics and a Bachelor of Science degree in
6 Business Administration, both from the University of Nebraska-Lincoln.

7 **Q. Have you read the direct testimony of Mr. W. Craig Conwell filed on behalf**
8 **of Alltel Communications, LLC (“Alltel”) in this proceeding?**

9
10 A. Yes, I have.

11
12 **Q. What is the purpose of your rebuttal testimony?**

13
14 A. The purpose of my rebuttal testimony is to respond to the direct testimony of Mr.
15 Conwell in regard to policy issues regarding the pricing of transport and
16 termination that he discussed in his direct testimony in connection with the
17 determination of reciprocal compensation rates pursuant to 47 U.S.C. § 251(b)(5).

18 **Q. What is the statutory requirement for transport and termination rates**
19 **contained in 47 U.S.C. § 252(d)(2)?**

20
21 A. 47 U.S.C. § 252(d)(2) reads as follows:

22 (2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.—
23 (A) IN GENERAL. – For the purpose of compliance by an incumbent local
24 exchange carrier with section 251(b)(5), a State commission shall not consider
25 the terms and conditions for reciprocal compensation to be just and reasonable
26 unless –

27 “(i) such terms and conditions provide for the mutual and reciprocal recovery by
28 each carrier of costs associated with the transport and termination on each
29 carrier’s network facilities of call that originate on the network facilities of the
30 other carrier; and

31
32 “(ii) such terms and conditions determine such costs on the basis of a reasonable
33 approximation of the additional costs of terminating such calls.

34
35 (B) RULES OF CONSTRUCTION. – This paragraph shall not be construed –

1
2 “(i) to preclude arrangements that afford the mutual recovery of costs through the
3 offsetting of reciprocal obligations, including arrangements that waive mutual
4 recovery (such as bill-and-keep arrangements); or
5

6 “(ii) to authorize the Commission or any State commission to engage in any rate
7 regulation proceeding to establish with particularity *the additional costs of*
8 *transporting or terminating calls*, or to require carriers to maintain records with
9 respect to the additional costs of such calls. (emphasis added)
10

11 **Q. How did the Federal Communications Commission (“FCC”) interpret the**
12 **“additional cost” standard for the pricing of transport and termination?**
13

14 A. The FCC found that the pricing of transport and termination under the “additional
15 cost” standard should use the same economic cost-based pricing standard that it
16 established for the pricing of unbundled elements.¹

17 **Q. How did the FCC codify this finding into rules for pricing transport and**
18 **termination.**
19

20 A. The FCC established rules for pricing transport and termination in 47 C.F.R.
21 §51.505 and 47 C.F.R. §51.511. 47 C.F.R. §51.505(a) specifies that the forward-
22 looking economic cost of an element (in the present case transport and
23 termination) equals the sum of: (1) the total element long-run incremental cost of
24 an element; and (2) a reasonable allocation of forward-looking common costs. 47
25 C.F.R. §51.511(a) specifies that the forward-looking economic cost per unit of an
26 element equals the forward-looking economic cost of the element, as defined in §
27 51.505 of this part, divided by a reasonable projection of the sum of the total
28 number of units of the element that the incumbent LEC is likely to provide to
29 requesting telecommunications carriers and the total number of units of the

¹ 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 (“*Local Competition Order*”) (rel. Aug. 8, 1996) at ¶ 1054.

1 element that the incumbent LEC is likely to use in offering its own services,
2 during a reasonable measuring period.

3 **Q. Please explain the economic theory underlying the FCC's choice of the**
4 **forward-looking economic cost standard for pricing contained in 47 C.F.R. §**
5 **51.505 and 47 C.F.R. § 51.511.**

6
7 A. The FCC chose a pricing standard that it felt would most closely mirror entry
8 decisions and utilization of telecommunications infrastructure in a competitive
9 market.² This standard, forward-looking economic cost, includes the total
10 element long-run incremental cost of an element ("TELRIC"), plus a reasonable
11 allocation of forward-looking common costs.³

12 **Q. Please describe the TELRIC costing methodology as adopted by the FCC in**
13 **§ 51.505(b).**

14
15 A. TELRIC can be simply explained by elaborating on each word in this term. The
16 word "total" refers to the increment of the network element or service over which
17 the cost is to be computed. In other words, as stated by the FCC, "the increment
18 that forms the basis for a TELRIC study shall be the *entire quantity* of the
19 network element provided."⁴ (emphasis added) The word "element" refers to the
20 good/service for which a cost is being developed. In this case, the elements for
21 which costs need to be developed are transport and termination (switching). The
22 words "long-run" refer to a period long enough so that all of a firm's costs
23 become variable or avoidable.⁵ Finally, the words "incremental cost" refer to the

² See *Local Competition Order* at ¶¶ 630 and 679.

³ See 47 C.F.R. § 51.505(a).

⁴ See *Local Competition Order* at ¶ 690.

⁵ *Id.* at ¶ 677.

1 additional costs a firm will incur as a result of expanding the output of a good or
2 service by producing an additional quantity of the good or service.⁶

3 **Q. Are there any other FCC rules that are pertinent to the pricing of transport**
4 **and termination?**

5
6 A. Yes. § 51.507 contains general rate structure standards for elements including
7 transport and termination. The text of § 51.507(c) states in part “[t]he costs of
8 shared facilities shall be recovered in a manner that efficiently apportions costs
9 among users.”

10 **Q. Based upon your review of the FCC’s pricing rules, in your opinion, is Mr.**
11 **Conwell correct in his assertion that usage-sensitive costs refer to the costs of**
12 **components of plant (e.g., a switch) whose capacity is exhausted by the**
13 **volume of traffic handled by the plant component?**⁷

14
15 A. No, not in my opinion. Usage-sensitive costs are not determined by whether or
16 not a component of plant, e.g., a switch, are exhausted by the traffic volume
17 placed upon a component. Rather, usage-sensitive costs are costs that vary with
18 usage or the volume of traffic.

19 **Q. Based upon your review of the FCC’s pricing rules, in your opinion, is Mr.**
20 **Conwell correct in his assertion that the “additional cost” standard requires**
21 **that transport and termination rates recover only an RLEC’s costs that are**
22 **caused by handling land-to-mobile traffic?**⁸

23
24 A. No, not in my opinion. As I mentioned previously, the FCC determined that
25 transport and termination rates should be based upon TELRIC, plus a reasonable
26 allocation of forward-looking common costs. Furthermore, TELRIC requires that
27 the cost, or rate, be computed over the *total*, or *entire quantity* of the network

⁶ Id. at ¶ 675.

⁷ See Conwell Direct Testimony at p. 17, footnote 8.

⁸ Ibid.

1 element provided. Therefore, the TELRIC rates should be determined over the
2 total quantity of transport and termination (switching) provided by an RLEC. The
3 rates should not be determined based upon costs and quantities of demand
4 associated with any particular carrier or group of carriers (for example, mobile
5 carriers). This would be a violation of FCC rules.

6 **Q. Based upon your review of the FCC's pricing rules, in your opinion, is Mr.**
7 **Conwell correct in his assertion that the RLECs must produce evidence to**
8 **prove that the capacities of the equipment components included in the switch**
9 **common category are exhaustible by expected usage demand in order to be**
10 **treated as usage-sensitive switch investments that are recoverable through**
11 **termination rates?**⁹

12
13 A. No, not in my opinion. Mr. Conwell states that it does not appear that usage
14 exhausts the capacity of the RLEC's switch processors, therefore, he asserts that
15 there are no additional costs caused by usage.¹⁰ The dictionary defines capacity
16 as "the ability to contain, receive, or accommodate," and "the maximum amount
17 or number that can be contained." If switching costs were not sensitive to usage,
18 then a discussion of switch capacity would be unnecessary and irrelevant. As I
19 mentioned above, usage-sensitivity is based upon whether costs vary with usage,
20 not whether foreseeable usage would exhaust the capacity of a given network
21 component. As Mr. Conwell mentions in his testimony, Beresford stated in its
22 response to Alltel's interrogatory that the capacity of the switch processor
23 components is volume-sensitive, and that multiple volume-sensitive variables
24 may be limiting factors that can exhaust the capacity of the switch processor
25 function. The fact that a new switch has been engineered with sufficient capacity

⁹ See Conwell Direct Testimony at 45:6-14.

¹⁰ See Conwell Direct Testimony at 44:7-10.

1 and currently possesses unused capacity does not mean that the switch is not
2 usage sensitive. In fact, in order to meet the standards for TELRIC that the FCC
3 has established, the costs must be based on an efficient network configuration. It
4 may be the most cost efficient to base termination (switching) rates upon a switch
5 that has a processor that is sufficiently large so that it does not need to be
6 augmented or replaced during its useful life.

7 **Q. What are the ramifications of Mr. Conwell's assertion that the switch**
8 **processor is not usage-sensitive and that the cost of the processor should not**
9 **be included in termination (switching) rates?**

10
11 A. If the switch processor was found not to be usage-sensitive and the costs of the
12 processor were not included in the termination (switching) rates, this would result
13 in Alltel not paying for the use of *shared* components in the switch. As I
14 mentioned earlier, the FCC rules require that the costs of shared facilities shall be
15 recovered in a manner that efficiently apportions costs among users. Mr. Conwell
16 is suggesting that others, for example consumers subscribing to basic local
17 exchange service and interexchange carriers that provide long-distance service,
18 should be required to pay for the use of the switch processor, while wireless
19 carriers such as Alltel should not. Such a pricing regime, that is, requiring
20 consumers and long-distance carriers to pay for the switch processor while not
21 requiring Alltel to do so, would not efficiently apportion costs among users. If
22 Alltel was not required to pay for the use of the switch processor, it would
23 encourage Alltel to maximize its termination to the RLECs, as Alltel would likely
24 receive revenues from its end users for doing so, while not incurring termination
25 costs for the use of such switch components.

- 1 **Q. Have any regulatory agencies ruled that the cost of a switch processor are**
2 **usage-sensitive and should be included in termination (switching) rates?**
3
- 4 A. Yes. The Nebraska Public Service Commission (“NPSC”) has found in an
5 arbitration regarding an interconnection agreement between a wireless carrier and
6 an incumbent local exchange carrier that the switch processor is usage-sensitive
7 and therefore the costs of the processor should be included in usage-sensitive rates
8 for termination (switching). The NPSC indicated in an order reviewing an
9 arbitrated interconnection agreement and approving traffic-sensitive rates for the
10 switch processor “[t]he Commission is of the opinion that switch costs should be
11 shared by users of switching resources.”¹¹
- 12 **Q. What argument had the wireless carrier in the Nebraska arbitration case**
13 **made as to why the cost of the switch processor should not be included in**
14 **termination (switching) rates?**
15
- 16 A. The wireless carrier in the Nebraska arbitration case, WWC License L.L.C., had
17 made an argument similar to Alltel’s argument in the instant proceeding, that is,
18 “that the current and reasonably anticipated volume of traffic on the networks is
19 so small, and that the smallest available switches are so powerful, that it is not
20 appropriate to characterize the switches as having any cost that varies with use or
21 that contributed additional cost to the termination of calls.”¹²
- 22 **Q. Are you the economist who testified on behalf of the incumbent local**
23 **exchange carrier in the Nebraska arbitration case?**
24
- 25 A. Yes, I am.

¹¹ See *The Petition of Great Plains Communications, Inc., for Arbitration to Resolve Issues Relating to an Interconnection Agreement with WWC License L.L.C.*, Application No. C-2872, Interconnection Agreement Approved as Modified (entered Sept. 23, 2003) at ¶ 40.

¹² *WWC License, L.L.C., v. Boyle*, 459 F.3d 880, 895 (8th Cir. 2006).

1 **Q. Was your argument regarding the reasons as to why the cost of the switching**
2 **processor should be included in termination (switching) rates the same in the**
3 **Nebraska arbitration case as presented in the instant proceeding?**

4
5 A. Yes, it was.

6 **Q. Was the finding of the NPSC that the cost of the switch processor should be**
7 **included in per-minute compensation rates for termination reviewed and**
8 **upheld by any courts?**

9
10 A. Yes. The finding of the NPSC that the switch processor costs should be included
11 in a per-minute compensation rate was reviewed and upheld by the United States
12 District Court for the District of Nebraska¹³ and the United States Court of
13 Appeals for the Eighth Circuit.¹⁴

14 **Q. What is your reaction to Mr. Conwell's assertion that transport cable costs**
15 **should be computed specifically for routes that are used to transport Alltel's**
16 **mobile-to-land traffic?**¹⁵

17
18 A. Mr. Conwell is not properly applying the TELRIC pricing rule in asserting that
19 transport cable costs should be computed specifically for mobile-to-land traffic.
20 As I indicated previously, the "T" in TELRIC stands for the *total* costs
21 attributable to an element, in this case transport. If the transport distances for
22 mobile-to-land traffic are shorter than transport distances for the network in
23 general, as asserted by Mr. Conwell, developing rates based on a subset of the
24 total costs associated with transport could result in insufficient cost recovery, as I
25 will explain later in my testimony. Furthermore, it could result in inefficient
26 resource allocation, as artificially-low rates for transport may stimulate the

¹³ WWC License L.L.C. v. Boyle, 2005 WL 3676515 (D. NE 2005).

¹⁴ WWC License, L.L.C., v. Boyle, 459 F.3d 880 (8th Cir. 2006)

¹⁵ See Conwell Direct Testimony at 77:10-19.

1 demand for transport by sending incorrect pricing signals regarding the total cost
2 of providing such an element.

3 **Q. What is your reaction to Mr. Conwell's assertion that transport cable costs**
4 **should be computed specifically for routes used by Alltel for mobile-to-land**
5 **traffic, unless the RLECs can prove that longer cable mileages are more**
6 **efficient?**¹⁶

7
8 A. As I just discussed, Mr. Conwell is not properly applying the TELRIC pricing
9 rule. The "T" in TELRIC stands for the *total* costs attributable to an element, in
10 this case transport. Therefore, to comply with the TELRIC pricing standard, the
11 transport network should be designed to minimize costs as a whole over the *entire*
12 network. There are no requirements that element costs should be computed to
13 minimize the costs for the benefit of a specific carrier using the network. In fact,
14 designing a network to minimize the costs for a particular carrier could violate the
15 TELRIC requirements if it increased the total cost of the network.

16 **Q. What potential consequences could occur if transport costs were computed as**
17 **being specific to land-to-mobile traffic, instead of being computed for the**
18 **entire network?**

19
20 A. The Telecommunications Act of 1996 (the "Act") contains § 252(i), a provision
21 which allows *any* requesting telecommunications carrier to "opt-in" or adopt an
22 agreement upon the same terms and conditions as approved by a state commission
23 for another carrier. Therefore, if the transport rates specified in this proceeding
24 were approved by the South Dakota Public Utilities Commission, any
25 telecommunications carrier, not just mobile carriers such as Alltel, could seek to
26 receive transport for the same rate from the RLECs. This would clearly be
27 inappropriate, as the rates as suggested by Mr. Conwell would include only the

¹⁶ See Conwell Direct at 77:21-78-4.

1 costs associated with Alltel's mobile-to land traffic, and would not be appropriate
2 for other carriers. As I mentioned previously, setting a transport rate in this
3 manner could result in under-recovery of transport costs for the RLECs. For
4 example, if the South Dakota Public Utilities Commission approved a transport
5 rate that applied only to transport routes of shorter distances than average, other
6 telecommunications carriers, even those that would utilize transport routes of
7 greater distances than those utilized by mobile-to-land traffic, could "opt-in" to an
8 agreement between any of the RLECs and Alltel. Such carriers would receive
9 transport services at a rate less than the cost of the RLECs to provide transport.
10 Therefore, the RLECs could ultimately receive less compensation than the
11 TELRIC, plus a reasonable allocation of common costs, which they are entitled to
12 receive under the Act.

13 **Q. What is your reaction to Mr. Conwell's assertion that CALEA and Centrex**
14 **license fees should not be included in termination, since these costs are not**
15 **attributable to terminating mobile-to-land traffic¹⁷**
16

17 A. Mr. Conwell is not properly applying the TELRIC pricing rule. The "T" in
18 TELRIC stands for the *total* costs attributable to an element, in this case
19 termination. As I just explained with regard to transport, TELRIC rates are not
20 specific to a given carrier's use of a specific network element. TELRIC rates
21 must include all costs associated with a network element.

22 **Q. What is your reaction to Mr. Conwell's assertion that investments associated**
23 **with Web Self-Care should not be included in termination, since these costs**
24 **are attributable to retail services, rather than to terminating mobile-to-land**
25 **traffic?¹⁸**
26

¹⁷ See Conwell Supplemental Direct at 10:3-5.

¹⁸ See Conwell Supplemental Direct at 10:16-11:6.

1 A. Mr. Conwell is not properly applying the TELRIC pricing rule. The “T” in
2 TELRIC stands for the *total* costs attributable to an element, in this case
3 termination. As I just explained with regard to transport, TELRIC rates are not
4 specific to a given carrier’s use of a specific network element. TELRIC rates
5 must include all costs associated with a network element. Custom calling
6 features, such as caller ID, call waiting, etc., are not separate network elements,
7 rather, they are included in the switching (termination) element.¹⁹ If a landline
8 CLEC were to request the use of an unbundled switching network element from
9 the RLECs, it would be necessary for the landline CLEC to have access to the
10 Web Self-Care System in order to provide custom calling features to the landline
11 CLEC’s customers in the same manner as provided by the RLEC. The rules for
12 unbundled network elements (“UNEs”) require that an incumbent LEC offer
13 UNEs at a level of quality that is equal to that which the incumbent LEC provides
14 itself.²⁰ The rules further specify that “[t]his obligation is not limited to a
15 consideration of service quality as perceived by end users, and includes, but is not
16 limited to, service quality as perceived by the requesting carrier.”²¹ Therefore, the
17 Web Self-Care System should be included in the termination rate, as it is part of
18 the total cost of providing termination (switching).
19 With regard to Mr. Conwell’s assertion that the investment associated with Web
20 Self-Care should not be included in termination since FCC Rule § 51.505(d)(2)

¹⁹ See 47 C.F.R. § 51.319(c)(1)(i)(C)(2).

²⁰ See 47 C.F.R. § 51.305(a)(3).

²¹ Ibid.

1 does not permit “retail service costs” to be included in the FLEC costs of
2 termination, I do not believe that Mr. Conwell has correctly cited and interpreted
3 that rule. FCC Rule § 51.505(d)(2) is entitled “Retail costs” not “Retail service
4 costs.” Examples of retail costs that the FCC states should not be included in
5 UNEs are the costs of billing, marketing, and collection.²² Retail costs are costs
6 associated with offering a retail service to subscribers that are not
7 telecommunications carriers, but are not, as Mr. Conwell suggests, investments to
8 provide a retail service. Therefore, I believe that investments associated with the
9 Web Self-Care System are appropriately included in the termination (switching)
10 rate.

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

12 **A. Yes, it does.**

²² See 47 C.F.R. § 51.505(d)(2).