

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION
OF KENNEBEC TELEPHONE
COMPANY, FOR ARBITRATION
PURSUANT TO THE
TELECOMMUNICATIONS ACT OF
1996 TO RESOLVE ISSUES RELATING
TO AN INTERCONNECTION
AGREEMENT WITH ALLTEL
COMMUNICATIONS, INC.

Docket No.
TC07-114

**REBUTTAL TESTIMONY OF DAN DAVIS
ON BEHALF OF KENNEBEC TELEPHONE COMPANY**

Introduction

Q. Please state your name, employer and business address.

A. My name is Dan Davis. 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.

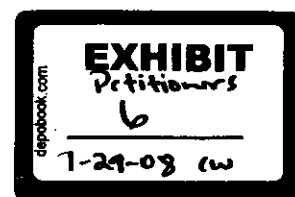
Q. Did you file direct testimony on behalf of Kennebec Telephone Company in this proceeding?

A. Yes. I filed direct testimony on behalf of Kennebec Telephone Company (“Kennebec”) on March 24, 2008.

Q. Have you read the direct testimony of Mr. Williams filed on behalf of Alltel?

A. Yes, I have.

Q. What is the purpose of your rebuttal testimony?



1 A. The purpose of my rebuttal testimony is to respond to the direct testimony of Mr.
2 Williams in regard to issues 2 through 7 that he discussed in his direct testimony.

3 **Rebuttal Testimony-Issue 2 – Issue 7**

4 **Issue 2: What is the appropriate InterMTA use factor to be applied to interMTA traffic**
5 **exchanged between the parties?**

6
7 **Q. Mr. Williams states that the FCC Rules make no clear statement when, or if, a**
8 **CMRS provider and a LEC should be responsible to each other for compensation**
9 **for interMTA traffic or how such compensation should be calculated.¹ Where in the**
10 **FCC's First Report and Order does the FCC clearly articulate the financial**
11 **obligations between a CMRS provider and a LEC?**

12
13 A. The FCC clearly states the financial obligations between a CMRS provider and a LEC in
14 paragraph 1044 its First Report and Order. Paragraph 1044 of the First Report and Order
15 states the following:

16 CMRS customers may travel from location to location during the course of a
17 single call, which could make it difficult to determine the applicable transport and
18 termination rate or access charge. We recognize that, using current technology, it
19 may be difficult for CMRS providers to determine, in real time, which cell site a
20 mobile customer is connected to, let alone the customer's specific geographic
21 location. This could complicate the computation of traffic flows and the
22 applicability of transport and termination rates, given that in certain cases, the
23 geographic locations of the calling party and the called party determine whether a
24 particular call should be compensated under transport and termination rates
25 established by one state or another, or under interstate or intrastate access charges.
26 We conclude, however, that it is not necessary for incumbent LECs and CMRS
27 providers to be able to ascertain geographic locations when determining the rating
28 for any particular call at the moment the call is connected. We conclude that
29 parties may calculate overall compensation amounts by extrapolating from traffic
30 studies and samples. For administrative convenience, the location of the initial
31 cell site when a call begins shall be used as the determinant of the geographic
32 location of the mobile customer. As an alternative, LECs and CMRS providers
33 can use the point of interconnection between the two carriers at the beginning of
34 the call to determine the location of the mobile caller or called party.

35
36 **Q. Mr. Williams states that typically the rates applicable to interMTA traffic are**
37 **negotiated.² In the contract that Alltel has or had with 29 South Dakota Rural**

¹ See Mr. Williams Direct Testimony, Page 4, Lines 12-14.

² See Mr. Williams Direct Testimony, Page 5, Line 5.

1 **ILECs, including Kennebec, what rate was negotiated to be applied to interMTA**
2 **traffic?**

3
4 A. According to Section 5.1.1 of the aforementioned agreement, the Telephone Company's
5 access charges applied to the termination of InterMTA traffic. And according to Section
6 2.1 of that agreement, InterMTA Traffic was subject to Kennebec's Interstate or
7 Intrastate access charges.

8 **Q. Mr. Williams lists his third reason why "negotiated estimates" are used for the**
9 **exchanged traffic that is compensable as interMTA traffic "as a particular matter,**
10 **there is no difference in what a terminating carrier needs to do to complete a call**
11 **whether it is interMTA or intraMTA."³ Do you agree with his third reason?**

12
13 A. No, I do not. The FCC has determined that there are different standards for rate
14 development for terminating interMTA calls versus terminating intraMTA calls and that
15 is what is being followed by Kennebec.

16 **Q. Mr. Williams states that a factor to delineate what percentage of Traffic is**
17 **InterMTA is required because no practical methodology has been developed that**
18 **can accurately measure whether a call is an intraMTA call or an interMTA call.⁴**
19 **What methods are available to develop a factor to delineate what percentage of the**
20 **Traffic is InterMTA?**

21
22 A. Mr. Thompson addresses the "SS7" method and the "CDR" method in his testimony.⁵

23
24 **Q. Mr. Williams states that "the Petitioner has not attempted to study or account for**
25 **the level of interMTA traffic that is sent from their network to the Alltel network."⁶**
26 **Did you identify the deficiencies of Alltel's claim that the InterMTA factor should**
27 **reflect the net amount of InterMTA traffic exchanged between the parties in your**
28 **direct testimony?**

29

³ See Mr. Williams Direct Testimony, Page 5, Lines 16-17.

⁴ See Mr. Williams Direct Testimony, Page 7, Lines 3-10.

⁵ See Mr. Thompson Direct Testimony, Pages 8-12.

⁶ See Mr. Williams Direct Testimony, Page 7, Line 23-24.

1 A. Yes I did. I addressed the deficiencies of Alltel's claim on pages 7-8 of my Direct
2 Testimony.

3 **Q. Mr. Williams asserts that Kennebec's proposed interconnection agreement does not**
4 **provide that Alltel be paid compensation for the termination of interMTA Traffic**
5 **originated by Kennebec that terminates on and uses Alltel's network.⁷ Do you agree**
6 **with Mr. Williams?**

7
8 A. No, I do not. As I described on pages 7-8 in my Direct Testimony, Kennebec's
9 termination of InterMTA Traffic to Alltel would only occur if there was a direct
10 connection between Alltel and Kennebec. There is not a direct connection between
11 Kennebec and Alltel. If there was, Section 2.1 of Kennebec's proposed interconnection
12 agreement clearly provides that InterMTA Traffic is that which is "originated by the End
13 User of one Party and terminated to the End User of the other Party." What Kennebec's
14 Agreement does not set forth are the applicable rates that Alltel would charge for
15 terminating InterMTA Traffic. Since Alltel does not have an access tariff, Kennebec
16 could not propose using an Alltel access rate. Section 7.2.4 of Kennebec's proposed
17 Interconnection Agreement sets forth the access rates that Kennebec would charge Alltel
18 for terminating InterMTA Traffic, as those rates established in Kennebec's Interstate and
19 Intrastate access tariffs. Alltel, in its proposed Interconnection Agreement, did not
20 propose any language for InterMTA Traffic in the other direction (terminating to Alltel).
21 In fact, the only change in this section proposed by Alltel are the rates that Kennebec
22 proposes to charge Alltel for terminating InterMTA Traffic. Alltel had ample
23 opportunity to propose language for the rates it would charge Kennebec but did not.

⁷ See Mr. Williams Direct Testimony, Page 8, Lines 16-19.

- 1 **Q. Do you believe the POI method as advocated by Alltel⁸ provides a reasonable**
2 **approximation of the location of the CMRS subscriber when a CMRS-wireline call**
3 **is originated?**
4
- 5 A. No I do not. As I described on pages 11-12 of my Direct Testimony, the POI method
6 suffers from a major deficiency in that it assumes that the only place that a wireless
7 subscriber can make or receive calls is at the point of interconnection and disregards the
8 more likely scenario, that such calls were not placed or received at the point of
9 interconnection.
- 10 **Q. The FCC, in its First Report and Order, stated that the determination of whether a**
11 **call is an interMTA call or an intraMTA call is based upon the parties' locations at**
12 **the beginning of the call.⁹ Does Mr. Williams provide any explanation as to how the**
13 **POI method provides an estimation of the parties' locations at the beginning of a**
14 **call?**
15
- 16 A. No he does not.
- 17 **Q. In your opinion, why would a CMRS carrier advocate the use of the POI method**
18 **when it does not provide a reasonable estimation of the parties' locations at the**
19 **beginning of a call?**
20
- 21 A. Because it will more than likely result in an InterMTA factor of zero.
- 22
- 23 **Q. In the study developed by Alltel that used the POI method, what is the resulting**
24 **InterMTA factor?**
25
- 26 A. Zero.
27
- 28 **Q. Mr. Williams states that Kennebec's intrastate access rates and terms are not**
29 **appropriate for this application.¹⁰ He also states that it is undisputed that the FCC**
30 **has asserted authority over all traffic to and from a CMRS carrier.¹¹ Do you agree**
31 **with Mr. Williams' assertion?**
32

⁸ See Mr. Williams Direct Testimony, Page 10, Lines 13-19.

⁹ See the First Report and Order, at para 1043.

¹⁰ See Mr. Williams Direct Testimony, Page 10, Lines 1-2.

¹¹ See Mr. Williams Direct Testimony, Page 10, Lines 3-4.

1 A. No I do not. It appears that Mr. Williams is asserting that this Commission has no
2 jurisdiction over intrastate intercarrier compensation rates for state traffic originating and
3 terminating between Kennebec and Alltel. If such an assertion were true, we would not
4 be in front of this Commission in this proceeding reviewing the rates Kennebec proposes
5 for transport and termination. Clearly the Act, pursuant to 47 U.S.C. § 252(c) and 47
6 U.S.C. § 252(d) gives this Commission the authority over such rates. As it relates to state
7 access rates, Mr. Williams' claim that the FCC has asserted authority over all traffic to
8 and from a CMRS carrier is incorrect and misplaced. Although Mr. Williams does not
9 provide a citation to back-up his claim, I believe the authority that Mr. Williams is
10 referring to is in regard to the rates a CMRS carrier charges its end users,¹² not over state
11 intercarrier compensation rates, including transport and termination and state access rates
12 developed by Kennebec.

13 **Q. Did the previous agreement between Kennebec and Alltel allow for InterMTA**
14 **Traffic to be billed at Kennebec's Intrastate access rate?**

15
16 A. Yes, it did. According to Section 2.1 of that agreement, InterMTA Traffic was billed at
17 Kennebec's interstate and intrastate access charges.

18 **Q. Does Mr. Williams support his claim that access charges that are applied to**
19 **interMTA traffic need to have been developed utilizing the methodologies provided**
20 **by FCC rules?**¹³

21
22 A. No, he does not. Mr. Williams does not cite any FCC rule to support his claim that
23 intrastate access rates should be developed in accordance with FCC rules and not state
24 access rate development rules.

¹² See 47 U.S.C. 332(C)(3)(A).

¹³ See Mr. Williams Direct Testimony, Page 10, Lines 7-9.

1 **Q. Do you agree with Mr. Williams that the FCC failed to specify how compensation**
2 **should be paid for interMTA traffic and therefore Alltel should be allowed to**
3 **specify that Kennebec's interstate access tariffs be applied to all interMTA traffic?**¹⁴
4

5 A. No, I do not. The FCC, in its First Report and Order, stated that "the geographical
6 locations of the calling and the called party determine whether a particular call should be
7 compensated under the transport and termination rates established by one state or
8 another, or under interstate or intrastate access charges."¹⁵ Thus, it is clear that the
9 jurisdiction of the call determines the appropriate tariff under which to bill the carrier
10 terminating traffic onto Kennebec's network. Therefore, contrary to Alltel's assertion,
11 intrastate access charges are properly applied to intrastate interMTA traffic terminated by
12 Alltel to Kennebec's network and interstate access charges are properly applied to
13 interstate interMTA traffic terminated by Alltel to Kennebec's network.

14 **Q. Mr. Williams claims that there are limitations with respect to the applicability of**
15 **Kennebec's Intrastate Access Tariff.**¹⁶ **Mr. Williams states that Kennebec's rate**
16 **presumes the delivery of traffic will occur at the SDN tandem and Alltel does not**
17 **route its traffic via SDN.**¹⁷ **Mr. Williams also states that Kennebec's tariff includes**
18 **a rate element for carrier common line.**¹⁸ **Are these statements relevant in terms of**
19 **how Kennebec should develop its state access rates?**

20
21 A. No, they are not. Kennebec has developed its access rates in accordance with the
22 Commission's rules on access rate development. The transport rate element is developed
23 according to ARSD 20:10:29:16. The transport rate element is calculated by dividing the

¹⁴ See Mr. Williams Direct Testimony, Page 10, Lines 6-7 and Lines 9-11.

¹⁵ See the First Report and Order, at para. 1044. The FCC recognized that it may be difficult to determine in real time a customer's specific location and concluded that parties may calculate overall compensation amounts by extrapolating from traffic studies and samples.

¹⁶ See Mr. Williams Direct Testimony, Page 10, Lines 12-13.

¹⁷ See Mr. Williams Direct Testimony, Page 10, Lines 17-20.

¹⁸ See Mr. Williams Direct Testimony, Page 11, Line 1.

1 transport revenue requirement by the annual transport minutes of use. The transmission
2 facilities from the Qwest route and the SDN route are included in the revenue
3 requirement and the minutes on both routes are included in the annual transport minutes
4 of use. It appears that Alltel's statement regarding the route that it terminates its traffic to
5 Kennebec would indicate that it advocates the use of a route specific rate. Since ARSD
6 20:10:29:16 does not address route specific rates or allow for distant sensitive charges, I
7 don't believe Mr. Williams' observation regarding the use of the Qwest route for Alltel
8 terminating traffic is relevant in the determination of Kennebec's transport access rate.
9 With regard to Mr. Williams' complaint that Kennebec's state access rate includes a rate
10 element for carrier common line, the inclusion of such a rate is consistent with ARSD
11 20:10:29:03.

12 **Q. Has the Commission approved a switched access rate for Kennebec?**

13
14 **A.** Yes, the switched access rate was approved in docket TC06-079.¹⁹ I believe that this is
15 the appropriate rate to charge Alltel for its terminating intrastate interMTA traffic.

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

18
19 **Q.** Mr. Williams states that Alltel lacks a system that can adequately capture traffic
20 records.²⁰ Does Kennebec have a system that captures traffic records?

21
22 **A.** Kennebec does not capture terminating wireless minutes at its switch locations for traffic
23 that is indirectly routed. Kennebec purchases records from the transiting provider, in this
24 case Qwest, which captures the minutes terminating to Kennebec from each of the

¹⁹ See In the Matter of the Establishment of Switched Access Rates for the Local Exchange Carriers Association, Order Approving Settlement Stipulation and Order Approving Tariff Revisions, TC06-079, December 28, 2006.

²⁰ See Mr. Williams Direct Testimony, Page 11, Lines 21-22.

1 wireless carriers. Kennebec uses the records it has purchased from Qwest to bill the
2 wireless carriers.

3 **Q. Could Alltel purchase terminating records from the transiting provider?**

4

5 A. Yes, it could. Purchasing records from the transiting provider should alleviate any
6 concern that Alltel may have regarding its internal systems.

7 **Q. Do you agree with Mr. Williams' assertion that Kennebec's proposed billing method**
8 **would cause Alltel to forfeit reciprocal compensation?**²¹

9

10 A. No, I do not. Kennebec's proposal would simply require Alltel to be responsible for its
11 own billing instead of relying on Kennebec.

12 **Q. According to Mr. Williams, wireless carriers do not have monthly detailed records**
13 **that allow them to determine how much compensable intraMTA traffic they receive**
14 **from ILECs.²² Could wireless carriers purchase records from the transit providers**
15 **that would allow them to determine how much intraMTA traffic they receive from**
16 **ILECs?**

17

18 A. Yes, they could.

19

20 **Q. Mr. Williams states that Alltel conducted studies on March 21, 2008 for traffic**
21 **exchanged between the parties in January 2008.²³ According to Mr. Williams, this**
22 **study was conducted to determine IntraMTA traffic ratios. Do you have any**
23 **observations regarding Alltel's analysis?**

24

25 A. Yes, I do. The studies were conducted on the day prior to the filing of direct testimony.
26 Given the short time frame in which the study was conducted and the results compiled, I
27 believe the results could be prone to errors. Additionally, given that Alltel did not
28 conduct the study until after the second round of discovery, Kennebec was not afforded
29 the opportunity conduct an analysis of Alltel's study.

²¹ See Mr. Williams Direct Testimony, Page 12, Line 1.

²² See Mr. Williams Direct Testimony, Page 13, Lines 23-25.

²³ See Mr. Williams Direct Testimony, Page 14, Lines 9-10.

1 **Q. Mr. Williams states that Kennebec has not produced any study to indicate that**
2 **Alltel's study is not representative of the traffic exchanged between the parties.²⁴**
3 **Given that it is Kennebec's position that the parties not bill based upon a fixed**
4 **traffic ratio, was there any reason for Kennebec to present an analysis advocating**
5 **the use of a fixed traffic ratio?**

6
7 A. No, there was not.

8
9 **Q. Did Kennebec review the results submitted by Alltel to determine the accuracy of**
10 **such analysis?**

11
12 A. Yes, it did. Kennebec reviewed the records that it received from Qwest for Alltel's
13 terminating traffic for approximately the same billing period as Alltel's study period.
14 Kennebec's records showed 61,979 minutes terminating to Kennebec from Alltel, which
15 was approximately three times more than what Alltel's study showed as terminating to
16 Kennebec. Kennebec's records also showed that it had terminated 17,332 minutes to
17 Alltel.

18 **Q. What is Kennebec's suggested resolution to this issue?**

19
20 A. Although the analysis performed by Alltel and the analysis performed by Kennebec
21 differed significantly in terms of total minutes, both analysis indicated the traffic ratio to
22 be in the range of 78-80 mobile to land originated and 22-20 land to mobile originated.
23 However, since there is no language in the Act or FCC rules that obligates Kennebec to
24 perform billing on behalf of its competitors, Kennebec recommends that each party be
25 responsible for its own billing and collection functions. Each party should bill the other
26 party to the agreement based upon billing records it has obtained from a third party transit
27 provider. Alltel is capable of obtaining billing records from the third party transit
28 provider in order to bill Kennebec. Kennebec therefore recommends that the Commission
29 reject the language for Section 7.2.3 as proposed by Alltel and instead insert language

²⁴ See Mr. Williams Direct Testimony, Page 14, Line 24.

1 into Section 7.2.2 of the agreement which would direct Alltel to obtain terminating
2 records generated by a Third Party Provider as the basis for billing Kennebec.

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

5 **Q. Mr. Williams claims that the language used in the draft agreement attached as**
6 **Kennebec's Exhibit A is inconsistent with Alltel's proposed language.²⁵ Isn't the**
7 **language in Kennebec's draft agreement in Sections 4.3 and 4.4 exactly the same as**
8 **the language in the agreement submitted by Alltel in Sections 4.3 and 4.4?**
9

10 **A. Yes, it is. This fact is supported by Alltel's Response to the Petition for Arbitration**
11 **whereby Alltel states that it accepts Kennebec's proposed language in Section 4.3 of**
12 **Exhibit A to the Petition.²⁶**

13 **Q. Mr. Williams states that Alltel has proposed Appendix B to specify dialing parity**
14 **obligations.²⁷ Have you reviewed Appendix B as submitted by Alltel and does it**
15 **specify dialing parity obligations?**
16

17 **A. I have reviewed Appendix B as submitted by Alltel. The subject of Appendix B is**
18 **"Direct Interconnection POI Locations and Telephone Company Local Calling Area."**
19 **There is no information contained in Appendix B as submitted by Alltel so I am uncertain**
20 **how it specifies dialing parity obligations as claimed by Mr. Williams.**

21 **Q. Mr. Williams, by way of a question, states that Kennebec must provide dialing**
22 **parity and charge its end users the same rates for calls to an Alltel NPA/NXX as**
23 **calls to a landline NPA/NXX in the same rate center.²⁸ Does the dialing parity rule**
24 **establish end-user billing requirements?**
25

²⁵ See Mr. Williams Direct Testimony, Page 15, Lines 21-23.

²⁶ See Alltel's Response, at para. 19.

²⁷ See Mr. Williams Direct Testimony, Page 16, Line 14.

²⁸ See Mr. Williams Direct Testimony, Page 16, Lines 15-17.

1 A. No, it does not. I agree with Mr. Williams that “this code section on its face precludes
2 dialing distinctions based upon the identity of the telecommunications service
3 provider.”²⁹ However, this code section does not address end-user billing.

4 **Q. Does this arbitration proceeding involve end-user billing issues?**

5
6 A. No, it does not.

7
8 **Q. Do the contracts as submitted by Alltel and Kennebec both contain language
9 recognizing that such agreements do not affect rate levels or rate structures that
10 either party charges its end-users?**

11
12 A. Yes they do. The agreement as submitted by Kennebec and the agreement as submitted
13 by Alltel states the following:

14 Except as otherwise expressly provided for herein, this Agreement has no effect
15 on the definition of End User services that either Party offers to its End User
16 customers, the services either Party chooses to offer to its respective End User
17 customers, the rate levels or rate structures that either Party charges its End Users
18 for services, or the manner in which either Party provisions or routes the services
19 either Party provides to its respective End User customer.

20
21 **Q. Mr. Williams cites 47 C.F.R. § 51.207 and states that it is apparent that under
22 existing law, the Petitioner is clearly required to provide dialing parity to Alltel.³⁰
23 What does Kennebec’s Petition state with respect to this rule?**

24
25 A. Kennebec’s Petition states that “Telco proposes to fulfill its responsibilities in
26 conformance with 47 U.S.C. § 51.207.”³¹ Reference to U.S.C. was in error and was
27 meant to state “Kennebec’s Petition states that “Telco proposes to fulfill its
28 responsibilities in conformance with 47 C.F.R. § 51.207.”

29 **Q. How do you recommend the Commission act on this issue?**
30

²⁹ See Mr. Williams Direct Testimony, Page 17 Line 1-2.

³⁰ See Mr. Williams Direct Testimony, Page 16 Line 21-22.

³¹ See Kennebec’s Petition for Arbitration, at para. 16.

1 A. Mr. Williams states that it is essential that the agreement reflect the legal obligations of
2 the parties and Alltel has proposed language in Sections 4.3 and 4.4 requiring Kennebec
3 to provide Alltel local dialing parity.³² Since the language in Sections 4.3 and 4.4 of the
4 Agreements submitted by Alltel and Kennebec are exactly the same, I recommend the
5 Commission adopt such language for Sections 4.3 and 4.4.

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

7
8 **Q. Is it your understanding that this issue has been resolved?**

9
10 A. Yes, it is. Kennebec proposed that the Agreement be deemed effective as of January 1,
11 2007, and remain in full force and effect for a period of three years after January 1, 2007.
12 Alltel, in its Response to the Petition, states that it accepts the effective date and term of
13 the Agreement as proposed by the Petitioner.³³ Mr. Williams, in his testimony confirms
14 the January 1, 2007 effective date and the three year term and states that “when a final
15 conformed agreement is approved by the Commission, the Parties will be obligated to
16 reconcile and true-up compensation due based upon the final agreement terms as
17 compared to any billing and payment transaction associated with services provided since
18 January 1, 2007.”³⁴ Therefore, I understand that this issue has been resolved.

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

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

21
22 **Q. Do you agree with Mr. Williams claim that it is Kennebec’s desire to incorporate**
23 **language into the interconnection agreement that defines traffic in a manner**
24 **inconsistent with the Parties ability to measure traffic?**³⁵

³² See Mr. Williams Direct Testimony, Page 16 Lines 11-13.

³³ See Alltel’s Response, at para. 20.

³⁴ See Mr. Williams Direct Testimony, Page 17 Lines 18-23.

³⁵ See Mr. Williams Direct Testimony, Page 18 Lines 2-3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

A. No, I do not. It is not Kennebec’s desire or intent to incorporate language into the agreement in a manner that is inconsistent with the Parties ability to measure traffic. It is Kennebec’s intention to incorporate language into the agreement that is consistent with the FCC’s First Report and Order as a way to determine what proportion of Traffic is IntraMTA and what proportion of Traffic is InterMTA. The FCC recognized that since CMRS customers may travel from location to location during the course of a single call, it would be difficult to determine the applicable transport and termination rate or access charge.³⁶ In acknowledging the complexity of ascertaining the CMRS subscriber’s location, the FCC concluded that parties could calculate the overall compensation amounts by extrapolating from traffic studies and samples by using the CMRS subscriber’s originating cell site location to determine the proportion of traffic exchanged between CMRS providers and LECs that was subject to reciprocal compensation or access charges.³⁷ Kennebec’s intention is to extrapolate from traffic studies and samples the proportion of the total traffic that is InterMTA traffic and the proportion of total traffic that is IntraMTA traffic. Mr. Thompson, in his direct testimony, discusses the methods that can be used to calculate InterMTA and IntraMTA factors that can be incorporated into the Parties’ interconnection agreement.³⁸

Q. Do you agree with Mr. Williams that Alltel’s proposed language on how to measure and distinguish IntraMTA traffic from InterMTA Traffic “may serve to avoid unnecessary disputes during the term of the agreement?”³⁹

³⁶ See First Report and Order, at para. 1044.
³⁷ Ibid.
³⁸ See Mr. Thompson Direct Testimony, at pages 8-11.
³⁹ See Mr. Williams Direct Testimony, Page 18 Lines 6-7.

1 A. No, I do not. Alltel's definition is silent on how to determine the location of the cellular
2 subscriber when the call is originated and therefore does not provide the parties a
3 methodology to distinguish IntraMTA Traffic from InterMTA Traffic.

4 **Q. Do you believe Alltel's proposed language will create disputes over how to**
5 **determine whether or not a call is an InterMTA call or an IntraMTA call?**
6

7 A. Yes, I do. If the agreement does not specify how the parties are to determine the location
8 of the cellular subscriber when a call is originated (i.e. the originating cell site location), I
9 believe there will be disputes regarding the proportion of traffic that is InterMTA versus
10 IntraMTA.

11 **Q. How does Kennebec propose to differentiate traffic that is subject to access charges**
12 **(InterMTA) versus which traffic is subject to transport and termination charges**
13 **(IntraMTA)?**
14

15 A. Kennebec proposes to use traffic studies and samples as described by Mr. Thompson.

16 **Q. How should the Commission rule on this issue?**
17

18 A. In order to avoid on-going conflicts and billing disputes between the Parties, the
19 Commission should eliminate any ambiguity and confirm that the determination of
20 whether the call is an IntraMTA call or an InterMTA call should be based upon the
21 location of the initial cell site serving the wireless end user at the start of the call and the
22 location of the end office serving the wireline end user. If the initial cell site information
23 can not be used, study samples as described by Mr. Thompson should be used as an
24 alternative in calculating the appropriate InterMTA and IntraMTA percentages.⁴⁰ In such
25 a case, references to the phrase "the location of the connecting cell site" could be
26 removed from the definitions of InterMTA and IntraMTA Traffic. In its place, such
27 definitions could refer to the location of the rate center of the CMRS customer's NPA-

⁴⁰ See Mr. Thompson Direct Testimony, description of SS7 Method, at page 9

1 NXX to estimate the location of the CMRS customer. Such additions to the definition
2 would help to remove any ambiguities as to how the parties calculate the appropriate
3 proportion of traffic that is IntraMTA and the proportion of traffic that is InterMTA.

4
5 **Issue 7: Which Party can initiate a direct interconnection request?**

6 **Q. Do you understand the position that Alltel is trying to articulate regarding Issue 7?**

7 A. No I do not. Alltel first raised this issue in its Response to the Petition for Arbitration. In
8 its response, Alltel stated that the proposed language in Section 3.1.3 of the Agreement
9 provides that either Party can request and thus require direct interconnection facilities.
10 Alltel then states in its Response that as a CMRS provider, Alltel has the right to seek
11 indirect interconnection pursuant to 47 U.S.C. § 251(a)(1).⁴¹

12 Mr. Williams, in his testimony, does not refer to either indirect interconnection or to
13 section 251(a)(1) of the Act as does Alltel's response. Instead, Mr. Williams states that
14 "an incumbent LEC has an affirmative obligation to provide a direct interconnection at
15 the request of a competitive carrier,"⁴² and by way of a footnote references 47 U.S.C. §
16 251(c)(2). Mr. Williams' finishes his testimony on this issue by stating that "Alltel's
17 proposed language merely reflects this situation."

18 **Q. Given the inconsistencies between Alltel's Response on Issue 7 and Mr. Williams**
19 **testimony on Issue 7, do you know which of "Alltel's proposed language" Mr.**
20 **Williams refers to in his testimony?**

21 A. No I do not. Given that Alltel's Response to Issue 7 refers to Section 3.1.3 of the
22 Agreement, I can only speculate that Alltel's proposed language for which Mr. Williams
23 is referring is found in that section. As I stated in my direct testimony, Alltel's proposed

⁴¹ See Alltel's Response, at para. 22.

⁴² See Mr. Williams Direct Testimony, at page 18, Lines 16-18.

1 language for Section 3.1.3, that it can unilaterally dictate the use of a two-way direct
2 interconnection facility, conflicts with the language found in Section 4.5 in both
3 Kennebec's proposed interconnection agreement and the Agreement as submitted by
4 Alltel in its Response. No changes to section 4.5 have been proposed in Mr. Williams'
5 testimony. Section 4.5 of both Agreements states the following:

6 As an alternative to routing traffic covered by this Agreement
7 through a Point of Interconnection, either Party may choose to
8 deliver Traffic from its network to the other Party's network via a
9 Third Party Provider and thus be Indirectly Connected with the
10 other Party for delivery of Traffic.
11

12 Thus, Alltel's proposed language for Section 3.1.3 would be impracticable with its
13 accepted language for Section 4.5.

14 **Q. If Alltel's proposed language for Section 3.1.3 is adopted, how could Alltel's**
15 **proposed language require Kennebec to route its originating traffic?**

16 **A.** Alltel's language would require Kennebec, at Alltel's directive, to route its originating
17 traffic over a direct connection and pay for the direct connection whether or not
18 Kennebec wanted to use the direct connection for its originating traffic.

19 **Q. Does Alltel's proposed language for section 3.1.3, that it can unilaterally require**
20 **Kennebec to use a 2-way direct connection, contradict its previous position in**
21 **Docket TC06-159?**

22 **A.** Yes, it does. In that proceeding, Venture Communications Cooperative was the
23 Incumbent LEC. With respect to Issue 8 in that proceeding, the subject of which was
24 "Land-to-Mobile Traffic Direct Interconnection" Alltel stated that the "Utilization of a
25 direct connection is an option available to Venture but is not mandated."⁴³

26 **Q. Mr. Williams states that an incumbent LEC has an affirmative obligation to provide**
27 **a direct interconnection at the request of a competitive carrier. Does Mr. Williams**
28 **state that the incumbent LEC must provide for a 2-way direct interconnection**

⁴³ See Response of Alltel Communications, Inc., to Petition for Arbitration of Venture Communications Cooperative, Docket No. TC06-159, filed October 10, 2006, at para. 24.

1 **facility at the request of a competitive carrier and thus require Kennebec to use a**
2 **direct interconnection?**

3 A. No he does not. He states that Kennebec has to provide a direct connection (i.e. for Alltel
4 to terminate its Traffic to Kennebec). His testimony does not back-up the language that
5 Alltel has proposed in Section 3.1.3 of the Agreement, which states that Kennebec must
6 use a 2-way direct connection at the request of Alltel.

7 **Q. Does Mr. Williams provide any support for his assertion that Alltel can unilaterally**
8 **require the use of a 2-way direct interconnection facility?**

9 A. No he does not. Mr. Williams simply refers to Section 251(c)(2) of the Act.

10 **Q. Does Section 251(c)(2) of the Act support Alltel's proposed contract language**
11 **allowing it to unilaterally require the use of a 2-way direct interconnection facility?**

12 A. No it does not. Section 251(c)(2) of the Act imposes an obligation on the incumbent
13 LEC to provide "for the facilities and equipment of any requesting telecommunications
14 carrier, interconnection with the local exchange carrier's network at any technically
15 feasible point within the carrier's network."

16 **Q. Does the FCC's attendant rule to Section 251(c)(2) of the Act support Alltel's**
17 **proposed contract language allowing it to unilaterally require the use of a 2-way**
18 **direct interconnection facility?**

19 A. No it does not. The attendant FCC rule to Section 251(c)(2) of the Act is 47 C.F.R. §
20 51.305 (a)(2). This FCC rule imposes an obligation on the incumbent LEC to provide
21 "for the facilities and equipment of any requesting telecommunications carrier,
22 interconnection with the local exchange carrier's network at any technically feasible
23 point within the incumbent LEC's network."

24 **Q. How do you recommend that the Commission act on this issue?**

25 A. Given that the Act and FCC rules do not give any party the right to dictate the use of 2-
26 way direct interconnection facilities, the fact the Alltel's proposal contradicts its previous
27 position in Docket TC06-159, the fact that Mr. Williams' testimony does not back-up or

1 provide support for Alltel's proposed language, and the fact that such language conflicts
2 with the agreed upon language in Section 4.5, I recommend that the Commission reject
3 Alltel's proposed language and accept the language as proposed by Kennebec for Section
4 3.1.3 of the interconnection agreement.

5 **Q. Under issue 7-"Which Party can initiate a direct interconnection request?" Mr.**
6 **Williams submits a new topic of discussion which was not included in Alltel's**
7 **Response to the Petition for Arbitration. What is your understanding of the new**
8 **issue raised by Mr. Williams?**

9 A. Based upon Mr. Williams' testimony, I believe Alltel wants to recommend locations for
10 the POI when the Parties are directly interconnected.

11 **Q. In its Response to the Petition for Arbitration, did Alltel object to the location**
12 **Kennebec listed as the technically feasible point of interconnection in Kennebec's**
13 **proposed Agreement?**

14 A. No, it did not. Kennebec, in its proposed Agreement which was included in its Petition
15 for Arbitration, identified the technically feasible point of direct interconnection. This
16 technically feasible point, identified in Appendix B of the proposed Agreement, is at the
17 Kennebec host end-office switch location. As I stated in my direct testimony, Alltel may
18 choose to use a direct connection or an indirect connection through the use of a transit
19 provider such as Qwest or SDN, to terminate to subscribers served by the host location.
20 Alltel, in its Response to Kennebec's Petition, did not object to Kennebec's proposed
21 point of interconnection and did not offer any alternatives to Kennebec's proposed point
22 of interconnection.

23 **Q. If Alltel chooses to route its traffic over a direct connection to Kennebec's**
24 **subscribers served by the rate center listed in Appendix B, where would the POI be**
25 **located?**

26 A. The POI would be located in the rate center listed in Appendix B

1 **Q. Mr. Williams proposes additional POI locations for Kennebec originated traffic**
2 **including Alltel's meet point with SDN, Alltel's meet point with Qwest, and Alltel's**
3 **switch location. Do you object to Mr. Williams' proposal?**

4 **A.** Yes, I object to Mr. Williams' proposal. The FCC rule, 47 C.F.R. § 51.305 (a)(2),
5 requires that interconnection must be at a point within the incumbent LEC's network.
6 This only makes sense. The 1996 amendment to the Telecommunications Act opened
7 ILECs' markets to competition. Given a competitor is going to compete with the ILEC
8 for the ILEC's subscribers, it would make no sense to compete for the ILEC's subscribers
9 in the ILEC's marketplace, but then interconnect at a location removed from the location
10 in which you are competing. Yet this is precisely what Alltel is proposing. The locations
11 proposed by Mr. Williams are more than likely located either in Sioux Falls, South
12 Dakota or in Rapid City, South Dakota. Kennebec has no obligation to interconnect
13 outside of the rate centers where Alltel has selected to compete with Kennebec. Mr.
14 Williams' proposals would require Kennebec to incur the cost of facilities to locations in
15 Sioux Falls or Rapid City even though Kennebec has no intent to compete with Alltel at
16 those locations. In addition, interconnecting at these locations clearly contradicts the first
17 part of Mr. Williams' testimony on issue 7 in which he references Section 251(c)(2) in
18 footnote 4. Sioux Falls and Rapid City clearly do not meet the standard established in
19 Section 251(c)(2), that is, interconnection within the ILEC's network.

20 Mr. Williams' proposal is even more problematic when combined with Alltel's proposed
21 language as previously discussed in Section 3.1.3 as well as Mr. Williams' definition of
22 dialing parity which he expands beyond the definition in FCC rules.

CONFIDENTIAL TESTIMONY OF DAN DAVIS
JULY 7, 2008

1 When Alltel's proposal on Issue 7(b) is viewed in conjunction with its proposal on Issue
2 7(a) and with Mr. Williams' claims regarding the meaning of dialing parity in Issue 4,
3 one is left with the following business paradigm:

- 4 • Alltel elects to compete with Kennebec in Kennebec rate centers.
- 5 • Alltel dictates that Kennebec must route its originating traffic to Alltel over a direct
6 connection--Issue 7a.
- 7 • Alltel dictates a location for Kennebec to route its originating Traffic to--a location where
8 Kennebec and Alltel do not compete with one another- -Issue 7b.
- 9 • Kennebec incurs the cost of facilities to this location.
- 10 • Kennebec, based on Mr. Williams' dialing parity claim, can not assess its end user a
11 charge and therefore can not recover its increased cost associated with Alltel's proposal
12 for routing as dictated by 7(a) and 7(b).

13 **Q. How do you recommend the Commission act on Issues 7(a) and 7(b)?**

14 A. The Commission should reject Alltel's proposed POI locations that are outside of
15 Kennebec's serving area.

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

17 A. Yes, it does.