

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

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**DIRECT 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. On whose behalf are you testifying?

A. I am testifying on behalf of Kennebec Telephone Company, (“Kennebec”). Kennebec provides local telephone exchange service and exchange access service predominantly in the more rural parts of South Dakota.

Q. What is your current position?

A. I am a senior consultant at Consortia.

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 Kennebec 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 Kennebec. Some of these areas are identified as issues in the Petition for
8 Arbitration filed by Kennebec (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 Kennebec’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 Kennebec. I will demonstrate that such an approach would only be
10 appropriate if Kennebec delivered InterMTA traffic directly to Alltel on a direct
11 connection. There is not a direct connection between Kennebec and Alltel so this sub-
12 issue is not relevant.

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

17 **F. Issue 4:** Issue 4 in the Petition is: “What is the obligation of the parties with
18 respect to dialing parity?” I will testify that Kennebec will provide dialing parity as
19 required by the Act and applicable FCC Rules.

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

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

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

14 **Testimony-Issue 2 – Issue 7**

15
16 **Issue 2: What is the appropriate InterMTA use factor to be applied to interMTA traffic**
17 **exchanged between the parities?**

18
19 **Issue 2, First Sub-Issue: Alltel’s claim that Kennebec’s use of interstate versus intrastate**
20 **access rates for InterMTA traffic is unsupported.**

21
22 **Q. Do you agree with Alltel’s claim that Kennebec’s use of interstate versus intrastate**
23 **access rates for InterMTA traffic is unsupported?**
24

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, Released August 8, 1996, at para. 1044 (“*First Report and Order*”).

² 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 A. No I do not. Kennebec proposes that its applicable intrastate access tariff shall be used as
2 the basis to provide the rate for intrastate InterMTA traffic and its applicable interstate
3 access tariff shall be used as the basis to provide the rates for interstate InterMTA traffic.
4 Calls that originate in South Dakota and terminate to one of the Kennebec exchanges are
5 intrastate calls and are properly subject to the rates as established in the intrastate tariff
6 pursuant to South Dakota Administrative Rule 20:10:29:04. Likewise, calls that are
7 originated outside of the state that are terminated to a Kennebec exchange are interstate
8 calls and are subject to the rates established in the interstate tariff pursuant to Section 69
9 of the FCC rules. The FCC recognized that intrastate interMTA traffic would be assessed
10 intrastate access charges and interstate interMTA traffic would be assessed interstate
11 access charges in its *First Report and Order*. There, the FCC stated that “the
12 geographical locations of the calling and the called party determine whether a particular
13 call should be compensated under the transport and termination rates established by one
14 state or another, or under interstate or intrastate access charges . . . for administrative
15 convenience, the location of the initial cell site when a call begins shall be used as the
16 determinant of the geographical location of the mobile customer.”³ Had the FCC
17 determined that either intrastate access charges or interstate access charges do not apply
18 to interMTA traffic, it would not have referred to intrastate and interstate access charges
19 in paragraph 1044 of the *First Report and Order*.

20 Further, pursuant to South Dakota Administrative Rule 20:10:29:04, intrastate switched
21 access charges are billed for the provision of intrastate telecommunications services.
22 Thus, it is clear that the jurisdiction of the call determines the appropriate tariff under
23 which to bill the carrier terminating traffic onto Kennebec’s network. Therefore, contrary

³ See *First Report and Order* at para. 1044.

1 to Alltel's assertion, intrastate access charges are properly applied to intrastate interMTA
2 traffic terminated by Alltel to Kennebec's network and interstate access charges are
3 properly applied to interstate interMTA traffic terminated by Alltel to Kennebec's
4 network.

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

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

11
12 A. Kennebec routes all originating InterMTA traffic to subscribers' preferred Interexchange
13 Carriers ("IXCs"). Kennebec does not route any InterMTA traffic to Alltel. Consistent
14 with 47 U.S.C. § 251(g) and 47 C.F.R. § 51.701(b)(1), telecommunications traffic that
15 that is routed and carried by IXCs is subject to interstate or intrastate exchange access
16 and must be charged to and recovered from the IXC that carries the call.⁴ Kennebec
17 assesses IXCs exchange access charges and the IXC assesses and receives compensation
18 from the subscriber that originated the call. Since it is the IXC that terminates these calls
19 onto the Alltel network, Alltel must seek compensation from the IXC for these InterMTA
20 IXC-terminated calls and not from Kennebec.

21 **Q. Under what circumstance would Kennebec route InterMTA traffic to Alltel without**
22 **the use of an IXC?**

23
24 A. Kennebec would route InterMTA Traffic to Alltel without using an IXC only if Alltel had
25 an NPA-NXX code that was rated as local to the rate center from which the land line
26 subscriber originated the call. Alltel does not have an NPA-NXX code rated as local to

⁴ See *First Report and Order* at para. 1043.

1 Kennebec so all of Kennebec's InterMTA Traffic is routed to IXCs, therefore a net
2 amount is not relevant.

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

5
6 **Q. What is Kennebec's position regarding the billing and payment for the IntraMTA**
7 **Traffic?**

8
9 A. Kennebec recommends that each party to the agreement should bill the other party to the
10 agreement based upon actual recorded terminating traffic it receives from the other party
11 or based upon billing records it has obtained from a third party transit provider. This is
12 how Kennebec currently determines the amount of terminating traffic it receives from
13 Alltel. Kennebec believes that Alltel should also be capable of recording terminating
14 traffic it receives on the direct connect and can obtain billing records from the third party
15 transit provider in order to bill Kennebec.

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

18
19 A. Instead of both parties measuring and billing for the traffic that terminates on its
20 respective network from the other party, under Alltel's net billing approach, only
21 Kennebec would be required to obtain the necessary billing records in order to bill Alltel
22 for traffic that Alltel terminates to Kennebec. Kennebec would then give Alltel a credit
23 for the traffic that Kennebec terminates to Alltel assuming the parties can agree to the
24 appropriate offset percentage. Kennebec submits that if the parties can not agree on the
25 appropriate offset percent, the most accurate and fair compensation methodology is for
26 each of the parties to obtain the necessary data in order to bill the other party.

27 **Q. Are there any obligations in the Act or FCC rules that require an ILEC to measure**
28 **its originating traffic or to purchase billing records when the terminating carrier**

1 **chooses not to measure traffic terminating onto its network or purchase billing**
2 **records in order to determine a net billing percentage?**
3

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

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

19 **Issue 4: What is the obligation of the parties with respect to dialing parity?**
20

21 **Q. Is it your understanding that this issue has been resolved?**
22

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

25 **Issue 5: What is the appropriate effective date and term of the agreement?**
26

27 **Q. Is it your understanding that this issue has been resolved?**
28

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

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

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

8
9 **Q. How does Kennebec propose to differentiate traffic that is subject to access charges**
10 **(InterMTA) versus which traffic is subject to transport and termination charges**
11 **(IntraMTA)?**

12
13 A. Kennebec proposes that the location of the initial site when the call begins should be used
14 as the determinant of the geographical location of the mobile customers for use in
15 determining which traffic is subject to access charges (InterMTA) versus which traffic is
16 subject to transport and termination charges (IntraMTA).

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

22
23 A. In the *First Report and Order*, the FCC concluded that traffic between an incumbent LEC
24 and a CMRS network that originates and terminates within the same MTA (defined based
25 on the parties' location at the beginning of the call) is subject to the transport and
26 termination rate under section 251(b)(5), rather than interstate or intrastate access
27 charges.⁵

⁵ 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.⁶ 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.”⁷ 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.⁸

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 Kennebec 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 Kennebec 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

⁶ Id. at para. 1044.

⁷ Ibid.

⁸ 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 Kennebec’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. Since Alltel and Kennebec do not have a direct
10 connection between their networks, by definition they do not have Point of
11 Interconnection. Thus using a Point of Interconnection would not be possible in the
12 context of the current indirect arrangement in place between Alltel and Kennebec.

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

16
17 A. No, it has not.

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

23
24 A. No. Alltel’s definition provides no basis on which to determine the location of the
25 wireless subscriber at the beginning of a call in order to determine whether the call is an
26 IntraMTA call or an InterMTA call. I believe the Agreement must include the basis for
27 determining the location of the wireless subscriber at the beginning of the call in order to
28 avoid on-going conflicts and billing disputes between the Parties. The Commission

1 should eliminate any ambiguity and confirm that the determination of whether the call is
2 an IntraMTA call or an InterMTA call should be based upon the location of the initial cell
3 site serving the wireless end user at the start of the call and the location of the end office
4 serving the wireline end user.

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

6 **Q. Do you agree with Alltel’s assertion that based upon Section 3.1.3 of the Petitioner’s**
7 **proposed Interconnection Agreement that either Party can request and thus require**
8 **a direct connection?**

9 A. No I do not. Section 3.1.3 of the Interconnection Agreement proposed by Kennebec
10 states the following: “When both parties agree to utilize and implement 2-way facilities
11 in accordance with the terms of 3.2.1.1, the parties will provision two-way direct
12 interconnection facilities between their networks with each Party being responsible for
13 their own recurring and non-recurring facility costs to the POI.” (emphasis added) Since
14 this section specifically states “when both Parties agree,” Alltel’s assertion that either
15 party can unilaterally require a direct connection is incorrect. Section 3.1.3 of the
16 Proposed Agreement references Section 3.2.1.1, which in turn references points of
17 interconnection in Appendix B. The locations listed in Appendix B are each of
18 Kennebec’s stand alone end office switch locations or host end office switch locations.
19 Alltel may choose to use a direct connection, an indirect connection through the use of a
20 transit provider such as Qwest or SDN, or a combination thereof to each of these specific
21 locations for the purpose of terminating its traffic to subscribers served by each of the
22 listed locations.

23 Kennebec’s proposed language does not in any way dictate that Alltel must use direct
24 facilities in order to terminate its traffic to Kennebec’s subscribers. It is Alltel’s proposed
25 language that would allow Alltel to unilaterally require the use of a two-way direct

1 interconnection at Alltel's request. I believe that Alltel's proposal to dictate that
2 Kennebec must utilize these facilities if requested by Alltel is inconsistent with the
3 language in Section 4.5 of Kennebec's and Alltel's proposed agreement. According to
4 Section 4.5, either Party may choose to route its originating Traffic on an indirect basis
5 through the use of a Third Party Provider. Given Alltel's acceptance of the language of
6 Section 4.5 and the inconsistency created through Alltel's suggested language in Section
7 3.1.3, Kennebec submits that the Commission accept the language in Section 3.1.3 as
8 proposed by Kennebec.

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

10 **A.** Yes, it does.