

**PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA**

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IN THE MATTER OF THE PETITION OF ALLIANCE	)	
COMMUNICATIONS COOPERATIVE, INC., BERESFORD	)	
MUNICIPAL TELEPHONE COMPANY, MCCOOK COOPERATIVE	)	Docket Nos.
TELEPHONE COMPANY, SANTEL COMMUNICATIONS	)	TC 07-111
COOPERATIVE, INC., AND WEST RIVER COOPERATIVE	)	TC 07-112
TELEPHONE COMPANY FOR ARBITRATION PURSUANT TO THE	)	TC 07-113
TELECOMMUNICATIONS ACT OF 1996 TO RESOLVE ISSUES	)	TC 07-114
RELATING TO AN INTERCONNECTION AGREEMENT WITH	)	TC 07-115
ALLTEL COMMUNICATIONS, LLC.	)	TC 07-116

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**REBUTTAL TESTIMONY OF RON WILLIAMS**

1 **Q: PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

2 A. My name is Ron Williams. I am the Vice President – Interconnection and Compliance  
3 for Alltel Communications, LLC. My business address is 3650 131st Avenue S.E., Suite  
4 600, Bellevue, Washington 98006.

5 **Q: ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A. I am testifying on behalf of Alltel Communications, LLC (“Alltel”).

7 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A: The purpose of this testimony is to respond to the direct testimony filed on behalf of  
9 Petitioners by Larry Thompson and Dan Davis. I will comment on Thompson testimony  
10 with respect to factors associated with Issue 2. I will comment on Davis testimony with  
11 respect to rates and compensation methodology associated with Issue 2 as well as Issues  
12 3, 5, and 7.

13 **Issue 2: What is the appropriate Percent of InterMTA Use Factor to be applied to**  
14 **non-IntraMTA traffic exchanged between the parties?**

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16 **Sub Issue: Mobile-to-Land InterMTA Factor**

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18 **Q: HAVE YOU REVIEWED THE LARRY THOMPSON TESTIMONY ON BEHALF OF PETITIONERS**  
19 **REGARDING INTERMTA TRAFFIC FACTOR DERIVATION?**

1 A: Yes I did. The testimony of Larry Thompson is based on a 2004 study and deals only  
2 with traffic in the mobile-to-land direction (i.e., traffic originating from Alltel and  
3 terminating to a Petitioner). While I do not agree that an NPANXX methodology  
4 produces an accurate representation of interMTA traffic volume, I believe I understand  
5 the methodology employed in producing the study.

6 **Q: WHY DON'T YOU BELIEVE AN NPANXX METHODOLOGY PRODUCES AN ACCURATE**  
7 **DEPICTION OF INTERMTA TRAFFIC.**

8 A: The primary reason has to do with the mobility of wireless users. While an NPANXX  
9 assigned for incumbent LEC users is, for the most part, fixed to a specific geographic  
10 origination point, it is not the case with telephone numbers assigned to wireless users.

11 **Q: IN THOMPSON'S TESTIMONY AND EXHIBITS THE PETIONERS PROVIDED THEIR**  
12 **CALCULATIONS OF MOBILE-TO-LAND INTERMTA FACTORS. DO YOU CONCUR IN THEIR**  
13 **RESULTS?**

14 A: No. The Petitioners used data from 2004 and did not account for substantial changes in  
15 the network and method that traffic is exchanged between Alltel and each of the  
16 Petitioners. Since 2004 Alltel has:

- 17 • Divested operations in Minnesota to RCC Holdings which were  
18 included in the study.
- 19 • Divested operations in Nebraska to US Cellular which were  
20 included in the study.
- 21 • Modified routing translations in the Sioux Falls switch for traffic  
22 terminating to Alliance, Beresford, and West River
- 23 • Modified routing translations in the Rapid City switch for traffic  
24 terminating to Alliance, Beresford, Kennebec, McCook, Santel,  
25 and Venture.

26 These changes affect both interMTA and intraMTA traffic classifications  
27 used in the Petitioner study.

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**Q: IS THERE ENOUGH DETAIL AVAILABLE IN THE PETITIONER STUDY TO MAKE ADJUSTMENTS THAT REFLECT CURRENT NETWORK CONDITIONS?**

A: Yes. The data provided in the last page of Thompson’s interMTA exhibits<sup>1</sup> show the NPANXX of traffic originating from Alltel. By adjusting for traffic that is subject to network changes made since the time of the study, the study results will reflect the currently prevailing traffic exchange conditions using the traffic volumes from 2004.

**Q: PLEASE DESCRIBE YOUR ADJUSTMENTS TO THE PETITIONER STUDIES?**

A: The adjustments to Petitioner studies necessary to remove inconsistencies with current conditions are reflected in Exhibit RW5. The complete data from each Petitioner InterMTA Exhibit was replicated in my exhibit. A column was added to identify the line item volume of traffic adjustment and the revised value for that line item. Other columns were added to identify the wireless switch originating traffic and the routing associated with traffic from that switch to each Petitioner. Changes from 2004 conditions are highlighted. For example, traffic excluded from the study as a result of Alltel’s divestiture of certain Minnesota operations to RCC Holdings is highlighted showing ‘RCC’ as the switch and ‘N/A’ (not applicable), since traffic originating from RCC is not applicable to a study of Alltel traffic. A similar notation is made for certain Nebraska operations divested to USCellular (‘USCC’). A change in the ‘Current Routing’ column indicates whether the primary routing has changed from local to ‘IXC’ (interexchange carrier). In addition, a correction was made to the Alliance data set to remove duplicate data reported by Petitioner as interMTA traffic in two categories (‘DSnotinSD’ and ‘DENinSD’)

**Q: CAN YOU SUMMARIZE THE ADJUSTED RESULTS OF THE PETITIONER STUDIES?**

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<sup>1</sup> Thompson narrative testimony is substantially the same for each Petitioner but the associated Exhibits for each Petitioner are numbered differently. Refer to the last page of Exhibit H for Beresford, Exhibit I for Santel, Exhibit J for Alliance, McCook, and West River, and Exhibit K for Kennebec.

1 A: Yes, the table below shows, for each Petitioner, the original study result and the result  
2 incorporating my adjustments.

Petitioner	Initial Result	Adjusted Result
Alliance Communications	7.76 %	2.7 %
Beresford Municipal	70.72 %	11.6 %
Kennebec Telephone	11.64 %	2.1 %
McCook Cooperative	5.2 %	3.2%
SanTel	9.3 %	5.2%
West River Cooperative	26.6 %	4.4%

3 **Q: DO YOU BELIEVE THE ADJUSTED RESULTS OF THE PETITIONER STUDIES REFLECT AN**  
4 **ACCURATE FACTOR FOR INTERMTA COMPENSATION.**

5 A: No, but these results eliminate known inaccuracies in the Petitioner data and provide  
6 guidance on a more accurate ceiling for a ratio of Alltel traffic terminating to Petitioners  
7 that may be interMTA in nature.

8 **Issue 2: What is the appropriate Percent of InterMTA Use Factor to be applied to**  
9 **non-IntraMTA traffic exchanged between the parties?**

10 **Sub Issue: Compensation Rate Applicable to InterMTA Traffic**

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13 **Q: IN YOUR EXPERIENCE, HOW ARE INTERMTA COMPENSATION RATES NORMALLY**  
14 **DEVELOPED?**

15 A: Rates applicable to interMTA traffic are negotiated. Sometimes the negotiations have  
16 resulted in the rates being the same as reciprocal compensation rates for intraMTA traffic,  
17 sometimes interMTA rates reflect a specified nominal rate that is identified in an  
18 agreement, and sometimes the interMTA rate is established as a reference to other  
19 existing rates, for example, interstate access rate elements.

20 **Q: ARE YOU AWARE OF LEC-CMRS INTERCONNECTION AGREEMENTS THAT SET**  
21 **COMPENSATION FOR INTERMTA TRAFFIC BASED ON LEC ACCESS CHARGES?**

22 A: Yes, but such agreements are based on business negotiations and compromises rather  
23 than a requirement or on FCC regulations or the Telecommunications Act. The FCC has  
24 failed to specify how, or even if, compensation should be paid for interMTA traffic.

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1 **Q: DID THE FCC SAY THAT INTERMTA TRAFFIC IS “ACCESS” TRAFFIC?**

2 A: No. The FCC only stated that interMTA could be subject to access charges but they did  
3 not define CMRS traffic as access traffic. Therefore, there is no ‘obligation’ for a local  
4 exchange carrier to charge access rates to a CMRS provider for interMTA traffic. It is  
5 also logical to conclude that, since the FCC has asserted authority over all traffic to and from  
6 a CMRS carrier, to the extent that access charges are applied to interMTA traffic those access  
7 charges need to have been developed under FCC guidelines.

8 **Q: MR. DAVIS MAKES STATEMENTS IN HIS DIRECT TESTIMONY CONCERNING THE**  
9 **APPLICABILITY OF INTRASTATE ACCESS TARIFFS TO CMRS INTERMTA TRAFFIC. FOR**  
10 **EXAMPLE, THE STATEMENT IS MADE THAT ‘WEST RIVER PROPOSES THAT ITS**  
11 **APPLICABLE INTRASTATE ACCESS TARIFF SHALL BE USED AS THE BASIS TO PROVIDE THE**  
12 **RATE FOR INTRASTATE INTERMTA TRAFFIC ...’<sup>2</sup>. DO YOU HAVE AN ISSUE WITH THIS**  
13 **STATEMENT?**

14 A: Yes. The current LECA tariff rate is based on a stipulated agreement between  
15 interexchange carriers and LECA member telephone companies. The stipulated rate is a  
16 composite and does not have separate rate elements (e.g., transport, end office switching,  
17 signaling, etc.) and includes carrier common line (CCL). CCL is not an applicable access  
18 rate element in federal domain as the FCC rejected loop subsidy as an access rate element  
19 in 2001. Further, the LECA composite rate includes transport and switching costs  
20 associated with a Centralized Equal Access (CEA) tandem (operated by SDN and located  
21 in Sioux Falls). This CEA switching and transport are not used in the delivery of Alltel  
22 traffic to Petitioners and cannot be assessed to Alltel in a composite access rate. In other  
23 words, Petitioners are not providing Alltel the services contemplated by, and iterated in,  
24 the LECA tariff. Petitioners have no basis to charge their intrastate tariff rates for  
25 services that is not set forth in the tariff and which, in this case, amounts to a service  
26 much less costly than the service anticipated in the tariff.

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<sup>2</sup> See, e.g., *ibid*, Page 6 lines 1-2  
Williams – Reply Testimony – v4  
Doc# 478782v1, 05925-0042

1 **Q: DOES ALLTEL OBJECT TO THE PETITIONERS REQUEST THAT THE COMMISSION ORDER**  
2 **INTERMTA TRAFFIC BE BILLED AT INTRASTATE ACCESS RATES?**

3 A: Yes. LECA tariff is designed for true interexchange access traffic that is carried by  
4 interexchange carriers and delivered subject to the CEA requirements in effect in South  
5 Dakota. Any interMTA traffic delivered by Alltel to the Petitioners is not carried by  
6 interexchange carrier and does not use the CEA network.

7 **Q: WHAT DOES ALLTEL PROPOSE FOR AN INTERMTA COMPENSATION RATE?**

8 A: Alltel is willing to accept the applicable rate elements of the Petitioners' interstate access  
9 tariffs be applied to all interMTA traffic on a symmetric and reciprocal basis (Alltel to  
10 Petitioner and Petitioner to Alltel).

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12 **Issue 2: What is the appropriate Percent of InterMTA Use Factor to be applied to**  
13 **non-IntraMTA traffic exchanged between the parties?**

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15 **Sub Issue: Use of a Net InterMTA Factor**

16 **Q: HOW WOULD THE PETITIONERS' PROPOSED CONTRACTUAL LANGUAGE TREAT**  
17 **COMPENSATION FOR INTERMTA TRAFFIC?**

18 A. The language proposed by the Petitioners in Section 5.1.1 of the proposed agreement template  
19 filed with their petition would result in only the Petitioners receiving interMTA traffic  
20 compensation.<sup>3</sup>

21 **Q: MR. DAVIS' TESTIMONY EXPRESSES CONCERN THAT ALLTEL IS SEEKING TO ASSESS**  
22 **INTERMTA CHARGES FOR INTERMTA TRAFFIC ORIGINATED BY PETITIONERS AND**  
23 **ROUTED TO ALLTEL VIA AN INTEREXCHANGE CARRIER<sup>4</sup>. IS THAT THE CASE?**

24 A: No. If interMTA traffic is routed via an interexchange carrier, Alltel is not seeking any  
25 compensation from the Petitioner.

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<sup>3</sup> This asymmetrical view of compensation for interMTA traffic is also reflected in Petitioners' proposed definition of interMTA traffic which defines InterMTA Traffic s as only "... wireless to wireline calls ...". Obviously, the asymmetry proposed in this definition and 5.1.1 ignores the fact that interMTA traffic travels both wireless to wireline and wireline to wireless, and would result in skewed and improper compensation treatment.

<sup>4</sup> See, for example, Davis Testimony on behalf of McCook Cooperative Telephone Company, page 7 lines 14-22.

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2 **Q: MR. DAVIS' TESTIMONY IMPLIES THAT ALLTEL WOULD NOT BE ELIGIBLE TO RECEIVE**  
3 **COMPENSATION FROM PETITIONERS FOR INTERMTA TRAFFIC DELIVERED TO ALLTEL**  
4 **THAT WAS NOT ROUTED VIA AN IXC<sup>5</sup>. IS THAT REASONABLE?**

5 A: No. There is no basis in the Act, FCC Rules or other law to impose an obligation  
6 unilaterally on a CMRS carrier to pay interMTA compensation for its interMTA  
7 originated traffic and yet not require the RLEC to be responsible for its originated  
8 interMTA traffic. Compensation between carriers should be reciprocal and symmetrical  
9 when like services are provided. With respect to the termination of traffic, whether the  
10 traffic is inter or intra MTA, Alltel is performing the same transport and termination  
11 function as the Petitioner to insure that call is appropriately delivered to and end user  
12 consumer. Accordingly, Alltel should be similarly compensated.

13 **Q: IN THE SITUATION IN WHICH AN INTERMTA CALL IS NOT TRANSPORTED BY AN IXC,**  
14 **WHICH CARRIER WOULD BE RESPONSIBLE FOR COMPENSATION?**

15 A: The carrier originating the call is responsible for the terminating compensation. If a  
16 Petitioner customer originates the call, then the Petitioner should be responsible for any  
17 interMTA charges. If the call originates from Alltel's network, then Alltel would be  
18 responsible to the Petitioner for interMTA charges. This is consistent with the "calling  
19 party's network pays" philosophy of the Telecommunications Act.

20 **Q: MR. DAVIS MAKES STATEMENTS IN HIS DIRECT TESTIMONY CONCERNING**  
21 **CIRCUMSTANCES UNDER WHICH PETITIONERS ROUTE INTERMTA TRAFFIC TO ALLTEL.**  
22 **FOR EXAMPLE, THE STATEMENT IS MADE THAT 'WEST RIVER WOULD ROUTE**  
23 **INTERMTA TRAFFIC TO ALLTEL WITHOUT USING AN IXC ONLY IF ALLTEL HAD AN**  
24 **NPA-NXX CODE THAT WAS RATED AS LOCAL TO THE RATE CENTER FROM WHICH THE**  
25 **LAND LINE SUBSCRIBER ORIGINATED THE CALL.'** MR. DAVIS THEN GOES ON TO SAY  
26 **'ALLTEL DOES NOT HAVE AN NPA-NXX CODE RATED AS LOCAL TO WEST RIVER SO**  
27 **ALL OF WEST RIVER'S INTERMTA TRAFFIC IS ROUTED TO IXCs, THEREFORE A NET**  
28 **AMOUNT IS NOT RELEVANT.'**<sup>6</sup> **DOES ALLTEL HAVE AN NPA-NXX CODE RATED AS**  
29 **LOCAL TO ANY WEST RIVER SUBSCRIBERS?**

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<sup>5</sup> See, for example, Davis Testimony on behalf of McCook Cooperative Telephone Company, pages 7-8.

<sup>6</sup> See, *ibid*, Page 7 lines 25-27

1 A: Yes. Alltel has local numbers rated out of Belle Fourche that should be dialed as local  
 2 calls by West River’s Nisland customers. Mr. Davis makes similar erroneous claims  
 3 regarding the potential of interMTA calls being delivered to Alltel via local routes. I  
 4 have attached Exhibit RW6 in an effort to clarify and correct Mr. Davis’ assertions. With  
 5 the exception of Kennebec Telephone, all Petitioners are delivering traffic to Alltel via  
 6 one or more local routes. So, Mr. Davis’ assumption about the possibility of net  
 7 interMTA traffic is incorrect.

8 **Q: DOES ALLTEL HAVE A PROPOSED COMPROMISE FOR THE APPLICATION OF NET**  
 9 **INTERMTA FACTOR?**

10 A: Yes. For the purpose of compromise in this proceeding, Alltel proposes applying the  
 11 factors for the balance of traffic exchanged between the parties to the adjusted interMTA  
 12 factor Alltel derived from Petitioner studies to create an estimated net interMTA factor.  
 13 Because the balance of traffic is currently in the favor of Petitioners, the net factor would,  
 14 in all cases, result in interMTA compensation payments to the Petitioner. This table  
 15 shows the effect of Alltel’s proposal:

	A	B	C	D
Petitioner	Adjusted InterMTA Result for mobile-to-land	Traffic Factor land-to-mobile	InterMTA land-to-mobile	Net InterMTA Factor
Alliance Communications	2.7 %	41 %	1.1 %	1.6 %
Beresford Municipal	11.6 %	22 %	2.6 %	9.0 %
Kennebec Telephone	2.1 %			2.1 %
McCook Cooperative	3.2%	33 %	1.1 %	2.1 %
SanTel	5.2%	34 %	1.8 %	3.4 %
West River Cooperative	4.4%	23 %	1.0 %	3.4 %

16 Source: Column A: Adjusted Factors in Exhibit RW-5  
 17 Column B: Direct Testimony Exhibit RW-4  
 18 Column C: Column A \* Column B  
 19 Column D: Column A – Column C  
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21 **Q: WHAT INTERMTA FACTOR SHOULD THE COMMISSION ADOPT FOR THE**  
 22 **INTERCONNECTION AGREEMENT BETWEEN PETITIONER AND ALLTEL?**

23 A: Alltel believes the Net InterMTA Factor shown above is a reasonable solution in this  
 24 circumstance.

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

**Q: IS THE PETITIONER ATTEMPTING TO FORCE ALLTEL TO BASE ITS BILLS ON ACTUAL TRAFFIC RECORDS?**

A: Yes.

**Q: WHAT'S WRONG WITH THAT?**

A: Accurate traffic data, for use in billing this Petitioner, is not available to Alltel for either direct or indirect interconnection.

**Q: PLEASE EXPLAIN.**

A: Many land-to-mobile intraMTA calls are dialed as toll calls (i.e., 1+). All of these land-to-mobile toll calls, whether interconnection between Alltel and Petitioner is direct or indirect, will be handed off by Petitioner to an IXC. The IXC will, in-turn, route those calls to Alltel through a terminating third-party access tandem. The terminating access tandem records, which Alltel would be forced to use for billing, if the Petitioners' position on this issue were adopted, will not identify the Petitioner as the originating carrier for such calls, because the Petitioner will not deliver the call to the terminating access tandem which produces the record. Instead, the IXC will deliver the call to the terminating access tandem. Thus, the access tandem records – that the Petitioner would force Alltel to use for billing – will identify the IXC as the originating carrier, not the Petitioner. There is, therefore, no way for Alltel to base its intercarrier bills to Petitioner using 'actual traffic data', because the data available to Alltel, for a substantial portion of land-to-mobile intraMTA traffic (i.e. that which is routed through IXCs) will not identify the Petitioner as the originating carrier. Thus, it is standard practice in the industry for a wireless carrier to base their bills to a LEC by applying traffic factors to the LECs' billed

1 traffic volume. This practice is not the result of Alltel's failure to spend the necessary  
2 funds to develop a billing system. This practice results from the unavailability of  
3 accurate billing data.

4 **Q: PETITIONER WITNESS DAVIS CLAIMS ACTUAL BILLING IS THE MOST ACCURATE**  
5 **METHOD FOR BILLING RECIPROCAL COMPENSATION. DO YOU AGREE?**

6 A: No. What Davis claims as 'actual' billing is, in fact, actual billing for only a portion of  
7 reciprocal compensation traffic exchanged between each Petitioner and Alltel.  
8 Significantly, the traffic that would be excluded from this 'actual' billing proposal has a  
9 significant disproportionate impact on Alltel's ability to bill Petitioner.

10 **Q: PLEASE EXPLAIN WHY BILLING 'ACTUAL' TRAFFIC IS AN UNSATISFACTORY SOLUTION IN**  
11 **THIS CIRCUMSTANCE.**

12 A: One of the reasons why Davis' proposal fails is the limitation inherent in billing systems  
13 for intercarrier traffic. Today's wholesale billing systems (commonly referred to as  
14 'CABS' for Carrier Access Billing System) were designed to deal with legacy traffic  
15 classification and routing methods that preceded the 96 Telecom Act. As such, such  
16 systems are not designed to account for the exchange of CMRS traffic on an MTA basis.  
17 For example, a call from a Kennebec customer to an Alltel customer in Sioux Falls with a  
18 Sioux Falls telephone number is an intraMTA call. Alltel is due reciprocal compensation  
19 on that call under terms of the interconnection agreement already agreed upon between  
20 the Parties<sup>7</sup>. However, because that call will be routed to Alltel via one or more  
21 interexchange carriers, a billing system would not be able to associate that call Kennebec.  
22 In essence, for the purpose of billing for reciprocal compensation, it is phantom traffic.

23 **Q: IS THERE AN ALTERNATIVE UNDER WHICH ACTUAL BILLING WOULD BE ACCURATE FOR**  
24 **RECIPROCAL COMPENSATION?**

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<sup>7</sup> See the agreement Section 5.1 and 5.1.2 and the definition of IntraMTA traffic in Section 1.0  
Williams – Reply Testimony – v4  
Doc# 478782v1, 05925-0042

1 A: Yes. Actual billing could only be accurate if all intraMTA traffic was exchanged without  
2 using an IXC. Unfortunately, this solution would require the Petitioners to make radical  
3 changes to their traffic routing. These changes would involve significant switch  
4 translation work to ensure that all CMRS telephone numbers (NPANXXs and/or  
5 Location Routing Numbers) in the MTA were programmed to route as ‘local’ traffic (i.e.,  
6 via a direct connection or indirectly via a tandem transit operator (e.g., Qwest).

7 **Q: IS ALLTEL DEMANDING THAT PETITIONERS PERFORM THESE SWITCH TRANSLATIONS?**

8 A: No. Alltel realizes such translation changes would be highly disruptive to the Petitioners  
9 and has proposed the use of factors, based on sample studies, as an effective business  
10 solution to this matter.

11 **Q: WHAT LEGAL AUTHORITY SUPPORTS ALLTEL’S POSITION THAT ALL INTRAMTA**  
12 **TRAFFIC EXCHANGED BETWEEN WIRELESS AND WIRELINE CARRIERS IS SUBJECT TO**  
13 **RECIPROCAL COMPENSATION?**

14 Alltel’s position is based on FCC Rules and Orders, and federal court cases, which are  
15 clear and consistent regarding LEC obligations to reciprocally compensate a CMRS  
16 provider for intraMTA traffic originated on the LEC’s network regardless of the  
17 existence or the nature of an intermediary carrier. FCC Rule 51.701(b)(2) specifies that a  
18 LEC’s reciprocal compensation obligation applies to “traffic exchanged between a LEC  
19 and a CMRS provider that, at the beginning of the call, originates and terminates within  
20 the same Major Trading Area.” There are no exceptions to this basic rule.

21 The Missouri Public Service Commission, for example, recently addressed this same  
22 issue in an arbitration case and acknowledged the matter to have been clearly settled in  
23 the federal courts:

24                   Although federal appellate courts have held that the “mandate expressed in these  
25 [reciprocal compensation] provisions is clear, unambiguous, and on its face  
26 admits of no exceptions,” Petitioners nonetheless ask the Commission to create a  
27 new exception. Specifically, they claim that they should be excused from paying

1 reciprocal compensation for intraMTA traffic they deliver to interexchange  
2 carriers (“IXCs”), but the Commission may not rewrite or ignore FCC rules.<sup>8</sup>

3 **Q: WHAT DO THE FCC’S RULES AND ORDERS PROVIDE?**

4 A: In its *First Report & Order*<sup>9</sup>, the FCC implemented the requirement in Section 251(b)(5)  
5 of the Telecommunications Act that LECs “establish reciprocal compensation  
6 arrangements for the transport and termination of telecommunications”<sup>10</sup>:

7 LECs have a duty to establish reciprocal compensation arrangements with  
8 respect to local traffic originated by or terminating to any  
9 telecommunications carriers. CMRS providers are telecommunications  
10 carriers and, thus, LECs’ reciprocal compensation obligations under section  
11 251(b)(5) apply to all local traffic transmitted between LECs and CMRS  
12 providers.

13 ...

14 We reiterate that traffic between an incumbent LEC and a CMRS network that  
15 originates and terminates within the same MTA (defined based on the parties’  
16 locations at the beginning of the call) is subject to transport and termination rates  
17 under section 251(b)(5), rather than interstate or intrastate access charges.

18 *First Report & Order*, ¶¶ 1041, 1043 (emphasis added). As noted above, this was  
19 incorporated into FCC Rule 51.701(b)(2).

20 **Q: IS LAND-TO-MOBILE TRAFFIC THAT IS ROUTED VIA AN INTEREXCHANGE CARRIER**  
21 **EXCLUDED FROM THE SCOPE OF RECIPROCAL COMPENSATION?**

22 A: No. The FCC’s Rules establish reciprocal compensation obligations for all intraMTA  
23 traffic – there is no exception for calls routed by a LEC via an interexchange carrier  
24 (“IXC”). In fact, FCC Rule 51.701 provides such an exception for traffic exchanged  
25 between two LECs, but it denies such exemption for traffic exchanged between a LEC  
26 and CMRS provider. FCC Rules apply reciprocal compensation obligations to all  
27 “Telecommunications Traffic.” Specifically, Rule 51.701(b)(1) states:

28 For purposes of this subpart, telecommunications traffic means:  
29 Telecommunications traffic exchanged between a LEC and a telecommunications  
30 carrier other than a CMRS provider, except for telecommunications traffic that is

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<sup>8</sup> See Alma/T-Mobile Arbitration Report, Missouri Public Service Commission, Case No. IO-2005-0468, at 18 (citations omitted).

<sup>9</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunication Act of 1996*, CC Docket No. 96-98, 11 FCCR 15499, FCC 96-325, First Report and Order (1996) (“*First Report & Order*”).

<sup>10</sup> 47 U.S.C. § 251(b)(5).

1 interstate or intrastate exchange access, information access, or exchange services  
2 for such access. (emphasis added).

3 FCC Rule 51.701(b)(2) provides:

4 For purposes of this subpart, telecommunications traffic means:  
5 [t]elecommunications traffic exchanged between a LEC and a CMRS provider  
6 that, at the beginning of the call, originates and terminates within the same  
7 Major Trading Area... (emphasis added).

8 Thus, in subparts (b)(1) and (b)(2), the FCC intentionally crafted a rule for reciprocal  
9 compensation obligations involving a LEC and a CMRS provider that differs from the  
10 rule applicable to the reciprocal compensation obligations associated with LEC to LEC  
11 traffic. Under subpart (b)(1), when two LECs exchange traffic, reciprocal compensation  
12 obligations do not apply to traffic “that is interstate or intrastate exchange access.” This  
13 exception does not apply, however, to traffic exchanged between a LEC and a CMRS  
14 Provider. In the latter case, reciprocal compensation obligations apply to all intraMTA  
15 traffic, *even if the traffic is also interstate or intrastate interexchange*. By deliberately  
16 excepting IXC access traffic in Section 51.701(b)(2), the FCC imposed reciprocal  
17 compensation obligations for all calls between a LEC and a CMRS Provider within the  
18 same MTA, regardless of whether the calls are delivered via an IXC.

19 **Q: HAVE ANY FEDERAL COURTS RESOLVED THIS ISSUE?**

20 A: Yes. Federal courts have confirmed that a LEC must pay reciprocal compensation for all  
21 intraMTA traffic destined to a CMRS network, even if the call is routed by the LEC via  
22 an interexchange carrier (“IXC”). The 10th Circuit Court of Appeals held:

23 We hold that the mandate expressed in these provisions is clear, unambiguous,  
24 and on its face admits of no exceptions. The RTCs in the instant case have a  
25 mandatory duty to establish reciprocal compensation agreements with the CMRS  
26 providers, *see Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001) (noting  
27 that the term “shall” connotes a mandatory, as opposed to permissive,  
28 requirement), for calls originating and terminating within the same MTA. Where  
29 the regulations at issue are unambiguous, our review is controlled by their plain  
30 meaning. *In re Sealed Case*, 237 F.3d 657, 667 (D.C. Cir. 2001). Nothing in the  
31 text of these provisions provides support for the RTC’s contention that reciprocal  
32 compensation requirements do not apply when traffic is transported on an IXC  
33 network.

1 *Atlas Tel. Co. v. Oklahoma Corp. Comm'n*, 400 F.3d 1256, 1265 (10th Cir. 2005). This  
2 ruling affirmed the lower court's ruling that:

3 Thus, although the FCC was clearly aware of the issues created when access calls  
4 are exchanged, as evidenced by the exemption from reciprocal compensation  
5 obligations for LEC-to-LEC access calls under § 51.701(b)(1), the FCC did not  
6 create a similar exception for LEC-to-CMRS access calls which originate and  
7 terminate within the same major trading area. 47 C.F.R. § 51.701(b)(2).

8 *Atlas Tel. Co. v. Corporation Comm'n of Okla*, 309 F.Supp.2d 1299, 1310 (W.D. Okla.  
9 2004). The United States District Court for the District of Nebraska is in accord as well:

10 Thus, as a matter of federal law, the [Nebraska] Commission erred in ruling that  
11 Great Plains owed no reciprocal compensation to Western Wireless for calls  
12 originated by Great Plains and terminated by Western Wireless within the same  
13 MTA, whether or not the call was delivered via an intermediate carrier.

14 *WWC License, L.L.C. v. Boyle et al.*, Case No. 4:03CV 3393, Mem. Op., p. 6 (D. Neb.  
15 Jan 20, 2005), *appealed on other grounds and affirmed*, *WWC License, L.L.C. v. Boyle*,  
16 459 F.3d 880 (8th Cir. 2006) Finally, the United States District Court for the Western  
17 District of Missouri arrived at the same conclusion:

18 The *Atlas* decision is on all fours with the appeal currently pending before this  
19 Court. The Commission in the present case concluded that calls made by a LEC  
20 customer to a CMRS customer within the same MTA, whether connected directly  
21 from the LEC to the CMRS or indirectly through an IXC, were subject to  
22 reciprocal compensation requirements under the plain language of 47 U.S.C. §  
23 251(b)(5) and 47 C.F.R. § 51.701(b)(2). That decision is in accord with the  
24 Tenth Circuit's reasoning in *Atlas*, which this Court finds persuasive.

25 *Alma Communications Company v. Missouri Public Service Commission*, Case No. 05-  
26 4358-CV-C-NKL, Order Granting T-Mobile's Mot. Summ. J. p.10, (W.D.Mo. May 19,  
27 2006).

28 **Q: HAVE ANY FEDERAL COURTS FOUND THAT A LEC'S RECIPROCAL COMPENSATION**  
29 **OBLIGATION IS ABSOLVED WHEN INTRAMTA TRAFFIC IS HANDED OFF TO AN IXC FOR**  
30 **DELIVERY TO A CMRS CARRIER?**

31 **A:** No. Every federal court that has ruled on this issue has ruled against the position taken by the  
32 Petitioner in this case.

33 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

1 A. The Commission, like the Courts, the FCC and other state commissions, should reject  
2 Petitioners' position and rule that reciprocal compensation obligations apply to all  
3 Petitioner originated intraMTA traffic, including intraMTA traffic handed off by  
4 Petitioner to IXCs for delivery to CMRS providers and that Alltel's proposed language  
5 for Sections 5.1, 7.2.1, 7.2.3 and Appendix A - 3.0 be used in the Agreement between the  
6 Parties.

7  
8  
9

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

10 **Q: WHAT IS YOUR INTERPRETATION OF THE PETITIONER TESTIMONY ON DIALING PARITY**  
11 **AND ITS IMPLICATION FOR THE COMMISSION?**

12 A: I would interpret Mr. Davis' testimony to mean that the dialing parity language proposed  
13 by Alltel in Section 4.3, 4.4, and 7.4 of the agreement is acceptable to each Petitioner.  
14 Further, that each Petitioner will accurately populate Appendix B "Telephone Company  
15 Local Calling Area" in the final conformed agreement resulting from this arbitration.  
16 The Commission should include such direction in its arbitration order.

17  
18  
19

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

20 **Q: DID YOU REVIEW THE DAN DAVIS TESTIMONY ON ISSUE 6?**

21 A: Yes. With respect to both definitions, Mr. Davis makes the point that it is necessary to  
22 include specifications in the definition that are irrelevant to how this agreement is  
23 constructed. As such, the inclusion of the unnecessary language in the definition may  
24 only result in potential disputes during the term of the agreement.

25 **Q: PLEASE EXPLAIN.**

26 A: Alltel has offered simple language to define InterMTA and IntraMTA traffic. Alltel's  
27 language is both consistent with the FCC views on CMRS traffic classification and with

1 how InterMTA and IntraMTA traffic will be treated in the context of the specific  
2 agreement between Alltel and the Petitioner. Both Parties agree that factors will be used  
3 to distinguish interMTA traffic<sup>11</sup>. Petitioner has proposed a factor that is inconsistent  
4 with the very traffic definition that Mr. Davis is proposing<sup>12</sup>. In reality, whether traffic is  
5 interMTA or intraMTA in this agreement will be determined by the language and factors  
6 in the agreement not "... based on the location of the connecting cell site serving the  
7 wireless end user at the beginning of the call ...".

8 **Q: HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

9 A: The Commission should rule that the simple language proposed by Alltel is best suited  
10 for this agreement between Petitioner and Alltel.

11  
12 **Issue 7: Which Party can initiate a direct interconnection request?**

13  
14 **Q: HAVE YOUR REVIEWED PETITIONER TESTIMONY ON THIS ISSUE?**

15 A: Petitioner witness Davis expresses concern that Alltel is seeking language that requires  
16 Petitioners to route traffic to Alltel via a direct connect in the event a direct connect is  
17 established between the Parties. Mr. Davis' expressed concern seems to fly in the face of  
18 case made by Petitioners' in their filings<sup>13</sup> for a suspension of transport obligations for  
19 originating traffic (a suspension that, if granted, would impose direct connect obligations  
20 on Alltel just to obtain dialing parity treatment). Nevertheless, Alltel is not seeking to  
21 require a Petitioner to utilize a direct connection if one exists. Alltel merely desires to

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<sup>11</sup> The Parties agree that InterMTA compensation will be based on a factor (not location of specific calls) specified in Appendix A 2.0. Both Parties have proposed InterMTA factors based on traffic study: The Alltel study was based on a 'POI' method and the Petitioner study was based on an 'NPANXX' method.

<sup>12</sup> See Direct Testimony of Larry Thompson, page 12 lls 17-19 "The MTA of the NPA-NXX was determined by the location of the central office to which each of the NPA-NXXs were assigned." This language is inconsistent with language proposed by Petitioner when applied to Alltel traffic because the NPA-NXX location has nothing to do with the 'cell site serving the wireless end user at the beginning of the call'.

<sup>13</sup> See South Dakota Commission Dockets TC08-006, TC08-007, TC08-013, TC08-020, TC08-025, TC08-027

1 maintain its right to establish a connection so that traffic can be delivered directly to  
2 Petitioner.

3 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

4 A: Yes, it does.