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February 24, 2004

Honorable Wayne L. Weismandel
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004


Dear Judge Weismandel:

Pursuant to 52 Pa. Code §5.253, ALLTEL Pennsylvania, Inc. hereby requests that the transcript be corrected in the above referenced case. The incorrect sections of the transcript along with the corrections, are detailed in Attachment 1 to this letter.

If you have any questions, please contact the undersigned.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By 

Patricia Armstrong

Enclosures

cc: Certificate of Service
Stephen B. Rowell, Esquire (w/encl.)
Lynn Hughes (w/encl.)

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SECRETARY'S BUREAU

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Cellco Partnership d/b/a Verizon : Docket No. A-310489F7004
Wireless For Arbitration Pursuant to :
Section 252 of the Telecommunications :
Act of 1996 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February, 2004, served a true and correct copy of the foregoing Attachment 1 on behalf of ALLTEL Pennsylvania, Inc. upon the persons and in the manner indicated below:

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ATTACHMENT 1

TRANSCRIPTION CORRECTIONS		
DATE & PAGE	CURRENT TRANSCRIPT	CORRECTED VERSION
02/10/04, p. 166, l. 9	Verizon ILEC	Verizon Wireless
02/10/04, p. 168, l. 17	distinguishing	distinctions
02/10/04, p. 169, l. 14	Bell of	should be removed
Index	DJW-9 (Forecast Demand Units, Pennsylvania)	DJW-9 (Forecast Demand Units, Pennsylvania) (Proprietary)

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**DOCUMENT
FOLDER**

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Cellco Partnership d/b/a Verizon :
Wireless For Arbitration Pursuant to :
Section 252 of the Telecommunications : A-310489F7004
Act of 1996 to Establish an Interconnection :
Agreement with ALLTEL Pennsylvania, Inc. :

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MAIN BRIEF OF CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS

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**DOCUMENT
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Pursuant to 52 Pa. Code § 5.501 and the Arbitration Proceeding Order issued January 8, 2004, by Administrative Law Judge Wayne L. Weismandel, Petitioner, Cellco Partnership d/b/a Verizon Wireless (“Verizon Wireless”) submits this Main Brief in the above-captioned arbitration. As directed by the Arbitration Proceeding Order, Verizon Wireless’s Final Best Offers are set forth in a separate document filed concurrently with this brief.

STATEMENT OF THE CASE

This proceeding is an interconnection arbitration brought pursuant to section 252(b) of the Telecommunications Act of 1996 (the “1996 Act”), 47 U.S.C. § 252(b), and the Commission’s orders implementing that provision.¹ Verizon Wireless is a provider of commercial mobile radio service (“CMRS”) in the Commonwealth of Pennsylvania pursuant to licenses issued by the Federal Communications Commission (“FCC”). Respondent, ALLTEL Pennsylvania, Inc. (“ALLTEL”) is an incumbent local exchange carrier (“LEC”) providing local telephone service in certain parts of the Commonwealth pursuant to certificates issued by the Pennsylvania Public Utility Commission (the “PUC” or the “Commission”).

ALLTEL received a formal request for negotiation of an interconnection and reciprocal compensation agreement from Verizon Wireless via electronic mail on June 23, 2003. This request was filed with the Commission at the above-captioned docket. Verizon Wireless timely filed and served its Petition for Arbitration of fourteen open issues on November 26, 2003. On December 22, 2003, ALLTEL filed and served its Response to the Petition. ALLTEL’s Response set forth ALLTEL’s position with respect to the fourteen issues raised by Verizon

¹ Order, *In re: Implementation of the Telecommunications Act of 1996*, Pa. PUC Docket No. M-0096079 (June 3, 1996); Order on Reconsideration, *In re: Implementation of the Telecommunications Act of 1996*, Pa. PUC Docket No. M-0096079 (Sept. 5, 1996).

Wireless and raised eighteen additional issues for arbitration. During the pendency of this proceeding, the parties continued to negotiate as required by the 1996 Act. As a result, eleven of the thirty-two issues submitted for arbitration by the parties were resolved and withdrawn from consideration.²

A hearing was held before Administrative Law Judge Wayne L. Weisman on February 10, 2004, at which the parties presented testimony and documentary evidence in support of their positions on the issues. The parties' Main Briefs and final best offers are due February 24, 2004, their Reply Briefs are due March 2, 2004, and the Recommended Decision is scheduled to be issued March 30, 2004.

Pursuant to the 1996 Act, state commissions have nine months from the date of an interconnection request in which to conclude the resolution of unresolved issues submitted for arbitration.³ The statutory deadline in this case would have fallen on March 19, 2004. However, at the pre-hearing conference held in this matter, the parties stipulated, with the approval of Chief Administrative Law Judge Robert A. Christianson, that the Commission will be deemed to have met the statutory deadline if it resolves the open issues on or before April 29, 2004.⁴

² See *Petition of Cellco Partnership d/b/a Verizon Wireless*, Docket No. A-310489F7004, Transcript of Hearing ("Tr.") at 41:24 - 42:25 (February 10, 2004).

³ 47 U.S.C. § 252(b)(4)(C).

⁴ See *Petition of Cellco Partnership d/b/a Verizon Wireless*, Docket No. A-310489F7004, Transcript of Pre-Hearing Conference, at 24:6 - 26:9 (January 6, 2004).

SUMMARY OF ARGUMENT

Verizon Wireless's positions with respect to the open issues to be resolved in this proceeding are summarized in its Statement of Final Best Offers. Two fundamental questions control the resolution of many of the issues presented by the parties: (1) whether federal law requires ALLTEL to deliver ALLTEL-originated traffic to Verizon Wireless without charge at any point within the applicable Major Trading Area ("MTA"), irrespective of ALLTEL's local exchange area or service area boundaries; and (2) what method of setting ALLTEL's reciprocal compensation may be used in this proceeding.

There is no question that federal law requires ALLTEL to deliver the traffic it originates to Verizon Wireless, without charge, anywhere within the MTA in which the call originated, irrespective of local exchange or service area boundaries. Section 251(a) of the Act requires ALLTEL to "interconnect directly or indirectly" with Verizon Wireless's facilities.⁵ Section 51.703(a) of the FCC's rules requires LECs to establish reciprocal compensation arrangements for the transport and termination of "telecommunications traffic."⁶ Section 51.703(b)(2) defines "telecommunications traffic" as traffic exchanged between a LEC and a CMRS provider "that, at the beginning of the call, originates and terminates in the same Major Trading Area."⁷ Section 51.703(a), when read in conjunction with Section 51.701(b)(2), "requires LECs to deliver, *without charge*, traffic to CMRS providers *anywhere within the MTA* in which the call

⁵ 47 U.S.C. § 251(a)(1).

⁶ 47 CFR § 51.703(a).

⁷ *Id.* § 51.701(b)(2).

originated.”⁸ ALLTEL nevertheless asserts that these rules somehow do not require a LEC to deliver traffic beyond its local exchange area or service area. But nothing in the rules supports this assertion, and it is unsustainable in light of controlling FCC precedent. In *TSR Wireless, LLC v. U.S. West Communications, Inc.*, the FCC held that although “MTAs typically are large areas that may encompass multiple LATAs, and often cross state boundaries[,] . . . a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.”⁹ If federal law requires LECs to deliver traffic they originate to CMRS providers without charge beyond LATA boundaries and state lines, *a fortiori* it requires them to deliver it beyond the limits of their local exchange areas and services areas. The fact that ALLTEL might choose to deliver this traffic indirectly via a third party transit provider instead of directly through a leased facility is irrelevant.

With respect to reciprocal compensation rates, ALLTEL has failed to prove that its proposed rates are based on an FCC-compliant cost study. The first cost study ALLTEL submitted blatantly violated a number of FCC requirements, including the express prohibition against consideration of embedded costs.¹⁰ This study evidently was never intended to be taken seriously, since ALLTEL was already preparing a second, revised study at the time it submitted the first one.

⁸ *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) (emphasis added).

⁹ *Id.*

¹⁰ See Verizon Wireless St. No. 2.0 (Wood Direct) at 9-13; Verizon Wireless St. No. 2.1 (Wood Rebuttal) at 8-18.

The rates generated by the second study cannot be adopted because ALLTEL effectively deprived both the Commission and Verizon Wireless of the “notice and an opportunity to comment” on the study required by 47 CFR § 51.507(e)(2). ALLTEL first disclosed the existence of the second study when it served its rebuttal testimony, six days before the hearing in this matter. The most important cost models used in the study – those used to calculate the network investment inputs – were never produced. The model that *was* produced was password-protected and wrapped in at least 40 “hidden macros” designed to inhibit the user’s ability to review the workings of the model. The cost experts for both parties agreed that this rendered verification of the model “impossible.”¹¹

Since ALLTEL has failed to support its proposed rates with a usable cost study, the Commission must choose between a “bill-and-keep” arrangement – essentially a zero rate – and default proxy rates.¹² Although the record supports the adoption of bill-and keep, there is more support for the adoption of proxy rates until ALLTEL’s permanent rates are set. The Commission must be able to articulate a “reasonable basis” for the adoption of a particular proxy rate.¹³ Although ALLTEL’s second cost study was not verifiable, Don J. Wood, testifying on behalf of Verizon Wireless, was able to detect an arithmetical error in traffic growth calculations that, when corrected, produced rates that fell within a range of reasonableness confirmed by the data Mr. Wood had used to formulate Verizon Wireless’s initial rate proposal. Therefore, the Commission should direct the parties to adopt the rates calculated by Mr. Wood as proxies pending the establishment of ALLTEL’s permanent cost-based rates in a proceeding in which the

¹¹ Tr. 122:20 – 122:22 (Wood); Tr. 257:17- 258:1 (Caballero).

¹² See 47 CFR § 51.705(a).

¹³ *Id.* § 51.705(a)(2).

Commission and all interested public and private parties may thoroughly investigate ALLTEL's cost study.

ARGUMENT

Issue 1: Whether rural local exchange carriers are subject to the negotiation and arbitration process set forth in Section 252(b) for disputes under Section 251(b)(5) for traffic indirectly exchanged with CMRS?

Section 251(f)(1) does not exempt rural exchange carriers from the 252(b) arbitration process for disputed issues concerning the scope of the reciprocal compensation obligations of LECs for traffic which is routed directly or indirectly under 251(a)(1). Furthermore, ALLTEL has waived any rural exemption or suspension which it might have invoked under 47 U.S.C. § 251(f) by negotiating and arbitrating this case.

Summary of Verizon Wireless's position: The arbitration process and requirements of Section 252(b) apply to any interconnection disputes between ALLTEL and Verizon Wireless arising under Section 251(a)-(c).

Issue 2: Do the FCC's rules interpreting the scope of an ILEC's reciprocal compensation obligations under 251(b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LEC's Tandem facilities?

The FCC defines "telecommunications traffic" subject to reciprocal compensation as "[t]elecommunications traffic exchanged between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area" ("MTA").¹⁴ Therefore, the FCC's rules interpreting the scope of an incumbent LEC's reciprocal compensation obligations under 251(b)(5) apply to intra-MTA traffic that is exchanged indirectly through a third-party LEC's tandem facilities. No distinction is drawn in the FCC's rules

¹⁴ 47 C.F.R. § 701(b)(2).

between directly exchanged traffic and indirectly exchanged traffic. Nor should there be— whether traffic is exchanged directly or indirectly is a matter of each carrier’s choice.¹⁵ The reciprocal compensation provisions of the 1996 Act do not turn on whether a party chooses to deliver traffic originated on its network to another carrier directly on its own facilities or through a third-party’s facilities. This is confirmed by the FCC’s determination that, where traffic is exchanged via a third-party’s switch, the third-party carrier does not “terminate” the traffic and the reciprocal compensation rules govern the rights and obligations of the originating carrier and the true terminating carrier.¹⁶

Summary of Verizon Wireless’s position: The FCC’s reciprocal compensation rules apply to the transport and termination of “telecommunications traffic” between Local Exchange Carriers (“LECs”) and other telecommunications carriers, regardless of whether such traffic is exchanged directly or indirectly.¹⁷

Issue 3(a): Does Section 251(b)(5) impose an obligation on the originating LEC to pay a CMRS provider for its traffic when it transits the network of a third party LEC and terminates on the network of a CMRS provider?

Section 251(b)(5) of the 1996 Act does not qualify the obligation to pay reciprocal compensation based on whether traffic is exchanged directly or indirectly. Nor do the FCC’s rules. To the contrary, by defining the traffic between a LEC and a CMRS provider that is subject to reciprocal compensation solely in terms of the originating and terminating points of the call, section 51.701(b)(2) of the FCC’s rules makes clear that the manner of delivering the

¹⁵ See Tr. at 188:12 – 189:12 (Hughes).

¹⁶ See *Texcom, Inc. v. Bell Atlantic Corp., Order on Reconsideration*, 17 FCC Rcd. 6275, 6276-77, ¶ 4 (2002).

¹⁷ See 47 C.F.R. §§ 51.100(a)(1), 51.701(a), 51.701(b)(2).

call – i.e., directly over the originating LEC’s facilities or indirectly over a transiting carrier’s facilities – has no bearing on the obligation of the originating LEC to pay reciprocal compensation. ALLTEL’s decision to use a third party LEC’s facilities to deliver traffic to Verizon Wireless does not affect ALLTEL’s obligation to pay Verizon Wireless reciprocal compensation for that traffic.

Summary of Verizon Wireless’s position: The obligation of a LEC to pay a CMRS provider reciprocal compensation for the transport and termination of traffic originated on the LEC’s network and terminated on the CMRS provider’s network is not altered where the traffic transits the network of a third-party LEC.

Issue 3(b): Whether pursuant to Section 251(b)(5), a local exchange carrier is required to pay any transit charges on traffic it originates indirectly to a CMRS provider?

Section 51.703 of the FCC’s rules provides as follows:

- (a) Each LEC *shall* establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting carrier.
- (b) A LEC may *not* assess charges for telecommunications traffic that *originates on the LEC’s network*.

47 C.F.R. § 51.703 (emphasis added). The FCC explained the application of Section 51.703(b) in unambiguous terms in *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Red 11166 (2000):

Section 51.703(b) concerns how carriers must compensate each other for the transport and termination of calls. . . . *Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated* MTAs typically are large areas that may encompass multiple LATAs, and often cross state boundaries. *Pursuant to Section 51.703(b), a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.*

Such traffic falls under our reciprocal compensation rules if carried by the incumbent LEC

Id. ¶ 31 (emphasis added, footnotes omitted). The carrier that originates its traffic has control over whether the traffic is sent directly or indirectly. When ALLTEL chooses to deliver its customers' calls to Verizon Wireless indirectly, it utilizes the facilities of other carriers, and thereby incurs costs ("transit charges") for use of the transiting provider's network. Since the transit charges are incurred as a result of the traffic that is sent by ALLTEL, on behalf of its customers, to customers of Verizon Wireless, ALLTEL is prohibited by section 51.703(b) of the FCC's rules from passing the charges on to Verizon Wireless.¹⁸

ALLTEL has suggested that it should not be required to pay any transit charges on traffic it originates indirectly to Verizon Wireless because Verizon Wireless signed agreements in New York agreeing to pay transit charges on land-to-mobile traffic.¹⁹ However, parties to *negotiated* agreements may agree to interconnection on any terms they like, including terms that vary from those required by the 1996 Act, provided the resulting agreement is not discriminatory and is in the public interest.²⁰ In contrast to negotiated arrangements, *arbitrated* agreements, such as the agreement at issue here, must adhere to the requirements of the Act, including its pricing provisions.²¹ As Mr. Sterling explained, Verizon Wireless's agreement to pay transiting charges

¹⁸ See 47 C.F.R. § 51.703(b).

¹⁹ See ALLTEL St. No. 1 (Hughes Direct) at 5:2-6.

²⁰ 47 U.S.C. § 252(a); see *Texcom, Inc. v. Bell Atlantic Corp., Order on Reconsideration*, 17 FCC Rcd. 6275, 6277 n.12 (2002) ("While the cost of using the facilities at issue *typically is recovered through reciprocal compensation charges to originating carriers . . . carriers are free to negotiate different arrangements* for the costs associated with indirect interconnection.") (citing 47 U.S.C. § 252(a)(1)) (emphasis added).

²¹ See 47 U.S.C. §§ 252(c), (d).

in New York was the product of negotiations concerning various terms and conditions, and Verizon Wireless agreed to pay such charges in exchange for concessions in other areas.²² That agreement has no bearing on ALLTEL's legal responsibility for the cost of transporting traffic it originates to Verizon Wireless.

In sum, Section 251(b)(5) requires LECs to pay for the costs of originating and terminating traffic on a CMRS carrier's network where traffic is originated in part through the facilities of a third-party transit provider. Transit costs incurred by the originating LEC for these transit services are the responsibility of the originating LEC under Section 51.703(b) of the FCC's rules.²³

Summary of Verizon Wireless position: The originating LEC is responsible for all costs of delivering traffic to the point of interconnection, including transit charges due third-party carriers for telecommunications traffic where the LEC chooses to deliver the traffic indirectly.

Issue 4: Does a third party transit provider "terminate" traffic within the meaning of Section 251(b)(5)?

The FCC has ruled that a transiting carrier is not a "terminating carrier" for the purposes of reciprocal compensation.²⁴ Only the originating and terminating carriers pay and receive reciprocal compensation under Section 251(b)(5).

²² See Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 4:11-13.

²³ See *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) ("Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.").

²⁴ See *Texcom, Inc. v. Bell Atlantic Corp., Order on Reconsideration*, 17 FCC Rcd. 6275, 6276-77, ¶ 4 (2002) (citing 47 U.S.C. § 251(b)(5), 47 C.F.R. § 51.701 *et seq.*).

Summary of Verizon Wireless position: A third party transit provider does not “terminate” traffic within the meaning of 47 U.S.C. § 251(b)(5).

Issue 5: Where a third party provider provides indirect interconnection facilities, should the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers include the terms and conditions on which the originating carrier will pay the third party transiting provider for transiting service?

The reciprocal compensation requirements imposed by the Act and implemented by the FCC set up a system for two carriers to establish arrangements and bill each other for traffic originating and terminating on their respective networks. It is the responsibility of the originating carrier to arrange the means by which it transports traffic to the terminating carrier, whether those means are the originating carrier’s own network or the network of a transiting carrier.²⁵

ALLTEL seeks to incorporate the terms of its own agreements with third-party transit providers into its interconnection agreement with Verizon Wireless in an effort to avoid responsibility for the transit charges ALLTEL incurs in transporting traffic to Verizon Wireless.²⁶ Both parties agree that “the Act does not speak to” how parties to a reciprocal compensation arrangement compensate third parties involved in indirect interconnection arrangements.²⁷ In fact, at the hearing, Ms. Hughes conceded that if a party chooses indirect

²⁵ See 47 C.F.R. § 51.703(b); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) (“Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . .”).

²⁶ See ALLTEL St. No. 1 (Hughes Direct) at 8:15 – 9:2; Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 8:7-15.

²⁷ Tr. at 187:19 (Hughes).

interconnection, it is incumbent upon that party to negotiate its own arrangements with transiting carriers such as Verizon Pennsylvania.²⁸

ALLTEL's insistence that its interconnection agreement with Verizon Wireless must include to the terms of ALLTEL's terminating toll arrangements with Verizon Pennsylvania²⁹ is contrary to the reciprocal compensation rules implemented by the FCC pursuant to Section 251(b)(5) of the Act. The terminating carrier cannot impose obligations on the originating party for how its traffic is exchanged. In other words, the fact that the terminating carrier has a common trunk group, or point of interconnection that facilitates indirect interconnection, does not obligate the originating carrier to pay a transiting carrier pursuant to those arrangements. Under Section 51.703(b), it is the obligation of the originating carrier to bear the costs of delivery of its traffic under the reciprocal compensation scheme, including any charges incurred through the originating carrier's use of a third party's transit facilities.³⁰ Allowing a terminating carrier to dictate the terms of cost recovery is inconsistent with the FCC's reliance on the cost causation principle of recovery.

Both ALLTEL and Verizon Wireless can make independent agreements with the third parties involved in indirect interconnection arrangements. If ALLTEL does not want to pay third-party transit fees, it can directly connect to Verizon Wireless, either through one-way facilities constructed or leased by ALLTEL or through two-way facilities shared with Verizon

²⁸ Tr. at 188:16-20.

²⁹ ALLTEL St. No. 1R (Hughes Rebuttal) at 19.

³⁰ See *Texcom Inc. v. Bell Atlantic Corp* at ¶ 6. "Currently, our rules in this area follow the cost causation principle of allocating the cost of delivering traffic to the carriers responsible for the traffic, and ultimately their customers." The cost allocation methodology adopted by the FCC is based on the premise that in a calling party pays compensation scheme, the originating carrier can recover the costs of delivery from its customer.

Wireless. While ALLTEL, as an incumbent LEC, may not be able to *initiate* a request for interconnection with Verizon Wireless pursuant to Section 252(a) of the Act, ALLTEL may negotiate and arbitrate direct interconnection arrangements after Verizon Wireless makes such a request. As the FCC has made clear, however, ALLTEL cannot pass on to Verizon Wireless the cost of delivering traffic that originates on ALLTEL's network.³¹

Summary of Verizon Wireless position: Where a third party transiting provider provides indirect interconnection facilities, the terms and conditions on which the originating carrier will pay the third party provider for transiting service are irrelevant to, and have no place in, the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers.

Issue 8: Whether a LEC is required to share in [the] cost of dedicated two-way interconnection facilities between its switch and the CMRS carrier's switch to extend traffic beyond the LEC's local exchange area and network?

Where the parties have agreed to construct or lease two-way interconnection facilities on a dedicated basis for the purpose of direct interconnection, both parties must pay the cost of their proportionate use of such facilities, regardless of whether such facilities extend beyond the LEC's local exchange area or "interconnected network." An incumbent LEC's obligation to share the cost of two-way direct facilities does not end at its local exchange or network boundary; it ends at the point of interconnection, which can be located anywhere in the MTA.

³¹ See 47 C.F.R. 51.703(b); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) ("Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.").

Once again, the FCC has emphasized the incumbent LEC's responsibility to deliver traffic that originates on the LEC's network to CMRS providers anywhere in the MTA without charge.³²

Although Verizon Wireless is entitled to insist on delivery of ALLTEL-originated traffic to any point in the MTA, Verizon Wireless is willing to establish one point of interconnection within each LATA where it terminates traffic with ALLTEL. Verizon Wireless has four (4) switches within the LATAs and MTAs in Pennsylvania served by ALLTEL.³³ It is technically and economically feasible for ALLTEL to share in the cost of connecting to those switches where traffic volumes justify direct connection.³⁴ ALLTEL has rejected this offer, asserting that it should not be required to share the cost of transport to "distant parts of the LATA,"³⁵ because its territories in three LATAs in Pennsylvania are not contiguous and interconnected.³⁶ This position is untenable for two reasons.

³² See *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) ("Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules."); 47 C.F.R. 51.703(b).

³³ See Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 6:3-4.

³⁴ *Id.* at 6:5-6; see also Tr. at 136:23 – 137:19.

³⁵ Tr. at 191:20-192:2.

³⁶ Tr. at 190:23 – 191:16.

First, the FCC has rejected ALLTEL's position.³⁷ Moreover, ALLTEL conceded at hearing that the FCC has ruled that the non-LEC is entitled to direct interconnection at any technically feasible point within the carrier's network.³⁸

Second, as Ms. Hughes herself made clear, the configuration of ALLTEL's network in Pennsylvania is the result of ALLTEL's decision to purchase "a lot of different independents in Pennsylvania."³⁹ Therefore, despite Ms. Hughes's insistence that ALLTEL "is not the cost causer" in this situation,⁴⁰ any transport costs associated with transporting ALLTEL-originated traffic between noncontiguous service areas are the direct result of ALLTEL's own business decisions, and it is entirely appropriate to hold ALLTEL responsible for the cost of transporting ALLTEL-originated traffic to the point of interconnection in the LATA chosen by Verizon Wireless.⁴¹

Summary of Verizon Wireless position: An incumbent LEC's obligation to share the cost of two-way direct facilities does not end at its local exchange area or network boundaries; it ends at the point of interconnection, which can be located anywhere in the MTA.

³⁷ See *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) ("Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated . . .").

³⁸ Tr. at 189:17 – 190:3 (Hughes).

³⁹ Tr. at 191:7-8.

⁴⁰ Tr. 169:3-12.

⁴¹ In any event, as Mr. Wood testified, the impact of a noncontiguous service territory on a LEC's cost of transporting traffic is relatively small. (Tr. at 96:16 – 96:18).

Issue No. 9 What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of direct and indirect traffic?

1. **Verizon Wireless’s Final and Best Offer**

Neither of ALLTEL’s cost studies can be used to set cost-based rates in this arbitration – the first study because it fails to comply with FCC-mandated methodologies and the second because there was insufficient opportunity, and information, to verify its inputs, calculations, and results. The Commission should therefore direct the parties to incorporate default proxy rates into their interconnection agreement and commence a proceeding to investigate and set “permanent” cost-based reciprocal compensation rates for ALLTEL.

The record supports Verizon Wireless’s proposed blended rate of \$0.0078 for tandem, end office and indirect local traffic. However, the Commission also has a “reasonable basis” as required by 47 C.F.R. § 51.707(a)(2) for the adoption of the rates Mr. Wood derived from correcting ALLTEL’s new cost study as default proxies. Verizon Wireless therefore proposes the adoption of the following rates as default proxies pending completion of an investigation of ALLTEL’s cost studies:

Type 2A (tandem)	\$0.00896
Type 2B and Type 1 (end office)	\$0.00446
Indirect	\$0.00792⁴²

2. **Discussion**

The 1996 Act and FCC rules require reciprocal compensation for the transport and termination of direct and indirect telecommunications traffic exchanged between LECs, such as

⁴² Verizon Wireless Exhibit DJW-9, at 3.

ALLTEL, and CMRS providers, such as Verizon Wireless.⁴³ With respect to reciprocal compensation rates, section 252(d)(2) of the 1996 Act, entitled “Charges for Transport and Termination of Traffic,” provides:

(A) IN GENERAL.--For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

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

(B) RULES OF CONSTRUCTION.--This paragraph shall not be construed--

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

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

47 U.S.C. § 252(d)(2). Section 51.705 of the FCC's rules implementing this provision, entitled “Incumbent LEC's rates for transport and termination,” provides, in pertinent part:

(a) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of :

(1) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;

⁴³ See 47 U.S.C. § 251(b)(5); 47 C.F.R. §§ 20.11(b), 20.11(c), 51.703(a), 51.703(b).

(2) Default proxies, as provided in § 51.707; or

(3) A bill-and-keep arrangement, as provided in § 51.713.

47 C.F.R. § 51.705(a); *see also* 47 C.F.R. §§ 20.11(b)(1), (c). In this case, Verizon Wireless's reciprocal compensation rates must be "symmetrical," or equal to, ALLTEL's for the provision of similar transport and termination services.⁴⁴

ALLTEL has the burden of proving that its proposed reciprocal compensation rates are based on the "forward-looking economic costs of such offerings" demonstrated by a cost study that complies with the FCC's rules. 47 C.F.R. § 51.505(e). As shown below, ALLTEL has failed to meet this burden because ALLTEL's initial study (ALLTEL Exh. CC-1) did not comply with the FCC's required methodology and because the cost information provided by ALLTEL in the rebuttal testimony of Cesar Caballero at "CC-2" is insufficient to establish cost-based rates in accordance with Sections 51.505, 511 of the FCC's rules.⁴⁵ Therefore, ALLTEL's reciprocal compensation rates must be established on the basis of either a bill-and-keep arrangement or default proxies. While the record would support a bill-and-keep arrangement, Verizon Wireless has proposed the adoption of the rates set forth in its Best and Final Offer as default proxies pending the establishment of ALLTEL's permanent cost-based rates in a proceeding in which the Commission and all interested public and private parties may thoroughly investigate, analyze, and verify ALLTEL's cost model and cost studies.

⁴⁴ *See* 47 C.F.R. § 51.711(a); *see also* 47 C.F.R. §§ 20.11(b)(2), (c).

⁴⁵ Both Verizon Wireless's cost expert, Don J. Wood and Cesar Caballero offered surrebuttal testimony that supports the conclusion that ALLTEL's second or revised cost study provided in the rebuttal testimony of Cesar Caballero, could not be verified as TELRIC compliant in the amount of time afforded Verizon Wireless. *See* Tr. at 15 (Wood); Tr. at 180 (Caballero).

3. **ALLTEL has failed to prove that its proposed rates are based on forward-looking economic costs pursuant to a cost study that complies with FCC Rules.**

ALLTEL has proposed two completely different sets of rates in this proceeding.

ALLTEL has failed to prove that either set of rates is based on the “forward-looking economic costs” of transport and termination “using a cost study pursuant to [47 C.F.R.] §§ 51.505 and 51.511,” as required by 47 C.F.R. 51.705(a)(1).

a. **ALLTEL’s initial cost study cannot be used to develop costs that are compliant with 47 C.F.R. §§51.505 and §51.511.**

Verizon Wireless’s cost expert Don J. Wood described in detail how ALLTEL’s initial cost study (ALLTEL Exhibit CC-1) fails to comply with applicable FCC rules because: (1) it is not based on an efficient network configuration; (2) it does not assume the most efficient technology commercially available; (3) it does not accurately reflect forward-looking acquisition costs for network equipment and facilities; and (4) it does not reflect forward-looking expenses. ALLTEL in effect acknowledged these deficiencies when it abandoned the rates produced by its initial study in favor of the rates produced by its new study.⁴⁶ In fact, Mr. Caballero admitted that his original cost study was not a TELRIC study at all when he testified that, at the time it was filed, “we had not at ALLTEL finalized a TELRIC study for ALLTEL Pennsylvania.”⁴⁷

b. **ALLTEL’s new cost study cannot be used to develop costs that are compliant with 47 C.F.R. §§51.505 and §51.511.**

Like its initial effort, ALLTEL’s second cost study, ALLTEL Exhibit CC-2, fails to comply with the FCC’s requirements, but for different reasons. The FCC has established specific requirements for cost studies used to support proposed rates for network elements and

⁴⁶ See ALLTEL St. No. 2R (Caballero Rebuttal) at 4-5) (proposing rates based on new study).

⁴⁷ Tr. at 205:3-4 (Caballero).

intercarrier compensation rates based on those elements. Section 51.505(e) requires an incumbent LEC to *prove* to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of providing the element, using a cost study that complies with the methodology set forth in sections 51.505 and 51.511.⁴⁸ Obviously, to meet this standard of proof any such cost study would need to be open to inspection and its inputs fully explained.

The FCC also created specific requirements regarding the information that must be made available in a proceeding such as this one. Section 51.505(e)(2) provides:

any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

47 C.F.R. § 51.505(e)(2). “Notice and an opportunity to comment,” requires, at a minimum, the provision of the proffered cost study to affected parties in a suitable format in sufficient time to permit meaningful review. As Mr. Wood testified, these requirements have produced an industry standard as to how cost models are constructed and presented:

Over the past ten years, and particularly since 1996 as carriers have worked to implement the requirements of the Act (including but not limited to §51.505(e)), the cost models used to calculate network element costs pursuant to §252 of the Act and §51 of the FCC rules have become much more open to inspection and review. When describing the merits of the cost models that they advocate, both carriers (ILECs, CLECs and other carriers) and regulators now make frequent references to the “openness” of these models: the models are presented in fully-functioning form, to the extent possible, the models are presented in a format that permits review and manipulation, the operation of the model is fully described and documented, and all inputs and assumptions are explained and their source documented. While parties may disagree on the proper methodology to be

⁴⁸ See 47 C.F.R. § 51.505(e).

employed in a cost study or the inputs and assumptions used, they do so on the basis of having complete access to the study and underlying computer models.

Regulators have actively encouraged this trend. In the state arbitrations in which I have participated, regulators have consistently insisted on such a complete disclosure so that all parties to the proceeding – while they may disagree on whether certain cost study assumptions are appropriate – at least begin the process on a common ground by understanding how any proposed cost models operate. When developing its Synthesis Cost Model for use in calculating federal universal service support, the FCC staff followed its own admonition and developed a model that is open and inputs that are fully explained.⁴⁹

The timing and manner in which ALLTEL submitted its new cost study (ALLTEL Exh. CC-2) in this proceeding precludes a finding that Verizon Wireless has had “notice and an opportunity for comment” on the cost study, the models on which it relies, and its inputs and assumptions. Specifically: (1) the submission of the cost study with Mr. Caballero’s rebuttal testimony mere days before hearings simply did not afford sufficient time for review; (2) the computer cost models used to generate the most important part of the study, the investment inputs, were not provided at all; and (3) the computer cost model that was provided was produced in a manner that, in ALLTEL’s own witness’s words, made verification of the model “impossible.”

First. ALLTEL’s late submission of the new study deprived Verizon Wireless of notice and opportunity for comment. ALLTEL provided its initial cost study (ALLTEL Exh. CC-1) to Verizon Wireless on December 22, 2003.⁵⁰ In its January 12, 2004 response to Verizon Wireless’s interrogatory requesting all cost studies, models, inputs and assumptions that ALLTEL intended to present in support of its proposed reciprocal compensation rates, ALLTEL

⁴⁹ Verizon Wireless St. 2.0 (Wood Direct) at 8:8 – 9:7.

⁵⁰ Tr. at 243:19-21 (Caballero).

responded simply that “Cost studies have been provided,” referring to the initial study provided on December 22, 2003 and later admitted as ALLTEL Exh. CC-1.⁵¹ Although Mr. Caballero admitted that ALLTEL started work on the new cost study (ALLTEL Exh. CC-2) in 2003,⁵² ALLTEL did not disclose this fact to Verizon Wireless until it served Mr. Caballero’s rebuttal testimony (ALLTEL St. 2R) on February 4, 2004, six days before the hearing in this matter.⁵³ ALLTEL did not provide documentation of major portions of the new cost study to Verizon Wireless until the next day (February 5, 2004), and it never provided the underlying models for the investment portion in electronic format.⁵⁴ Even ALLTEL’s cost witness admitted that the extreme lateness of the submission of the new study deprived Verizon Wireless’s cost expert of the opportunity to review the model in detail.⁵⁵

Second, although the “vast majority” of the FCC-mandated TELRIC methodology relates to the investment stage of a cost model⁵⁶ (the bottom part of the schematic drawn by Mr. Wood), ALLTEL failed to provide the actual cost models used to calculate the network investment in the new study, instead proffering several thousand pages of paper documentation.⁵⁷ As Mr. Wood testified, “[e]ven if Verizon Wireless had time to assess a box full of documents [on the weekend

⁵¹ See Order Granting Motion to Compel, *Petition of Cellco Partnership*, Dkt. No. A-310489F7004, slip op. at 2 (Jan. 20, 2004).

⁵² Tr. at 245:7-9.

⁵³ See Tr. at 135:24 – 136:22 (Sterling).

⁵⁴ See Tr. 52:11-57:10 (Wood).

⁵⁵ Tr. at 228:19 – 229:1 (Caballero).

⁵⁶ Tr. at 56:3-7.

⁵⁷ Tr. at 54:13 – 55:6; Tr. at 119:23 – 120:25.

before a Tuesday hearing], those particular documents would really have no value in determining whether this was a reasonable calculation.”⁵⁸ This omission was substantial. As Mr. Wood testified, the investment associated with the facilities used to provide local transport and termination is “the most important input” to ALLTEL’s cost studies.⁵⁹ The “bottom up” calculation of network investment in the new cost study was a “fundamentally different process” and required “a completely different computer model” from that used in the original study⁶⁰ – a computer model that was not provided to Verizon Wireless.⁶¹ Mr. Caballero confirmed the importance of the missing models when he testified that the investment in the new study was derived from a number of “very different models, engineering models, pricing models,” that were not provided or made available to Verizon Wireless.⁶² Mr. Caballero also confirmed that it was in this area where the real difference between the original and the new studies lay.⁶³

At hearing, Mr. Caballero sought to excuse ALLTEL’s failure to provide the investment models in a reviewable format by asserting that they are not “easy to put on a CD-ROM” and the only practical way for Verizon Wireless to review them would be to travel to ALLTEL’s premises in Arkansas.⁶⁴ This may well be true, but by choosing to rely on such models to calculate investment and then submitting the resulting study only at the last minute, ALLTEL

⁵⁸ Tr. at 55:3-6.

⁵⁹ Tr. at 120:13 (Wood).

⁶⁰ Tr. 57:6 - 57:10 (Wood).

⁶¹ Tr. at 57:2-57:10, 119:19 – 120:25.

⁶² Tr. at 206:4-5.

⁶³ See Tr. at 205:19-21.

⁶⁴ Tr. at 208:13-22.

nevertheless deprived Verizon Wireless of notice and an opportunity to comment on the models, and thus the study itself. Perhaps if ALLTEL had notified Verizon Wireless in December or January that it was revising its cost study based on the models in question, or disclosed that fact in its interrogatory response, Verizon Wireless could have reviewed the models on ALLTEL's premises. ALLTEL, for whatever reason, did not do so.

Third, the portion of the new study that was provided in electronic format was not verifiable. It was password-protected, in contravention of the ALJ's order compelling ALLTEL to provide complete responses to Verizon Wireless's interrogatories.⁶⁵ In addition, the model contained some 40 "hidden macros," which were designed to inhibit full examination of the model.⁶⁶ The negative effect on Verizon Wireless's ability to review the models was amply demonstrated by Mr. Wood's testimony,⁶⁷ illustrated by the names ALLTEL gave to the macros (e.g., "HideActiveSheetReallyWell"),⁶⁸ and even confirmed by Mr. Caballero's admission that the macros were designed to inhibit ALLTEL personnel's access to the model.⁶⁹ As Mr. Wood testified:

[The hidden macros] make it impossible for anyone other than an ALLTEL employee to go through this and get any meaningful analysis, any meaningful sensitivity runs, any of that kind of review, the kind of review we'd normally do for this kind of model.⁷⁰

⁶⁵ Tr. at 50:9-18.

⁶⁶ Tr. at 58:12 – 67:8; Verizon Wireless Exh. DJW-7.

⁶⁷ Tr. 58-67; 121-122.

⁶⁸ Tr. at 66:22.

⁶⁹ Tr. at 216:7 – 216:18.

⁷⁰ Tr. at 122:16 – 122:19.

In short, Mr. Wood agreed, the hidden macros make it “impossible to verify the accuracy of the results.”⁷¹ Even Mr. Caballero agreed with this assessment.⁷²

In sum, ALLTEL has failed to support its proposed rates with a cost study that is compliant with 47 C.F.R. §§51.505, specifically, 47 C.F.R. § 51.505(e)(2). By filing its new cost study at the last minute, by failing to provide the models underlying the calculations of its network investment in a reviewable format, and by making it impossible to verify the electronic models it did provide, ALLTEL has not only deprived Verizon Wireless of notice and a meaningful opportunity to comment on ALLTEL’s new cost study, it has deprived the Commission of the basis on which it could adopt ALLTEL’s proposed rates.

4. **The Commission should adopt Verizon Wireless’s proposed default proxy rates for transport and termination and commence a separate rulemaking to consider ALLTEL’s revised cost study and set permanent rates.**

In the absence of a cost study produced in compliance with section 51.505, the FCC’s rules require rates for transport and termination to be set on the basis of either default proxies or a bill-and-keep arrangement.⁷³ Verizon Wireless’s final proposal is that the Commission order the parties to adopt the rates proposed by Verizon Wireless as default proxies and pending the completion of a rulemaking to set permanent rates for ALLTEL after a thorough examination of

⁷¹ Tr. at 122:20 – 122:22.

⁷² Tr. at 257:17- 258:1.

⁷³ See 47 C.F.R. § 51.705(a).

its revised cost study, a procedure expressly approved by the FCC.⁷⁴

Section 51.707(a) of the FCC's rules provide the guidelines for default proxies:
(a) A state commission may determine that the cost information available to it with respect to transport and termination of telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511. In that event, the state commission may establish rates for transport and termination of telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

(1) Any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3); and

(2) The state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of telecommunications traffic, or for specific components included within transport and termination.

47 C.F.R. § 51.707(a).⁷⁵ In addition, section 20.11 of the FCC's rules requires that compensation between CMRS providers and LECs for termination of traffic be "reasonable."⁷⁶

⁷⁴ See *id.* § 51.707(a); see also *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15851 ¶ 693 (1996) [hereinafter "*First Report & Order*"] ("States may review a TELRIC economic cost study in the context of a particular arbitration proceeding, or they may conduct such studies in a rulemaking and apply the results in various arbitrations involving incumbent LECs. In the latter case, states must replace any interim rates set in arbitration proceedings with the permanent rate resulting from the separate rulemaking. This permanent rate will take effect at or about the time of the conclusion of the separate rulemaking and will apply from that time forward.").

⁷⁵ The FCC at one point required default proxy rates for transport and termination to fall within certain ranges. See 47 C.F.R. § 51.707(b). However, this rule was vacated when the U.S. Court of Appeals for the Eighth Circuit held that while the FCC could prescribe the methodology to be used by state commissions to set reciprocal compensation rates, it could not prescribe the rates themselves. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757 (8th Cir. 2000), *aff'd in part and rev'd in part on other grounds sub nom. Verizon Communications v. FCC*, 535 U.S. 467 (2002).

⁷⁶ *Id.* § 20.11(b).

a. **ALLTEL's proposed transport and termination rates are not appropriate default proxies.**

The rates proposed by ALLTEL – the rates based on ALLTEL Exh. CC-2 – cannot be adopted as proxies for at least three reasons.

First, for all of the reasons set forth above, the only support in the record for those rates – the revised cost study – does not, standing alone, provide a “reasonable basis” for their selection as proxies any more than it does for their selection as permanent rates.

Second, to adopt ALLTEL's proposed rates as proxies when ALLTEL failed to carry its burden of proving the validity of those rates would eviscerate the rule allocating the burden of proof in arbitration proceedings and remove the incentive for ILECs such as ALLTEL to provide cost studies at a time and in a form that provides notice and an opportunity for comment to in those proceedings.

Third, ALLTEL's proposed rates are not reasonable because they are based on either a gross arithmetic error or an unsubstantiated projection of local traffic volume growth over the study period. ALLTEL's initial cost study appeared to assume a decline in local traffic over the next five years, rather than an increase.⁷⁷ As Mr. Wood noted, this is inconsistent with industry trends, which “indicate[] that traffic volumes are increasing, not decreasing. By using this artificially low number as its denominator, ALLTEL has significantly overstated unit costs.”⁷⁸ It was not until the production of ALLTEL's revised cost study that the explanation for this discrepancy emerged. As Mr. Wood explained, ALLTEL's study calls for a positive local traffic

⁷⁷ See Verizon Wireless St. No. 2.1 (Wood Rebuttal) at 15:6 – 15:15.

⁷⁸ *Id.* at 15:15 – 15:17.

growth factor 90% over five years) but actually uses a negative factor (-10%).⁷⁹ Upon review of workpapers that were provided with the revised cost study, the source of this error became apparent: ALLTEL had failed to add the stated factor to a base of 100%, which resulted in producing a factor equal to 100% *minus* the positive factor ALLTEL itself identified.⁸⁰ When corrected for this error, the growth factor used returned to the positive 90% over five years as reflected in ALLTEL's own assumptions, or approximately 15%-20% per year.

Mr. Caballero's attempts to explain this error were unconvincing. He asserted that the mistake was in the formula expressed in the workpapers, and that the "1 +" that reflected the 100% of current minutes was included in error.⁸¹ Yet he provided no explanation why that particular error would have been made. Moreover, in numerous other instances in its cost study documentation, when ALLTEL meant to express a negative growth factor, it did so by using negative value labeled with a "minus" sign, rather than as a positive value reflecting what would remain after the growth declined.⁸² Mr. Caballero never gave any reason why the claimed *negative* growth in local minutes was expressed as a *positive* value rather than with *negative* value like the other declining factors used in the revised study, *i.e.*, as 90% rather than as -10%. The conclusion made by Verizon Wireless that the stated growth formula was incorrectly applied by ALLTEL in CC-2 is reasonable in light of the facts established by Mr. Wood's testimony.

Adding to this confusion, Mr. Caballero failed to provide any factual support for the declining growth in demand in the paper documentation provided with his rebuttal testimony, the

⁷⁹ Tr. at 73-76.

⁸⁰ Tr. at 76-79; DJW-9.

⁸¹ Tr. at 218:11 – 221:10.

⁸² Tr. 248:11-251.

electronic model, or verbally in his surrebuttal. Mr. Caballero claimed that ALLTEL's local usage actually was declining, thus supporting the negative growth factor he claimed on the stand rather than the positive value set forth in his cost study. ALLTEL failed to carry its burden on this point, however, because Mr. Caballero's testimony does not withstand scrutiny. Mr. Caballero – whose word choice was quite deliberate and precise – never actually cited any data to show that that ALLTEL's *local* traffic volume was declining. First, Mr. Caballero cited a “study of minutes use relative to ALLTEL Pennsylvania.”⁸³ However, when questioned by the Arbitrator, Mr. Caballero rendered this “study” immaterial when he carefully noted that the claimed decline was for “*all* minutes.”⁸⁴ “All” minutes, of course, would include toll minutes and access minutes in addition to local calling minutes. This explanation also appears to apply to his immediately preceding testimony relating to “industry norm[s].”⁸⁵

In sum, regardless of which growth estimate is applied, neither could be verified with the information provided by ALLTEL with CC-2, and through the rebuttal testimony of Mr. Caballero, to support the adoption of permanent rates. Therefore, the best that can be said about ALLTEL's attempts to support its claim that it meant -10% when it repeatedly wrote 90% is that further investigation is necessary.

⁸³ Tr. at 222:22 – 222:23. This “study,” however, was not provided either to the Commission or to Verizon Wireless as part of ALLTEL's cost study documentation and therefore fails to meet the requirements of FCC rule 51.505(e).

⁸⁴ Tr. at 259:25 (emphasis added).

⁸⁵ See Tr. at 259:2 – 259:14.

b. **Verizon Wireless's proposed default proxies are both reasonable and supported by a reasonable basis in the record.**

Since the cost study originally provided to Verizon Wireless did not comply with the requirements of the 1996 Act and the FCC's rules, Verizon Wireless originally proposed a blended transport and termination rate for tandem (2A) end office (2B) and indirect interconnection traffic of \$0.0078 based upon the tariffed rates of other Pennsylvania ILECs for similar services, the reciprocal compensation rates contained in Verizon Wireless's agreements with Pennsylvania ILECs similar to ALLTEL, and a "best in class" analysis for ALLTEL's cost study areas.⁸⁶ Although ALLTEL took great issue with Verizon Wireless's proposal because it was based in part on the rates of LECs that have service territories more contiguous than ALLTEL's, Mr. Wood explained that the non-contiguous character of ALLTEL's service territory – the product of ALLTEL's voluntary choice to purchase LECs in different geographical areas – does not cause an increase of local transport and termination costs.⁸⁷ This is because the cost of transport facilities between these territories is driven not by the facility mileage (length) but by the facility termination equipment (the electronics on both ends), and the slight cost of increased mileage is offset by the efficiencies generated by aggregation of traffic from widely dispersed customers.⁸⁸

When Mr. Wood received documentation of ALLTEL's revised cost study and detected the arithmetic error described above, he was able to correct the error and recalculate the rates produced by the study. Although Mr. Wood was unable to verify that the rates did not exceed

⁸⁶ Verizon Wireless St. No. 2.0 (Wood Direct) at 13-14.

⁸⁷ Tr. at 98:8 – 98:22.

⁸⁸ Tr. at 114:18 – 117:11.

ALLTEL's forward-looking costs of providing transport and termination, he did find they fell within the range of reasonableness based upon his extensive experience and his comparison of the recalculated rates with those of comparable carriers.⁸⁹ The evidence thus clearly shows that this offer is well within the range of reasonableness required for default proxies adopted pursuant to 47 C.F.R. § 51.707 and for termination rates adopted pursuant to 47 C.F.R. § 20.11.

Summary of Verizon Wireless position: Verizon Wireless proposes that the rates recalculated by Mr. Wood based on his correction of the results of ALLTEL CC-2 be adopted as reasonable default proxy rates pending a complete investigation of ALLTEL's cost study:

Type 2A (tandem)	\$0.00896
Type 2B and Type 1 (end office)	\$0.00446
Indirect	\$0.00792

Issue 10: Can the Parties implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic?

The FCC has recognized that there are circumstances under which a party may appropriately use factors to determine traffic balances for purposes of reciprocal compensation.⁹⁰ The factor would be available and used by a party to the extent that a party cannot measure actual terminating minutes. If ALLTEL can measure the amount of traffic it terminates indirectly, a traffic factor can be used by Verizon Wireless to estimate the amount of traffic ALLTEL originates indirectly to Verizon Wireless. In light of the fact that ALLTEL has not

⁸⁹ Tr. at 79:20-79:22, 81:15-83:4, 125:6-126:23.

⁹⁰ *First Report & Order*, *supra* n.74, ¶ 1044.

produced any measurements or estimates of the amount of traffic it originates indirectly to Verizon Wireless, use of traffic factors will be required, since Verizon Wireless cannot measure this traffic. Although Verizon Wireless requested this information, ALLTEL failed to provide any calculation of the minutes it indirectly originates to Verizon Wireless.⁹¹

Summary of Verizon Wireless position: The parties can and should implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic for purposes of computing reciprocal compensation to the extent that a party cannot measure actual terminating minutes.

Issue 11: Where a CMRS provider's switch serves the geographically comparable area of LEC tandem, can it charge a termination rate equivalent to a tandem rate for traffic terminated in the Land to Mobile direction?

Verizon Wireless's switches that terminate ALLTEL-originated traffic serve geographical areas comparable to the areas served by ALLTEL's tandem switches.⁹² Section 51.711(a)(3) of the FCC's rules clearly states:

Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.⁹³

⁹¹ See Tr at. 93:21-25, 94:7-16 (Sterling) ("We requested of ALLTEL data on the traffic they originate indirectly through Verizon Pennsylvania's tandems to us. Their response to our interrogatory acknowledged that they do send traffic indirectly to us, but they did not provide any information on the amount or volumes of that traffic sent to use indirectly... and, so without that piece... I am not able to come up with the same type of analysis or ratio ...").

⁹² See Verizon Wireless St. 1.0 ("Sterling Direct") at 22:15-22:17.

⁹³ 47 C.F.R. 51.711(a)(3).

This rule “requires only that the comparable geographic area test be met before carriers are entitled to the tandem interconnection rate for local call termination.”⁹⁴ Therefore, Verizon Wireless is entitled to charge ALLTEL’s tandem rate for all traffic originated by ALLTEL, irrespective of the kind of switch that originates the traffic.

Summary of Verizon Wireless position: Because Verizon Wireless is not an incumbent LEC and because its switches that terminate ALLTEL-originated traffic serve geographical areas comparable to the areas served by ALLTEL’s tandem switches, Verizon Wireless is entitled under the FCC’s rules to charge ALLTEL’s tandem interconnection rate for all traffic originated by ALLTEL.⁹⁵

Issue 13: After a requesting carrier sends a formal request for interconnection under Section 252 (b) of the Act, what interim reciprocal compensation terms apply to the parties until an agreement has been negotiated and arbitrated by the Commission?

The prior interconnection agreement between ALLTEL and Verizon Wireless was terminated by ALLTEL effective March 16, 2003.⁹⁶ Therefore, an interim rate must be set for the traffic exchanged by the parties during the period of March 17, 2003 through the date on which the agreement produced by this arbitration is approved and becomes effective. Section 51.715 of the FCC’s rules states:

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of telecommunications traffic immediately

⁹⁴ Notice of Proposed Rulemaking, *In re Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, 9648 ¶ 105 (2001) (footnote omitted).

⁹⁵ See 47 C.F.R. § 51.711(a)(3).

⁹⁶ See Verizon Wireless St. No. 1.0 (Sterling Direct) at 3:23 – 4:1.

under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

47 C.F.R. § 51.715(a). Section 51.715(b) specifically provides: “In a state in which a state commission has established transport and termination rates based on forward-looking cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.”⁹⁷ The Commission has approved transport and termination rates for Verizon Pennsylvania, an incumbent LEC. Although ALLTEL objects to use of Verizon Pennsylvania’s rates as interim rates on the ground that ALLTEL’s cost characteristics differ from those of Verizon Pennsylvania,⁹⁸ that circumstance does not lessen the mandatory command in Section 51.715(b)(1) that approved incumbent LEC rates “*shall*” be used as interim rates. Verizon Pennsylvania’s approved reciprocal compensation rates therefore should be adopted as interim rates for traffic exchanged during the period from the termination of the prior interconnection agreement until effective date of the new agreement. An interim reciprocal compensation rate, as opposed to a rate based upon ITORP, should apply pursuant to Section 51.715(b)(1) of the FCC’s rules, subject to a true-up in accordance with Section 51.715(d).

Summary of Verizon Wireless position: Pursuant to 47 C.F.R. § 51.715, the Commission should require the parties to use the approved rates for Verizon Pennsylvania as the interim reciprocal compensation rates from the effective termination date of the prior interconnection agreement between the parties until the agreement reached as a result of this arbitration is approved by the Commission.

⁹⁷ 47 C.F.R. § 51.715(b)(1).

⁹⁸ See ALLTEL St. No. 1R (Hughes Rebuttal) at 22.

Issue 15: Whether the payment due date for invoices rendered under the agreement should be determined from the date of the invoice or the date of receipt of the invoice and whether the allotted time should be 30 or 45 days thereafter?

The contract should provide that “Payment for all undisputed charges is due within thirty (30) days of receipt of the invoice” as opposed to thirty days from “invoice date.” This will afford both parties some protection in the invoice is mailed several days after the invoice date, or the mail is delayed. ALLTEL argues that payment thirty days after the date of the invoice is “industry standard.”⁹⁹ ALLTEL also points to Verizon Wireless interconnection agreements with other LECs in Pennsylvania that have payments due thirty days from invoice date. However, those interconnection agreements were executed several years ago, prior to the formation of Verizon Wireless and its resulting centralized payment system. Further, Verizon Wireless has had payment terms of greater than thirty days included in interconnection agreements throughout the United States, including agreements recently negotiated in Pennsylvania.¹⁰⁰ As Mr. Sterling testified, ALLTEL’s position puts Verizon Wireless at risk should there be delays between the invoice date and when the invoice is mailed or received.¹⁰¹ Verizon Wireless should not be required to bear the entire risk of mail delays or the delay between the time when the invoices are printed and the time they are mailed. Therefore, as a compromise position, Verizon Wireless has proposed that payments be due thirty days from receipt of invoice.¹⁰² However, if ALLTEL would agree to place bills in the mail on the date of

⁹⁹ ALLTEL St. No. 1 (Hughes Direct) at 18:3-4.

¹⁰⁰ See Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 13:5-7.

¹⁰¹ See Verizon Wireless St. No. 1.0 (Sterling Direct) at 24:7-9; see also Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 13:9-11.

¹⁰² *Id.* at 13:11-12.

invoice, Verizon Wireless would agree to language making payments due thirty days from the invoice date.¹⁰³

Summary of Verizon Wireless position: Unless ALLTEL commits to placing invoices in the mail on the date of invoice, the contract should provide “Payment for all undisputed charges is due within thirty (30) days of receipt of the invoice” as opposed to thirty days from “invoice date.”

Issues No. 16 & 17: Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3 and 9.1.1.4. Whether the agreement should include the following: “A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind should not be considered a Bona Fide dispute.” And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have the right to pursue normal treatment procedures. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party’s account by the billing party by the next billing cycle upon resolution of the dispute.

Verizon Wireless proposes the following revisions to ALLTEL’s proposed language (proposed additions are underscored and in bold; proposed deletions are stricken out):

Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: “A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other **undisputed** amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for special damages of any kind should not be considered a Bona Fide dispute.” And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1,

¹⁰³ See *id.* at 13:12-14.

the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party **shall** ~~must~~ have the right to pursue **any remedy applicable at law or equity** ~~normal treatment procedures~~. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

Verizon Wireless's proposed changes clarify both parties' rights to withhold validly disputed amounts pursuant to the billing dispute provisions of the agreement.¹⁰⁴ The changes also protect both parties' rights to pursue any legal or equitable remedy if the billing dispute resolution mechanism does not resolve a billing dispute, and it eliminates the undefined term "normal treatment procedures."

Summary of Verizon Wireless position: Verizon Wireless's proposed revisions to the bona fide dispute clause should be adopted.

Issue 20: **Whether, as Verizon Wireless proposes in Petition Exhibit 1 section entitled "Most Favored Nation, General Terms and Conditions," paragraph 31.1, Verizon Wireless should have the right to opt out of this agreement during its terms and into any other agreement that ALLTEL may execute with another carrier.**

Summary of Verizon Wireless position: Verizon Wireless proposes that the "Most Favored Nation" ("MFN") provision be eliminated from the agreement, since the parties have not agreed on language and the MFN provision of the 1996 Act, 47 U.S.C. § 252(i), speaks for itself.

¹⁰⁴ See Verizon Wireless St. No. 1.0 (Sterling Direct) at 24:10 – 24:14.

Issue 24: Whether agreement section referred to as “Incumbent Local Exchange Carrier Requirement,” Attachment 2, paragraph 1.4.2 of Verizon’s Exhibit 1, should specify that ALLTEL’s obligations to provide service under the agreement is with respect to that service are where [sic] ALLTEL is authorized to provide service?

ALLTEL has an obligation to exchange traffic directly and indirectly with Verizon Wireless. Verizon Wireless has three direct points of interconnection with ALLTEL on its network. ALLTEL has an obligation pursuant to the FCC’s rules to deliver its traffic to the Verizon Wireless at any point within the MTA, irrespective of whether that point lies within ALLTEL’s authorized service area. The discussion of Issues 3(a) and 8, *supra*, supports Verizon Wireless’s position on this issue and is incorporated by this reference.

Summary of Verizon Wireless position: Since ALLTEL is obligated to deliver traffic originated on its network to any point with the MTA, the agreement section referred to as “Incumbent Local Exchange Carrier Requirement,” Attachment 2, paragraph 1.4.2 of Verizon’s Exhibit 1, should *not* specify that “ALLTEL’s obligations to provide service under the agreement is with respect to that service are where [sic] ALLTEL is authorized to provide service.”

Issue 25: Whether the phrase “within ALLTEL’s interconnected network” should be inserted in the agreement section entitled “Direct Routed Traffic Mobile to Land Traffic,” Attachment 2, paragraph 2.1.1.1, paragraph 2.1.1.2, paragraph 2.1.2.1, and paragraph 2.1.2.2 of Verizon’s Exhibit 1, to clearly indicate that when Verizon Wireless connects to one of ALLTEL’s separate segregated networks, it is able to exchange traffic and is achieving interconnection, only with that individual segregated ALLTEL network.

ALLTEL has an obligation to exchange traffic directly and indirectly with Verizon Wireless. Verizon Wireless has three direct points of interconnection with ALLTEL on its network. ALLTEL has an obligation pursuant to the FCC’s rules to deliver its traffic to the Verizon Wireless at any point within its MTA. Therefore, ALLTEL, and not Verizon Wireless,

has the obligation to bring its traffic to any one of the points of interconnection on its network, regardless of whether some of ALLTEL's areas are non-contiguous. The discussion of Issue 8, *supra*, supports Verizon Wireless's position on this issue and is incorporated by this reference.

Summary of Verizon Wireless position: Since ALLTEL is obligated to deliver traffic originated on its network to any point with the MTA, the phrase "within ALLTEL's interconnected network" should not be inserted into the agreement.

Issue 27: Whether the agreement section entitled "Indirect Network Interconnection," Attachment 2, paragraph 2.1.5 of Verizon Wireless's Exhibit 1 should require the establishment of a direct interconnection facility when the capacity of the indirect traffic reaches a DS1 level?

The 257,000 combined MOU threshold ALLTEL has proposed should be implemented only to the extent the end office traffic is exchanged at ALLTEL's tandem locations. To the extent Verizon Wireless must establish facilities physically connecting to ALLTEL's end offices, the threshold should be 500,000 MOUs in the mobile-to-land direction. ALLTEL maintains that "industry standard indicates that an end office direct interconnection should be established" when the volume of traffic reaches a DS1 level.¹⁰⁵ As Mr. Sterling explained, however, connecting directly to an end office at a DS1 level may be considered an industry standard when the cost of the facility is *shared* between the connecting parties.¹⁰⁶ If one carrier is required to pay the entire cost of the facility, the traffic volume must be greater to make it financially worthwhile.¹⁰⁷ In addition, a DS1 level may equate to different traffic volumes depending on

¹⁰⁵ ALLTEL St. No. 1 (Hughes Direct) at 3:23-4:3.

¹⁰⁶ *See* Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 2:20-21.

¹⁰⁷ *Id.* at 2:21-3:1.

other factors, such as grade of service.¹⁰⁸ Once established, the cost of the facility should be shared between the parties in proportion to the amount of traffic each party originates over the shared facility. “The rate of a carrier providing transmission facilities on a dedicated ... between two carriers shall recover only the costs of the proportion of that trunk used by an interconnection carrier to send traffic that will terminate on the providing carrier’s network.”¹⁰⁹

Summary of Verizon Wireless position: The 257,000 combined MOU threshold ALLTEL has proposed should be implemented only to the extent the end office traffic is exchanged at ALLTEL’s tandem locations, and, to the extent Verizon Wireless must establish facilities physically connecting to ALLTEL’s end offices, the threshold should be 500,000 MOUs in the mobile-to-land direction.

Issue 28: Whether Verizon Wireless may establish NPA-NXX’s in ALLTEL rate centers, regardless of actual delivery point of the associated calls, and require ALLTEL to bear all transport costs to the point of delivery?

Pursuant to Section 251(b)(3), ALLTEL has an obligation under the 1996 Act to provide dialing parity to Verizon Wireless’s customers. This obligation does not require that the parties are interconnected directly under Section 251(c)(2) of the Act. Moreover, any suggestion by ALLTEL that NPA-NXX assignments by CMRS providers should be constrained by “the actual delivery point” of “associated” calls is nonsensical, since the geographical delivery point of calls to a mobile telephone changes with the subscriber’s location.

As argued at length above, the FCC’s rules obligate the originating carrier to bear all costs, including transit charges due third-party carriers, for delivering intraMTA

¹⁰⁸ *Id.* at 3:1-2.

¹⁰⁹ *See* 47 C.F.R. § 51.709(b).

telecommunications traffic terminated on a CMRS provider's network.¹¹⁰ The obligation is keyed to the originating and terminating locations at the beginning of the call;¹¹¹ NPA-NXX assignments are irrelevant.

Summary of Verizon Wireless position: Verizon Wireless is entitled to establish NPA-NXXs associated with ALLTEL rate centers regardless of the actual delivery point of the associated calls without any impact on ALLTEL's obligation to bear the costs of delivering traffic it originates to Verizon Wireless.

Issue 30: Whether a 60/40 land to mobile traffic factor must be used by both Parties when either Party cannot record the terminating minutes originating from the other Party routed over a direct interconnection facility, even though ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and even though Verizon's proposed factor of 60/40 land to mobile is inconsistent with the shared facilities factor of 70/30 land to mobile proposed by Verizon Wireless?

A 40% land-originated, 60% mobile-originated traffic factor is a reasonable proxy.¹¹² It is supported by the traffic volumes observed by Verizon Wireless at the one point of interconnection where both parties deliver traffic directly to the other (Meadville) and traffic thus can actually be measured. The monthly volume of traffic exchanged directly at Meadville represents a traffic relationship of, on average, 44% land-originated and 56% mobile-

¹¹⁰ See 47 C.F.R. § 51.703(b); *TSR Wireless, LLC v. U.S. West Communications, Inc.*, 15 FCC Rcd 11166, ¶ 31 (2000) ["Section 51.703(b), when read in conjunction with Section 51.701(b)(2), requires LECs to deliver, without charge, traffic to CMRS providers anywhere within the MTA in which the call originated [A] LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that originates and terminates within the same MTA, as this constitutes local traffic under our rules.".]

¹¹¹ See 47 C.F.R. § 51.703(b).

¹¹² See Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 9:5 – 9:7.

originated.¹¹³ In contrast, as Mr. Sterling explained at the hearing, ALLTEL has offered no traffic data or other data to support a 70/30 ratio.¹¹⁴

ALLTEL insists that the parties have already agreed to a traffic ration of 70/30.¹¹⁵ As Mr. Sterling testified at the hearing however, the 70/30 ratio was merely a proposal made during the give-and-take of the negotiations process.¹¹⁶ On cross examination, Ms. Hughes conceded that the redlined agreement attached to ALLTEL's response to the petition shows the 70/30 split as having been proposed by Verizon Wireless, rather than as something that had been agreed to by both parties.¹¹⁷ As Mr. Sterling explained, Verizon Wireless offered a traffic factor of 70/30 land to mobile in the context of negotiations concerning several open items.¹¹⁸ Verizon Wireless should not be penalized for attempting to resolve several outstanding issues by proposing a compromise position in a good faith attempt to reach an agreement.

Summary of Verizon Wireless position: The Land to Mobile factor should be 40% land-originated, 60% mobile-originated.

¹¹³ See Verizon Wireless St. No. 1.0 (Sterling Direct) at 26:17 – 28:18.

¹¹⁴ Tr. at 133:5-7.

¹¹⁵ ALLTEL St. No. 1R (Hughes Rebuttal) at 25; Tr. at 180:25 – 181:5.

¹¹⁶ See Tr. at 132:20 – 133:12.

¹¹⁷ See Tr. at 181:23 – 182:6.

¹¹⁸ See Verizon Wireless St. No. 1.1 (Sterling Rebuttal) at 9:5-6; Tr. at 132:25 – 133:4.

Issue 31: Whether the agreement’s definition of “Interconnection Point,” Attachment 8 of Verizon Wireless Exhibit 1, should be clear in appropriately defining the parties’ responsibilities of network between the parties, which in ALLTEL’s case will be on its network.

ALLTEL has an obligation to exchange traffic directly and indirectly with Verizon Wireless. Verizon Wireless has three direct points of interconnection with ALLTEL on its network. ALLTEL has an obligation pursuant to the FCC’s rules to deliver its traffic to the Verizon Wireless at any point within the MTA, irrespective of whether that point lies within ALLTEL’s authorized service area. The discussion of Issues 3(a) and 8, *supra*, supports Verizon Wireless’s position on this issue as well and is incorporated by this reference.

Summary of Verizon Wireless position: The definition of “Interconnection Point” should appropriately consider ALLTEL’s responsibility to deliver traffic to Verizon Wireless to any point within the MTA.

Issue 32: Whether the agreement should include a definition of “Interexchange Carrier,” a term not used in the agreement.


Summary of Verizon Wireless position: Verizon Wireless hereby recedes from its initial position on this issue and will agree to omit this language from the agreement.

CONCLUSION

For all of the foregoing reasons, Verizon Wireless respectfully requests that the Commission adopt Verizon Wireless's final best offer with respect to each open issue in this proceeding.

Respectfully submitted,

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*Counsel for Cellco Partnership d/b/a
Verizon Wireless*

DATED: February 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing document upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

Via Federal Express – Over Night Delivery and E-mail

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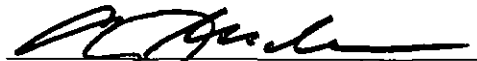
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Dated: February 24, 2004



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CHARLES E. THOMAS
(1913 - 1998)

February 24, 2004

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

**DOCUMENT
FOLDER**

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:


Enclosed for filing are an original and nine (9) copies of the Final and Best Offer of ALLTEL Pennsylvania, Inc. in the above referenced proceeding.

Copies of the Final and Best Offer has been served in accordance with the attached Certificate of Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Patricia Armstrong

Enclosures

cc: Certificate of Service
Stephen B. Rowell, Esquire (w/encl.)
Lynn Hughes (w/encl.)

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SECRETARY'S BUREAU
2004 FEB 24 PM 4:27

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Cellco Partnership d/b/a Verizon : Docket No. A-310489F7004
Wireless For Arbitration Pursuant to :
Section 252 of the Telecommunications :
Act of 1996 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February, 2004, served a true and correct copy of the foregoing Final and Best Offer on behalf of ALLTEL Pennsylvania, Inc. upon the persons and in the manner indicated below:

HAND DELIVERY

Honorable Wayne L. Weismandel
Administrative Law Judge
Pennsylvania Public Utility Commission
2nd Floor West
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
(including diskette)

VIA E-MAIL AND FEDERAL EXPRESS

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Elaine D. Critides, Esquire
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Patricia Armstrong

RECEIVED

FEB 24 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Re: *Cellco Partnership d/b/a Verizon* : Docket No. A-310489F7004
Wireless For Arbitration Pursuant to :
Section 252 of the Telecommunications :
Act of 1996 :

DOCKETED
MAR 11 2004

**FINAL AND BEST OFFER
OF
ALLTEL PENNSYLVANIA, INC.**

RECEIVED

FEB 24 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

INTRODUCTION

Pursuant to the Telecommunications Act of 1996 (the "Act"), the Orders of the Pennsylvania Public Utility Commission ("Commission"), and the January 8, 2004 Arbitration Proceeding Order of Administrative Law Judge Wayne L. Weismandel, ALLTEL Pennsylvania, Inc. ("ALLTEL") respectfully submits its Final and Best Offer on the outstanding issues in the above-captioned arbitration. ALLTEL has negotiated with Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") in an effort to resolve as many of the issues originally presented in this proceeding as possible. As a result of compromises, the parties have resolved 11 of the original 32 issues. As to the remaining issues, ALLTEL believes that Issues 1, 2 and 3a are resolved as moot, and that Issues 10, 16, 17 and 20 can be resolved as set forth herein. As to the remaining issues, ALLTEL's positions set forth below are both fully supported by the facts and fully consistent with the Act, the Federal Communications Commission's ("FCC") Orders and Rules implementing the Act, and this Commission's Orders implementing the Act.

**DOCUMENT
FOLDER**

SUMMARY OF RESOLVED AND UNRESOLVED ISSUES

For the Commission's convenience, ALLTEL submits the following summary of resolved and unresolved issues:

FULLY RESOLVED ISSUES

- Issue No. 6: Can Verizon Wireless traffic be combined with other traffic over the same trunk group?
- Issue No. 7: Is an incumbent local exchange provider required to provide dialing parity to a CMRS provider's NPA NXXs that are locally rated where traffic is exchanged indirectly? Refers to Verizon Wireless' Issue 7 in its Petition for Arbitration.
- Issue No. 12: Should the Parties establish a factor to delineate what percentage of traffic is interMTA and thereby subject to access rates? If so, what should the factor be? (Appendix A.11)
- Issue No. 14: Under what circumstances should either party be permitted to terminate the agreement or block traffic as a remedy in cases of default or breach?
- Issue No. 18: Limitations on disputes, General Terms and Conditions, paragraph 9.1.2. Refers to ALLTEL's Issue 18 in its Response to Verizon Wireless's Petition for Arbitration.
- Issue No. 19: Whether the agreement should provide for commercial arbitration only by consent of the parties as provided in Arbitration, General Terms and Conditions, paragraph 9.6.1 of Verizon Wireless Petition Exhibit 1?
- Issue No. 21: Whether the agreement should identify all the parties to the agreement?
- Issue No. 22: Whether with respect to the section of the agreement referred to as, "Type 1 Interconnection Facilities to be grandfathered," Attachment 2, paragraph 1.1.1, there should be included the following language: "CMRS Provider shall not request new Type 1 facilities. Existing Type 1 facilities as of the effective date of this interconnection agreement may be retained until the parties migrate the Type 1 facilities to Type 2B facilities."
- Issue No. 23: Whether Verizon Wireless can require SS7 signaling from ALLTEL at all locations, even if SS7 is not available from ALLTEL at a location and only multi-frequency signaling is available?

Issue No. 26: Whether it is appropriate to insert language with respect to indirect connection to tandems into a section that addresses direct connection, specifically, the section entitled "Direct Routed Traffic Land to Mobile Traffic," Attachment 2, paragraph 2.1.2.2 of Verizon's Exhibit 1?

Issue No. 29: Whether, ALLTEL should be required to bill by factor rather than actual minutes, even though ALLTEL can record the actual terminating traffic minutes originating from Verizon Wireless that is routed through a direct interconnection and terminated to ALLTEL?

UNRESOLVED ISSUES

Issue No. 1: Whether rural local exchange carriers are subject to the negotiation and arbitration process set forth in Section 252 (b) for disputes under Section 251 (b)(5) for traffic indirectly exchanged with CMRS?

Issue No. 2: *Do the FCC's rules interpreting the scope of an ILEC's reciprocal compensation obligations under 251 (b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LEC's Tandem facilities?*

Issue No. 3(a): Does Section 251 (b)(5) impose an obligation on the originating LEC to pay a CMRS provider for its traffic when it transits the network of a third party LEC and terminates on the network of a CMRS provider?

Issue No. 3(a)(1): Can CMRS traffic be combined with other traffic types over the same trunk group? Refers to Verizon Wireless' Issue 6 in its Petition for Arbitration. This issue can actually be deleted.

Issue No. 3(b): Whether pursuant to Section 251 (b)(5), a local exchange carrier is required to pay any transit charges on traffic it originates indirectly to a CMRS provider?

Issue No. 4: Does a third party transit provider "terminate" traffic within the meaning of Section 251 (b)(5)?

Issue No. 5: Where a third party provider provides indirect interconnection facilities, should the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers include the terms and conditions on which the originating carrier will pay the third party transiting provider for transiting service?

- Issue No. 8: Whether a LEC is required to share in cost of dedicated two-way interconnection facilities between its switch and the CMRS carrier's switch to extend traffic beyond the LEC's local exchange area and network?
- Issue No. 9: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of direct and indirect traffic?
- Issue No. 10: Can the Parties implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic? VZW believes this is related to issue 30, except issue 10 relates to indirect and direct traffic.
- Issue No. 11: Where a CMRS provider's switch serves the geographically comparable area of LEC tandem, can it charge a termination rate equivalent to a tandem rate for traffic terminated in the Land to Mobile direction?
- Issue No. 13: After a requesting carrier sends a formal request for interconnection under Section 252 (b) of the Act, what interim reciprocal compensation terms apply to the parties until an agreement has been negotiated and arbitrated by the Commission? Refers to Verizon's Issue 13 in its Petition for Arbitration.
- Issue No. 15: Whether the payment due date for invoices rendered under the agreement should be determined from the date of the invoice or the date of receipt of the invoice and whether the allotted time should 30 or 45 days thereafter?
- Issues No. 16 & 17: Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: "A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind should not be considered a Bona Fide dispute." And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have the right to pursue normal treatment procedures. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

- Issue No. 20: Whether, as Verizon Wireless proposes in Petition Exhibit 1 section entitled, "Most Favored Nation, General Terms and Conditions," paragraph 31.1, Verizon Wireless should have the right to opt out of this agreement during its terms and into any other agreement that ALLTEL may execute with another carrier.
- Issue No. 24: Whether agreement section referred to as "Incumbent Local Exchange Carrier Requirement," Attachment 2, paragraph 1.4.2 of Verizon's Exhibit 1, should specify that ALLTEL's obligations to provide service under the agreement is with respect to that service are where ALLTEL is authorized to provide service?
- Issue No. 25: Whether the phrase "within ALLTEL's interconnected network" should be inserted in the agreement section entitled "Direct Routed Traffic Mobile to Land Traffic," Attachment 2, paragraph 2.1.1.1, paragraph 2.1.1.2, paragraph 2.1.2.1, and paragraph 2.1.2.2 of Verizon's Exhibit 1, to clearly indicate that when Verizon Wireless connects to one of ALLTEL's separate segregated networks, it is able to exchange traffic and is achieving interconnection, only with that individual segregated ALLTEL network.
- Issue No. 27: Whether the agreement section entitled "Indirect Network Interconnection," Attachment 2, paragraph 2.1.5 of Verizon Wireless' Exhibit 1, should require the establishment of a direct interconnection facility when the capacity of the indirect traffic reaches a DS1 level?
- Issue No. 28: Whether Verizon Wireless may establish NPA-NXXs in ALLTEL rate centers, regardless of actual delivery point of the associated calls, and require ALLTEL to bear all transport costs to the point of delivery?
- Issue No. 30: Whether a 60/40 land to mobile traffic factor must be used by both Parties when either Party cannot record the terminating minutes originating from the other Party routed over a direct interconnection facility, even though ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and even though Verizon's proposed factor of 60/40 land to mobile is inconsistent with the shared facilities factor of 70/30 land to mobile proposed by Verizon Wireless?
- Issue No. 31: Whether the agreements definition of "Interconnection Point," Attachment 8 of Verizon Wireless Exhibit 1 should be clear in appropriately defining the parties' responsibilities of network between the parties, which in ALLTEL's case will be on its network.

Issue No. 32: Whether the agreement should include a definition of Interexchange Carrier, a term not used in the agreement.

With respect to these unresolved issues, please note that ALLTEL on February 24, 2004, is filing its Main Brief and each of these issues is addressed therein, and the arguments with respect to the individual issues is incorporated herein by reference.

ALLTEL'S BEST FINAL OFFER ON UNRESOLVED ISSUES

Issue 1: Applicability of Arbitration to this Petition

A. Description of Issue

Whether rural local exchange carriers are subject to the negotiation and arbitration process set forth in Section 252 (b) for disputes under Section 251 (b)(5) for traffic indirectly exchanged with CMRS?

B. ALLTEL's Final Best Offer

This issue is moot and need not be addressed.

C. Rationale

ALLTEL remains of the position that since it has agreed to and participated in the arbitration process under Section 252(b) of the Act, this issue is moot and need not be addressed.

Issue 2: Applicability of the FCC's Reciprocal Compensation Rules

A. Description of Issue:

Do the FCC's rules interpreting the scope of an ILEC's reciprocal compensation obligations under 251 (b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LEC's Tandem facilities?

B. ALLTEL's Final Best Offer

This issue is moot and need not be addressed.

C. Rationale

ALLTEL remains of the position that since it has agreed to the application of Section 251(b)(5) reciprocal compensation at cost-based rates for both direct and indirect traffic, this issue is moot and need not be addressed.

Issue 3 (a): Applicability of Section 251(b)(5) Reciprocal Compensation

A. Description of Issue

Does Section 251 (b)(5) impose an obligation on the originating LEC to pay a CMRS provider for its traffic when it transits the network of a third party LEC and terminates on the network of a CMRS provider?

B. ALLTEL's Final Best Offer

This issue is moot and need not be addressed.

C. Rationale

ALLTEL remains of the position that since it has agreed to the application of Section 251(b)(5) reciprocal compensation at cost-based rates for both direct and indirect traffic, this issue is moot and need not be addressed.

Issue 3 (b): An ILEC Has No Responsibility for Costs of a Third-Party Tandem Provider for Services Outside the ALLTEL Network

A. Description of Issue

Whether pursuant to Section 251 (b)(5), a local exchange carrier is required to pay any transit charges on traffic it originates indirectly to a CMRS provider?

B. ALLTEL's Final Best Offer

Pursuant to established regulatory principles, Section 251(b)(5), or the FCC's implementation rules, ALLTEL respectfully submits that it is not required to pay transit charges to a third-party tandem provider on ALLTEL originated traffic to a tandem location selected by Verizon Wireless outside the ALLTEL network and service territory.

C. Rationale

ALLTEL has no responsibility for transit charges of a third-party tandem provider on ALLTEL originated traffic transported to a tandem location selected by Verizon Wireless anywhere within an MTA outside the ALLTEL service territory.

Issue 4: Does a Third-Party Transit Provider Terminate Traffic

A. Description of Issue

Does a third party transit provider "terminate" traffic within the meaning of Section 251 (b)(5)?

B. ALLTEL's Final Best Offer

ALLTEL submits that it is immaterial whether the indirect traffic that the third-party tandem provider hands to or terminates on to ALLTEL's network is referred to as "terminated," "handed to," or "transferred to," etc. The parties have agreed to the application of Section 251(b)(5) reciprocal compensation on indirect traffic which should eliminate consideration of this issue.

C. Rationale

This issue is not in dispute in this proceeding since ALLTEL is in agreement with respect to the application of Section 251(b)(5) reciprocal compensation to the indirect exchange of traffic with Verizon Wireless.

Issue 5: Terms and Conditions of Third-Party Provider

A. Description of Issue

Where a third party provider provides indirect interconnection facilities, should the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers include the terms and conditions on which the originating carrier will pay the third party transiting provider for transiting service?

B. ALLTEL's Final Best Offer

There must be an effective "agreement" in place setting forth the terms and conditions regarding the responsibilities and obligations of the third-party transit provider. It is not ALLTEL's position that the transit provider be a party to this agreement, but rather that the agreement identify the responsible party for compensating the transit provider.

C. Rationale

Because Verizon PA, as the third-party transit provider, may attempt to impose charges, terms and conditions in connection with the indirect traffic exchanged between Verizon Wireless and ALLTEL and because Verizon PA will have in its exclusive possession information necessary for ALLTEL and Verizon Wireless to bill each other, it is necessary for the terms of the interconnection agreement between ALLTEL and Verizon Wireless to address which party is responsible for payment of those transit charges and it is necessary for ALLTEL to have in place an agreement with Verizon PA addressing the terms and conditions for their exchange of this indirect traffic including the exchange of information necessary to fully implement that indirect interconnection.

Issue 8: Sharing of Verizon Wireless' Capital Costs Between Its Switch and the ALLTEL Network

A. Description of Issue

Whether a LEC is required to share in cost of dedicated two-way interconnection facilities between its switch and the CMRS carrier's switch to extend traffic beyond the LEC's local exchange area and network?

B. ALLTEL's Final Best Offer

ALLTEL is not required to share in the cost of a two-way facility beyond its network to the CMRS carrier's switch at a location anywhere within the MTA. Sections 2.1.2.2 and 2.1.5 should read as follows:

2.1.2.2 Unless ALLTEL elects to have a third party provisioning facilities under subsection 1.6 of this Attachment, ALLTEL shall provide the physical plant facilities that interconnect ALLTEL's Interconnection Point with CMRS Provider's Interconnection Point, within ALLTEL's interconnected network. ALLTEL shall be responsible for the physical plant facility from its network to the appropriate Interconnection Point within ALLTEL's interconnected network.

2.1.5 Indirect Network Interconnection

When the Parties interconnect their networks indirectly via a third LEC's tandem, compensation shall be in accordance with the terms of this Agreement as specified in Attachment 3. Neither Party shall deliver: (i) traffic destined to terminate at the other Party's end office via another LEC's end office, or (ii) traffic destined to terminate at an end office subtending the other Party's access tandem via another LEC's access tandem. ALLTEL will only be responsible for the interconnection facilities located within the ALLTEL exchange boundary utilized in the routing of the indirect traffic. When traffic to a specific ALLTEL end office exceeds 257,000 MOU, then CMRS Provider will establish a direct connection to the ALLTEL end office. If the ALLTEL end office is a remote switch, the CMRS provider will establish a direct connection to the ALLTEL host switch serving the ALLTEL remote switch. (emphasis added)

C. Rationale

ALLTEL has no responsibility to share Verizon Wireless' capital costs in constructing facilities from a Verizon Wireless switch anywhere within an MTA to establish a direct interconnection with the ALLTEL network.

Issue 9: Establishment of Reciprocal Compensation Rates

A. Description of Issue

What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of direct and indirect traffic?

B. ALLTEL's Final Best Offer

As set forth in the ALLTEL Main Brief under Issue 9, ALLTEL firmly believes that its TELRIC-based rates in Exhibit CC-2 are supported by the evidence and should be adopted by the ALJ in this arbitration proceeding. These rates are as follows:

Type 2A	(Direct)	\$.01891
Type 2B	(Direct)	\$.00942
Type 1	(Direct)	\$.00942
Indirect		\$.01642

These rates would result in a blended rate of \$.0165. ALLTEL, however, submits that since cost-based rates are available by interconnection type, such rates should be employed in lieu of a blended rate. ALLTEL further notes that the above rates do not reflect third-party transit costs or costs associated with Verizon Wireless' building of direct interconnection facilities outside of ALLTEL's network and territory. Should ALLTEL be assigned any responsibility for these costs, its TELRIC-based rates in CC-2 would have to be revised upward.

Throughout this Section 252 process, ALLTEL has been negotiating in good faith to amicably settle this controversy. ALLTEL firmly believes that a negotiated resolution of the unresolved issues would be in the best interest of both parties and the public.

Consistent therewith and as further evidence of ALLTEL's good faith, ALLTEL submits a "final and best offer" to resolve all remaining issues. Since ALLTEL believes the resolution of the reciprocal compensation rate issue has an impact on resolution of all other issues, ALLTEL submits this final and best package offer as part of its response to Issue 9. The offer is summarized below:

Issue 9 - \$.014 blended reciprocal compensation rate

The adoption of this rate is specifically contingent on resolution of the other unresolved issues on the following packaged basis (unmodified):

- Issue 1 - Moot
- Issue 2 - Moot
- Issue 3(a) - Moot
- Issue 3(b) - Third-party transit cost not assigned to ALLTEL
- Issue 4 - Moot
- Issue 5 - The effectiveness of the new interconnection agreement be contingent upon Verizon PA acknowledging it will continue to meet its responsibilities under the ITORP Exhibit G Agreement (excluding Verizon Wireless billing) and ALLTEL given the right to pursue a new agreement with Verizon PA applicable to the indirect traffic.
- Issue 8 - The capital costs incurred by Verizon Wireless for facilities between its switch and the ALLTEL network in establishing direct interconnection not assigned to ALLTEL.
- Issue 10 - ALLTEL be permitted to bill for Verizon Wireless originated traffic using actual traffic data.
- Issue 11 - The application of a blended rate would make this issue moot.

- Issue 13 - The question of the indirect interim rate on indirect traffic being resolved at Docket No. C-200395. The existing \$.012 rate for direct interconnection remaining in effect pending resolution of a new agreement subject to true-up.
- Issue 15 - Payment due date established at 30 days from the date of the invoice.
- Issue 16 and Issue 17 - Bona Fide Dispute Language as set forth herein
- Issue 20 - A MFN provision not included in the agreement.
- Issue 24 - The direct interconnection provision in Attachment 2 applicable only where ALLTEL provides services or facilities as an ILEC.
- Issue 27 - Verizon Wireless required to establish interconnection when the level of traffic reaches 500,000 MOU at the Verizon PA tandem.
- Issue 28 - ALLTEL not required to bear any third-party costs arising from Verizon Wireless' employment of virtual NXXs.
- Issue 30 - A land to mobile factor established at 70/30.
- Issue 31 - The "Interconnection Point" defined as the demarcation point of the transmission facility.
- Issue 32 - The definition of an "interexchange carrier" included in the agreement.

ALLTEL's desire for this arbitration to be amicably resolved gives rise to this final offer. ALLTEL, however, submits this offer with great hesitancy, that being its fear that should the offer not be adopted, its compromise on some of these unresolved issues will be viewed as a weakness in its final positions on each issue. ALLTEL urges the Administrative Law Judge not to permit this result. If this one last good faith offer is not

adopted as a whole package, ALLTEL stands firm on the positions advocated in its Main Brief on each of the unresolved issues. These positions are supported in both law and fact.

C. Rationale

The rates contained in Exhibit CC-2 are TELRIC based rates which are supported by the record in this proceeding and are extremely conservative when compared to comparable rates contained in Verizon Wireless agreements with other comparable rural ILECs.

Issue 10: Propriety of Using a Traffic Factor When Actual Traffic Can Be Measured

A. Description of Issue

Can the Parties implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic? VZW believes this is related to issue 30, except issue 10 relates to indirect and direct traffic.

B. ALLTEL's Final Best Offer

ALLTEL has no objection to the use of a reasonable traffic factor by Verizon Wireless if and only if actual data is not available. ALLTEL will use call recordings provided from an ALLTEL switch or call records provided by Verizon ILEC.

C. Rationale

A traffic factor should be used for billing only when a party does not have actual traffic data. When actual traffic data does exist, such data should be used for billing purposes.

Issue 11: Applicability of Charging a Tandem Rate

A. Description of Issue

Where a CMRS provider's switch serves the geographically comparable area of LEC tandem, can it charge a termination rate equivalent to a tandem rate for traffic terminated in the Land to Mobile direction?

B. ALLTEL's Final Best Offer

Section 251(b)(5) rates must be reciprocal and symmetrical. In those areas where an ALLTEL tandem is not used, ALLTEL will not bill Verizon Wireless a tandem rate. Since ALLTEL will not bill a tandem rate to Verizon Wireless in those areas, Verizon Wireless should not be permitted to bill ALLTEL a tandem rate at those locations. Therefore, the language in paragraph 2.1.1, Rates, of Attachment 3 to ALLTEL Exhibit 4 should be adopted.

C. Rationale

Verizon Wireless' proposal to assess ALLTEL the higher tandem rate for all land to mobile traffic when ALLTEL will only assess a tandem rate to Verizon Wireless when traffic is terminated through an ALLTEL tandem must be rejected as it will result in ALLTEL paying rates to Verizon Wireless that are asymmetrical and not reciprocal.

Issue 13: Interim Terms Pending Final Agreement

A. Description of Issue

After a requesting carrier sends a formal request for interconnection under Section 252 (b) of the Act, what interim reciprocal compensation terms apply to the parties until an agreement has been negotiated and arbitrated by the Commission? Refers to Verizon's Issue 13 in its Petition for Arbitration.

B. ALLTEL's Final Best Offer

With respect to the appropriate interim rate for indirect traffic since April 2002, such rate shall be determined by the Commission in the complaint proceeding at C-20039211. ALLTEL submits that the applicable rate since April 2002 is governed by the ITORP billing process. With respect to direct traffic, ALLTEL believes that the \$.012 rate presently being charged should continue subject to true-up until such time as permanent reciprocal compensation rates are established.

C. Rationale

Due to the pending complaint proceeding at Docket No. C-20039321, it is not possible to establish an interim rate for indirect traffic at this time. ALLTEL firmly believes that the ITORP compensation is applicable to the indirect traffic until an agreement is established in this proceeding establishing reciprocal compensation and a new agreement addressing the ITORP traffic is executed by ALLTEL and Verizon PA. As to the direct traffic, ALLTEL believes that the existing \$.012 rate should be continued subject to true-up until new reciprocal compensation rates are established.

Issue 15: Payment Due Date

A. Description of Issue

Whether the payment due date for invoices rendered under the agreement should be determined from the date of the invoice or the date of receipt of the invoice and whether the allotted time should 30 or 45 days thereafter?

B. ALLTEL's Final Best Offer

Consistent with all of ALLTEL's interconnection agreements in Pennsylvania and the majority of Verizon Wireless's interconnection agreements in Pennsylvania, including those with its affiliates, the payment due date should be 30 days from the date

of the invoice. Attachment 3, Section 1.1 should read in pertinent part subject to Section 8.0, Payment of Rates and Late Payment Charges and Section 9.0, Dispute Resolutions of This Agreement, bills rendered by either party shall be paid within thirty (30) calendar days of the invoice date. Similarly, Section 8.2 of the Agreement should provide for payment thirty (30) days from the invoice date.

C. Rationale

A payment due date 30 days after the date on the bill is reasonable, practicable, consistent with industry standards, and in accord with all ALLTEL interconnection agreements as well as numerous Verizon Wireless interconnection agreements with its affiliates.

Issues 16 and 17: Bona Fide Dispute

A. Description of Issue

Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: "A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind should not be considered a Bona Fide dispute." And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have the right to pursue normal treatment procedures. Any credits due to the disputing party resulting from the Bona Fide dispute

process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

B. ALLTEL's Final Best Offer

ALLTEL proposed the following language in Sections 9.1.1.3 and 9.1.1.4 of its draft agreement:

9.1.1.3 For purposes of this subsection 9.1.1. "Bona Fide Dispute" means a dispute of a specific amount of money actually billed by a Party. A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind will not be considered a Bona Fide Dispute for purposes of this subsection 9.1.1.

9.1.1.4 Once the Bona Fide Dispute has been processed in accordance with this subsection 9.1.1, the disputing Party will make payment on any of the disputed amount owed to the billing Party by the next billing due date, or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party resulting from the Bona Fide Dispute process will be applied to the Disputing Party's account by the billing Party by the next billing cycle upon resolution of the dispute.

In its Initial Offer dated February 6, 2004, Verizon Wireless offered the following language (with the boldface being Verizon Wireless' edit mark):

Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: "A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other **undisputed** amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for special damages of any kind will not be considered a Bona Fide Dispute." And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1., the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have **the right to pursue any**

remedy applicable at law or equity. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

Verizon Wireless Initial Offer at 7-8.

ALLTEL can accept the bolded language shown above as proposed by Verizon Wireless. However, a few minor points must be clarified, as Verizon Wireless made other changes in the language shown above that were not specifically identified (bolded) by Verizon Wireless. First, Verizon Wireless changed the "will" to "should" in the last quoted sentence of paragraph 9.1.1.3. (changed but not shown as changed in boldface in Verizon Wireless' proposal above). ALLTEL believes retention of the word "will" keeps the proposal mandatory, whereas inclusion of the word "should" unintentionally renders it discretionary. Second, Verizon Wireless inserted the word "special" in front of "damages" in that same sentence (again, changed but not shown as changed in bold face in Verizon Wireless' proposal above). ALLTEL does not believe that that term "special" should be included, since the intent of the language was that no damages of any kind would be considered for purposes of this section concerning a Bona Fide Dispute overpayment and there is no understanding what "special" damages would be. Finally, it is unclear whether Verizon Wireless proposed to strike the first sentence in ALLTEL's paragraph 9.1.1.3, which defines a Bona Fide Dispute as "a dispute of a specific amount of money actually billed by a Party." While not shown as stricken, Verizon Wireless did not include that introductory definition in its proposed language. ALLTEL would propose to maintain that language. Accordingly, as its final and best offer, ALLTEL offers the following revised paragraphs 9.1.1.3 and 9.1.1.4 from its ALLTEL Exhibit 4, with changes (being those offered by Verizon Wireless) shown in **boldface** and ALLTEL's proposed deletion appearing as ~~strikeout~~:

9.1.1.3 For purposes of this subsection 9.1.1. "Bona Fide Dispute" means a dispute of a specific amount of money actually billed by a Party. A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other **undisputed** amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind will not be considered a Bona Fide Dispute for purposes of this subsection 9.1.1.

9.1.1.4 Once the Bona Fide Dispute has been processed in accordance with this subsection 9.1.1, the disputing Party will make payment on any of the disputed amount owed to the billing Party by the next billing due date, or the billing Party shall have the right to pursue **any remedy applicable at law or equity**, ~~normal treatment procedures~~. Any credits due to the disputing Party resulting from the Bona Fide Dispute process will be applied to the Disputing Party's account by the billing Party by the next billing cycle upon resolution of the dispute.

C. Rationale

ALLTEL believes that with the changes shown above, ALLTEL has accepted all those changes offered and specifically noted by Verizon Wireless in its initial offer. Those changes made but not specifically noted by Verizon Wireless have not been accepted for the reasons stated above, primarily that they add ambiguity to the language. ALLTEL submits that the language shown above for paragraphs 9.1.1.3 and 9.1.1.4 should be adopted.

Issue 20: Most Favored Nation ("MFN").

A. Description of Issue

Whether, as Verizon Wireless proposes in Petition Exhibit 1 section entitled, "Most Favored Nation, General Terms and Conditions," paragraph 31.1, Verizon Wireless should have the right to opt out of this agreement during its terms and into any other agreement that ALLTEL may execute with another carrier.

B. ALLTEL's Final Best Offer

Paragraph 31.1 should be deleted. Verizon Wireless should not be permitted to employ Section 252(i) to give it the right to opt into another agreement during the term of the agreement to be established in this arbitration. Further, in its Initial Offer, Verizon Wireless appears to have agreed that since this paragraph could not be agreed upon, the paragraph should be removed from the agreement.

C. Rationale

Verizon Wireless, under Section 252(i), may not opt into another agreement during the term of the agreement to be established through this arbitration and section 31.0 of the draft agreement should be omitted.

Issue 24: ALLTEL's Obligations as an ILEC for Direct Routed Mobile to Land Traffic

A. Description of Issue

Whether agreement section referred to as "Incumbent Local Exchange Carrier Requirement," Attachment 2, paragraph 1.4.2 of Verizon's Exhibit 1, should specify that ALLTEL's obligations to provide service under the agreement is with respect to that service are where ALLTEL is authorized to provide service?

B. ALLTEL's Final Best Offer

Section 1.4.2 should read as follows:

The Parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of service or facilities by ALLTEL in those areas where ALLTEL is not the Incumbent Local Exchange Carrier, as defined by the Act.

C. Rationale

The interconnection agreement's provisions addressing the direct interconnection of the Verizon Wireless and ALLTEL networks must clearly be defined as being applicable only where ALLTEL provides services or facilities as an ILEC.

Issue 25: Direct Routed Mobile to Land Traffic Within ALLTEL's Interconnected Network

A. Description of Issue

Whether the phrase "within ALLTEL's interconnected network" should be inserted in the agreement section entitled "Direct Routed Traffic Mobile to Land Traffic," Attachment 2, paragraph 2.1.1.1, paragraph 2.1.1.2, paragraph 2.1.2.1, and paragraph 2.1.2.2 of Verizon's Exhibit 1, to clearly indicate that when Verizon Wireless connects to one of ALLTEL's separate segregated networks, it is able to exchange traffic and is achieving interconnection, only with that individual segregated ALLTEL network.

B. ALLTEL's Final Best Offer

The language "within ALLTEL's interconnected network" must be retained in paragraphs 2.1.1.1, 2.1.1.2, 2.1.2.1 and 2.1.2.2.

C. Rationale

The interconnection agreement must clearly define ALLTEL's obligations for direct routed traffic as extending only to ALLTEL's interconnected network.

Issue 27: Traffic Level to Establish Direct Interconnection Facility

A. Description of Issue

Whether the agreement section entitled "Indirect Network Interconnection," Attachment 2, paragraph 2.1.5 of Verizon Wireless' Exhibit 1, should require the

establishment of a direct interconnection facility when the capacity of the indirect traffic reaches a DS1 level?

B. ALLTEL's Final Best Offer

A DS 1 level or 257,000 MOU should be used to establish when the capacity requires the establishment of a direct interconnection facility. Accordingly, 2.1.5 should read:

When the Parties interconnect their networks indirectly via a third LEC's tandem, compensation shall be in accordance with the terms of this Agreement as specified in attachment 3. Neither Party shall deliver: (i) traffic destined to terminate at the other Party's end office via another LEC's end office, or (ii) traffic destined to terminate at an end office subtending the other Party's access tandem via another LEC's access tandem. ALLTEL will only be responsible for the interconnection facilities located within the ALLTEL exchange boundary utilized in the routing of the indirect traffic. -When traffic to a specific ALLTEL end office exceeds 257,000 MOU, then CMRS Provider will establish a direct connection to the ALLTEL end office. If the ALLTEL end office is a remote switch, the CMRS provider will establish a direct connection to the ALLTEL host switch serving the ALLTEL remote switch.

C. Rationale

Direct interconnection should be required when the level of traffic reaches 257,000 MOU to any end office as measured either at a Verizon PA tandem or an ALLTEL tandem where applicable.

Issue 28: NPA-NXXs with Different Rating and Routing Points

A. Description of Issue

Whether Verizon Wireless may establish NPA-NXXs in ALLTEL rate centers, regardless of actual delivery point of the associated calls, and require ALLTEL to bear all transport costs to the point of delivery?

B. ALLTEL's Final Best Offer

ALLTEL should not be required to bear costs, including charges from a third-party tandem provider, in transporting and transiting traffic to Verizon Wireless' switches at a location outside of the ALLTEL service territory arising from Verizon Wireless' employment of virtual NXXs.

C. Rationale

ALLTEL is not responsible for third-party charges when Verizon Wireless' rating points for an NPA-NXX are different than the call's actual routing points and the call is routed indirectly over a third party's facilities to a distant switch located off of ALLTEL's network and outside its service territory.

Issue 30: Land to Mobile Traffic Factor

A. Description of Issue

Whether a 60/40 land to mobile traffic factor must be used by both Parties when either Party cannot record the terminating minutes originating from the other Party routed over a direct interconnection facility, even though ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and even though Verizon's proposed factor of 60/40 land to mobile is inconsistent with the shared facilities factor of 70/30 land to mobile proposed by Verizon Wireless?

B. ALLTEL's Final Best Offer

A 70/30 factor which was offered by Verizon Wireless in response to ALLTEL's Initial Offer, which was accepted by ALLTEL, and which is consistent with the industry standard, should be the traffic factor for inclusion in the agreement.

C. Rationale

The appropriate land to mobile traffic factor for the agreement should be 70/30 as the parties originally agreed and which is in accord with industry standards.

Issue 31: Definition of Interconnection Point

A. Definition of Issue

Whether the agreements definition of "Interconnection Point," Attachment 8 of Verizon Wireless Exhibit 1 should be clear in appropriately defining the parties' responsibilities of network between the parties, which in ALLTEL's case will be on its network.

B. ALLTEL's Final Best Offer

Attachment 8 should contain the following definition "Interconnection Point" or "IP". The IP is the demarcation point of the transmission facility for purposes of determining the Parties' transport costs for traffic exchanged between the Parties.

C. Rationale

ALLTEL believes that it is essential for the interconnection agreement to define the interconnection point.

Issue 32: Definition of Interexchange Carrier

A. Description of Issue

Whether the agreement should include a definition of Interexchange Carrier, a term not used in the agreement.

B. ALLTEL's Final Best Offer

This definition should be excluded from the interconnection agreement.

C. Rationale

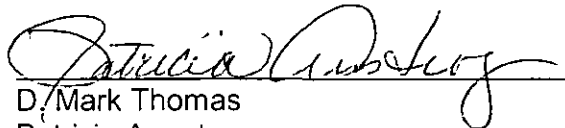
There is no necessity to define "interexchange carrier" since the term is not employed in the agreement.

CONCLUSION

For the foregoing reasons, and as more fully set forth in ALLTEL's Main Brief, ALLTEL respectfully submits that its positions on the unresolved issues are supported both in law and fact and urges the Commission to approve an interconnection agreement with Verizon Wireless consistent with ALLTEL's Best and Final Offer.

Respectfully submitted,

ALLTEL PENNSYLVANIA, INC.



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Dated: February 24, 2004

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February 24, 2004

Via Federal Express

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996, Docket No. A-310489F7004

Dear Secretary McNulty:

I enclose for filing in the referenced matter the original and nine copies of the following documents:

- Main Brief of Cellco Partnership d/b/a Verizon Wireless, and
- Statement of Final Best Offers of Cellco Partnership d/b/a Verizon Wireless

Thank you for your assistance. Please do not hesitate to contact me if you have any questions regarding this matter.

Very truly yours,


Christopher M. Arfaa

CMA/cms
Enclosures

cc: ALJ Wayne L. Weismandel (w/encls. and diskette via federal express and email)
Attached Certificate of Service (w/encls.)

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PA PUBLIC UTILITY COMMISSION
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Cellco Partnership d/b/a Verizon
Wireless For Arbitration Pursuant to
Section 252 of the Telecommunications
Act of 1996 to Establish an Interconnection
Agreement with ALLTEL Pennsylvania, Inc.

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A-310489F7004

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STATEMENT OF FINAL BEST OFFERS OF
CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS

Pursuant to the Arbitration Proceeding Order issued January 8, 2004, by Administrative Law Judge Wayne L. Weismandel, Petitioner, Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") submits this Statement of Final Best Offers with respect to the open issues in the above-captioned arbitration.

Issue 1: Whether rural local exchange carriers are subject to the negotiation and arbitration process set forth in Section 252(b) for disputes under Section 251(b)(5) for traffic indirectly exchanged with CMRS?

Final Best Offer of Verizon Wireless: The arbitration process and requirements of Section 252(b) apply to any interconnection disputes between ALLTEL and Verizon Wireless arising under Section 251(a)-(c).

Issue 2: Do the FCC's rules interpreting the scope of an ILEC's reciprocal compensation obligations under 251(b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LEC's Tandem facilities?

Final Best Offer of Verizon Wireless: The FCC's reciprocal compensation rules apply to the transport and termination of "telecommunications traffic" between Local Exchange Carriers ("LECs") and other telecommunications carriers, regardless of whether such traffic is exchanged directly or indirectly. See 47 C.F.R. §§ 51.100(a)(1), 51.701(a), 51.701(b)(2).

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Issue 3(a): Does Section 251(b)(5) impose an obligation on the originating LEC to pay a CMRS provider for its traffic when it transits the network of a third party LEC and terminates on the network of a CMRS provider?

Final Best Offer of Verizon Wireless: The obligation of a LEC to pay a CMRS provider reciprocal compensation for the transport and termination of traffic originated on the LEC's network and terminated on the CMRS provider's network is not altered where the traffic transits the network of a third-party LEC.

Issue 3(b): Whether pursuant to Section 251(b)(5), a local exchange carrier is required to pay any transit charges on traffic it originates indirectly to a CMRS provider?

Final Best Offer of Verizon Wireless: The originating LEC is responsible for all costs of delivering traffic to the point of interconnection, including transit charges due third-party carriers for telecommunications traffic where the LEC chooses to deliver the traffic indirectly.

Issue 4: Does a third party transit provider "terminate" traffic within the meaning of Section 251(b)(5)?

Final Best Offer of Verizon Wireless: A third party transit provider does not "terminate" traffic within the meaning of 47 U.S.C. § 251(b)(5).

Issue 5: Where a third party provider provides indirect interconnection facilities, should the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers include the terms and conditions on which the originating carrier will pay the third party transiting provider for transiting service?

Final Best Offer of Verizon Wireless: Where a third party transiting provider provides indirect interconnection facilities, the terms and conditions on which the originating carrier will

pay the third party provider for transiting service are irrelevant to, and have no place in, the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers.

Issue 8: Whether a LEC is required to share in cost of dedicated two-way interconnection facilities between its switch and the CMRS carrier's switch to extend traffic beyond the LEC's local exchange area and network?

Final Best Offer of Verizon Wireless: An incumbent LEC's obligation to share the cost of two-way direct facilities does not end at its local exchange area or network boundaries; it ends at the point of interconnection, which can be located anywhere in the MTA.

Issue No. 9 What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of direct and indirect traffic?

Final Best Offer of Verizon Wireless: Verizon Wireless proposes that the rates recalculated by Mr. Wood based on his correction of the results of ALLTEL CC-2 be adopted as reasonable default proxy rates pending a complete investigation of ALLTEL's cost study:

Type 2A (tandem)	\$0.00896
Type 2B and Type 1 (end office)	\$0.00446
Indirect	\$0.00792

Issue 10: Can the Parties implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic?

Final Best Offer of Verizon Wireless: The parties can and should implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic for purposes of reciprocal compensation to the extent that a party cannot measure actual terminating minutes.

Issue 11: Where a CMRS provider's switch serves the geographically comparable area of LEC tandem, can it charge a termination rate equivalent to a tandem rate for traffic terminated in the Land to Mobile direction?

Final Best Offer of Verizon Wireless: Because Verizon Wireless is not an incumbent LEC and because its switches that terminate ALLTEL-originated traffic serve geographical areas comparable to the areas served by ALLTEL's tandem switches, Verizon Wireless is entitled under the FCC's rules to charge ALLTEL's tandem interconnection rate for all traffic originated by ALLTEL. *See* 47 C.F.R. § 51.711(a)(3).

Issue 13: After a requesting carrier sends a formal request for interconnection under Section 252 (b) of the Act, what interim reciprocal compensation terms apply to the parties until an agreement has been negotiated and arbitrated by the Commission?

Final Best Offer of Verizon Wireless: Pursuant to 47 C.F.R. § 51.715, the Commission should require the parties to use the approved rates for Verizon Pennsylvania as the interim reciprocal compensation rates from the effective termination date of the prior interconnection agreement between the parties until the agreement reached as a result of this arbitration is approved by the Commission.

Issue 15: Whether the payment due date for invoices rendered under the agreement should be determined from the date of the invoice or the date of receipt of the invoice and whether the allotted time should be 30 or 45 days thereafter?

Final Best Offer of Verizon Wireless: Unless ALLTEL commits to placing invoices in the mail on the date of invoice, the contract should provide "Payment for all undisputed charges is due within thirty (30) days of receipt of the invoice" as opposed to thirty days from "invoice date."

Issues No. 16 & 17: Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3 and 9.1.1.4. Whether the agreement should include the following: "A

Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind should not be considered a Bona Fide dispute.” And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have the right to pursue normal treatment procedures. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party’s account by the billing party by the next billing cycle upon resolution of the dispute.

Final Best Offer of Verizon Wireless: Verizon Wireless proposes the following revisions to ALLTEL’s proposed language (proposed additions are underscored and in bold; proposed deletions are stricken out):

Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: “A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other undisputed amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for special damages of any kind should not be considered a Bona Fide dispute.” And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party shall ~~must~~ have the right to pursue any remedy applicable at law or equity ~~normal treatment procedures~~. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party’s account by the billing party by the next billing cycle upon resolution of the dispute.

Issue 20: **Whether, as Verizon Wireless proposes in Petition Exhibit 1 section entitled “Most Favored Nation, General Terms and Conditions,” paragraph 31.1, Verizon Wireless should have the right to opt out of this agreement during its terms and into any other agreement that ALLTEL may execute with another carrier.**

Final Best Offer of Verizon Wireless: Verizon Wireless proposes that the “Most Favored Nation” (“MFN”) provision be eliminated from the agreement, since the parties have not agreed on language and the MFN provision of the 1996 Act, 47 U.S.C. § 252(i), speaks for itself.

Issue 24: Whether agreement section referred to as “Incumbent Local Exchange Carrier Requirement,” Attachment 2, paragraph 1.4.2 of Verizon’s Exhibit 1, should specify that ALLTEL’s obligations to provide service under the agreement is with respect to that service are where [sic] ALLTEL is authorized to provide service?

Final Best Offer of Verizon Wireless: Since ALLTEL is obligated to deliver traffic originated on its network to any point with the MTA, the agreement section referred to as “Incumbent Local Exchange Carrier Requirement,” Attachment 2, paragraph 1.4.2 of Verizon’s Exhibit 1, should *not* specify that “ALLTEL’s obligations to provide service under the agreement is with respect to that service are where [sic] ALLTEL is authorized to provide service.”

Issue 25: Whether the phrase “within ALLTEL’s interconnected network” should be inserted in the agreement section entitled “Direct Routed Traffic Mobile to Land Traffic,” Attachment 2, paragraph 2.1.1.1, paragraph 2.1.1.2, paragraph 2.1.2.1, and paragraph 2.1.2.2 of Verizon’s Exhibit 1, to clearly indicate that when Verizon Wireless connects to one of ALLTEL’s separate segregated networks, it is able to exchange traffic and is achieving interconnection, only with that individual segregated ALLTEL network.

Final Best Offer of Verizon Wireless: Since ALLTEL is obligated to deliver traffic originated on its network to any point with the MTA, the phrase “within ALLTEL’s interconnected network” should not be inserted into the agreement.

Issue 27: Whether the agreement section entitled "Indirect Network Interconnection," Attachment 2, paragraph 2.1.5 of Verizon Wireless's Exhibit 1 should require the establishment of a direct interconnection facility when the capacity of the indirect traffic reaches a DS1 level?

Final Best Offer of Verizon Wireless: The 257,000 combined MOU threshold ALLTEL has proposed should be implemented only to the extent the end office traffic is exchanged at ALLTEL's tandem locations, and, to the extent Verizon Wireless must establish facilities physically connecting to ALLTEL's end offices, the threshold should be 500,000 MOUs in the mobile-to-land direction.

Issue 28: Whether Verizon Wireless may establish NPA-NXX's in ALLTEL rate centers, regardless of actual delivery point of the associated calls, and require ALLTEL to bear all transport costs to the point of delivery?

Final Best Offer of Verizon Wireless: Verizon Wireless is entitled to establish NPA-NXXs associated with ALLTEL rate centers regardless of the actual delivery point of the associated calls without any impact on ALLTEL's obligation to bear the costs of delivering traffic it originates to Verizon Wireless.

Issue 30: Whether a 60/40 land to mobile traffic factor must be used by both Parties when either Party cannot record the terminating minutes originating from the other Party routed over a direct interconnection facility, even though ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and even though Verizon's proposed factor of 60/40 land to mobile is inconsistent with the shared facilities factor of 70/30 land to mobile proposed by Verizon Wireless?

Final Best Offer of Verizon Wireless: The Land to Mobile factor should be 40% land-originated, 60% mobile-originated.

Issue 31: Whether the agreement's definition of "Interconnection Point," Attachment 8 of Verizon Wireless Exhibit 1, should be clear in appropriately defining the

parties' responsibilities of network between the parties, which in ALLTEL's case will be on its network.

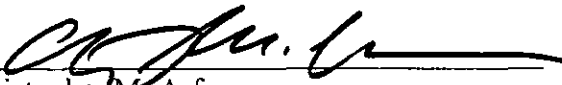
Final Best Offer of Verizon Wireless: The definition of "Interconnection Point" should appropriately consider ALLTEL's responsibility to deliver traffic to Verizon Wireless to any point within the MTA.

Issue 32: Whether the agreement should include a definition of "Interexchange Carrier," a term not used in the agreement.

Final Best Offer of Verizon Wireless: Verizon Wireless hereby recedes from its initial position on this issue and agrees to omit this language from the agreement.

Respectfully submitted,

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DATED: February 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of the foregoing document upon the persons listed below by the means indicated in accordance with the requirements of 52 Pa. Code § 1.54:

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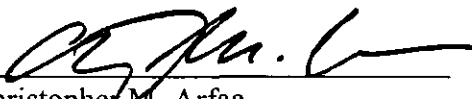
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252
of the Telecommunications Act of 1996 to Establish an Interconnection Agreement
With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Secretary McNulty:

Enclosed for filing are an original and nine (9) copies of the Main Brief of ALLTEL
Pennsylvania, Inc. in the above referenced proceeding.

Copies of the Main Brief have been served in accordance with the attached Certificate of
Service.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Patricia Armstrong

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Enclosures

cc: Certificate of Service
Stephen B. Rowell, Esquire (w/encl.)
Lynn Hughes (w/encl.)

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Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Cellco Partnership d/b/a Verizon :
Wireless For Arbitration Pursuant to : Docket No. A-310489F7004
Section 252 of the Telecommunications :
Act of 1996 :

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MAIN BRIEF OF
ALLTEL PENNSYLVANIA, INC.

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MAR 2 2004

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Dated: February 24, 2004

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I. STATEMENT OF THE CASE

This proceeding was initiated by the Petition for Arbitration filed by Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") on November 26, 2003, seeking arbitration pursuant to Section 252 of the Telecommunications Act of 1996 (hereinafter "Act" or "TCA-96" or "Telecom Act of 1996"). The Petition addresses Verizon Wireless' request to ALLTEL Pennsylvania, Inc. ("ALLTEL"), to negotiate prices, terms, and conditions of an interconnection agreement regarding both direct and indirect traffic.¹ On December 22, 2003, the "Response of ALLTEL Pennsylvania, Inc. to the Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless" ("Response") was filed with this Commission. The Petition has been docketed at A-310489F7004. There were initially 33 issues set forth in the Petition and Response.²

The negotiations actually commenced on January 14, 2003, when Verizon Wireless provided ALLTEL a letter seeking negotiations of a new interconnection agreement to replace the agreement that had existed between ALLTEL and Verizon Wireless, which agreement ALLTEL contends was terminated on September 26, 2002.³ This prior agreement is the subject of a pending complaint proceeding before the Commission at Docket No. C-20039321.⁴ Verizon Wireless provided

¹See Verizon Wireless Hearing Exhibit 1.

²At the commencement of the hearing in the matter, the parties with the assistance of Judge Weismandel agreed that 11 of the 33 unresolved issues had been resolved. T. 42.

³See ALLTEL Exhibit 4 (Response) at 4.

⁴The dispute on the prior agreement concerns the scope of the agreement. ALLTEL claims that the agreement was limited solely to traffic within its Meadville service territory where the parties have established a direct interconnection. On the other hand, Verizon Wireless contends that the agreement also governed indirect three-party traffic throughout Pennsylvania between Verizon Wireless, Verizon Pennsylvania, Inc., and ALLTEL. ALLTEL maintains that such three-party traffic

(continued...)

another communication to ALLTEL on February 28, 2003. The parties discussed a possible exchange of letters stating that the previous agreement would continue to be effective while the parties negotiated a successor agreement, but this exchange never occurred. Subsequently on March 20, 2003, ALLTEL discussed amending the prior agreement to continue on a month-to-month basis pending resolution of the complaint proceeding, but such amendment was never executed.⁵

Verizon Wireless' formal negotiation request to ALLTEL was dated June 23, 2003. Negotiation sessions were subsequently conducted telephonically on October 17, and November 18, 20 and 21, 2003, prior to Verizon Wireless filing its Petition seeking arbitration.⁶

The Petition was initially assigned to Administrative Law Judge ("ALJ") Marlane Chestnut. However, due to Judge Chestnut's illness, a prehearing conference was held January 5, 2004, with Chief Administrative Law Judge Robert Christianson presiding. At the prehearing, the parties exchanged prehearing conference memoranda and agreed to an expedited litigation schedule.⁷ Dates were scheduled for the filing of direct and rebuttal testimony and hearing dates were reserved for February 10 and 11, 2004, as memorialized in the Arbitration

⁴(...continued)

is subject to the IntraLATA Toll Originating Responsibility Plan approved by the Commission at Docket No. P-830452 until such time as a new agreement between ALLTEL and Verizon Wireless becomes effective. For the new agreement that is subject to this arbitration, ALLTEL is agreeable to changing the I TORP compensation to a Section 251(b)(5) reciprocal compensation arrangement with Verizon Wireless reflecting Section 252(d)(2) cost-based rates. See ALLTEL Ex. 4 (Response) at 5.

⁵See ALLTEL Ex. 4 (Response) at 4-6.

⁶Id.

⁷During the establishment of a litigation schedule in this proceeding, the parties agreed to waive TCA-96's statutory time frame for arbitration.

Proceeding Order dated January 8, 2004 ("Arbitration Order") of ALJ Wayne L. Weismandel, who was subsequently assigned as the arbitrator following the prehearing conference. Pursuant to the Arbitration Order, ALLTEL served the direct and/or rebuttal testimony (proprietary and non-proprietary versions) and exhibits of witnesses Lynn Hughes, marked ALLTEL Statement Nos. 1 and 1R and Exhibit 1A; Cesar Caballero, marked ALLTEL Statement Nos. 2 and 2R and Exhibits CC-1 and CC-2; and Steven Watkins, marked ALLTEL Statement No. 3R and Exhibits 3A thru 3E. Verizon Wireless likewise presented direct and rebuttal testimony (proprietary and non-proprietary versions) and exhibits of witness Mark B. Sterling, marked Verizon Statement Nos. 1 (which was subsequently revised) and 1.1, and Exhibits MBS-1 thru 4; and Don J. Wood, marked Verizon Wireless Statement Nos. 2 and 2.1, and Exhibits DJW-1 thru 6.

ALJ Weismandel presided over the hearing held on February 10, 2004,⁸ at which time the ALLTEL and Verizon Wireless witnesses were presented to authenticate and adopt their prefiled statements and exhibits and were subject to cross examination. ALLTEL witness Steven Watkins, who had been scheduled to appear at the hearing on February 11, 2004, was not called to testify because Verizon Wireless did not request cross-examination of the witness.⁹ His prefiled ALLTEL Statement 3R and related Exhibits 3A - 3E were stipulated into the record following Verizon Wireless' unsuccessful motion to strike.¹⁰ At the hearing, ALLTEL also presented additional exhibits, ALLTEL Exhibits 4, 5, 6, 7 and 8 and Verizon

⁸The February 11, 2004 hearing date was subsequently cancelled.

⁹T. 267.

¹⁰T. 268.

Wireless presented additional exhibits, Verizon Wireless Exhibits DJW-7 thru 10 and Verizon Wireless Hearing Exhibit 1.

The hearing transcript in this matter comprises 271 pages. Following the arbitration hearing, Judge Weisman by Order dated February 17, 2004, reopened the record to admit ALLTEL Statement Nos. 2 and 2R with Exhibits CC-1 and CC-2, which documents inadvertently had not been formally admitted into the record at the February 10, 2004 hearing.

The subject of this arbitration includes both direct and indirect traffic. ALLTEL currently has three points of direct interconnection with Verizon Wireless, although traffic is currently only exchanged directly at the Meadville direct interconnection.¹¹ The indirect exchange of traffic is through a three-way traffic arrangement using the tandems of Verizon Pennsylvania, Inc. ("Verizon PA" or "Verizon ILEC"). As discussed above in footnote 4, it is ALLTEL's position that this three-way transit arrangement is governed by the IntraLATA Toll Originating Responsibility Plan, i.e. ITORP, as approved by this Commission until such time as the agreement to be established through this arbitration becomes effective.¹²

In its Petition, Verizon Wireless is not seeking to change this existing three-way traffic arrangement from a network facilities standpoint. Instead, Verizon Wireless is actually seeking to keep the ITORP network arrangement in place but to change the compensation format to a reciprocal compensation arrangement

¹¹Verizon Wireless St. 1.0 at 28-29 and ALLTEL St. 1R at 25-27.

¹²The ITORP agreement requires Verizon PA to bill Verizon Wireless based upon ALLTEL's intrastate access charges for the wireless traffic ALLTEL terminates and for Verizon PA to remit the money to ALLTEL as compensation for its termination services. The ITORP agreement does not provide for reciprocal compensation for the traffic ALLTEL originates to Verizon Wireless customers and which Verizon Wireless terminates. ALLTEL St. 1 at 13.

between Verizon Wireless and ALLTEL with Verizon PA being removed from the billing process. Verizon Wireless is also seeking cost-based rates in place of the ALLTEL intrastate access charges that currently form the basis for compensation under ITORP. ALLTEL has no opposition to the application of reciprocal compensation at cost-based rates to replace the application of access charges under the ITORP compensation process.¹³ In other words, ALLTEL is not seeking to retain the application of its intraLATA access rates and has submitted for Judge Weismandel's consideration cost-based rates consistent with the Section 252(d)(2) pricing standards in the Telecom Act of 1996.

In its Petition, Verizon Wireless identified 15 issues subject to dispute and attached a draft agreement (attached Exhibit 1 to Verizon Wireless Hearing Ex. 1). ALLTEL, in its Response, identified 18 additional unresolved issues and attached a draft agreement (attached Exhibit A to ALLTEL Exhibit 4) that reflected ALLTEL's position on these additional unresolved issues as well as the issues identified in the Verizon Wireless Petition. Both ALLTEL and Verizon Wireless submitted Initial Offers on February 6, 2004, and are submitting Best and Final Offers with their Main Briefs. This Main Brief is submitted in accordance with the briefing schedule set forth in the Arbitration Order.

¹³Before the ITORP process can be changed between Verizon PA and ALLTEL, there must be some acknowledgment or agreement from Verizon PA agreeing to the change in the ITORP billing process. ALLTEL respectfully submits that it and Verizon Wireless have no standing to unilaterally change the existing ITORP agreement without Verizon PA acknowledging the change or entering a new agreement with ALLTEL. ALLTEL respectfully believes that a new agreement with Verizon PA would be the most appropriate course of action. See ALLTEL St. 1 at 17.

II. ALLTEL PENNSYLVANIA, INC.

ALLTEL is an incumbent local exchange carrier providing telecommunications services in rural portions of Pennsylvania. As shown on ALLTEL Exhibit 3E, ALLTEL provides service in portions of the following counties: Allegheny, Armstrong, Beaver, Cambria, Cameron, Carbon, Centre, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Green, Huntingdon, Indiana, Jefferson, Lawrence, Lycoming, McKean, Mercer, Northumberland, Schuylkill, Union, Venango, Warren, Washington, Westmoreland, and Wyoming Counties.

By Order entered October 19, 1999, Docket No. P-00971177, Petition of ALLTEL Pennsylvania, Inc.; Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action Pursuant to Section 251(f)(2) and Section 253(b) of the Telecommunications Act of 1996 ("ALLTEL Suspension Order"), the Commission declared ALLTEL to be a rural telephone company qualifying for the rural exemption status under TCA-96 Section 251(f)(1), 47 U.S.C. §251(f)(1), and granted it a Section 251(f)(2), 47 U.S.C. §251(f)(2), temporary suspension of its Section 251(b) and (c), 47 U.S.C. §251(b) and (c), interconnection obligations.

ALLTEL's declaration as a rural telephone company and its grant of Section 251(f)(2) relief were both predicated on its demonstration to the Commission of the rural nature of its service territory and the makeup of its operations. As the Commission recognized in the ALLTEL Suspension Order:

The uncontroverted evidence of record states that ALLTEL PA has fewer than 2% of the subscriber lines installed in the aggregate nationwide.

We conclude that ALLTEL PA should be classified as a rural carrier under the TA-96.³ We also conclude that ALLTEL PA may

petition for §251(f)(2) relief. However, the recognition of rural status does not automatically entitle the carrier to §251(f)(2) relief.

* * *

As compared to other companies which have been granted §251(f)(2) relief, ALLTEL PA is large. This factor mitigates against the view that ALLTEL PA is in the same market position as Pennsylvania's smaller "rural" carriers. However, a close examination of ALLTEL PA's service area demonstrates that ALLTEL PA serves multiple discontinuous areas in rural Pennsylvania. ALLTEL PA provides service to rural areas in Greene county separate and apart from service provided to rural areas in Elk, Cameron, Jefferson, Clarion, Armstrong, and Venango counties. ALLTEL PA also provides rural service to Crawford, Mercer, and Erie county separate and apart from the areas discussed above. Finally, ALLTEL PA provides service in Northumberland, Union, and Wyoming counties significantly east of, and in predominantly rural parts of, these areas.

These considerations, inter alia, lead us to conclude that ALLTEL PA is a rural carrier serving a predominantly rural area and eligible for relief under §251(f) of the TA-96. Moreover, ALLTEL PA's service area and characteristics are of the type focused on in the legislative history behind §251(f).⁴

* * *

We conclude that ALLTEL PA, despite its size, does serve primarily low density population areas. We are persuaded, for the time being, that the potential economic burden upon ALLTEL PA's rural client base and interference with the universal service objectives are sufficient to warrant the grant of §251(f)(2) relief. We are persuaded that such relief is necessary to avoid significant adverse economic impact upon users of telecommunications service and is consistent with the public interest, convenience, and necessity.

³ Although it is not a prerequisite for §251(f)(2) relief, our finding is consistent with ALLTEL's rural characteristics. We note that the primary question of ALLTEL's rural status was originally being considered at M-00960799F002. Having addressed the issue in this proceeding, we will mark that issue closed.

⁴ The legislative history behind §251(f)(1) (pertaining to rural exemptions) reflects a concern for protecting companies serving rural areas from the larger nationwide companies with far superior financial and technological resources. ALLTEL PA's own petition acknowledges this fact.

ALLTEL Suspension Order at 8-10 (citations omitted; emphasis added). Further, as discussed in greater detail below, ALLTEL as a rural telephone company more

closely resembles other rural ILECs operating in Pennsylvania, including Commonwealth Telephone Company ("Commonwealth") and North Pittsburgh Telephone Company ("NPTC").

III. STATEMENT OF UNRESOLVED ISSUES

- Issue 1. Whether rural local exchange carriers are subject to the negotiation and arbitration process set forth in Section 252 (b) for disputes under Section 251 (b)(5) for traffic indirectly exchanged with CMRS?
- Issue 2: Do the FCC's rules interpreting the scope of an ILEC's reciprocal compensation obligations under 251 (b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LEC's Tandem facilities?
- Issue 3(a): Does Section 251 (b)(5) impose an obligation on the originating LEC to pay a CMRS provider for its traffic when it transits the network of a third party LEC and terminates on the network of a CMRS provider?
- Issue 3(b): Whether pursuant to Section 251 (b)(5), a local exchange carrier is required to pay any transit charges on traffic it originates indirectly to a CMRS provider?
- Issue 4: Does a third party transit provider "terminate" traffic within the meaning of Section 251 (b)(5)?
- Issue 5: Where a third party provider provides indirect interconnection facilities, should the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers include the terms and conditions on which the originating carrier will pay the third party transiting provider for transiting service?

- Issue 8: Whether a LEC is required to share in cost of dedicated two-way interconnection facilities between its switch and the CMRS carrier's switch to extend traffic beyond the LEC's local exchange area and network?
- Issue 9: What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of direct and indirect traffic?
- Issue 10: Can the Parties implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic? VZW believes this is related to issue 30, except issue 10 relates to indirect and direct traffic.
- Issue 11: Where a CMRS provider's switch serves the geographically comparable area of LEC tandem, can it charge a termination rate equivalent to a tandem rate for traffic terminated in the Land to Mobile direction?
- Issue 13: After a requesting carrier sends a formal request for interconnection under Section 252 (b) of the Act, what interim reciprocal compensation terms apply to the parties until an agreement has been negotiated and arbitrated by the Commission? Refers to Verizon's Issue 13 in its Petition for Arbitration.
- Issue 15: Whether the payment due date for invoices rendered under the agreement should be determined from the date of the invoice or the date of receipt of the invoice and whether the allotted time should 30 or 45 days thereafter?

Issues 16 & 17: Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: "A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind should not be considered a Bona Fide dispute." And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have the right to pursue normal treatment procedures. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

Issue 20: Whether, as Verizon Wireless proposes in Petition Exhibit 1 section entitled, "Most Favored Nation, General Terms and Conditions," paragraph 31.1, Verizon Wireless should have the right to opt out of this agreement during its terms and into any other agreement that ALLTEL may execute with another carrier.

- Issue 24: Whether agreement section referred to as "Incumbent Local Exchange Carrier Requirement," Attachment 2, paragraph 1.4.2 of Verizon's Exhibit 1, should specify that ALLTEL's obligations to provide service under the agreement is with respect to that service are where ALLTEL is authorized to provide service?
- Issue 25: Whether the phrase "within ALLTEL's interconnected network" should be inserted in the agreement section entitled "Direct Routed Traffic Mobile to Land Traffic," Attachment 2, paragraph 2.1.1.1, paragraph 2.1.1.2, paragraph 2.1.2.1, and paragraph 2.1.2.2 of Verizon's Exhibit 1, to clearly indicate that when Verizon Wireless connects to one of ALLTEL's separate segregated networks, it is able to exchange traffic and is achieving interconnection, only with that individual segregated ALLTEL network.
- Issue 27: Whether the agreement section entitled "Indirect Network Interconnection," Attachment 2, paragraph 2.1.5 of Verizon Wireless' Exhibit 1, should require the establishment of a direct interconnection facility when the capacity of the indirect traffic reaches a DS1 level?
- Issue 28: Whether Verizon Wireless may establish NPA-NXXs in ALLTEL rate centers, regardless of actual delivery point of the associated calls, and require ALLTEL to bear all transport costs to the point of delivery?
- Issue 30: Whether a 60/40 land to mobile traffic factor must be used by both Parties when either Party cannot record the terminating minutes originating from the other Party routed over a direct interconnection

facility, even though ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and even though Verizon's proposed factor of 60/40 land to mobile is inconsistent with the shared facilities factor of 70/30 land to mobile proposed by Verizon Wireless?

Issue 31: Whether the agreements definition of "Interconnection Point," Attachment 8 of Verizon Wireless Exhibit 1 should be clear in appropriately defining the parties' responsibilities of network between the parties, which in ALLTEL's case will be on its network.

Issue 32: Whether the agreement should include a definition of Interexchange Carrier, a term not used in the agreement.

IV. SUMMARY OF ARGUMENT

This Section 252 arbitration proceeding addresses the establishment of reciprocal compensation between ALLTEL and Verizon Wireless on both direct and indirect traffic. Two major questions need to be resolved: (1) what are appropriate forward-looking cost-based rates to be established by this Commission for this rural carrier; and (2) which party should bear costs arising from Verizon Wireless' decision to employ an affiliated third-party LEC to transport and transit traffic instead of directly interconnecting with the ALLTEL network. Resolution of these questions hinges on the correct application of the Section 252(d)(2) pricing standard for ALLTEL and a carefully considered determination of ALLTEL's interconnection obligations under TCA-96 based on the specific interconnection arrangements requested by Verizon Wireless.

Consistent with Section 252(d)(2), ALLTEL prepared TELRIC cost studies resulting in forward-looking cost-based rates. ALLTEL's Pennsylvania study is directly consistent with the study recently reviewed and approved by the New York Public Service Commission to set TELRIC based reciprocal compensation rates for ALLTEL New York. Not only are the ALLTEL rates cost-based, they are also reasonable when compared to the reciprocal compensation rates established in Verizon Wireless interconnection agreements with other rural carriers in Pennsylvania and elsewhere throughout the country.

In contrast, Verizon Wireless proposes novel ratemaking concepts never before adopted for a non-RBOC company. Verizon Wireless seeks to hold ALLTEL to the same manner of cost study presentation applied today to the RBOCs and

advocates the adoption of Verizon-North rates, as a proxy, in place of the cost-based rates developed specifically for this rural telephone company.

Compounding Verizon Wireless' position on rates, Verizon Wireless also erroneously contends that ALLTEL should bear costs to transport traffic to locations far outside its network and service territory, an obligation not even imposed today on the RBOCs. Further, Verizon Wireless advocates ALLTEL be held accountable for sharing Verizon Wireless' capital costs in making direct interconnections with ALLTEL's network that extend beyond ALLTEL's network and service territory. If adopted, these positions could jeopardize ALLTEL's financial integrity and set a precedent that threatens the financial integrity of Pennsylvania's entire rural telephone industry.

The Verizon Wireless positions are directly contrary to the Telecommunications Act of 1996 and applicable regulatory standards. It has long been established that an incumbent local exchange carrier's interconnection duties and cost responsibilities are limited to its network and service territory, and that fundamental regulatory premise has not changed under TCA-96. Contrary to Verizon Wireless' assertions, no rural ILEC has been required nor can be expected to bear the cost of transporting traffic as far away as Burlington, Vermont or Buffalo, New York, or any other location beyond its network within the ten state area from Canada to Virginia that comprises the six MTAs located in Pennsylvania in order to deliver traffic to Verizon Wireless at its chosen locations.

Verizon Wireless' positions in this proceeding are in violation of TCA-96, the decisions of this Commission and the FCC, and its positions conflict with industry practice and its agreements with affiliated carriers. They simply are not warranted.

V. ARGUMENT

**FOREWORD: ITORP
 TELECOM ACT OF 1996
 VERIZON WIRELESS NEGOTIATIONS REQUEST**

Before specifically addressing the unresolved issues, a brief description of the ITORP process in Pennsylvania, the Telecom Act of 1996, and the Verizon Wireless negotiations request is warranted. Following this description, ALLTEL will address each unresolved issue in this arbitration proceeding.

A. The IntraLATA Toll Originating Responsibility Plan (ITORP)

1. The Modified Final Judgment

Throughout most of the 20th century, public telephone service was provided in a monopoly environment. The Bell operating companies and independent local exchange carriers provided services limited to customers within their specific service territories. For the most part, AT&T had a monopoly over the provision of interstate toll services.¹⁴

Prior to 1983, mechanisms were employed among carriers for intercarrier compensation in the completion of toll calls. The Bell operating companies were compensated for their local exchange costs in connection with both intrastate and interstate toll service through a division of revenue process with AT&T. A settlement process was employed by the Bell companies and AT&T to compensate

¹⁴See P. Huber, M. Kellogg & J. Thorne, Federal Telecommunications Law (2d ed. 1999), pages 2-3.

the independent carriers, like ALLTEL, for their costs in connection with both interstate and intrastate toll services.¹⁵

In the 1960's and 1970's, competition began slowly arising in the telecommunications marketplace and various legal challenges arose over AT&T's monopolization of the industry.¹⁶ By the early 1980's, antitrust challenges arose and ultimately were resolved through a settlement between AT&T and the U.S. Justice Department whereby the AT&T system was split into separate long distance and local companies.¹⁷ This divestiture of AT&T was effective January 1, 1984, with AT&T providing long distance toll service and seven (7) Regional Bell Operating Companies ("RBOCs") providing local and intrastate intraLATA toll service. The RBOCs were required to permit access to their systems by competitive long distance carriers at uniform rates in order to accelerate the provision of toll competition.

The Pennsylvania Public Utility Commission, in the Access Charge Order, summarized these changes, as follows:

The Modified Final Judgment, approved by the United States District Court for the District of Columbia, in United States v. AT&T, 552 F. Supp. 131 (1982), on August 24, 1982, with respect to the divestiture of Bell operating Companies by American Telephone and Telegraph Company (AT&T), makes fundamental and sweeping changes in the manner in which interstate and intrastate toll telephone service will be provided, effective January 1, 1984.

The most significant of these changes are:

¹⁵See Re: Petition Requesting the Commission to Institute a Generic Investigation Concerning the Development of Intrastate Access Charges, Docket No. P-830452 (Order entered August 10, 1983) ("Access Charge Order") at 2.

¹⁶E.g. Carter v. AT&T, 250 F. Supp. 188 (N.D. Tex. 1966), aff'd 365 F.2d 486 (5th Cir. 1966), cert. denied, 385 U.S. 1008 (1967).

¹⁷United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).

1. The intrastate toll service provided by The Bell Operating Companies will be limited to that which takes place within the Local Access Transport Area (LATA).
2. All interstate and all other intrastate toll service will be provided by the American Telephone and Telegraph Company (AT&T), Independent Telephone Companies, and other carriers (such as MCI, Sprint, etc.).
3. The prior division of revenues procedures between AT&T and the BOCs pertaining to interstate and intrastate toll traffic, will terminate, to be replaced by tariff charges, also to be effective January 1, 1984.

On February 28, 1983, the Federal Communications Commission (FCC) released its Third Report and Order in Common Carrier (CC) Docket No. 78-72. The FCC Report and Order sets forth the adopted rules, by which carriers, i.e. AT&T, MCI, Sprint, etc., and end users (individual subscribers) will pay for access to, and the use of, the local facilities of the BOCs and Independents, to cover those costs incurred in providing interstate and foreign service. In general terms the rules, as modified on July 27, 1983, provide that end users will pay flat rate interstate toll access charges, while the carriers, in most instances, will be charged usage sensitive charges. The FCC rules also provide that during a six year transition period, end user charges will increase until, at the end of the six period, most of the exchange access costs pertaining to interstate toll traffic, currently recovered through interstate long distance toll charges, will be paid for by end users through flat monthly charges.

Access Charge Order at 2-3 (footnotes omitted).

The AT&T divestiture resulted in changes in the intercompany compensation process employed by Bell Telephone Company of Pennsylvania ("Bell of PA") and the independent local exchange carriers operating in Pennsylvania ("Independents"). These changes were summarized by Chairman Bill Shane in a subsequent November 25, 1987 Motion at Docket No. I-870076 (Appendix A hereto), as follows:

One of the many changes brought about by the 1984 AT&T divestiture was a change in the method of intercompany compensation for toll services provided jointly by Bell of Pa. and the

independent telephone companies. In general, the toll revenue pooling arrangement among AT&T, Bell of Pa. and the independent telephone companies was replaced by a system of interstate and intrastate access charges whereby the terminating local telephone company would charge the connecting carrier, AT&T or another telephone company, a fee for access to its local network. For intrastate intraLATA toll calls, however, a transitional pooling arrangement similar to the pre-divestiture environment was employed from the beginning of divestiture until the end of 1985.

From January 1, 1984, until December 31, 1985, Bell of Pa. had established statewide toll rates based on their costs. Under this arrangement, all independent telephone companies in the state concurred in Bell of Pa.'s rates and tariffs. The independent companies then billed their customers these rates and remitted the collected revenues to an intrastate pool administered by Bell of Pa. Bell of Pa. then reimbursed the independents their toll costs from the pool.

The Commission had, earlier in the Access Charge Order, recognized that Bell of PA intended to tariff exchange access charges and had reduced toll rates which were "incompatible with the concept of a settlement agreement" for intercarrier compensation purposes. Consequently, the Commission directed Bell of PA and the Independents to work on a plan to share intraLATA toll and access revenues.¹⁸

2. Approval of ITORP

Pursuant to the Access Charge Order, Bell of PA and the Independents developed and executed a new intraLATA toll network arrangement and settlement process known as ITORP. ITORP was found "fair and reasonable" and approved by this Commission in its Order entered August 9, 1985, in Re: Petition Requesting the Commission to Institute a Generic Investigation Concerning the Development

¹⁸See Access Charge Order at 13.

of Intrastate Access Charges, Docket No. P-830452, et al. ("ITORP Order"). The ITORP Order provided, as follows:

VI. TOLL COMPENSATION PLAN AND INTRALATA TOLL ORIGINATING RESPONSIBILITY PLAN (ITORP)

In our Order Instituting an Investigation of August 19, 1983, we made mention of the fact that there had been discussions between Bell and the Independent companies regarding a new compensation agreement pertaining to intercompany intraLATA toll and other non-exchange traffic, to replace the settlements arrangement which had been in effect for many years.

On November 23, 1983, Bell filed revisions to its Tariff Telephone-Pa. P.U.C. No. 1, Section 29B, at R-832535, which implemented the compensation arrangements agreed to by the parties, which were reflected in a basic agreement of September 28, 1983, as revised on November 3, 1983 and December 15, 1983.

In our Opinion and Order of December 28, 1983, we permitted this revised plan to go into effect, effective January 1, 1984, pending further review and consideration of the plan during these proceedings.

The ALJ referred to the Toll Compensation Plan at pages 72 and 74 of his Recommended Decision in the Access Charge Phase of this proceeding but made no specific recommendation regarding its approval and disapproval. Having reviewed the plan and the pertinent portions of the record we find the plan to be fair and reasonable as between the parties and, therefore, we approve the plan and the changes to Bell's Tariff Telephone-Pa. P.U.C. No. 1, Section 29B, filed at R-832535.

ITORP Order at 82 (emphasis added).

3. The ITORP Agreements

Bell of PA and the Independents implemented the ITORP process through execution of the Telecommunications Services and Facilities Agreements ("TSFAs").¹⁹ The TSFAs had an effective date of January 1, 1986, and addressed the services and facilities provided by Bell of PA and each independent company

¹⁹ALLTEL St. 1 at 12. Separate TSFAs were entered between Bell of PA and each of the independent local exchange carriers.

in the provision of intraLATA toll and exchange access services and the settlement process applicable thereto. As ALLTEL witness Hughes explained:

The incumbent local exchange carriers in Pennsylvania implemented the ITORP process through execution of a company-specific Telecommunications Services and Facilities Agreement or TSFA. This TSFA specifies terms and conditions for the joint provision of certain services and facilities between Verizon ILEC and each independent company. The TSFA provides for the services and facilities associated with intraLATA telecommunications services, including toll and exchange access services, and each carrier has been assigned only cost responsibility for services and facilities in its respective operating area. Specifically, in Appendix 1 to the TSFA provides:

C. Each party will provide such services and facilities in its operating area as are necessary to terminate IntraLATA Telecommunications Services traffic originated by other parties. These services and facilities are to be provided as specified in the Telecommunications Services and Facilities Agreement in effect between the parties.

ALLTEL St. 1 at 12-13.

Each TSFA also included an Appendix 2 - Ancillary Services Agreement, which became effective January 1, 1986. Later, an Exhibit G Agreement was made an integral part of TSFA Appendix 2, on or about January 26, 1993. The Exhibit G Agreement addressed the terms and conditions for wireless traffic being carried over the ITORP network transiting a Bell of PA tandem, which included traffic being originated to the Independents' end-users by CMRS (wireless) providers and traffic being originated by the Independents to CMRS end-users. The agreement required Bell of PA to bill the CMRS providers based upon the Independents' intrastate

access charges and to remit such compensation to the Independents for their termination services.²⁰ Ms. Hughes explained:

Exhibit G addresses compensation obligations of Verizon ILEC with respect to termination of CMRS traffic that originates on a CMRS carrier's network and transits a Verizon ILEC tandem and intra-LATA joint use trunk group. In recognition that the wireless traffic is being carried over an access network, Section II.A.5. of Exhibit G obligates Verizon ILEC (i.e., the tandem owning local exchange carrier) to bill the appropriate CMRS carrier based upon the terminating carrier's access charges and remit the appropriate revenues to the terminating carrier.

ALLTEL St. 1 at 13. The Exhibit G Agreement did not grant Bell of PA any right to charge the Independents for the traffic they originated through ITORP to wireless end-users on a flat rate basis.²¹

More specifically, the indirect traffic flow between the Independents and CMRS providers under ITORP is as follows:²² Verizon PA²³ (i) receives traffic originated by wireless carriers over facilities established between it and the wireless carriers; (ii) switches the traffic through its tandem switches; and (iii) delivers the said traffic to the Independents' end offices over the same ITORP trunk groups used in the provision of intraLATA toll and access services. The CMRS providers have interconnection points between their networks and the Verizon PA network and the Independents are connected to the Verizon PA network through the ITORP joint-use toll trunks.

²⁰Id.

²¹See Exhibit MBS-3.

²²For the purpose of this Main Brief, we will refer to this traffic as "indirect three-party traffic" or "transit traffic" or "ITORP wireless traffic."

²³Following the execution of the ITORP agreements, Bell of PA subsequently became Verizon PA.

Where CMRS providers elect not to establish direct interconnections, traffic originated by the Independents' customers to wireless end-users is also transported over the ITORP network whereby Verizon PA receives the traffic originated from the Independents, Verizon PA switches the traffic through its tandems and transports the traffic over the direct interconnections that it has with the CMRS providers. As before stated, the Exhibit G Agreement under ITORP does not impose any transit charges on the Independents for the transit service provided by Verizon PA on the Independents' local calls to wireless carriers.

Following the execution of the Exhibit G Agreements, the Commission in an Order entered December 21, 1994, Investigation Regarding The IntraLATA Toll Originating Responsibility Plan, Docket No. I-00870076, approved the continuation of ITORP recognizing that it also covered "other ancillary services" (which included the Exhibit G wireless services). This Order provided, as follows:

ITORP is an intrastate intraLATA toll settlement process between Pennsylvania local exchange companies ("LECs") that was started on January 1, 1986, whereby each LEC: (1) applies its toll tariff to their customers for origination of intraLATA toll calls in that LEC's territory and books the money collected from these calls as its intraLATA toll revenues (commonly referred to as "bill and keep"); and (2) applies its access charge tariffs to other LECs for terminating toll calls in their territory, as well as for directory assistance and any other ancillary services provided to the other LECs. Access charges owed between each LEC are then netted under ITORP on a monthly basis and each LEC will either pay out or receive payment as settlement for that month's terminating access. ITORP was approved to replace the transitional intrastate toll settlement process known as the Toll Compensation Plan which was approved to become effective January 1, 1984, until December 31, 1985, and which was developed to replace the similar pre-divestiture pooling arrangement among AT&T, Bell of Pennsylvania and the Pennsylvania independent telephone companies.

Order at 2-3, note 2 (emphasis added).

Following the adoption of the Telecom Act of 1996, the Commission by Order entered February 14, 1997, In Re: Generic Investigation of Intrastate Access Charge Reform, Docket No. I-00960066, opened a generic investigation into intrastate access charge reform. This investigation also addressed the application of access charges to wireless carriers.²⁴

This access charge investigation was subsequently consolidated with the Global proceeding at Docket No. P-00991648 and P-00991649. The Commission, in the Global Order entered September 30, 1999, closed the access charge reform investigation at Docket No. I-00960066 without making any changes in the TSFA and Exhibit G agreements applicable to the ITORP wireless traffic.²⁵ Thus, the ITORP arrangement applicable to wireless traffic has been reviewed and approved by the Commission.

B. The Telecommunications Act of 1996

The Telecom Act of 1996 made sweeping changes in the telecommunications industry. The Act embodies Congress' recognition that *advances in technology had altered the historically accepted premise that telecommunication services could be most efficiently delivered by regulated monopolies rather than competitive providers.*²⁶ A primary objective of the Act was to jump start local competition primarily in the service territories of non-rural incumbent local exchange carriers.

²⁴See Order entered February 14, 1999, paragraph 4.b.

²⁵See Re Nextlink Pennsylvania, Inc., 196 PUR4th 172, 292 (1999).

²⁶See AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 370 (1999).

1. General Interconnection Duties

Section 251(a) of the Telecom Act of 1996 sets forth the following general duty on all telecommunications carriers:

(A) GENERAL DUTY OF TELECOMMUNICATIONS CARRIERS.— Each telecommunications carrier has the duty—

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256.

47 U.S.C. §251(a).

This statutory requirement imposes a general duty on all telecommunications carriers to interconnect directly and indirectly with other carriers via the public switched network and to use equipment and technical approaches that are compatible with all network participants.²⁷

2. Interconnection Obligations of All Local Exchange Carriers

In furtherance of the stated objective of promoting competition, the Telecom Act of 1996 requires local exchange carriers to permit access to certain services. Specifically, under Section 251(b) all local exchange carriers (incumbent and competitive) have the following duties: (i) Section 251(b)(1) with respect to resale of the incumbent's telecommunications services by competitors; (ii) Section 251(b)(2) to provide for the "portability" of its subscribers' telephone numbers; (iii) Section 251(b)(3) to provide "dialing parity"; (iv) Section 251(b)(4) to afford access to its poles, ducts, conduits, and rights-of-way; and (v) Section 251(b)(5) to establish "reciprocal compensation" agreements.

²⁷See also 47 C.F.R. §51.100.

Under Section 251(c), all incumbent local exchange carriers also have the duty to negotiate in good faith with prospective competitors seeking to “interconnect” with their network (Section 251(c)(1)); to provide interconnections to a prospective competitor at any technically feasible point within the carriers’ networks on rates, terms and conditions that are just, reasonable, and nondiscriminatory (Section 251(c)(2)); to provide nondiscriminatory access to their network elements on an “unbundled” basis (Section 251(c)(3)); to sell their telecommunication services to competitors at wholesale prices for resale by those competitors to the general public (Section 251(c)(4)); to provide public notice of changes that impact interoperability (Section 251(c)(5)); and to provide physical collocation of competitors’ equipment on their premises (Section 251(c)(6)).

3. **Section 252 Negotiation, Mediation, and Arbitration Procedures**

Section 252, 47 U.S.C. §252, sets forth the procedures for implementing the Section 251(b) and (c) interconnection obligations. The preferred method is voluntary negotiations, through which the parties negotiate and enter into binding agreements applicable to the interconnection. Section 252(a)(1) provides that any such voluntary agreement may be consummated “without regard” to the specific statutory requirements of Sections 251(b) and (c). If a voluntary agreement is not reached, either party may ask the applicable state commission to participate in the negotiations and to mediate any differences that may arise in the course thereof.²⁸ The ultimate negotiated agreement must, in any event, be submitted to the state

²⁸See 47 U.S.C. §252(a)(2).

commission for approval.²⁹ Alternatively, either party may petition the state commission to arbitrate any issues that remain unresolved between the parties.³⁰

With respect to arbitration of Section 251(b)(5) reciprocal compensation requests, Section 252(d)(2) sets forth the applicable pricing standard:

(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.—

(A) IN GENERAL.— For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

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

47 U.S.C. §252(d)(2) (emphasis added). As can be seen, the reciprocal compensation pricing standard is limited to costs on each carrier's network and does not address costs outside the respective carrier's network.

4. The Statutory Exemptions to Certain Interconnection Requirements

As protection to rural telephone companies and universal service within their service territories, Section 251(f)(1)(A) of the Telecom Act, 47 U.S.C. §251(f)(1)(A), exempts rural telephone companies from the aforesaid Section 251(c)

²⁹ 47 U.S.C. §252(b)(4).

³⁰ 47 U.S.C. §252(b)(1).

interconnection requirements.³¹ This exemption is commonly referred to as the "rural telephone company exemption." As previously noted, the Commission has declared ALLTEL to be a rural telephone company and, therefore, subject to the Section 251(f)(1)(A) exemption provisions.³² Verizon Wireless in this matter has taken no action to seek removal of this exemption, which it was required to do if it sought any Section 251(c) interconnection services.

Section 251(f)(2), 47 U.S.C. §251(f)(2), also allows local exchange carriers with fewer than two percent of the nation's subscriber lines to petition their state commission for a suspension of any Section 251(b) and (c) interconnection requirement. Pursuant thereto, the Commission previously granted ALLTEL a temporary suspension of its Section 251(b) and(c) interconnection requirements.³³

The 8th Circuit Court of Appeals in Iowa Utilities Board II,³⁴ made it clear that the rural telephone company exemption and suspension provisions do not take second place to the Act's pro-competition provisions:

In the Act, Congress sought both to promote competition and to protect rural telephone companies as evidenced by the congressional debates. See 142 CONG. REC. S687-01 (Feb. 1, 1996) (statements by Sen. Hollings and Sen. Burns); 142 CONG. REC. H1145-06 (Feb. 1, 1996) (statement by Rep. Orton). It is clear that Congress intended that all Americans, including those in sparsely settled areas served by small telephone companies, should share the benefit of the lower cost of competitive telephone service and the benefits of new telephone technologies, which the Act was designed to provide. It is also clear

³¹See Armstrong Communications, Inc., et al. v. Pa. P.U.C., 768 A.2d 1230 (Pa. Commw. 2001).

³²See ALLTEL Suspension Order.

³³Id.

³⁴Iowa Utilities Board, et al. v. FCC, 219 F.3d 744 (8th Cir.1999) ("Iowa Utilities Board II"), aff'd in part, rev'd in part, and remanded on other grounds in Verizon Communications Inc. v. FCC, 434 U.S. 467 (2002).

that Congress exempted the rural ILECs from the interconnection, unbundled access to network elements, and resale obligations imposed by § 251(c), unless and until a state commission found that a request by a new entrant that the ILEC furnish it any of § 251(c)'s methods to compete in the rural ILEC's market is (1) not unduly economically burdensome, (2) technically feasible, and (3) consistent with § 254. See 47 U.S.C. § 251(f)(1). Likewise, Congress provided for the granting of a petition for suspension or modification of the application of the requirements of § 251(b) or (c) if a state commission determined that such suspension or modification is necessary to avoid (1) a significant adverse economic impact, (2) imposing a requirement that is unduly economically burdensome, and (3) imposing a requirement that is technically infeasible; and is consistent with the public interest, convenience, and necessity. See 47 U.S.C. § 251(f)(2).

Iowa Utilities Board II, 219 F.3d at 761.

This Honorable Commission has likewise recognized that the pro-competition provisions in TCA-96 must not override the Act's rural telephone company and universal service protections:

While the overriding emphasis of TA-96 was to create a pro-competitive deregulated framework for the telecommunication industry nationwide, it must be remembered that the distinct universal service provisions of Section 251 must be balanced against competitive concerns, and this Commission should strictly limit the entry of competitors where universal service might be unreasonably jeopardized. For the rural areas of the Commonwealth, typically those served by the smaller ILECs, the continued provision of universal service and the provision of Section 254 are critical and more compelling.

Petition For Streamlined Form of Regulation and Network Modernization Plan of Citizens Telephone Company of Kecksburg, et al., Docket No. P-00971229 (Order entered April 28, 1999) at 21-22.

C. The Verizon Wireless Negotiations Request

Verizon Wireless, through the acquisition of 360 Communications, Inc., became a party to an agreement entered into between 360 Communications, Inc.

and ALLTEL for direct interconnection of their networks in Meadville, Pennsylvania. This interconnection agreement was dated September 17, 1997.³⁵ ALLTEL's witness, Lynn Hughes testified that the "rate specified in that agreement was 1.2¢ per minute of use and was applied reciprocally and symmetrically between the parties at the Meadville interconnection."³⁶ While this agreement was outstanding, the two carriers also exchanged traffic indirectly throughout Pennsylvania under ITORP. As Ms. Hughes explained:

With respect to indirect traffic, prior to April 2002, ALLTEL was paid approximately 3¢ per minute of traffic that Verizon Communications terminated on ALLTEL including all wireless traffic originated by Verizon Wireless. This termination and compensation arrangement was pursuant to the Commission approved ITORP process. Prior to April, 2002 only direct traffic was addressed by the interconnection agreement between Verizon Wireless and ALLTEL, and indirect traffic was terminated and compensated pursuant to the ITORP process.

ALLTEL St. 1 at 16-17.

In April 2002, Verizon Wireless ceased paying the ITORP rate contending that the 1.2¢ reciprocal compensation rate applicable to Meadville also applied to the indirect traffic being exchanged under ITORP. ALLTEL filed a complaint against Verizon PA requesting the Commission to direct Verizon Wireless' affiliate, Verizon PA, to compensate ALLTEL in accordance with the Exhibit G Agreement under ITORP. This complaint remains currently pending for initial decision before ALJ Paist in ALLTEL Pennsylvania, Inc. v. Verizon Pennsylvania, Inc., et al., at Docket No. C-20039321. While this complaint proceeding was pending, in order to implement cost based reciprocal compensation rates and to expand the agreement

³⁵ ALLTEL St. 1 at 16.

³⁶ Id.

to also include indirect traffic, ALLTEL terminated the September 17, 1997 Agreement with Verizon Wireless.³⁷

This Section 252 arbitration proceeding addresses the June 23, 2003 formal request by Verizon Wireless for negotiations of an interconnection agreement seeking Section 251(b)(5) reciprocal compensation between Verizon Wireless and ALLTEL on both the traffic they directly exchange under the prior September 17, 1997 Agreement and the traffic they indirectly exchange under ITORP.

With this background, ALLTEL will now direct its specific attention to the unresolved issues.

Issue 1: Applicability of Arbitration to this Petition

A. Issue:

Whether rural local exchange carriers are subject to the negotiation and arbitration process set forth in Section 252 (b) for disputes under Section 251 (b)(5) for traffic indirectly exchanged with CMRS?

B. Discussion:

Verizon Wireless in Issue 1 is demanding the Commission to make a ruling as to whether a rural local exchange carrier, in this case ALLTEL, is subject to Section 252 arbitration process on a negotiations request seeking Section 251(b)(5) reciprocal compensation on indirect three-party traffic.³⁸ ALLTEL in its Response has already stated that since it has agreed to the application of the Section 252 arbitration process for the purpose of resolving the Verizon Wireless Section 251(b)(5) negotiations request regarding the indirect traffic being exchanged by the

³⁷See Verizon Wireless St. 1.0 at 4.

³⁸See Verizon Wireless Hearing Exhibit 1 (Arbitration Petition) at 8-10.

parties, the question as to whether it is mandated to do so under the Telecom Act of 1996 is moot.³⁹

Verizon Wireless, however, continues to press the Commission for a ruling. Its witness Sterling asserted that the issue is not moot since the terms and conditions for rates, the measurement of traffic, and the obligation to share two-way facilities charges have not been resolved.⁴⁰ On rebuttal, he changed direction contending the issue is not moot since ALLTEL has reserved its rural exemption rights.⁴¹

This issue is moot. ALLTEL has agreed to the application of Section 252 arbitration and to Section 251(b)(5) reciprocal compensation on the indirect traffic in question. Thus, there is no issue before the Administrative Law Judge as to whether the Section 252 arbitration procedure applies. The matters raised by Mr. Sterling are actually other issues in this proceeding such as the determination of the reciprocal compensation rates to be established in this arbitration, not whether Section 252 arbitration is required under TCA-96. Ms. Hughes explained:

Mr. Sterling asserts that the reason this issue remains open is due to the need for adequate terms and conditions for rates, the measurement of traffic applicable to the reciprocal compensation rate, and the parties' obligations to share two-way facilities charges which have not been agreed to by the parties. Each of the reasons stated by Mr. Sterling however, is included in other issues (issues 8, 9, and 10) as detailed in the arbitration petition. Mr. Sterling responds to issue 8 on pages 14 and 19, to issue 9 on pages 15 and 20, and to issue 10 on page 21 of his direct testimony.

ALLTEL St. 1R at 3-4.

³⁹See ALLTEL Exhibit 4 (Response) at 12.

⁴⁰Verizon Wireless St. 1.0 at 5.

⁴¹Verizon Wireless St. 1.1 at 2.

As further recognized by Ms. Hughes, apparently Verizon Wireless is seeking a ruling on Issue 1 so that it can be applied in the remand proceeding at Docket Nos. P-00021995 thru P-00022015,⁴² which pending docketed proceedings on remand address its Section 251(b)(5) negotiations requests to a group of rural local exchange carriers. ALLTEL respectfully submits that this tactic should not be permitted.

In addition, contrary to Mr. Sterling's contention, the fact that ALLTEL possesses a rural exemption does not impact this issue. This arbitration concerns the application of Section 251(b)(5) reciprocal compensation, to which ALLTEL's rural exemption under Section 251(f)(1) does not apply.⁴³

"[A] case is moot when the issues presented are no longer 'live.'"⁴⁴ Pennsylvania courts likewise will not exercise jurisdiction to decide issues that do not determine the resolution of an actual case or controversy.⁴⁵ As stated by the Supreme Court of Pennsylvania:

It has long been the rule in Pennsylvania that this Court will not decide moot questions. We will do so only in rare instances where exceptional circumstances exist or where questions of great public importance are involved.

Ridley Park Shopping Center, Inc. v. Sun Ray Drug Co., 180 A.2d 1, 3 (Pa. 1962).⁴⁶

⁴²ALLTEL St. 1R at 4.

⁴³Under Section 251(f)(1), a rural telephone company exemption is only applicable to Section 251(c) interconnection obligations. See ALLTEL St. 1R at 16.

⁴⁴Powell v. McCormack, 395 U.S. 486, 496 (1969).

⁴⁵See Pa. State Police v. Paulshock, 789 A.2d 309 (Pa. Commw. 2001), rev'd on other grounds 836 A.2d 110 (Pa. 2003).

⁴⁶See also Schuster v. Gilberton Coal Co., 194 A.2d 346 (Pa. 1963); Manganese Steel Forge Co. v. Commonwealth, Dept. of Highways, 218 A.2d 307 (Pa. 1966).

In order for an issue to be justiciable, and not an impermissible request for an advisory opinion, there must be an actual dispute between the adverse litigants.⁴⁷ The general rule is that to be justiciable, an actual case or controversy must exist at all stages of the process.⁴⁸

Here, the parties have agreed to arbitration under Section 252(b) so there is no issue to be decided that will determine the resolution of the case. The issue has been raised in the pending remand proceeding before Judge Weismandel in Docket Nos. P-00021995, et al., and should be decided therein.

C. Summary:

Based upon the actual facts and Pennsylvania case law, Issue 1 is moot and *need not be addressed in this arbitration proceeding.*

Issue 2: Applicability of the FCC's Reciprocal Compensation Rules

A. Issue:

Do the FCC's rules interpreting the scope of an ILEC's reciprocal compensation obligations under Section 251(b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LEC's tandem facilities?

B. Discussion:

Verizon Wireless in Issue 2 of its Petition is also demanding this Commission to make a ruling that the FCC's reciprocal compensation rules apply to the intraMTA traffic being indirectly exchanged between the parties. This issue is moot for the same reasons as set forth in response to Issue 1, i.e. ALLTEL has agreed to

⁴⁷ See Grays Ferry Cogeneration Partnership v. PECO Energy Co., 998 F. Supp. 542 (E.D. Pa. 1998).

⁴⁸ Petition of Global NAPS South, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Relief, 1999 Pa. PUC LEXIS 58.

provide reciprocal compensation on indirect traffic. Thus, whether the FCC rules mandate that result is not at issue and need not be addressed.

As ALLTEL witness Hughes testified:

As I state earlier in my rebuttal, ALLTEL believes this issue is moot. Moreover, in his discussion on page 16, lines 14 – 23, Mr. Sterling has clearly confused the issue. This issue states “Do the FCC’s rules interpreting the scope of an ILEC’s reciprocal compensation obligations under 252(b)(5) apply to IntraMTA traffic that is exchanged indirectly through a third-party LECs’ tandem facilities.” Mr. Sterling states on line 15 that ALLTEL has agreed to reciprocal compensation for indirect traffic, but Verizon Wireless doesn’t agree to the rates proposed by ALLTEL. Thus, this is a rate issue. The appropriate rate to be applied to reciprocal compensation is a separate issue (Issue 9). Therefore, Mr. Sterling’s reasoning for this issue to remain open has no basis. Furthermore, on line 17, Mr. Sterling states that the scope of transport charges which ALLTEL agrees to pay are inconsistent with Verizon Wireless’s interpretation of the FCC’s reciprocal compensation requirements. While it is unclear what transport charges Mr. Sterling is referencing, these charges are appropriately addressed as a part of the resolution of issue 9. Mr. Sterling also states that during the course of negotiations, ALLTEL asserted that certain costs of transport facilities are not recoverable under the reciprocal compensation requirements. Mr. Sterling’s recollection is incorrect, as ALLTEL did not make such a comment.

ALLTEL St. 1R at 16-17.

It appears that Verizon Wireless is also seeking a ruling on this issue for the same reason, i.e. for application in the remand proceeding at Docket Nos. P-00021995, et al. Again, this tactic should not be permitted. This issue in this proceeding is moot as there is no controversy between ALLTEL and Verizon Wireless over the application of the FCC’s reciprocal compensation rules in establishing rates on their indirect exchange of traffic.

C. Summary:

Based upon the actual facts and Pennsylvania case law, Issue 2 is moot and need not be addressed in this arbitration proceeding.

Issue 3(a): Applicability of Section 251(b)(5) Reciprocal Compensation

A. Issue:

Does Section 251(b)(5) impose an obligation on the originating LEC to pay a CMRS provider for its traffic when it transits the network of a third-party LEC and terminates on the network of a CMRS provider?

B. Discussion:

This Issue 3(a) is identical to Issue 2. ALLTEL submits that since it has agreed to reciprocal compensation for indirect traffic, there is no pending controversy and the issue is moot.

C. Summary:

Based upon the actual facts and Pennsylvania case law, Issue 3(a) is moot and need not be addressed in this arbitration proceeding.

Issues 3(b) and 8: An ILEC Has No Responsibility For Costs in Connection with Services and Facilities Outside Its Network

A. Issue 3(b):

Whether pursuant to Section 251(b)(5), a local exchange carrier is required to pay any transit charges on traffic it originates indirectly to a CMRS provider?

Issue 8:

Whether a LEC is required to share in cost of dedicated two-way interconnection facilities between its switch and the CMRS carrier's switch to extend traffic beyond the LEC's local exchange area and network?

B. Discussion:

1. Introduction

Three primary questions must be resolved in this arbitration. One concerns rates and is addressed in response to Issue 9. The two other primary questions arise from Verizon Wireless' proposal to exchange traffic indirectly and concern whether ALLTEL has any obligation to incur costs in connection with meeting Verizon Wireless at a distant location. In this regard, the first is Issue 3(b), whether ALLTEL is responsible for any transportation and transit costs imposed by a third-party tandem provider to deliver ALLTEL originated traffic to a tandem location selected by Verizon Wireless at a location beyond ALLTEL's network and outside of its service territory. The second, Issue 8, is whether ALLTEL is responsible to share in the Verizon Wireless capital costs in constructing facilities between Verizon Wireless' switch and ALLTEL's network to establish a direct interconnection to the ALLTEL network. Verizon Wireless witness Sterling argued that third-party tandem provider costs on ALLTEL originated traffic are ALLTEL's responsibility and that ALLTEL must share in Verizon Wireless' capital costs to connect a Verizon Wireless switch to establish a direct interconnection to ALLTEL's network.⁴⁹ In contrast, ALLTEL witnesses Watkins⁵⁰ and Hughes⁵¹ contended any charges and costs incurred to meet Verizon Wireless at its chosen location off the ALLTEL network are the responsibility of Verizon Wireless.

⁴⁹See Verizon Wireless St. 1 at 14, 17-18, and 19-20.

⁵⁰See ALLTEL St. 3R at 20-30.

⁵¹See ALLTEL St. 1 at 3-8 and St. 1R at 11-13.

Verizon Wireless is seeking to retain use of the ITORP arrangement for the delivery of its wireless calls to ALLTEL and for the termination of ALLTEL originated calls to Verizon Wireless customers. Under ITORP today, the process does not permit the tandem provider, Verizon PA, to impose transit charges on local calls being originated by ALLTEL customers to Verizon Wireless numbers. Further, when the ITORP network was established, the Independents, including ALLTEL, were required to extend facilities to their boundaries only.⁵² Verizon Wireless seeks to retain use of the ITORP arrangement for its own economic reasons⁵³ but demands that any costs incurred to deliver ALLTEL traffic beyond ALLTEL's network be borne by ALLTEL. Further, while Verizon Wireless is not seeking to establish any new direct interconnections with ALLTEL, it demands language in the agreement requiring ALLTEL to bear a portion of its capital costs should it establish any new direct interconnections over the life of the agreement.

The Verizon Wireless positions are contrary to established regulatory principles and not consistent with applicable federal or state law. With respect to third-party transit charges in connection with the indirect traffic, ALLTEL witness Watkins testified:

Verizon Wireless must be responsible for the transit service that Verizon ILEC provides because this service involves the provision of network functions that are not the interconnection obligation of ALLTEL, involve the transport to a point of connection far beyond the ALLTEL network and certificated service territory and interconnection point obligations, and is an arrangement chosen by Verizon Wireless solely for the convenience of Verizon Wireless. Verizon Wireless, for the indirect transit traffic arrangements with ALLTEL, has not elected to establish an interconnection point on the network of ALLTEL;

⁵²See ALLTEL St. 1 at 12-13.

⁵³See Verizon Wireless St. 1.0 at 5.

Verizon Wireless has voluntarily chosen to utilize the indirect transit arrangement because it is more economic for Verizon Wireless to use a 3rd party's network than to interconnect directly with ALLTEL. This economically efficient choice for Verizon Wireless, to sit behind Verizon ILEC's tandem and arrange to use Verizon ILEC's network for completion of an "indirect interconnection" with ALLTEL rather than *meeting ALLTEL directly, however, can not be used as a basis to impose additional costs on ALLTEL to now go outside its network.*

ALLTEL St. 3R at 22.

With respect to direct interconnection, ALLTEL witness Hughes likewise challenged Verizon Wireless' claim that ALLTEL should share in Verizon Wireless' capital costs should Verizon Wireless elect to establish further direct interconnections to the ALLTEL network:

On page 14, lines 19-22 of his direct testimony, Mr. Sterling states that it is Verizon Wireless's position that federal law requires LECs to bear the cost of delivering traffic to CMRS carriers anywhere within the MTA in which the call originated. Mr. Sterling does not cite a specific federal law or regulation requiring the LEC to bear any costs of facilities outside its franchised territory, since no such law or regulation exists. In the regulation of local exchange carriers, LECs have been responsible for the network facilities within their franchised service territories. Verizon Wireless now seeks to expand the LEC's cost responsibilities to include transport facilities to a Verizon Wireless switch that is within the MTA. If Verizon Wireless succeeds in this proposal even without a federal rule requiring this, the CMRS provider could change the location anywhere within the MTA and demand the LEC be required to pay transport to their switch, which could be out of state. For the reasons stated in Mr. Watkins' testimony, Mr. Sterling's conclusions are unsupported.

ALLTEL St. 1 at 13 (emphasis added).

2. ALLTEL's Duties Are Limited to Interconnections to Its Network

Section 251(a)(1) of the Telecom Act of 1996 imposes a general duty on all telecommunications carriers to interconnect directly and indirectly with other carriers via the public switched network and to use equipment and technical approaches

that are compatible with all network participants. The FCC's implementing rules⁵⁴ do not require any specific standards, hierarchical network arrangements, business relationships, compensation arrangements, or service obligations. This section is separate and apart from the Section 251(b) and (c) requirements imposed under the Act on local exchange carriers. There is no nexus between Section 251(a) and the standards set forth in Sections 251(b) and (c), including the Section 251(b)(5) reciprocal compensation standard. ALLTEL is fulfilling its Section 251(a)(1) duty to be interconnected directly and indirectly by establishing interconnection with carriers that seek network arrangements to the ALLTEL network. The direct interconnection with Verizon Wireless at Meadville and the ITORP process are examples of such arrangements.⁵⁵ However, under all these arrangements, ILECs have only been required to extend their facilities and services within their service territory boundaries.

Under established regulatory principles, an ILEC is not responsible for interconnection or network arrangements outside of its own service area network. An ILEC's interconnection obligations arise only with respect to the geographic area within which it is certificated to operate and with respect to its incumbent network and facilities in that area. Section 251(h)(1)(A) of the Telecom Act of 1996, 47 U.S.C. §251(h)(1)(A), sets forth the definition of an "incumbent local exchange carrier" for the purpose of interconnection requirements as follows:

For purposes of this section, the term 'incumbent local exchange carrier' means, with respect to an area, the local exchange carrier

⁵⁴ See 47 C.F.R. §51.100.

⁵⁵ ALLTEL St. 3R at 5-6.

that---on the date of enactment . . . provided telephone exchange service in such area

47 U.S.C. §251(h)(1)(A) (Emphasis added.)

Consistent therewith, the FCC's rules state that "[a]n incumbent LEC shall provide . . . interconnection with the incumbent LEC's network: (1) . . . ; (2) at any technically feasible point within the incumbent LEC's network["⁵⁶ Accordingly, to the extent that the Telecom Act requires ALLTEL, an operating ILEC, to provide interconnection with its network, that interconnection arises solely in connection with its existing network when the request is made. An ILEC's responsibilities are limited to its network. Consistent therewith, the Section 252(d)(2) pricing standard applicable to reciprocal compensation limits cost responsibility to "transport and termination on each carrier's network facilities."⁵⁷

In Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part, and remanded in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999) ("Iowa Utilities Board I"), the Eighth Circuit Court of Appeals addressed the equal quality principles in TCA-96 and decided that an ILEC does not have the obligation to provide interconnection to other carriers at a level greater than it provides for itself and that there is no requirement to provide superior interconnection arrangements to requesting carriers. As the Court stated, the Act "does not mandate that incumbent LECs cater to every desire of every requesting carrier."⁵⁸

⁵⁶47 C.F.R. §51.305. (Emphasis added.)

⁵⁷47 U.S.C. §252(d)(2).

⁵⁸Iowa Utilities Board I, 120 F.3d at 813.

Accordingly, an ILEC's interconnection duties are limited to its network since it has never had an obligation to provide services outside of its service territory.

In the context of reviewing issues related to CMRS interconnection, the Ninth Circuit Court of Appeals further confirmed that interconnection obligations are established with respect to an ILEC's existing network, recognizing that "Sections 251 and 252 of the Act require ILECs to allow CMRS providers to interconnect with their existing networks in return for fair compensation."⁵⁹

Since the ILEC in this proceeding, ALLTEL, has no requirement to establish a point of interconnection with another carrier, including a CMRS provider, either directly or indirectly, at a location outside its service territory, it cannot be forced to bear costs arising from the economic decision of the petitioning carrier to not directly interconnect but instead to locate its switch only in RBOC service territories and to use a third-party RBOC tandem outside the ILEC's territory to indirectly exchange traffic.⁶⁰

Citing Section 251(c)(2)(B), 47 U.S.C. §251(c)(2)(B), ALLTEL witness Hughes addressed Issues 3(b) and 8 in the context of long-established regulatory practice and correctly concluded that ALLTEL's cost responsibilities are limited to costs within its service territory and network:

⁵⁹U.S. West v. Washington Utilities and Transportation Commission, 255 F.3d 990 (9th Cir. 2001) ("U.S. West v. Wash. Utils."). Further, it is well settled law that even with respect to its own service territory, ALLTEL is not under the duty to extend its network to each and every prospective customer regardless of location. Through Commission approved line extension policies, this Commission has recognized that prospective customers located within an ILEC's service territory but off its existing network must share in the ILEC's costs to extend facilities to serve such customers. See Final Rulemaking Re Line Extensions, 1996 Pa. PUC LEXIS 162.

⁶⁰Requiring ALLTEL to bear these costs would be discriminatory and confiscatory in violation of ALLTEL's constitutional rights.

Verizon's proposed routing configuration and cost imposition has not historically existed in the telecommunications industry. In establishing local calling between telecommunications companies, for example in an EAS arrangement, each of the LECs' NPA-NXXs that are included in the local calling area are in separate and distinct rate centers that are directly connected. In this situation, Verizon Wireless has established an NPA-NXX within an ALLTEL rate center to receive local calling from ALLTEL customers and the associated switch for this NPA-NXX is located outside of the ALLTEL territory thus causing indirect routing of all traffic to this NPA-NXX. ALLTEL should not incur any third party transit charges associated with the routing of traffic to Verizon merely due to Verizon's choice, for purely Verizon's own economic reasons, of a distant network location. To my knowledge, an independent ILEC has never been required to incur additional costs to carry traffic to a point outside its service territory simply to suit the economic choice of a competitor.

Here Verizon Wireless has specifically chosen not to establish direct interconnection facilities to ALLTEL and is attempting to place the costs of reaching Verizon's network on ALLTEL and ultimately upon ALLTEL's customers. Verizon Wireless argues that ALLTEL must be financially responsible for either constructing or using a transport facility to transport traffic originated by its customers to a point of interconnection with Verizon Wireless at any point designated by Verizon Wireless, irrespective of the distance from ALLTEL's network to that point of interconnection. There is no logical basis for Verizon Wireless's demand that ALLTEL obtain a service from Verizon ILEC for which ALLTEL must pay Verizon ILEC to transport traffic beyond ALLTEL's network. Nor does ALLTEL have any obligation to establish an interconnection point with Verizon Wireless at a point outside of ALLTEL's network. Section 251(c)(2)(B) of the Act requires ALLTEL to interconnect with Verizon "at any technically feasible point within [ALLTEL's] network." ALLTEL has no obligation to establish and pay for interconnection with other requesting carriers at any point outside ALLTEL's network due to Verizon Wireless' desire not to establish a direct interconnection. While Verizon Wireless has the choice to interconnect indirectly in lieu of a direct interconnection, it cannot force ALLTEL to undertake obligations beyond ALLTEL's own network responsibilities and to incur costs to deliver traffic outside its network simply to accommodate Verizon Wireless' choice.

ALLTEL St. 1 at 6-7.

* * *

ALLTEL is responsible for facilities utilized in transporting traffic to Verizon Wireless for both direct and indirect interconnection within the ALLTEL interconnected network. ALLTEL cannot be responsible for any facilities or expenses associated with the use of any third party's facilities outside ALLTEL's interconnected network for local calls between the parties. Today, when there is a mandatory Extended Area Service (EAS) arrangement between two local exchange carriers (LECs), each LEC is responsible for the facilities contained in its respective franchise territory and recovers its' costs from its' end users. Each LECs' facilities and costs responsibility end at the meet point. This is precisely the scenario envisioned by the FCC in 47 CFR §51.5 where "meet point" is defined as "a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends." In the EAS scenario, neither company is assessed a charge for the use of any facilities outside its franchise territory. To make ALLTEL interconnect at a point outside its network and be responsible for the costs of constructing or using facilities beyond its network, would be totally inconsistent with §251(c)(2)(B) of the Act.

ALLTEL St. 1 at 10-11.

3. The FCC's Reciprocal Compensation Rules Do Not Impose Third-Party Transit Charges on ALLTEL

With respect to Issue 3(b) pertaining to the indirect traffic, Verizon Wireless witness Sterling argued that under "the FCC's reciprocal compensation rules [47 C.F.R. §703(b)], the originating carrier is responsible for the costs of the traffic that is originated on its network and delivered to the terminating carrier."⁶¹ While Mr. Sterling correctly recites the originating carrier responsibility rule, he takes that rule far beyond its context when he applies it to traffic indirectly exchanged through a third-party at a location chosen by Verizon Wireless for economic reasons at a location outside ALLTEL's service territory.

Section 251(b)(5) sets forth the reciprocal compensation requirements for "transport and termination of telecommunications traffic." The FCC's Subpart H

⁶¹Verizon Wireless St. 1.0 at 11.

rules implementing the reciprocal compensation statutory provision set forth the definitions, conditions, and scope of traffic subject to reciprocal compensation.⁶² These rules do not impose third-party transit charges on traffic originated by an ILEC. First, as addressed below, the Subpart H rules are confined to situations where a technically feasible interconnection point is established between two carriers, not two interconnection points among three different carriers. Second, the FCC has explicitly acknowledged that its rules do not address transit traffic arrangements. Third, as before discussed, the FCC and the courts have both concluded that the interconnection requirements that apply to ILECs relate solely to obligations regarding their existing networks. Such obligations do not apply to networks of other carriers in different service areas, including third-party transit providers at tandem locations outside the ILECs' networks.

a. The FCC's Subpart H Rules Regarding Reciprocal Compensation Do Not Impose Third-Party Transit Charges upon the ILEC

The reciprocal compensation rules in Subpart H are actually limited to traffic arrangements where a direct interconnection point is sought or established between two carriers. Section 51.701 of the FCC's Subpart H rules sets forth the definitions, conditions, and scope of traffic which form the basis for the reciprocal compensation framework. By their explicit terms, the Subpart H Rules applicable to reciprocal compensation apply to a framework where an actual physical interconnection point is established between the networks of two carriers that are the parties to the compensation arrangement. The FCC's discussion in the adoption of these rules describes this reciprocal compensation framework, as follows:

⁶²See 47 C.F.R. §51.221. The Subpart H rules are attached as Exhibit B to ALLTEL St. 3R.

[R]eciprocal compensation for transport and termination of calls is intended for a situation in which two carriers collaborate to complete a local call.

We define "transport" for purposes of Section 251(b)(5), as the transmission of terminating traffic that is subject to section 251(b)(5) from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party[.]

In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) ("First Report and Order") at paras. 1034 and 1039 (emphasis added).

Accordingly, the Subpart H rules do not impose any third-party transit cost responsibility on the ILEC. In this proceeding, ALLTEL has agreed to the application of the FCC's Subpart H Rules for establishing the applicable reciprocal compensation rates between ALLTEL and Verizon Wireless in connection with their indirect traffic arrangement employing Verizon PA tandems. This agreement, however, does not subject ALLTEL to transit cost responsibility since, as discussed above, the FCC's rules do not encompass third-party transit charges for reciprocal compensation purposes.

b. The FCC Has Acknowledged That Its Interconnection Rules Do Not Apply to Indirect Three-Party Transit Traffic

Three-party transit arrangements are not part of the FCC's interconnection requirements or rules. In over 700 pages of the FCC's original First Report and Order and the FCC's implementing interconnection rules, neither the concepts of "transit service" and "transit traffic," nor the word "transit" ever appears. In an FCC arbitration of interconnection agreements between Verizon (in its capacity as an incumbent LEC in Virginia) and three CLECs, the FCC confirmed the fact that its

rules and standards do not address transit traffic arrangements. The FCC concluded that it “had not had occasion to determine whether incumbent LECs have a duty to provide transit service under the [Section 251(c)(2)] provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty.”⁶³

Accordingly, the responsibility for third-party transit charges in the three-party ITORP transit arrangement now at issue in this proceeding involving Verizon Wireless, Verizon PA, and ALLTEL, is outside the scope of the FCC’s interconnection rules applicable to reciprocal compensation and outside the originating carrier responsibility rule cited by Verizon Wireless witness Sterling.

c. Third-Party Transit Charges Are Not Reciprocal Compensation

ALLTEL witness Hughes logically explained why third-party transit charges by definition cannot be considered reciprocal compensation under Section 251(b)(5) and the FCC rules:

Mr. Sterling relies on Rule 51.703(b) as the basis for requiring ALLTEL to pay any transit charges Verizon ILEC may impose. As Mr. Sterling recognizes, however, this FCC rule applies to reciprocal compensation, not payment of transit charges to a third party for transporting indirect traffic on the third party’s network. Reciprocal compensation defines the compensation process between two parties. Payment of transit charges to a third party cannot be defined as reciprocal since there is no reciprocal charge that would be

⁶³See In the Matter of In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., 17FCC Rcd 27039 (2002) at para. 117.

assessed the third party. This transit rate can only be charged to Verizon Wireless by the third party.

ALLTEL St. 1R at 11 (referring to Mr. Sterling's recognition that the FCC's reciprocal compensation rules "set up a system for two parties to establish arrangements and bill each other[.]")⁶⁴

Ms. Hughes further explained that ALLTEL would have no means to recover transit charges associated with Verizon Wireless' choice of an interconnection point outside the ALLTEL network other than through rate increases to its customers.⁶⁵ Even this recovery would be problematic since transit charges would be imposed on a minute of use basis whereas ALLTEL's customers' rates are set on a flat-rate basis.⁶⁶

4. A Third-Party Transit Provider Has No Right to Impose Transit Charges on ALLTEL

Under the present ITORP arrangement, Verizon PA has no authority and does not impose transit charges on ALLTEL in connection with local traffic its customers originate to wireless customers. What Verizon Wireless is actually seeking by way of this arbitration is a contract provision that would require ALLTEL to bear responsibility for any transit charges that may be imposed by the Verizon Wireless affiliate, Verizon PA, in connection with it transporting and transiting a local call from an ALLTEL customer to a Verizon Wireless customer within an MTA. As before stated, ALLTEL does not have any responsibility for costs arising from

⁶⁴Verizon Wireless St. 1 at 18-19.

⁶⁵ALLTEL St. 1R at 12.

⁶⁶A requirement for ALLTEL to absorb these costs would result in confiscation if ALLTEL could not recover these costs from its customers. Further, placing the cost responsibility on the ALLTEL customers and allowing the real cost causer, Verizon Wireless, to escape its obligations would be totally unreasonable.

Verizon Wireless' economic decision not to directly interconnect with the ALLTEL network but instead to employ the services of its affiliated third-party tandem provider at a location outside the ALLTEL network.

Under ITORP, the traffic between ALLTEL and Verizon Wireless is commingled with other traffic over the ITORP toll trunks. Mr. Watkins explained this network arrangement and the reasons why Verizon Wireless and its affiliate Verizon PA must not be permitted to force ALLTEL to assume responsibility for Verizon PA transit charges:

In simple terms, there is a hierarchy among switches. Tandem switches are at a higher level than end office switches. Tandem switches serve larger geographic areas and switch traffic to and from other tandem switches and to and from lower level switches; *i.e.* end office switches. End office switches generally switch traffic to specific end users within a confined exchange area or exchange areas. In the call routing process, carriers most often first direct their traffic to a tandem switch where this traffic is then switched to an end office switch for completion to an end user. Each end office switch is exclusively connected to a specific tandem switch for such routing purposes. This condition is often described as a subtending status; *i.e.*, the specific end office subtends the tandem. A subtending end office receives traffic from a tandem that comes from multiple sources. As such, these different kinds of traffic are sent in tandem; *i.e.*, commingled over the same subtending trunk group.

* * *

In a competitive world, no carrier can be forced to accept involuntarily a subtending, subordinate network position that would require it to be dependent on its competitor. When an end office of one LEC subtends a tandem office of another LEC, the subtending LEC is disadvantaged in that it cannot directly identify, measure, or switch, on a real time basis, the traffic of individual originating carriers (including distinguishing the tandem provider's traffic from individual third-party traffic) that the tandem provider combines on a single trunk group under the typical transit traffic arrangement.

No law or regulation requires a carrier like ALLTEL or other similarly situated LECs to subtend a Verizon ILEC tandem. There will be a chilling effect on competition if Verizon ILEC were allowed either

unilaterally, with its affiliate, or with any other CMRS carrier, to force another LEC into a network and business arrangement under which Verizon ILEC establishes itself always at the center, between and among all other carriers, as the tandem switch and transport provider. From a policy perspective, if such opportunity existed for Verizon ILEC, it would provide Verizon ILEC and its affiliate Verizon Wireless with unwarranted and an anti-competitive advantage over other carriers. That is exactly why such opportunity does not exist.

ALLTEL St. 3R at 17-18.

As Mr. Watkins testified, Verizon Wireless and Verizon PA have neither the authority nor the right to unilaterally change the existing ITORP agreements between Verizon PA and ALLTEL by forcing ALLTEL to continue to utilize the ITORP arrangement but now incur transit cost responsibility. The Exhibit G Agreement between Verizon PA and ALLTEL under ITORP has been in place since 1991⁶⁷ and does not place any responsibility on ALLTEL for transit costs on non-toll traffic being originated by ALLTEL's customers. If Verizon Wireless seeks to retain use of the ITORP network arrangement, a new process must be put in place to modify ITORP.⁶⁸

Verizon Wireless witness Sterling contended that "[i]f ALLTEL wishes to avoid third-party transit charges for traffic it originates, ALLTEL is free to choose to connect directly to Verizon Wireless."⁶⁹ ALLTEL, consistent with its responsibility in these sections, however, stands ready and willing to interconnect with Verizon

⁶⁷See Verizon Wireless Exhibit MBS-3.

⁶⁸ALLTEL in this arbitration has stipulated to changing ITORP to a reciprocal compensation arrangement between ALLTEL and Verizon Wireless, thereby removing Verizon PA from any billing responsibility. However, as Ms. Hughes testified, before any such modification can be implemented, there must be a "new agreement with Verizon ILEC." ALLTEL St. 1 at 17. ALLTEL and Verizon Wireless cannot unilaterally change the ITORP agreement without the express agreement and/or acknowledgment of Verizon PA.

⁶⁹Verizon Wireless St. 1.1 at 5.

Wireless at any technically and economically feasible point on its network. Even the Verizon Wireless witness, Mr. Sterling, acknowledged that it does not expect ALLTEL to extend facilities outside its network.⁷⁰ However, it is Verizon Wireless that refuses to exercise its right to directly interconnect at any such point on the ALLTEL network.

Verizon Wireless' decision not to pursue a direct interconnection under Section 252 is due to its own economic considerations. Indeed, the FCC's initial recognition of "indirect interconnection" was as an economically efficient means for two competing LECs to exchange traffic with each other by using the direct connections each had with an ILEC, almost always an RBOC.⁷¹ No ILEC, however,

⁷⁰See Verizon Wireless St. 1 at 14.

⁷¹See, e.g., First Report and Order, 11 FCC Rcd 15499, at paras. 985-1000. In this section of the First Report and Order, the FCC attempted to address two issues: (1) Whether certain carriers, such as CMRS and pagers, fell under the definition of "telecommunications carrier;" and (2) whether section 251(a) allowed "nonincumbent LECs discretion to interconnect directly or indirectly with a requesting carrier." Id. at para. 986 (emphasis added). In other words, in the second part of the FCC's review, the FCC was attempting to determine what interconnection rights non-ILECs ("telecommunications carriers") had, since the *interconnection* rights and obligations of Incumbent LEC's were clearly set forth in Section 251(c). In reviewing comments provided, the Commission noted argument from two "nonincumbent" LECs that the goal of allowing both direct and indirect interconnections under Section 251(a) was to ensure that all subscribers of one carrier are able to reach subscribers of other carriers, a goal those LECs claimed was achieved when two competitors were allowed to interconnect to an incumbent LEC's network. Id. at para. 990. The FCC similarly noted the argument of Comcast, a non-ILEC, that allowing competitors to interconnect "directly or indirectly" reflected the goal of TCA-96 to allow competitors to interconnect with other carriers in a *cost efficient manner*. Id. In its discussion, the FCC concluded that

telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. Unlike section 251(c), which applies to incumbent LECs, section 251(a) interconnection applies to all telecommunications carriers including those with no market power. Given the lack of market power by telecommunications carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect connection (e.g., two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a).

Id. at para. 997 (emphasis added). The FCC declined to hold all telecommunications carriers to all forms of interconnection in section 251, noting that "Section 251 is clear in imposing different obligations on carriers depending upon their classification (i.e., incumbent LEC, LEC, or
(continued...)

has ever been required to extend facilities beyond its network or service territory or to purchase third party services in order to serve the economically efficient planning of a requesting carrier to interconnect indirectly rather than directly connect to an ILEC.

Now, not only does Verizon Wireless seek to retain the ITORP arrangement from a network standpoint due to economic considerations, it seeks to impose transit cost responsibility resulting for its decision on ALLTEL. While ALLTEL will agree to retain the existing ITORP indirect interconnection and to change the ITORP access compensation to a reciprocal compensation arrangement using cost-based rates, ALLTEL refuses to accept and submits it cannot be mandated to accept responsibility for charges from the third-party transit provider arising solely due to Verizon Wireless' economic decision not to directly interconnect to ALLTEL's network.

5. The Verizon Wireless Transit Cost Position Is Contrary to Regulatory Decisions

The New York Public Service Commission ("NY PSC") recently addressed the issue of third-party transit cost responsibility on indirect traffic originating from an ILEC and terminating to other carriers and found conclusively that ILECs are

⁷¹(...continued)

telecommunications carrier)[,]" noting further that "section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points" but that "direct interconnection [was] not required under section 251(a) of all telecommunications carriers." *Id.* So, while two non-ILECs can choose to efficiently exchange traffic by indirectly interconnecting through an ILEC, the less stringent form of indirect interconnection under 251(a) applicable to all carriers does not impose upon ILECs a greater interconnection burden (to go outside their territory and off their network) than what is set forth in section 251(c). Accord In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, 15 FCC Rcd 13523, 2000 FCC LEXIS 3805 (Order released July 24, 2000) (wherein the FCC characterized Section 251(a) as allowing two competing entities to connect indirectly through an ILEC, and characterized indirect interconnection of two competing entities through one ILEC as "voluntary private agreements"). *Id.* at para. 28.

responsible for delivering traffic to their borders, but not beyond. The NY PSC initiated a proceeding to address complaints by customers that certain calls either failed to reach their destination or were incorrectly billed at toll rates. In the first of a series of orders entered in the proceeding, addressing ILEC calls to CLEC customers, the NY PSC found that customers had difficulties with their calls – either failing to reach their destination or incurring toll charges – because no provision had been made for physical interconnection between the CLECs and independent ILECs.⁷² This, the Commission found, was unlike the situation between the independent ILECs and Verizon New York, where traffic exchange arrangements had been put into place to handle calls to a customer outside the geographic area associated with the assigned NXX.⁷³

One of the issues the NY PSC requested comments on was “Whether there were any unique costs incurred when a third party transported calls between the originating carrier and the requesting CLEC and if there were how such costs should be compensated?”⁷⁴ Just as Verizon Wireless argues in this arbitration proceeding,⁷⁵ the CLECs also argued that it would be inefficient for them to physically interconnect with every independent ILEC for the exchange of relatively small amounts of traffic, and that where small amounts of traffic were involved, calls

⁷²Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, Case 00-C-0789, 2000 N.Y. PUC LEXIS 1047 (Order Issued and effective December 22, 2000) at 2.

⁷³Id.

⁷⁴Id. at 2-3.

⁷⁵Verizon Wireless St. 1.0 at 3, 10; Verizon Wireless St. 1.1 at 5 (“Certainly, Verizon Wireless should not be required to build a switch in the territory of every Independent Telephone Company”).

between independent ILECs and CLECs could be carried by a third party LEC such as Verizon New York.⁷⁶ The NY PSC, however, required CLECs to have interconnection arrangements in place with the independent ILECs prior to activating a NXX code, concluding that “[a] fundamental network and service arrangement with Independents is an essential element in accomplishing that goal [of completed calls and proper billing].”⁷⁷ The NY PSC also made it abundantly clear, however, that because the independent ILECs’ responsibility was limited to delivering traffic to their service area borders, CLECs must either provide their own interconnection facilities or lease facilities to the meet point.

Prior to activating an NXX code that can be accessed on a local basis by an independent telephone company’s customer, CLECs must enter into an arrangement establishing fundamental network and service arrangements. CLECs must make arrangements for interconnection facilities to a meet-point designated as the Independent Telephone Company boundary. Independent Telephone Companies are responsible for delivering traffic to their own service area borders.

Id. at 9, Ordering Paragraph 1 (emphasis added). With this obligation appropriately placed upon the CLECs, no unique costs would be incurred by the independent ILECs in transporting calls to CLECs.⁷⁸

In his rebuttal testimony, Verizon Wireless witness Sterling asserted that “[t]he NY PSC decision addressed only CLECs – CMRS was not included. The regulatory treatment of CLECs is very different from the treatment of CMRS

⁷⁶Id. at 7.

⁷⁷Id. at 4, 9.

⁷⁸Id. at 6.

providers in certain areas, and this is one of these areas.”⁷⁹ As noted by ALLTEL witness Hughes, however, while the initial NY PSC order addressed CLEC traffic, by further order of the NY PSC at the same docket number, the NY PSC broadened the application of the requirement that interconnection agreements be in place before NXX code activation to all carriers, including CMRS carriers.⁸⁰ Further, the NY PSC reiterated its position that “Independents’ responsibility is limited to delivering traffic to their own service area borders,” and the obligation for delivery beyond their borders was on the other requesting carrier “in order to allow efficient interconnection to Independents.”⁸¹

After entertaining comments from the wireless industry, the NY PSC issued yet another order in this same proceeding. In that order, the NY PSC lifted the requirement on wireless carriers to provide proof of interconnection arrangements prior to activating a code upon learning that an arrangement already existed between the independent ILECs and Verizon New York for carrying and completing calls to wireless carriers’ customers and that the wireless carriers had interconnection agreements with the tandem (Verizon NY) provider.⁸² And in this further order, after specifically addressing comments from the wireless industry, the NY PSC again reiterated that “all carriers are responsible for traffic being carried

⁷⁹Verizon Wireless St. 1.1 at 3.

⁸⁰Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, Case 00-C-0789, 2001 N.Y. PUC LEXIS 696 (Order Issued and effective September 7, 2001) at 11.

⁸¹Id. at 7.

⁸²Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, Case 00-C-0789, 2002 N.Y. PUC LEXIS 390 (Order Issued and effective August 16, 2002) at 5.

from the independents' service territory borders to the facilities used to provide their service."⁸³

Clearly, the NY PSC has determined that ILECs are responsible for bringing meet-point facilities only to service territory boundaries. Further, the NY PSC has correctly determined consistent with long-established regulation that any transit costs arising in connection with another carrier's decision to use a third-party tandem outside of an ILEC's service territory (as a more efficient means of interconnecting rather than directly interconnecting with the ILEC) is the responsibility of the other carrier.⁸⁴ And clearly, the NY PSC included CMRS carriers in these determinations.

Consistent with this New York decision, the FCC has found it appropriate for a third-party tandem provider to assess the terminating CMRS carrier in exactly the same manner. In Texcom, Inc. d/b/a Answer Indiana, Complainant, v. Bell Atlantic Corp., d/b/a Verizon Communications, Defendant, Order on Reconsideration, 17 FCC Rcd 6275 (2002), a complaint proceeding between a CMRS provider and Verizon North, the FCC confirmed that the third-party tandem provider (i.e. Verizon PA) had not violated the Section 51.703 rules when Verizon PA charged the terminating wireless provider for "traffic that originates on a third carrier's network, transits the [intermediary carrier's] network, and terminates to the [CMRS provider]."

⁸³Id. at 5 (emphasis added).

⁸⁴Even Verizon Wireless' affiliate Verizon New York agreed with this determination. As reported by the NY PSC, "Independents should not be required to extend their facilities beyond their service areas according to Verizon, and Independents should also not be required to provide connecting facilities." September 7, 2001 Order at 6-7.

The FCC has similarly decided in other proceedings involving Bell operating companies and CMRS providers that the CMRS providers are responsible for the indirect transit costs on ILEC originated calls. For example, in TSR Wireless the FCC decided:

Section 51.703(b) of the rules affords carriers the right not to pay for delivery of local traffic originated by the other carrier. However, [the CMRS provider complainants] are required to pay for "transiting traffic," that is, traffic that originates from a carrier other than the interconnecting LEC [in this case U.S. West] but nonetheless is carried over the LEC network to the [CMRS provider's] network.

TSR Wireless, LLC v. U.S. West Communications, Inc., Memorandum Opinion and Order, 15 FCC Rcd 11166, 11177, n. 70 (2000), aff'd sub. nom., Qwest Corp. v. FCC, 252 F.3d 462 (D.C. Cir. 2001).

6. The Verizon Wireless Position Goes to the Preposterous in Claiming ALLTEL Must Bear the Cost Anywhere Within an MTA

Verizon Wireless' position with respect to ALLTEL's interconnection cost responsibility for meeting Verizon Wireless anywhere within an MTA without regard to ALLTEL's network is preposterous.⁸⁵

ALLTEL witness Watkins, by use of maps, demonstrated that if the Verizon Wireless position were adopted, it would subject ALLTEL "to paying Verizon ILEC for use of a tandem anywhere in Pennsylvania or the nine neighboring states of Ohio, West Virginia, Virginia, Maryland, New Jersey, Delaware, New York, Connecticut and Vermont."⁸⁶ The same rationale would apply to any switch location chosen by Verizon Wireless for the purpose of direct interconnection. He

⁸⁵Verizon Wireless St. 1.0 at 11.

⁸⁶ALLTEL St. 3R at 29.

highlighted the absurdity in the Verizon Wireless position using the New York MTA as an example:

For example, the New York MTA stretches from the northeastern portions of Pennsylvania all the way to the Canadian border in northern New York and Vermont and includes most of Eastern New York, all of Connecticut, a significant portion of Northern New Jersey, and most of Vermont. No LEC, including the incumbent Verizon ILEC or any other LEC operating in portions of northeastern Pennsylvania, provides a LEC service which requires the delivery of local exchange service calls to, for example, Burlington, Vermont, and no LEC is required to provide such a service. No LEC in Pennsylvania is required to provide an intrastate local exchange service which involves transporting calls to Burlington, Vermont. Such calls are not included in a rural LEC's own local service offering and are not even a service provided by a LEC. While the geographic expanse of the New York MTA is most dramatic to illustrate in impossibility of Mr. Sterling's suggestion, the other MTAs that include portions of Pennsylvania also include areas at great distances away in other states.

ALLTEL St. 3R at 28.

Verizon Wireless witness Sterling endeavored to support his position stating that the Bell companies meet CMRS providers anywhere within an MTA.⁸⁷ Mr. Watkins countered this contention emphasizing the interconnection points with the Bell companies must first be "premised by the condition that it [the interconnection point] must be technically feasible and on the existing network of the particular Bell company."⁸⁸

That CMRS carriers can choose an interconnection point anywhere within the MTA was founded first on the premise that the interconnection point was on an

⁸⁷Verizon Wireless St. 1.0 at 11.

⁸⁸ALLTEL St. 3R at 26.

ILEC's network.⁸⁹ When the RBOCs (the ILECs involved in most cited case law) attempted to dictate where on their network a CMRS carrier could locate its switch, the FCC declared that it was the CMRS carrier's choice anywhere within the MTA. Anywhere, that is, on the RBOC's network, within the MTA. Having settled that issue as between the RBOCs and the CMRS carriers with respect to CMRS switch locations for direct interconnection points, that holding cannot now be applied to independent ILECs to impose upon them a greater burden for indirectly interconnecting than is imposed on the RBOCs for direct interconnections. The underlying premise of the CMRS carriers' right to choose an interconnection point anywhere within the MTA remains premised on the basic understanding that the interconnection point will be on the ILEC's network. If not, if the CMRS carrier determines that an indirect interconnection through a third party presents a more economical option than directly connecting with an independent's network, then the CMRS carrier must be responsible for the costs to deliver traffic to and from the ILEC's network. Any other result presents an absurd construction of the intent of the Telecom Act of 1996 and the obligations on ILECs. It also presents a discriminatory result for rural ILECs as no telecommunication carrier will ever choose to locate their facilities on anything but RBOC systems. Rural ILECs will be wholly dependent upon and subservient to RBOC transit services and network architecture, and exposed to transit costs covering multi-state areas - an obligation unprecedented in the history of telecommunications regulation.

⁸⁹T. 189-90.

7. Requiring ALLTEL to Incur Costs to Deliver Traffic to Verizon Wireless Off ALLTEL's Network and Outside Its Service Territory Without Allowing ALLTEL to Recover Those Costs Would Be in Violation of the U.S. Constitution

The U.S. Constitution guarantees against private property being taken for the public good without just compensation. Verizon Wireless' position that ALLTEL must bear interconnection cost responsibility for meeting Verizon Wireless anywhere within an MTA without regard to the location of ALLTEL's actual network and service territory is legally unsupported and, if adopted, would benefit only Verizon Wireless and its affiliated companies and their customers at ALLTEL's expense. Should such a result be adopted in this proceeding and should ALLTEL be precluded from recovering those additional costs either through appropriate rates and/or customer end user charges, the result would be an unconstitutional deprivation of ALLTEL's property rights.⁹⁰ A utility must be permitted to obtain a revenue stream sufficient to "maintain its financial integrity, to attract capital, and to compensate its investors for the risk [they have] assumed[.]"⁹¹ Accordingly, compensation must be sufficient to cover ALLTEL's actual costs plus a reasonable profit.

Further, established principles of statutory construction require that statutes be construed to avoid unconstitutional results.⁹² ALLTEL contends that requiring ILECs to make interconnection terms available only with respect to their current

⁹⁰T. 169.

⁹¹Duquesne Light Co. v. Barasch, 488 U.S. 299, 310, 317 (1989); See also Tenoco Oil Co. v. Department of Consumer Affairs, 876 F.2d 1013, 1020 (1st Cir. 1989) (to satisfy constitutional concerns, "rates must provide not only for a company's costs, but also for a fair return on investment").

⁹²See e.g. United States v. Security Industrial Bank, 459 U.S. 70, 78-80 (1982) (wherein the Court narrowed the construction of a statute to avoid an unconstitutional taking).

network and service area obligations is the statutory construction intended by Congress in Section 251 of TCA-96 and avoids the possibility of unconstitutional errors. Allowing CMRS providers to interconnect indirectly under Section 251(a), but requiring that the costs of those indirect arrangements be borne by the requesting carrier to the extent they would impose obligations on the ILEC beyond the ILEC's existing network, satisfies the requirement in Section 251(a). Further, it avoids an unconstitutional and discriminatory interpretation of Section 251(a) as it relates to Section 251(c) that would, if adopted, impose on independent ILECs interconnection terms that are more onerous than those imposed by Congress under Section 251(c), which clearly obliges ILEC to interconnect only with respect to their existing networks.

C. Summary:

ALLTEL has no responsibility for transportation and transit costs of a third-party tandem provider (in this case, Verizon Wireless' affiliate, Verizon PA) on ALLTEL originated traffic to a tandem location selected by Verizon Wireless off ALLTEL's network and outside ALLTEL's service territory, and ALLTEL has no responsibility to share Verizon Wireless' capital costs in constructing facilities from a Verizon Wireless switch anywhere within an MTA to establish a direct interconnection with the ALLTEL network.

Issue 4: Does a Third-Party Transit Provider Terminate Traffic

A. Issue:

Does a third-party transit provider "terminate" traffic within the meaning of Section 251(b)(5)?

B. Discussion:

Verizon Wireless raised this Issue 4 in its Petition apparently for the purpose of assuring that Section 251(b)(5) reciprocal compensation is applicable to the indirect traffic that it is exchanging with ALLTEL with Verizon PA acting as the third-party transit provider. Verizon Wireless witness Sterling testified that “[t]he FCC has ruled that a transiting carrier is not the ‘terminating carrier’ for the purposes of recovery under the principles of reciprocal compensation. Only the originating and terminating carriers pay and receive reciprocal compensation under Section 251(b)(5).”⁹³ Witness Sterling further testified that ALLTEL was incorrectly using the term “terminate” with respect to Verizon PA’s function as the tandem provider “which could lead to an erroneous conclusion that Verizon Pennsylvania is functioning as an IXC.”

ALLTEL respectfully submits that under ITORP as currently structured, Verizon PA is functioning as an IXC, which is why intrastate access charges apply to Verizon Wireless traffic.⁹⁴ However, ALLTEL has now voluntarily agreed to apply Section 251(b)(5) reciprocal compensation in place of the ITORP compensation arrangement (subject to Verizon PA agreeing to modify the Exhibit G Agreement).

Accordingly, as Ms. Hughes testified: “Issue 4 is not a question relevant to this proceeding as this issue is not in dispute between the parties.”⁹⁵

⁹³Verizon St. 1.0 at 18.

⁹⁴See ALLTEL St. 3R at 16-17.

⁹⁵ALLTEL St. 1R at 18.

C. Summary:

Issue 4 is not in dispute in this proceeding since ALLTEL is in agreement to the application of Section 251(b)(5) reciprocal compensation to its indirect exchange traffic with Verizon Wireless with Verizon PA acting as the third-party transit provider.

Issue 5: Terms and Conditions of Third-Party Provider

A. Issue:

Where a third party provider provides indirect interconnection facilities, should the interconnection agreement that establishes the terms and conditions for the exchange of the traffic between the originating and terminating carriers include the terms and conditions on which the originating carrier will pay the third party transiting provider for transiting service?

B. Discussion:

When indirect interconnection is to be used for the exchange of traffic between two carriers, ALLTEL respectfully submits that the interconnection agreement must address the presence of the third party and the responsibilities of each party to that third party.

ALLTEL's position is simple. Because the third party transit provider may attempt to impose charges, rates or other terms or conditions on any party that sends traffic over its tandem facilities pursuant to the indirect interconnection agreement, the obligation of each party to the indirect agreement (Verizon Wireless and ALLTEL) to the third party transit provider (Verizon PA) must be clearly addressed.

There are really two aspects to Issue 5. First there is the issue of cost responsibility for third party transit charges. ALLTEL believes that in order to avoid any ambiguity, the party to be responsible for transit charges must be spelled out

in the indirect interconnection agreement between ALLTEL and Verizon Wireless. As ALLTEL witness Ms. Hughes succinctly summarized in her rebuttal testimony, "the actual issue is who is the responsible party for the payment to the third-party tandem provider arising from Verizon Wireless's economical decision to employ an indirect interconnection."⁹⁶ If that issue is not clearly addressed in the agreement between Verizon Wireless and ALLTEL, cost responsibility to the third party will be unaddressed and at best the agreement will be ambiguous, a result ALLTEL wishes to avoid. As discussed in response to Issues 3(b) and 8, ALLTEL believes that its obligations for interconnection with any carrier do not require it to extend or pay for services off its network and outside its service territory. In agreeing to indirectly exchange traffic with Verizon Wireless to accommodate Verizon Wireless' choice to utilize a tandem in a third party's territory, ALLTEL believes that it has the right to be free from any ambiguity in the interconnection agreement over who is responsible to the third party provider. Addressing that cost responsibility is all that ALLTEL is attempting to accomplish with respect to terms that must be included in the interconnection agreement.

The second aspect of Issue 5 addresses the fact that since the third party tandem provider will also be the source of much of the traffic exchange information that both Verizon Wireless and ALLTEL will need in order to bill each other correctly for the indirectly exchanged traffic, those terms must be addressed before the interconnection agreement between Verizon Wireless and ALLTEL can be effectuated. For example, ALLTEL can only bill indirect routed traffic originating from Verizon Wireless and terminating to ALLTEL if Verizon PA provides meet point

⁹⁶ALLTEL St. 1R at 12.

billing records.⁹⁷ At the present time, Verizon PA has the responsibility of providing such traffic data pursuant to the ITORP Exhibit G Agreement. If the ITORP Exhibit G Agreement is to be changed by an interconnection agreement between ALLTEL and Verizon Wireless, there must be some acknowledgment from Verizon PA that it will remain obligated to fulfill its other Exhibit G responsibilities, including provision of traffic information to ALLTEL. If necessary, Verizon PA should be compelled to enter a new agreement so the responsibilities of the parties are clear and Verizon Wireless' indirect interconnection with reciprocal compensation can be accomplished.

Indirect interconnection of the switched telecommunications network does not occur in the absence of the establishment of proper terms and conditions among all affected parties. Verizon Wireless currently has an agreement in place with Verizon PA that addresses how those parties exchange traffic and each party's responsibilities. ALLTEL seeks only to have the same clarity of responsibilities and obligations as between it and Verizon PA that Verizon Wireless already has in its interconnection agreement with Verizon PA.

In order to successfully address indirect interconnection, the interconnection agreements between ALLTEL and Verizon Wireless and ALLTEL and Verizon PA must be free from ambiguity so that they actually work. Several terms and conditions must be addressed: (1) responsibility for payment to the third party for use of its transit service; (2) establishment of trunking facilities and a physical interconnection point; (3) responsibility to establish proper authority for Verizon PA to deliver traffic of third parties; (4) responsibility not to abuse the scope of traffic

⁹⁷ALLTEL St. 1 at 9.

authorized by the arrangement (i.e., the transmission of unauthorized or commingled traffic); (5) the provision of complete and accurate usage records; (6) coordination of billing, collection and compensation; (7) responsibility to resolve disputes that will necessarily involve issues where the factual information is in the possession of Verizon PA (e.g., how much traffic was transmitted, and which carrier originated the traffic); (8) responsibility to act to implement network changes which alter or terminate the voluntary arrangement; and (9) responsibilities to coordinate appropriate actions in the event of default and nonpayment by a carrier transiting traffic.

The indirect flow of traffic under ITORP works today because the third party physical interconnection used (i.e., the interconnection between Verizon PA and ALLTEL) was established under a framework of mutually agreed and commonly applied terms and conditions.⁹⁸ Verizon Wireless proposes to continue the existing ITORP facilities,⁹⁹ but to change the compensation and billing scheme currently used under that process.¹⁰⁰ Currently, however, traffic over the ITORP trunk groups commingles wireless traffic with interexchange carriers' toll traffic. Therefore, ALLTEL lacks the technical ability to identify the nature of the traffic on the terminating end. Only Verizon PA has the ability to record this traffic. Therefore, if the ITORP network will continue to be used, but the terms that exist between Verizon PA and ALLTEL with respect to that network, compensation and billing will

⁹⁸ See ALLTEL St. 1 at 12-14; ALLTEL St. 1R at 6; Verizon Wireless St. 1 at 2, 7 note 1, 9; Verizon Wireless St. 1.1 at 11.

⁹⁹ Verizon Wireless St. 1 at 9.

¹⁰⁰ Verizon Wireless St. 1 at 7, note 1.

be altered, an agreement to altered terms must be achieved and those terms known and identified before the indirect interconnection between ALLTEL and Verizon Wireless, subject to this arbitration, can be accomplished. Consequently, there must be an effective agreement in place identifying the responsibilities between Verizon PA and ALLTEL for the Verizon Wireless traffic.

As ALLTEL witness Hughes summarized:

ALLTEL has never asserted that the third party transit provider has to be a party to the agreement between ALLTEL and Verizon Wireless. What ALLTEL has stated is that the responsible party that will be paying the third party charges must be documented in the interconnection agreement. Before implementation of the interconnection agreement with Verizon Wireless, ALLTEL will either have to work with Verizon LEC [Verizon PA] to change the ITORP agreement or set up some other type of contract with them in order for ALLTEL to receive the data in order to bill Verizon Wireless for indirect traffic.

T. 172-73.

With respect to the importance of having that third party tandem provider agreement, as Ms. Hughes testified, even Verizon Wireless witness Sterling has recognized in his testimony in a pending North Carolina proceeding that having an up front agreement with the third-party intermediary facilitates the indirect interconnection.¹⁰¹

C. Summary:

Because Verizon PA, as the third-party tandem provider, may attempt to impose charges, terms and conditions in connection with the indirect traffic exchanged between Verizon Wireless and ALLTEL and because Verizon PA will

¹⁰¹See T. 173 ("In North Carolina, Bell South, as the ILEC there, is providing a meet point type of arrangement where they are negotiating and signing agreements to provide the data to the independents for use in billing to the wireless carriers.").

have in its exclusive possession information necessary for ALLTEL and Verizon Wireless to bill each other, it is necessary for the terms of the interconnection agreement between ALLTEL and Verizon Wireless to address which party is responsible for payment of those transit charges and it is necessary for ALLTEL to have in place an agreement with Verizon PA addressing the terms and conditions for their exchange of this indirect traffic including the exchange of information necessary to accomplish that indirect interconnection.

Issue 9: Establishment of Reciprocal Compensation Rates

A. Issue:

What is the appropriate pricing methodology for establishing a reciprocal compensation rate for the exchange of direct and indirect traffic?

B. Discussion:

1. Overview

While Verizon Wireless couches Issue 9 as to the appropriate pricing methodology, ALLTEL respectfully submits that the real issue is what rates should be established for reciprocal compensation on both direct and indirect traffic. Resolution of this issue is extremely complex. ALLTEL has agreed to the establishment of reciprocal compensation rates based upon forward-looking costs consistent with the pricing standard set forth in Section 252(d)(2) of the Telecom Act of 1996. However, as before stated, ALLTEL does not believe the Section 252(d)(2) pricing standard places responsibility on ALLTEL for transit costs on indirect traffic or for costs of a CMRS provider to establish direct interconnections with its network.

2. General Background of TELRIC Pricing

ALLTEL's direct and indirect rates for reciprocal compensation purposes are based on the TELRIC methodology reflecting forward-looking costs plus a reasonable profit, and a factor for recovery of joint and common costs incurred in terminating Verizon Wireless calls consistent with FCC rules at 47 C.F.R. §51.505(b).¹⁰²

Specifically, ALLTEL developed and submitted evidence concerning the following four types of interconnection: Type 2A (Direct Connection), Type 2B (Direct Connection), Type 1 (Direct Connection) and Indirect Interconnection. The composition of these interconnection types is detailed below:

Type 1

Type 1 facilities are those facilities that provide a trunk side connection (line side treatment) between an ALLTEL end office and Verizon Wireless Mobile Switching Center ("MSC").

ALLTEL will no longer be offering this type of facility and will allow Verizon Wireless to retain this type of facility until they can transfer from Type 1 to Type 2B facilities.¹⁰³

Type 2A

A Type 2A connection is where Verizon Wireless connects directly to the ALLTEL tandem and as a result connecting carriers have access to any and all end offices that ALLTEL has behind that tandem.¹⁰⁴

¹⁰²ALLTEL St. 2R at 5.

¹⁰³See ALLTEL Ex. 4; See also ALLTEL Ex. CC-1.

¹⁰⁴T. 231.

With this trunk-side connection to an access tandem, or combination of connections to the access and local tandems, the wireless service provider functions like an end office. Separate connections to the access and local tandems may be used if ALLTEL has separate tandems for local and toll-type traffic.¹⁰⁵

If a connection to a local tandem is used, calls via that tandem are restricted to valid NXX codes in offices subtending that tandem. Calls to or from a location outside the scope of the local tandem must be routed via the access tandem. Therefore, a Type 2A connection to a local tandem can never be furnished without an accompanying connection to an access tandem as well.¹⁰⁶

The cost elements applicable to a Type 2A include the following: End Office Switching + Tandem Switching + IX Transport Termination + IX Transport Facility + HR Transport Termination + HR Transport Facility.¹⁰⁷

Type 2B

The Type 2B connection is where Verizon Wireless comes directly into an end office and that usually takes place because Verizon Wireless has enough usage into that end office that it warrants establishing that connector.¹⁰⁸

With a trunk-side connection to an end office, the Type 2B connection functions exactly like a high-usage trunk. It is intended to be used with a Type 2A

¹⁰⁵ALLTEL Ex. CC-1.

¹⁰⁶ALLTEL Ex. CC-1.

¹⁰⁷Id.

¹⁰⁸T. 233.

connection in situations where the wireless service provider has large traffic quantities to and from NXX codes within a specific end office.¹⁰⁹

The first-choice route is the Type 2B connection with overflow allowed via the Type 2A connection. With the Type 2B connection, the wireless service provider can establish connections only to valid NXX codes in the end office providing the Type 2B connection, including those used for Feature Group A (FGA) service by interexchange carriers.¹¹⁰

The cost elements applicable to a Type 2B include the following: End Office Switching + H/R Transport Termination + H/R Transport Facility.¹¹¹

Indirect

Is a connection through a third party (T.234).

The cost elements applicable to indirect interconnection include the following: End Office Switching + IX Transport Termination + IX Transport Facility + HR Transport Termination + HR Transport Facility.¹¹² See also ALLTEL Ex. 7 and T. 231 et seq.

ALLTEL submitted its cost studies based upon forward-looking costs and supported the rates for each of these types of interconnections in its studies. The studies are based upon a rebuild of a forward-looking network reflecting advanced

¹⁰⁹ALLTEL Ex. CC-1.

¹¹⁰ALLTEL Ex. CC-1.

¹¹¹Id.

¹¹²ALLTEL Ex. CC-1.

technologies and route optimization. The studies also estimated the forward-looking investment, expense and demand in accord with TELRIC rules.¹¹³

Cost of service studies have never been an exact science. In fact, seldom is there a cost of service study that some party does not challenge. As this Commission recognized in a Duquesne Light Company rate proceeding:

A cost of service study is one of the most subjective elements in any rate case. The methods used for classifying items of plant and expense between demand, customer and energy components are far from being an exact science. Cost of service studies are more accurately characterized as engineering art . . .

Pa. P.U.C. v. Duquesne Light Co., 1983 Pa. PUC LEXIS 84 at 73.

ALLTEL is the only party that has submitted TELRIC cost studies in this proceeding.¹¹⁴ Verizon Wireless witness Wood, however, attempted to criticize the studies and their presentation in hope of this Commission not giving the studies any due consideration. However, not only are these studies valid and convincing, they are the only evidence that may be considered in establishing reciprocal compensation rates in this proceeding. As ALLTEL's cost of service witness Mr. Caballero testified:

- Q. Does the model structure presented by ALLTEL reflect a traditional TELRIC framework?
- A. Yes. TELRIC models are a relatively recent variation of standard long run incremental cost (LRIC) analysis. The general format is to estimate forward-looking investment and estimate forward-looking expense associated with that investment. Forward-looking expenses are generally derived by applying forward-looking expense factors that are developed in part from embedded expense data. These expense factors are designed to account for maintenance

¹¹³See ALLTEL St. 2R at 3-4.

¹¹⁴T. 84-85.

expense, network operations expense, wholesale billing expense, taxes and depreciation. TELRIC models define the increment as total demand and are designed to also recover a reasonable share of overheads/common costs and allow for a reasonable profit. For each interconnection element the ALLTEL model follows these steps. For example, the tab labeled "EO Switching" starts first by estimating the appropriate forward-looking investment (lines 1-21) and then develops forward-looking expense by applying forward-looking expense, tax, depreciation, common cost and return factors to the estimated forward-looking investment (lines 22-37). Total expense is then reduced to a per unit rate by dividing by total demand in minutes (lines 38 -40). This procedure is followed for each element.

ALLTEL St. 2R at 3-4.

3. ALLTEL's Initial Study - ALLTEL Exhibit CC-1

In connection with ALLTEL's on-going negotiations with Verizon Wireless and shortly after Verizon Wireless' filing of its Arbitration Petition, ALLTEL presented its initial TELRIC study contained in ALLTEL Exhibit CC-1. Exhibit CC-1 was predicated upon forwarding-looking TELRIC cost models and ratios that the ALLTEL system had actually completed in other states.¹¹⁵ These ratios correlated TELRIC costs compared to embedded costs to develop percentage factors.¹¹⁶ ALLTEL took these factors and applied them to the historic ALLTEL PA investment to produce the cost of service results in Exhibit CC-1.¹¹⁷

In developing Exhibit CC-1, Mr. Caballero explained that it was a multi-step process.¹¹⁸ ALLTEL simulated the rebuild of the network based on actual customer

¹¹⁵T. 205.

¹¹⁶ALLTEL provided general backup on how these factors were developed. T. 205.

¹¹⁷T. 205.

¹¹⁸ALLTEL St. 1 at 3.

locations, rights-of-way and up-to-date technologies utilizing TELRIC studies for North Carolina, Georgia, Ohio, Texas, Nebraska, Kentucky and New York.¹¹⁹ Based thereon, ALLTEL developed forward-looking to embedded cost ratios. These ratios were then applied to Pennsylvania embedded investment to develop a reasonable proxy for a Pennsylvania TELRIC study. The resulting simulated network was thus based on the most cost effective and efficient technology. The model then estimated forward-looking costs (expenses plus capital costs based on the estimated level of forward-looking investment.) Based thereon, ALLTEL initially proposed the following reciprocal compensation rates:¹²⁰

2A	\$.02505
2B	\$.01263
Type 1	\$.01263
Indirect	\$.02243

These above rates differ due to the manner of interconnection and different network elements utilized by each means of interconnection as discussed above.¹²¹ These are the individual rates associated with the various forms of interconnection as opposed to a blended rate which is sometimes used in interconnection agreements. The formula and weightings to be given each type of interconnection in developing a blended rate is set forth in Exhibit CC-1. A blended rate flowing from these rates would be \$.0223.¹²²

¹¹⁹See ALLTEL Ex. CC-1, page captioned "Forward Loading Fiber Costs Based on CWF Data For TELRIC Studies."

¹²⁰These rates were marked as proprietary in ALLTEL Statement 2 at 5, but for the purpose of this Main Brief, ALLTEL is not maintaining the rates as proprietary.

¹²¹See ALLTEL St. 2 and ALLTEL Ex. CC-1, "Interconnection Type Definitions."

¹²²ALLTEL Ex. CC-1, sheet captioned "Reciprocal Compensation Interconnection Weighted Composite Results."

Verizon Wireless witness Wood in Verizon Wireless Statements 2.0 and 2.1 was critical of Exhibit CC-1 contending, inter alia, that it was not Pennsylvania specific and inappropriately utilized embedded costs. Contrary thereto, ALLTEL's cost of service expert Mr. Caballero explained:

[T]he way that we developed that factor was to take into account other TELRIC studies that we had performed for other ALLTEL properties and we took a very close look at what happened between embedded investment and forward-looking investment and developed a factor based on those studies that we applied then to ALLTEL Pennsylvania.

I don't think CC-1 was an embedded study at all. I think the application of the forward-looking factor removes any type of embedded cost study relative to that.

T. 224.

The use of historic costs as a starting point is not a flaw in the development of a TELRIC study. In addressing the question whether "a TELRIC cost study [can] consider historical costs," the Public Utilities Commission of the State of Colorado concluded as follows:

1. Conclusion

A TELRIC cost study may consider historical costs as a starting point for determining the forward-looking costs.

2. Conclusion

- a. Even a 'forward-looking' study must look forward from somewhere. That starting point may be historical costs. In order to determine what something might cost in the future, it is permissible to consider what it costs in the present. In fact, both of the primary cost studies presented in this docket are based on 'historical' data. The HAI Model 5.2a, sponsored by Joint Intervenors, uses Automated Reporting Management Information Systems (ARMIS) data. Qwest's model uses Qwest's book costs. It is simply disingenuous for any party to argue that historical costs are not relevant to this proceeding.

- b. The Commission emphasizes that the use of historical costs is a starting point only, from which forward-looking adjustments are made to arrive at a TELRIC-compliant rate. Without any adjustment, the costs would fail to be forward-looking.
- c. As to the problem of carrying forward Qwest's inefficiencies, it is important to realize that Qwest's inefficiencies of the past are in some sense legitimate inefficiencies of the future. The TELRIC 'efficient competitor' is a relative approximation. All companies have some inherent 'inefficiencies.' The TELRIC forward look requires the assumption of a relatively efficient competitor, but by no means a competitor that operates with absolute efficiency.

In the Matter of U.S. West Communications, Inc.'s Statement of Generally Available Terms and Conditions, Docket No. 99 A-577T, 2001 Colo. PUC LEXIS 1140 (Order entered December 21, 2001), at 14. Thus, Mr. Wood's first criticism of ALLTEL's study in CC-1, that it is flawed due to its use of embedded costs as a starting point, is no justification for ignoring the study's results.

Witness Wood was also critical of the CC-1 study contending that it was impossible to determine the sensitivity of the results to changes in inputs.¹²³ However, Mr. Caballero testified that "the input sheet was never password protected and Verizon Wireless could have changed any numbers in the input sheet and the worksheet would have recalculated the rates and determined the sensitivity to changes in any input."¹²⁴

Under these circumstances, the study contained in ALLTEL Exhibit CC-1 is certainly a valid TELRIC study worthy of this Commission's consideration in setting the reciprocal compensation rates in this arbitration proceeding.

¹²³Verizon Wireless St. 2.1 at 14.

¹²⁴T. 227.

4. ALLTEL's Pennsylvania Study - ALLTEL Exhibit CC-2

ALLTEL had begun work on a Pennsylvania TELRIC study early in 2003 in connection with certain CLEC requests, but given the press of matters and lack of time, work on it was not completed.¹²⁵ On February 3, 2004, ALLTEL completed the study detailing its actual forward-looking investment values specifically for the Pennsylvania study area. The study eliminated the use of factors and developed forward-looking investments from specific inputs relative to ALLTEL Pennsylvania, Inc. This study was submitted as ALLTEL Exhibit CC-2.¹²⁶ The details of the model are addressed in ALLTEL Statement 2R.

The cost models used in both CC-1 and CC-2 are the same. It was the inputs which changed between ALLTEL Exhibits CC-1 and CC-2.¹²⁷ As to the inputs for CC-2, ALLTEL provided a hard copy back-up because electronic back-up was not available. As seen in Exhibit CC-2, Part A, the backup comes from various different models, engineering models, pricing models, etc.¹²⁸ A review of the pages in ALLTEL Exhibit CC-2 (Part A) captioned TELRIC Input Descriptions lists the Data Source, the Source Description and the Report name detailing all of the different models used to develop the inputs. As Mr. Caballero testified, there were many models including separate modules to develop forward-looking costs for loops,

¹²⁵T. 205; T. 245.

¹²⁶T. 205.

¹²⁷Id.

¹²⁸See ALLTEL Ex. CC-2; T. 205, 209.

switching and interoffice transmission.¹²⁹ For example, with respect to the switching model Mr. Caballero testified:

Switching

1. Access lines, circuit and trunking information is obtained from the ALLTEL engineering databases. This information is used to determine line card quantities.
2. Five-year line and trunk forecast information is obtained from network engineering. This file included switch wire lines, equipped lines, peripherals, standard and special features required to price the new switch.
3. The switching model develops switch equipment costs based on Northern Telecom (Nortel) most current digital switch price list per the input filed developed in the previous steps. Prices for switching equipment not provided by Nortel is obtained from current price lists provided by ALLTEL Supply. All applicable vendor discounts are applied in this step.
4. DLCs costs are calculated using a model provided by CALIX. This model uses the latest available digital technology and size requirements. The number of DLCs was calculated in Step 4 of the Loop costs.
5. A summary of these costs is produced for input into the TELRIC input database.

ALLTEL St. 2R at 9.

The inputs resulting from these numerous individual modules, such as switching, were then imported into the TELRIC model. Mr. Caballero further explained:

TELRIC Model Processing

1. Investment material costs, facilities information and demand information calculated in the loop, switching, interexchange facilities models are imported into the TELRIC input database.

¹²⁹See ALLTEL St. 2R at 6.

2. Investment for each element is calculated by applying sales tax, fill factor (capacity adjustment), Engineered Freight and Installation costs (EF&I) and power and common costs, and other minor materials to material costs imported in Step 1.
3. Sales tax is obtained from the "Factors Worksheet" which contains applicable sales tax rates for each state.
4. The fill rate is provided by the engineering group. This fill rate is used to provide additional capacity for growth or spares.
5. EF&I ratios are developed through analysis of historical installation costs or from standard construction hours provided by the WOMS system.
6. Power & Common ratios are contained on the "Factors Worksheet". These factors are the same factors used in embedded COE investment cost studies.
7. Other minor materials are those expended during construction.
8. Annual costs are calculated based on forward-looking investment. Annual carrying charges include depreciation expense, return on net investment, income taxes, direct expenses and common costs. I provide additional detail relative to these costs in the next section.
9. Annual costs are divided by twelve to obtain monthly costs. Monthly costs are divided by the number of loops, ports, minutes of use, or facilities as appropriate to arrive at the monthly network element rate.

Id. at 11.

ALLTEL has submitted studies, similar in format and using the same methodology as the CC-2 Pennsylvania study, in Kentucky, Nebraska and New York.¹³⁰ In fact, Mr. Caballero testified that the New York PSC specifically found the ALLTEL model to be a TELRIC cost study.¹³¹ The New York PSC found, as stated in ALLTEL Exhibit 8, that "[t]he rates were derived from Total Element Long Run

¹³⁰T. 209.

¹³¹See T. 234-36.

Incremental Costs (TELRIC) cost studies submitted in the context of this proceeding.” Moreover, the witness testified that it is commonplace for rural telephone companies to produce their cost studies in a hard format rather than soft (electronic) citing the rural ILEC studies that ALLTEL Wireless has received in Wisconsin and Nebraska.¹³²

The reciprocal compensation rates resulting from the ALLTEL Exhibit CC-2 study are set forth below:¹³³

Type 2A (Direct)	\$.01891
Type 2B (Direct)	\$.00942
Type 1 (Direct)	\$.00942
Indirect	\$.01672

ALLTEL St. 2R at 5. Mr. Caballero further testified that a blended rate flowing from these specific cost-based rates would be \$.0165 per minute.¹³⁴

As can be seen, the rates are substantially lower than those developed in the initial ALLTEL Exhibit CC-1 study. They are also clearly reasonable in comparison with the reciprocal compensation rates Verizon Wireless has agreed to with other rural ILECs as discussed below in subsection 6 to Issue 9.

5. Backup and Review

Through witness Wood, Verizon Wireless launched attacks on the ALLTEL TELRIC models contending they were not open to review, were hard to use, contained “booby-traps,” etc. However, except for a brief telephone call from Mr. Woods to Mr. Caballero, and a single interrogatory from Verizon Wireless, Mr.

¹³²T. 212-14.

¹³³These rates were marked as proprietary in ALLTEL St. 2R at 5, but for the purpose of this Main Brief, ALLTEL is not maintaining the rates as proprietary.

¹³⁴T. 240.

Wood made no effort despite an open offer from ALLTEL to review or discuss the contents of the studies with ALLTEL directly. Instead, he chose to take a shotgun approach to disparage the studies for not being fully presented electronically and for being difficult to access in hopes that the Commission would not give credence to their results. ALLTEL submits that these criticisms are not warranted, and certainly do not justify wholesale rejection of the study results as Verizon Wireless argues.

The primary criticism raised by the Verizon Wireless witness concerned the level of openness of the studies. Mr. Caballero, however, explained that ALLTEL does not have the capabilities of the RBOCs in developing its TELRIC models. The RBOCs themselves did not initially have the ability to provide totally electronic models. Instead, the openness of their studies has evolved over the past 7 years. Mr. Caballero testified, as follows:

On CC-2, we provided, as Mr. Wood talked about this morning, a lot of paper backup that comes from those models where the network modernization, as he calls it, takes place, and the reason that we cannot provide that on a soft copy is because it comes from very different models, engineering models, pricing models, and we really don't have the capability to provide that on a soft copy.

You know, he mentions that a key to study these models is the openness of it, and that's really true relative to the large ILECs, Your Honor. I mean, every time that we've received studies from the Verizons, the Bell Souths, that takes place, but they have built all these back models specific to their TELRIC study and they will link up to their TELRIC model. Ours do not. I mean, we don't have the capabilities that the Bell companies have, so we have different engineering models that the engineers use for capital improvements, and we actually use what they use to re-size, optimize and reprice the network and come up with a TELRIC investment.

So the reason for not providing a soft copy of all the backup is not that we're trying to keep Verizon Wireless from analyzing the study. It's that we really don't have the means to do it effectively.

As you recall, Your Honor, in the early sessions of TELRIC studies, the RBOCs didn't have that capability either, and during cost proceedings, they actually held workshops and invited interested parties to take a look and ask questions, and we would be willing to do that if that helps Verizon Wireless understand the model and it would help them in not having to go through all that paper backup that we provided with CC-2.

T. 205-07.

Verizon Wireless further criticized the fact that the study utilized macros. However, as both Mr. Caballero and Mr. Woods recognized macros are very useful because they enable you to perform a multitude of functions in one step. They are *efficient and they read data, compile data and produce output sheets*. The macros were not inserted to impede Verizon Wireless' review, and ALLTEL contends they did not impede Verizon Wireless' review to the extent that the study results should be deemed unreliable. Rather, macros are an integral part of the model that protect the integrity of the model and ensure results comport with the methodology intended in the study. In other words, macros particularly ensure that ALLTEL's own employees conduct the study in the manner intended.¹³⁵ As Mr. Caballero testified:

BY MR. THOMAS:

Q. Now, earlier this morning there was a lot of discussion between Mr. Wood, myself, also Judge Weisman as to your CC-2 study and the blocks, how difficult it was to use those blocks and the macros involved and so forth.

Do those macros, do those blocks, do they in any way flaw the study?

A. No, they do not. The purpose of the macros – and I think Mr. Wood had it right this morning. I mean, macros are very useful, especially when resources are tight, because what they enable you to do is to perform a multitude of functions in one step, Your Honor. So they're very efficient, and they read data

¹³⁵T. 215-16.

and they compile data and they produce output sheets, and they're very useful to do.

I understand the difficulty that Mr. Wood had relative to some of the macros as they relate to protecting some of the spreadsheets in the model, and I just want to make clear to you and to Verizon Wireless that the reason that those macros are there is not to hinder them in any way from their review of the model, but we actually do have users of the model at ALLTEL and we have somebody who is making the changes to the model that's necessary; and so the macros protect those spreadsheets to insure that the users don't have the capability to make some of those changes.

So I understand the difficulty that Mr. Wood had in trying to access maybe some of those spreadsheets, but the intent really was not to hinder them. The intent is really to protect ALLTEL from changes in the model that could really impact the results later on. So I actually disagree with him in the sense that we have the macros to protect the integrity of the model and to protect the results of the model rather than to keep a third party from making a thorough analysis of the model.

Q. The individuals you want to protect the model from, am I correct --

A. The individuals that I want to protect the model from are my own employees who actually use the model rather than make some of the algorithm changes to the model, and they analyze results and they help us to put the packages together when we have proceedings such as this. They should not be changing any of the formulas. They should just be analyzing the results.

So the purpose of those macros is to protect ALLTEL from other employees making changes to the model when they should not be making changes to the model.

Q. Also, the word "booby-trap" was used this morning. Is the ALLTEL study booby-trapped?

A. No; and there's no intent to booby-trap the model. I mean, we'll be happy to work with Verizon Wireless in answering any questions they may have about the model. You know, from the time that I became involved, the time frame has been very compressed, Your Honor, and we have been trying to provide a model that certainly satisfied especially some of Wood's criticisms relative to CC-1, and our intent here is not to

preclude them from analyzing any input or algorithm that the model has. We will be happy to share those with them.

T. 214-17.

Witness Wood also specifically criticized and purportedly corrected a formula appearing in the CC-2 study relating to demand. Using the so-called corrected formula resulting in a revised demand figure, Mr. Wood, in his Exhibit DJW-9, changed the CC-2 study rates. These recalculations produced rates which Mr. Wood claimed supported the reciprocal compensation rates that he had earlier recommended in Verizon Wireless Statement 2.0.¹³⁶

Mr. Caballero was quick to dispute these revised rates and the methodology employed by the Verizon Wireless witness. The ALLTEL witness first testified that the CC-2 study was not flawed but contained a correct formula that simply had been mislabeled:

[BY MR. THOMAS]

Q. Do you have a copy of Verizon Wireless' Exhibit DJW-9 that was introduced this morning?

A. I think I do. Let me find it.

(Pause.)

A. Yes, I do.

Q. I want to look at, I think it's page three of that exhibit. That's the last page.

¹³⁶Witness Wood's revised rates were Type 2A - \$.00896, Type 2B - \$.00446, and Indirect - \$.00792. See T. 73-80 and Verizon Wireless Ex. DJW-9. These rates were marked as proprietary on the transcript and in Verizon Wireless Ex. DJW-9, but for the purpose of this Main Brief, ALLTEL is not maintaining the rates as proprietary.

A. On page three of that exhibit, Mr. Wood recalculated the ALLTEL rate based on the description of a formula from the model that we provided in CC-2.

Q. Where was that formula labeled? Did he put an exhibit in?

A. No. I believe that formula is on DJW-8, on page 14 of that exhibit.

Q. Are you referring to the middle column there under source?

A. Under source, under forecast units. The description under that source, it reads one plus line 22 times line 43, and Mr. Wood pointed out that that's not what I think the formula is working the way that ALLTEL intended, and I'd like to go over the explanation of how that 90 percent works, if I may.

Q. Mr. Caballero, let me just stop you for a minute.

A. Okay.

Q. Based upon what you just said, are you saying the label one plus line 22 –

A. Is incorrect. It should read line 22 times line 43. The one plus should not be in that source column.

MR. ARFAA: Your Honor --

BY MR. THOMAS:

Q. Is that the way the CC-2 study works, then?

A. That's the way the calculation is performed, but that's not the way that it reads on the label.

MR. ARFAA: Objection, move to strike. They're changing their cost documentation once again, Your Honor.

JUDGE WEISMANDEL: No, they're explaining what was discovered this morning. Thank you. Overruled.

BY MR. THOMAS:

Q. Let's make this clear, Mr. Caballero. You aren't going to change your study by changing the label, are you?

A. No, and I'm trying to support the number that is in the study. I am not changing any of the numbers that we provided in the CC-2 study.

Q. So the formula that you applied in CC-2 was not one plus line 22, but simply line 22 times line 23?

A. Times line 43.

Q. Times line 43?

A. That's correct.

Q. As a result of applying the improper formula, as a result of you mislabeling the study, Mr. Wood calculated the rate shown on page three of DJW-9; is that --

A. That's correct.

T. 218-20.

In fact, if Mr. Wood had looked back at ALLTEL Exhibit CC-1, he would have seen that the formula for demand in that study was correctly labeled to read "line 22 times line 43."¹³⁷

Mr. Caballero also took exception to the so-called corrected rates developed by Mr. Wood since they reflected an annual 17% growth in minutes on the ALLTEL network. A practical review of Mr. Wood's change in demand and purported correction should have revealed a very questionable 17% increase in demand (usage) when usage on the ALLTEL network has actually been decreasing. As Mr. Caballero testified:

Q. Are those rates [developed by Mr. Wood] correct or not correct?

A. No, they are not correct. The reason they are not correct is because they are overstating ALLTEL demand.

¹³⁷See ALLTEL Exhibit CC-1, Sheet labeled Demand - forecast local terminating MOU, source line 22 x line 43.

The way that the model works, Your Honor, is 100 percent to us means no growth. That's the base line of current units. So when we have that 90 percent factor, it actually means that we have a ten percent reduction over the five year period, as Mr. Wood explained this morning the model is actually doing.

If we had a 90 percent increase, it would read 190 percent rather than 90 percent. And the reason that we have a ten percent decrease over a five year period which is a little, it's about two percent decreasing minutes a year, that's reflective of what we expect for ALLTEL Pennsylvania minutes of use-wise.

Minutes of use are not increasing the way Mr. Wood testified this morning. He's testifying that ALLTEL Pennsylvania is going to see about 18 percent per year growth in minutes over the next five years, and the industry is just not going that way and I don't think he has supported that 18 percent growth per year to reach that 90 percent over the five years.

Q. *What percent growth was reflected in your study, CC-2?*

A. I actually include a ten percent decrease over the five year period which is about a two percent decline in minutes on an annual basis.

Q. And what was that based upon?

A. It was based on studies that we had performed for ALLTEL Pennsylvania that reflect that minutes are indeed not growing but we're beginning to lose minutes, and so we included that on the forward-looking demand.

Q. In what time period?

A. We looked at the last three years of data relative to interexchange minutes.

T. 220-21.

Further, Mr. Wood's projected 17% annual increase in minutes is in direct conflict with a recent report of this Commission which shows a negative access line growth for rural ILECs of (-1.73%) for the period 2001 to 2002.¹³⁸

In explaining why the rates in Verizon Wireless Exhibit DWJ-9 are incorrect, Mr. Caballero testified as follows:

Q. As a result, do you believe that Mr. Wood's rates in the block on page three, Exhibit DJW-9, whether those rates would be valid either on an interim basis or would be correct to use on a final basis?

A. No. I don't think they should be used at all for reciprocal compensation. These rates are artificially low because they really use a much higher growth in demand for the ALLTEL Pennsylvania properties which we certainly are not experiencing today.

Q. Mr. Wood testified earlier this morning that your study was incorrect referring to page 14, DJW-8, because you didn't apply the one plus 22 times 43 formula.

Was your study incorrect?

A. The label was incorrect. The study was not incorrect.

Q. Looking at Mr. Wood's Statement 2.1, and I want to direct your attention to page 15, and on line five of that page, there's the same number -- it's marked proprietary -- that number that appears on that page, is that the same number you just referred to?

A. It is the same number that I just referred to.

Q. And the basis of that number, again, was based upon historical —

A. Based on a study of minutes of use relative to ALLTEL Pennsylvania and what we would expect growth-wise over the next five years.

¹³⁸October 30, 2003 Report of the Pa. USF Fund Administration, recently referenced in the Commission's Order entered December 19, 2003, at Docket No. M-00001337, Pennsylvania Universal Service Fund Annual Rate Adjustment, at 3.

T. 221-22.

In conclusion, there is no flaw in ALLTEL's reciprocal compensation rates in its TELRIC studies in Exhibits CC-1 and CC-2. The studies are certainly valid for use in this proceeding. ALLTEL submits that its Pennsylvania-specific CC-2 study, which actually resulted in reductions to the CC-1 rates, should be given greatest weight in establishing reciprocal compensation rates in this proceeding. Mr. Wood's erroneous correction based upon inaccurate and unrealistic demand levels should be rejected out of hand. Also, Mr. Wood's complaints concerning the openness of the studies do not justify ignoring the results of the studies.

6. Verizon Wireless Proposed Proxy Rates

ALLTEL witness Caballero testified that ALLTEL's CC-2 study would result in a blended rate of \$.0165.¹³⁹ Verizon Wireless witness Wood, in lieu of giving consideration to ALLTEL's TELRIC studies and having prepared no cost study of his own, simply looked at rates for Verizon, Sprint and Frontier. Using the Verizon North (GTE) rates as a proxy for establishing rates for ALLTEL in this proceeding,¹⁴⁰ he advocated a blended rate of \$.0078¹⁴¹ in lieu of the \$.0165 blended rate resulting from ALLTEL's CC-2 study or the \$.0223 blended rate from the initial CC-1 study.

ALLTEL submits that the Commission has access to a valid Pennsylvania-specific TELRIC study, i.e. CC-2, prepared consistent with the format recently relied upon in New York for setting reciprocal compensation rates for ALLTEL New York. This study, together with the CC-1 study (based upon factors from ALLTEL's studies

¹³⁹T. 240.

¹⁴⁰See Verizon Wireless St. 2.0 at 14 and Ex. DJW-5 at 2.

¹⁴¹T. 87 et seq.

in other states), presents a valid representation of ALLTEL's forward-looking costs consistent with the Section 252(d)(2) pricing standard and should be employed in developing reciprocal compensation rates for ALLTEL in this proceeding. Certainly, there is no basis for using a proxy and, if a proxy were used, the Verizon-North rates are certainly not indicative of ALLTEL's costs.

Verizon-North is not a rural carrier. As Mr. Caballero testified, Verizon is 14 times the size of ALLTEL and, being part of the Verizon system, has significantly greater vendor discounts and purchasing abilities than ALLTEL.¹⁴² As indicative of the impropriety of using Verizon-North as a proxy we refer the Administrative Law Judge to the Commission's ALLTEL Suspension Order, cited on page 6 *infra*, clearly concluding that ALLTEL is a rural telephone company. Also, we direct the ALJ's attention to the Commission's Order on Reconsideration entered September 9, 1996, at Docket No. M-00960799, In Re: Implementation of the Telecommunications Act of 1996, which found that GTE, one of the largest operating companies in the United States, was not entitled to rural telephone company status or even partial rural status:

Finally, we also address GTE's claim that it is entitled to partial RTC designation under § 3(a)(47)(C) of the 1996 Act. Under subsection (C), a LEC may qualify as an RTC if it "provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines." GTE argues that it has approximately 60,000 access lines in the "Contel" study area and approximately 38,000 access lines in the "Quaker State" study area, and that therefore, it is entitled to partial RTC status for those portions of its service territory. We disagree. We believe that it was Congress' clear intent that in determining RTC status, a company's operations in a state be viewed as a whole. The plain language of this provision of the Act simply does not support the concept of "partial designations" for portions of a LEC's service territory. Such an

¹⁴²T. 226.

interpretation would stretch the statute's meaning beyond any logical or reasonable reading.

For instance, such an interpretation would exempt GTE, one of the largest telephone operating companies in the United States, from the interconnection provisions of the Act for a large portion of its service territory in Pennsylvania and permit it to be treated similar to some of the smallest LECs in the country. We cannot accept that Congress would go to the trouble of enacting a very comprehensive procompetitive regulatory scheme and then turn around and exempt large portions of the service territory of one of the nation's largest LECs from its application. Consequently, we find that in order for a company to meet the criteria for designation as an RTC under § 3(a)(47)(C), its operations within a state must be viewed as a whole. Section 3(a)(47) does not contemplate partial designations for portions of a company's service territory. Accordingly, GTE does not meet the criteria for eligibility as an RTC under § 3(a)(47)(C) of the 1996 Act.

Order on Reconsideration at 10-11

Since that time, GTE merged with Verizon making it probably the largest telephone operating company in the United States. Under these circumstances, Verizon-North is in no way an appropriate proxy for establishing reciprocal compensation rates for ALLTEL. This conclusion was confirmed by Mr. Caballero when he compared the Verizon system to the ALLTEL system, testifying as follows:

I think what he's trying to infer, and I think that's actually something he said this morning, is that ALLTEL as an \$8 billion company should have the purchasing power of a large company and should have access to significant vendor discounts of an \$8 billion company, which is not small by any stretch of the imagination, and I don't disagree with that. We're not, you know, just one little area.

However, then he proposes a rate that he derives from Verizon GTE. And so if we compare Verizon to ALLTEL, I don't think we have the purchasing power that a Verizon company would have.

I did the same thing that Mr. Wood did. I went to the Verizon website and I looked at their fourth quarter earnings, and they reported 2003 earnings of \$68 billion, eight times those of ALLTEL. And they have approximately 160 million customers, about 14 times the size of ALLTEL.

So while I agree that we do enjoy some vendor discounts and purchasing abilities and we actually include those discounts in the TELRIC model, we are nowhere near to the discounts that Verizon could get from the size that they have.

T. 226.

In prior orders of this Commission where the Commission was called upon to review and decide the rural status of ALLTEL and other carriers, the comparisons this Commission drew between ALLTEL and carriers like North Pittsburgh Telephone Company ("North Pittsburgh") or Commonwealth Telephone Company ("Commonwealth"), as opposed to Sprint or GTE, are compelling. As set forth in the Commission's Order entered June 3, 1996, implementing the terms of the Telecom Act of 1996, 32 of Pennsylvania's 38 ILECs qualified as rural because they served fewer than 50,000 access lines.¹⁴³ Five of the 6 remaining ILECs, all of which served more than 50,000 access lines and all of which sought rural status, were ALLTEL, Commonwealth, North Pittsburgh, The United Telephone Company of Pennsylvania/Sprint Communications Company, L.P. ("Sprint") and GTE North.

While the Commission declared North Pittsburgh and the 36 smaller ILECs a "rural company" in the Implementation Order, it deferred ruling for ALLTEL, Commonwealth and Sprint.¹⁴⁴ Commonwealth was subsequently declared a rural carrier by the Commission in its September 9, 1996 Order on Reconsideration (at 10). As stated above, GTE North, now Verizon-North, was denied rural status after being recognized as "one of the largest telephone operating companies in the

¹⁴³In Re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799 (Order entered June 3, 1996) ("Implementation Order") at 13.

¹⁴⁴Id. at 13-15.

United States."¹⁴⁵ Sprint has never been declared a rural company by this Commission and has never sought or been granted Section 251(f)(2) relief.

With ALLTEL having been declared to be a rural telephone company in the ALLTEL Suspension Order, it is much more similar to other rural telephone companies such as North Pittsburgh and Commonwealth than to much larger non-rural companies such as Verizon-North and Sprint.

If the Administrative Law Judge looks at rates that Verizon Wireless has agreed to with North Pittsburgh and Commonwealth, ALLTEL's proposed CC-2 rates (which equate to a blended rate of \$.0165) are clearly reasonable and conservative. For example, Verizon Wireless in its May 1, 2000 agreement with North Pittsburgh agreed to pay North Pittsburgh a tandem switching and MSC rate of \$.019 (T.100) and an indirect rate at the ITORP rate of approximately \$.030.¹⁴⁶ With respect to Commonwealth, Verizon Wireless recently entered an agreement on February 12, 2003, initially agreeing to a \$.042 blended rate declining to \$.02 on and after May 31, 2004.¹⁴⁷ Further, the rates agreed to by Verizon Wireless for rural telephone companies operating in other states support a blended rate more in the neighborhood of \$.02.¹⁴⁸ Consistent therewith, Verizon Wireless in New York entered an agreement with rural local exchange carriers at a reciprocal compensation rate of \$.02.¹⁴⁹

¹⁴⁵Order on Reconsideration at 11.

¹⁴⁶ALLTEL Ex. 5. See ALLTEL St. 2 at 7 and T.100.

¹⁴⁷T.102.

¹⁴⁸See ALLTEL Exs. 5 and 6.

¹⁴⁹ALLTEL Ex. 6; T. 167.

In discussing why these other rural carriers would be more reasonable proxies, if proxies are to be used, Mr. Caballero explained that switching and transport costs do vary in relation to the geographic area served. Specifically, he testified "that total element switching and transport costs will vary considerably due to geographic terrain differences, population density, local calling patterns, distances between exchanges or to connection POP, and economies of scale."¹⁵⁰

ALLTEL understands that in an arbitration proceeding such as this proceeding, the time limitations are not really practical for permitting a detailed review of a TELRIC study. ALLTEL witness Caballero, therefore, suggested that if the Commission is reluctant to set permanent rates at this time based upon the results of the CC-2 TELRIC study, that a reasonable course of action would be to set the CC-2 rates as interim rates on a going forward basis and afford Verizon Wireless additional time to review the study. Mr. Caballero even stated ALLTEL would be willing to provide a workshop to assist Verizon Wireless in a review of the study.¹⁵¹ Regardless of the procedure employed, there is no justification in this proceeding for setting ALLTEL's reciprocal compensation rates at the exact rates being charged by Verizon-North, which are significantly lower than the reciprocal compensation rates established for other rural ILECs.

C. Summary:

If permanent reciprocal compensation rates are to be established, the only Pennsylvania forward-looking cost-based rates of record are the following rates from ALLTEL Exhibit CC-2: Type 2A - \$.01891, Type 2B - \$.00942, Type 1 - \$.00942,

¹⁵⁰ALLTEL St. 2R at 14.

¹⁵¹T. 217.

and Indirect - \$.01672.¹⁵² These rates would equate to a blended rate of \$.0165. ALLTEL, however, respectfully believes that since cost-based rates are available by specific interconnection type, such rates should be employed in lieu of a blended rate.

Issue 10: Propriety of Using a Traffic Factor When Actual Traffic Can Be Measured

A. Issue:

Can the parties implement a traffic factor to use as a proxy for the mobile-to-land and land-to-mobile traffic balance if the CMRS provider does not measure traffic.

B. Discussion:

Verizon Wireless in its Petition raised Issue 10 claiming there are situations in which a CMRS carrier does not measure the traffic it receives from an ILEC. ALLTEL, however, citing Section 1.1, Attachment 3 to the draft Interconnection Agreement, which provides that the Parties should use either actual traffic records or data (either Meet Point Billing Records or a report) provided by the transit provider for billing to the other party, submits that a factor should not be used where actual data exists.

ALLTEL does not need a factor for billing traffic to Verizon Wireless. ALLTEL can bill direct routed traffic originating from Verizon Wireless and terminating to ALLTEL through actual call detail records recorded in an ALLTEL end office with an ALLTEL tandem whether Verizon Wireless' traffic comes through an ALLTEL tandem or comes to an ALLTEL end-office via a Verizon PA tandem.

¹⁵²Since the cost-based rates in CC-2 reflect no transit costs on indirect traffic and no cost responsibility for construction of Verizon Wireless facilities outside the ALLTEL existing network, if ALLTEL would be assigned responsibility for any of these costs, the CC-2 TELRIC study results would have to be revised as would the aforesaid reciprocal compensation rates.

ALLTEL can bill indirect routed traffic originating from Verizon Wireless and terminating to ALLTEL via the meet point billing records that it receives from Verizon PA, provided it has an effective agreement with Verizon PA to provide these records. Consistent with the referenced language, actual recordings should be used where available. The billing of traffic based upon actual call detail records or a report from the transit provider produces an accurate bill for the traffic terminated to each party. The utilization of a traffic factor only provides an estimate for the billing of the traffic terminated on a party's network. Verizon Wireless proposes to use a factor for billing in both directions for both direct and indirect traffic because Verizon Wireless claims it does not measure the traffic originating from ALLTEL and terminating to Verizon Wireless. ALLTEL does not oppose Verizon Wireless' use of a representative traffic factor¹⁵³ for billing ALLTEL if Verizon Wireless has no actual data. ALLTEL can bill based upon actual data and accordingly, should not be forced to estimate the traffic through use of a traffic factor.¹⁵⁴

C. Summary:

A traffic factor should be used for billing only when a party does not have actual traffic data; when actual data does exist, such data should be used for billing purposes.

¹⁵³It must be recognized that ALLTEL does not support the factor proposed by Verizon Wireless. This issue of appropriate factor is discussed in Issue 30.

¹⁵⁴See ALLTEL St. 1 at 9-10 and ALLTEL St. 1R at 20.

Issue 11: Applicability of Charging a Tandem Rate

A. Issue:

Where a CMRS provider's switch serves the geographically comparable area of LEC tandem, can it charge a termination rate equivalent to a tandem rate for traffic terminated in the land to mobile direction?

B. Discussion:

Rates must be reciprocal and symmetrical. However, Verizon Wireless through Issue 11 is proposing to charge ALLTEL a tandem rate for terminating all calls it receives from ALLTEL, regardless of the transport arrangement, i.e. regardless of whether the call is received through indirect interconnection or through a direct interconnection at an ALLTEL end office or tandem. As ALLTEL witness Ms. Hughes testified, in some areas of Pennsylvania, ALLTEL's network does not include an ALLTEL tandem. Instead the ALLTEL end office subtends another ILEC's tandem. In those areas where an ALLTEL tandem is not used, ALLTEL will not bill Verizon Wireless a tandem rate.¹⁵⁵ Since ALLTEL will not bill a tandem rate to Verizon Wireless in those areas, Verizon Wireless should not be permitted to bill ALLTEL a tandem rate at those locations. Allowing Verizon Wireless to do so would allow Verizon Wireless's rate to exceed ALLTEL's rate. This would render the rates asymmetrical, in violation of 47 C.F.R. 51.711, unless Verizon Wireless has proven to the state commission "on the basis of a cost study using a forward-looking economic cost based pricing methodology" that a higher, asymmetrical rate, is justified. 47 C.F.R. 51.711(b). Since Verizon Wireless has provided no cost study to support its rate, its asymmetrical rate proposal contravenes the FCC's rules.

¹⁵⁵ALLTEL St. 1 at 14-15.

Similarly for end-offices with direct interconnection, an ALLTEL tandem is not used at all, and therefore Verizon Wireless should not be allowed to charge ALLTEL a tandem rate.

Verizon Wireless attempts to justify charging a tandem rate to ALLTEL on the FCC's rule at 47 C.F.R. §51.711(a)(3). However, reliance on this rule is misplaced since the only time that ALLTEL sends any traffic to Verizon Wireless through an ALLTEL tandem is where the parties establish direct trunking through ALLTEL's tandem. In response to this criticism, Verizon Wireless contends that its switch serves a geographically comparable area of ALLTEL's tandem and thus it can charge a termination rate equivalent to a tandem rate for traffic terminated in the Mobile to Land direction. The provision in 47 C.F.R. § 51.711(a)(3) refers to the geographic area comparable to the area served by the incumbent LEC's tandem switch. As stated therein, "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3). When ALLTEL originates traffic that travels indirectly to Verizon Wireless through a Verizon PA tandem, the ILEC with the comparable geographic area and the tandem switching charge is Verizon PA, not ALLTEL. Thus, the geographic comparability test is inapplicable as the interconnection is indirect, not direct. If Verizon Wireless is allowed to charge ALLTEL a tandem rate based on the "geographic area" subpart of rule 51.711, the appropriate rate would be Verizon PA's tandem rate of \$.0007, not the rate Verizon Wireless has proposed for ALLTEL. ALLTEL appropriately proposes to include its tandem rate in the

reciprocal rates only when the network layout of ALLTEL includes an ALLTEL tandem and Verizon Wireless is connecting directly to the ALLTEL tandem.¹⁵⁶

In U.S. West Communications, Inc. v. Washington Utilities and Transportation Commission, 255 F.3d 990 (9th Cir. 2001), the dispute involved the direct interconnection and exchange of traffic between AT&T Wireless and one ILEC, i.e. U.S. West. In that case, the geographic comparability test was employed, because the comparison was between the CMRS carrier's switch and the exchanging ILEC's tandem. In that case, AT&T Wireless ultimately was allowed to charge the tandem rate to U.S. West when AT&T Wireless connected to the U.S. West tandem. However, the case clearly did not provide for the unilateral assessment of a tandem charge to U.S. West for any type of interconnection, including direct connection to an end office and most importantly indirect interconnection, where the tandem of an indirectly connected ILEC was not involved.

Verizon Wireless further argues that there is no justification to compel Verizon Wireless to charge the lower end office rate for land to mobile calls delivered to an end office connection because Verizon Wireless' costs for terminating the traffic remain the same.¹⁵⁷ However, as stated by ALLTEL witness Ms. Hughes, if Verizon is willing to accept a blended rate, which by its nature would be a rate higher than the end office rate and lower than the tandem rate (rather than the actual higher tandem rate for traffic terminating to a tandem and the lower end office rate for traffic terminating directly to an end office), Verizon Wireless would

¹⁵⁶See ALLTEL St. 1R at 21.

¹⁵⁷Verizon Wireless St. 1 at 15.

be accepting a rate that would be less than the tandem rate alone.¹⁵⁸ Therefore, Verizon Wireless contradicts its very own argument that it must assess the higher tandem rate in order to cover its costs.

Finally, ALLTEL notes that Verizon Wireless currently has an interconnection agreement with the Sprint/United Telephone Company that provides for different termination rates depending on whether the interconnection is through a Sprint tandem or through a Sprint end office.¹⁵⁹ This is precisely the arrangement proposed by ALLTEL.

For all of these reasons, Verizon Wireless' proposal to assess the higher tandem rate on all calls originated by ALLTEL, when ALLTEL will not reciprocally charge Verizon Wireless a tandem rate for calls that are not terminated to a tandem, must be rejected.

C. Summary:

Verizon Wireless' proposal to assess ALLTEL the higher tandem rate for all land to mobile traffic when ALLTEL will only assess a tandem rate to Verizon Wireless when traffic is terminated to a tandem must be rejected as it will result in ALLTEL paying rates to Verizon Wireless that are asymmetrical when Verizon Wireless has submitted no cost data to support asymmetrical rates, and the geographic comparability rule is inapplicable because the tandem at issue and the corresponding area served is Verizon PA's not ALLTEL's, and therefore the language in paragraph 2.1.1, Rates, of Attachment 3 to ALLTEL Exhibit 4 should be adopted.

¹⁵⁸ALLTEL St. 1R at 14.

¹⁵⁹ALLTEL St. 1R at 14-15; ALLTEL Ex. 1A.

Issue 13: Interim Terms Pending Final Agreement

A. Issue:

After a requesting carrier sends a formal request for interconnection under Section 252 (b) of the Act, what interim reciprocal compensation terms apply to the parties until an agreement has been negotiated and arbitrated by the Commission?

B. Discussion:

Citing the FCC's rules at 47 C.F.R. §51.715, Verizon Wireless through Issue 13 of the Petition contends that the Commission has authority to establish interim rates from the date of its interconnection request. Verizon Wireless then advocates that Verizon PA's transportation and transit rates be set as interim rates for ALLTEL presumably subject to true-up when final rates are established.¹⁶⁰ ALLTEL respectfully submits that Verizon Wireless' proposed use of Verizon PA rates as interim rates is without support.

The issue of interim rates is severely complicated by the controversy currently pending before the Commission at Docket No. C-20039321. This controversy was summarized by ALLTEL witness Hughes, as follows:

The question concerning whether and what interim rate may be applicable is ultimately a legal question. I will limit my testimony to outlining certain facts that may be relevant to the determination. Direct traffic was subject to an interconnection agreement between the parties dated September 17, 1997. The rate specified in that agreement was 1.2¢ per minute of use and was applied reciprocally and symmetrically between the parties. That agreement was terminated on or before March 17, 2003. Subsequent to the termination of that interconnection agreement, the parties have continued to exchange traffic and compensate one another consistent with the rate and terms of that agreement for direct traffic only. Neither party has billed or paid one another for any traffic other than direct traffic under that agreement.

¹⁶⁰See Verizon Wireless Petition at 28 and its Initial Offer at 6.

With respect to indirect traffic, prior to April 2002, ALLTEL was paid approximately 3¢ per minute of traffic that Verizon Communications terminated on ALLTEL including all wireless traffic originated by Verizon Wireless. This termination and compensation arrangement was pursuant to the Commission approved ITORP process. Prior to April, 2002 only direct traffic was addressed by the interconnection agreement between Verizon Wireless and ALLTEL, and indirect traffic was terminated and compensated pursuant to the ITORP process.

However, in early 2002, Verizon Wireless, contending that indirect traffic was also to be terminated and compensated pursuant to the interconnection agreement that had previously only been applied to direct traffic, directed Verizon Communications to no longer compensate ALLTEL pursuant to ITORP. While ALLTEL disagreed and protested, Verizon Communications ceased paying ALLTEL anything for indirect traffic. ALLTEL filed a complaint at Docket No. C-20039321. No decision in that proceeding has been issued. If ALLTEL prevails in the complaint proceeding, then ITORP is still in effect and the applicable rate for indirect traffic today would be the ITORP rates. In these negotiations and this proceeding, ALLTEL has agreed to negotiate and present to the Commission for approval a new agreement that would address both direct and indirect traffic and that would in part modify the ITORP process as it pertains to ALLTEL's exchange of traffic with Verizon Wireless. Of course, before any modifications could be implemented, there would have to be a new agreement with Verizon ILEC.

ALLTEL St. 1 at 16-17 (emphasis added).

Under these circumstances, an interim rate applicable to the indirect traffic cannot be established until the complaint proceeding is resolved providing a determination as to whether the indirect traffic between Verizon Wireless and ALLTEL is subject to ITORP compensation pending a new agreement to be established in this proceeding.

With respect to the direct traffic, ALLTEL opposes the application of the Verizon PA rates as interim rates. It is ALLTEL's position that the FCC rules do not provide for the interim application of an RBOC's rates to a rural ILEC. Throughout this proceeding, Verizon Wireless has continued to pay on direct traffic at the \$.012

rate in the prior agreement.¹⁶¹ ALLTEL submits that there is no reason to replace this rate with the transport and transit rates of Verizon PA. Instead, ALLTEL believes that this rate should be continued and then trued-up when the permanent rates are established pursuant to this arbitration proceeding.

C. Summary:

As to indirect traffic, ALLTEL firmly believes that the ITORP compensation is applicable until the pending complaint proceeding at Docket No. C-20039321 is resolved, an agreement is established in this proceeding establishing reciprocal compensation and a new agreement addressing the ITORP traffic is executed by ALLTEL and Verizon PA; while as to the direct traffic, ALLTEL believes that the existing \$.012 rate should be continued subject to true-up upon resolution of the new reciprocal compensation rates.

Issue 15: Payment Due Date

A. Issue:

Whether the payment due date for invoices rendered under the agreement should be determined from the date of the invoice or the date of receipt of the invoice and whether the allotted time should be 30 or 45 days thereafter?

B. Discussion:

ALLTEL in its Response (ALLTEL Exhibit 4) at 30 raised the payment due date as Issue 15. It is ALLTEL's position is that payment for all undisputed charges should be due 30 days after the date of the invoice. This we submit is the industry standard and is consistent with the language contained in all ALLTEL

¹⁶¹See ALLTEL St. 1 at 16.

interconnection agreements in Pennsylvania.¹⁶² If Verizon Wireless' position of 30 days after receipt of the invoice is applied, ALLTEL would never know the date from which to determine when payment was due and when late payment charges should be applied because it would never know the date Verizon Wireless actually received the invoice. ALLTEL must have a date certain from which to calculate a due date. *The invoice date is the most practical and accepted date for this purpose.* ALLTEL's billing system calculates the payment due date of 30 days from the invoice date for all carriers. It would be administratively impossible to base a billing system upon some unknown date. As ALLTEL witness Hughes explained:

On page 24, lines 7 – 9 [Verizon Wireless St. 1.0], Mr. Sterling states that ALLTEL's position puts Verizon Wireless at risk should there be delays between the invoice date and when the invoice is mailed or received. Verizon Wireless receives an industry standard mechanized bill known as the Bill Data Tape. The Bill Data Tape was established by the national Ordering and Billing Forum (OBF). The OBF includes participants from Local Exchange Carriers, Interexchange Carriers, Competitive Local Exchange Carriers and Wireless Carriers. These participants establish Carrier Access Billing ("CABs") standards for both a paper bill and the Bill Data Tape ("BDT"). The BDT is expressed mailed (overnight delivery) to TEOCO (a company that provides bill verification) the same day the bill is processed. Therefore the concern by Verizon Wireless that the bill will not be timely received and puts them at risk is not warranted since the vendor hired by Verizon Wireless to verify their bill receives the mechanized bill the day after the bill is processed. On the other hand, Verizon Wireless's proposal puts ALLTEL in a position of never knowing when a payment would be late, unless it individually queried every Verizon Wireless bill to ascertain Verizon Wireless's receipt date. This position is clearly untenable. Under ALLTEL's proposal, Verizon Wireless would have 30 days from a date certain in which to pay. Thirty days to turn around a bill is more than sufficient to cover any potential lag in receipt that Verizon Wireless may experience. However, as I stated, given the use of an industry standard CABs billing system, any delay between ALLTEL's bill date and its receipt date by Verizon Wireless should be minimal at most.

¹⁶²T. 151.

ALLTEL St. 1R at 23-24.

Furthermore, in the executed interconnection agreements between Verizon Wireless and at least 5 other companies in Pennsylvania, including those with its affiliates Verizon PA and Verizon North, the interconnection agreements require payment of billed amounts to be due within 30 days of the date of the bill statement.¹⁶³ We respectfully submit that ALLTEL should not be subject to more onerous terms than those that Verizon Wireless places on its affiliates.

C. Summary:

A payment due date 30 days after the date on the bill is reasonable, practicable, consistent with industry standards and in accord with all ALLTEL interconnection agreements as well as numerous Verizon Wireless interconnection agreements with its affiliates.

Issues 16 and 17: Bona Fide Dispute

A. Issue:

Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: "A Bona Fide dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, or should a Bona Fide dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind should not be considered a Bona Fide dispute." And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1, the disputing party must make payment on any of the disputed amount owed to the billing party by the next billing due date, or the billing party must have the right to pursue normal treatment procedures. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

¹⁶³T. 152-53.

B. Discussion:

Section 9.0, page 7, *General Terms & Conditions*, of the draft interconnection agreement between Verizon Wireless and ALLTEL addresses Dispute Resolution. Paragraph 9.1.1.3 of ALLTEL's Exhibit 4 (the ALLTEL Exhibit A draft agreement) addresses those circumstances that comprise a Bona Fide Dispute and the conditions that apply.

Verizon Wireless' position on this language was unclear to ALLTEL. Verizon Wireless agreed to keep ALLTEL's proposed language during the negotiation session held November 20, 2003.¹⁶⁴ However, the proposed language appeared stricken in Verizon Wireless Hearing Exhibit 1 (the Verizon Wireless Exhibit 1 draft agreement). Verizon Wireless witness Sterling also asserted in testimony that Verizon Wireless offered language to ALLTEL to revise paragraph 9.1.1.3 to clarify language.¹⁶⁵ However, as noted by ALLTEL witness Hughes in rebuttal, Verizon Wireless' position on lost interest was never proposed by Verizon Wireless during negotiations and Verizon Wireless never offered alternative Bona Fide Dispute language to ALLTEL.¹⁶⁶

However, in its Initial Offer filed in between the filing of direct and rebuttal testimony in this proceeding, Verizon Wireless did in fact offer alternative language for paragraphs 9.1.1.3. and 9.1.1.4. Accordingly, subject to the clarification set forth below and in ALLTEL's Final and Best Offer filed simultaneously with this Main Brief, ALLTEL believes this issue can be resolved.

¹⁶⁴ ALLTEL Exhibit 4 at 31.

¹⁶⁵ Verizon Wireless St. 1 at 24.

¹⁶⁶ ALLTEL St. 1R at 24.

ALLTEL proposed the following language in Sections 9.1.1.3 and 9.1.1.4 of

its draft agreement:

9.1.1.3 For purposes of this subsection 9.1.1. "Bona Fide Dispute" means a dispute of a specific amount of money actually billed by a Party. A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind will not be considered a Bona Fide Dispute for purposes of this subsection 9.1.1.

9.1.1.4 Once the Bona Fide Dispute has been processed in accordance with this subsection 9.1.1, the disputing Party will make payment on any of the disputed amount owed to the billing Party by the next billing due date, or the billing Party shall have the right to pursue normal treatment procedures. Any credits due to the disputing Party resulting from the Bona Fide Dispute process will be applied to the Disputing Party's account by the billing Party by the next billing cycle upon resolution of the dispute.

ALLTEL Exhibit 4, Draft Agreement, General Terms & Conditions, paras. 9.1.1.3 and 9.1.1.4, at 7.

In its Initial Offer dated February 6, 2004, Verizon Wireless offered the following language (with the boldface being Verizon Wireless' edit marks):

Bona Fide Dispute, General Terms and Conditions, paragraph 9.1.1.3. and 9.1.1.4. Whether the agreement should include the following: "A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other **undisputed** amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for special damages of any kind will not be considered a Bona Fide Dispute." And, therefore, whether once a Bona Fide dispute has been processed in accordance with this subsection 9.1.1., the disputing party must make payment on any of the disputed

amount owed to the billing party by the next billing due date, or the billing party must have **the right to pursue any remedy applicable at law or equity**. Any credits due to the disputing party resulting from the Bona Fide dispute process would be applied to the disputing party's account by the billing party by the next billing cycle upon resolution of the dispute.

Verizon Wireless Initial Offer at 7-8.

ALLTEL can accept the bolded language shown above as proposed by Verizon Wireless. However, a few minor points must be clarified, as Verizon Wireless made other changes in the language shown above that were not specifically identified by Verizon Wireless. First, Verizon Wireless changed the "will" to "should" in the last quoted sentence of paragraph 9.1.1.3. (changed but not shown as changed in boldface in Verizon Wireless' proposal above). ALLTEL believes retention of the word "will" keeps the proposal mandatory, whereas inclusion of the word "should" unintentionally renders it discretionary.

Second, Verizon Wireless inserted the word "special" in front of "damages" in that same sentence (again, changed but not shown as changed in bold face in Verizon Wireless' proposal above). ALLTEL does not believe that the term "special" should be included, since the intent of the language was that no damages of any kind would be considered for purposes of this section concerning a Bona Fide Dispute over payment. Further, it is unclear what "special" damages would be.

Finally, it is unclear whether Verizon Wireless proposed to strike the first sentence in ALLTEL's paragraph 9.1.1.3, which defines a Bona Fide Dispute as "a dispute of a specific amount of money actually billed by a Party." While not shown as stricken, Verizon Wireless did not include that introductory definition in its proposed language. ALLTEL would propose to maintain that language.

Accordingly, ALLTEL believes that the following substituted language, with changes shown in boldface and strikeout, essentially adopting Verizon Wireless' bolded changes, and striking out language no longer necessary as a result of Verizon Wireless' offer, is an appropriate resolution of these disputed issues:

9.1.1.3 For purposes of this subsection 9.1.1. "Bona Fide Dispute" means a dispute of a specific amount of money actually billed by a Party. A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other **undisputed** amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind will not be considered a Bona Fide Dispute for purposes of this subsection 9.1.1.

9.1.1.4 Once the Bona Fide Dispute has been processed in accordance with this subsection 9.1.1, the disputing Party will make payment on any of the disputed amount owed to the billing Party by the next billing due date, or the billing Party shall have the right to pursue **any remedy applicable at law or equity**. ~~normal treatment procedures~~. Any credits due to the disputing Party resulting from the Bona Fide Dispute process will be applied to the Disputing Party's account by the billing Party by the next billing cycle upon resolution of the dispute.

C. Summary:

ALLTEL believes that with the changes shown immediately above, ALLTEL has accepted all those changes offered and specifically noted by Verizon Wireless in its initial offer and that Issues 16 and 17 should be resolved with adoption of the following compromise language as between ALLTEL and Verizon Wireless:

9.1.1.3 For purposes of this subsection 9.1.1. "Bona Fide Dispute" means a dispute of a specific amount of money actually billed by a Party. A Bona Fide Dispute does not include the refusal to pay all or part of a bill or bills when no written documentation is provided to

support the dispute, nor shall a Bona Fide Dispute include the refusal to pay other undisputed amounts owed by the disputing Party pending resolution of the dispute. Claims by the disputing Party for damages of any kind will not be considered a Bona Fide Dispute for purposes of this subsection 9.1.1.

- 9.1.1.4 Once the Bona Fide Dispute has been processed in accordance with this subsection 9.1.1, the disputing Party will make payment on any of the disputed amount owed to the billing Party by the next billing due date, or the billing Party shall have the right to pursue any remedy applicable at law or equity. Any credits due to the disputing Party resulting from the Bona Fide Dispute process will be applied to the Disputing Party's account by the billing Party by the next billing cycle upon resolution of the dispute.

Issue 20: Most Favored Nation ("MFN")

A. Issue:

Whether, as Verizon Wireless proposes in Petition Exhibit 1 section entitled "Most Favored Nation, General Terms and Conditions," paragraph 31.1, Verizon Wireless should have the right to opt out of this agreement during its terms and into any other agreement that ALLTEL may execute with another carrier.

B. Discussion:

Citing Section 252(i) of the Telecom Act of 1996, Verizon Wireless through witness Sterling apparently believes that it should have the right at any time to simply opt into any agreement that ALLTEL may enter during the term of its agreement with Verizon Wireless.¹⁶⁷ ALLTEL disagrees.

Verizon Wireless should not be permitted to employ the MFN provision in Section 252(i) to opt into another agreement during the term of the agreement to be established in this arbitration. While it may seek changes in the agreement under

¹⁶⁷ See Verizon Wireless St. 1.0 at 25.

the Change of Law Provision to make it consistent with changes in law during the term, TCA-96 does not provide Verizon Wireless the right to simply walk away from a valid and binding agreement in favor of another agreement. The basis for negotiating and executing an interconnection agreement between two parties is to provide a commitment by both parties to the business terms and conditions of the agreement as well as to provide certainty to the relationship during the term of the agreement. The interconnection agreement provides for a contract term that specifies the duration of the contract. MFN rights under the Act are available after the agreement is terminated or where a party does not otherwise have an agreement. If Section 252(i) was to be interpreted in the manner proposed by Verizon Wireless, ILECs would have no stability whatsoever with their connecting carriers jumping from one agreement to another at any time.¹⁶⁸

C. Summary:

Verizon Wireless, under Section 252(i), may not opt into another agreement during the term of the agreement to be established through this arbitration and section 31.0 of the draft agreement should be omitted.

Issue 24: ALLTEL's Obligations as an ILEC for Direct Routed Mobile to Land Traffic

A. Issue:

Whether agreement section referred to as "Incumbent Local Exchange Carrier Requirement," Attachment 2, paragraph 1.4.2 of Verizon's Exhibit 1, should specify that ALLTEL's obligations to provide service under the agreement is with respect to that service are where ALLTEL is authorized to provide service?

¹⁶⁸See ALLTEL St. 1 at 19 and St. 1R at 24-25.

B. Discussion:

Attachment 2 of the draft agreement addresses the network architecture necessary for Verizon Wireless and ALLTEL to "interconnect their respective networks" for the direct exchange of traffic. In this Attachment, ALLTEL proposed the following language:

1.4.2 Incumbent Local Exchange Carrier Requirement

The Parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of services or facilities by ALLTEL in those areas where ALLTEL is not the Incumbent Local Exchange Carrier, as defined by the Act.

ALLTEL Exhibit 4 (Exhibit A draft agreement to ALLTEL Response) at Attachment 2, paragraph 1.4.2.

Verizon Wireless proposes striking this language.¹⁶⁹ This language "within the ALLTEL interconnected network" merely defines ALLTEL's network for purposes of direct interconnection. ALLTEL's proposed language should not be controversial. The terms and conditions for direct interconnection do not apply to the provision of services or facilities by ALLTEL in those areas where ALLTEL is not the ILEC.

ALLTEL is only authorized to provide service in its franchised area. Further, ALLTEL's service territory is highly segregated - discontinuous as previously noted by the Commission.¹⁷⁰ Dispersed as it is throughout Pennsylvania, ALLTEL's franchised territory effectively traverses 5 of the 6 MTAs in Pennsylvania, sitting in

¹⁶⁹ See Verizon Wireless Hearing Ex. 1, (Exhibit 1 draft agreement to Verizon Wireless Arbitration Petition).

¹⁷⁰ ALLTEL Suspension Order at 9.

parts of MTAs that include coverage areas in 9 neighboring states.¹⁷¹ ALLTEL's discontiguous service areas are not all interconnected by ALLTEL facilities. ALLTEL's proposed direct interconnection language allows Verizon Wireless to establish a single point of interconnection within ALLTEL's network that utilizes ALLTEL's own facilities to connect the local exchange areas. Because ALLTEL's territory is disjointed across the state, however, if Verizon Wireless chooses to establish a direct facility to an ALLTEL end office that is not connected to the ALLTEL network through ALLTEL-owned facilities then Verizon Wireless would only receive calls from ALLTEL end users or send calls to ALLTEL end users located in that specific end office.

The language in paragraph 1.4.2 makes the contract terms with respect to direct interconnection unambiguous. ALLTEL should not be required to provide service or facilities in areas where ALLTEL is not the ILEC. ALLTEL is unaware of any other ILEC that has been required to provide a direct interconnection point where the ILEC is neither certificated to provide service nor has facilities. Without the language specifying that the terms for the provision of direct interconnection do not apply to the provision of services or facilities by ALLTEL where it is not the ILEC, the contract will be ambiguous with respect to ALLTEL's responsibilities outside its service area and off its network. This could impose additional costs upon ALLTEL for transporting traffic outside the ALLTEL network using a third-party provider. Further, it directly conflicts with the network architecture addressed in Attachment 2 calling for Verizon Wireless and ALLTEL to "interconnect their respective networks." This can render any agreed upon direct interconnection

¹⁷¹ALLTEL St. 3R; ALLTEL Exs. 3C and 3E.

between the parties an indirect interconnection, potentially compelling ALLTEL to use a third-party to complete delivery of supposedly direct interconnected traffic. Should Verizon Wireless choose an interconnection point off of ALLTEL's network, then Verizon Wireless *should* be responsible for transport of the traffic back to Verizon Wireless' switch.¹⁷²

Verizon Wireless contends it understands the limitations of ALLTEL's discontinuous service territory, and that it is not suggesting that ALLTEL create any additional connections that do not already exist. Nevertheless, Verizon Wireless maintains that "the real issue regards traffic in the land to mobile direction, which ALLTEL has an obligation to deliver to Verizon Wireless [and] to be responsible for the cost of doing so."¹⁷³

Verizon Wireless' position is inherently inconsistent. Verizon Wireless cannot contend that it is not suggesting that ALLTEL create any additional connections that do not already exist, but also contend that ALLTEL has an obligation to deliver traffic to Verizon Wireless under terms applicable to *direct interconnections* to any distant interconnection point off of ALLTEL's interconnected network. The language in Attachment 2 addresses direct interconnections of Verizon Wireless' and ALLTEL's networks. Verizon Wireless cannot purport to agree to a direct interconnection, but at the same time, by refusing to acknowledge that terms and conditions for direct interconnections apply only where ALLTEL is authorized to provide service or has facilities as the ILEC, reserve an out for itself to convert any direct interconnection to an indirect interconnection. ALLTEL's obligations for direct

¹⁷²ALLTEL St. 1 at 20.

¹⁷³Verizon Wireless St. 1.1 at 14.

interconnections can only be with respect to its network and service area. Accordingly, in providing the network architecture for direct interconnection between Verizon Wireless' and ALLTEL's respective networks, the agreement must clearly state that the terms and conditions for direct interconnection do not apply to the provision of services or facilities by ALLTEL in areas where ALLTEL is not the ILEC.

Additionally, for reasons stated above in response to Issues 3b and 8, which is incorporated herein by reference, ALLTEL's obligations to deliver traffic to Verizon Wireless extend only to areas where ALLTEL is certificated as the ILEC and on ALLTEL's network.

C. Summary:

The language in Attachment 2 addressing direct interconnection of the Verizon Wireless and ALLTEL networks must clearly be defined as being applicable only where ALLTEL provides services or facilities as the ILEC, and the language proposed by ALLTEL in Exhibit 4, Attachment 2, paragraph 1.4.2., should be adopted.

Issue 25: Direct Routed Mobile to Land Traffic Within ALLTEL's Interconnected Network

A. Issue:

Whether the phrase "within ALLTEL's interconnected network" should be inserted in the agreement section entitled "Direct Routed Traffic Mobile to Land Traffic," Attachment 2, paragraph 2.1.1.1, paragraph 2.1.1.2, paragraph 2.1.2.1, and paragraph 2.1.2.2 of Verizon's Exhibit 1, to clearly indicate that when Verizon Wireless connects to one of ALLTEL's separate segregated networks, it is able to exchange traffic and is achieving interconnection, only with that individual segregated ALLTEL network.

B. Discussion:

The language "within ALLTEL's interconnected network" appears elsewhere in the agreement. Although in negotiations Verizon Wireless agreed to the

language as it appeared throughout the agreement, for purposes of this arbitration, Verizon Wireless has proposed striking its inclusion in section 2.1.1., paragraphs 2.1.1.1 and 2.1.1.2. and section 2.1.2, paragraphs 2.1.2.1 and 2.1.2.2.

Section 2.1 of Attachment 2 addresses the basic terms for direct routed mobile to land and land to mobile traffic. Unless the contract is clear that direct routed traffic will be delivered to a point within ALLTEL's interconnected network, the direct interconnection can easily be converted to an indirect interconnection invoking the services of a third-party transit provider and potentially imposing additional costs on ALLTEL to deliver or receive traffic at some distant point. For reasons expressed in response to Issue 24, and in response to Issues 3b and 8, all of which is incorporated herein by reference, this language "within ALLTEL's interconnected network" is essential to clarify that ALLTEL' obligations with respect to the direct exchange of traffic extend only to where it has facilities.

C. Summary:

The interconnection agreement must clearly define ALLTEL's obligations for direct routed traffic as extending only to ALLTEL's interconnected network and the language proposed by ALLTEL in Exhibit 4, Attachment 2, paragraphs 2.1.1.1, 2.1.1.2, 2.1.2.1. and 2.1.2.2. should be adopted.

Issue 27: Traffic Level to Establish Direct Interconnection Facility

A. Issue:

Whether the agreement section entitled "Indirect Network Interconnection," Attachment 2, paragraph 2.1.5 of Verizon Wireless' Exhibit 1, should require the establishment of a direct interconnection facility when the capacity of the indirect traffic reaches a DS1 level?

B. Discussion:

Generally, parties to an indirect interconnection agreement establish a traffic level at which the connecting carrier is required to construct facilities for the purpose of establishing a direct interconnection to the incumbent carrier's network. It is ALLTEL's position that a direct interconnection should be established when the level of the indirect traffic reaches a DS1 level. A DS1 level¹⁷⁴ is a reasonable standard for triggering dedicated transport because DS1 is a standard unit of network capacity, is an efficient network design and is generally accepted in the industry.¹⁷⁵ A 500,000 MOU threshold, which appears to be Verizon Wireless' actual proposal would equate to approximately 2 DS1s. At a 500,000 MOU threshold, ALLTEL may be forced to expand its existing facilities (between ALLTEL and the third-party) at ALLTEL's customer expense before the threshold is met or exceeded.

In Verizon Wireless Statement 1.1 at 3, Verizon Wireless witness Sterling indicated he was willing to utilize a 257,000 MOU threshold but only to the extent the end office traffic is exchanged at ALLTEL's tandem location. However, Ms. Hughes' surrebuttal makes it very clear that the threshold by end office must be applied at both a Verizon PA tandem location and an ALLTEL tandem location:

Q. Ms. Hughes, Mr. Sterling in his rebuttal testimony on page 3 offered to utilize 257,000 minutes of use as a threshold for direct interconnection, but then he put the caveat only to the

¹⁷⁴At Verizon Wireless' request, ALLTEL quantified the DS1 level to be 257,000 minutes of use ("MOU"). T. 196.

¹⁷⁵ALLTEL St. 1 at 21; see also Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies, Case OO-C-0799, 2000 N.Y. PUC LEXIS 1047 (Issued and Effective December 22, 2000) at 7 ("The DS-1 or T-1 level (24 voice grade channels) recommended by both Verizon and Time-Warner is a reasonable standard for triggering dedicated transport since it represents a standard unit of network capacity, is an efficient network design, and is generally acceptable to most parties").

extent that the end office traffic is exchanged at ALLTEL's tandem location.

Can you respond to that offer?

- A. Well, I'm unclear as to what the purpose of this offer is. ALLTEL's offices sit both behind an ALLTEL tandem and they could possibly sit behind a Verizon ILEC tandem. A threshold needs to be established for both situations.

Thresholds are needed in contracts in order to circumvent call problems that both of our customers could incur. For example, a Verizon Wireless customer could call an ALLTEL customer. If there is not enough facilities available because of the amount of volume of traffic that are placed on those facilities, the Verizon Wireless customer could receive an intercept message. They could receive a fast busy on their phone. And these mechanisms are put in place into contracts to prevent those type of instances from occurring.

ALLTEL initially proposed a DS-1 level as the industry standard that is used. We also have counter-proposed that with a flat minute of use based amount that each party could measure to determine when a direct connection should be established and not use an indirect route.

The 257,000 minutes of use was offered, and ALLTEL believed that's fair in all circumstances.

T. 164-65.

Thus, ALLTEL submits that 257,000 MOU should be the threshold that applies by end office at both a Verizon PA tandem and an ALLTEL tandem. To utilize a higher threshold at any tandem location could result in service degradation for all applicable customers as inadequate capacity could limit the volume of calls.

C. Summary:

Direct interconnection on an end office basis should be required when the level of traffic reaches 257,000 MOU.

Issue 28: NPA-NXXs with Different Rating and Routing Points

A. Issue:

Whether Verizon Wireless may establish NPA-NXXs in ALLTEL rate centers, regardless of actual delivery point of the associated calls, and require ALLTEL to bear all transport costs to the point of delivery?

B. Discussion:

The issue of the establishment of virtual NXX codes in ALLTEL's rate centers, and the responsibility of costs associated with delivery of traffic using virtual NXX codes, is addressed in Attachment 2, page 4, Section 2.2 Routing Points in the Exhibit A Agreement attached to ALLTEL's Response (ALLTEL Exhibit 4), and in Attachment 2, page 4, Section 2.1 Routing Points in the Exhibit 1 Agreement attached to Verizon Wireless' Arbitration Petition (Verizon Wireless Exhibit 1).

As fully addressed in ALLTEL's responses to Issues 3(b) and 8 herein, ALLTEL is not responsible for third-party charges associated with Verizon Wireless' choice to have traffic delivered indirectly to a distant switch location. With respect to this issue, Verizon Wireless has chosen to use virtual NPA-NXXs with call routing points that are different than the actual call routing points Verizon Wireless has established to transfer and complete the call. Verizon Wireless wishes to establish NPA-NXXs within ALLTEL rate centers to receive local calling from ALLTEL customers. However, Verizon Wireless does not wish to establish network facilities necessary to complete the transfer of the call on a local basis. In fact, the switch associated with Verizon Wireless' virtual NPA-NXXs is located at a distant location off of ALLTEL's network and outside its service territory. This causes the calls to these Verizon Wireless NXXs to appear be to an ALLTEL rate center when in fact they are routed indirectly to a distant location off ALLTEL's network. The costs

arising from this indirect routing are the result of Verizon Wireless' economic decision to employ a NPA-NXX that appears local but that is delivered to a Verizon Wireless switch that is off of ALLTEL's network. As the entity that has caused the costs associated with the delivery of calls using a virtual NXX, Verizon Wireless must bear the responsibility for the costs. As fully explained in our discussion on Issues 3(b) and 8, which is incorporated herein, ALLTEL cannot be forced to bear costs to transport traffic outside its service territory and off its network. The costs at issue result from Verizon Wireless' economic decision not to establish a direct interconnection and its decision to employ virtual NXXs to its switches outside the ALLTEL network. Calls that are transported indirectly to Verizon Wireless using a virtual NXX provide a significant revenue increase to Verizon Wireless with minimal expense, since a call is rated local but Verizon Wireless has expended no capital on facilities necessary to complete the call as local. Thus, as an economic decision made by Verizon Wireless this cost must be borne by Verizon Wireless.

C. Summary:

ALLTEL is not responsible for third-party charges when Verizon Wireless' rating points for an NPA-NXX are different than the call's actual routing points and the call is routed indirectly over a third party's facilities to a distant switch located off of ALLTEL's network and outside its service territory.

Issue 30: Land to Mobile Traffic Factor

A. Issue:

Whether a 60/40 land to mobile traffic factor must be used by both Parties when either Party cannot record the terminating minutes originating from the other Party routed over a direct interconnection facility, even though ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and even though Verizon's proposed factor of 60/40 land to mobile is inconsistent with the shared facilities factor of 70/30 land to mobile proposed by Verizon Wireless?

B. Discussion:

As discussed in Issue 10, ALLTEL has the ability to record all terminating traffic originating from Verizon Wireless over direct interconnection facilities and has access to the traffic data for the indirect traffic it terminates through a Verizon PA tandem. Therefore, a traffic factor is not needed by ALLTEL for billing Verizon Wireless. If there is a need for Verizon Wireless to use a traffic factor, Verizon Wireless' proposed 60/40 factor is unreasonable.

As ALLTEL witness Hughes noted in ALLTEL Statement 1R, page 8, during the negotiation process, ALLTEL had provided Verizon Wireless with the standard ALLTEL interconnection agreement which contained an 80/20 traffic factor; 80% mobile to land and 20% land to mobile. During the course of negotiations, Verizon Wireless changed the percentage to 70% mobile to land and 30% land to mobile and offered them to ALLTEL. Thus, the 70/30 traffic factor was based upon Verizon's own counter proposal to ALLTEL. As Ms. Hughes further testified, a review of the tracking changes in the Agreement itself shows that the 70/30 factor was inserted by Verizon Wireless on November 13, 2003 at 4:12 p.m. ALLTEL accepted this change during the negotiation conference held on November 21, 2003 and believed that the issue was closed.

Accordingly, ALLTEL did not undertake the time to conduct a specific traffic study or provide actual traffic counts. While apparently Verizon Wireless has reneged on this prior commitment by submitting this issue as unresolved for arbitration, ALLTEL submits that the 70/30 traffic factor should be accepted being consistent with traffic factors generally accepted for similar situations.¹⁷⁶

In addition, witness Hughes clearly refuted Verizon witness Sterling's claim that he looked at an isolated direct trunk group which supported his position that the traffic is far more in balance. Ms. Hughes was of the belief that Verizon Wireless is not being forthright on this issue testifying as follows:

On page 28 of Mr. Sterling's revised direct testimony, lines 12 – 17, Mr. Sterling states Verizon Wireless has three direct interconnection facilities established with ALLTEL. Each of these facilities is directly connected to an ALLTEL tandem, which are located in Meadville, Kittanning, and St. Marys, PA. As stated by Mr. Sterling, Verizon Wireless is only transporting traffic directly to ALLTEL at the Meadville tandem. Thus, Verizon Wireless is sending traffic indirectly to Verizon ILEC that will terminate to ALLTEL customers in Kittanning and St. Marys even though Verizon Wireless is connected directly to ALLTEL tandems in those areas. This makes it clear that Verizon Wireless is already using its indirect interconnection election to avoid paying ALLTEL. By routing the traffic indirectly to ALLTEL, Verizon Wireless avoids a direct reciprocal compensation charge from ALLTEL. Also, since Verizon Wireless stopped compensating Verizon ILEC for indirect traffic as required under the ITORP agreement, and Verizon Wireless ILEC thus stopped compensating ALLTEL for terminating this traffic to ALLTEL (the subject of ALLTEL's pending complaint at Docket No. C-20039321), Verizon Wireless is not charged by anyone for terminating this traffic. There is no other explanation as to why Verizon Wireless would pay for a direct interconnection facility to ALLTEL and not utilize the facility.

Further, the information provided by Mr. Sterling in his late filed revised direct testimony is not reliable. Foremost, as a measurement of traffic on one tandem between the parties, it is not representative of the entire traffic flow between the companies. Verizon Wireless could be transporting traffic indirectly and directly to ALLTEL for

¹⁷⁶See ALLTEL Exhibit 6 §4.3.3.

termination in Meadville. The results shown in Mr. Sterling's late filed testimony are also inconsistent with and in fact directly contrary to otherwise generally accepted land to mobile industry traffic factors. While Mr. Sterling presents aggregate MOU data, ALLTEL cannot *substantiate the factor provided in Mr. Sterling's testimony and he provided no support.* Finally, it is clear from the information provided by Verizon Wireless in Mr. Sterling's supplemental testimony, that Verizon Wireless is routing traffic indirectly to ALLTEL where direct interconnection facilities exist. While ALLTEL reserves the right to respond further to this late filed testimony, for these reasons alone, ALLTEL believes the conclusions presented in Mr. Sterling's revised direct testimony cannot be supported.

As I also stated earlier in this rebuttal testimony, we believe Verizon Wireless's sudden turn around on this issue represents bad faith negotiations by Verizon Wireless by agreeing to a factor, but submitting this issue as unresolved in the arbitration. Under the negotiation concept, all issues that were agreed to by the parties during the negotiation process could be included in the arbitration.

ALLTEL St. 2R at 25-27.

C. Summary:

The appropriate land to mobile traffic factor for the agreement should be 70/30 as the parties originally agreed and which are in accord with industry standards.

Issue 31: Definition of Interconnection Point

A. Issue:

Whether the agreements definition of "Interconnection Point," Attachment 8 of Verizon Wireless Exhibit 1 should be clear in appropriately defining the parties' responsibilities of network between the parties, which in ALLTEL's case will be on its network.

B. Discussion:

ALLTEL submits that Interconnection Point ("POI") should be defined as the demarcation point of the transmission facility for the purposes of determining the parties transport costs for the traffic being exchanged. Verizon Wireless' definition

is vague and does not appropriately define the parties responsibilities. While the definition does not need to limit use of this term to direct connection only, it must reflect that the POI divides the responsibilities of network between the parties, which in ALLTEL's case will be on its network.¹⁷⁷

C. Summary:

The definition of interconnection point should read "Interconnection Point or IP. The IP is the demarcation point of the transmission facility for the purposes of determining the Parties' transport costs for traffic exchanged between the Parties" and the language set forth in ALLTEL's proposed agreement should be adopted.

Issue 32: Definition of Interexchange Carrier

A. Issue:

Whether the agreement should include a definition of Interexchange Carrier, a term not used in the agreement.

B. Discussion:

The term is not used in the agreement and is therefore not needed.¹⁷⁸

C. Summary:

There is no need to define interexchange carrier when the term is not used anywhere in the agreement.

¹⁷⁷ ALLTEL St. 1 at 21-22.

¹⁷⁸ Id.

VI. CONCLUSION

For the foregoing reasons, ALLTEL respectfully submits that its positions on the unresolved issues are supported both in law and fact and urges the Commission to approve an interconnection agreement with Verizon Wireless consistent therewith.

Respectfully submitted,

ALLTEL PENNSYLVANIA, INC.



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Dated: February 24, 2004

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APPENDIX A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting: November 25, 1987
Agenda No.: C-17

MOTION OF CHAIRMAN BILL SHANE

One of the many changes brought about by the 1984 AT&T divestiture was a change in the method of intercompany compensation for toll services provided jointly by Bell of Pa. and the independent telephone companies. In general, the toll revenue pooling arrangement among AT&T, Bell of Pa. and the independent telephone companies was replaced by a system of interstate and intrastate access charges whereby the terminating local telephone company would charge the connecting carrier, AT&T or another telephone company, a fee for access to its local network. For intrastate intraLATA toll calls, however, a transitional pooling arrangement similar to the pre-divestiture environment was employed from the beginning of divestiture until the end of 1985.

From January 1, 1984, until December 31, 1985, Bell of Pa. had established statewide toll rates based on their costs. Under this arrangement, all independent telephone companies in the state concurred in Bell of Pa.'s rates and tariffs. The independent companies then billed their customers these rates and remitted the collected revenues to an intrastate pool administered by Bell of Pa. Bell of Pa. then reimbursed the independents their toll costs from the pool.

Effective January 1, 1986, Bell of Pa. and the independents initiated the IntraLATA Toll Responsibility Plan, or ITORP, pursuant to the Commission's directive in the Generic Access Charge Investigation order at P-830452. ITORP applies to intrastate toll services provided jointly by Bell and independent telephone companies and jointly by the independents within a LATA. Under this plan, each company, Bell or an independent, applies its toll tariff to calls originated over access lines in that company's operating area. The money collected from these calls then becomes that company's booked intraLATA toll revenue. The net access charges computed under ITORP is then added or subtracted from this booked revenue figure.

After nearly two years of experience with ITORP as a means to compensate telephone companies for the costs of jointly provided toll calls, I believe that the Commission should reexamine this area to determine whether this plan is operating fairly

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and effectively. One of the many arguments made against ITORP was that it would unduly disadvantage the smaller independent telephone companies whose toll traffic parameters may not be economic due to the size of the service territory, toll traffic patterns and other factors. And indeed in the case of Sugar Valley Telephone Company at R-870685, we have seen a recent example of a company whose revenue base has been eroded substantially under this new environment. On the other hand, it may be that the revenue erosion problems faced by Sugar Valley and other similarly situated telephone companies could be solved, or at least minimized, by properly pricing of their toll and access services to better approximate their costs.

Rather than immediately launching into a formal on-the-record investigation before an ALJ regarding this complex subject matter, I believe that it would be wise and appropriate to solicit initial comments from the industry on this matter. In my opinion, the Commission should adopt an order which opens an investigation docket for the purpose of receiving comments on ITORP. Moreover, the investigation order should set forth the following issues:

- (1) What have been the operational effects of ITORP on Bell and the independents during 1986 and 1987?
- (2) What have been the financial effects of ITORP on Bell and the independents during 1986 and 1987?
- (3) What changes, if any, are needed to improve the ITORP process for the future?
- (4) What can be done to alleviate the revenue erosion experienced by some of the smaller independent telephone companies under the present toll tariffs and the ITORP mechanism? Should an alternative to ITORP be considered for certain companies?
- (5) To what extent do Bell and the independents know the costs of each element necessary to complete a jointly provided toll call? What cost standards should be used?

While these are the major issues I have in mind at this juncture, the commenting parties would be free to address other relevant issues as they see fit. After the comments are received and analyzed by our staff, the Commission will be in a better position to determine whether any further action is required. The Commission intends to make this determination within 6 months of the date of publication in the Pennsylvania Bulletin.

Therefore, I move:

- (1) That the Commission open an investigation docket to receive comments regarding the operation of ITORP and, in particular, to address the issues set forth in this motion.
- (2) That the local telephone companies be directed to cooperate with our staff in order to develop and assemble such revenue, cost and traffic data as may be necessary to address issues relating to ITORP.
- (3) That the Law Bureau be directed to prepare the necessary investigation order.
- (4) That a copy of the order be served on all jurisdictional telephone companies and published in the Pennsylvania Bulletin.
- (5) That the Law Bureau and the Office of Special Assistants be assigned the responsibility of reviewing the comments and preparing a further report and recommendation for the Commission's consideration.

Bill Shane 11/24/87

Bill Shane, Chairman

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Cellco Partnership d/b/a Verizon : Docket No. A-310489F7004
Wireless For Arbitration Pursuant to :
Section 252 of the Telecommunications :
Act of 1996 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February, 2004, served a true and correct copy of the foregoing Main Brief on behalf of ALLTEL Pennsylvania, Inc. upon the persons and in the manner indicated below:


HAND DELIVERY

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February 24, 2004

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In re: Cellco Partnership d/b/a Verizon Wireless For Arbitration Pursuant to Section 252 of the Telecommunications Act of 1996 to Establish an Interconnection Agreement With ALLTEL Pennsylvania, Inc.
Docket No. A-310489F7004

Dear Judge Weismandel:

Pursuant to 52 Pa. Code §5.253, ALLTEL Pennsylvania, Inc. hereby requests that the transcript be corrected in the above referenced case. The incorrect sections of the transcript along with the corrections, are detailed in Attachment 1 to this letter.

If you have any questions, please contact the undersigned.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By 
Patricia Armstrong

Enclosures

cc: Certificate of Service
Stephen B. Rowell, Esquire (w/encl.)
Lynn Hughes (w/encl.)

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Cellco Partnership d/b/a Verizon : Docket No. A-310489F7004
Wireless For Arbitration Pursuant to :
Section 252 of the Telecommunications :
Act of 1996 :

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of February, 2004, served a true and correct copy of the foregoing Attachment 1 on behalf of ALLTEL Pennsylvania, Inc. upon the persons and in the manner indicated below:

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