

Steve Gatto, P.C.

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July 13, 2006

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, P.O. Box 30221
Lansing, MI 48909

Re: In the Matter of the Petition of Ace Telephone Company, Allendale Telephone Company, Barry County Telephone Company, Blanchard Telephone Company, Bloomingdale Telephone Company, Chippewa County Telephone Company, Deerfield Farmers' Telephone Company, Hiawatha Telephone Company, Kaleva Telephone Company, Midway Telephone Company, Ogden Telephone Company, Ontonagon Telephone Company, Pigeon Telephone Company, the Upper Peninsula Telephone Company, Waldron Telephone Company, and Winn Telephone Company, For the Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Alltel Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996
Case No. U-14889.

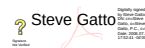
Dear Ms. Kunkle:

Enclosed for filing are (1) Petitioners' Response the Arbitration Panel's Request Information from Petitioners, Petitioners Proposed Decision for the Arbitration Panel and Certificate of Service of for filing the matter..

Please call if you have any questions regarding the enclosures.

Yours truly yours,

Steve Gatto, P.C.

The logo for Steve Gatto, P.C. features a stylized 'S' and 'G' in a circular arrangement, with the text 'Steve Gatto' and 'P.C.' to the right.

Steve Gatto

Enclosures:

cc: Michael S. Ashton
Anne-Marie Clark
Wendy Thelen
Sharon Feldman, Administrative Law Judge

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Ace Telephone)
Company, Allendale Telephone Company,)
Barry County Telephone Company,)
Blanchard Telephone Company, Bloomingdale)
Telephone Company, Chippewa County)
Telephone Company, Deerfield Farmers')
Telephone Company, Hiawatha Telephone)
Company, Kaleva Telephone Company, Midway)
Telephone Company, Ogden Telephone Company,)
Ontonagon Telephone Company, Pigeon Telephone)
Company, the Upper Peninsula Telephone)
Company, Waldron Telephone Company, and)
Winn Telephone Company, For the Arbitration)
of Interconnection Rates, Terms, and Conditions)
and Related Arrangements with Alltel)
Communications, Inc., Pursuant to Section 252(b))
of the Federal Telecommunications Act of 1996)
_____)

Case No. U-14889

Certificate of Service

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Steve Gatto, being first duly sworn, deposes and says that on this 13th day of July, 2006, he served a copy of Petitioners' Response To The Arbitration Panel's Request For Information, Petitioners' Proposed Decision of the Arbitration Panel, and Certificate of Service for same on the following individuals by e-mail to the e-mail addresses listed below:

Michael Ashton @Masht@fraserlawfirm.com
Wendy Thelen at wjthelen@michigan.gov
Ann-Marie Clark at clarka@michigan.gov
Sharon Feldman, Administrative Law Judge at slfeldman@michigan.gov

 Steve Gatto
Digitally signed by Steve Gatto
DN: cn=Steve Gatto, o=Steve Gatto, P.C., c=US
Date: 2006.07.13 17:25:11 -0400
Steve Gatto

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Ace Telephone)
Company, Allendale Telephone Company,)
Barry County Telephone Company,)
Blanchard Telephone Company, Bloomingdale)
Telephone Company, Chippewa County)
Telephone Company, Deerfield Farmers')
Telephone Company, Hiawatha Telephone)
Company, Kaleva Telephone Company, Midway)
Telephone Company, Ogden Telephone Company,)
Ontonagon Telephone Company, Pigeon Telephone)
Company, the Upper Peninsula Telephone)
Company, Waldron Telephone Company, and)
Winn Telephone Company, For the Arbitration)
of Interconnection Rates, Terms, and Conditions)
and Related Arrangements with Alltel)
Communications, Inc., Pursuant to Section 252(b))
of the Federal Telecommunications Act of 1996)

Case No. U-14889

PETITIONERS ACE TELEPHONE COMPANY ET AL.'S
PROPOSED DECISION OF THE ARBITRATION PANEL

Petitioners Ace Telephone Company et al.¹ through their attorneys, Steve Gatto, P.C., submit the attached Proposed Decision of the Arbitration Panel, and respectfully request the Arbitration Panel adopt it in full.

Respectfully Submitted,

STEVE GATTO, P.C.
Attorney for Petitioner

By: _____

 Steve Gatto
Digitally signed by Steve Gatto
DN: cn=Steve Gatto, o=Steve Gatto, ou=Steve Gatto, email=Steve.Gatto@P58521.com, c=US

Date: July 13, 2006

Steve Gatto, P.C.
Attorney for Petitioners
Steve Gatto (P58521)
210 S. Washington Square, Suite A
Lansing, MI 48933
517-896-3978

¹ Petitioners refer, collectively, to the following: Ace Telephone Company, Allendale Telephone Company, Barry County Telephone Company, Blanchard Telephone Company, Bloomingdale Telephone Company, Chippewa County Telephone Company, Deerfield Farmers' Telephone Company, Hiawatha Telephone Company, Kaleva Telephone Company, Midway Telephone Company, Ogden Telephone Company, Ontonagon Telephone Company, Pigeon Telephone Company, Upper Peninsula Telephone Company, Waldron Telephone Company, Winn Telephone Company. Each is a rural telephone company.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Petition of Ace Telephone)
Company, Allendale Telephone Company,)
Barry County Telephone Company,)
Blanchard Telephone Company, Bloomingdale)
Telephone Company, Chippewa County)
Telephone Company, Deerfield Farmers')
Telephone Company, Hiawatha Telephone)
Company, Kaleva Telephone Company, Midway)
Telephone Company, Ogden Telephone Company,)
Ontonagon Telephone Company, Pigeon Telephone)
Company, the Upper Peninsula Telephone)
Company, Waldron Telephone Company, and)
Winn Telephone Company, For the Arbitration)
of Interconnection Rates, Terms, and Conditions)
and Related Arrangements with Alltel)
Communications, Inc., Pursuant to Section 252(b))
of the Federal Telecommunications Act of 1996)

Case No. U-14889

PROPOSED DECISION OF THE ARBITRATION PANEL
SUBMITTED BY PETITIONERS ACE TELEPHONE COMPANY ET AL.

PRESENT: Sharon L. Feldman
Wendy Thelen
Anne-Marie Clark

I. HISTORY OF PROCEEDINGS

On May 15, 2006, Petitioners² filed their Petition for Arbitration (“Petition”) of interconnection rates, terms, conditions, and related arguments with the Commission, seeking arbitration of an interconnection agreement with Alltel Communications, Inc. (“Alltel”) pursuant to Section 252 (b) of the Federal Telecommunications Act of 1996

² Petitioners refer, collectively, to the following: Ace Telephone Company, Allendale Telephone Company, Barry County Telephone Company, Blanchard Telephone Company, Bloomingdale Telephone Company, Chippewa County Telephone Company, Deerfield Farmers’ Telephone Company, Hiawatha Telephone Company, Kaleva Telephone Company, Midway Telephone Company, Ogden Telephone Company,

(“Federal Act”), 47 USC 151 et seq., Section 204 of the Michigan Telecommunications Act (“MTA”), MCL 484.2101 et seq., and the arbitration procedure orders that the Michigan Public Service Commission (“Commission”) issued in Case Nos. U-11134 and U-13774 (“Arbitration Procedure Orders”).³ The Petition identified two issues for arbitration: (1) whether the Agreement should include rates for local switching, local transport-termination, and local transport-facility relative to terminating CMRS traffic, that Petitioners propose, which are based on applicable MPSC-approved TSLRIC studies, and (2) whether the parties’ Agreement should exclude language that the Parties expressly waive any rights they may have to the other to collect amounts that either of the Parties owed the other before the interconnection agreement is executed.⁴

With and in support of the Petition, Petitioners also filed the following: (1) Petitioners’ respective letters requesting negotiations, (2) Alltel’s acknowledgment of receiving Petitioners’ requests to negotiate, (3) the last proposed interconnection agreements of Petitioners, which are the interconnection agreements Petitioners request the arbitration panel and Commission order executed, (4) Alltel’s last proposed interconnection agreement, (5) a list of issues to be arbitrated, (6) a Matrix showing, for each disputed issue, the Parties’ respective positions and language for inclusion in an interconnection agreement, and the reasons the Commission should adopt Petitioners’ position and language, (7) Affidavit of Agris Pavlovskis, supporting both the Petition and Matrix, (8) Affidavit of David S. McCartney, supporting both the Petition and the

Ontonagon Telephone Company, Pigeon Telephone Company, Upper Peninsula Telephone Company, Waldron Telephone Company, Winn Telephone Company. Each is a rural telephone company.

³ Order, MPSC Case No. U-11134 (July 16, 1996), and Order, MPSC Case No. U-13774 (May 18, 2004) (collectively, the “Arbitration Procedure Orders”).

testimony of David S. McCartney, (9) correspondence confirming that the parties stipulated to an arbitration window closing on May 15, 2006.

On May 23, 2006, the arbitration panel (“Panel”) was appointed and an order was issued directing Alltel to file its Response to the Petition by June 9, 2006.⁵

On June 9, 2006, Alltel filed its response (“Response”) to the Petition. With its Response, Alltel filed pre-filed Direct Testimony and Exhibits of Ron Williams, pre-filed Direct Testimony and Exhibits of Will Brandt, and pre-filed Direct Testimony and Exhibits of W. Craig Conwell. Alltel opposed Petitioners’ position on the first issue identified in the Petition regarding what the appropriate reciprocal compensation rate should be, but withdrew its request that the release language be included in the interconnection agreement, thereby resolving Petitioners’ issue number two. In its response, Alltel raised an additional issue: (1) If a rate of \$.00 or bill and keep is not required to continue, whether the rates that will be applicable retroactive to the agreed effective date of the new interconnection agreement, will be interim rates and subject to true-up to the final rates that result in Commission Docket U-14781.⁶

In an order through correspondence date June 30, 2006, the Panel requested Petitioners and Alltel provide answers to the following questions:

For Petitioners:

1. Did these Petitioners [Allendale Telephone Company, Deerfield Farmers’ Telephone Company, Midway Telephone Company, and Ontonagon Telephone Company] participate in the cost study in Case No. U-12261? If yes please provide the basis for your answer. If not, please explain the basis for the reciprocal compensation rates requested by these petitioners.

⁴ See Petition, paragraph 29; see also Exhibit 5 to the Petition (containing a list of issues to be arbitrated), and Exhibit 6 (containing a Matrix showing, for each disputed issue, the Parties’ respective positions and proposed language).

⁵ Arbitration Panel Correspondence, May 23, 2006.

⁶ Alltel Response, June 9, 2006, p. 4.

2. What is Petitioners' response to Alltel's claim, presented in the affidavit of Ron Williams, pp. 3-11, that reciprocal compensation should be billed based on bill and keep, or a rate of \$0.00, because of Petitioners' handling of ISP traffic? Do Petitioners agree that they exchange ISP traffic on a bill and keep basis or at a rate of \$0.00? If the answer varies by petitioner, please provide a petitioner-specific response.

For Alltel:

1. Please explain how the supporting material attached to Mr. Williams' affidavit supports his conclusion that Petitioners exchange ISP traffic on a bill and keep basis, or at a rate lower than Petitioners seek for reciprocal compensation in this proceeding? Does Alltel have any additional information to support its claim?
2. Does Alltel distinguish its position in this arbitration from the position of Verizon Wireless in Case No. U-14678? If so, how?⁷

The parties were directed to file their responses to the Panel's questions, and a proposed decision of the arbitration panel on the sole issue of determining the appropriate rates regarding local switching, local transport-termination, and local transport-facility relative to CMRS traffic, by July 13, 2006.⁸ The Panel allowed each party an opportunity to respond to the other party's submission by July 23, 2006. The parties timely filed those documents.

II. RESOLVED AND UNRESOLVED ISSUES

Petitioners presented two issues in their Petition for arbitration; Alltel added one issue to Petitioners first issue. Alltel withdrew its request for release language in the interconnection agreement, resolving Petitioners second issue. The Panel will therefore resolve the sole issue of determining the appropriate rates regarding local switching, local transport-termination, and local transport-facility relative to CMRS traffic.

III. PROPOSED FINDING AND CONCLUSIONS

⁷ Arbitration Panel Correspondence, June 30, 2006.

⁸ Arbitration Panel Correspondence, July 7, 2006.

The Panel's decision today is limited by the specific standards for arbitration set forth in the Commission's Arbitration Procedure Orders and Section 252 (b) of the Federal Act, and must ensure that the Commission's resolution of open issues and any imposition of conditions upon the parties meet the requirements of § 251 of the Federal Act and the FCC's implementing regulations. See also 47 USC 252(c).

As per the Commission's Arbitration Procedure Orders, the Panel's decision in this proceeding on each issue is limited to the positions raised by the Petitioners raised in the Petition, Petitioners' exhibits submitted to date, testimony, and proposed decision of the arbitration panel ("PDAP"), and Alltel's Response, testimony, exhibits, and PDAP. See also 47 USC 252(b)(4). The Panel is limited to selecting the position of one of the parties on each issue, unless the result would be clearly unreasonable or contrary to the public interest.⁹ For these purposes, a result is clearly unreasonable or contrary to the public interest if, without regard to the opposing party's position, it is inconsistent with the Federal Act or if it is otherwise contrary to law, arbitrary, or capricious.¹⁰

Section 252(b) of the 1996 act provides that either party to a negotiation of an interconnection agreement may petition the Commission to arbitrate open issues in the negotiation. 47 USC 252(b)(1). As explained below, Petitioners and Alltel were unable to resolve certain issues through negotiation, and Petitioners petitioned the Commission to arbitrate the unresolved issues in accordance with the MTA, the Commission's Arbitration Procedure Orders, and the Federal Act.

⁹ See Arbitration Procedure Orders.

¹⁰ See Arbitration Procedure Orders

The parties were given proper notice of this proceeding. As required by the Commission in its Arbitration Procedure Orders, the Commission has jurisdiction to arbitrate and resolve open issues between Petitioners and Alltel.

The Panel has considered the disputed issues presented in the Petition and the Response in accordance with the standards set forth above, and sets forth its finding in the pages attached hereto. Pursuant to the Commission's Arbitration Procedure Orders, the parties will have ten days to file objections to the Panel's decision, after which the Commission will issue its decision approving or rejecting the resulting agreement.

ARBITRATION PANEL

Sharon Feldman

Wendy Thelen

Anne-Marie Clark

IV. CONTESTED ISSUE

The sole issue of determining the appropriate rates regarding local switching, local transport-termination, and local transport-facility relative to CMRS traffic.

V. PROPOSED FINDING AND CONCLUSIONS

ISSUE 1: "Whether the Agreement should include rates for local switching, local transport-termination, and local transport-facility relative to terminating CMRS traffic, that Petitioners propose, which are based on applicable MPSC-approved TSLRIC studies?"

A. The Position of the Parties

1. Petitioners' Position

Yes, the parties' interconnection agreements should have the rates for local switching, local transport-termination, and local transport-facility relative to terminating CMRS traffic that Petitioners propose, which are based on applicable Commission-approved TSLRIC studies. As explained in the Direct Testimony of David S. McCartney filed supporting the Petition, the rates Petitioners (other than Chippewa County Telephone Company, Hiawatha Telephone Company, Upper Peninsula Telephone Company, and Winn Telephone Company) propose are equal and are directly based on the costs in MECA's 2nd TSLRIC Study, which the Commission approved in Case No. U-12261 (March 18, 2000).

Likewise, as explained by Mr. McCartney in his testimony, the rates Chippewa County Telephone Company ("Chippewa"), Hiawatha Telephone Company ("Hiawatha"), Upper Peninsula Telephone Company ("Upper Peninsula"), and Winn Telephone Company propose are equal and are directly based on the costs in their respective TSLRIC Studies. The Commission approved in Chippewa's TSLRIC Study in Case No. U-12149 (December 23, 1999); Hiawatha's TSLRIC Study in Case No. U-11996 (September 13, 1999); Upper Peninsula's TSLRIC Study in Case No. U-12471 (September 18, 2000); and Winn's TSLRIC Study in Case No. U-13191 (February 11, 2002).

Although Petitioners Allendale Telephone Company ("Allendale"), Deerfield Farmers' Telephone Company ("Deerfield"), Midway Telephone Company ("Midway"), and Ontonagon Telephone Company ("Ontonagon") did not participate in MECA's 2nd TSLRIC Study, each of these Petitioners did participate in MECA's 1st TSLRIC Study approved in Case No. U-11448 (January 28, 1998). According to Mr. McCartney's

testimony, the mapping of the costs to the rates from MECA's 1st TSLRIC Study produces rates that are similar to MECA's 2nd TSLRIC Study.¹¹

Petitioners Allendale, Deerfield, Midway, and Ontonagon argue that their costs were approved in Case No. U-11448, and that the results of rates for local switching, local transport-termination, and local transport-facility from their approved cost study are similar to their proposed rates based on MECA's 2nd TSLRIC Study. Since their proposed rates "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 47 CFR §§ 51.505 and 51.511, their proposed rates represent a reasonable approximation of the cost of terminating calls.¹²

Petitioners argue that the starting point for the determination of which rate proposal to adopt in this matter is the cost studies' result of the applicable Commission-approved TSLRIC studies.

As noted, the Commission has already approved all the above cost studies, doing so in Case Nos. U-11448, U-11996, U-12149, U-12261, U-12471, and U-13191. In approving these cost studies, the Commission determined that the TSLRIC studies comport with all applicable requirements. Thus, for the purpose of this proceeding, it is conclusively presumed that, by proposing rates based on the respective TSLRIC studies, Petitioners' proposal satisfies the requirement that they are based on a forward-looking cost study pursuant to 47 USC §§ 252(d)(2) and 251(b)(5), and 47 CFR §§51.505 and 51.511.

¹¹ Direct Testimony of David S. McCartney, p. 17.

¹² See 47 CFR § 51.505(e).

Since the costs revealed by the applicable TSLRIC Studies are valid, the propriety of the rates Petitioners propose turns on the validity of Mr. McCartney's mapping analysis. Mr. McCartney, in his pre-filed testimony, explains his mapping analysis for each cost study in great detail, and illustrates that Petitioners' proposed rates are directly based on the results of Mr. McCartney's mapping analysis of the applicable TSLRIC studies.¹³ Alltel has not challenged Mr. McCartney's mapping analysis. In fact, in Case No. U-14678, Alltel's witness, Mr. Conwell, performed an independent mapping of MECA's 2nd TSLRIC Study and Upper Peninsula's TSLRIC Study and determined virtually identical rates. Case No. U-14678, Testimony of W. Craig Conwell, pp. 19, 41.

The rates Petitioners propose are consistent with Section 252(d), and the parties' interconnection agreements should have the rates for local switching, local transport-termination, and local transport-facility relative to terminating CMRS traffic as Petitioners propose.

2. Alltel's Position

Alltel argues that Petitioners have the burden of proof of justifying the rates and must provide cost studies to support their proposed reciprocal compensation rates. Further, that Alltel must be provided an opportunity to review and analyze those studies. Alltel argues that Petitioners have failed to put forth in this proceeding company specific TELRIC compliant models and failed to provide those models and supporting documents to Alltel as required by FCC rules pursuant to 47 CFR 51.301 and 51.506. It claims that the documentation Petitioners provided with their Petition is inadequate under the FCC

¹³ Direct Testimony of David S. McCartney, p. 14-37; See all Exhibits DSM 1-6.

rules. Therefore, bill and keep, the current compensation mechanism between the parties should continue.

Alltel argues that Petitioners cannot rely upon the Commission's previous determination of their costs because Alltel was not a party to those proceedings. It further claims that the historic cost studies on which Petitioners rely are already recognized as not being in compliance with the recent rulings by this Commission and most Petitioners are already required to prepare and file new costs studies. Therefore, Alltel argues that the very studies that Petitioners rely upon in this proceeding will be superceded and will be obsolete when Petitioners filed new cost studies with the Commission on June 30, 2006.

Alltel claims that Mr. Conwell's testimony shows the studies upon which Petitioners rely are not compliant with the FCC TELRIC methodology and cannot be the basis of any determination of rates in this proceeding. Alltel further claims that Mr. Conwell's testimony points out the cost studies are old and there are many flaws and deficiencies with the material relied upon by Petitioners. It argues that when those deficiencies are corrected, the resulting rates will be substantially lower than the proposed rates.

Alltel argues that if bill and keep is not used for reciprocal compensation for the interconnection agreements, then the rates set forth by Mr. Conwell's testimony should be approved as final rates.

Alltel further argues that if the Commission set rates for the interconnection agreement based on Petitioners' proposed rates, they should be interim rates subject to a true up to the final rates that result in Commission Docket U-14781.

3. Petitioners' Response to Alltel's Arguments

In response, Petitioners argue that none of the arguments Alltel raises in an attempt to avoid the rates Petitioners propose have any merit. Moreover, most of the arguments raised by Alltel were settled by the Commission in Case No. U-14678. Alltel proposed a rate of \$0.006038 during the negotiations after reviewing one of Petitioners' cost studies. Alltel's last proposed rate during the negotiations can be swiftly rejected since it would produce a rate below TSLRIC in violation of the MTA. See MCL 484.2321 "[a] provider of a regulated telecommunications service shall not charge a rate for the service that is less than the total service long run incremental cost of providing the service".) Alltel's last proposed rate of \$0.006038 is less than the TSLRIC of local switching, local-transport-termination, and local transport-facility as those costs were approved by the Commission in Case Nos. U-11448, U-11996, U-12149, U-12261, U-12471, and U-13191.¹⁴ Likewise, Alltel's argument that the rates proposed by Mr. Conwell in his testimony should be rejected for the same reason.¹⁵

In response to Alltel's argument that Petitioners proposed rates violate TELRIC pricing rules because Petitioners TSLRIC Studies are not TELRIC compliant, Petitioners argue that Alltel's argument fails. First, the Commission has already approved Petitioners' cost studies, attesting that they comply with TSLRIC. Second, in Case No. U-12320, the Commission acknowledged that the FCC has stated that Michigan's TSLRIC methodology is consistent with TELRIC. January 13, 2003, Report of the Commission, MPSC Case No. U-12320 at p. 49. Alltel's own witness, Mr. Conwell, in

¹⁴ Direct Testimony of David S. McCartney, p. 37.

¹⁵ Direct Testimony of W. Craig Conwell, p. 45. Mr. Conwell proposes the rate 0.006038 be used for all Petitioners except Chippewa, Hiawatha, and Upper Peninsula. For those companies he proposes the rate \$0.009.

Case No. U-14678, provided testimony that the TSLRIC and TELRIC methodologies “produce the same measure of costs.”¹⁶ Thus, Petitioners have complied with the FCC’s requirements. More importantly, in Case No. U-14678, the Commission determined that the TSLRIC studies in Case No. U-12261 (MECA’s 2nd TSLRIC Study) and Case No. U-12471 (Upper Peninsula’s TSLRIC Study) are valid and that the rates based on the mapping of costs from those studies are appropriate for use in interconnection agreements for the termination of CMRS traffic. Similarly, the TSLRIC studies approved in Case Nos. U-11448, U-11996, U-12149, and U-13191 should be found to be valid as well and the rates based on those cost studies to be appropriate for use in interconnection agreements for the termination of CMRS traffic.

Because the Commission approved Petitioners’ TSLRIC Studies, Alltel cannot challenge or contest the Commission’s prior findings that the costs in those studies comply with TSLRIC.¹⁷ Petitioners challenge Alltel’s claim that Petitioners cannot rely upon the Commission’s previous determination of costs because Alltel was not a party to those proceedings. The reality is that Alltel could have participated in Petitioners’ cost studies, as they were publicly filed Commission dockets, but Alltel opted not to do so. Further, Alltel or its agents participated in industry wide meetings (including a meeting at the Chicago O’Hare airport) to discuss MECA’s 1st TSLRIC Study and the rates relating to reciprocal compensation for the termination of CMRS traffic. At that time, Alltel was aware, that Petitioners planned to use rates based on cost studies for compensation for termination CMRS traffic using MECA’s MPSC Tariff 24R. Alltel simply chose not to

¹⁶ Direct Testimony of W. Craig Conwell, p. 5.

¹⁷ See e.g., Champion’s Auto Ferry, Inc., 231 Mich App at 712 (citing Senior Accountants, Analysis & Appraisers Ass’n v Detroit, 399 Mich 449, 457-458; 249 NW2d 121 (1976)); Minicucci v Scientific Data Management, Inc., 243 Mich App 28, 36; 620 NW2d 657 (2000).

participate in those cases. In doing so, it waived its right to question or challenge the studies.

Alltel's argument that bill and keep must be required because Petitioners have failed to put forth in this proceeding copies of company specific TELRIC compliant models and supporting materials, fails for the following reasons. First, in adopting the arbitration panel's decision in Case No. U-14678, the Commission affirmed that "the Commission may properly take notice of cost studies that it has previously approved in a separate docket." Further, the Commission, in Case No. U-14678, agreed with that cases Arbitration Panel recommended decision that "a bill and keep arrangement is only appropriate when traffic is roughly equal in order to recognize the cost effects of traffic imbalances. The record shows a traffic exchange imbalance here of 70/30 mobile to land."¹⁸ The record in the instant case also shows a traffic imbalance of 70/30 mobile to land.

Alltel's claim that the cost studies on which Petitioners rely are already recognized as not being in compliance with the recent rulings by this Commission is incorrect. In Case No. U-14678, the Commission specifically found that the "petitioners' cost studies, as currently approved, comply with legal requirements until the Commission issues an order stating otherwise."¹⁹ Alltel's claims that most of Petitioners are required to file new cost studies by June 30, 2006. However, seven of the Petitioners were not part of the arbitration in Case No. U-14678, and have not been ordered to file a new cost study. Alltel's argument that the very studies that Petitioners rely upon in this proceeding will be superceded and will be obsolete when Petitioners filed new cost studies with the

¹⁸ Decision of Arbitration Panel, Case No. U-14678 (January 23, 2006) p. 11.

¹⁹ Order, MPSC, Case No. U-14678, February 21, 2006, p.9.

Commission on June 30, 2006, is also with merit. The Commission, in Case No. U-14678, specifically determines that the “current rates, as mapped by petitioners will be effective until the Commission approves a different cost study. New rates will be mapped accordingly and will be effective on the date of the Commission order approving the new cost studies.”²⁰ Thus, the Commission has made clear that cost studies remain in effect until “the Commission issues an order stating otherwise.”²¹ Therefore, based on the Commission’s order in Case No. U-14678, Alltel’s further argument that any rates set by the Commission for the interconnection agreement based on Petitioners’ proposed rates should be interim rates subject to a true up to the final rates that result in Commission Docket U-14781 fails as well. Petitioners’ approved cost studies are legally in effect until the Commission orders otherwise.

B. THE PANEL’S DECISION

The Panel recommends that the Commission agree with Petitioners on this issue. The Commission already approved the TSLRIC studies upon which Petitioners’ rate proposals are based.²² Therefore, any challenge to the cost studies themselves is procedurally improper.²³ Thus, for the purposes of this arbitration proceeding, those studies are conclusively presumed to be state valid costs.

Although Petitioners Allendale, Deerfield, Midway and Ontonagon did not participate in MECA’s 2nd TSLRIC Study in Case No. U-12261, they did participate in MECA’s 1st TSLRIC Study in Case U-11448, and the rates based on those approved costs, according to Mr. McCartney’s Testimony, are similar to the cost approved in Case

²⁰ Order, MPSC, Case No. U-14678, February 21, 2006, p.9.

²¹ Order, MPSC, Case No. U-14678, February 21, 2006, p.9.

²² See MPSC Case No. U-11448, U-11996, U-12149, U-12261, U-12471, U-13191.

No. U-12261.²⁴ Since their proposed rates are similar to the rates from MECA's 2nd TSLRIC Study, it is probable that if those Petitioners had participated in MECA's 2nd TSLRIC, their costs would have decrease to similar extent that the cost did in that cost study. Thus, Petitioners proposed rates would represent a reasonable approximation of the cost of terminating calls.

Therefore, it is just and reasonable for these Petitioners to use the rates approved in Case No. U-12261.

Since the applicable studies contain valid costs, the only remaining question for consideration is whether Petitioners' witness, Mr. David S. McCartney, correctly "mapped the costs" from those studies. The Panel finds that Mr. McCartney's mapping analysis is correct, and notes that Alltel has not challenged Mr. McCartney's methodology or calculations.

Given that the Panel finds the cost studies upon which Petitioners base their rate proposals are valid and previously approved by the Commission, and that Mr. McCartney's mapping analysis is valid and unchallenged, the Panel concludes that the rates Petitioners proposed should be adopted in the interconnection agreement as the rates are "just and reasonable." 47 USC 252(d)(2)(A).

The Panel find that Alltel's last proposed rate of \$0.006038 would violate applicable laws, and rejects Alltel's proposal that \$0.006038 rate should be used for all Petitioners except Chippewa, Hiawatha, and Upper Peninsula. The Panel also rejects Alltel's proposal that the rate of \$0.0009 be used for Chippewa, Hiawatha, and Upper Peninsula for the same reasoning set forth above.

²³ See e.g. Champion's Auto Ferry, Inc. v Mich Pub Serv Comm, 231 Mich App 699, 712; 588 NW2d 153 (1998).

The Panel specifically rejects Alltel's proposal of a bill and keep arrangement for local call termination. A bill and keep arrangement is only appropriate when traffic is roughly equal in order to recognize the cost effects of traffic imbalances. The record shows a traffic exchange imbalance here of 70/30 mobile to land. Thus, bill and keep is not appropriate here.

The Panel further finds Alltel's remaining arguments unpersuasive. The Panel rejects those arguments for the reasons that: (1) Alltel's attempts to re-litigate the applicable cost study cases fails as procedurally improper and an improper collateral attack on Commission orders in MPSC Case Nos. U-11448, U-11996, U-12149, U-12261, U-12471, and U-13191, (2) Alltel's claim that bill and keep should be required because Petitioners did not put forth in this proceeding TELRIC complaint models and supporting material also fail. The Commission may properly take notice of cost studies that it has previously approved in a separate docket. Further, the Commission has previously acknowledged that the FCC has stated that Michigan's TSLRIC methodology is consistent with TELRIC. January 13, 2003, Report of the Commission, MPSC Case No. U-12320 at p. 49, (3) Alltel's argument that the cost studies Petitioners rely upon in this proceeding will be superceded and will be obsolete when the Petitioners file new cost studies with the Commission on June 30, 2006 is unpersuasive. The Commission specifically noted that the cost studies remain effective until new cost studies are approved and the newly approved rates will become effective on the date the Commission order approving the new cost studies. Order, MPSC Case No. U-14678, p. 9.

²⁴ Direct Testimony of David S. McCartney, pp. 17-18.

The Panel recommends that the Commission adopt the reciprocal compensation rates for Petitioners (except Chippewa, Hiawatha, Upper Peninsula, and Winn) of (1) \$0.022465. The Panel recommends that the Commission adopt the reciprocal compensation rates for Chippewa of (1) \$0.053435. The Panel recommends that the Commission adopt the reciprocal compensation rates for Hiawatha of (1) \$0.035550. The Panel recommends that the Commission adopt the reciprocal compensation rates for Upper Peninsula of (1) \$0.039028. The Panel recommends that the Commission adopt the reciprocal compensation rates for Winn of (1) \$0.021337.