

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, Odgen 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

**ALLTEL COMMUNICATIONS, INC.'S
PROPOSED DECISION OF THE ABRITRATION PANEL**

HISTORY OF PROCEEDINGS

Ace Telephone Company, Barry County Telephone Company, Blanchard Telephone Company, Bloomingdale Telephone Company, Chippewa Telephone Company, Deerfield Farmers' Telephone Company, Hiawatha Telephone Company, Kaleva Telephone Company, Midway Telephone Company, Ogden Telephone Company, Ontonagon County Telephone Company, Pigeon Telephone Company, the Upper Peninsula Telephone Company, Waldron Telephone Company, and Winn Telephone Company (collectively, "Petitioners"), through their attorney, Steve Gatto, P.C., and pursuant to Section 252(b)(1) of the Federal

Telecommunications Act of 1996 (“Federal Act”), 47 USC 252(b)(1) and the Michigan Telecommunications Act (“MTA”), MCL 484.2201 et seq., filed their petition for arbitration on May 14, 2006 requesting that the Michigan Public Service Commission (“Commission”) arbitrate open issues resulting from interconnection negotiations between Petitioners and Alltel Communications, Inc. (“Alltel”). The Petition identified open issues with Petitioners’ representation of the positions of the parties on those issues.

An Arbitration Panel (the Panel) was designated by the Commission and, on June 9, 2006, Alltel filed its response to the Petition (the Response). The Panel members established a schedule for the arbitration proceeding.

The Petition includes the following exhibits: (1) Petitioners’ respective letters requesting negotiations (Exhibit 1), (2) Alltel’s acknowledgment of receiving Petitioners’ requests to negotiate (Exhibit 2), (3) the last proposed interconnection agreement from Petitioners (other than Chippewa County Telephone Company (“Chippewa”), Hiawatha Telephone Company (“Hiawatha”), Upper Peninsula Telephone Company (“UPTC”) and Winn Telephone Company (“Winn”), (Exhibit 3), (4) an Alltel proposed interconnection agreement (Exhibit 4), (5) a list of issues to be arbitrated (Exhibit 5), (6) a Matrix identifying each disputed issue (Exhibit 6), (7) Affidavit of Agris Pavlovskis (Exhibit 7), (8) Affidavit of David S. McCartney (Exhibit 8), (9) correspondence that the Parties (not Allendale) have stipulated to an arbitration window closing on May 14, 2006 (Exhibit 9), (10) the last proposed interconnection agreement from Petitioner Chippewa (Exhibit 10), (11) the last proposed interconnection agreement from Petitioner Hiawatha (Exhibit 11), (12) the past proposed interconnection agreement from Petitioner UPTC (Exhibit 12), and (13) the last proposed interconnection

agreement from Petitioner Winn (Exhibit 13). The Testimony of David S. McCartney was also filed with the Petition.

The Alltel Response included the following: (1) the Affidavit of Mr. Ron Williams, (2) the Testimony of Mr. Williams, (3) Williams Exhibits RW 1, 2, and 3, (4) Affidavit of W. Craig Conwell, (5) Testimony of Mr. Conwell, (6) Conwell Exhibits WCC-1 and WCC-2, (7) Affidavit of Will Brandt, (8) Testimony of Will Brandt, (9) Brandt Exhibits A, B-1, B-2, C-1, C-2, D-1, D-2, E-1, E-2, F-1, F-2, G-1, G-2, H-1, H-2, I-1, I-2, J-1, J-2, K-1, K-2, L-1, L-2, M-1, M-2, N-1, N-2, O-1, O-2, O-3, P-1, P-2, Q-1, and Q-2.

The issues in dispute are stated as follows in the Petition:

Issue 1: Whether the Parties' interconnection agreements should contain the rates, regarding local switching, local transport-termination, and local transport-facility relative to terminating CMRS traffic, that Petitioners' proposed and which are equal to and directly based on mapping applicable MPSC-approved TSLRIC studies?

Issue 2: Whether the Parties' interconnection agreement should exclude language to the effect that the Parties expressly waive any rights they may have as to the other to collect amounts that either of the Parties owed the other before the interconnection agreement is executed?

In the Response, Alltel withdrew its request that release language with respect to prior period traffic be included in the interconnection agreement and MECA issue 2 was therefore resolved without arbitration. Alltel described two unresolved issues in its Response, as follows:

- (1) What is the appropriate reciprocal compensation mechanism with respect to intraMTA traffic exchanged between the parties?
- (2) 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?

REQUEST FOR DISCOVERY

On July 7, 2006, Alltel filed a Request for an order Requiring Petitioners to Produce Additional Data, Information and Documents and on July 13, 2006 MECA filed its response. Alltel was seeking full cost study information in order to allow it to respond to the cost studies in accordance with its right to arbitrate the rate dispute that exists between the parties. The MECA companies oppose the request of Alltel to arbitrate the rates in this proceeding, arguing that the Commission prior approval of those studies is final and not subject to arbitration in this proceeding. The MECA companies have therefore not provided or submitted the entire costs studies and all support to either Alltel or this Panel.

THE ISSUES

The issues for resolution as described in the Response will be resolved in this order.

Discussion and Findings

This arbitration is to be resolved under the standards set forth in the Commission's rules and orders, including Commission Case Nos. U-11134 and U-13774, Sections 251 and 252 of the federal Act, and the rules and orders that the Federal Communications Commission (FCC) adopted and issued in implementing the federal Act.

In accordance with the Commission's Arbitration Procedure Orders, the Panel's decision on each issue in this proceeding is limited to the positions raised by the petitioners in the Petition, Petitioners' exhibits submitted to date, testimony, and proposed decision of the arbitration panel, and Verizon Wireless' Response, testimony, exhibits, and proposed decision of the arbitration panel. 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.

The Panel has considered the disputed issues presented in the Petition and the Response in accordance with the standards set forth above, and presents its findings below. 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.

Issue 1: What is the appropriate reciprocal compensation mechanism?

All Petitioners other than the UPTC have proposed a rate for local switching, a rate for local transport-termination, and a rate for local transport-facility. UPTC has proposed a single, combined rate to be paid for local call termination that includes the above three elements (local switching, local transport-termination, and local transport-facilities). Petitioners' proposed rates for local switching, local transport-termination, and local transport-facilities are based on and equal to those that the applicable MPSC-approved TSLRIC studies support. Alltel has not agreed to this proposal. Petitioners' proposed rates as follows:

<u>Proposal of All Petitioners Except CCTC, HTC, UPTC and WINN</u>	
Local switching per conversation minute of use:	\$0.019705
Local transport-termination per conversation minute of use per termination:	\$0.001472
Local transport-facilities per conversation minute of use per mile:	\$0.000161
Composite Local Call Termination rate per conversation minute (Based on 8.0 billable miles)	\$0.022465
<u>Proposal of Petitioner CCTC</u>	
Local switching per conversation minute of use:	\$0.012408
Local transport-termination per conversation minute of use per termination:	\$0.006112
Local transport-facilities per conversation minute of use per mile:	\$0.008621
Composite Local Call Termination rate per conversation minute (Based on 4.05 billable miles)	\$0.053435

Proposal of Petitioner HTC

Local switching per conversation minute of use: \$0.030043

Local transport-termination per conversation minute of use per termination:

\$0.003694

Local transport-facilities per conversation minute of use per mile: \$0.000276

Composite Local Call Termination rate per conversation minute
(Based on 6.57 billable miles)

\$0.035550

Proposal of Petitioner UPTC

Local call termination per conversation minute of use: \$0.039028

Proposal of Petitioner WINN

Local switching per conversation minute of use: \$0.018288

Local transport-termination per conversation minute of use per termination:

\$0.001265

Local transport-facilities per conversation minute of use per mile: \$0.000477

Composite Local Call Termination rate per conversation minute
(Based on 3.74 billable miles)

\$0.021337

(McCartney Testimony, pages 11, 12, and 13)

All Petitioners other than CCTC, HTC, UPTC and Winn proposed rates are based on and equal to the rates that MECA's 1st TSLRIC Study and MECA's 2nd TSLRIC Study - both of which were approved by the MPSC. (McCartney Testimony, page 13)

The rate that CCTC proposed is based on a mapping calculation derived from CCTC's TSLRIC Study. CCTC has proposed rates for local switching, local transport-termination, and local transport-facilities, the specific rates that mapping of the CCTC TSLRIC Study revealed. In 1999, CCTC submitted its TSLRIC filing to the Commission, leading to MPSC Case No. U-12149. The Commission issued its final order in that case on December 23, 1999, accepting CCTC's TSLRIC Study as modified and resubmitted. The CCTC TSLRIC Study is the last TSLRIC study that the CCTC submitted to the Commission. (McCartney Testimony, pages 22 and 23)

The rate that HTC proposed is based on a mapping calculation derived from HTC's TSLRIC Study. The HTC proposed rates for local switching, local transport-termination, and local transport-facilities are based on mapping of the HTC TSLRIC Study support. In 1999, the HTC submitted its TSLRIC filing to the Commission, leading to MPSC Case No. U-11996. The Commission issued its final order in the case on August 13, 1999, accepting the HTC's TSLRIC Study as with certain modifications. HTC modified their TSLRIC study per the MPSC ordered and resubmitted their TSLRIC to the MPSC in a document labeled "Hiawatha Telephone Company, Total Service Long Run Incremental Cost Study, September 13, 1999, Modified in Accordance with Commission Order No. U-11996". (McCartney Testimony, pages 25 and 26)

The rate that UPTC proposed is based on mapping calculation derived from UPTC's TSLRIC Study. The UPTC proposed, as a combined rate for local switching, local transport-termination, and local transport-facilities, the rate from mapping of the UPTC TSLRIC Study. In 2000, the UPTC submitted its TSLRIC filing to the Commission, leading to MPSC Case No. U-12471. The Commission issued its final order in that case on September 18, 2000, accepting the UPTC's TSLRIC Study as filed. The UPTC TSLRIC Study is the last TSLRIC study that the UPTC submitted to the Commission. (McCartney Testimony, pages 29 and 30)

The rate that WINN proposed is based on mapping calculation from WINN's TSLRIC Study. The WINN proposed rates for local switching, local transport-termination, and local transport-facilities by mapping of the WINN TSLRIC Study. In 2001, the WINN submitted its TSLRIC filing to the Commission, leading to MPSC Case No. U-13191. The Commission issued its final order in that case on February 1, 2002, accepting the WINN's TSLRIC Study as revised per Staff comments and resubmitted on January 11, 2002. (McCartney Testimony, page 33)

Alltel proposes the Commission find that bill and keep is the appropriate compensation mechanism between the parties as a result of (1.) the ISP traffic presently exchanged by the Petitioners with others on a bill and keep basis and (2.) Petitioners' failure to provide Alltel and file FCC compliant cost studies in this proceeding. If the Commission fails to award ISP compensation equality (bill and keep), then Alltel proposes reciprocal compensation rates that do not exceed those developed by Alltel witness Conwell as follows:

Ace Telephone Company	\$0.004359
Allendale Telephone Company	\$0.004359
Barry County Telephone Company	\$0.004359
Blanchard Telephone Company	\$0.004359
Bloomington Telephone Company	\$0.004359
Chippewa County Telephone Company	\$0.00
Deerfield Farmers Telephone Company	\$0.004359
Hiawatha Telephone Company	\$0.00
Kaleva Telephone Company	\$0.004359
Midway Telephone Company	\$0.004359
Ogden Telephone Company	\$0.004359
Ontonagon County Telephone Company	\$0.004359
Pigeon Telephone Company	\$0.004359
Upper Peninsula Telephone Company	\$0.00
Waldron Telephone Company	\$0.004359
Winn Telephone Company	\$0.005550

Alltel also proposes that the Commission order that Alltel is entitled to tandem compensation on all traffic originated by Petitioners and terminating to Alltel's network. A final alternative proposed by Alltel is that interim rates subject to true up be established as requested by Petitioners at the Conwell rates or those supported by Will Brandt as consistent with the FCC's interim compensation rules. Final rates would be established in another proceeding.

The unresolved issues in this proceeding as described by petitioner and Alltel concern the determination of the appropriate reciprocal compensation mechanism that each will pay the other with respect to traffic it originates and sends to the other for termination. Except where bill and

keep are required under FCC rules, the originating carrier must pay the terminating carrier the additional costs incurred in receiving a call at the point of interconnection and terminating the call to the end user. This is referred to as “transport and termination”. “Termination” is defined as the switching function at an end office. 47 C.F.R. § 51.701(d). “Transport” is defined as any tandem switching and transmission necessary to get a call to the end office serving the customer. 47 C.F.R. § 51.701(c). The cost based transport and termination rates cannot exceed a LEC’s forward-looking economic costs. 47 C.F.R. § 51.505(e)

The Petitioners, who are ILECs, have the burden of establishing appropriate rates for transport and termination of telecommunications traffic pursuant to the Act. The rules for ILEC transport and termination rates are provided at 47. C.F.R. § 51.705(a).

- (a) An incumbent LEC’s rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:
 - (1) the forward-looking economics costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511;
 - (2) default proxies, as provided in § 51.707; or
 - (3) a bill-and-keep arrangement, as provided in § 51.713.

Section 252(d)(2) of the Act, mandates that transport and termination be priced as follows:

- (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)(A).

FCC regulations specify that a bill and keep arrangement is the appropriate method of reciprocal compensation in certain instances. One such instance is the FCC determination that bill and keep is appropriate with respect to all Section 251(b)(5) traffic to the extent that a local exchange carrier is not billed or does not pay (i.e., has a bill and keep relationship), with respect to internet service provider (“ISP”) traffic that originates on its network. The FCC requires parity in the compensation for 251(b)(5) traffic. Therefore, in the event Petitioners are using bill and keep or paying a rate lower than its offered reciprocal compensation rates with respect to its originated ISP traffic, then it is also necessary to use bill and keep or the lower ISP termination rate paid by Petitioners with respect to all 251(b)(5) traffic, including Alltel CMRS traffic, terminated by Petitioners.

In establishing this parity or nondiscrimination requirement among 251(b)(5) traffic requirement, the FCC determined,

Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to “pick and choose” intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply, therefore, only if an incumbent LEC offers to exchange all traffic subject to section 251(b)(5) at the same rate. Thus, if the applicable rate cap is \$.0010/mou, the ILEC must offer to exchange section 251(b)(5) traffic at the same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis.¹

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic, Order on Remand and Report and Order, Released April 27, 2001, ¶189.

Although the current default rate for ISP-bound traffic is \$.0007 per minute of use, since the Petitioners in this case are exchanging ISP-bound traffic without compensation, the appropriate rate for all their 251(b)(5) traffic is \$0.000.

Based on an assessment of publicly available information, Alltel assembled substantial data that leads to a conclusion that ISP traffic is exchanged but that traffic exchange is not pursuant to a filed interconnection agreement. Additionally, most of the Petitioners have an affiliate that is an ISP. In all cases, the affiliate provides ISP service in the Petitioner service area, and in most cases, the affiliate provides ISP service in areas served by other local exchange carriers. The Commission's website indicates that only two Petitioners have interconnection agreements that may address ISP traffic.² It is clear that most of the Petitioners are exchanging ISP traffic on a "bill and keep" basis. (Williams Testimony) Therefore, given the FCC's ISP order, the same arrangement must be available to Alltel.

All but three of the Petitioners (Chippewa county, Hiawatha and Winn) based their proposed transport and termination rates on cost studies that the Commission by order in Case No. U-14678 has determined must be revised and reexamined. The three remaining Petitioners although not parties in U-14678, suffer from similar defects. Therefore, the proposed cost-based rates of at least 13 of 16 Petitioners will be superceded by the new studies they have recently filed.

Twelve Petitioners in this arbitration relied entirely, for their proposed transport and termination rate (\$.022465 per minute), on the MECA 2nd total Service Long Run Incremental Cost Study (TSLRIC) Study. Upper Peninsula's proposed rate (\$.039028 per minute) is based on a separate study. These are the same studies produced for the MECA-Verizon Wireless

² Allendale Telephone (Case U-11784), Bloomingdale Telephone (Case U-13752), Deerfield Farmers' (Case U-13780), and Winn Telephone (Case U-13339)

arbitration in U-14678, which the Commission ordered to be revised and reexamined. The new cost studies were required to be filed on June 30, 2006. If the studies are prepared in compliance with FCC rules and reflect current technologies, costs, *etc.*, the new studies will produce lower transport and termination costs and rate than Petitioners are seeking in this case. For example, when the studies are modified to remove usage-sensitive end office switching costs (other than interoffice trunk equipment costs) in compliance with decisions of this Commission, the rate based on the MECA TSLRIC study will be reduced from \$0.022465 to \$0.004359 per minute, or approximately 4/10th of a cent per minute, even before other necessary updates and corrections are made.³ In Case U-14678, the Commission noted that significant changes in circumstances have occurred since the Petitioner TSLRIC studies were completed and ordered a new examination of total service long run incremental costs in Case U-14781. Specifically, the Commission's final order states:

“...the arbitration panel noted that the Commission's findings concerning usage sensitive and end office switching costs subsequent to the approval of the petitioners' TSLRIC studies might be considered a sufficient change in circumstance to warrant a new cost study application by the petitioners. Therefore, the arbitration panel recommended that the Commission direct the petitioners to file, within 30 days of the date of the final order in this case, a new cost study either jointly or separately and require the agreement to provide for the inclusion of new rates when the cost study is approved.”...

MECA companies also can not rely on averaged studies but must produce company specific studies. Section 51.505(e) of the FCC rules establishes a threshold criteria that effectively eliminates any cost study that relies on ‘averaged’ cost derivation based on the inputs from more than one ILEC. Specifically, § 51.505(e) states:

“An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per unit of

³ Carr Telephone Company, Chapin Telephone Company, Drenthe Telephone Company, Lennon Telephone Company, Sand Creek Telephone Company and Springport Telephone Company.

providing the element, using a cost study that complies with the methodology set forth in this section and Sec. 51.511.”

Because the rule states that the incumbent LEC must prove a rate for each element offered does not exceed the forward-looking economic cost per unit, it is a simple mathematical principle that any costs that are ‘averaged’ contain a combination of values both higher and lower than the average. This rule clearly prohibits those carrier’s whose costs are less than the ‘average’ from adopting the ‘averaged’ study result because they would be adopting a rate that exceeds their forward-looking economic cost. Therefore, unless specific carrier rate results are identified, a study that relies on aggregated data and produces an ‘averaged’ result must be rejected.

All the Petitioners that have requested rates based on the ‘MECA 2nd TSLRIC Study’ have claimed ‘averaged’ costs. Since it is impossible to extract the unique results of each carrier to determine which carriers are more or less than the average result, the study cannot be accepted as a basis to “prove to the state commission that the rates for each element do not exceed the forward-looking economic cost per unit of providing the element”. Rates must be developed for each ILEC based on their unique forward-looking economic costs including service area, network topology, usage characteristics, and business environment. Twelve of the Petitioner’s have failed to provide such costs. Instead they have offered an outdated ‘average’ combination study to be used as a proxy. In fact, the study includes six companies whose costs are not at issue in this proceeding and four companies that are now trying to opt into a study that they were not a party to. Petitioners have failed to meet their burden of proof. The entire TSLRIC studies used by Mr. McCartney to “map” costs to rates have not been produced for the record or provided to Alltel as required by FCC rules. Instead, the Petitioners attempt to rely solely upon the Commission’s previous approval of these studies. However, FCC Rule 51.505(e)(2) is clear

that “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.” In this case particularly, with the TSLRIC studies being six to seven years old and the Commission in U-14678 ordering new studies to be filed, it is important for Alltel to have access to the cost models used to produce the studies and documentation of key assumptions and input data. The Petitioners have not provided or filed this required information.

The FCC has held that an incumbent LEC cost study “must explain with specificity why and how specific functions are necessary to provide network elements and how the associated costs are developed.”⁴ An incumbent LEC “must prove to the state commission the nature and magnitude of any forward-looking costs that it seeks to recover in the prices of interconnection and unbundled network elements.” The documentation should include an electronic copy of the cost model so that cost calculations can be traced and methods verified as consistent with FCC Rules 51.505 and 51.511; and, documentation should “explain with specificity” the basis for key assumptions and input data. The Petitioners have failed to do so in this proceeding, but rather attempt to rely entirely on previously utilized costs studies.

The Petitioners’ proposed transport and termination rates exceed their forward-looking economic costs, which is not permitted by FCC Rule 51.505(e). Their proposed rates range from \$0.022465 - \$0.053435 per minute. Simply removing end office switching costs that are non-usage sensitive, consistent with orders of this Commission, the FCC and several other State commissions, lowers the rates to a range of \$0.004359 - \$0.005550 per minute for the twelve Petitioners relying on the MECA 2nd TSLRIC Study and Winn Telephone. The results of the studies of Chippewa County, Hiawatha and Upper Peninsula are so suspect that similar comparisons are not reasonable to make. These Petitioners however bear the burden to prove

that their studies today produce valid forward-looking economic costs. The MECA 2nd TSLRIC Study and Upper Peninsula TSLRIC Study completed in 1999-2000 treat substantial portions of switching costs as usage-sensitive and include these costs in the transport and termination rate. For example, the MECA study treats all host and remote switch investment as usage-sensitive, except the investment in line equipment. Specifically, the switch “base cost” (typically the switch processor, memory and other “getting started costs”), software, power and other common costs are attributed entirely to usage. In its September, 2004 order after reviewing SBC Michigan’s costs of telecommunications services, the Commission found that there are no usage-sensitive costs of end office switching. It states as follows:

The Commission finds that there are no usage sensitive costs associated with end-office switching and that the switched access local switching costs per MOU should be set to zero. Likewise, the Commission finds that for local calls subject to reciprocal compensation charges placed to UNE-P customers, the end-office switching costs should be set at zero.⁵

The Commission’s findings in U-13531 followed the MECA and Upper Peninsula studies by four or more years. Other defects also exist in these studies relied on by the MECA companies. (Conwell Testimony, page 40)

Issue 2: Whether any rates established in this proceeding will be interim rates subject to true up to final rates from a generic costs proceeding?

Option 1: As bill and keep is required by the ISP Order, this issue is moot.

Option 2: [Alternatively, if bill and keep is not the required result, then Section 51.715 of the FCC local competition rules is applicable and a true up of any interim compensation established in this matter at the request of a party is required and the following language would be appropriate in this order.] In this instance, the MECA companies requested interim

⁴ Local Competition Order, 11 FCC Rcd at 15850 ¶ 691.

compensation in their request for negotiation. (See initial BFRs) Because the cost studies upon which the Petitioners rely have already been determined subject to question and change and new studies have now been filed by many of the MECA Companies, those historic studies can not be the basis of final rates. Therefore, as in the Verizon Wireless arbitration rates established in this proceeding must be interim. Interim rates determined in this proceeding must be then trued up to the results of an FCC compliant cost study examination.

CONCLUSION

Option (1)

The Petitioners are exchanging ISP traffic on a 'bill and keep' compensation basis. Given this evidence, the Commission should order a reciprocal compensation rate of \$0.000 or bill and keep for each of the Petitioners' agreements with Alltel because Petitioners are exchanging ISP traffic at a zero rate or bill and keep basis.

Bill and keep is additionally and independently justified and required because Petitioners have not filed in this proceeding and have not provided Alltel FCC compliant costs studies. Without doing so, Alltel would be denied its statutory right to arbitration of those rates if rates based on these studies were approved and therefore bill and keep is required.

Option (2)

[To be used only if Option 1 is not lawfully required.]

⁵ *In the matter, of the Commission's own motion, to review the costs of telecommunications services provided by SBC Michigan*, Opinion and Order, Case No. U-13531, September 21, 2004, p. 40.

The rates developed by Mr. Conwell using publicly available data and data available to Alltel through Petitioner's pleadings are approved as final rates in this proceeding. Those calculations indicate appropriate transport and termination rates in the range of 4/10th of a cent, significantly less than the inflated costs and rates proposed by the Petitioners and are set forth previously in this order.

Option (3)

[To be used only if Option 1 and 2 are not lawfully required.]

FCC compliant rates will be developed in the separate cost docket initiated by this Commission with respect to MECA companies. As the Petitioners requested in their bona fide request that initiated these negotiations, interim rates will be implemented retroactive to the effective date agreed to by the Parties tried up to the ultimate final rates. The interim rates should be those calculated by Will Brandt in conformity with FCC default interim compensation rules. All MECA companies will be made parties to the separate cost docket and are directed to file cost studies within three months if they have not already done so.

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