

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

RESPONSE TO PETITION FOR ARBITRATION

NOW COMES Alltel Communications, Inc. (Alltel) and for its response to the Petition for Arbitration 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 (collectively, the MECA Companies) filed on or about May 14, 2006 (the Petition), states the following:

1. As described in the Petition, the Parties have as a result of *diligent and good faith efforts*, substantially reduced the issues that are necessary for determination by arbitration. The remaining unresolved issues all concern what rates or compensation mechanism will apply under the new agreement effective retroactive to December 5, 2005. Each of the Petitioners is currently exchanging traffic without a written interconnection agreement with Alltel and without any payment of reciprocal compensation between them and Alltel. Therefore, the current arrangement between the Parties is based on a \$.00 rate or bill and keep. As demonstrated in this reply and the attached testimony of Messrs. Ron Williams, Will Brandt and Craig Conwell, the current zero rated or bill and keep mechanism must be continued under the new agreement or in the event it is determined that this is not the legally required result then rates supported by Alltel witness W. Craig Conwell should be approved. Alternatively, interim rates based on the FCC proxy rate determination described by Will Brandt should be implemented until final rates are determined based on full and complete disclosure and arbitration of FCC compliant costs studies. A lawful reciprocal compensation rate determination, if necessary, can be accomplished in Commission Case No. U-14781 if all MECA Companies are required to file and share with the parties FCC compliant costs studies and adequate discovery and participation by all interested parties are allowed. If final rates can not or are not properly determined in Case No. U-14781 then the interim rates support by Mr. Brandt would remain effective as permanent rates.
2. While Alltel does not have sufficient information to confirm or deny many of the allegations of paragraphs 1 through 19, Alltel does not contest them, except to deny that

it is an Arkansas corporation as alleged in paragraph 19. Alltel is a Delaware corporation.

3. Alltel admits that this Commission has jurisdiction to consider the Petition and must do so in accordance with the requirements of federal law, specifically The Telecommunications Act of 1996 (the Act) and Federal Communications Commission (FCC) rules pursuant to the Act.
4. Alltel admits that the MECA Companies do not have and have not had a written interconnection agreement with Alltel. The MECA Companies have and continue to exchange traffic with Alltel on a zero rated or bill and keep basis and without billing and payment of compensation between the parties. All other allegations of paragraph 22 of the Petition are denied.
5. The allegations of paragraphs 23 through 27 are admitted.
6. Alltel also admits as alleged in paragraph 28 that MECA and Alltel, through “diligent and good-faith efforts”, have managed to reduce the number of issues; however the parties differ on their identification of the remaining issues.

UNRESOLVED ISSUES

7. MECA identified two issues which can be summarized as follows: (1) what is the appropriate reciprocal compensation rate for intraMTA traffic; and (2) whether release language with respect to any prior period traffic should be excluded from the interconnection agreement. As Alltel is hereby withdrawing its request that release language with respect to prior period traffic be included in the interconnection agreement, MECA issue 2 is therefore resolved. Even with resolution of MECA issue 2, the following issues remain to be resolved in this arbitration:

(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?

SUMMARY OF ALLTEL POSITION

8. Alltel's position is that (1) the appropriate reciprocal traffic compensation arrangement per FCC rules and determinations, must be bill and keep and no rates should be reciprocally billed between the parties because the MECA companies are not paying reciprocal compensation with respect to other Act section 251(b)(5) traffic, particularly traffic the MECA Companies originate and is terminated by others for internet service provider traffic (ISP traffic); or (2) bill and keep must be required and continue because the MECA Companies have failed to put forth in this proceeding and provide Alltel a copies of company specific TELRIC compliant models and supporting materials as required by FCC rules (See 47 CFR 51.301 and 51.506); or if bill and keep is not required, then the rates determined by Mr. Conwell should be approved as final rates. As a final alternatively and again only if the current zero rate or bill and keep is not required, the Commission may adopt the FCC proxy rates determined by Mr. Brandt and make them effective retroactive to the agreed effective date of the new agreement and the final rates determined in Commission docket U-14781 (the current Commission docket established to examine and establish many MECA Companies' reciprocal compensation rates) (the Cost Docket). The latter alternative is proper only if all MECA companies and Alltel are made parties to the Cost Docket, all MECA companies are required to file

company specific cost studies in accordance with FCC rules and full participation of all interested parties is provided. The interim rates would be trued up to the final rates that result from the Cost Docket as required by FCC interim rate rules.

ISSUE 1: WHAT IS THE APPROPRIATE RECIPROCAL COMPENSATION MECHANISM?

A. ZERO RATING OR BILL AND KEEP IS REQUIRED

(1.) The FCC does not allow ILECs to rate discriminate among 251(b)(5) traffic

9. The MECA ISP traffic compensation of \$.00, bill and keep or \$.0007 must be applicable to all MECA 251(b)(5) traffic. In *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, Order on Remand and Report and Order, Paragraph 89 (April 27, 2001) (the FCC ISP Order), the FCC determined that

It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payers, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. ... we will not allow them to “pick and choose” intercarrier compensation regimes depending on the nature of the traffic... 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.

The testimony of Mr. Ron Williams attached hereto demonstrates that the MECA companies are originating ISP bound traffic and are terminating it without any agreement requiring them to pay reciprocal compensation i.e. a rate of \$.00 is being charged or bill

and keep is being used. Section 252(a)(1) of the Act requires that these MECA interconnection arrangements be filed and approved by this Commission. Therefore, the MECA companies should be required to immediately file these 251(b)(5) traffic arrangements for approval by this Commission and make the same rates available for all other 251(b)(5) traffic.

(2) Lawful Reciprocal Compensation Rates can not be established based on the Petition because an FCC compliant cost study has not been filed in this proceeding by the MECA Companies, they have not provided such to Alltel and full and effective arbitration must be provided

10. If the bill and keep regime under which the MECA Companies are compensating ISP traffic is not required, then the Act requires the MECA Companies to establish their proposed rates in accordance with FCC rules and TELRIC requirements as discussed by Mr. Williams and Mr. Conwell. The MECA Companies have the burden of proof of justifying the rates and must provide costs studies to support their proposed reciprocal compensation rates and Alltel must be provided the opportunity to review and analyze those studies. If the MECA Companies fail to support the proposed rates and fail or refuse to make the entire studies and all support available to Alltel then the \$.00 rate or bill and keep, the current compensation mechanism between the parties, should continue.

- (a) As described by Mr. Williams in his testimony and reflected in his Exhibits, Alltel requested the studies and models that allegedly support the MECA Companies proposed rates. However, the MECA Companies only provided Alltel what appear to be the results of their prior studies, paper copies of some portions of some of the studies and variable levels of details with respect to the studies. The MECA companies have not yet provided Alltel the entire models or the studies and certainly not in an

electronic form that is necessary to allow Alltel to analyze and run the model. Some MECA companies have provided no costs study data, others have provided the historic costs data and at least one MECA company has provided at least portions of an entirely new study. Section 252 of the Act, however, provides Alltel the right to negotiate and if that is unsuccessful, then to arbitrate the rates that it will reciprocally pay and bill MECA. This proceeding is an arbitration pursuant to the Act and unless the entire model, its assumptions and inputs are provided and in a format that can be analyzed and run by Alltel then Alltel will be denied its statutory right to arbitrate. Unless it is provided a full arbitration and its statutory rights protected, then the present bill and keep compensation between Alltel and MECA companies should be continued.

- (b) While the MECA companies attempt to rely on this Commission's previous determination of their costs, Alltel was not a party to those proceedings and has not had the opportunity to arbitrate the applicable rates. Additionally, the very studies upon which the MECA companies rely in this proceeding will be superseded and be obsolete within weeks when they file their new costs studies in accordance with the Commission's order in the recent Verizon Wireless arbitration with many of the MECA Companies. *In the Matter of Ace Telephone et al for the arbitration of interconnection rates, terms and conditions and related arrangements with Verizon Wireless, Case No. U-14678* (the Verizon Wireless Arbitration). The historic studies on which Petitioners rely are already

recognized as not being in compliance with recent rulings by this Commission and most Petitioners are already required to prepare and file new cost studies. The new studies are required to be filed on or before June 30, 2006. The historic studies on which Petitioners rely are also defective for a variety of reasons as discussed by Mr. Conwell in his testimony in this matter. Mr. Conwell is an expert with respect to costs studies and in particular with respect to the studies upon which the MECA companies attempt to rely as he also testified in the Verizon Wireless Arbitration. Just as the record reflects in that arbitration, the MECA Companies have not provided all information, study inputs, data or assumption support with respect to the costs studies and the studies have not been provided in electronic format necessary to adequately prepare for and present rebuttal to the studies. Mr. Conwell testifies at length to the many deficiencies and flaws with the material relied on by the MECA companies. The Alltel testimony demonstrates that when the deficiencies are corrected, the resulting rates will be substantially lower than the proposed rates. For example, even simply reversing the erroneous inclusion of switching costs in such studies will dramatically lower the costs and resulting rates. Mr. Conwell clearly shows the studies upon which the MECA companies attempt to rely are not compliant with FCC TELRIC methodology and can not be the basis of any determination of rates in this proceeding.

(3)The only basis for establishing final rates in this proceeding is as described in the testimony of Mr. Conwell

Utilizing the limited data provided by Petitioners and various public information, Mr. Conwell prepared an analysis of the Petitioners' costs and determined forward looking rates that are much closer to FCC compliant rates than those proposed by Petitioners. Mr. Conwell reflects the rates which he determined could be approved as final rates in his testimony and Mr. Williams also summarizes those rates. This analysis also demonstrates that the MECA proposed rates are greatly inflated.

ISSUE 2: IF RECIPROCAL RATES MUST BE ESTABLISHED THEN, WHAT SHOULD BE THE INTERIM RATES AND WHEN WILL THE FINAL RATES BE DETERMINED?

INTERIM RATES MUST BE BASED ON FCC PROXY RATE DETERMINATIONS AND TRUED UP TO FINAL RATES DETERMINED ON FCC COMPLIANT COSTS STUDIES AND PROCEEDINGS

11. If zero rating or bill and keep is not required regardless of the MECA ISP compensation regime or the MECA failure to properly provide studies or justify its proposed rates, then interim rates subject to true up to final FCC TELRIC compliant rates are required in accordance with FCC rules. (See 47 CFR 51.715) These rules specify that upon request by a telecommunications carrier that does not have an existing interconnection agreement, the incumbent LEC shall provide transport and termination immediately under an interim arrangement pending resolution of negotiation or arbitration and that if the final rates differ from the interim rates then the "state commission shall require carriers to make adjustment to past compensation." 47 CFR 51.715(d). In this instance the MECA Companies requested interconnection negotiations and also requested interim rates at the same time. (See Petition Exhibit 1) The parties have resolved the issue as to when the rates and agree would be effective and agreed that date would be December 5,

2005. While this would seem to settle the interim rates issue, uncertainty and disagreement is created if this Commission, as it did in the Verizon Arbitration, approves rates based on the historic MECA Company generic cost studies and does not order that such be trued up to final rates from the Cost Docket. This result would clearly violate FCC rules with respect to rate setting as discussed by Mr. Williams and Mr. Conwell, but also the FCC interim rate rules. As discussed by Mr. Williams and Mr. Conwell there is no basis provided by the Petition to establish final rates in this current proceeding. Therefore, in accordance with FCC rules, either current bill and keep must continue or if rates are established they should be interim rates based on FCC defaults and trued up to final rates that are determined based on FCC compliant costs studies and a full and fair proceeding.

12. The attached testimony of Will Brandt determines appropriate interim rates based on the FCC default or proxy formulas in accordance with FCC rules. Mr. Brandt carefully documents how he derived these rates and the reasonable assumptions underlying the development.

REQUESTED RELIEF

13. Alltel respectfully requests that the petition be denied, that the current bill and keep or \$.00 rate or bill and keep arrangement remain in effect to avoid discrimination by Petitioners with respect to 251(b)(5) traffic, or if that is not required that interim rates be established consistent with Alltel testimony and final rates determined with respect to each MECA company in the Cost Docket.

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