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December 27, 2006

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

Re: In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges
MPSC Case No. U-15166

Dear Ms. Kunkle:

Enclosed for filing please find the Formal Complaint and Application and Resolution of Alltel Communications, Inc. in the above captioned proceeding. The supporting testimony and exhibits of Ron Williams is also enclosed. These documents have been filed electronically with the Commission's Electronic Docket Filing System.

Very truly yours,

CLARK HILL PLC

Haran C. Rashes

HCR:pat
cc: Stephen B. Rowell
Philip R. Schenkenberg

Enclosures

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

FORMAL COMPLAINT AND APPLICATION FOR RESOLUTION

Pursuant to Sections 201, 203, 204, 205, and 601 of the Michigan Telecommunications Act ("Michigan TA"), as amended, MCL 484.2201 *et seq.*, and the Michigan Public Service Commission's ("MPSC" or "Commission") Rules of Practice and Procedure, MAC R 460.17101 *et seq.*, Alltel Communications, Inc. ("Alltel"), by its attorneys, brings this Formal Complaint and Application for Resolution ("Complaint") regarding Michigan Bell Telephone Co. d/b/a AT&T Michigan ("AT&T"). In support of its Complaint, Alltel files the accompanying testimony of Ron Williams and related exhibits and states as follows:

PARTIES

1. AT&T is an incumbent local exchange provider in Michigan, and, according to the Commission's list of Regulated Local Telephone Companies Licensed in Michigan, has its principal offices at 221 North Washington, Ground Floor, Lansing, Michigan 48933.

2. Alltel is a provider of commercial mobile radio services ("CMRS") authorized by the Federal Communications Commission ("FCC") to provide wireless telecommunications services in certain geographic areas in Michigan, and has its principal offices at P.O. Box 3373, Little Rock, Arkansas 72203.

JURISDICTION

3. Section 201 of the Michigan TA, MCL 484.2201, provides the Commission with jurisdiction and authority to enforce the Michigan TA and to exercise its delegated authority under the federal Telecommunications Act.

4. Section 203 of the Michigan TA, MCL 484.2203, authorizes the Commission, upon receipt of a complaint, to conduct an investigation, hold hearings, and issue its findings and order under the contested case provisions of the Michigan Administrative Procedures Act ("APA"), MCL 24.201 *et seq.*

5. Section 204 of the Michigan TA, MCL 484.2204, provides that if two or more telecommunications providers are unable to agree on a matter relating to a regulated telecommunication issue between the parties, then either provider may apply to the Commission for resolution of the matter.

6. Section 205 of the Michigan TA, MCL 484.2205, authorizes the Commission to investigate and resolve complaints.

7. Section 601 of the Michigan TA, MCL 484.2601, permits the Commission to award remedies and/or penalties where a violation of the Michigan TA (or one of the Commission's orders) is found.

8. As held by the United States Court of Appeals for the Sixth Circuit, the Commission has delegated authority to interpret and enforce interconnection agreements under the federal Telecommunications Act. *See e.g., Michigan Bell Tel Co v MCIMetro Access Transmission Services, Inc*, 323 F3d 348, 356-57 (6th Cir. 2003).

9. The Commission also has jurisdiction and authority to enforce tariffs for regulated intrastate services.

10. This Complaint is filed with regard to SS7 message charges billed by AT&T for wireless calls originated by Alltel and terminated by AT&T in Michigan, and are within the Commission's jurisdiction. These charges were billed by AT&T to VeriSign, Inc. ("VeriSign") which transmits SS7 messages for Alltel. VeriSign has paid the charges billed by AT&T, and has demanded reimbursement from Alltel for all such SS7 message charges.

11. Alltel has standing to assert this Complaint because it is a person with an interest in the outcome of the Complaint. AT&T has billed VeriSign for SS7 messaging charges for Alltel calls, and VeriSign asserts that if those charges were properly assessed to VeriSign, Alltel must pay those amounts to VeriSign. Alltel seeks an order that such amounts were not properly assessed by AT&T, and requiring that AT&T refund any amounts paid by VeriSign with respect to Alltel intraMTA traffic.

BACKGROUND

12. Alltel has exchanged telecommunications traffic with AT&T in the State of Michigan at all times relevant to this Complaint. The parties have operated in Michigan in accordance with interconnection agreements filed with and approved by the Commission. Most recently, on October 14, 2004 in Docket U-14300, the Commission approved a multi-state interconnection agreement that was effective upon Commission approval (the "2004 ICA"). Prior to that date the parties operated pursuant to other agreements, including an agreement dated as of October 14, 1999, between Ameritech Information Industry Services and CenturyTel Wireless, Inc.

13. The telecommunications traffic exchanged between Alltel and AT&T that is the subject of this Complaint originates and terminates in Michigan and in the same Major Trading Area, or "MTA."

14. Signaling is a necessary part of the exchange of traffic between carriers because it provides the call processing and routing information. Alltel and AT&T utilize out-of-band SS7 signaling to exchange call processing and routing information.

15. At all times relevant to this Complaint, Alltel has contracted with VeriSign to transmit SS7 messages to and from AT&T and other telecommunications carriers in Michigan. VeriSign provides this service to Alltel in accordance with an agreement referred to as the "SS7 Agreement." When a call destined to AT&T is initiated by an Alltel customer and in the reverse, VeriSign transmits the SS7 message and exchanges that SS7 information with AT&T, so that the call path is established and the call can be completed. The SS7 messages that are transmitted by VeriSign and exchanged with AT&T are referred to as "ISUP messages."

16. The Commission has determined on several occasions that SS7 signaling is part and parcel of the delivery of traffic between carriers. In 1999 the Commission conducted an interconnection arbitration involving CenturyTel Wireless, Inc. and Thumb Cellular and Ameritech Michigan. *In the matter of the application of CenturyTel Wireless, Inc. and Thumb Cellular for arbitration of interconnection agreements with Ameritech Michigan*, MPSC Case No. U-11989, Opinion and Order (Sept. 14, 1999). In that decision, the Commission ordered SS7 services to be priced at Total Service Long Run Incremental Cost ("TSLRIC") based rates because "signaling is part of interconnection and should not be viewed solely as a separate access service." *Id.* at 14. See also, *In the matter of the application of AirTouch Cellular, Inc. for arbitration of interconnection terms, conditions, and prices from Ameritech Michigan*, MPSC Case No. U-11973, Opinion and Order (Aug. 17, 1999) ("signaling is part of interconnection").

17. The 2004 ICA establishes a reciprocal rate for the termination of telecommunications traffic subject to 47 U.S.C. § 251(b)(5). This rate is contained in a

document titled "Amendment to Interconnection Agreement" that was executed at the same time as the 2004 ICA, and that provides the parties will exchange intraMTA traffic pursuant to the rate structure in the FCC's *ISP Compensation Order*.[1] This amendment, referred to as the "ISP Amendment,"[2] caps the rate paid by the parties for terminating Section 251(b)(5) traffic at $0.0007 per minute of use.

18. The 2004 ICA (including the ISP Amendment) does not authorize AT&T to separately charge Alltel for receiving and processing ISUP messages that are necessary for the exchange of Section 251(b)(5) traffic. Instead, the 2004 ICA provides that "If SS7 services are provided by [AT&T], they will be provided in the applicable access tariffs." This provision does not apply because access tariffs are not applicable to intraMTA wireless traffic subject to Section 251(b)(5). In addition, consistent with the *ISP Compensation Order*, the rate cap in the ISP Amendment prevents AT&T from recovering more than $0.0007 for intraMTA traffic by separately billing for receiving and processing ISUP messages.

19. Since August of 2003 and through the present, AT&T has billed VeriSign a per-message charge for receiving and processing ISUP messages for Section 251(b)(5) traffic originated by Alltel and terminated to AT&T. On information and belief, AT&T has issued these bills as access charges under one or more of its access tariffs. VeriSign has paid these charges and has invoiced Alltel for those charges. Alltel disputes that those charges are properly assessed by AT&T. VeriSign asserts that if the charges are properly assessed by AT&T, then Alltel is obligated to reimburse VeriSign under the terms of the SS7 Agreement.

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[1] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 (rel. April 27, 2001) ("*ISP Compensation Order*").

[2] "ISP" stands for Internet Service Provider.

20. AT&T has separately billed Alltel terminating compensation for intraMTA traffic. Alltel has paid these bills issued by AT&T. The payment AT&T has received for the ISUP messages associated with the Alltel traffic is over and above the terminating compensation received by AT&T under the various interconnection agreements between Alltel and AT&T.

21. AT&T was put on notice of this dispute by VeriSign, including by letter dated June 20, 2005. Since that time, AT&T, VeriSign, and Alltel have been party to various communications, but the dispute has not been resolved, and AT&T continues to issues bills to VeriSign as described above. To the extent this complaint is brought under the 2004 ICA, the informal and formal dispute resolution provisions do not apply, and Alltel would not agree to submit this matter to be resolved by binding arbitration.

COUNT I – IMPROPER TARIFFED CHARGES

22. Alltel restates the allegations contained in Paragraphs 1 through 21 of this Complaint, as if fully set forth herein.

23. Between August 2003 and the present, AT&T has billed VeriSign under its intrastate and/or interstate access tariffs for receiving and processing ISUP messages associated with intraMTA traffic, including that originated by Alltel.

24. As AT&T has argued in other jurisdictions, intraMTA traffic between a CMRS provider and a LEC is not and cannot be subject to access tariffs. Instead, the FCC determined that such traffic is subject to reciprocal compensation under 47 U.S.C. § 251(b)(5). *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCCR 15499, FCC 96-325, First Report and Order, ¶ 1036 (1996) ("*First Report & Order*").

25. In addition, the FCC specifically prohibited local exchange carriers ("LECs") from assessing any tariff charges on intraMTA wireless traffic on and after April 29, 2005. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, 20 FCCR 4855, Declaratory Ruling and Report and Order (2005) ("*T-Mobile Order"*); 47 CFR § 20.11(d)-(e).

26. Further, neither AT&T's intrastate access tariff nor interstate access tariff on its terms applies to assess ISUP message charges on intraMTA calls originated by a CMRS provider and terminated to AT&T.

27. Between August 2003 and November 2006 AT&T has billed, and VeriSign has paid approximately $1,440,000 for ISUP message charges for Alltel's traffic.

28. AT&T has improperly billed VeriSign under the terms of its intrastate and/or interstate tariffs for, and has improperly collected the amount of approximately $1,440,000 from VeriSign for these charges.

29. AT&T's improper billing and collection of ISUP message charges constitutes a violation of the Michigan TA.

30. WHEREFORE, Alltel and VeriSign respectfully request that the Commission enter an order finding that AT&T improperly assessed and continues to improperly assess ISUP message charges to VeriSign with respect to Alltel's intraMTA traffic, and requiring AT&T to refund to VeriSign all amounts improperly billed and received, which presently amount to approximately $1,440,000.00, plus interest.

COUNT II – RECEIPT OF EXCESS TERMINATING COMPENSATION UNDER INTERCONNECTION AGREEMENT AND ISP COMPENSATION ORDER

31. Alltel restates the allegations contained in Paragraphs 1 through 30 of this Complaint, as if fully set forth herein.

32. The 2004 ICA does not authorize AT&T to bill Alltel for receiving and processing ISUP messages associated with intraMTA traffic.

33. The FCC's *ISP Compensation Order* gave incumbent local exchange carriers ("ILECs") the right to require competitive local exchange carriers ("CLECs") to exchange ISP-bound traffic at rates that are capped at $0.0007. In order to exercise this right, however, an ILEC was obligated to offer to exchange all Section 251(b)(5) traffic (including intraMTA wireless traffic) at the same rate cap.

34. The parties' ISP Amendment incorporated the rate cap in the FCC's *ISP Compensation Order*. Under the ISP Amendment and the *ISP Compensation Order*, AT&T is prohibited from collecting more than $0.0007 per minute of use for terminating Section 251(b)(5) traffic.

35. Since October 2004 AT&T has billed Alltel directly $0.0007 per minute for all Section 251(b)(5) traffic, and has separately billed VeriSign ISUP message charges for terminating this same traffic.

36. By assessing SS7 message charges on Alltel's traffic, AT&T has recovered more than $0.0007 per minute of use for terminating Section 251(b)(5) traffic subject, in violation of the 2004 ICA (including the ISP Amendment) and the *ISP Compensation Order*.

37. These SS7 message charges would be excess compensation to AT&T under the 2004 ICA whether billed directly to Alltel (which has not occurred) or billed indirectly to Alltel (i.e., via VeriSign). In addition, if AT&T were to directly bill Alltel for SS7 message charges under the ICA, other limitations and defenses would apply.

38. WHEREFORE, Alltel respectfully requests that the Commission enter an order finding that AT&T has and continues to improperly receive compensation for traffic subject to

47 U.S.C. § 251(b)(5) that exceeds the compensation allowed under the 2004 ICA and the *ISP Compensation Order*, requiring AT&T to refund to VeriSign all amounts improperly billed and received, which presently amount to approximately $1,050,000, plus interest, and to cease billing VeriSign for SS7 messages associated with Alltel's intraMTA traffic.

COUNT III – REQUEST FOR RECIPROCAL PAYMENT OF SS7 MESSAGE CHARGES

39. Alltel restates the allegations contained in Paragraphs 1 through 38 of this Complaint, as if fully set forth herein.

40. In the alternative, if SS7 message charges were lawfully applied to Alltel's intraMTA traffic, Alltel is entitled to assess reciprocal SS7 message charges on traffic originated by AT&T and terminated by Alltel.

41. A "reciprocal compensation" arrangement is defined in the FCC's Rules as "one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of telecommunications traffic that originates on the network facilities of the other carrier." 47 CFR § 51.701(e). As noted above, the exchange of SS7 messages is an essential part of exchange of traffic. Consistent with federal law, Commission decisions, the 1999 interconnection, and the 2004 ICA, any SS7 message charges lawfully assessed on Alltel's traffic must also be assessed on AT&T traffic.

42. Alltel has received and processed ISUP messages for traffic it received from AT&T in exactly the same way that AT&T has received and processed ISUP messages for traffic originated by Alltel. This provided a benefit to AT&T and its end-user customers by allowing for the exchange of telecommunications traffic. It would be unjust and contrary to contract, law and policy for AT&T to obtain this benefit for free while charging Alltel for its provision of the same function.

43. If Alltel does not prevail on either Count I or Count II, it seeks in the alternative an order that it is entitled to assess reciprocal SS7 message charges on AT&T's traffic for all time periods during which AT&T assessed such charges on Alltel's traffic.

44. WHEREFORE, Alltel respectfully requests in the alternative that the Commission enter an order that Alltel is entitled to collect reciprocal SS7 message charges from AT&T for traffic originated by AT&T and terminated by Alltel, for all time periods during which such charges were assessed by AT&T on Alltel's traffic.

DISPUTE RESOLUTION

45. Pursuant to Section 203a(1) of the Michigan TA, MCL 484.2203a(1), Alltel is willing to have the parties attempt alternative means of resolving Count II of the complaint and, therefore, requests that the parties agree upon a mediator, and that dispute resolution be conducted under the Commission's auspices.

RELIEF REQUESTED

A. Pursuant to Section 203 of the Michigan TA, MCL 484.2203, and Rule 505(1)(e) of the Commission's Rules of Practice and Procedure, R 460.1505(1)(e), Alltel demands a contested case hearing on its Complaint.

B. Alltel requests, pursuant to Sections 201, 205(2) and 601 of the Michigan TA MCL 484.2201, MCL 484.2205(2) and MCL 484.2601, that the Commission issue an order finding that AT&T has violated the Michigan TA and tariffs and agreements and providing Alltel with appropriate relief, as follows:

1. Ordering AT&T to refund to VeriSign all amounts improperly billed and received, which presently amount to approximately $1,440,000.00, plus interest;

2. Ordering AT&T to pay fines and Alltel's attorney fees and actual costs as provided for in Section 601 of the Michigan TA, MCL 484.2601;

3. Ordering AT&T to cease billing for receiving and processing ISUP messages with respect to Alltel's intraMTA traffic;

4. In the alternative, order that Alltel may collect reciprocal SS7 message charges from AT&T for traffic originated by AT&T and terminated by Alltel, for all time periods during which such charges were assessed by AT&T on Alltel's traffic; and

5. Ordering the issuance of such other relief as is just and reasonable.

Respectfully Submitted,

By: _____

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Date: December 27, 2006

Attorneys For Alltel Communications, Inc.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

I. QUALIFICATIONS AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Ron Williams. My business address is 3640 131st Avenue S.E., Bellevue, Washington 98006.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed as Vice President – Interconnection & Regulatory by Alltel Communications, Inc. (hereinafter, "Alltel"). My duties and responsibilities include developing effective and economic interconnection and operational relationships with other telecommunications carriers. I work with my staff and other departments within Alltel to develop plans to deal with company needs and interface with carriers to ensure arrangements are in place to meet the operational objectives of the company.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A: I have a BA in Accounting and a BA in Economics from the University of Washington. I also have a MBA from Seattle University.

Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE IN THE FIELD OF TELECOMMUNICATIONS?

A. I have eighteen years of experience in various aspects of the telecommunications industry. My telecom background includes ten years experience working for GTE, including six years in their Local Exchange Carrier ("LEC") operations and business development, and four years in wireless operations. I also have four years experience in start-up Competitive Local Exchange Carriers ("CLEC") operations with FairPoint Communications and with Western Wireless. Beginning August of 1999, I worked for Western Wireless, first as the Director of CLEC Operations and, more recently, in my current position in InterCarrier Relations. Western Wireless was acquired by Alltel Communications in August 2005 and since that time I have worked in my present capacity dealing with interconnection, carrier relations, and 911 matters.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION ("COMMISSION") OR OTHER STATE COMMISSIONS?

A. I filed testimony in Commission Docket No. U-14889 in June of 2006. I have also testified before other state commissions on interconnection matters and on the implementation of intermodal local number portability. I have testified before the Oklahoma Corporation Commission and the Nebraska Public Service Commission in

separate interconnection arbitrations. I have testified before the South Dakota Public Service Commission in an interconnection complaint case. And, I have testified in Nebraska, New Mexico, and South Dakota on rural LEC requests to suspend their obligations to implement local number portability.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS CASE?

A. I am testifying in support of Alltel's Formal Complaint and Application for Resolution ("Complaint").

Q. HAVE YOU REVIEWED ALLTEL'S COMPLAINT?

A. Yes I have. I am familiar with the history of this dispute, the facts alleged in the Complaint and the basis for Alltel's position. To the best of my knowledge, information and belief, the facts alleged in the Complaint are true and correct.

Q. CAN YOU SUMMARIZE ALLTEL'S COMPLAINT AGAINST MICHIGAN BELL TELEPHONE COMPANY D/B/A AT&T MICHIGAN ("AT&T")?

A. Alltel utilizes an SS7 provider, VeriSign, Inc. ("VeriSign"), to transmit SS7 messages to other telecommunications carriers in Michigan so that telecommunications traffic can be exchanged. Since 2003 AT&T has assessed charges on VeriSign for receiving SS7 messages associated with traffic originated by Alltel and terminated by AT&T. Alltel seeks a refund of all amounts paid to AT&T, and seeks a declaration that such charges cannot be assessed in the future. Alltel's request is based on the following arguments:

- Alltel understands that AT&T relies on one or more of its access tariffs in assessing these SS7 charges. Alltel disputes AT&T's claim that these tariffs apply for two reasons. First, based on Alltel's review, the tariffs, on their terms, simply do not apply. Second, because this traffic originates and terminates within a single major trading area ("MTA"), federal law prohibits the application of access tariffs to this traffic.
- Since October 2004 the parties have operated pursuant to an Interconnection Agreement that does not allow AT&T to bill for receiving ISUP (Integrated Services Digital Network User Part) messages, and that caps total compensation paid to AT&T for terminating intraMTA traffic at $0.0007 per minute of use ("MOU"). AT&T has billed $0.0007 per MOU directly to Alltel and Alltel has paid those amounts. By additionally billing and collecting SS7 charges on that traffic, AT&T has received more than what is allowed under the contract.
- If the Commission denies Alltel's request for relief on Counts I and II, Alltel seeks an order that the Interconnection Agreement and applicable law allow Alltel to assess SS7 charges reciprocally on AT&T for all time periods during which AT&T assessed such charges.

II. BACKGROUND INFORMATION

A. Alltel's Operations in Michigan

Q. WHAT SERVICES DOES ALLTEL PROVIDE IN MICHIGAN?

A. Alltel is a commercial mobile radio service ("CMRS") provider, i.e., a provider of wireless telecommunications services. Based on Alltel's license areas and network configurations, all of the telecommunications traffic exchanged between Alltel and AT&T that is the subject of this Complaint originates and terminates in Michigan in a single Major Trading Area, or "MTA." The term "MTA" is defined at 47 CFR § 24.202(a). An MTA map can be located at the following link on the FCC's web site: <http://wireless.fcc.gov/auctions/data/maps/mta.pdf>.

B. Background of SS7 Signaling

Q. WHAT IS SIGNALING?

A. Signaling is that part of interconnection between two telecommunications carriers' networks that provides the call processing and routing information. Without signaling, a switch cannot transfer a call to another carrier. There are two general kinds of signaling: "in-band signaling" and "out-of-band signaling." With in-band signaling, carriers communicate call processing and routing information within the voice network. Out-of-band signaling uses a separate network to communicate call processing and routing information, so that only the voice call itself is carried on the voice network. Out-of-band signaling is more efficient and allows parties to exchange more information about a

call. For example, calling name information can be exchanged via out-of-band signaling but not via in-band signaling.

Q. WHAT KIND OF SIGNALING DOES ALLTEL UTILIZE IN MICHIGAN?

A. Alltel utilizes "Signaling System 7" or "SS7" signaling, in Michigan. SS7 signaling is the industry standard for out-of-band signaling in traditional telephony.

Q. HOW DOES SS7 SIGNALING RELATE TO THE EXCHANGE OF TRAFFIC BETWEEN CARRIERS?

A. Signaling is a necessary part of the exchange of traffic between carriers because it provides the call processing and routing information. Without the exchange of this information, the networks would not know how to get a call from point A to point B, and the terminating carrier would not know where the call was coming from. Said another way, signaling is an integral part of each call, and without it there would be no exchange of telecommunications traffic.

Q. HOW IS THE ACTUAL INFORMATION EXCHANGED?

A. SS7 signaling information is exchanged within "ISUP messages." ISUP messages are call setup messages initiated by switches that contain the information necessary to set up and route the call. When a telecommunications carrier receives an ISUP message it will send a return message that will allow the networks to establish and reserve the necessary

call path. If a call will not be able to be completed for some reason (busy line, etc.) that is communicated as well.

Q. WHAT TYPE OF INFORMATION IS EXCHANGED OVER THE SS7 NETWORK?

A. In the case of ISUP, coded information supports the call set-up, supervision (time of call duration after answer) and call tear-down (circuit restored to an available state).

Q. PLEASE DESCRIBE THE MAJOR COMPONENTS THAT MAKE UP THE SS7 NETWORK.

A. The major components are:

- SCP (Service Control Point);
- STP (Signal Transfer Point); and
- SSP (Service Switching Point). (In a CMRS network the SSP functionality is located in the Mobile Switching Center ("MSC")).

An SCP is the entity that provides the interface to a network database that provides storage for call routing information (such as in the case of an 800 call) or call completion information (for example, in the case of collect calls). The SCPs generally respond to SS7 signaling message queries initiated by SSPs or an MSC.

The STP's main function is to switch and possibly address SS7 signaling messages. An STP is connected to other STPs and are interconnected via facilities known as "B-links," which in order to ensure diverse routing, consist of at least four (4) links (two between each STP). STPs do not originate SS7 traffic other than network

maintenance messages, which are not the type of SS7 signaling messages at issue in this proceeding.

Finally, the SSPs are typically digital switches with SS7 messaging hardware and software that allow them to originate and terminate SS7 signaling messages for call set-up and tear down, and for accessing databases housed by an SCP. SSPs are connected to STPs via facilities known as "A-links," which are established in pairs for redundancy, to connect the SSP with associated, redundant STPs. An SSP generates the initial SS7 signaling messages required when a customer wants to make a call, and a terminating SSP provides the responding SS7 signaling messages required to ensure that the voice path is available to the end user that the customer is calling.

C. Alltel's Relationship with VeriSign

Q. THE COMPLAINT ALLEGES THAT VERISIGN TRANSMITS SS7 MESSAGES ON BEHALF OF ALLTEL. PLEASE EXPLAIN ALLTEL'S RELATIONSHIP WITH VERISIGN.

A. For Alltel markets in Michigan, VeriSign is Alltel's ultimate SS7 service provider. VeriSign provides SS7 services for Alltel, as well as hundreds of other telecommunications carriers nationwide. When a call to an AT&T customer is initiated by an Alltel customer, Alltel generates an ISUP message, which is then transmitted by VeriSign. SS7 information is exchanged with other carriers' networks over VeriSign's links to establish the call path so the call can be completed. The same process is used in the reverse situation, i.e. when a call is to be delivered by AT&T in Michigan to be terminated to an Alltel customer. On those calls, ISUP messages are received over

VeriSign's links, allowing the call to be set up and delivered on the Alltel wireless voice network.

D. Interconnection Agreements Between Alltel and AT&T

Q. DO ALLTEL AND AT&T HAVE AN INTERCONNECTION AGREEMENT THAT GOVERNS THEIR EXCHANGE OF TRAFFIC IN MICHIGAN?

A. Yes. Most recently, on October 14, 2004 in Docket U-14300, the Commission approved a multi-state Interconnection Agreement that was effective upon Commission approval (the "2004 ICA"). The 2004 ICA is attached hereto as Exhibit C-1. Prior to the 2004 ICA the parties operated pursuant to other agreements, including an agreement dated as of October 14, 1999, between Ameritech Information Industry Services and CenturyTel Wireless, Inc.

Q. WHAT DOES THE 2004 ICA PROVIDE WITH REGARD TO THE USE OF SS7 SIGNALING?

A. The 2004 ICA first defines "Common Channel Signaling" and provides that the parties will implement and utilize SS7 signaling. Section 1.13 states:

> "CCS" ("Common Channel Signaling") means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.

Section 29 of the 2004 ICA then provides:

> 29. Signaling.
>
> 29.1 Signaling Protocol. SS7 Signaling is SBC-13STATE's preferred method for signaling. Where multi-frequency signaling is currently used, the Parties agree to use their best efforts to convert to SS7. If SS7 services are provided by SBC-13STATE, they will be provided in the applicable access tariffs. Where multi-frequency signaling is currently used, the Parties agree, below, to Interconnect their networks using multi-frequency ("MF") or ("DTMF") signaling, subject to availability at the End Office Switch or Tandem Switch at which Interconnection occurs. The Parties acknowledge that the use of MF signaling may not be optimal. SBC-13STATE will not be responsible for correcting any undesirable characteristics, service problems or performance problems that are associated with MF/SS7 inter-working or the signaling protocol required for Interconnection with ALLTEL employing MF signaling.
>
> 29.2 Parties directly or, where applicable, through their Third Party provider, will cooperate on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its End Users. Where available, all CCS signaling parameters will be provided including, without limitation, Calling Party Number ("CPN"), originating line information ("OLI"), calling party category and charge number.

Q. WHAT DOES THE 2004 ICA PROVIDE WITH REGARD TO THE PAYMENT OF RECIPROCAL COMPENSATION?

A. The 2004 ICA provides that the parties will pay each other reciprocal compensation for traffic exchanged between the parties that originates and terminates within the same MTA. Section 1.46 defines "Local Calls" as calls within an MTA. Section 2.2 of the

Reciprocal Compensation Appendix provides that Local Calls are subject to reciprocal compensation. The reciprocal compensation rate that applies is contained in a document titled "Amendment to Interconnection Agreement" that was executed at the same time as the 2004 ICA. The ISP amendment provides the parties will exchange intraMTA traffic pursuant to the rate structure in the FCC's *ISP Compensation Order*.[1] This amendment, referred to as the "ISP Amendment," caps the rate paid by the parties for terminating Section 251(b)(5) traffic at $0.0007 per minute of use.

Q. WHAT WAS THE PURPOSE OF THE FCC'S *ISP COMPENSATION ORDER*?

A. The *ISP Compensation Order* provided ILECs like AT&T with a significant benefit by allowing them to choose to elect CLECs $0.0007 per minute for ISP-bound traffic delivered to CLECs. In order to make this election, however, the ILEC was required to elect to exchange *all* Section 251(b)(5) traffic – including intraMTA wireless traffic – at a rate of $0.0007. AT&T made this election, and as a result, became obligated to obtain compensation for intraMTA wireless traffic no greater than $0.0007 per minute.

[1] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98 (rel April 27, 2001) ("*ISP Compensation Order*").

Q. DOES THE 2004 ICA AUTHORIZE AT&T TO BILL AND COLLECT SS7 CHARGES FOR TRAFFIC THAT IS SUBJECT TO RECIPROCAL COMPENSATION?

A. No. The 2004 ICA (including the ISP Amendment) does not authorize AT&T to separately charge Alltel for receiving and processing ISUP messages that are necessary for the exchange of Section 251(b)(5) traffic. The 2004 ICA states that "If SS7 services are provided by [AT&T], they will be provided in the applicable access tariffs." In addition, as noted above, the ISP Amendment (in conjunction with the *ISP Compensation Order*) establishes an upper cap of $0.0007 on the compensation that AT&T can charge for terminating intraMTA traffic.

E. Alltel's dispute with AT&T over SS7 charges

Q. HAS AT&T BEEN ASSESSING SS7 CHARGES ON ALLTEL'S INTRAMTA TRAFFIC?

A. Yes. Since at least August of 2003 AT&T has billed VeriSign a per-message charge for receiving and processing ISUP messages for Section 251(b)(5) traffic originated by Alltel and terminated to AT&T. Our understanding, from AT&T, is that it claims these charges were billed pursuant to one or more of AT&T's access tariffs. VeriSign has paid these charges, has invoiced Alltel for those charges, and has demanded reimbursement from Alltel for all such SS7 message charges. Further, VeriSign and Alltel have disputed those charges with AT&T.

Q. WHAT IS AT&T'S POSITION WITH REGARD TO THESE CHARGES?

A. In a letter dated June 20, 2005, a representative of VeriSign informed AT&T that these charges were improper. AT&T responded to that letter on December 28, 2005, with a letter claiming that these charges were proper under various tariffs, and that SS7 signaling is not part of the exchange of local (i.e., intraMTA) traffic. Those two letters are attached hereto as Exhibits C-2 and C-3, respectively.

Q. HAVE THERE BEEN ANY DIRECT DISCUSSIONS BETWEEN ALLTEL AND AT&T?

A. Yes. Stephen Rowell, Vice President – State Regulatory Legal Affairs spoke with AT&T representative Tracy Turner regarding this matter in the fall of 2006, and again disputed the charges, demanded a refund, and demanded the cessation of such charges. AT&T did not cease billing VeriSign for SS7 charges for Alltel's traffic, and has not refunded any amounts previously paid.

III. ANALYSIS AND AUTHORITIES

A. SS7 Is Part and Parcel of the Exchange of Local Traffic

Q. YOU STATED EARLIER THAT SS7 IS PART AND PARCEL OF INTERCONNECTION AND THE EXCHANGE OF TRAFFIC. CAN YOU EXPLAIN WHY THAT IS IMPORTANT?

A. As I noted, without SS7 there can be no exchange of traffic. In addition, the 2004 ICA establishes SS7 as the signaling method for exchanging of local traffic. As a result, there is no way to separate the exchange of SS7 messages from the traffic itself. Accordingly, a charge assessed on the receipt of an ISUP message is a charge to terminate traffic, and

falls within the scope of reciprocal compensation under 47 USC § 251(b)(5). AT&T's assessment of charges in this case is premised on the unreasonable and unjustified position that it can charge an originating carrier for receiving ISUP messages for intraMTA traffic as if those messages have nothing to do with reciprocal compensation obligations. Once one recognizes that the receipt of ISUP messages is part of terminating local traffic, the justification for separate charges goes away, and AT&T's arguments can be dismissed.

Q. HAS THIS COMMISSION RECOGNIZED THAT SS7 SIGNALING IS PART OF THE DELIVERY OF TRAFFIC BETWEEN CARRIERS?

A. Yes, on more than one occasion. In 1999 the Commission conducted an interconnection arbitration involving CenturyTel Wireless, Inc. and Thumb Cellular and Ameritech Michigan. *In the matter of the application of CenturyTel Wireless, Inc. and Thumb Cellular for arbitration of Interconnection Agreements with Ameritech Michigan*, MPSC Case No. U-11989, Opinion and Order (Sept. 14, 1999). In that decision, the Commission ordered SS7 services to be priced at TELRIC rates because "signaling is part of interconnection and should not be viewed solely as a separate access service." *Id.* Similarly, in an interconnection arbitration between AirTouch and AT&T, the Commission specifically found that SS7 charges were part of reciprocal compensation rates. *In the Matter of the Application of AirTouch Cellular, Inc. for Arbitration of Interconnection Terms, Conditions, and Prices from Ameritech Michigan*, MPSC Case No. U-11973, Opinion and Order, p 12 (Aug. 17, 1999). The Commission agreed with

AirTouch's witness that "'simply interconnecting the two networks does not allow anything to happen unless you're able to signal between switches' because 'without signaling, a switch cannot transfer a call outside of itself.'" *Id.*

Q. HAVE OTHER STATE COMMISSIONS DECIDED THAT SS7 SIGNALING IS PART OF THE EXCHANGE OF TRAFFIC AND NOT A SEPARATE ACCESS SERVICE?

A. Yes. In 2002 the Nebraska Public Service Commission issued an order denying Qwest Communications, Inc.'s attempt to impose SS7 charges on local providers pursuant to an intrastate tariff, and requiring Qwest to refund all amounts improperly received. *Cox Nebraska Telcom v Qwest Communications, Inc*, Neb Pub Serv Comm'n Case No. FC-1297, Order Granting Relief, ¶ 4 (Dec 17, 2002) ("*Nebraska Order*") (attached hereto as Exhibit C-4). In that case, Qwest argued that Interconnection Agreements and Section 251(b)(5) obligations were irrelevant to its billing for ISUP messages, and that it could assess these charges because Illuminet (now know as VeriSign) was its customer. *Nebraska Order*, ¶37. The Commission rejected Qwest's argument that it "should treat SS7 messages and the network that carry them independently of the voice traffic." *Id.*, ¶39. The Commission found instead that the SS7 message "is an integral component of the end-user traffic it supports" based on the record evidence, "common sense, and other regulatory decisions." *Id.* For that reason, any cost for receiving and processing an ISUP message is recovered within reciprocal compensation payments, not through the application of an access tariff:

> Based on our review of the record and the ICAs at issue, the conclusion must be made that recovery of the costs of the SS7 message charges are included within the reciprocal compensation rates or bill-and-keep arrangements included in the ICAs. Consistent with our finding that the SS7 message is an integral component of the end-user traffic, the ICAs reflect no separate charges for SS7 messages associated with the treatment of the end-user traffic types addressed in the ICAs. Any other conclusion would allow a party to unilaterally alter the terms and conditions of an ICA, which we will not allow a party to do.

Id., ¶63. The Nebraska Commission's reasoning is directly applicable to Alltel's Complaint in this case.

A similar case was litigated in Idaho, and the decision in that case was issued in 2003. *Idaho Telephone Association et al v Qwest Corporation, Inc*, Idaho Pub Utils Comm'n Case No. QWE-T-02-11 (April 15, 2003) (attached hereto as Exhibit C-5). In that case, Qwest made similar arguments as those made in Nebraska, with similar results. The Commission found that "access charges are not applicable to local traffic" (p. 12), and that Qwest had "unilaterally imposed message charges on traffic for which it was already being fully compensated" within existing intercarrier and customer rates" (p. 22). As with the Nebraska case, the Idaho Commission's decision supports Alltel's request for relief in this case.

B. Count I - AT&T's Access Tariffs Do Not and Cannot Apply to intraMTA CMRS Traffic

1. The Tariffs Do Not on Their Terms Apply

Q. COUNT I OF THE COMPLAINT ASSERTS THAT AT&T HAS IMPROPERLY RELIED ON ONE OR MORE OF ITS ACCESS TARIFFS TO APPLY CHARGES ON THE RECEIPT OF ISUP MESSAGES FROM ALLTEL. WHAT IS ALLTEL'S FIRST ARGUMENT ON THIS POINT?

A. We understand from AT&T that it has assessed these charges in accordance with one or more access tariffs. However, we have reviewed the Michigan intrastate and interstate access tariffs and do not believe they apply on their terms in a way that would allow AT&T to assess per-message ISUP charges on Alltel's traffic. For this reason we dispute AT&T's claim that its tariffs (as written) provide it with the right to assess charges for ISUP messages. If AT&T's tariffs do not apply on their terms, amounts billed and collected should be refunded.

Q. IS AT&T PROVIDING A SERVICE FOR ALLTEL WHEN IT RECEIVES THESE ISUP MESSAGES?

A. No. Alltel has created and addressed the ISUP message, and arranged to have it delivered to AT&T. AT&T is simply processing the message so that the call can be delivered. This is not properly viewed as a service provided to Alltel, for which tariff charges would appropriately apply.

2. Access Tariffs Cannot Apply to IntraMTA CMRS Traffic

Q. THE COMPLAINT ALSO ASSERTS THAT AT&T'S ACCESS TARIFFS CANNOT LAWFULLY APPLY TO ASSESS CHARGES ON ALLTEL'S INTRAMTA TRAFFIC. ON WHAT DO YOU BASE THAT ASSERTION?

A. When the FCC implemented the 1996 Act, it clearly established that traffic exchanged between CMRS providers and LECs within a Major Trading Area or "MTA" is subject to the federal scheme for reciprocal compensation (47 USC § 251(b)(5)) instead of federal or state access charge mechanisms:

> traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under [47 USC] section 251(b)(5) rather than intrastate and interstate access charges.

In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, 11 FCCR 15499, FCC 96-325, First Report and Order, ¶ 1036 (1996) ("*First Report & Order*") (emphasis added).

Over the years, this FCC determination has spawned many disputes arising out of attempts by LECs to apply their access tariffs to intraMTA wireless traffic. As a result of these disputes, there is a significant body of case law making abundantly clear that under no circumstances can access tariffs be applied to intraMTA wireless traffic.

Q. CAN YOU PROVIDE SOME EXAMPLES OF SUCH CASES?

A. Yes. In Iowa, a centralized equal access provider, Iowa Network Services ("INS"), sought to impose its access tariffs on wireless traffic delivered by Qwest to INS. Qwest

argued to the Iowa Utilities Board that access charges could not apply to intraMTA wireless traffic. On appeal, the Eighth Circuit Court of Appeals affirmed the Board's decision that those access tariffs could not lawfully apply:

> In this case, the calls originate and terminate within the same local MTA; therefore, they are considered to be "local" calls. According to the FCC's ruling, because these calls are "local," they are to be governed by reciprocal compensation arrangements. The rulings of the district court and the IUB are consistent with this ruling; thus, they do not violate federal law. As a result, the district court did not err in granting Qwest's motion for summary judgment.
>
> * * *
>
> Because the traffic in this case is "local," and therefore covered by 47 USC §§ 251, 252, INS's tariff is not applicable.

Iowa Network Servs v Qwest, 466 F3d 1091, 1097 (8th Cir 2006).

Similar litigation occurred in Montana, where two rural ILECs sued Qwest, seeking to enforce their access tariffs as to intraMTA wireless traffic. The Court's decision found that while the tariffs did on their terms apply, their enforcement was preempted by the FCC's *First Report & Order*:

> Paragraph 1036 expressly states that the FCC, for purposes of applying *section 251(b)(5)*'s reciprocal compensation obligations, defines the local service area for calls to or from a CMRS network as the Major Trading Area (MTA). In other words, traffic that both originates and terminates in the same MTA is considered "local," and thus "subject to transport and termination rates under *section 251(b)(5)* [reciprocal compensation], rather than interstate or intrastate access charges." The FCC's order makes no distinction, with respect to CMRS traffic that originates and terminates in the same MTA, between traffic that flows between two carriers or among three or more carriers before termination. This traffic is all "local" traffic subject to the reciprocal compensation scheme.

3 Rivers Tel Coop, Inc v US West Comm'ns, Inc, CV-99-80-GF-CSO, 2003 US Dist LEXIS 24871, at *65 (D Mont Aug 22, 2003) (attached hereto as Exhibit C-6). *See also, Alma Tel Co v. Pub Serv Comm'n of Mo*, 183 SW3d 575, 578 (Mo. 2006) ("Thus, the proposed tariffs, which the LECs concede are interstate and intrastate access charges, are unlawful, and the PSC was correct in disallowing them."); *Northern Ark Tel Co v Cingular Wireless, LLC*, No. 05-3044, 2006 US Dist LEXIS 62507 (WD Ark Aug 31, 2006) (compensation for the exchange of Section 251(b)(5) traffic is a matter for negotiated agreement) (attached hereto as Exhibit C-7); *Union Tel Co v Qwest Corp.*, No. 02-cv-209-D, 2004 US Dist LEXIS 28417, at *29 (D Wyo May 11, 2004) (federal and state access tariffs have no application to intraMTA wireless calls) (attached hereto as Exhibit C-8).

Q. HAS AT&T ARGUED THAT FEDERAL LAW PREEMPTS THE APPLICATION OF TARIFFS TO INTRAMTA WIRELESS TRAFFIC?

A. Yes, it has – vigorously in fact.

Q. CAN YOU PROVIDE AN EXAMPLE?

A. A group of rural LECs in Wisconsin filed a complaint against AT&T in 2003 seeking to enforce their access tariffs as to intraMTA wireless traffic delivered by AT&T to the rural LECs on common trunks. In December of 2006 the Wisconsin Commission issued a decision that in accordance with the *First Report & Order*, and the *Iowa Network Services*, *3 Rivers*, and *Alma Tel.* cases, access tariffs could not apply to intraMTA

wireless traffic. *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*, Wisc Pub Serv Comm'n Docket No. 5-TI-1068, Final Decision, p 13 (Dec 11, 2006) ("[T]he Commission determines that federal law preempts the application of the identified access tariffs . . . because reciprocal compensation is required under 47 USC § 251(b)(5) for local traffic as defined by the FCC.") (Attached hereto as Exhibit C-9).

Q. DID AT&T AGREE WITH THIS ANALYSIS?

A. Yes. AT&T was the primary advocate seeking an order that access tariffs could not lawfully apply to intraMTA wireless under any circumstances. I have attached, as Exhibit C-10, a copy of an initial brief (without attachments) filed by AT&T in that docket on April 17, 2006. Beginning on page 15, AT&T argues "Federal Law Preempts Recovery of Access Charges for Local Wireless Traffic." This argument, which spans 20 pages, is exactly the argument that Alltel is making in this case: Access tariffs cannot be applied to charge other carriers for terminating intraMTA wireless traffic, and compensation is paid through reciprocal compensation rates alone. In light of AT&T's support for these legal principles, AT&T should not be heard to rely on its access tariffs to collect compensation for intraMTA wireless traffic in this case.

3. The FCC's T-Mobile Order

Q. DOES THE FCC'S RECENT *T-MOBILE ORDER*[2] AND ITS AMENDED RULE 47 CFR § 20.11(D) IMPACT THIS ANALYSIS?

A. Yes. In 2005 the FCC issued the T-Mobile Order, which added a new Rule 20.11(d) effective April 29, 2005. That new Rule provides:

> Local exchange carriers may not impose compensation obligations for traffic not subject to access charges upon commercial mobile radio service providers pursuant to tariffs.

The purpose of this new rule was to invalidate so-called "wireless termination tariffs" that sought to impose reciprocal compensation obligations on intraMTA wireless traffic. Some LECs had filed such tariffs in lieu of negotiating reciprocal compensation arrangements under Sections 251-252. The FCC wanted to ensure that on and after April 29, 2005, intraMTA wireless traffic would be subject only to reciprocal compensation payments pursuant to filed Interconnection Agreements.

Q. HOW DOES THAT FIT INTO ALLTEL'S COMPLAINT IN THIS CASE?

A. We understand that AT&T is imposing compensation obligations on intraMTA wireless traffic pursuant to filed tariffs. That would clearly violate FCC Rule 20.11(d), which basically prohibits a LEC from imposing "compensation obligations for [intraMTA wireless] traffic . . . pursuant to tariffs." While we believe the application of AT&T's

[2] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, 20 FCCR 4855, Declaratory Ruling and Report and Order (2005) ("*T-Mobile Order*").

tariffs to this traffic has always been unlawful, it is clearly unlawful on and after April 29, 2005.

C. Count II – AT&T Has Received Compensation in Excess of That Authorized by The 2004 ICA

Q. COUNT II OF THE COMPLAINT STATES THAT AT&T HAS RECEIVED EXCESS COMPENSATION UNDER THE 2004 ICA. CAN YOU EXPLAIN THAT FURTHER?

A. Yes. The 2004 ICA does not authorize AT&T to bill for receiving and processing ISUP messages. In addition, by billing Alltel $0.0007 per minute for terminating local traffic, and billing VeriSign additional charges for receiving ISUP messages on those calls, it has received compensation in excess of the rate cap in the 2004 ICA. Thus, as a matter of contract, AT&T has been and is being over-compensated and should pay a refund. In addition, the policy behind the FCC's *ISP Compensation Order* was that LECs who sought to pay $0.0007 for ISP-bound traffic were required to terminate all local traffic for that same rate. AT&T has received, and continues to receive, substantially more than that rate cap. While AT&T has obtained the benefits of the *ISP Compensation Order*, AT&T is trying to create a loophole to avoid the concurrent burden. The Commission should enforce the ISP Amendment and the ISP Compensation Order and require AT&T to provide a refund of this excess compensation received.

D. Count III – Alltel Should be Allowed to Bill Reciprocally for SS7 Messages

Q. COUNT III OF THE COMPLAINT REQUESTS, IN THE ALTERNATIVE, THAT ALLTEL BE ALLOWED TO BILL RECIPROCALLY FOR RECEIVING AND PROCESSING ISUP MESSAGES ON CALLS FROM AT&T. ON WHAT CALLS HAS ALLTEL RECEIVED AND TERMINATED ISUP MESSAGES FROM AT&T?

A. ISUP messages are required for all calls, and Alltel has received and processed ISUP messages for every call it has received from AT&T.

Q. WHY SHOULD ALLTEL BE ALLOWED TO BILL AT&T RECIPROCALLY FOR THESE CHARGES?

A. While Alltel does not believe that either party should be billing for these charges, Count III is purely an argument made in the alternative to Counts I and II. If the Commission were to find that these charges were appropriately assessed, principles of reciprocity in Section 251(b)(5), the 2004 ICA, and the FCC's Rules would require that Alltel be able to obtain reciprocal compensation for performing the same function.

IV. DAMAGES – REQUEST FOR RECOVERY

Q. HAS ALLTEL IDENTIFIED THE AMOUNTS THAT AT&T HAS BILLED AND COLLECTED FROM VERISIGN SINCE OCTOBER OF 2003?

A. Yes. Table I below sets forth the amounts that AT&T has billed VeriSign for receiving and processing ISUP messages associated with Alltel traffic in Michigan. VeriSign has

paid these amounts to AT&T and claims that Alltel is obligated to repay VeriSign for these amounts.

TABLE I

Month of Invoice	Charges
8/15/2003	$25,808.93
9/15/2003	$25,985.82
10/15/2003	$28,042.32
11/15/2003	$28,556.11
12/15/2003	$26,753.83
1/15/2004	$27,264.50
2/15/2004	$27,557.66
3/15/2004	$26,725.89
4/15/2004	$28,874.22
5/15/2004	$35,383.58
6/15/2004	$32,744.16
7/15/2004	$31,978.02
8/15/2004	$34,595.01
9/15/2004	$34,760.44
10/15/2004	$34,280.36
11/15/2004	$33,194.86
12/15/2004	$31,310.81
1/15/2005	$36,578.60
2/15/2005	$36,979.51
3/15/2005	$35,495.45
4/15/2005	$39,179.06
5/15/2005	$39,891.98
6/15/2005	$42,010.01
7/15/2005	$44,676.38
8/15/2005	$43,906.72
9/15/2005	$44,121.34
10/15/2005	$40,461.72
11/15/2005	$39,783.97
12/15/2005	$36,464.58
1/15/2006	$40,945.22
2/15/2006	$39,001.08
3/15/2006	$37,248.24
4/15/2006	$40,705.81
5/15/2006	$47,298.91
6/15/2006	$46,846.66
7/15/2006	$47,212.10
8/15/2006	$47,783.45

Month of Invoice	Charges
9/15/2006	$41,463.26
10/15/2006	$43,584.22
11/15/2006	$43,655.22
Total:	$1,469,109.99

Q. IS ALLTEL SEEKING A REFUND OF ALL OF THESE AMOUNTS?

A. Yes. If Alltel prevails on Count I, all amounts should be refunded. If Alltel prevails on Count II, amounts billed after the effective date of the 2004 ICA should be refunded.

Q. WHY IS ALLTEL SEEKING TO HAVE THE REFUNDS PAID TO VERISIGN?

A. These amounts were billed to and paid by VeriSign. As a result, Alltel requests that AT&T be ordered to refund these amounts to VeriSign. This will in turn eliminate VeriSign's claims that Alltel is required to pay VeriSign these amounts.

V. CONCLUSION

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes it does.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

LIST OF EXHIBITS

Exhibit C-1 Interconnection Agreement, executed as of July 28, 2004, by and between, SBC Michigan and Alltel Communications, Inc.

Exhibit C-2 Correspondence dated June 20, 2005, from Paul Florack, Vice President-Network Services, Verisign, Inc., to Glen R. Sirles, VP & GM, Local Interconnection, SBC Communications.

Exhibit C-3 Correspondence dated December 28, 2005, from Paula J. Fulks, General Attorney-Industry Markets, SBC Telecommunications, to Paul Florack, Vice President-Network Services, Verisign, Inc.

Exhibit C-4 *Cox Nebraska Telcom v Qwest Communications, Inc.*, Neb. Pub. Serv. Comm'n Case No. FC-1297, Order Granting Relief, (Dec. 17, 2002) ("*Nebraska Order*").

Exhibit C-5 *Idaho Telephone Association et al. v. Qwest Corporation, Inc.*, Idaho Pub. Utils. Comm'n Case No. QWE-T-02-11 (April 15, 2003).

Exhibit C-6 *3 Rivers Tel Coop, Inc v US West Commc'ns, Inc*, CV-99-80-GF-CSO, 2003 US Dist LEXIS 24871, at *65 (D Mont Aug 22, 2003).

Exhibit C-7 *Northern Ark Tel Co v Cingular Wireless, LLC*, No. 05-3044, 2006 US Dist LEXIS 62507 (WD Ark Aug 31, 2006).

Exhibit C-8 *Union Tel Co v Qwest Corp*, No. 02-cv-209-D, 2004 US Dist LEXIS 28417, (D Wyo May 11, 2004).

Exhibit C-9 *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*, Wisc Pub Serv Comm'n Docket No. 5-TI-1068, Final Decision, (Dec 11, 2006).

Exhibit C-10 *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*, Wisc Pub Serv Comm'n Docket No. 5-TI-1068, AT&T Wisconsin's Initial Brief Relating to Transit Traffic (Apr 17, 2006).

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-1

Interconnection Agreement
Executed as of July 28, 2004
by and between
SBC Michigan
and
Alltel Communications, Inc.

Exhibit A
Case No. U-14300

INTERCONNECTION AGREEMENT

Executed as of July 28, 2004

by and between

SBC MICHIGAN

and

ALLTEL COMMUNICATIONS, INC.

CELLULAR/PCS INTERCONNECTION AGREEMENT
by and between
Alltel Communications, Inc.
and
Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Southwestern Bell Telephone, L. P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin

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CELLULAR/PCS INTERCONNECTION AGREEMENT

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 for Commercial Mobile Radio Services (the "Agreement") is by and between one or more of the following ILEC's: Illinois Bell Telephone d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada , The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California , The Southern New England Telephone Company d/b/a SBC Connecticut and Southwestern Bell Telephone, L. P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, (only to the extent that the agent for each such ILEC executes this Agreement for such ILEC and only to the extent that such ILEC provides Telephone Exchange Services as an ILEC in each of the state(s) listed below) and Alltel Communications, Inc ("ALLTEL") (an Arkansas corporation), a Wireless Service Provider , shall apply to the state(s) of Arkansas, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas and Wisconsin.

WHEREAS, ALLTEL holds authority from the Federal Communications Commission to operate as a Cellular licensee to provide Authorized Services in the State(s), and intends to provide commercial mobile radio services employing such licensed frequency(ies); and

WHEREAS, the Parties desire to enter into an agreement for the interconnection of their respective networks within the portions of the State in which both Parties are authorized to operate and deliver traffic for the provision of telecommunications services pursuant to the Telecommunications Act of 1996 and other applicable federal, state and local laws;

NOW, THEREFORE, the Parties hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

1.1 Capitalized Terms used in this Agreement shall have the respective meanings specified below, in Section 1.x of each Appendix attached hereto, and/or as defined elsewhere in this Agreement.

1.2 **"Access Tandem"** means a local exchange carrier switching system that provides a concentration and distribution function for originating and/or terminating traffic between a LEC end office network and IXC points of presence (POPs).

1.3 **"Act"** means the Communications Act of 1934 [47 U.S.C. 153], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.

1.4 **"Affiliate"** is as defined in the Act.

1.5 **"Ancillary Services"** means optional supplementary services such as directory assistance, N11, operator services, Service Access Codes (600, 700, 800 and 900 services, but not including 500 services) and Switched Access Services. Enhanced 911 ("E911") is not an Ancillary Service.

1.6 **"Ancillary Services Connection"** means a one-way, mobile-to-land Type 1 interface used solely for the transmission and routing of Ancillary Services traffic.

1.7 **"Answer Supervision"** means an off–hook supervisory signal sent by the receiving Party's Central Office Switch to the sending Party's Central Office Switch on all Completed Calls after address signaling has been completed.

1.8 **"Applicable Law"** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including without limitation those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.

1.9 **"ASR"** ("Access Service Request") is an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of Interconnection.

1.10 **"Accessible Letters"** are correspondence used to communicate pertinent information regarding **SBC-13STATE** to the client/End User community.

1.11 **"Authorized Services"** means those cellular services which ALLTEL may lawfully provide pursuant to Applicable Law, including the Act, and that are considered to be CMRS. This Agreement is solely for the exchange of Authorized Services traffic between the Parties.

1.12 **"Business Day"** means Monday through Friday, excluding holidays on which **SBC-13STATE** does not provision new retail services and products in the State. A listing of SBC 13-STATE holidays is included on the SBC Prime Access Website – https://www.sbcprimeaccess.com.

1.13 **"CCS"** ("Common Channel Signaling") means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.

1.14 **"Cell Site"** means a transmitter/receiver location, operated by ALLTEL, through which radio links are established between a wireless system and mobile units.

1.15 **"Central Office Switch"** means a switch, including, but not limited to an End Office Switch, a Tandem Switch and a Remote End Office switch.

1.16 **"CLLI"** ("Common Language Location Identifier") codes provide a unique 11-character representation of a network interconnection point. The first 8 characters identify the city, state and building location, while the last 3 characters identify the network component.

1.17 **"Claim(s)"** means any pending or threatened claim, action, proceeding or suit.

1.18 **"CLASS Features"** ("Custom Local Area Signaling Service Features") means certain Common Channel Signaling based features available to End Users, including: Automatic Call Back; Call Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

1.19 **"CMRS"** ("Commercial Mobile Radio Service") is as described in the Act and FCC rules.

1.20 **"Commission"** means the applicable State agency with regulatory authority over Telecommunications. Unless the context otherwise requires, use of the term "Commissions" means all of the thirteen agencies listed in this Section. The following is a list of the appropriate State agencies:

1.20.1 **"AR-PSC"** means the "Arkansas Public Service Commission";

1.20.2 **"CA-PUC"** means the "Public Utilities Commission of the State of California";

1.20.3 **"DPUC"** means the "Connecticut Department of Public Utility Control";

1.20.4 **"IL-CC"** means the "Illinois Commerce Commission";

1.20.5 **"IN-URC"** means the "Indiana Utilities Regulatory Commission";

1.20.6 **"KS-CC"** means the "Kansas Corporation Commission";

1.20.7 **"MI-PSC"** means the "Michigan Public Service Commission";

1.20.8 **"MO-PSC"** means the "Missouri Public Service Commission";

1.20.9 **"NV-PUC"** means the "Public Utilities Commission of Nevada";

1.20.10 **"PUC-OH"** means the "Public Utilities Commission of Ohio";

1.20.11 **"OK-CC"** means the "Oklahoma Corporation Commission";

1.20.12 **"PUC-TX"** means the "Public Utility Commission of Texas"; and

1.20.13 **"PSC-WI"** means the "Public Service Commission of Wisconsin."

1.21 **"Completed Call"** means a call that is delivered by one Party to the other Party and for which a connection is established after Answer Supervision.

1.22 **"Consequential Damages"** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive, exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.

1.23 **"Conversation MOU"** means the minutes of use that both Parties' equipment is used for a Completed Call, measured from the receipt of Answer Supervision to the receipt of Disconnect Supervision.

1.24 **"CPN"** ("Calling Party Number") means a Signaling System 7 "SS7" parameter whereby the ten (10) digit number of the calling Party is forwarded from the End Office.

1.25 **"Day"** means calendar day unless "Business Day" is specified.

1.26 **"DEOT"** means Direct End Office Trunk.

1.27 **"Digital Signal Level"** is one of several transmission rates in the time-division multiplex hierarchy including, but not limited to:

1.27.1 **"DS-0"** ("Digital Signal Level 0") is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

1.27.2 **"DS-1"** ("Digital Signal Level 1") is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

1.28 **"Disconnect Supervision"** means an on–hook supervisory signal sent at the end of a Completed Call.

1.29 **"End Office Switch"** is a **SBC-13STATE** Central Office Switch that directly terminates traffic to and receives traffic from End Users of local Exchange Services.

1.30 **"End User"** means a Third Party subscriber to Telecommunications Services provided by any of the Parties at retail, including a "roaming" user of ALLTEL's CMRS and CMRS network. As used herein, the term "End Users" does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.

1.31 **"Equal Access Trunk Group"** means a trunk used solely to deliver Carrier's customers' traffic through an SBC access tandem to or from an IXC, using Feature Group D protocols.

1.32 **"Exchange Service"** means Telephone Exchange Service as defined in the Act.

1.33 **"Facility"** means the wire, line, or cable used to transport traffic between the Parties' respective networks.

1.34 **"FCC"** means the Federal Communications Commission.

1.35 **"Governmental Authority"** means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.

1.36 **"ILEC"** means Incumbent Local Exchange Carrier.

1.37 "**Intellectual Property"** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.

1.38 **"Interconnection"** means interconnection as required by the Act.

1.39 **"InterLATA"** is as defined in the Act.

1.40 **"InterMTA Traffic"** means traffic to or from ALLTEL's network that originates in one MTA and terminates in another MTA (as determined by the geographic location of the cell site to which the mobile End User is connected).

1.41 **"ISP"** ("Internet Service Provider") shall be given the same meaning as used in the FCC Order on Remand and Report and Order; *In the Matter of Implementation of the Local Competition Provisions in the Federal Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic;* CC Docket Nos. 96-98 and 99-68; FCC Order No. 01-131, released April 27, 2001.

1.42 **"IXC"** ("Interexchange Carrier") means, a carrier (other than a CMRS provider or a LEC) that provides, directly or indirectly, interLATA and/or intraLATA Telephone Toll Services.

1.43 **"LATA"** means Local Access and Transport Area as described in the Act.

1.44 **"LEC"** means "Local Exchange Carrier" as defined in the Act.

1.45 **"LERG"** ("Local Exchange Routing Guide") means a Telcordia Reference Document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as network element and equipment designations.

1.46 **"Local Calls"** are Authorized Services Completed Calls that originate on either Party's network, that terminate on the other Party's network, that are exchanged directly between the Parties and that, at the beginning of the call, originate and terminate within the same MTA. "Local Calls" does not refer to the local calling area of either Party. In order to measure whether traffic comes within the definition of Local Calls, the Parties agree that the origination and termination point of the calls are as follows:

(a) For **SBC-13STATE**, the origination or termination point of a call shall be the End Office Switch that serves, respectively, the calling or called party at the beginning of the call.

(b) For ALLTEL, the origination or termination point of a call shall be the Cell Site that serves, respectively, the calling or called party at the beginning of the call.

1.47 **"Loss"** or **"Losses"** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).

1.48 **"MSC"** ("Mobile Switching Center") means ALLTEL equipment used to route, transport and switch commercial mobile radio service traffic to, from and among its end users and to and from other Telecommunications Carrier's.

1.49 **"MTA"** ("Major Trading Area") is as defined in 47 C.F.R. § 24.202(a).

1.50 **"NANP"** ("North American Numbering Plan") is a numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.

1.51 **"NPA"** ("Numbering Plan Area") also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs which correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, e.g., 800.

1.52 **"NXX "** means the three-digit switch entity indicator that is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX contains 10,000 station numbers.

1.53 **"OBF"** ("Ordering and Billing Forum") is a forum comprised of LECs and IXCs whose responsibility is to create and document Telecommunication industry guidelines and standards.

1.54 **"OLI" ("**Originating Line Information") is an SS7 Feature Group D signaling parameter which refers to the number transmitted through the network identifying the billing number of the calling Party.

1.55 "**Originating Landline to CMRS Switched Access Traffic**" means InterLATA traffic delivered directly from SBC-13STATE's originating network to ALLTEL's network that, at the beginning of the call: (a) originates on SBC-13STATE's network in one MTA; and, (b) is delivered to the mobile unit of ALLTEL's Customer connected to a Cell Site located in another MTA. SBC-13STATE shall charge and ALLTEL shall pay SBC-13STATE the Originating Landline to CMRS Switched Access Traffic rates in Appendix Pricing – Wireless.

1.56 **"Paging Traffic**" is traffic to ALLTEL's network that results in the sending of a paging message over a paging or narrowband PCS frequency licensed to ALLTEL or traffic to **SBC-13STATE**'s network that results in the sending of a paging message over a paging or narrowband PCS frequency licensed to **SBC-13STATE**.

1.57 **"Party"** means either **SBC-13STATE** authorized to provide Telecommunications Service in the State or ALLTEL. "Parties" means both such **SBC-13STATE** and ALLTEL.

1.58 **"Person"** means an individual or a partnership, an association, a joint venture, a corporation, a business or a trust or other entity organized under Applicable law, an unincorporated organization or any Governmental Authority.

1.59 **"POI"** ("Point of Interconnection") means the physical location at which the Parties' networks meet for the purpose of establishing Interconnection. POIs include a number of different technologies and technical interfaces based on the Parties mutual agreement. The POI establishes the technical interface, the test point(s) and the point(s) for operational and financial division of responsibility.

1.60 **"Rate Center"** means the specific geographic point and corresponding geographic area defined by the State Commission for the purpose of rating inter- and intra-LATA toll calls.

1.61 **"Rating Point"** means the vertical and horizontal ("V&H") coordinates assigned to a Rate Center and associated with a particular telephone number for rating purposes. The Rating Point must be in the same LATA as the Routing Point of the associated NPA-NXX as designated in the LERG, but need not be in the same location as that Routing Point.

1.62 **"Routing Point"** designated as the destination for traffic inbound to services provided by that Telecommunications ALLTEL that bear a certain NPA-NXX designation. The Routing Point need not be the same as the Rating Point, but it must be in the same LATA as the Rating Point. Central Office Switches are Routing Points for traffic to end users identified by numbers drawn from NPA-NXX designations, as stated in the LERG. Where ALLTEL has not established Routing Points for its Dedicated NPA-NXXs in its own network, the Routing Point shall be the **SBC-13STATE** Tandem Switch where traffic to **SBC-13STATE** NXXs in the same NPA is homed.

1.63 **"SBC"** ("SBC Communications Inc.") means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California , The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.

1.64 "**SBC-2STATE" -** As used herein, **SBC-2STATE** means **SBC CALIFORNIA** and **SBC NEVADA**, the applicable SBC-owned ILEC(s) doing business in California and Nevada.

1.65 "**SBC-4STATE" -** As used herein, **SBC-4STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, and SBC Oklahoma, the applicable SBC-owned ILEC(s) doing business in Arkansas, Kansas, Missouri and Oklahoma.

1.66 "**SBC-7STATE" -** As used herein, **SBC-7STATE** means **SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA** and **SBC NEVADA,** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Kansas, Missouri, Nevada, Oklahoma, and Texas.

1.67 "**SBC-8STATE"** - As used herein, **SBC-8STATE** means **SBC SOUTHWEST REGION 5-STATE, SBC CALIFORNIA, SBC NEVADA,** and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas.

1.68 "**SBC-10STATE"** - As used herein, **SBC-10STATE** means **SBC SOUTHWEST REGION 5-STATE** and **SBC MIDWEST REGION 5-STATE,** the applicable SBC-owned ILEC(s) doing business in Arkansas, Illinois, Indiana, Kansas, Michigan, Missouri, Ohio, Oklahoma, Texas, and Wisconsin.

1.69 "**SBC-12STATE"** - As used herein, **SBC-12STATE** means **SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE** and **SBC-2STATE** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

1.70 **"SBC-13STATE"** - As used herein, **SBC-13STATE** means **SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE, SBC-2STATE** and **SBC CONNECTICUT** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

1.71 "**SBC ARKANSAS" -** As used herein, **SBC ARKANSAS** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, the applicable SBC-owned ILEC doing business in Arkansas.

1.72 "**SBC CALIFORNIA" –** As used herein, **SBC CALIFORNIA** means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.

1.73 "**SBC CONNECTICUT" -** As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.

1.74 "**SBC ILLINOIS" -** As used herein, **SBC ILLINOIS** means Illinois Bell Telephone Company d/b/a SBC Illinois, the applicable SBC-owned ILEC doing business in Illinois.

1.75 **"SBC INDIANA" -** As used herein, **SBC INDIANA** means Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana, the applicable SBC-owned ILEC doing business in Indiana.

1.76 "**SBC KANSAS**" - As used herein, **SBC KANSAS** means Southwestern Bell Telephone, L.P. d/b/a SBC Kansas, the applicable SBC-owned ILEC doing business in Kansas.

1.77 **"SBC MICHIGAN" -** As used herein, **SBC MICHIGAN** means Michigan Bell Telephone Company d/b/a SBC Michigan, the applicable SBC-owned doing business in Michigan.

1.78 "**SBC MIDWEST REGION 5-STATE**" - As used herein, **SBC MIDWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

1.79 "**SBC MISSOURI**" **-** As used herein, **SBC MISSOURI** means Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, the applicable SBC-owned ILEC doing business in Missouri.

1.80 "**SBC NEVADA**" **–** As used herein, **SBC NEVADA** means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.

1.81 "**SBC OHIO**" **-** As used herein, **SBC OHIO** means The Ohio Bell Telephone Company d/b/a SBC Ohio, the applicable SBC-owned ILEC doing business in Ohio.

1.82 "**SBC OKLAHOMA**" **-** As used herein, **SBC OKLAHOMA** means Southwestern Bell Telephone, L.P. d/b/a SBC Oklahoma, the applicable SBC-owned ILEC doing business in Oklahoma.

1.83 "**SBC SOUTHWEST REGION 5-STATE**" - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

1.84 **"SBC TEXAS"** – As used herein, **SBC TEXAS** means Southwestern Bell Telephone, L.P. d/b/a SBC Texas, the applicable SBC-owned ILEC doing business in Texas.

1.85 "**SBC WISCONSIN**" **-** As used herein, **SBC WISCONSIN** means Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC doing business in Wisconsin.

1.86 "**Shared Facility Factor**" means the factor used to appropriately allocate cost of 2-way DS1 Interconnection Facilities based on proportionate use of facility between **SBC-13STATE** and ALLTEL.

1.87 **"SS7"** ("Signaling System 7") means a signaling protocol used by the CCS Network.

1.88 **"State Abbreviation"** means the following:

1.88.1 **"AR"** means Arkansas
1.88.2 **"CA"** means California
1.88.3 **"CT"** means Connecticut
1.88.4 **"IL"** means Illinois
1.88.5 **"IN"** means Indiana
1.88.6 **"KS"** means Kansas
1.88.7 **"MI"** means Michigan
1.88.8 **"MO"** means Missouri
1.88.9 **"NV"** means Nevada
1.88.10 **"OH"** means Ohio
1.88.11 **"OK"** means Oklahoma
1.88.12 **"TX"** means Texas
1.88.13 **"WI"** means Wisconsin

1.89 **"Switched Access Services"** means an offering of access to **SBC-13STATE**'s network for the purpose of the origination or the termination of traffic from or to End Users in a given area pursuant to a Switched Access Services tariff.

1.90 **"Tandem Switch"** or **"Tandem(s)"** are **SBC-13STATE** switches used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX .

1.91 **"Telcordia"** means Telcordia Technologies, Inc.

1.92 "**Telecommunications Carrier**" is as defined in the Act.

1.93 **"Telecommunications Service"** is as defined in the Act.

1.94 **"Telephone Toll Service"** is as defined in the Act.

1.95 **"Terminating IntraLATA InterMTA Traffic"** means traffic that, at the beginning of the call: (a) originates on ALLTEL's network and terminates in the same LATA; (b) is sent from the mobile unit of ALLTEL's End User connected to ALLTEL's Cell Site located in one MTA; and, (c) is terminated on **SBC-13STATE**'s network in another MTA. For such InterMTA IntraLATA Traffic, **SBC-13STATE** shall charge and ALLTEL shall pay **SBC-13STATE** the Terminating IntraLATA InterMTA Traffic rates in Appendix Pricing - Wireless.

1.96 **"Terminating Switched Access Traffic"** means traffic that, at the beginning of the call: (a) originates on ALLTEL's network; (b) is sent from the mobile unit of ALLTEL's End User or the mobile unit of a Third Party connected to a Cell Site located in one MTA and one LATA; and, (c) terminates on **SBC-13STATE**'s network in another MTA and another LATA (*i.e.*, the traffic is both InterMTA and InterLATA). This traffic must be terminated to **SBC-13STATE** as FGD terminating switched access per **SBC-13STATE**'s Federal and/or State Access Service tariff.

1.97 **"Third Party"** means any Person other than a Party.

1.98 **"Toll Free Service"** means service provided with a dialing sequence that invokes toll-free (i.e., 800-like) service processing. Toll Free Service includes calls to the Toll Free Service 8YY NPA SAC Codes.

1.99 **"Transit Traffic"** means traffic handled by a Telecommunications Carrier when providing Transiting Service.

1.100 **"Transiting Service"** means switching and intermediate transport of traffic between two Telecommunications Carriers, one of which is a Party to this Agreement and one of which is not, carried by the other Party to this Agreement that neither originates nor terminates that traffic on its network while acting as an intermediary.

1.101 **"Trunk(s)"** or **"Trunk Group(s)"** means the switch port interface(s) used and the communications path created to connect ALLTEL's network with **SBC-13STATE**'s network for the purpose of exchanging Authorized Services Local Calls for purposes of Interconnection.

1.102 **"Trunk Side"** refers to a Central Office Switch interface that offers those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

1.103 **"Wire Center"** denotes a building or space within a building that serves as an aggregation point on a given Telecommunication Carrier's network, where transmission Facilities are connected and traffic is switched. **SBC-13STATE**'s Wire Center can also denote a building in which one or more Central Office Switches, used for the provision of Exchange Services and Switched Access Services, are located.

2. INTERPRETATION, CONSTRUCTION AND SEVERABILITY

2.1 Definitions

2.1.1 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation" and/or "but not

limited to." The words "will" and "shall" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement; the use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

2.2 Headings Not Controlling

2.2.1 The headings and numbering of Sections, Parts, Appendices, Schedules and Exhibits to this Agreement are for convenience only and shall not be construed to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

This Agreement incorporates a number of Appendices which, together with their associated Attachments, Exhibits, Schedules and Addenda, constitute the entire Agreement between the Parties. In order to facilitate use and comprehension of the Agreement, the Appendices have been grouped under broad headings. It is understood that these groupings are for convenience of reference only, and are not intended to limit the applicability that any particular Appendix, Attachment, Exhibit, Schedule or Addenda may otherwise have.

2.3 Referenced Documents

2.3.1 Unless the context shall otherwise specifically require, and subject to Section 15, "Intervening Law," whenever any provision of this Agreement refers to a technical reference, technical publication, ALLTEL Practice, **SBC-13STATE** Practice, any publication of Telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement (each hereinafter referred to as a "Referenced Instrument"), it will be deemed to be a reference to the then-current version or edition (including any amendments, supplements, addenda, or successors) of each Referenced Instrument that is in effect at time of use, and will include the then-current version or edition (including any amendments, supplements, addenda, or successors) of any other Referenced Instrument incorporated by reference therein.

2.4 References

2.4.1 References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require.

2.5 Tariff References

2.5.1 To the extent a tariff provision or rate is incorporated or otherwise applies between the Parties due to the provisions of this Agreement, it is understood that said tariff provision or rate applies only in the jurisdiction in which such tariff provision or rate is filed, and applies to ALLTEL and only the **SBC13-STATE** ILEC(s) that operates within that jurisdiction. Further, it is understood that any changes to said tariff provision or rate are also automatically incorporated herein or otherwise hereunder, effective hereunder on the date any such change is effective.

2.6 Conflict in Provisions

2.6.1 If any definitions, terms or conditions in any given Appendices, Attachments, Exhibits, Schedules or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit, Schedule or Addendum. For example, if an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement.

2.7 Joint Work Product

2.7.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

2.8 Severability

2.8.1 The Parties negotiated the terms and conditions of this Agreement for Interconnection and services as a total arrangement and it is intended to be non-severable. However, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. If necessary to effect the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement to replace the unenforceable language with enforceable language that reflects such intent as closely as possible.

2.9 Incorporation by Reference

2.9.1 The General Terms and Conditions of this Agreement, and the Interconnection and services provided hereunder, shall be subject to all of the legitimately related rates, terms and conditions contained in the Appendices to this Agreement, which are incorporated herein by reference and deemed a part hereof for purposes of such Interconnection and services. Without limiting the general applicability of the foregoing, the following provisions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each Interconnection, Network Element, function, facility, product or service provided hereunder: definitions; interpretation, construction and severability; general responsibilities of the Parties; effective date, term and termination; billing and payment of charges; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; confidentiality; intervening law; governing law; regulatory approval; changes in end user local exchange service provider selection; compliance and certification; law enforcement and civil process; relationship of the parties/independent contractor; no Third Party beneficiaries, disclaimer of agency; assignment; subcontracting; environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; End User inquiries; expenses; conflict of interest; survival of obligations, scope of agreement; amendments and modifications; and entire agreement.

2.10 State-Specific Rates, Terms and Conditions

2.10.1 For ease of administration, this Agreement contains certain specified rates, terms and conditions which apply only in a designated State ("State-Specific Terms"). To the extent that this Agreement contains State-Specific Terms, such State-Specific Terms shall not apply and shall have no effect in any other State(s) to which this Agreement is submitted for approval under Section 252(e) of the Act.

2.10.2 State-Specific Terms, as the phrase is described in Section 2.11.1 above, have been negotiated (or, in the case of 2.10.2 above, have been included in the Agreement per state requirement) by the Parties only as to the States where this Agreement has been executed, filed and approved. When the Parties negotiate an Interconnection agreement for an additional state, neither Party shall be precluded by any language in this Agreement from negotiating State-Specific Terms for the state in which they are to apply.

2.11 Scope of Application

2.11.1 This Agreement may be negotiated for more than one State. However, this Agreement shall be applied separately and distinctly to the Parties' operations in each individual State.

2.12 Scope of Obligations

2.12.1 Notwithstanding anything to the contrary contained herein, **SBC-13STATE**'s obligations under this Agreement shall apply only to:

2.12.1.1 the specific operating area(s) or portion thereof in which **SBC-13STATE** is then deemed to be the ILEC under the Act (the "ILEC Territory"), and assets that **SBC-13STATE** owns or leases and which are used in connection with **SBC-13STATE**'s provision to ALLTEL of any Interconnection products or services provided or contemplated under this Agreement, the Act or any tariff or ancillary agreement referenced herein (individually and collectively, the "ILEC Assets").

2.13 Affiliates

2.13.1 These General Terms and Conditions and all Attachments, Exhibits, Appendices, Schedules and Addenda hereto constituting this Agreement, including subsequent amendments, if any, shall bind **SBC-13STATE**, ALLTEL and any Affiliate of ALLTEL. ALLTEL further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between **SBC-13STATE** and any such Affiliate of ALLTEL that continues to operate as a separate entity. This Agreement shall remain effective as to ALLTEL and any such Affiliate of ALLTEL for the Term of this Agreement until either **SBC-13STATE** or ALLTEL or any such Affiliate of ALLTEL institutes renegotiation, or this Agreement expires or terminates, pursuant to the provisions of this Agreement. Notwithstanding the foregoing, this Agreement will not supercede a currently effective Interconnection agreement between any such Affiliate of ALLTEL and **SBC-13STATE** until the earlier of the date when the other agreement has: 1) expired; 2) been noticed for renegotiation pursuant the terms thereof; or 3) otherwise terminated provided; however, each Affiliate of ALLTEL operating under a separate Interconnection agreement within a State shall have its own unique ACNA codes and OCN.

3. GENERAL RESPONSIBILITIES OF THE PARTIES

3.1 Each Party is individually responsible to provide Facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with **SBC-13STATE**'s network as referenced in Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275, and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

3.2 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all End Users in their respective designated service areas.

3.3 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.

3.4 Insurance

3.4.1 This Section 3.4 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument. The other Party must be named as an Additional Insured on the Commercial General Liability policy. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance, which may be provided through a program of self-insurance as provided in 3.4.4. Each Party shall require its subcontractors providing services under this

Agreement to maintain in force the insurance coverage and limits required under Section 3.4. The Parties agree that companies affording the insurance coverage required under Section 3.4 shall have a rating of B+ or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage. Each Party agrees to provide the other Party with at least thirty (30) Days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

3.4.2 If ALLTEL is not and does not collocate with **SBC-13STATE** during the Term, the following insurance requirements will apply:

3.4.2.1 Each Party shall keep and maintain in force at each Party's expense all insurance required by Applicable Law, including: Workers' Compensation insurance with benefits afforded under the laws of the state in which the Services are to be performed and Employers Liability insurance with minimum limits of $100,000 for Bodily Injury-each accident, $500,000 for Bodily Injury by disease-policy limits and $100,000 for Bodily Injury by disease-each employee; Commercial General liability insurance with minimum limits of: $2,000,000 General Aggregate limit; $1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; $1,000,000 each occurrence sub-limit for Personal Injury and Advertising; $2,000,000 Products/Completed Operations Aggregate limit, with a $1,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of $300,000 are required for lease agreements; if use of a motor vehicle is required, Automobile liability insurance with minimum limits of $1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

3.4.3 If at any time during the Term ALLTEL decides to collocate with **SBC-13STATE**, the following insurance requirements will apply:

At all times during the Term, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law: Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of $100,000 for Bodily Injury-each accident, $500,000 for Bodily Injury by disease-policy limits and $100,000 for Bodily Injury by disease-each employee; Commercial General Liability insurance with minimum limits of: $10,000,000 General Aggregate limit; $5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; $1,000,000 each occurrence sub-limit for Personal Injury and Advertising; $10,000,000 Products/Completed Operations Aggregate limit, with a $5,000,000 each occurrence sub-limit for Products/Completed Operations; Fire Legal Liability sub-limits of $2,000,000; if use of an automobile is required, Automobile Liability insurance with minimum limits of $1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.

3.4.4 Each Party agrees to accept the other Party's program of self-insurance in lieu of insurance coverage if certain requirements are met. These requirements are as follows:

The Party desiring to satisfy its Workers' Compensation and Employers Liability obligations through self-insurance shall submit to the other Party a copy of its Certificate of Authority to Self-Insure its Workers' Compensation obligations issued by each state covered by this Agreement or the employer's state of hire; and

3.4.4.1 The Party desiring to satisfy its automobile liability obligations through self-insurance shall submit to the other Party a copy of the state-issued letter approving self-insurance for automobile liability issued by each state covered by this Agreement; and

3.4.4.2 The Party desiring to satisfy its general liability obligations through self-insurance must provide evidence acceptable to the other Party that it has a net worth of at least 10 times the amount of insurance required and maintains at least an investment grade (e.g., B+ or higher) debt or credit rating as determined by a nationally recognized debt or credit rating agency such as Moody's, Standard and Poor's or Duff and Phelps.

3.4.5 Each Party agrees to provide the other Party with at least thirty (30) Days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.

3.4.6 This Section 3.4 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.

ALLTEL represents that a complete list of ALLTEL's Access Carrier Name Abbreviation (ACNA) codes, each with the applicable Operating Company Number (OCN), covered by this Agreement is provided below. Any addition, deletion or change in name associated with the listed ACNA codes, or any changes in OCNs, requires notice to **SBC-13STATE**. Notice must be received before orders can be processed under a new or changed ACNA code or OCN.

ACNA/OCN List:
CCQ - All States
AAK - All States
CYC – MI or WI
IPD – OH Only
UTS – OH Only
NWL – WI Only
WCL – WI Only

3.5 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party's timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party (for example, by using its management personnel to perform work or by other means) in the event of a labor dispute to the extent permitted by Applicable Law.

3.6 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

3.7 Each Party agrees it will comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA).

4.0 EFFECTIVE DATE, TERM, AND TERMINATION

4.1 In **SBC-13STATE**, with the exception of **SBC-OHIO**, the effective date of this Agreement (the "Effective Date") shall be upon Commission approval of this Agreement under Section 252(e) of the Act or, absent such Commission approval, the date this Agreement is deemed approved under Section 252(e)(4) of the Act. In **SBC-OHIO**, based on PUC-OH rule, the Agreement is effective upon filing and is deemed approved by operation of law on the 91st Day after filing.

4.2 The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on October 26, 2006 (the "Term"). This Agreement shall expire if either Party provides written notice, within one hundred-eighty (180) Days prior to the expiration of the Term, to the other Party to the effect that such Party does not intend to extend the Term. Absent the receipt by one Party of such written notice, this Agreement shall remain in full force and effect on and after the expiration of the Term, subject to the provisions of this Section 4.

4.3 Notwithstanding any other provision of this Agreement, either Party (at its sole discretion) may terminate this Agreement, and the provision of Interconnection and services, in the event the other Party (1) fails to perform a material obligation or breaches a material term of this Agreement and (2) fails to cure such nonperformance or breach within forty-five (45) Days after written notice thereof. Should the nonperforming or breaching Party fail to cure within forty-five (45) Days after such written notice, the noticing Party may thereafter terminate this Agreement immediately upon delivery of a written termination notice.

4.4 If pursuant to Section 4.2, this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement upon sixty (60) days written notice to the other Party of its intention to terminate this Agreement, subject to Sections 4.5 and 4.6. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 4.4 other than its obligations under Sections 4.5 and 4.6.

4.5 Upon termination or expiration of this Agreement in accordance with Sections 4.2, 4.3 or 4.4:

4.5.1 Each Party shall continue to comply with its obligations set forth in Section 36, "Survival of Obligations"; and

4.5.2 Each Party shall promptly pay all undisputed amounts owed under this Agreement prior to the receipt of such notice of termination or the expiration of the Agreement, subject to Section 6, "Dispute Resolution"

4.6 If **SBC-13STATE** serves notice of expiration or termination pursuant to Section 4.2 or Section 4.4, respectively, ALLTEL shall provide **SBC-13STATE** written confirmation, within ten (10) Days, that ALLTEL either wishes to (1) commence negotiations with **SBC-13STATE**, or adopt an agreement, under Sections 251/252 of the Act, or (2) terminate its Agreement. ALLTEL shall identify the action to be taken for each affected agreement identified in **SBC-13STATE**'s notice.

4.7 If ALLTEL serves notice of expiration or termination pursuant to Section 4.2 or Section 4.4, and also wishes to pursue a successor agreement with **SBC-13STATE**, ALLTEL shall include a written request to commence negotiations with **SBC-13STATE**, or adopt an agreement, under Sections 251/252 of the Act and identify which state(s) the successor agreement will cover. Upon receipt of ALLTEL's Section 252(a)(1) request, the Parties shall commence good faith negotiations on a successor agreement.

4.8 The rates, terms and conditions of this Agreement shall continue in full force and effect until (i) the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; or (ii) the 161st day after the date on which **SBC-13STATE** received ALLTEL's Section 252(a)(1) request, at which time ALLTEL shall request an interim arrangement pursuant to 51.715 and SBC shall continue to offer services to ALLTEL pursuant to the terms, conditions and rates set forth in the interim arrangement. Upon request by ALLTEL, such interim arrangement shall be ALLTEL's request to enter into SBC-13STATE's then current interconnection agreement.

4.9 If at any time during the Section 252(a)(1) negotiation process (prior to or after the expiration date or termination date of this Agreement), ALLTEL withdraws its Section 252(a)(1) request, ALLTEL must include in its notice of withdrawal a request to adopt a successor agreement under Section 252(i) of the Act or affirmatively state that ALLTEL does not wish to pursue a successor agreement with **SBC-13STATE** for a given state. The rates, terms and conditions of this Agreement shall continue in full force and effect until the later of: 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) Days after the date ALLTEL serves notice of withdrawal of its Section 252(a)(1) request. If the Term of this Agreement has expired, on the earlier of (i) the ninety-first (91st) Day following **SBC-13STATE**'s receipt of ALLTEL's notice of withdrawal of its Section 252(a)(1) request or (ii) the effective date of the agreement following approval by the Commission of the adoption of an agreement under 252(i), the Parties shall, have no further obligations under this Agreement except those set forth in Section 4.5 of this Agreement.

4.10 If ALLTEL does not affirmatively state that it wishes to pursue a successor agreement with **SBC-13STATE** as provided in Section 4.6 or Section 4.7 above, then the rates, terms and conditions of this Agreement shall continue in full force and effect until the later of 1) the expiration of the Term of this Agreement, or 2) the expiration of ninety (90) Days after the date ALLTEL provided or received notice of expiration or termination. Thereafter, the Parties shall have no further obligations under this Agreement except as provided in Section 4.5 above.

4.11 For any Interconnection arrangements covered by this Agreement that may already be in place, the Parties agree that, once this Agreement is deemed effective, the rates contained in Attachment I shall be applied to those arrangements. To the extent that a Party is not able to bill the new rates for the pre-existing Interconnection arrangements on the Effective date, the parties agree that, once billing is possible, the rate will be applied to the pre-existing Interconnection arrangements retroactively to the Effective date of this Agreement.

4.12 The Parties agree to continue uninterrupted service under this agreement during negotiations of a subsequent agreement. This agreement will continue in effect until the subsequent agreement becomes effective, subject to Section 4.3.

5. BILLING AND PAYMENT OF CHARGES

5.1 Charges and Payment

5.1.1 Each Party agrees to pay the other all undisputed billed amounts by the earlier of (i) the payment date, which may be set no earlier than thirty (30) Days after the bill date, or (ii) the next bill date (i.e. the same date in the following month as the bill date). The undisputed portions of all bills are to be paid when due. All non-usage-sensitive monthly charges, Facility and Serving Arrangements shall be billed by **SBC-13STATE** monthly in advance, except those charges due for the initial month, or a portion of the initial month during which new items are provided, will be included in the next bill rendered. If the date on which a bill is due as provided above is on a Day other than a Business Day, payment will be made on the next Business Day. Payments will be made in U.S. dollars.

5.1.2 Usage-sensitive charges hereunder shall be billed monthly in arrears by both Parties.

5.2 Late Payment Charge

5.2.1 Bills will be considered past due thirty (30) Days after the bill date or by the next bill date (i.e., same date as the bill date in the following month), whichever occurs first, and are payable in immediately available U.S. funds. If the amount billed is received by the billing Party after the Payment Due Date or if any portion of the payment is received by the billing Party in funds which are not immediately available to the billing Party, then a late payment charge will apply to the unpaid balance. The late payment charge will be as set forth in **SBC-13STATE**'s applicable state tariff. When there is no applicable tariff in the State, any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1½%) per month or (ii) the highest rate of interest that may be charged under Applicable Law, compounded daily from the number of Days from the Payment Due Date to and including the date that payment is actually made.

5.3 Backbilling

5.3.1 Charges for any service or product provided pursuant to this Agreement may be billed by the billing Party for up to one (1) year after the initial date such service or product was furnished. This Section shall not apply to backbilling that would be appropriate where changes are not evident other than through an audit pursuant to Audit provisions of this Agreement.

5.4 Backcredits

5.4.1 Neither Party may request credit for any billing by the other Party pursuant to this Agreement more than one (1) year after the date of the bill on which the service or product was billed. Any

such request will be in writing and contain sufficient detail to allow the other Party to properly investigate the request. If the request for credit leads to a billing dispute, such dispute shall be handled in accordance with Section 6, Dispute Resolution. This Section shall not apply to requests for credit in the following situations: when the true-ups are provided for in this Agreement, or where changes are not evident other than through an audit pursuant to Audit provisions of this Agreement.

5.5 Tariffed Items

5.5.1 Where charges in this Agreement are specifically identified as tariffed rates, then those charges and those alone shall be deemed amended to conform to any authorized modifications that may hereafter occur to those tariffed rates. Such amendments shall become effective upon the effective date of tariff modification.

5.6 Invoices

5.6.1 Invoices shall comply with nationally accepted standards agreed upon by the Ordering and Billing Forum (OBF) for billing access traffic and Reciprocal Compensation traffic.

5.6.2 Parties agree that each will perform the necessary call recording and rating for its respective portions of an exchanged call in order to invoice the other Party.

5.6.3 Invoices between the Parties shall include, but not be limited to the pertinent following information.

Identification of the monthly bill period (from and through dates)
Current charges
Past due balance
Adjustments
Credits
Late payment charges
Payments
Contact telephone number for billing inquiries

5.6.4 The Parties will provide a remittance document with each invoice identifying:

Remittance address
Invoice number and/or billing account number
Summary of charges
Amount due
Payment Due Date (at least thirty (30) Days from the invoice date)

5.6.5 Invoices between the Parties will be provided on paper and will be the primary bill, unless a mechanized format is mutually agreed upon and subsequently designated in writing by both Parties as the primary bill.

5.6.6 Reciprocal Compensation invoices will be based on Conversation MOUs for all Completed Calls and are measured in total conversation time seconds, which are totaled (by originating and terminating CLLI code) for the monthly billing cycle and then rounded up to the next whole minute. When **SBC-13STATE** is unable to invoice reflecting an adjustment for shared Facilities and/or Trunks, ALLTEL will separately invoice **SBC-13STATE** for **SBC-13STATE**'s share of the cost of such Facilities and/or Trunks as provided in this Agreement thirty (30) Days following receipt by ALLTEL of **SBC-13STATE**'s invoice.

5.6.7 ALLTEL will invoice **SBC-13STATE** for Reciprocal Compensation by state, based on the terminating location of the call. ALLTEL will display the CLLI code(s) associated with the Trunk through which the exchange of traffic between **SBC-13STATE** and ALLTEL takes place as well as the number of calls and Conversation MOUs for each inbound Facility route. **SBC-13STATE** will invoice ALLTEL for Reciprocal Compensation by LATA and by the End Office/Tandem

Switch, based on the terminating location of the call and will display and summarize the number of calls and Conversation MOUs for each terminating office.

5.7 There will be no netting by the billed Party of payments due herein against any other amount owed by one Party to the other.

6. DISPUTE RESOLUTION

6.1 Finality of Disputes

6.1.1 Unless otherwise agreed, no non-billing related Claims will be brought for disputes arising under this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention. No Claims subject to Billing Dispute Resolution, Section 6.4, will be brought for disputes arising under this Agreement more than twelve (12) months from the Payment Due Date of the invoice giving rise to the dispute. Claims involving withheld amounts are subject to Section 6.4.

6.2 Alternative to Litigation

6.2.1 The Parties shall resolve disputes arising out of this Agreement, using the following Dispute Resolution procedure with respect to any controversy or Claim arising out of or relating to this Agreement or its breach.

6.3 Commencing Dispute Resolution

6.3.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or Claim arising out of or relating to this Agreement or its breach. No Party may pursue any Claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods:

6.3.1.1 Billing Dispute Resolution;

6.3.1.2 Informal Dispute Resolution; and

6.3.1.3 Formal Dispute Resolution.

6.4 Billing Dispute Resolution

6.4.1 The following Dispute Resolution procedures will apply with respect to any disputed amounts invoiced pursuant to or relating to the Agreement ("Disputed Amounts").

6.4.2 Any notice of Disputed Amounts given by either Party shall be referred to the appropriate billing department of the other Party.

6.4.3 A Party with a bona fide dispute regarding any amounts invoiced ("Disputing Party") shall provide written notice of Disputed Amounts to the other Party ("Notice of Disputed Amounts").

6.4.4 The Notice of Disputed Amounts shall contain the following: (i) the date of the invoice in question, (ii) the account number or other identification of the invoice in question, (iii) the circuit ID number or Trunk number in question, (iv) any USOC (or other descriptive information) in question, (v) the amount invoiced, (vi) the amount in dispute, (vii) the basis of the dispute and (viii) supporting actual data for an agreed upon limited period within the dispute timeframe to support investigation and resolution.

6.4.5 If a Disputing Party is withholding payment of Disputed Amounts, a Notice of Disputed Amounts must be received by the other Party by the Payment Due Date of the invoice in question.

6.4.6 Failure to timely provide the Notice of Disputed Amounts (including the required information and documentation) shall constitute the Disputing Party's irrevocable and full waiver of its dispute pertaining to the subject Disputed Amounts, and such withheld amounts shall be deemed past due, and late payment charges shall apply.

6.4.6.1 The Parties shall attempt to resolve disputes regarding withheld payments within sixty (60) Days of the invoicing Party's receipt of Notice of Disputed Amounts. However, if the dispute is not resolved within the first thirty (30) Days of such sixty-(60) Day period, upon request, the invoicing Party shall advise the Disputing Party of the status of the dispute and the expected resolution date.

6.4.6.2 The Parties shall attempt to resolve Disputed Amounts regarding fully paid invoices within ninety (90) Days of the invoicing Party's receipt of Notice of Disputed Amounts, but resolution may take longer depending on the complexity of the dispute. However, if the dispute is not resolved within the first forty-five (45) Days of such ninety-(90) Day period, upon request, the invoicing Party shall advise the Disputing Party of the status of the dispute and the expected resolution date.

6.4.7 Resolution of the dispute is expected to occur at the first level of management, resulting in a recommendation for settlement of the dispute and closure of a specific billing period. If the issues are not resolved within the allotted time, the following resolution procedure will be implemented:

6.4.7.1 If the dispute is not resolved within sixty (60) calendar days of the receipt of the notice of Disputed Amounts, the dispute may be escalated to the next level of management for each of the respective Parties for resolution.

6.4.7.2 If the dispute is not resolved within ninety (90) calendar days of the receipt of the notice of Disputed Amounts, the dispute may be escalated to the next level of management for each of the respective Parties for resolution.

6.4.7.3 If the dispute is not resolved within one hundred and twenty (120) calendar days of the receipt of the notice of Disputed Amounts, the dispute may be escalated to the next level of management for each of the respective Parties for resolution.

6.4.7.4 Each Party will provide to the other Party an escalation list for resolving billing disputes. The escalation list will contain the name, title, phone number, fax number and email address for each escalation point identified in this section 6.4.7.

6.4.7.5 Either Party may invoke Informal Resolution of Disputes upon written notice ("Informal Dispute Resolution Notice") received by the other Party within ten (10) Business Days after the expiration of the time frames contained in Sections 6.4.6.1 and 6.4.6.2; however, the Parties may, by mutual agreement, proceed to Informal Resolution of Disputes at any time during such time frames.

6.5 Informal Resolution of Disputes

6.5.1 Upon a Party's receipt of an Informal Dispute Notice, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the prior written concurrence of both Parties. Documents identified in or provided with such communications, not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in an arbitration or lawsuit.

6.6 Formal Dispute Resolution

6.6.1 If the Parties are unable to resolve the dispute through the informal procedure described above in Section 6.5, then either Party may invoke the following Formal Dispute Resolution procedures by submitting to the other Party a written demand for arbitration ("Arbitration Notice"). Unless

agreed upon by the Parties, Formal Dispute Resolution procedures described below, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) Days after receipt of the Informal Dispute Resolution Notice.

6.7 Claims Subject to Arbitration.

6.7.1 Claims, if not settled through Informal Dispute Resolution, will be subject to arbitration pursuant to Section 6.7.2 below:

6.7.2 Claims Subject to Arbitration. All Claims will be subject to arbitration if, and only if, the Claim is not settled through Informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

6.7.3 Claims Not Subject to Arbitration. If the following Claims are not resolved through Informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

6.7.3.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

6.7.3.2 Actions to compel compliance with the Dispute Resolution process.

6.7.3.3 All claims arising under federal or state statute(s), including antitrust claims.

6.8 Arbitration

6.8.1 Disputes subject to arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree.

6.8.2 The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes.

6.8.3 Each arbitration will be held in Dallas, Texas (**SBC SOUTHWEST REGION 5-STATE**); Chicago, Illinois (**SBC MIDWEST REGION 5-STATE**), San Francisco, California (**SBC CALIFORNIA**); Reno, Nevada (**SBC NEVADA**); or New Haven, Connecticut (**SBC CONNECTICUT**), as appropriate, unless the Parties agree otherwise.

6.8.4 The arbitrator shall be knowledgeable of telecommunications issues.

6.8.5 The arbitrator will control the scheduling so as to process the matter expeditiously.

6.8.6 The arbitration hearing will be requested to commence within sixty (60) Days of the demand for arbitration.

6.8.7 The times specified in this Section 6.8 may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause.

6.8.8 The Parties may submit written briefs upon a schedule determined by the arbitrator.

6.8.9 The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) Days after the close of hearings.

6.8.10 The arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of the Agreement.

6.8.11 Each Party will bear its own costs of these procedures, including attorneys' fees.

6.8.12 The Parties will equally split the fees of the arbitration and the arbitrator.

6.8.13 The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof.

6.8.14 Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

6.9 Resolution of Billing Disputes

6.9.1 The following provisions apply specifically to the resolution of Billing disputes.

6.9.1.1 When Billing disputes are resolved in favor of the Disputing Party, the following will occur within thirty (30) Days:

6.9.1.2 Interest will be paid by the invoicing Party on any amounts paid in excess of the amount found to be due according to the Billing Dispute Resolution from the date of Notice of Disputed Amounts.

6.9.1.3 Payments made in excess of the amount found to be due according to the Billing Dispute Resolution will be reimbursed by the invoicing Party.

6.9.2 When Billing disputes are resolved in favor of the invoicing Party, the following will occur within thirty (30) Days:

6.9.2.1 Late payment charges calculated from the Payment Due Date through date of remittance will be paid by the Disputing Party on any amount not paid that was found to be due according to the Billing Dispute Resolution.

6.9.2.2 Any amounts not paid but found to be due according to the Billing Dispute Resolution will be paid to the invoicing Party.

6.9.2.3 Failure by a Party to pay any charges determined to be owed within the applicable time period specified above shall be considered a failure to perform a material obligation or a breach of a material term of this Agreement.

7. AUDITS – Applicable in SBC-12STATE only

7.1 Subject to the restrictions set forth in Section 14 and except as may be otherwise expressly provided in this Agreement, upon thirty (30) days written notice a Party (the "Auditing Party") may audit the other Party's (the "Audited Party") books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement, but not for a period longer than twelve months ("service start date") for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder.

7.1.1 The scope of the audit shall be limited to the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) Days after Audited Party receives a written notice requesting an audit and shall be completed no later than one-hundred twenty (120) Days after the start of such audit.

7.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.

7.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours or through mutual exchange of data requested. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited

Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party Proprietary Information that reveals the identity of End Users of Audited Party.

7.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twelve (12) months after creation thereof, unless a longer period is required by Applicable Law.

7.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 5.2.1 (depending on the **SBC-13STATE** ILEC(s) involved), for the number of Days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

7.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.

7.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) Days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 7.1. Any additional audit shall be at the requesting Party's expense.

8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

8.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, FUNCTIONS, FACILITIES, NETWORK ELEMENTS, PRODUCTS AND SERVICES IT PROVIDES OR MAY PROVIDE UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER PARTY TO THIS AGREEMENT ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

9. LIMITATION OF LIABILITY

9.1 Except for indemnity obligations expressly set forth herein or as otherwise provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement (including any negligent act or omission, whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute (including the Act), shall not exceed in total the amount **SBC-13STATE** or ALLTEL has charged or would have charged to the other Party for the affected Interconnection, Network

Elements, functions, Facilities, products and/or service(s) that were not performed or did not function or were improperly performed or improperly functioned.

9.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or Claimed by a Third Party to have arisen out of the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

9.3 A Party may, in its sole discretion, provide in its tariffs and/or contracts with its End Users or Third Parties that relate to any Interconnection, Network Elements, functions, Facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection, Network Elements, functions, facilities, products and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and/or contracts the limitation(s) of liability described in this Section 9.3.

9.4 Neither ALLTEL nor **SBC-13STATE** shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 10 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 9.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Interconnection, Network Elements, functions, Facilities, products and services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and Indemnitee's and Indemnitee's Affilates' respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.

9.5 This Section 9 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of agreed liability and the type of damages that are recoverable. The Parties acknowledge that the above limitation of liability provisions are negotiated and alternate limitation of liability provisions would have altered the cost, and thus the price, of providing the Interconnection, Network Elements, functions, Facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability were agreed.

10. INDEMNITY

10.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Network Elements, functions, products, Facilities, and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Interconnection, Network Elements, functions, Facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.

10.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying

Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Network Elements, functions, Facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

10.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims or Losses by such End User regardless of whether the underlying Interconnection, Network Elements, function, Facilities, product or service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.

10.4 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any Claim or Loss arising from the Indemnifying Party's use of Interconnection, functions, Facilities, products and services provided under this Agreement involving:

10.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Network Elements, functions, Facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.

10.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Interconnection, Network Elements, functions, Facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any Interconnection, Network Elements, functions, Facilities, products or services provided pursuant to this Agreement.

10.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, Network Elements, functions, Facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

10.4.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Network Elements, functions, Facilities, products or services provided under this Agreement; and

10.4.1.2.2 no infringement would have occurred without such modification.

10.4.2 **SBC-13STATE** hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning ALLTEL's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection in SBC-13STATE's network or ALLTEL's use of other functions, Facilities, products or services furnished under this Agreement.

10.4.3 **SBC-13STATE** does not and shall not indemnify, defend or hold ALLTEL harmless, nor be responsible for indemnifying or defending, or holding ALLTEL harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to ALLTEL's

Interconnection with SBC-13STATE's network or ALLTEL's use of other functions, Facilities, products or services furnished under this Agreement.

10.5 Damage to Facilities.

10.5.1 ALLTEL shall reimburse **SBC-13STATE** for damages to **SBC-13STATE**'s Facilities utilized to provide Interconnection hereunder caused by the negligence or willful act of ALLTEL, its agents or subcontractors or ALLTEL's End User or resulting from ALLTEL's improper use of **SBC-13STATE**'s Facilities, or due to malfunction of any Facilities, functions, products, services or equipment provided by any Person or entity other than **SBC-13STATE**. Upon reimbursement for damages, **SBC-13STATE** will cooperate with ALLTEL in prosecuting a Claim against the Person causing such damage. ALLTEL shall be subrogated to the right of recovery by **SBC-13STATE** for the damages to the extent of such payment.

10.5.2 **SBC-13STATE** shall reimburse ALLTEL for damages to ALLTEL's Facilities utilized to provide Interconnection hereunder caused by the negligence or willful act of **SBC-13STATE** , its agents or subcontractors or **SBC-13STATE** 's End User or resulting from **SBC-13STATE** 's improper use of ALLTEL's Facilities. Upon reimbursement for damages, ALLTEL will cooperate with **SBC-13STATE** in prosecuting a Claim against the Person causing such damage. **SBC-13STATE** shall be subrogated to the right of recovery by ALLTEL for the damages to the extent of such payment.

10.6 Indemnification Procedures

10.6.1 Whenever a Claim shall give rise to indemnification obligations under this Section 10, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim.

10.6.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such Claim and the identity of counsel selected by the Indemnifying Party.

10.6.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such Claim, the Indemnified Party shall defend such Claim, at the reasonable expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such Claim.

10.6.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such Claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

10.6.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.

10.6.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

10.6.7 If the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

10.6.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

10.6.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 14, "Confidentiality".

11. INTELLECTUAL PROPERTY

11.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

11.2 Except as otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

12. NOTICES

12.1 Subject to Section 12.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be

12.1.1 delivered personally;

12.1.2 delivered by express overnight delivery service;

12.1.3 mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or

12.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in 12.1.1, 12.1.2 or 12.1.3, above.

12.1.5 Notices will be deemed given as of the earliest of:

12.1.5.1 the date of actual receipt,

12.1.5.2 the next Business Day when sent via express overnight delivery service,

12.1.5.3 five (5) Days after mailing in the case of certified mail or first class U.S. Postal Service, or

12.1.5.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivery by facsimile is shown on such confirmation as completed prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivery by facsimile is shown at 5:00 p.m. or later in the recipient's time zone.

12.2 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	ALLTEL CONTACT	SBC-13STATE CONTACT
NAME/TITLE	Lynn Hughes/Director Negotiations	Contract Management ATTN: Notices Manager
STREET ADDRESS	One Allied Drive	311 S. Akard, 9th Floor Four Bell Plaza
CITY, STATE, ZIP CODE	Little Rock, AR 77202	Dallas, TX 75202-5398
FACSIMILE NUMBER	501 905-8813	214-464-2006

12.3 ALLTEL's E-mail address for Accessible Letters: scott.a.terry@alltel.com

12.4 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) Days following receipt by the other Party.

12.5 **SBC-13STATE** communicates official information to ALLTELs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.

12.6 **SBC-13STATE** Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the date set forth on the e-mail message.

12.7 ALLTEL may designate up to a maximum of ten (10) recipients for **SBC-13STATE**'s Accessible Letter notification via e-mail.

12.8 ALLTEL shall submit to **SBC-13STATE** a completed Accessible Letter Recipient Change Request Form to the individual specified on that form to designate in writing each individual's e-mail address to whom ALLTEL requests Accessible Letter notification be sent. ALLTEL shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any ALLTEL recipient of Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) Days following receipt by **SBC-13STATE**. **SBC-13STATE** may, at its discretion, change the process by which ALLTEL provides Accessible Letter recipient information. Changes to this process will be developed through ALLTEL User Forum process and will be implemented only with the concurrence of ALLTEL User Form Global Issues group.

13. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

13.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.

13.2 Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

14. CONFIDENTIALITY

14.1 Both Parties agree to protect proprietary information received from the other ("Proprietary Information") in accordance with the provisions of Section 222 of the Act.

14.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:

14.2.1 Was at the time of receipt, already known to the Party receiving the Proprietary Information (the "Receiving Party"), free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Party disclosing the Proprietary Information (the "Disclosing Party"); or

14.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or

14.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information, provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or

14.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or

14.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or

14.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or

14.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

15. INTERVENING LAW

15.1 This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: the United States Supreme Court's opinion in Verizon v. FCC, et al, 535 U.S. 467 (2002); the D.C. Circuit's decision in United States Telecom Association, et. al ("USTA") v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, the D.C. Circuit's March 2, 2004 decision in USTA v. FCC, Case No. 00-1012 (D.C. Cir. 2004); the FCC's Triennial Review Order, released on August 21, 2003, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36) and the FCC's Biennial Review Proceeding which the FCC announced, in its Triennial Review Order, is scheduled to commence in 2004; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking on the topic of Intercarrier Compensation generally, issued In the Matter of Developing a Unified Intercarrier Compensation Regime, in CC Docket 01-92 (Order No. 01-132), on April 27, 2001 (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), **SBC-13STATE** has no obligation to provide unbundled network elements (UNEs) to ALLTEL and shall have no obligation to provide UNEs beyond those that may be required by the Act, if any, including the lawful and effective FCC rules and associated FCC and judicial orders. Except to the extent that **SBC-13STATE** has adopted the FCC ISP terminating

compensation plan ("FCC Plan") in an **SBC-13STATE** state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to **SBC-13STATE**'s right to exercise its option at any time to adopt on a date specified by **SBC-13STATE** the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

16. GOVERNING LAW

16.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Network Elements, functions, Facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. Further, the Parties submit, as applicable, to personal jurisdiction in the state where the products and services at issue were furnished or sought and limited to the following: Little Rock, Arkansas; Topeka, Kansas; St. Louis, Missouri; Columbus, Ohio; Oklahoma City, Oklahoma; Dallas, Texas and Milwaukee, Wisconsin, and waive any and all objection to any such venue.

17. REGULATORY APPROVAL

17.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification. SBC has voluntarily agreed to file this Agreement, at the time of execution in the following states; Kansas, Michigan, Ohio, Wisconsin, and Texas.

18. COMPLIANCE AND CERTIFICATION

18.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.

18.2 Each Party warrants that it has obtained all necessary certifications and licenses prior to ordering any Interconnection, functions, Facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification and licensure.

18.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other Telecommunications Carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

18.4 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the CALEA.

19. LAW ENFORCEMENT AND CIVIL PROCESS

19.1 **SBC-12 STATE** and ALLTEL shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

19.1.1 Intercept Devices

Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a End User of the other Party, it shall refer such request to the Party that serves such End User, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

19.2 Subpoenas

19.2.1 If a Party receives a subpoena for information concerning a End User the Party knows to be a End User of the other Party, it shall refer the subpoena to the Requesting Party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the receiving Party was the End User's service provider, in which case that Party will respond to any valid request.

19.3 Emergencies

19.3.1 If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way denial of outbound calls by the receiving Party's switch for an End User of the other Party, that receiving Party will comply with a valid emergency request. However, neither Party shall be held liable for any Claims or Losses arising from compliance with such requests on behalf of the other Party's End User and the Party serving such End User agrees to indemnify and hold the other Party harmless against any and all such Claims or Losses.

20. RELATIONSHIP OF THE PARTIES/INDEPENDENT CONTRACTOR

20.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

20.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

21. NO THIRD PARTY BENEFICIARIES; DISCLAIMER OF AGENCY

21.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

22. ASSIGNMENT

22.1 Assignment of Contract

22.1.1 ALLTEL may not assign or transfer this Agreement or any rights or obligations hereunder, whether by operation of law or otherwise, to a non-affiliated Third Party without the prior written consent of **SBC-13STATE**. Any attempted assignment or transfer that is not permitted is void *ab initio*.

22.1.2 ALLTEL may assign or transfer this Agreement and all rights and obligations hereunder, whether by operation of law or otherwise, to its Affiliate by providing sixty (60) calendar days' advance written notice of such assignment or transfer to **SBC-13STATE**; provided that such assignment or transfer is not inconsistent with Applicable Law (including the Affiliate's obligation to obtain and maintain proper Commission certification and approvals) or the terms and conditions of this Agreement. Notwithstanding the foregoing, ALLTEL may not assign or transfer this Agreement, or any rights or obligations hereunder, to its Affiliate if that Affiliate is a party to a separate agreement with **SBC-13STATE** under Sections 251 and 252 of the Act. Any attempted assignment or transfer that is not permitted is void *ab initio*.

22.2 Corporate Name Change and/or change in "d/b/a" only

22.2.1 When only ALLTEL name and/or form of entity (*e.g.*, a corporation to a limited liability corporation) is changing, and which does not include a change to a ALLTEL OCN/ACNA, constitutes a ALLTEL Name Change. For a ALLTEL Name Change, ALLTEL will incur a record order charge for each ALLTEL CABS BAN.

22.3 Company Code Change

22.3.1 Any assignment or transfer of an agreement associated with the transfer or acquisition of "assets" provisioned under that agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes an ALLTEL Company Code Change. For the purposes of Section 22.3.1, "assets" means any Interconnection, Unbundled Network Element, function, facility, product or service provided under that agreement. ALLTEL shall provide **SBC-13STATE** with ninety (90) calendar days advance written notice of any assignment associated with a WSP Company Code Change and obtain **SBC-13STATE**'s consent. **SBC-13STATE** shall not unreasonably withhold consent to an ALLTEL Company Code Change; provided, however, **SBC-13STATE'**s consent to any ALLTLE Company Code Change is contingent upon cure of any outstanding charges owed under that agreement and any outstanding charges associated with the "assets" subject to the ALLTEL Company Code Change. In addition, ALLTEL acknowledges that ALLTEL may be required to tender additional assurance of payment if requested under the terms of this Agreement.

22.3.2 For any ALLTEL Company Code Change, ALLTEL must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. ALLTEL shall pay the appropriate charges for each service order submitted to accomplish a ALLTEL Company Code Change. In addition, ALLTEL shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.

23. SUBCONTRACTING

23.1 If either Party retains or engages any subcontractor to perform any of that Party's obligations under this Agreement, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors.

23.2 Each Party will be solely responsible for payments due to that Party's subcontractors.

23.3 No subcontractor will be deemed a Third Party beneficiary for any purposes under this Agreement.

23.4 No contract, subcontract or other agreement entered into by either Party with any Third Party in connection with the provision of Interconnection, Network Elements, functions, facilities, products and services hereunder will provide for any indemnity, guarantee or assumption of liability by the other Party to this Agreement with respect to such arrangement, except as consented to in writing by the other Party.

23.5 Any subcontractor that gains access to CPNI, Confidential Information or Proprietary Information covered by this Agreement shall be required by the subcontracting Party to protect such CPNI or Proprietary Information to the same extent the subcontracting Party is required to protect such CPNI or Proprietary Information under the terms of this Agreement.

24. ENVIRONMENTAL CONTAMINATION

24.1 Each Party shall be solely responsible at its own expense for the proper handling, use, removal, excavation, storage, treatment, transport, disposal, or any other management by such Party or any person acting on its behalf of all Hazardous Substances and Environmental Hazards introduced to the affected work location and will perform such activities in accordance with Applicable Law.

24.2 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, **SBC-13STATE** shall, at ALLTEL's request, indemnify, defend, and hold harmless ALLTEL, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorneys and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal from the work location of a Hazardous Substance by **SBC-13STATE** or any person acting on behalf of **SBC-13STATE**, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by **SBC-13STATE** or any person acting on behalf of **SBC-13STATE**, or (iii) the presence at the work location of an Environmental Hazard for which **SBC-13STATE** is responsible under Applicable Law or a Hazardous Substance introduced into the work location by **SBC-13STATE** or any person acting on behalf of **SBC-13STATE**.

24.3 Notwithstanding anything to the contrary in this Agreement and to the fullest extent permitted by Applicable Law, ALLTEL shall, at **SBC-13STATE**'s request, indemnify, defend, and hold harmless **SBC-13STATE**, each of its officers, directors and employees from and against any losses, damages, costs, fines, penalties and expenses (including reasonable attorney's and consultant's fees) of every kind and nature to the extent they are incurred by any of those parties in connection with a claim, demand, suit, or proceeding for damages, penalties, contribution, injunction, or any other kind of relief that is based upon, arises out of, is caused by, or results from: (i) the removal or disposal of a Hazardous Substance from the work location by ALLTEL or any person acting on behalf of ALLTEL, or the subsequent storage, processing, or other handling of such Hazardous Substances after they have been removed from the work location, (ii) the Release of a Hazardous Substance, regardless of its source, by ALLTEL or any person acting on behalf of ALLTEL, or (iii) the presence at the work location of an Environmental Hazard for which ALLTEL is responsible under Applicable Law or a Hazardous Substance introduced into the work location by ALLTEL or any person acting on behalf of ALLTEL.

24.4 For the purposes of this agreement, "Hazardous Substances" means 1) any material or substance that is defined or classified as a hazardous substance, hazardous waste, hazardous material, hazardous chemical, pollutant, or contaminant under any federal, state, or local environmental statute, rule, regulation, ordinance or other Applicable Law dealing with the protection of human health or the environment, 2) petroleum, oil, gasoline, natural gas, fuel oil, motor oil, waste oil, diesel fuel, jet fuel, and other petroleum hydrocarbons, or 3) asbestos and asbestos containing material in any form, and 4) any soil, groundwater, air, or other media contaminated with any of the materials or substances described above.

24.5 For the purposes of this agreement, "Environmental Hazard" means 1) the presence of petroleum vapors or other gases in hazardous concentrations in a manhole or other confined space, or conditions reasonably likely to give rise to such concentrations, 2) asbestos containing materials, or 3) any potential hazard that would not be obvious to an individual entering the work location or detectable using work practices standard in the industry.

24.6 For the purposes of this agreement, "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposal, or other movement into 1) the work location, or 2) other environmental media, including but not limited to, the air, ground or surface water, or soil.

25. FORCE MAJEURE

25.1 No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics of a severely debilitating disease (SARS), terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event") or any Delaying Event caused by the other Party or any other circumstances beyond the Party's reasonable control. If a Force Majeure Event shall occur, the Party affected shall give prompt notice to the other Party of such Force Majeure Event specifying the nature, date of inception and expected duration of such Force Majeure Event, whereupon such obligation or performance shall be suspended to the extent such Party is affected by such Force Majeure Event during the continuance thereof or be excused from such performance depending on the nature, severity and duration of such Force Majeure Event (and the other Party shall likewise be excused from performance of its obligations to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable efforts to avoid or remove the cause of nonperformance in a non-discriminatory fashion vis-á-vis other Telecommunications Carriers, including the affected Party's own Affiliates, and the Parties shall give like notice and proceed to perform with dispatch once the causes are removed or cease in a non-discriminatory fashion vis-á-vis other Telecommunications Carriers, including the affected Party's own Affiliates.

26. TAXES

26.1 Each Party purchasing Interconnection, network elements, functions, facilities, products and services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the Interconnection, network elements, functions, facilities, products and services under this Agreement provided by or to such Party, except for (a) any Tax on either Party's corporate existence, status, or income or (b) any corporate franchise Taxes. Taxes shall be billed as a separate item on the invoice.

26.2 With respect to any purchase of Interconnection, network elements, functions, facilities, products and services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

26.3 With respect to any purchase hereunder of Interconnection, network elements, functions, facilities, products and services under this Agreement that are resold to a Third Party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.

26.4 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.

26.5 If the purchasing Party fails to impose any Tax on and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

26.6 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

26.7 If Applicable Law excludes or exempts a purchase of Interconnection, network elements, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, Loss, cost or expense with respect to forbearing to collect such Tax.

26.8 With respect to any Tax or Tax controversy covered by this Section 27, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a

contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

26.9 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 26 shall be sent in accordance with Section 12, "Notices" hereof.

27. NON-WAIVER

27.1 Except as otherwise specified in this Agreement, no waiver of any provision of this Agreement and no consent to any default under this Agreement shall be effective unless the same is in writing and properly executed by or on behalf of the Party against whom such waiver or consent is claimed. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. No course of dealing or failure of any Party to strictly enforce any term, right, or condition of this Agreement in any instance shall be construed as a general waiver or relinquishment of such term, right or condition.

28. NETWORK MAINTENANCE AND MANAGEMENT

28.1 The Parties will work cooperatively to implement this Agreement. The Parties will exchange appropriate information (for example, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, escalation processes, etc.) to achieve this desired result.

28.2 Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. Each Party will provide a 24-hour contact number for network traffic management issues to the other's surveillance management center and a trouble reporting number.

28.3 Each Party maintains the right to implement protective network traffic management controls, such as "cancel to", "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

28.4 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties.

28.5 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users. Facsimile (FAX) numbers must be exchanged by the Parties to facilitate event notifications for planned mass calling events.

28.6 Neither Party shall use any Interconnection, Network Element, function, facility, product or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of **SBC-13STATE**, its affiliated companies or other connecting Telecommunications Carriers, prevents any Telecommunications Carrier from using its Telecommunications Service, impairs the quality or the privacy of Telecommunications Service to other Telecommunications Carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting

Telecommunications Carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence either Party may discontinue or refuse service, but only for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.

28.7 The Parties shall cooperate to establish separate, dedicated Trunks for the completion of calls to high volume End Users.

28.8 ALLTEL and **SBC-13STATE** will work cooperatively to install and maintain a reliable network. ALLTEL and **SBC-13STATE** will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government and such other information as the Parties shall mutually agree) to achieve this desired reliability.

28.9 ALLTEL shall acknowledge calls in accordance with the following protocols.

28.9.1 ALLTEL will provide a voice intercept announcement or distinctive tone signals to the calling party when a call is directed to a number that is not assigned by ALLTEL.

28.9.2 ALLTEL will provide a voice announcement or distinctive tone signals to the calling party when a call has been received and accepted by ALLTEL's MSC.

28.10 When ALLTEL's MSC is not able to complete calls because of a malfunction in the MSC or other equipment, ALLTEL will either divert the call to its operator, or provide a recorded announcement to the calling party advising that the call cannot be completed.

28.11 ALLTEL will provide supervisory tones or voice announcements to the calling party on all calls, consistent with standard telephone industry practices.

28.12 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to comply with the Network Disclosure rules adopted by the FCC in CC Docket No. 96-98, Second Report and Order, codified at 47 C.F.R. 51.325 through 51.335, as such rules may be amended from time to time (the "Network Disclosure Rules").

28.13 ALLTEL agrees to pay **SBC-13STATE** for Time and Materials in all instances where ALLTEL submits a trouble report and **SBC-13STATE**, through investigation and testing, determines that the trouble is outside of the **SBC-13STATE** network. ALLTEL will be billed Time and Material Rate from the appropriate tariff

29. SIGNALING

29.1 Signaling Protocol. SS7 Signaling is **SBC-13STATE**'s preferred method for signaling. Where multi-frequency signaling is currently used, the Parties agree to use their best efforts to convert to SS7. If SS7 services are provided by **SBC-13STATE**, they will be provided in the applicable access tariffs. Where multi-frequency signaling is currently used, the Parties agree, below, to Interconnect their networks using multi-frequency ("MF") or ("DTMF") signaling, subject to availability at the End Office Switch or Tandem Switch at which Interconnection occurs. The Parties acknowledge that the use of MF signaling may not be optimal. **SBC-13STATE** will not be responsible for correcting any undesirable characteristics, service problems or performance problems that are associated with MF/SS7 inter-working or the signaling protocol required for Interconnection with ALLTEL employing MF signaling.

29.2 Parties directly or, where applicable, through their Third Party provider, will cooperate on the exchange of Transactional Capabilities Application Part ("TCAP") messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its End Users. Where available, all CCS signaling parameters will be provided including, without limitation, Calling Party Number ("CPN"), originating line information ("OLI"), calling party category and charge number.

30. TRANSMISSION OF TRAFFIC TO THIRD PARTIES

30.1 ALLTEL will not send to **SBC-13STATE** local traffic that is destined for the network of a Third Party unless ALLTEL has the authority to exchange traffic with that Third Party.

31. END USER INQUIRIES

31.1 Except as otherwise required by Section 32.1, each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

31.2 Except as otherwise required by Section 32.1, each Party will ensure that representatives who receive inquiries regarding the other Party's services:

31.2.1 Provide the number described in Section 33.1 to callers who inquire about the other Party's services or products; and

31.2.2 Do not in any way disparage or discriminate against the other Party or its products or services.

31.3 Except as otherwise provided in this Agreement, ALLTEL shall be the primary point of contact for ALLTEL's End Users with respect to the services ALLTEL provides such End Users.

32. EXPENSES

32.1 Except as expressly set forth in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the matters covered by this Agreement.

32.2 **SBC-12STATE** and ALLTEL shall each be responsible for one-half (1/2) of expenses payable to a Third Party for Commission fees or other charges (including regulatory fees and any costs of notice or publication, but not including attorney's fees) associated with the filing of this Agreement.

33. CONFLICT OF INTEREST

33.1 The Parties represent that no employee or agent of either Party has been or will be employed, retained, or paid a fee, or has otherwise received or will receive any personal compensation or consideration from the other Party, or from any of the other Party's employees or agents, in connection with the negotiation of this Agreement or any associated documents.

34. SURVIVAL OF OBLIGATIONS

34.1 The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement. Without limiting the general applicability of the foregoing, the following terms and conditions of these General Terms and Conditions are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Sections 4.5; 4.6, 5, 6, 7, 9 10, 11, 13, 14, 16, 18.4, 19.3, 25, 27, and 36.

35. SCOPE OF AGREEMENT

35.1 This Agreement is intended to describe and enable specific Interconnection and compensation arrangements between the Parties. This Agreement is the arrangement under which the Parties may purchase from each other the products and services described in Section 251 of the Act and obtain approval of such arrangement under Section 252 of the Act. Except as agreed upon in writing, neither Party shall be required to provide the other Party a function, facility, product, service or arrangement described in the Act that is not expressly provided herein.

35.2 Except as specifically contained herein or provided by the FCC or any Commission within its lawful jurisdiction, nothing in this Agreement shall be deemed to affect any access charge arrangement.

36. AMENDMENTS AND MODIFICATIONS

36.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such amendment or modification is in writing, dated, and signed by authorized representatives of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commission(s). **SBC-12STATE** and ALLTEL shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state.

36.2 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

36.3 If either Party proposes to make any permanent changes in the arrangements provided for in this Agreement, or any Attachments, or any permanent change in its operations that would affect the other Party's operations or services once the Trunks, apparatus, equipment, or any other item furnished by the Parties under this Agreement are installed, the changing Party shall give reasonable advance written notice to the other Party of such changes, advising when such changes will be made. All such changes shall be coordinated with the non-changing Party. Nothing in this Section shall affect the Parties' rights and obligations under this Agreement.

36.4 Subject to specific provisions herein to the contrary, each Party shall be solely responsible, at its expense, for the overall design of its services and for any redesigning or rearrangement of its services that may be required because of changes in Facilities, Trunks, operations or procedures of the other Party, minimum network protection criteria, or operating or maintenance characteristics of the Trunks.

37. AUTHORIZATION

37.1 **SBC-13STATE** represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, that SBC Telecommunications, Inc. has full power and authority to execute and deliver this Agreement as agent for **SBC-13STATE**, and that **SBC-13STATE** has full power and authority to perform its obligations hereunder.

37.2 ALLTEL represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

37.3 Each Party warrants that it has obtained or will obtain prior to operating under this Agreement, all-necessary jurisdictional licenses, authorizations and/or certifications required in those jurisdictions in which it will order services or Facilities or will operate under this Agreement. Upon request, each Party shall provide proof of such licenses, authorizations and/or certification.

38. ENTIRE AGREEMENT

38.1 **SBC-12STATE**

38.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement. This Agreement shall not operate as or constitute a novation of any agreement or contract between the Parties that predates the execution and/or Effective Date of this Agreement.

39. MULTIPLE COUNTERPARTS

39.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but such counterparts together constitute one and the same document.

40. DIALING PARITY

40.1 **SBC-13STATE** agrees that local dialing parity will be available to ALLTEL in accordance with the Act.

41. REMEDIES

41.1 Except as otherwise provided in this Agreement, no remedy set forth herein is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under Applicable Law or otherwise.

42. NUMBERING

42.1 It shall be the responsibility of each Party to program and update its own switches and network systems to recognize and route traffic to the other Party's assigned NPA-NXXs at all times. Neither **SBC-13STATE** nor ALLTEL shall charge each other for changes to switch routing software necessitated by the opening of NPAs or NXXs.

42.2 The Parties shall comply with Central Office Code Assignment Guidelines, as currently specified in INC 95-0407-008, in performing the electronic input of their respective number assignment information into the Routing Database System.

42.3 To the extent that ALLTEL's dedicated NPA-NXX resides at a point in **SBC-13STATE** network, then the Parties shall cooperate to reassign the routing V&H and the Common Language Location Identifier ("CLLI") of dedicated NPA-NXX(s) from **SBC-13STATE**'s Tandems to points within ALLTEL's network as designated by ALLTEL. ALLTEL agrees that it shall use best efforts to complete the reassignment of its dedicated NPA-NXX(s)into its network. The Parties agree to cooperate in order to complete the transfer of all codes no later than the end of twelve months from the Effective Date. Until an NPA-NXX is reassigned, it will continue to be assigned to **SBC-13STATE**'s network as shown in the LERG.

42.4 **SBC-13STATE** will forward a confirmation to ALLTEL in response to ALLTEL's request to add ALLTEL's NPA-NXXs to interconnection trunks, when ALLTEL submits such a request accompanied by the appropriate forms. This NPA-NXX installation request will be treated as a no-charge order.

SBC-13STATE Cellular/PCS Interconnection Agreement Signatures

Alltel Communications, Inc.

Signature: Michael D Rhoda

Name: Michael D Rhoda
(Print or Type)

Title: VP - Business Development
(Print or Type)

Date: 7-28-04

Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, Southwestern Bell Telephone, L. P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin by SBC Telecommunications, Inc., its authorized agent

Signature: Larry B. Cooper

Name: Larry B. Cooper
(Print or Type)

Title: For/ Senior Vice President-
Industry Markets and Diversified Businesses

Date: 07/28/04

OCN # 2281, 2300, 2224

ACNA 2281, 2267, 6547

APPENDIX NIM
(NETWORK INTERCONNECTION METHODS)

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APPENDIX NIM
(NETWORK INTERCONNECTION METHODS)

1. INTRODUCTION

1.1 This Appendix sets forth terms and conditions for Interconnection provided by **SBC-13STATE** and WSP.

1.2 Interconnection shall be provided at a level of quality equal to that which **SBC-13STATE** provides to itself, a subsidiary, an Affiliate, or any other Telecommunications Carrier.

1.3 In the event the Parties deploy new switches after the Effective Date, the Parties will provide reasonable advance notice of such change and will work cooperatively to accomplish all necessary network changes.

1.4 WSP may designate the interface it wants to receive from the following: Trunk Side terminations at voice grade, DS0 or DS1 level.

1.5 WSP and **SBC-13STATE** will interconnect directly at each **SBC-13STATE** Tandem in each LATA in which they exchange Local Calls and Switched Access Services traffic.

1.6 Facilities will be planned for in accordance with the trunk forecasts exchanged between the Parties as described in Appendix ITR

2. POINT OF INTERCONNECTION OPTIONS

2.1 WSP and **SBC-13STATE** shall mutually agree on a POI for each Facility with Trunks utilized to carry traffic between their respective networks. A POI may be located at:

2.1.1 the **SBC-13STATE** Wire Center where the Facilities terminate for WSP to **SBC-13STATE** Authorized Services traffic,

2.1.2 WSP's office, or a point within **SBC-13STATE**'s network where the Facilities terminate(if WSP is outside of **SBC-13STATE**'s network) for **SBC-13STATE** to WSP Authorized Services traffic, or

2.1.3 another, technically feasible location within **SBC-13STATE**'s network.

2.2 A POI shall not be located across a LATA boundary.

3. TERMS AND COMPENSATION FOR USE OF FACILITIES

3.1 Each Party shall be responsible for providing its own or leased transport Facilities to route calls to and from the POI. Each Party may construct its own Facilities, it may purchase or lease these Facilities from a Third Party, or it may purchase or lease these Facilities from the other Party, if available, pursuant to access services tariff or separate contract.

3.2 The Parties will connect their networks using digital Facilities of at least DS–1 transmission rates ("DS-1 Facilities"), where available.

3.3 The following shall apply solely for Facilities connecting the Parties networks dedicated for transport of Authorized Services Interconnection traffic and for transport of Authorized Services Third Party Traffic. Notwithstanding the foregoing, nothing in this Agreement shall be construed as authorizing WSP to use such Facilities to deliver traffic that is destined for a facilities-based Competitive Local Exchange Carrier (CLEC), Incumbent Local Exchange Carrier (ILEC), Commercial Mobile Radio Service (CMRS) provider, or Out-of-Exchange Local Exchange Carrier (OELEC). The Parties must execute a separate agreement for routing of any Third Party Traffic over the facilities described above.

3.3.1 Notwithstanding any other provision of this Agreement, **SBC-13STATE** shall not have dedicated transport obligations over, nor shall it have any obligation to share the cost of, Facilities between the Parties' networks that either cross a LATA boundary.

3.3.2 In calculating the shared cost of Facilities, **SBC-13STATE** is responsible for the proportionate share of the Facilities and/or Trunks used to deliver Local Calls to WSP's network under this Agreement WSP is responsible for the remainder of the shared cost..

3.3.3 Absent agreement of the Parties to the contrary, the cost of shared DS-1 Facilities will be split between the Parties either on relative actual traffic volumes (if the Parties can measure actual traffic volumes in both directions) or, in the absence of actual traffic measurement capabilities, according to the Shared Facility Factor listed in Appendix – Pricing (Wireless). Should the Parties desire to share the cost of Facilities larger than DS-1 Facilities, they will separately negotiate terms for such sharing.

3.3.4 Each Party reserves the right to refuse or discontinue the use of a shared Facilities arrangement provided by the other Party, the Facilities provided directly by the other Party or via a Third Party. This provision does not negate any obligations either Party may have regarding such Facilities, such as but not limited to, term and notice provisions.

3.3.5 When a Party uses its own Facilities (either through self-provisioning, or through the purchase of Facilities from the other Party or from Third Parties) to deliver one-way traffic from its network to the POI, such Party shall provide such Facilities at its sole cost and expense.

3.3.6 When a Party uses Facilities provided by the other Party (either through self provisioning, or through the purchase of Facilities from the other Party or from Third Parties) to deliver traffic from its network that are (a) dedicated to the transmission of Authorized Services traffic between the Parties' networks, and (b) are shared by the Parties, such Party will reimburse the other Party for a proportionate share of the cost of Facilities. Notwithstanding the foregoing, if WSP obtains shared Facilities from a Third Party, nothing herein shall obligate SBC-13STATE to reimburse WSP for those Facilities. SBC will not utilize third party facilities for routing originating traffic to ALLTEL. If SBC desires to utilize third party facilities then the Parties agree to amend this Agreement.

3.3.6.1 If either Party can measure the actual amount of traffic delivered to it in minutes of use over such Facilities the Parties will negotiate compensation arrangements for the allocation of the cost of such Facilities. **SBC-13STATE**'s use of such Facilities is equal to the amount of traffic originated on its network and terminated on WSP's network; WSP's use of such Facilities and/or Trunks is the sum of the following: (1) the amount of traffic originated on WSP's network delivered to **SBC-13STATE**'s network, and (2) the amount of Transit Traffic delivered to WSP's network by **SBC-13STATE**.

3.3.6.2 If the Parties can not measure the actual amount of traffic delivered in both directions over such Facilities and/or Trunks, or cannot distinguish Local Calls from all other traffic in the land-to-mobile direction, during the term hereof (in order to calculate the actual proportion of usage of such Facilities and/or Trunks by each Party), the Party, who is delivering Interconnection traffic originating on its network through Facilities and/or Trunks provided by the other Party, shall pay to the other Party providing such Facilities and/or Trunks its share of the costs of such Facilities and/or Trunks utilizing the Shared Facility Factor set forth in Appendix – Pricing (Wireless) which represents **SBC 13-STATE**'s share of the cost; provided, however, that either Party may submit to the other Party a traffic study, a reasonable estimate of its traffic with supporting justification for such estimate, and/or other network information in complete and appropriate form (determined in good faith)("Shared Facility Information") that the Parties will use to negotiate in good faith a different WSP-specific Shared Facility Factor. In computing the Shared Facility Factor, the amount of Local Calls originated on **SBC 13-STATE**'s network and terminated on WSP's network, shall be compared to the sum of all other traffic exchanged between the Parties. The Shared Facility Information must be WSP-specific and relate to WSP's network in the State; it shall not be based on industry average data or the data of other Telecommunications Carriers. If such Shared Facility Information is provided within ninety (90) Days after the date this Agreement is executed by duly authorized representatives of both Parties, then any WSP-specific Shared Facility Factor derived using such Shared Facility Information shall be effective as of

the date on which the Shared Facility Information was provided in complete and appropriate form (determined in good faith) to the other Party, but no earlier than the Effective Date of this Agreement; otherwise, the WSP-specific Shared Facility Factor will be effective as of the date the Shared Facility Information was provided in complete and appropriate form (determined in good faith) to the other Party. Any WSP-specific Shared Facility Factor that becomes effective during the Initial Term of the Agreement will remain in effect during the Initial Term of the Agreement. After the expiration of the Initial Term hereof, such WSP-specific Shared Facility Factor established during the Initial Term shall remain in effect thereafter unless either Party provides new Shared Facility Information to the other Party. In such case, the Parties shall use that new WSP-specific Shared Facility Information to renegotiate in good faith a new revised WSP-specific Shared Facility Factor. Renegotiation of the WSP-specific Shared Facility Factor shall occur no more frequently than once every twelve months.

4. ANCILLARY SERVICES TRAFFIC

4.1 When delivering Ancillary Services traffic to **SBC-13STATE**, WSP shall provide Facilities and connections in each LATA dedicated solely for Ancillary Services traffic. Ancillary Service traffic requires a dedicated DS-1 Facility. The connection used must be an Ancillary Services Connection.

4.2 For the provision of 911 and/or E911 Services, WSP may provide its own Facilities or purchase Facilities from a Third Party to connect its network with **SBC-13STATE**'s 911 Tandem. Alternatively, WSP may purchase appropriate Facilities from **SBC-13STATE**'s applicable Access Services Tariff.

4.2.1 This Section 4.2.1 applies only in states where Type 2C interfaces are generally available from **SBC-13STATE**. As a further alternative in such states, WSP may purchase Facilities employing a Type 2C interface from **SBC-13STATE** at rates found in the special access service section of **SBC-13STATE**'s Intrastate Access Services Tariff.

5. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

5.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; general responsibilities of the Parties; effective date, term and termination; billing and payment of charges; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; confidentiality; intervening law; governing law; regulatory approval; changes in End User local Exchange Service provider selection; compliance and certification; law enforcement and civil process; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency; assignment; subcontracting; environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; End User inquiries; expenses; conflict of interest; survival of obligations, scope of agreement; amendments and modifications; and entire agreement.

APPENDIX ITR
(Interconnection Trunking Requirements)

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APPENDIX ITR
(INTERCONNECTION TRUNKING REQUIREMENTS)

1. INTRODUCTION

1.1 This Appendix provides descriptions of the trunking requirements between ALLTEL and **SBC-13STATE**. The paragraphs herein describe the required and optional Interconnection Trunk Groups for local/intraLATA, IXC trunks, mass calling, 911/E911, Operator Services and Directory Assistance traffic.

1.2 **SBC-13STATE** and ALLTEL exchange traffic over their networks in connection with ALLTEL's Authorized Services in accordance with the provisions of this Agreement. ALLTEL shall deliver all Interconnection traffic destined to terminate on **SBC-13STATE**'s network through Interconnection Trunks obtained pursuant to this Agreement. This Agreement is not intended to allow for the exchange of Paging Traffic between the Parties' respective networks. If the Parties have Paging Traffic to exchange, a separate interconnection agreement must be negotiated to address that traffic.

2. TRUNKING DESCRIPTIONS

2.1 Type 1: Provides a one**-**way Trunk Side connection between an **SBC-13STATE** end office and ALLTEL's network. Type 1 Trunks will be used solely for the transmission and routing of Ancillary Services traffic.

2.2 Type 2A: Provides a Trunk Side connection between an **SBC-13STATE** Tandem Switch and ALLTEL's network. ALLTEL to **SBC-13STATE** traffic on such an Interconnection Trunk Group must be destined for an NPA-NXX residing in an **SBC-13STATE** End Office Switch that homes on that **SBC-13STATE** Tandem Switch. Type 2A Trunks can be one-way or two-way.

2.3 Type 2A Local/Equal Access Combined Trunk Group: Provides a Trunk Side connection between ALLTEL's network and an **SBC-7STATE** Access Tandem. Local/Equal Access Trunk Groups carry interexchange access traffic and local traffic. This Trunk Group requires an interface utilizing equal access signaling.

2.4 Type 2A Equal Access Trunk Group: Provides a Trunk Side connection between ALLTEL's network and an **SBC-13STATE** Access Tandem. Equal Access Trunk Groups carry interexchange access traffic. This Trunk Group requires an interface utilizing equal access signaling.

2.4.1 In **SBC MIDWEST REGION 5-STATE** and **SBC SOUTHWEST REGION 5-STATE**, a separate Type 2A Equal Access Trunk Group is required when **SBC MIDWEST REGION 5-STATE** and **SBC SOUTHWEST REGION 5-STATE** is not able to record ALLTEL-originated traffic to an IXC. ALLTEL will also provide to **SBC MIDWEST REGION 5-STATE** and **SBC SOUTHWEST REGION 5-STATE**, using industry standard data record formats, recordings of all calls (both Completed Calls and attempts) to IXCs from ALLTEL's network using Trunks employing a Type 2A connection.

2.5 Type 2B: Provides a Trunk Side connection between ALLTEL's network and **SBC-12STATE** End Office Switch providing the capability to access only subscribers served by that End Office Switch. Type 2B is a one-way mobile- to-land or land-to-mobile trunk group (and two-way, where available) and is available where facilities and equipment permit. Type 2B is not offered at DMS 10, Ericsson and 1AESS switches.

2.6 Type 2C: Provides a one-way terminating Trunk Side connection between ALLTEL's MSC and **SBC-13STATE**'s 911 Tandem equipped to provide access to E911 services.

2.7 Type 2D: Provides a direct voice-grade transmission path to a LEC Operator Services System (OSS) switch.

2.7.1 Directory Assistance and/or Operator Services traffic may be delivered through a dedicated Trunk Group to an **SBC-13STATE** Operator Services switch.

3. TRUNK REQUIREMENTS

3.1 Trunk Groups for the exchange of Authorized Services will be established between the Parties switches.

3.2 ALLTEL shall trunk to all **SBC-13STATE** Tandems in each LATA from each MSC where ALLTEL desires to exchange local and intraLATA traffic or, in the event ALLTEL has no MSC in the LATA, from ALLTEL's designated POI(s) within the LATA. If ALLTEL obtains Facilities from **SBC-13STATE,** ALLTEL will not be required to pay for the facility to each tandem until the traffic *requires twenty-four (24) or more trunks*. Once the traffic *requires twenty-four (24) or more trunks* , ALLTEL and SBC will follow the shared facility provision set forth in Attachment Network Interconnection Methods (NIM) section 3.3.6.2.

3.3 **SBC-13STATE** provided Type 1 interfaces will be as described above. Any non-Trunk Side Message Treatment (TSMT) form of Type 1 interface will be eliminated within ninety (90) Days of the Effective Date.

3.4 Direct End Office Trunking

3.4.1 The Parties shall establish a one-way mobile-to-land or land-to-mobile DEOT when actual or projected total end office traffic requires twenty-four (24) or more Trunks (500 Centum Call Seconds "CCS") for 3 consecutive months. If the DEOT is designed to overflow, the traffic will be alternate routed to the appropriate **SBC-13STATE** Tandem. DEOT's established as direct finals will not overflow from either direction to any alternate route. If Alltel chooses to open an NPA/NXX, port a number, or a pool a number that is rated as local to an SBC End Office Switch that does not sub-tend an **SBC-13STATE** Tandem for local calling, Alltel shall establish a direct final DEOT to such SBC End Office Switch.

3.4.2 The Party's may establish or will migrate from one-way to two-way DEOT's when the two-way service becomes available in each **SBC-13STATE** location.

3.4.3 ALLTEL shall establish DEOTs in accordance with 3.4.1 within thirty (30) days of notice from SBC-13STATE.

3.5 High Volume Call In (HVCI) / Mass Calling (Choke) Trunk Group: **SBC-12STATE**

3.5.1 A dedicated Trunk Group shall be required to the designated Public Response HVCI/Mass Calling Network Access Tandem in each serving area. This Trunk Group shall be one-way outgoing only and shall utilize MF signaling. As the HVCI/Mass Calling Trunk Group is designed to block all excessive attempts toward HVCI/Mass Calling NXXs, it is necessarily exempt from the one percent blocking standard described elsewhere for other final local Interconnection Trunk Groups. ALLTEL will have administrative control for the purpose of issuing ASRs on this one-way Trunk Group. The Parties will not exchange live traffic until successful testing is completed by both Parties.

3.5.1.1 This Trunk Group shall be sized as follows:

Number of End Users	***Number of Mass Calling Trunks***
0 – 10,000	*2*
10,001 – 20,000	*3*
20,001 – 30,000	*4*
30,001 – 40,000	*5*
40,001 – 50,000	*6*
50,001 – 60,000	*7*
60,001 – 75,000	*8*
75,000 +	*9 maximum*

3.5.2 If ALLTEL should acquire a HVCI/Mass Calling End User (*e.g.*, a radio station), ALLTEL shall notify **SBC-12STATE** at least sixty (60) Days in advance of the need to establish a one-way outgoing SS7 or MF Trunk Group from the **SBC-12STATE** HVCI/Mass Calling Serving Office to the ALLTEL End User's serving office. ALLTEL will have administrative control for the purpose of issuing ASRs on this one-way Trunk Group.

3.5.2.1 If ALLTEL finds it necessary to issue a new choke telephone number to a new or existing HVCI/Mass Calling End User, the ALLTEL may request a meeting to coordinate with **SBC-12STATE** the assignment of HVCI/Mass Calling telephone number from the existing choke NXX. In the event that the ALLTEL establishes a new choke NXX, ALLTEL must notify

SBC-12STATE a minimum of ninety (90) Days prior to deployment of the new HVCI/Mass Calling NXX. **SBC-12STATE** will perform the necessary translations in its end offices and Tandem(s) and issue ASR's to establish a one-way outgoing SS7 or MF trunk group from the **SBC-12STATE** Public Response HVCI/Mass Calling Network Access Tandem to the ALLTEL's choke serving office.

3.6 911/E911

3.6.1 See Appendix Wireless Emergency Number Services Access (E911) for trunk requirements.

4. TRUNK FORECASTING

4.1 ALLTEL agrees to provide Trunk forecasts to assist in the planning and provisioning of Interconnection Trunk Groups and Facilities.

4.2 ALLTEL will provide a Trunk forecast prior to initial implementation, and subsequent forecasts will be provided to **SBC-13STATE** upon request, as often as twice a year. The forecast shall include yearly forecasted Trunk quantities (which include measurements that reflect actual Tandem local Interconnection and InterLATA Trunks, end office local Interconnection Trunks, and Tandem subtending local Interconnection end office equivalent Trunk requirements) for a minimum of three (current plus 2 future) years.

4.3 Revised Trunk forecasts will be provided by ALLTEL whenever there are significant increases or decreases in trunking demand than reflected in previously submitted forecasts.

4.4 Trunk forecasts shall include yearly forecasted Trunk quantities by Tandem and subtending end offices. Identification of each Trunk will be by the "from" and "to" Common Language Location Identifiers (CLLI), as described in Telcordia Technologies documents BR 795-100-100 and BR 795-400-100.

4.5 The Parties agree to meet to review each submitted forecast, if deemed necessary by the Parties.

5. TRUNK PROVISIONING

5.1 ALLTEL will be responsible for ordering all Interconnection Trunk Groups.

5.2 Orders from ALLTEL to **SBC-13STATE** to establish, add, change, or disconnect Trunks shall be submitted using **SBC-13STATE**'s applicable ordering system. Two-way Trunk Groups may only be used for the delivery of traffic in both directions.

5.3 Orders that comprise a major project that directly impacts the other Party will be jointly planned and coordinated. Major projects are those that require the coordination and execution of multiple orders, or related activities between and among **SBC-13STATE** and ALLTEL work groups, including but not limited to the initial establishment of Trunk Groups in an area, designated NPA-NXX relocations, re-homes, facility grooming or major network rearrangements.

5.4 Due dates for the installation of Trunk Groups covered by this Appendix shall be based on each of the **SBC-13STATE**'s intrastate switched access intervals.

5.5 Trunk Servicing

5.5.1 The Parties will jointly manage the capacity of Trunk Groups. A Trunk Group Service Request (TGSR) will be sent by **SBC-13STATE** to notify the ALLTEL to establish or make modifications to existing Trunk Groups. ALLTEL will issue an ASR to **SBC-13STATE**'s Wireless Access Service Center, to begin the provisioning process:

5.5.1.1 Within ten (10) Business Days after receipt of the TGSR or other notification; or

5.5.1.2 At any time as a result of ALLTEL's own capacity management assessment.

5.5.2 Upon review of the TGSR, if a Party does not agree with the resizing, the Parties will schedule a joint planning discussion to take place and conclude within twenty (20) Business Days of ALLTEL's

receipt of the TGSR. At the joint planning discussion, the Parties will resolve and mutually agree to the disposition of the TGSR.

5.5.3 If **SBC-13STATE** does not receive an ASR, or if the ALLTEL does not respond to the TGSR by scheduling a joint discussion within the twenty (20) Business Day period, **SBC-13STATE** will attempt to contact ALLTEL to schedule a joint planning discussion. If ALLTEL will not agree to meet within an additional five (5) Business Days and present adequate reason for keeping Trunks operational, **SBC-13STATE** will issue an ASR to resize the Interconnection Trunks and Facilities.

5.6 Trunk servicing responsibilities for Operator Services trunks used for stand-alone Operator Service or Directory Assistance are the sole responsibility of the ALLTEL.

5.7 Utilization

5.7.1 Underutilization of Trunks exists when provisioned capacity is greater than the current need. This over provisioning is an inefficient deployment and use of network resources and results in unnecessary costs. Those situations where more capacity exists than actual usage requires will be handled in the following manner:

5.7.1.1 If a Trunk group is under seventy-five percent (75%) of busy hour centum call seconds (ccs) capacity on a monthly average basis for each month of any consecutive three (3) month-period, either Party may request to have the Trunk Group resized, the Trunk Group shall not be left with more than twenty-five percent (25%) excess capacity. Neither Party will unreasonably refuse a request to resize the Trunk Group. In all cases, grade of service objectives shall be maintained.

5.7.1.2 If an alternate final Trunk Group is at seventy-five percent (75%) utilization or greater, a TGSR may be sent to the ALLTEL for the final and all subtending high usage Trunk Groups that are contributing a DS1 or greater amount of overflow to the final route.

5.8 Design Blocking Criteria

5.8.1 Trunk requirements for forecasting and servicing shall be based on the blocking objectives shown in Table 1. Trunk requirements shall be based upon time consistent average busy season busy hour twenty (20) Day averaged loads applied to industry standard Neal-Wilkinson Trunk Group Capacity algorithms (use Medium day-to-day Variation and 1.0 Peakedness factor until actual traffic data is available) for all final Trunk Groups.

TABLE 1

Trunk Group Type	Design Blocking Objective
Type 2A	1%
Type 2A Equal Access (IXC)	0.5%
Type 2B (Final)	2%
Type 2C (911)	1%
Type 2D (Operator Services (DA/DACC))	1%
Type 1 (Operator Services (0+, 0-))	1%

5.8.2 When Trunks exceed measured blocking thresholds on an average time consistent busy hour for a twenty (20) Business Day study period, the Parties shall cooperate to increase the Trunks to the above blocking criteria in a timely manner. The Parties agree that twenty (20) Business Days is the study period duration objective.

6. ROUTING & RATING

6.1 Each NPA-NXX must have a single Rating Point and that Rating Point must be associated with a **SBC-13STATE** End Office Switch or other end office switches sub-tending the **SBC-13STATE** Tandem Switch where a Type 2A Trunk Group is located or the End Office Switch where a Type 2B or Type 1 Trunk Group is located; provided however, that the Rating Point may be designated anywhere in the LATA when the

Commission so rules in a proceeding binding **SBC-13STATE**. The Rating Point does not have to be the same as the Routing Point.

6.2 All terminating traffic delivered by ALLTEL to a Tandem Switch destined for publicly dialable NPA-NXXs that do not home on that Tandem Switch is misrouted. **SBC-13STATE** shall provide notice to ALLTEL pursuant to the Notices provisions of this Agreement that such misrouting has occurred. In the notice, ALLTEL shall be given thirty (30) Days to cure such misrouting or such traffic may be blocked.

6.3 The Parties shall deliver all traffic destined for the other Party's network in accordance with the serving arrangements defined in the LERG.

6.4 For Type 2 Trunk Groups (*i.e.*, Type 2A and Type 2B), ALLTEL will obtain its own NXX codes from the administrator and will be responsible for: (a) LERG administration, including updates, and (b) all Code opening information necessary for routing traffic on these Trunk Groups.

6.5 If either Party originates Local Calls traffic destined for termination to the other Party, but delivers that traffic to the other Party using the Facilities of a Third Party Telecommunications Carrier, the terminating Party shall be entitled to charge transport and termination rates as set forth in Appendix-Pricing (Wireless) to the originating Party. Any charges imposed by the Third Party Telecommunications Carrier are the responsibility of the originating Party. Notwithstanding any other provision in this Agreement, neither Party is responsible for payment of such transport and termination rates for traffic destined to the other Party when the calling party is the end user of an IXC and not the End User of a Party for the call, or when an IXC delivers traffic directly to the network of the terminating Party and such IXC is subject to terminating access charges imposed by the terminating Party.

6.6 ALLTEL shall not route over the Interconnection Trunks provided pursuant to this Agreement terminating traffic it receives from or through an IXC that is destined for **SBC-13STATE**'s End Office Switches.

6.7 ALLTEL shall not deliver traffic to **SBC-13STATE** under this Agreement from a non-CMRS Telecommunications Carrier.

6.8 All traffic received by **SBC-13STATE** at an End Office Switch from the ALLTEL must terminate to that end office. End Offices Switches do not perform Tandem-switching functions.

7. TRUNK DATA EXCHANGE

7.1 A Trunk Group utilization report (TIKI) is available upon request. The report is provided in MS-Excel format.

8. TRANSMISSION AND ROUTING OF AND COMPENSATION FOR EXCHANGE ACCESS SERVICE PURSUANT TO SECTION 251(c)(2)

8.1 This Section 7 provides the terms and conditions for the exchange of traffic between Carrier's End Users and **SBC-13STATE**'s End Users for the transmission and routing of and compensation for switched access traffic.

8.2 IXC Traffic.

8.2.1 All traffic between Carrier and the **SBC-13STATE** Access Tandem or combined local/Access Tandem destined to be routed to, or that has been routed from, an interexchange carrier ("IXC") connected with such **SBC-13STATE** Access Tandem or combined local/Access Tandem shall be transported over an Equal Access trunk group. This arrangement requires a separate Trunk Group employing a Type 2 interface when **SBC-13STATE** is not able to record ALLTEL-originated traffic to an IXC. ALLTEL will also provide to **SBC-13STATE**, using industry standard data record formats, recordings of all calls (both completed calls and attempts) to IXCs from ALLTEL's network using Trunks employing a Type 2A interface. This Equal Access trunk group will be established for the transmission and routing of all traffic between Carrier's End Users and IXCs via an **SBC-13STATE** Access Tandem or combined local/Access Tandem. Carrier is solely financially responsible for the facilities, termination, muxing, trunk ports and any other equipment used to provide such Equal Access trunk groups.

8.3 Traffic Subject to Access Charges

8.3.1 Terminating Switched Access Traffic

8.3.1.1 All Terminating Switched Access Traffic is subject to the rates, terms and conditions set forth in **SBC-13STATE**'s Federal and/or State Access Service tariffs and payable to **SBC-13STATE**. Terminating Switched Access Traffic must be routed over Switched Access trunks and facilities purchased from **SBC-13STATE**'s Federal and/or State Access Service tariffs.

8.3.1.2 Terminating Switched Access traffic shall not be routed at any time over Local Interconnection or Equal Access Interconnection trunks. Notwithstanding any other provision of this Agreement, for all traffic sent over Local Interconnection or Equal Access trunks determined by the Telco to be terminating switched access, based on sample data from T **SBC-13STATE** network studies, **SBC-13STATE** **13STATE** shall notify ALLTEL in writing of this misrouting. If ALLTEL doesn't respond within 30 days from the date of notice and **SBC-13STATE** is authorized to charge, and Carrier will pay, the Terminating IntraLATA InterMTA traffic rate stated in Appendix Pricing – Wireless for such traffic retroactively to the Effective Date of this Agreement (however, the Parties do not waive any rights with regard to exchange of traffic prior to the Effective Date).

8.3.2 Terminating IntraLATA InterMTA Traffic

8.3.2.1 This traffic is routed over the Local Interconnection trunks within the LATA.

8.3.2.1.1 For the purpose of compensation between **SBC-13STATE** and, Carrier under this Agreement, Terminating IntraLATA InterMTA Traffic is subject to the rate stated in Appendix Pricing – Wireless. **SBC-13STATE** shall charge and Carrier shall pay the rate stated in Appendix Pricing – Wireless for all Terminating IntraLATA InterMTA Traffic terminated to **SBC-13STATE** End Users.

If such traffic cannot be measured on a per MOU basis, a Terminating IntraLATA InterMTA Traffic percentage will be applied.

The percentage shall be applied to the total minutes terminated to **SBC-13STATE** End Users over Carrier's Local Interconnection trunks. As of the Effective Date of this Agreement, the percentage is 1%. The Terminating IntraLATA InterMTA percentage shall remain in effect for the initial term of the Agreement. A new calculation of the percentage of Terminating IntraLATA InterMTA Traffic shall occur no more frequently than once every twelve (12) months.

8.3.4 Originating Landline to CMRS Switched Access Traffic

8.3.4.1 This traffic is routed over the Local Interconnection trunks.

8.3.4.2 For the purpose of compensation between **SBC-13STATE** and Carrier under this Section, Originating Landline to CMRS Switched Access Traffic is subject to the Originating Landline to CMRS Switched Access Traffic rates stated in Appendix Pricing – Wireless. **SBC-13STATE** is authorized to charge and Carrier shall pay the rates stated in Appendix Pricing – Wireless on a per MOU basis for all Originating Landline to CMRS Switched Access Traffic from **SBC-13STATE** End Users.

8.3.4.3 An Originating Landline to CMRS Switched Access traffic percentage will be developed from the Parties' records based on the V & H coordinates of the Cell Site to which the Carrier's End User's mobile unit is connected at the beginning of the call. These records will be obtained from the Carrier's databases. The percentage will be based on the following formula:

*Telco originated MOU delivered by Telco to Carrier's network that terminate InterMTA divided by all Telco originated MOU delivered by **SBC-13STATE** to Carrier's network.*

8.3.4.4 The Parties Agree that as of the Effective Date, the Originating Landline to CMRS Switched Access percentage is 4%, and such percentage shall remain in effect until a successive Originating Landline to CMRS Switched Access percentage is developed. No sooner than one year from the Effective Date and no more frequently than once every twenty-four (24) months thereafter, either Party may request an audit to develop a successive Originating Landline to CMRS Switched Access traffic percentage. Within thirty (30) Days of the notice of either Party's desire to Audit, unless otherwise agreed, the Parties shall retain a mutually acceptable third party who shall be allowed to conduct an Audit of the Parties' records (to obtain and verify the data necessary for this formula) to be completed within ninety (90) Days of an Audit request. The Parties shall share the costs of the third party audit equally.

8.3.4.5 The percentage shall be applied to the total minutes originated by **SBC-13STATE**'s End Users delivered to Carrier's network over Carrier's Local Interconnection Trunks.

8.4 Both Parties agree to abide by the resolution for OBF Issue 2308-Recording and Signaling Changes Required to Support Billing.

9. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

9.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; general responsibilities of the Parties; effective date, term and termination; billing and payment of charges; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; confidentiality; intervening law; governing law; regulatory approval; changes in End User local Exchange Service provider selection; compliance and certification; law enforcement and civil process; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency; assignment; subcontracting; environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; End User inquiries; expenses; conflict of interest; survival of obligations, scope of agreement; amendments and modifications; and entire agreement.

APPENDIX
CELLULAR/PCS
EMERGENCY SERVICE ACCESS (E9-1-1)

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CELLULAR/PCS EMERGENCY SERVICE ACCESS (E9-1-1)

1. INTRODUCTION

1.1 This Appendix sets forth terms and conditions for 911 Service Access provided by the applicable SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier (ILEC) to Wireless Carriers for access to the applicable SBC-owned ILEC's 911 and E911 Databases, and interconnection to an SBC-owned ILEC' 911 Selective Router for the purpose of Call Routing of 911 calls completion to a Public Safety Answering Point (PSAP) as required by Section 251 of the Act.

1.2 Wireless E911 Service Access is a service which enables Carrier's use of **SBC-13STATE** 911 network service elements which **SBC-13STATE** uses in the provision of E911 Universal Emergency Number/ 911 Telecommunications Services, where **SBC-13STATE** is the 911 service provider. E911 Authority purchases Universal Emergency Number/911 Telecommunications Service from **SBC-13STATE**. Wireless E911 Service Access makes available to Carrier only the service configuration purchased by the E911 Authority from **SBC-13STATE**. **SBC-13STATE** shall provide Wireless E911 Service Access to Carrier as described in this Appendix, in each area in which (i) Carrier is authorized to provide CMRS and (ii) **SBC-13STATE** is the 911 service provider. The Federal Communications Commission has, in FCC Docket 94-102, ordered that providers of CMRS make available to their end users certain E9-1-1 services, and has established clear and certain deadlines and by which said service must be available. Wireless E911 Service Access is compatible with Carrier's Phase I and Phase II E911 obligations.

1.3 **SBC Communications Inc**. **(SBC)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.

1.4 **SBC-2STATE** - As used herein, **SBC-2STATE** means **SBC CALIFORNIA** and **SBC NEVADA**, the applicable SBC-owned ILEC(s) doing business in California and Nevada.

1.5 **SBC-13STATE** - As used herein, **SBC-13STATE** means **SBC SOUTHWEST REGION 5-STATE, SBC SOUTHWEST REGION 5-STATE, SBC-2STATE** and **SBC CONNECTICUT,** the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

1.6 **SBC CALIFORNIA** – As used herein, **SBC CALIFORNIA** means Pacific Bell Telephone Company d/b/a SBC California, the applicable SBC-owned ILEC doing business in California.

1.7 **SBC CONECTICUT** - As used herein, **SBC CONNECTICUT** means The Southern New England Telephone Company d/b/a SBC Connecticut, the applicable above listed ILEC doing business in Connecticut.

1.8 **SBC MIDWEST REGION 5-STATE** - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, The Ohio Bell Telephone Company d/b/a SBC Ohio, and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin, the applicable SBC-owned ILEC(s) doing business in Illinois, Indiana, Michigan, Ohio, and Wisconsin.

1.9 **SBC NEVADA** - As used herein, **SBC NEVADA** means Nevada Bell Telephone Company d/b/a SBC Nevada, the applicable SBC-owned ILEC doing business in Nevada.

1.10 **SBC SOUTHWEST REGION 5-STATE** - As used herein, **SBC SOUTHWEST REGION 5-STATE** means Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas, the applicable above listed ILEC(s) doing business in Arkansas, Kansas, Missouri, Oklahoma, and Texas.

1.11 The prices at which **SBC-13STATE** agrees to provide Carrier with E911 Service Access is contained in the applicable Appendix Pricing and/or the applicable State Access Services tariff where stated.

2. DEFINITIONS

2.1 "**911 System**" means the set of network, database and customer premise equipment (CPE) components required to provide 911 service.

2.2 "**911 Call(s)"** means a call made by an Carrier's Wireless End User by dialing "911" (and, as necessary, pressing the "Send" or analogous transmitting button) on a Wireless Handset.

2.3 **"Alternate PSAP"** means a Public Safety Answering Point (PSAP) designated to receive calls when the primary PSAP is unable to do so.

2.4 **"Automatic Location Identification"** or **"ALI"** means the necessary location data stored in the 911 Selective Routing/ALI Database, which is sufficient to identify the tower and/or face from which a wireless call originates.

2.5 **"Automatic Location Identification Database"** or **"ALI Database**" means the emergency service (E911) database containing caller information. Caller information may include, but is not limited to, the carrier name, Call Back Number, and Cell Site/Sector Information.

2.6 **"Automatic Number Identification"** or **"ANI"** means a signaling parameter that refers to the number transmitted through a network identifying a pANI. With respect to 911 and E911, "ANI" means a feature by which the pANI is automatically forwarded to the 911 Selective Routing Switch and to the PSAP's Customer Premise Equipment (CPE) for display.

2.7 **"Call Back Number"** means the Mobile Identification Number (MIN) or Mobile Directory Number (MDN), whichever is applicable, of a Carrier's Wireless End User who has made a 911 Call, which may be used by the PSAP to call back the Carrier's Wireless End User if a 911 Call is disconnected, to the extent that it is a valid, dialable number.

2.8 **"Call path Associated Signaling" or "CAS"** means a wireless 9-1-1 solution set that utilizes the voice transmission path to also deliver the Mobile Directory Number (MDN) and the caller's location to the PSAP.

2.9 **"Centralized Automatic Message Accounting (CAMA) Trunk"** means a trunk that uses Multi-Frequency (MF) signaling to transmit calls from the Carrier's switch to an **SBC-13STATE** E911 Selective Router.

2.10 **"Cell Sector"** means a geographic area defined by Carrier (according to Carrier's own radio frequency coverage data), and consisting of a certain portion or all of the total coverage area of a Cell Site.

2.11 **"Cell Sector Identifier"** means the unique alpha or alpha-numeric designation given to a Cell Sector that identifies that Cell Sector.

2.12 **"Cell Site/Sector Information"** means information that indicates to the receiver of the information the Cell Site location receiving a 9l1 Call made by a Carrier's Wireless End User, and which may also include additional information regarding a Cell Sector.

2.13 **"Common Channel Signaling/Signaling System 7 Trunk"** or **"CCS/SS7 Trunk** or **SS7 Signaling"** means a trunk that uses Integrated Services Digital Network User Part (ISUP) signaling to transmit ANI from Carrier's switch to an **SBC-13STATE** 911 Selective Routing Tandem.

2.14 **"Company Identifier"** or **"Company ID"** means a three to five (3 to 5) character identifier chosen by the Carrier that distinguishes the entity providing dial tone to the End User. The Company ID is maintained by NENA in a nationally accessible database.

2.15 **"Database Management System"** or **"DBMS"** means a system of manual procedures and computer programs used to create, store and update the data required to provide Selective Routing and/or ALI for 911 systems.

2.16 **"Designated PSAP"** means the PSAP designated to receive a 911 Call based upon the geographic location of the Cell Site. A "Default PSAP" is the PSAP designated to receive a 911 Call in the event the Selective Router is unable to determine the Designated PSAP. The "Alternate PSAP" is the PSAP that may receive a 911 Call in the event the Designated PSAP is unable to receive the 911 call.

2.17 **"E911 Authority"** means a municipality or other State or Local government unit, or an authorized agent of one or more municipalities or other State or Local government units to whom authority has been lawfully as the administrative entity to manage a public emergency telephone system for emergency police, fire, and emergency medical services through the use of one telephone number, 911.

2.18 **"E911 Service"** means the functionality to route wireless 911 calls and the associated caller and/or location data of the wireless end user to the appropriate Public Safety Answering Point.

2.19 **"E911 Trunk"** means one-way terminating circuits which provide a trunk-side connection between Carrier's MSC and **SBC-13STATE** 911 Tandem equipped to provide access to 911 services as technically defined in Telcordia Technical Reference GR145-CORE.

2.20 **"E911 Universal Emergency Number Service"** (also referred to as "Expanded 911 Service" or "Enhanced 911 Service") or **"E911 Service"** means a telephone exchange communications service whereby a PSAP answers telephone calls placed by dialing the number 911. E911 includes the service provided by the lines and equipment associated with the service arrangement for the answering, transferring, and dispatching of public emergency telephone calls dialed to 911. E911 provides completion of a call to 911 via dedicated trunks and includes ANI, ALI, and/or Selective Routing (SR).

2.21 **"Emergency Services"** means police, fire, ambulance, rescue, and medical services.

2.22 **"Emergency Service Routing Digits"** or **"ESRD"** is a digit string that uniquely identifies a base station, Cell Site, or sector that may be used to route emergency calls through the network in other than an NCAS environment.

2.23 **"Emergency Service Routing Key"** or **"ESRK"** is a 10 digit routable, but not necessarily dialable, number that is used not only for routing but also as a correlator, or key, for the mating of data that is provided to the PSAP (a.k.a. 911 Center) by different paths, such as via the voice path and ALI data path in an NCAS environment.

2.24 **"Hybrid CAS"** means a wireless 9-1-1 solution set that utilizes one transmission path to deliver the voice and Mobile Directory Number (MDN) to the PSAP and a separate transmission path to deliver the callers location information to the PSAP.

2.25 **"Meet Point"** means the demarcation between the **SBC-13STATE** network and the Carrier network.

2.26 **"Mobile Directory Number"** or **"MDN"** means a 10-digit dialable directory number used to call a Wireless Handset.

2.27 **"Mobile Identification Number"** or **"MIN"** means a 10-digit number assigned to and stored in a Wireless Handset.

2.28 **"National Emergency Number Association"** or **"NENA"** means the not-for-profit corporation established in 1982 to further the goal of "One Nation-One Number". NENA is a networking source and promotes research, planning, and training. NENA strives to educate, set standards and provide certification programs, legislative representation and technical assistance for implementing and managing 911 systems.

2.29 **"Non-Call path Associated Signaling"** or **"NCAS"** means a wireless 9-1-1 solution set that utilizes one transmission path to deliver the voice and a separate transmission path to deliver the Mobile Directory Number and the caller's location to the PSAP.

2.30 **"Phase I"** – as defined in CC Docket 94-102. Phase I data includes the Call Back Number and the associated 911 ALI.

2.31 **"Phase II"** – as defined in CC Docket 94-102. Phase II data includes XY coordinates, confidence factor and certainty

2.32 **"Public Safety Answering Point"** or **"PSAP"** means an answering location for 911 calls originating in a given area. The E911 Authority may designate a PSAP as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs answer calls; secondary PSAPs receive calls on a transfer basis. PSAPs are public safety agencies such as police, fire, emergency medical, etc., or a common bureau serving a group of such entities.

2.33 **"Pseudo Automatic Number Identification (pANI)"** is a 10-digit telephone number used to support routing of wireless 911 calls. It is used to identify the Cell Site and/or cell sector from which the call originates, and is used to link the ALI record with the caller's MDN.

2.34 **"Selective Routing"** or **"SR"** means an E911 feature that routes an E911 call from a 911 Selective Routing Switch to the Designated or Primary PSAP based upon the pANI associated with the originating Cell Site and/or Cell Sector.

2.35 **"Service Provider"** means an entity that provides one or more of the following 911 elements; network, database, or CPE

2.36 **"Shell Record"** means a partial ALI record which requires a dynamic update of the ESRK, Call Back Number, Cell Site and Sector Information for a Phase I deployment, and XY location data for a Phase II deployment. The dynamic update requires input from the wireless carrier's network prior to updating the ALI record and forwarding to the appropriate PSAP.

2.37 **"Wireless Handset"** means the wireless equipment used by a wireless end user to originate wireless calls or to receive wireless calls.

3. SBC-13STATE RESPONSIBILITIES

3.1 **SBC-13STATE** shall provide and maintain such equipment at the E911 SR and the DBMS as is necessary to perform the E911 Services set forth herein when **SBC-13STATE** is the 911 service provider. **SBC-13STATE** shall provide 911 Service to Carrier in areas where Carrier is licensed to provide service and **SBC-13STATE** provides the 911 System component. In such situations, **SBC-13STATE** shall provide Carrier access to the **SBC 13-STATE** 911 System as described in this section.

3.2 Call Routing

3.2..1 **SBC-13STATE** will route 911 calls from the **SBC 13-STATE** SR to the designated Primary PSAP or to designated alternate locations, according to routing criteria specified by the PSAP. Alternate PSAPs not subscribing to the appropriate wireless service shall not receive all features associated with the primary wireless PSAP.

3.2..2 When routing a 911 call and where **SBC-13STATE** is the ALI Database Provider, in a Phase I application, **SBC-13STATE** will forward the Phase I data as provided by the Carrier and in a Phase II application, **SBC-13STATE** will forward the Phase I and Phase II data as provided by the Carrier.

3.3 Facilities and Trunking

3.3.1 **SBC-13STATE** shall provide and maintain sufficient dedicated E911 trunks from **SBC-13STATE**'s SR's to the PSAP of the E911 Customer, according to provisions of the applicable State Commission approved tariff and documented specifications of the E911 Authority.

3.3.2 After receiving Carrier's order, **SBC-13STATE** will provide, and Carrier agrees to pay for, transport facilities required for 911 trunk termination. Except as provided in Section 8.1, transport facilities shall be governed by the applicable **SBC-13STATE** Access Services tariff. Additionally, when Carrier requests diverse facilities, **SBC-13STATE** will provide such diversity where technically feasible, at standard tariff rates.

3.3.3 **SBC-13STATE** and Carrier will cooperate to promptly test all trunks and facilities between Carrier's network and the **SBC-13STATE** SR(s).

3.3.4 **SBC-13STATE** will be responsible for the coordination and restoration of all 911 network maintenance problems to Carrier's facility Meet Point.

3.4 Database

3.4.1 Where **SBC 13-STATE** manages the 911 and E911 Databases and Carrier deploys a CAS or Hybrid-CAS Solution utilizing **SBC 13-STATE** E911 DBMS:

3.4.1.1 **SBC 13-STATE** shall store the Carriers ALI records in the electronic data processing database for the E911 DBMS.

3.4.1.2 **SBC 13-STATE** shall coordinate access to the **SBC 13-STATE** E911 DBMS for the initial loading and updating of Carrier ALI records.

3.4.1.3 **SBC 13-STATE**'s ALI database shall accept electronically transmitted files that are based upon NENA standards.

3.4.2 Where **SBC 13-STATE** is manages the 911 and E911 Databases, and Carrier deploys an NCAS solution:

3.4.2.1 Carriers designated third-party provider shall perform the above database functions.

3.4.2.2 **SBC 13-STATE** will provide a copy of the static MSAG received from the appropriate E911 Authority, to be utilized for the development of Shell ALI Records.

4. CARRIER RESPONSIBILITIES

4.1 Call Routing

4.1.1 Where **SBC-13STATE** is the 911 System Service Provider, Carrier will route 911 calls from Carrier's MSC to the **SBC-13STATE** SR office of the 911 system.

4.1.2 Depending upon the network service configuration, Carrier will forward the ESRD and the MDN of the party calling 911 or the ESRK associated with the specific Cell Site and sector to the **SBC-13-STATE** 911 SR.

4.2 Facilities and Trunking

4.2.1 Where specified by the E911 Authority, Carrier shall provide or order from **SBC-13STATE,** transport and trunk termination to each **SBC-13STATE** 911 SR that serves the areas in which Carrier is licensed to and will provide CMRS service.

4.2.2 Carrier shall maintain facility transport capacity sufficient to route 911 traffic over trunks dedicated for 911 interconnection between the Carrier's MSC and the **SBC-13STATE** SR

4.2.3 Carrier is responsible for determining the proper quantity of trunks and transport facilities from Carrier's MSC to interconnect with the **SBC-13STATE** 911 SR.

4.2.4 Carrier acknowledges that its End Users in a single local calling scope may be served by different SRs and Carrier shall be responsible for providing facilities to route 911 calls from its End Users to the proper E911 SR.

4.2.5 Carrier shall provide a minimum of two (2) one-way outgoing trunk(s) dedicated for originating 911 Emergency Service calls from the Carrier's MSC to each **SBC-13STATE** 911 Selective Router, where applicable. Where SS7 connectivity is available and required by the applicable PSAP, the Parties agree to implement CCS/SS7 trunks rather than CAMA (MF) trunks.

4.2.6 Carrier is responsible for appropriate diverse facilities if required by applicable State Commission rules and regulations or if required by other governmental, municipal, or regulatory authority with jurisdiction over 911 services.

4.2.7 Carrier shall engineer its 911 trunks to maintain a minimum P.01 grade of service as specified by NENA standards.

4.2.8 In order to implement Phase II E911 Service, Carrier is responsible for ordering a 56K or 64K frame relay or fractional T-1 circuit ("Data Circuit") from Carrier's MSC to the appropriate **SBC-13STATE** ALI server where **SBC-13STATE** is the designated ALI Database Provider. Such Data Circuit may be ordered from **SBC-13STATE** affiliate or vendor of Carrier's choice.

4.2.9 Carrier shall monitor its 911 circuits for the purpose of determining originating network traffic volumes. If Carrier's traffic study indicates that additional circuits are needed to meet the current level of 911 call volumes, Carrier shall request additional circuits from **SBC-13STATE**.

4.2.10 Carrier will cooperate with **SBC-13STATE** to promptly test all 911 trunks and facilities between Carrier's network and the **SBC-13STATE** 911 Selective Router(s) to assure proper functioning of 911 service. Carrier agrees that it will not pass live 911 traffic until both parties complete successful testing.

4.2.11 Carrier is responsible for the isolation, coordination and restoration of all 911 network maintenance problems to Carrier's facility Meet Point. Carrier is responsible for advising **SBC-13STATE** of the circuit identification and the fact that the circuit is a 911 circuit when notifying **SBC-13STATE** of a failure or outage. The Parties agree to work cooperatively and expeditiously to resolve any 911 outage. **SBC-13STATE** will refer network trouble to Carrier if no defect is found in **SBC-13STATE**'s 911 network. The Parties agree that 911 network problem resolution will be managed expeditiously at all times.

4.3 Database

4.3.1 Where **SBC-13STATE** is the 911 System Service Provider, and Carrier deploys a CAS or Hybrid CAS Solution utilizing **SBC-13STATE** 911 DBMS:

4.3.1.1 Carrier or its representatives shall be responsible for providing Carrier's ALI Records to **SBC-13STATE**, for inclusion in **SBC-13STATE**'s DBMS on a timely basis, once E911 trunking has been established and tested between Carrier's MSC and all appropriate SRs.

4.3.1.2 Carrier or its agent shall provide initial and ongoing updates of Carrier's ALI Records that are in electronic format based upon established NENA standards.

4.3.1.3 Carrier shall adopt use of a Company ID on all Carrier ALI Records in accordance with NENA standards. The Company ID is used to identify the carrier of record in facility configurations.

4.3.1.4 Carrier is responsible for providing updates to **SBC-13STATE** 911 DBMS; in addition, Carrier is responsible for correcting any errors that may occur during the entry of their data as reflected on the status and error report.

4.3.2 Where **SBC-13STATE** is the 911 System Service Provider, and Carrier deploys an NCAS solution:

4.3.2.1 Carrier's designated third-party provider shall perform the above database functions.

4.3.2.2 Carrier's designated third party shall be responsible for ensuring Carrier's Shell Records for ALI are submitted to **SBC-13STATE**, for inclusion in **SBC-13STATE**'s 911 DBMS, on a timely basis, once E911 trunking has been established and tested between Carrier's MSC and all appropriate SRs.

4.3.2.3 Carrier's third-party provider shall provide initial and ongoing updates of Carrier's Shell Records for ALI that are in electronic format based upon established NENA standards.

4.4 Other

4.4.1 Carrier is responsible for collecting from its End Users and remitting to the appropriate municipality or other governmental entity any applicable 911 surcharges assessed on the wireless service

provider and/or End Users by any municipality or other governmental entity within whose boundaries the Carrier provides CMRS.

4.4.2 In the event that there is a valid E911 Phase II PSAP request, Carrier shall notify **SBC-13STATE** Industry Markets 911 Account Manager at least five (5) months prior to Carrier's proposed Phase II implementation state.

5. RESPONSIBILITIES OF BOTH PARTIES

5.1 Jointly coordinate the provisioning of transport capacity sufficient to route originating 911 calls from the Carrier's MSC to the designated **SBC-13STATE** 911 Selective Router(s).

6. METHODS AND PRACTICES

6.1 With respect to all matters covered by this Appendix, each Party will comply with all of the following to the extent that they apply to E911 Service: (i) all FCC and applicable State Commission rules and regulations, (ii) any requirements imposed by any Governmental Authority other than a Commission, (iii) the terms and conditions of **SBC-13STATE**'s applicable Commission ordered tariff(s) and (iv) the principles expressed in the recommended standards published by NENA.

7. CONTINGENCY

7.1 The terms and conditions of this Appendix represent a negotiated plan for providing access to 911 and E911 Databases, and interconnection to an SBC–owned ILEC 911 Selective Router for the purpose of Call Routing of 911 calls completion to a Public Safety Answering Point (PSAP) as required by Section 251 of the Act.

7.2 The Parties agree that the E911 Service is provided for the use of the E911 Authority, and recognize the authority of the E911 Authority to establish service specifications and grant final approval (or denial) of service configurations offered by **SBC-13STATE** and Carrier.

8. BASIS OF COMPENSATION

8.1 Carrier shall compensate **SBC-13STATE** for the elements described in the Pricing Exhibit at the rates set forth in the Pricing Exhibit on a going forward basis. There shall be no true up or price adjustments for process charged for wireless 911 implementations accomplished via prior agreement or tariff prior tothe effective date of this Appendix. The prices shall be considered interim in the States of Arkansas, Connecticut, Indiana, Kansas, Michigan, Missouri, Nevada, Oklahoma, and Texas until a tariff in the State in question has become effective for such elements. In addition, the Parties acknowledge that the interim rates set forth in the Appendix are based on the pricing methodology set forth in the *Letter from Thomas J. Sugrue, Chief Wireless Telecommunications Bureau, FCC to Marlys R. Davis, E-911 Program Manager, King County E-911 Program Office, dated October 31, 2001 ("King County Letter"* and affirmed in *The Order on Reconsideration In the matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems Request of King County, Washington* (FCC 02-146). In the event that the final pricing methodology that is adopted in a particular State differs from the *King County Letter* methodology, the Parties agree to true up or true down the rates charged and amounts paid back to September 1, 2002. Except as set forth above, in the event **SBC-13STATE** files a new or revised tariff after the effective ate of this Appendix ("New Tariff") containing rates for one or more of the elements described in the Pricing Exhibit that vary from rates contained in a prior approved tariff or the rates specified in the Pricing Exhibit, or if such New Tariff contains additional or different elements, when the rates or elements in the New Tariff become effective, such rates or elements shall apply to the corresponding elements on a going forward basis from the date the rates in the New Tariff become effective. Finally, the failure of the Pricing Exhibit to list charges for the Data Circuit does not negate any such charges for the Data Circuit , should Carrier elect to purchase such circuit from an **SBC-13STATE** affiliate.

8.2 Charges for E911 Service shall begin once the trunks and facilities are installed and successfully tested between Carrier's network and **SBC-13STATE** SR(s).

9 LIABILITY

9.1 **SBC-13STATE**'s liability and potential damages, if any, for its gross negligence, recklessness or intentional misconduct, is not limited by any provision of this Appendix. **SBC-13STATE** shall not be liable to Carrier, its End Users or its E911 calling parties or any other parties or persons for any Loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after **SBC-13STATE** has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from Carrier until service is restored.

9.2 Carrier's liability and potential damages, if any, for its gross negligence, recklessness or intentional misconduct is not limited by any provision of this Appendix. In the event Carrier provides E911 Service to **SBC-13STATE**, Carrier shall not be liable to **SBC-13STATE**, its End Users or its E911 calling parties or any other parties or persons for any Loss arising out of the provision of E911 Service or any errors, interruptions, defects, failures or malfunctions of E911 Service, including any and all equipment and data processing systems associated therewith. Damages arising out of such interruptions, defects, failures or malfunctions of the system after Carrier has been notified and has had reasonable time to repair, shall in no event exceed an amount equivalent to any charges made for the service affected for the period following notice from **SBC-13STATE** until service is restored.

9.3 Carrier agrees to release, indemnify, defend and hold harmless **SBC-13STATE** from any and all Loss arising out of **SBC-13STATE**'s provision of E911 Service hereunder or out of Carrier's End Users' use of the E911 Service, whether suffered, made, instituted or asserted by Carrier, its End Users, or by any other parties or persons, for any personal injury or death of any person or persons, or for any loss, damage or destruction of any property, whether owned by Carrier, its End Users or others, unless the act or omission proximately causing the Loss constitutes gross negligence, recklessness or intentional misconduct of **SBC-13STATE**.

9.4 Carrier also agrees to release, indemnify, defend and hold harmless **SBC-13STATE** from any and all Loss involving an allegation of the infringement or invasion of the right of privacy or confidentiality of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of the E911 Service features and the equipment associated therewith, including by not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing E911 Service provided hereunder, unless the act or omission proximately causing the Loss constitutes the gross negligence, recklessness or intentional misconduct of **SBC-13STATE**.

10. MUTUALITY

10.1 Carrier agrees that to the extent it offers the type of services covered by this Appendix to any company, that should **SBC-13STATE** request such services, Carrier will provide such services to **SBC-13STATE** under terms and conditions comparable to the terms and conditions contained in this Appendix.

11. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

11.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; general responsibilities of the Parties; effective date, term and termination; billing and payment of charges; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; confidentiality; intervening law; governing law; regulatory approval; changes in End User local Exchange Service provider selection; compliance and certification; law enforcement and civil process; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency;

assignment; subcontracting; environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; End User inquiries; expenses; conflict of interest; survival of obligations, scope of agreement; amendments and modifications; and entire agreement.

PRICING EXHIBIT

1.0 SBC-2STATE CELLULAR/PCS E9-1-1:

1.1 CALIFORNIA

Trunk Charge per Trunk:

Monthly	$ 26.00
Non-Recurring	$ 741.00

Facility rates can be found in the State Special Access Tariff.

1.2 SBC NEVADA

Trunk Charge Per Trunk:

Monthly Recurring:	$ 8.00
Non-Recurring	$ 175.07

Facility rates can be found in the State Special Access Tariff.

2.0 SBC MIDWEST REGION 5-STATE CELLULAR/PCS E9-1-1:

2.1 ILLINOIS

Trunk Charge per Trunk:

Monthly	$ 19.99
Non-Recurring	$ 610.45

Facility rates can be found in the State Special Access Tariff.

2.2 INDIANA

Trunk Charge per Trunk:

Monthly	$ 26.64
Non-Recurring	$ 770.97

Facility rates can be found in the State Special Access Tariff.

2.3 MICHIGAN

Trunk Charge per Trunk:

Monthly	$ 19.81
Non-Recurring	$ 496.18

Facility rates can be found in the State Special Access Tariff.

2.4 OHIO

Trunk Charge per Trunk:

Monthly	$ 28.72
Non-Recurring	$ 436.62

Facility rates can be found in the State Special Access Tariff.

2.5 WISCONSIN

Trunk Charge per Trunk:

Monthly	$ 26.29
Non-Recurring	$ 737.59

Facility rates can be found in the State Special Access Tariff.

3.0 SBC SOUTHWEST REGION 5-STATE CELLULAR E9-1-1:

3.1 ARKANSAS

Trunk Charge per Trunk:

Monthly	$ 22.86
Non-Recurring	$ 312.00

Facility rates can be found in the State Special Access Tariff.

3.2 KANSAS

Trunk Charge per Trunk:

Monthly	$ 22.86
Non-Recurring	$ 312.00

Facility rates can be found in the State Special Access Tariff.

3.3 MISSOURI

Trunk Charge per Trunk:

Monthly	$ 58.00
Non-Recurring	$ 170.00

Facility rates can be found in the State Special Access Tariff.

3.4 OKLAHOMA

Trunk Charge per Trunk:

Monthly	$ 33.22
Non-Recurring	$ 110.00

Facility rates can be found in the State Special Access Tariff.

3.5 TEXAS

Trunk Charge per Trunk:

Monthly	$ 39.00
Non-Recurring	$ 165.00

Facility rates can be found in the State Special Access Tariff.

4.0 SBC CONNECTICUT CELLULAR/PCS E9-1-1:

Trunk Charge per Trunk:

Monthly	$ 14.39
Non-Recurring	$ 0.00

Facility rates can be found in the State Special Access Tariff

APPENDIX
MEET POINT BILLING

APPENDIX MEET POINT BILLING

1. DEFINITIONS

a. For purposes of this Appendix, "Access Tandem Switch" means a tandem switch in a **SBC-13STATE** network equipped to provide Interconnection between a WSP provider and an Interexchange Carrier (IXC) that is used to connect and switch traffic for the purpose of providing Switched Access Services.

b. For purposes of this Appendix, "Switched Access Services" means an offering of access to **SBC-13STATE**'s network for the purpose of the origination or the termination of traffic from or to IXCs in a given area pursuant to a Switched Access Services tariff for Feature Group B and Feature Group D.

c. **SBC Communications Inc**. **(SBC)** means the holding company which directly or indirectly owns the following ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and/or SBC Texas and/or Wisconsin Bell, Inc. d/b/a SBC Wisconsin.

d. **SBC-13STATE** - As used herein, **SBC-13STATE** means the applicable SBC-owned ILEC(s) doing business in Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

2. Pursuant to the procedures described in Multiple Exchange Carrier Access Billing (MECAB) document, developed by the Alliance for Telecommunications Industry Solutions' (ATIS) Ordering and Billing Forum (OBF), the Parties shall provide to each other the Switched Access detail usage data, on a per LATA basis, for jointly provided tandem switched Feature Groups B or D services to or from an IXC. As detailed in the MECAB document, the Parties will, in a timely fashion, exchange all information necessary to accurately, reliably and promptly bill Access Service customers for Switched Access services traffic jointly provided via the meet-point billing arrangement. Information shall be exchanged in Electronic Message Interface (EMI) format, via a mutually acceptable electronic file transfer protocol. The Parties agree to exchange the Switched Access detail usage data to each other on a reciprocal, no charge basis. Each Party agrees to provide the other Party with AURs based upon mutually agreed upon intervals. Each Party shall provide the other Party the billing name, billing address, and carrier identification ("CIC") of the IXCs that may utilize any portion of either Party's network in a carrier/LEC MPB arrangement in order to comply with the MPB Notification process as outlined in the MECAB document. **SBC-13STATE** shall provide this information to ALLTEL except where proprietary restrictions prohibit disclosure. Each Party will be entitled to reject a record that does not contain a CIC code.

3. ALLTEL shall designate **SBC-13STATE**'s Access Tandem Switch or any other reasonable facilities or points of Interconnection for the purpose of originating or terminating IXC traffic. For the access Tandem Switch designated, the Parties agree that the billing percentage to be utilized to bill Switched Access Service customers for jointly provided Switched Access Services traffic shall be any mutually agreed upon billing percentage(s).

4. The Parties will each bill the IXC for their portion of the Switched Access Services as stated in each Party's respective access tariff based on the billing percentages stated above.

5. The Parties shall undertake all reasonable measures to ensure that the billing percentage and associated information as described in the MECAB document identified in Paragraph 1 above, are maintained in their respective federal and state access tariffs, as required, until such time as such information will be included in the National Exchange Carrier Association ("NECA") FCC Tariff No. 4.

6. Each Party shall implement the "Multiple Bill/Single Tariff" option described in the MECAB document identified in Paragraph 1 above so that each Party bills the IXC for its portion of the jointly provided Switched Access Services.

APPENDIX
RECIPROCAL COMPENSATION
CELLULAR/PCS

TABLE OF CONTENTS

APPENDIX RECIPROCAL COMPENSATION

1. APPENDIX SCOPE AND TERM

1.1 This Appendix sets forth the rates, terms and conditions for Reciprocal Compensation of wireless telecommunications traffic between **SBC-13STATE** and ALLTEL, but only to the extent they are interconnected and exchanging calls pursuant to a fully executed, underlying Cellular/PCS Interconnection Agreement (the "Agreement") approved by the applicable state or federal regulatory agency for telecommunications traffic in this state.

2. COMPENSATION FOR LOCAL AUTHORIZED SERVICES INTERCONNECTION – RECIP COMP

2.1 Compensation rates for Interconnection are contained in Appendix - Pricing (Wireless).

2.2 Compensation for Local Calls Transport and Termination. Subject to the limitations set forth below in Section 2.3, **SBC-13STATE** shall compensate ALLTEL for the transport and termination of Local Calls originating on **SBC-13STATE**'s network and terminating on ALLTEL's network. ALLTEL shall compensate **SBC-13STATE** for the transport and termination of Local Calls originating on ALLTEL's network and terminating on **SBC-13STATE**'s network. The rates for this reciprocal compensation are set forth in Appendix Pricing (Wireless).

2.3 Traffic Not Subject to Reciprocal Compensation

2.3.1 Exclusions. Reciprocal compensation shall apply solely to the transport and termination of Local Calls, which shall not include, without limitation, the following:

2.3.1.1 Non-CMRS traffic (traffic that is not intended to originate or terminate to a mobile station using CMRS frequency);

2.3.1.2 Toll-free calls (*e.g.*, 800/888), Information Services Traffic, 500 and 700 calls;

2.3.1.3 Third Party Traffic;

2.3.1.4 Paging Traffic;

2.3.1.5 InterMTA Traffic;

2.3.1.6 Any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission.

3. CLASSIFICATION OF TRAFFIC

3.1 Telecommunications traffic exchanged between **SBC-13STATE** and ALLTEL pursuant to this Agreement will be classified as either Local Calls or InterMTA Traffic.

3.2 The Parties agree that ISP traffic between them in the mobile-to-land direction, if any, is presently *de minimis*; however, should such intercarrier ISP traffic become greater than *de minimis*, it will be treated for compensation purposes at the same rate and rate structure as Local Calls. No additional or separate measurement or tracking of ISP bound traffic shall be necessary. The Parties agree there is no ISP traffic exchanged between them in the land-to-mobile direction subject to this Agreement**.**

3.3 Billing For Mutual Compensation

3.3.1 Each Party will record its terminating minutes of use for all intercompany calls. Each Party will perform the necessary call recording and rating for calls, and shall be responsible for billing and collection, from its End Users. Except as specifically provided herein, each Party shall use procedures that record and measure actual usage for purposes of providing invoices to the other Party.

3.3.2 The Parties recognize that ALLTEL may not have the technical systems to measure actual usage and bill **SBC-13STATE** pursuant to this Agreement. To the extent ALLTEL does not have the ability

to measure and bill the actual amount of **SBC-13STATE**-to-ALLTEL traffic that is Local Calls ("Land-to-Mobile Local Calls Traffic"), and in the event **SBC-13STATE** also does not record the actual amount of such Land-to-Mobile Local Calls Traffic, ALLTEL shall bill **SBC-13STATE** the charges due as calculated and described in Sections 3.3.3 and 3.3.4 below.

3.3.3 When Section 3.3.2 applies, the Parties agree to use a surrogate billing factor to determine the amount of Land-to-Mobile Local Calls Traffic. Unless otherwise mutually agreed, the surrogate billing factor shall be deemed to be equal to the Shared Facility Factor, stated in Appendix-Pricing (Wireless). When using the surrogate billing method instead of recording actual usage, the amount Land-to-Mobile Local Calls Traffic Conversation MOUs shall be deemed to be equal to the product of (i) the ALLTEL-to-**SBC-13STATE** (mobile-to-land) Conversation MOU for Local Calls (based on **SBC-13STATE**'s monthly bill to ALLTEL) divided by the difference of one (1.0) minus the Shared Facility Factor, (times) (ii) the Shared Facility Factor. When using the surrogate billing method, ALLTEL shall bill **SBC13-STATE** the charges due under this Section 3.3 based solely on the calculation contained in the preceding sentence.

EXAMPLE

Land-to-Mobile Local Calls Traffic Conversion MOUs = [mobile-to-land local Mou's / (1 - Shared Facility Factor)] * Shared Facility Factor

Mobile-to-land MOU = 15,000
Shared Facility Factor = .30

Land-to-Mobile Local Calls MOU = [15,000/(1-.30)]*.30
=6,429 MOUs

3.3.4 When ALLTEL uses the surrogate billing factor billing method set forth above, ALLTEL shall itemize on each of its bills the state, for Land-to-Mobile Local Calls Traffic Conversation MOUs to which the surrogate billing factor is applied. All adjustment factors and resultant adjusted amounts shall be shown for each line item, including as applicable, but not limited to, the surrogate billing factor as provided in this Section 3.3, the blended call set-up and duration factors (if applicable), the adjusted call set-up and duration amounts (if applicable), the appropriate rate, amounts, etc.

3.3.5 Except as provided in this Section 3.3, see Section 5 of the General Terms and Conditions for billing requirements.

4. RESPONSIBILITIES OF THE PARTIES

4.1 Each Party to this Appendix will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved.

4.2 Where SS7 connections exist, each Party will include in the information transmitted to the other for each call being terminated on the other's network, where available, the original and true Calling Party Number (CPN).

4.3 If one Party is passing CPN but the other Party is not properly receiving information, the Parties will work cooperatively to correct the problem.

5. THIRD PARTY TRAFFIC/INDIRECT TERMINATION.

5.1 Billing. Each Party shall separately list on its bill to the other Party for reciprocal compensation the Conversation MOU representing Third Party Traffic. If ALLTEL does not record and identify the actual amount of Third Party Traffic delivered to it over the Interconnection Trunks, then ALLTEL shall deduct from the amount of total Conversation MOU on its bill to **SBC-13STATE** (for reciprocal compensation) a percentage that is equal to the percentage that Third Party Traffic minutes bear to the total billed

Conversation MOU on **SBC-13STATE**'s bill to ALLTEL (for reciprocal compensation) for the same time period. This adjustment will account for Third Party Traffic delivered to ALLTEL by **SBC-13STATE**.

5.2 Toll Pool/Designated Carrier. Notwithstanding anything contained herein to the contrary, when **SBC-13STATE** is the primary toll carrier for an independent LEC in the State and such independent LEC originates a call that terminates on ALLTEL's network, ALLTEL will bill, and **SBC-13STATE** will pay, compensation to ALLTEL for toll traffic originating from such independent LEC and terminating on ALLTEL's network as though the traffic originated on **SBC-13STATE**'s network.

6. ADDITIONAL TERMS AND CONDITIONS

6.1 Every interconnection, service and network element provided hereunder, shall be subject to all rates, terms and conditions contained in this Agreement which are legitimately related to such interconnection, service or network element. Without limiting the general applicability of the foregoing, the following terms and conditions of the General Terms and Conditions are specifically agreed by the Parties to be legitimately related to, and to be applicable to, each interconnection, service and network element provided hereunder: definitions; interpretation, construction and severability; general responsibilities of the Parties; effective date, term and termination; billing and payment of charges; dispute resolution; audits; disclaimer of representations and warranties; limitation of liability; indemnity; remedies; intellectual property; publicity and use of trademarks and service marks; confidentiality; intervening law; governing law; regulatory approval; changes in End User local Exchange Service provider selection; compliance and certification; law enforcement and civil process; relationship of the Parties/independent contractor; no third Party beneficiaries, disclaimer of agency; assignment; subcontracting; environmental contamination; force majeure; taxes; non-waiver; network maintenance and management; End User inquiries; expenses; conflict of interest; survival of obligations, scope of agreement; amendments and modifications; and entire agreement.

6.2 Entire Agreement. This Reciprocal Compensation Appendix is intended to be read in conjunction with the underlying Interconnection Agreement between **SBC-13STATE** and ALLTEL, but that as to the reciprocal compensation rates, terms and conditions, this Appendix constitutes the entire Agreement between the Parties on these issues, and there are no other oral agreements or understandings between them on reciprocal compensation that are not incorporated into this Appendix.

APPENDIX – PRICING (CELLULAR/PCS)

ARKANSAS

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.003506	$.001360	$.003506

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.03263

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.011736

5. Other Charges

   5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	$53.00	$340.00

   5.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   5.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   5.4 Translation Charges. Translation charges will apply for each effected end office when Carrier requests a change in an NPA-NXX code from or to being an EMS/EAS NPA-NXX.

   5.5 Trunk Interface Change Charges. Changes to the type of Trunk interfaces on a trunk will be charged at the rate of $100.00 per Trunk.

   5.6 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

KANSAS

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.003673	$.001310	$.003673

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.004683

   4.2 Originating Landline CMRS Switched Access Traffic Rate $.004184

5. Other Charges

   5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	$21.00	$260.00

   5.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   5.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff

   5.4 Translation Charges. Translation charges will apply for each effected end office when Carrier requests a change in an NPA-NXX code from or to being an EMS/EAS NPA-NXX.

   5.5 Trunk Interface Change Charges. Changes to the type of Trunk interfaces on a trunk will be charged at the rate of $120.00 per Trunk.

   5.6 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

MICHIGAN

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.001491	$.001004	$.001491

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is .30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.004947

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.004947

5. The rates for trunking are set forth in Telco tariff MPSC 20R, as amended from time to time.

6. Other Charges

   6.1 Selective Class of Call Screening.

   6.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   6.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   6.4 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

MISSOURI

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.004006	$.002047	$.004006

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.025927

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.009049

5. Other Charges

   5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	$40.75	$370.00

   5.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   5.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   5.4 Translation Charges. Translation charges will apply for each effected end office when Carrier requests a change in an NPA-NXX code from or to being an EMS/EAS NPA-NXX.

   5.5 Trunk Interface Change Charges. Changes to the type of Trunk interfaces on a trunk will be charged at the rate of $70.00 per Trunk.

   5.6 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

OHIO

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.004501	$.003600	$.004501

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.004947

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.004947

5. The rates for Type 2 trunking are set forth in Telco's intrastate Access Services tariff, as amended from time to time. The rates for Type 1 trunking are set forth in Telco's tariff PUCO 20, as amended from time to time.

6. Other Charges

   6.1 Selective Class of Call Screening.

   6.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   6.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   6.4 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

OKLAHOMA

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.003551	$.002297	$.003551

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.010721

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.005686

5. Other Charges

   5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	$54.65	$556.00

   5.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   5.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   5.4 Translation Charges. Translation charges will apply for each effected end office when Carrier requests a change in an NPA-NXX code from or to being an EMS/EAS NPA-NXX.

   5.5 Trunk Interface Change Charges. Changes to the type of Trunk interfaces on a trunk will be charged at the rate of $65.00per Trunk.

   5.6 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

TEXAS

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.00279	$0.001843	$.00279

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.029272

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.012345

5. Other Charges

   5.1 Selective Class of Call Screening

	Per Month	Nonrecurring Charge
Per BAN	$38.25	$402.75

   5.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   5.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   5.4 Translation Charges. Translation charges will apply for each effected end office when Carrier requests a change in an NPA-NXX code from or to being an EMS/EAS NPA-NXX.

   5.5 Trunk Interface Change Charges. Changes to the type of Trunk interfaces on a trunk will be charged at the rate of $92.50 per Trunk.

   5.6 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

APPENDIX – PRICING (CELLULAR/PCS)

WISCONSIN

1. The rates for transport and termination shall be as follows. (Per Conversation MOU)

Type 2A	Type 2B	Type 1
$.005385	$.004241	Rates specified in PSC of Wisconsin No. 20, part 4

2. Alltel Facilities will be provided at the rates, terms, and conditions as listed in SBC's applicable access tariff. SBC shall not be obligated to pay more that SBC's applicable tariff rate for such Facilities.

3. Shared Facility Factor

   The Shared Facility Factor is 0.30.

4. Exchange Access Rates

   4.1 Terminating IntraLATA InterMTA Traffic Rate $.004947

   4.2 Originating Landline to CMRS Switched Access Traffic Rate $.004947

5. The rates for Type 2A and Type 2B trunk port elements are as follows:

   Monthly Recurring (Carrier dedicated trunk)

Analog	$20.00, plus $2.53 per mile/per trunk
Digital	$70.00, plus $30.00 per mile/per DS-1

   Non-recurring (Carrier dedicated trunk)

Analog	$150.00
Digital	$500.00

   The rates for Type 1 trunk port elements are as follows:

   Monthly Recurring (Carrier dedicated trunk)

Analog	$20.00, plus $2.53 per mile/per trunk
Digital	$70.00, plus $30.00 per mile/per DS-1

   Non-Recurring (Carrier dedicated trunk)

Analog	$150.00
Digital	$500.00

   Additional rates for Type 1 are provided in Telco tariff Wisconsin 20, as amended from time to time.

6. Other Charges

   6.1 Selective Class of Call Screening.

   6.2 Cancellation Charge. A charge is calculated as the product of the number of Business Days from order application through the order cancellation multiplied by the average daily charge of the service ordered, plus the Access Order Charge. The Access Order Charge is governed by Telco's applicable interstate Access Services tariff.

   6.3 Rollover Charges. A rollover is a Carrier initiated move that involves a change of a Point of Termination from an existing service within the same Carrier premises. The nonrecurring charge associated with the installation of that service (i.e., the Rollover Charge) applies when Carrier requests a rollover. The Rollover Charge is governed by Telco's applicable interstate Access Services tariff.

   6.4 Charges for miscellaneous other items such as Service Establishment, Change in Service Arrangement, Changes in Trunk interfaces, Additional Engineering, Additional Labor Charges, Access Order Charge, Design Change Charge, Service Date Change Charge, ACNA, Billing Account Number (BAN) and Circuit Identification Change Charges, and Supercedure charges are governed by Telco's applicable interstate Access Services tariff.

Exhibit B
Case No. U-14300

FIRST AMENDMENT

Executed as of July 28, 2004

TO

INTERCONNECTION AGREEMENT

by and between

SBC MICHIGAN

and

ALLTEL COMMUNICATIONS, INC.

AMENDMENT TO
INTERCONNECTION AGREEMENT
BY AND BETWEEN
MICHIGAN BELL TELEPHONE COMPANY d/b/a SBC MICHIGAN
AND
ALLTEL COMMUNICATIONS, INC.

Michigan Bell Telephone Company[1] d/b/a SBC Michigan, as the Incumbent Local Exchange Carrier in Michigan, (hereafter, "ILEC" or "SBC Michigan") and Alltel Communications, Inc. as a Commercial Mobile Radio Service ("CMRS") provider in Michigan, (referred to as "CARRIER"), in order to amend, modify and supersede any affected provisions of their Interconnection Agreement with ILEC in Michigan ("Interconnection Agreement"), hereby execute this Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Telecommunications Act Section 251(b)(5) Traffic (Adopting FCC's Interim ISP Terminating Compensation Plan)("Amendment"). A CMRS provider is not a "LEC."

1.0 Scope of Amendment

1.1 On or about June 16, 2003 ILEC made an offer to all telecommunications carriers in the state of Michigan (the "Offer") to exchange traffic on and after July 6, 2003 under Section 251(b)(5) of the Act pursuant to the terms and conditions of the FCC's interim ISP terminating compensation plan of the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) ("FCC ISP Compensation Order") which was remanded but not vacated in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002).

1.2 The purpose of this Amendment is to include in CARRIER's Interconnection Agreement the rates, terms and conditions of the FCC's interim ISP terminating compensation plan for the exchange of ISP-bound traffic lawfully compensable under the FCC ISP Compensation Order ("ISP-bound Traffic") and traffic lawfully compensable under Section 251(b)(5) ("Section 251(b)(5) Traffic").

1.3 This Amendment is intended to supercede any and all contract sections, appendices, attachments, rate schedules, or other portions of the underlying Interconnection Agreement that set forth rates, terms and conditions for the terminating compensation for ISP-bound Traffic and Section 251(b)(5) Traffic exchanged between ILEC and CARRIER. Any inconsistencies between the provisions of this Amendment and provisions of the underlying Interconnection Agreement shall be governed by the provisions of this Amendment.

2.0 Rates, Terms and Conditions of FCC's Interim Terminating Compensation Plan for ISP-Bound Traffic and Section 251(b)(5) Traffic

2.1 ILEC and CARRIER hereby agree that the following rates, terms and conditions shall apply to all ISP-bound Traffic and all Section 251(b)(5) Traffic exchanged between the Parties on and after the date this Amendment becomes effective pursuant to Section 4.1 of this Amendment.

2.2 Reciprocal Compensation Rate Schedule for ISP-bound Traffic and Section 251(b)(5) Traffic:

2.2.1 The rates, terms, conditions in this section apply only to the termination of ISP-bound Traffic and Section 251(b)(5) Traffic, and ISP-bound Traffic is subject to the growth caps and new local market restrictions stated in Sections 2.3 and 2.4 below. Notwithstanding anything contrary in this Amendment, the growth caps in Section 2.3 and the rebuttable presumption in Section 2.6 only apply to LECs.

[1] Michigan Bell Telephone Company (Michigan Bell), a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the States of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Michigan Bell offers telecommunications services and operates under the names "SBC Michigan" and "SBC Ameritech Michigan" (used interchangeably herein), pursuant to assumed name filings with the State of Michigan. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

2.2.2 The Parties agree to compensate each other for such ISP-bound Traffic and Section 251(b)(5) Traffic on a minute of use basis, according to the following rate schedule:

July 6, 2003 and thereafter: .0007 per minute

2.2.3 Payment of Reciprocal Compensation will not vary according to whether the traffic is routed through a tandem switch or directly to an end office switch. Where the terminating party utilizes a hierarchical or two-tier switching network, the Parties agree that the payment of these rates in no way modifies, alters, or otherwise affects any requirements to establish Direct End Office Trunking, or otherwise avoids the applicable provisions of the Interconnection Agreement and industry standards for interconnection, trunking, Calling Party Number (CPN) signaling, call transport, and switch usage recordation.

2.3 ISP-bound Traffic Minutes Growth Cap

2.3.1 On a calendar year basis, as set forth below, LEC and ILEC agree to cap overall compensable Michigan ISP-bound Traffic minutes of use in the future based upon the 1st Quarter 2001 ISP-bound Traffic minutes for which LEC was entitled to compensation under its Michigan Interconnection Agreement(s) in existence for the 1st Quarter of 2001, on the following schedule.

Calendar Year 2001	1st Quarter 2001 compensable ISP-bound minutes, times 4, times 1.10
Calendar Year 2002	Year 2001 compensable ISP-bound minutes, times 1.10
Calendar Year 2003	Year 2002 compensable ISP-bound minutes
Calendar Year 2004 and on	Year 2002 compensable ISP-bound minutes

Notwithstanding anything contrary herein, in Calendar Year 2003, LEC and ILEC agree that ISP-bound Traffic exchanged between LEC and ILEC during the entire period from January 1, 2003 until December 31, 2003 shall be counted towards determining whether LEC has exceeded the growth caps for Calendar Year 2003.

2.3.2 ISP-bound Traffic minutes that exceed the applied growth cap will be Bill and Keep. "Bill and Keep" refers to an arrangement in which neither of two interconnecting Parties charges the other for terminating traffic that originates on the other network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party.

2.4 Bill and Keep for ISP-bound Traffic in New Markets

2.4.1 In the event CARRIER and ILEC have not previously exchanged ISP-bound Traffic in any one or more Michigan LATAs prior to April 18, 2001, Bill and Keep will be the reciprocal compensation arrangement for all ISP-bound Traffic between CARRIER and ILEC for the remaining term of this Agreement in any such Michigan LATAs.

2.4.2 In the event CARRIER and ILEC have previously exchanged traffic in an Michigan LATA prior to April 18, 2001, the Parties agree that they shall only compensate each other for completing ISP-bound Traffic exchanged in that Michigan LATA, and that any ISP-bound Traffic in other Michigan LATAs shall be Bill and Keep for the remaining term of this Agreement.

2.4.3 Wherever Bill and Keep is the traffic termination arrangement between CARRIER and ILEC, both Parties shall segregate the Bill and Keep traffic from other compensable local traffic either (a) by excluding the Bill and Keep minutes of use from other compensable minutes of use in the monthly billing invoices, or (b) by any other means mutually agreed upon by the Parties.

2.5 The Growth Cap and New Market Bill and Keep arrangement applies only to ISP-bound Traffic, and does not include Transit traffic, Optional Calling Area traffic, IntraLATA Interexchange traffic, or InterLATA Interexchange traffic.

2.6 ISP-bound Traffic Rebuttable Presumption

In accordance with Paragraph 79 of the FCC's ISP Compensation Order, LEC and ILEC agree that there is a rebuttable presumption that any of the combined Section 251(b)(5) Traffic and ISP-bound Traffic exchanged

between LEC and ILEC exceeding a 3:1 terminating to originating ratio is presumed to be ISP-bound Traffic subject to the compensation and growth cap terms in this Section 2.0. Either party has the right to rebut the 3:1 ISP presumption by identifying the actual ISP-bound Traffic by any means mutually agreed by the Parties, or by any method approved by the Commission. If a Party seeking to rebut the presumption takes appropriate action at the Commission pursuant to section 252 of the Act and the Commission agrees that such Party has rebutted the presumption, the methodology and/or means approved by the Commission for use in determining the ratio shall be utilized by the Parties as of the date of the Commission approval and, in addition, shall be utilized to determine the appropriate true-up as described below. During the pendency of any such proceedings to rebut the presumption, LEC and ILEC will remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in Section 2.2.2 for traffic above the ratio) subject to a true-up upon the conclusion of such proceedings. Such true-up shall be retroactive back to the date a Party first sought appropriate relief from the Commission.

3.0 Reservation of Rights

3.1 ILEC and CARRIER agree that nothing in this Amendment is meant to affect or determine the appropriate treatment of Voice Over Internet Protocol (VOIP) traffic under this or future Interconnection Agreements. The Parties further agree that this Amendment shall not be construed against either party as a "meeting of the minds" that VOIP traffic is or is not local traffic subject to reciprocal compensation. By entering into the Amendment, both Parties reserve the right to advocate their respective positions before state or federal commissions whether in bilateral complaint dockets, arbitrations under Section 252 of the Act, commission established rulemaking dockets, or before any judicial or legislative body.

4.0 Miscellaneous

4.1 If this Amendment is executed by CARRIER and such executed amendment is received by ILEC on or before July 28, 2003, this Amendment will be effective as of July 6, 2003, subject to any necessary state commission approval; provided, however, the rates will not be implemented in ILEC's billing system until after any necessary state commission approval, at which time the rates billed by the Parties beginning on July 6, 2003 will be subject to a true-up. If this Amendment is executed by CARRIER but such executed amendment is not received by ILEC until after July 28, 2003, this Amendment will become effective ten (10) days following the date such Amendment is approved or is deemed to have been approved by the applicable state commission.

4.2 This Amendment is coterminous with the underlying Interconnection Agreement and does not extend the term or change the termination provisions of the underlying Interconnection Agreement.

4.3 EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING INTERCONNECTION AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

4.4 Every rate, term and condition of this Amendment is legitimately related to the other rates, terms and conditions in this Amendment. Without limiting the general applicability of the foregoing, the change of law provisions of the underlying Interconnection Agreement, including but not limited to the "Intervening Law" or "Change of Law" or "Regulatory Change" section of the General Terms and Conditions of the Interconnection Agreement and as modified in this Amendment, are specifically agreed by the Parties to be legitimately related to, and inextricably intertwined with this the other rates, terms and conditions of this Amendment.

4.5 In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order

in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Notwithstanding anything to the contrary in this Agreement (including any amendments to this Agreement), SBC Michigan has no obligation to provide unbundled network elements (UNEs) to CARRIER and shall have no obligation to provide UNEs beyond those that may be required by the Act, if any, including the lawful and effective FCC rules and associated FCC and judicial orders. Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361 (rel. April 21, 2004). The Parties acknowledge and agree that SBC Michigan has exercised its option to adopt the FCC ISP terminating compensation plan ("FCC Plan") in Michigan and as of the date of that election by SBC Michigan, the FCC Plan shall apply to this Agreement, as more specifically provided for in this Amendment. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

IN WITNESS WHEREOF, this Reciprocal Compensation Amendment for ISP-Bound Traffic and Federal Telecommunications Act Section 251(b)(5) Traffic (Adopting FCC Interim Terminating Compensation Plan) to the Interconnection Agreement was exchanged in triplicate on this 28th day of July, 2004, by SBC Michigan, signing by and through its duly authorized representative, and CARRIER, signing by and through its duly authorized representative.

Alltel Communications, Inc.

Signature: Michael D Rhoda

Name: Michael D Rhoda
(Print or Type)

Title: VP - Business Development
(Print or Type)

Date: 7-28-04

Michigan Bell Telephone Company d/b/a SBC Michigan by SBC Telecommunications, Inc., its authorized agent

Signature: Larry Cooper

Name: *Larry B. Cooper*
(Print or Type)

Title: For/ Senior Vice President -
Industry Markets & Diversified Businesses

Date: 07/28/04

FACILITIES-BASED OCN # 2281, 2300, 2224

ACNA 2281, 2267, 6547

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-2

Correspondence dated June 20, 2005
From Paul Florack, Vice President-Network Services, Verisign, Inc.
to Glen R. Sirles, VP & GM, Local Interconnection, SBC Communications

Sign®

June 20, 2005

Mr. Glen R. Sirles
VP & GM, Local Interconnection
SBC Communications, Inc.
One SBC Plaza, Room 3621
Dallas, Texas 75202

Dear Mr. Sirles:

As you know, VeriSign Communications Services ("VeriSign") provides nationwide Signaling System Seven ("SS7") services to a variety of telecommunications carriers, including local exchange carriers ("LECs") and wireless providers in the SBC Communications, Inc. ("SBC") region.

In the former Ameritech region, SBC is improperly charging VeriSign for SS7 ISUP messages that are exchanged with SBC on behalf of VeriSign's carrier-customers associated with non-access calls (which either originate or terminate in a former Ameritech state). These SBC ISUP message charges are not permitted under applicable federal and state law and are precluded by the terms of the interconnection agreements ("ICAs") between SBC and VeriSign's carrier-customers.

In the Qwest region, VeriSign and its carrier-customers successfully litigated this same issue, stopped such unlawful SS7 message charges and received refunds. The public utility commissions ("PUCs") in Nebraska and Idaho found unlawful Qwest's similar practice of imposing SS7 message charges for the exchange of SS7 messages associated with non-access traffic. *See Cox Nebraska Telcom, LLC v. Qwest Communications, Inc.*, Nos. FC-1296 and FC-1297, Order Granting Relief (Neb. PSC, Dec. 17, 2002), *appeal dismissed*, File No. S-03-147 (NE S.Ct. Oct. 8, 2004); *Idaho Telephone Assoc. v. Qwest Corp.*, Case No. QWE-T-02-11, Order No. 29219 (Idaho PUC April 15, 2003). Following these decisions, Qwest modified its state tariffs to eliminate ISUP message charges on local (non-access) calls. Once Qwest's appeal was dismissed by the Nebraska Supreme Court, and facing likely additional losses before the PUCs in four additional states, Qwest agreed to settle this dispute by making a refund to VeriSign and its carrier-customers, and by agreeing to additional terms and conditions.

VeriSign's carrier-customers have raised serious concerns over these ISUP message charges. In particular, ALLTEL has informed us that these charges are precluded and invalid.

7400 West 129th Street • Overland Park, KS 66213 • Phone: 913.814.6200 • Fax: 913.814.6501 • www.verisign.com

VeriSign®

VeriSign would like to meet with SBC to resolve this issue promptly. Please contact me as soon as possible at 913-814-6295 or pflorack@verisign.com so that we may schedule a mutually convenient time to address these issues.

Sincerely,

Paul Florack

Paul Florack
Vice President – Network Services
VeriSign, Inc.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-3

Correspondence dated December 28, 2005
From Paula J. Fulks, General Attorney-Industry Markets , SBC Telecommunications
To Paul Florack, Vice President-Network Services, Verisign, Inc.

Paula J. Fulks
General Attorney-Industry Markets

SBC Telecommunications
One SBC Plaza, Room 29th Floor
Dallas, Texas 75202
Phone 214 464-8583
Fax 214 464-1626

December 28, 2005

RECEIVED
JAN - 5 2006

Paul Florack
VeriSign
7400 W 129th Street
Overland Park, KS 66213

Dear Mr. Florack:

This letter replies to yours of June 20, 2005, directed to Mr. Glen R. Sirles of the Company.

Pursuant to your request in that letter, representatives of SBC Midwest (formerly Ameritech Communications), including in-house counsel, have conferred with representatives of your company regarding the matter addressed in your letter. After careful consideration, SBC Midwest has concluded that it is not "improperly charging VeriSign for SS7 ISUP messages that are exchanged with SBC (sic)...associated with non-access calls (which either originate or terminate in a former Ameritech state).[1]"

VeriSign is not under contract with SBC Midwest or any of its affiliates to purchase SS7 service or to exchange ISUP messages. Therefore, VeriSign's use of the SS7 services of the SBC Midwest operating companies is governed by the terms of the state and federal tariffs for that state, which were approved in 1996. While you claim that you have obtained decisions overturning state tariffs for Qwest which assess charges for delivery of ISUP messages, the SBC Midwest tariffs for this aspect of SS7 service are valid and in effect in all five of the former Ameritech states. As an initial matter, SBC Midwest simply cannot agree to ignore the terms of its tariffs for one customer. If VeriSign does not want the service, it should not order and use it. I am told that SBC Midwest received and continues to receive ASRs (or their equivalent) from VeriSign for these purchases. If SBC Midwest did not charge VeriSign for these services, but did apply the tariff charges to other SS7 customers, that could constitute unlawful discrimination and a tariff violation.

If interconnecting CLECs, ILECs and wireless providers believe they are being charged by both VeriSign and SBC Midwest for the same service (SS7 signaling), their claims

[1] In this quotation of your statement of the issue, we have omitted your statement that the messages at issue "are exchanged with SBC on behalf of VeriSign's carrier-customers". As discussed below, SBC Midwest charges VeriSign for messages delivered to SBC Midwest by VeriSign pursuant to the tariffs under which those services are provided. SBC Midwest charges its customers, including local exchange carriers and wireless providers, pursuant to its legal arrangements with those customers, i.e. by tariff or interconnection agreement. SBC Midwest does not exchange SS7 messages "on behalf of" any third party. Rather, VeriSign purchases the SBC Midwest SS7 service from the applicable tariff and apparently, according to the information in your letter, sells that service to companies like Alltel.

should be lodged against VeriSign, not SBC Midwest[2]. VeriSign is the SBC Midwest customer for these services, not these companies. VeriSign may choose to pass these charges on to **its** customers, but that is VeriSign's decision. SBC Midwest is not involved in the arrangements between VeriSign and **its** customers. If the complaining CLEC or ILEC chose instead to build its own STPs, that company would purchase the same quad links, ports and usage as does VeriSign, and would be billed the same prices by SBC Midwest.

In our conversations regarding this matter, I understood you to contend that usage charges are not appropriate for signaling associated with "non-access" (i.e. local) calls because reciprocal compensation arrangements between SBC Midwest and the affected CLECs or ILECs for the exchange of local calls recover the costs associated with such usage. It appears that this is the argument which Qwest lost in Idaho and Nebraska. Qwest was unable to demonstrate that the cost study supporting the SS7 signaling usage charges newly added to its intrastate tariffs did not exclude the costs associated with local calls. The FCC decision approving the Ameritech disaggregated usage/facilities tariff (supplied to you via email) demonstrates that this is not the case in the SBC Midwest tariffs. Additionally, when Level 3 arbitrated a similar issue in Michigan and Illinois, the argument was rejected by these commissions, in part because it simply is not possible to separate the local signaling from other signaling for charging purposes. While you claim that these decisions are not dispositive, I am at a loss to understand why.

You do claim, however, that decisions by the Idaho and Nebraska public utility commissions **do** govern, or at least suggest an appropriate resolution of, this dispute. We disagree. Those decisions rest on the assumption that carriers utilize VeriSign to effectuate their interconnection agreements with the affected ILEC (in those cases, Qwest). This is not true. VeriSign provides a separate and different service to those carriers than that which the SBC Midwest companies provide to interconnecting CLECs. They can connect to VeriSign and be connected with all other SS7 providers, a service which SBC Midwest does not offer. Indeed, VeriSign touts other functionalities from which carriers can benefit, such as enhanced billing and reduced connectivity times, in distinguishing its service from that of the SBC ILECs.

VeriSign's proposal that SBC Midwest adopt the tariff arrangement which Qwest now uses, possibly with some discount or forgiveness of the claimed refund amount, is totally unacceptable to SBC Midwest. Essentially, the Qwest tariffs permit hubbing providers like VeriSign to self-report an unauditable ratio of local to non-local calls for which it provides SS7 signaling. Qwest then applies the ratio to the usage charges and bills VeriSign only the portion allocable to non-local calls. The result, predictably, would be a drastic reduction in the resulting revenue, as the percentages reported are, to quote VeriSign counsel, "quite low". Such a result, while predictable, would be quite disturbing, as VeriSign has averred to SBC Midwest, under oath, that its "percent of

[2] It is quite telling that SBC Midwest has received **no** complaints from **its** customers, the interconnecting CLECs, ILECs and WSPs, that they are paying for a service they do not receive under their interconnection agreements. No doubt this silence is attributable to the fact that they are not, in fact, being double charged, by SBC Midwest at least. On the other hand, were they to complain, VeriSign would be no part of that complaint, and indeed SBC Midwest may well be without ability to share the content of such complaints with a third party like VeriSign.

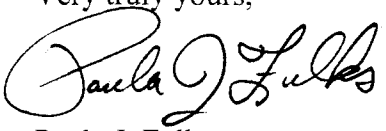
interstate usage" of these SS7 services, is 100%. Given this averment, it is difficult to understand how any portion of the SS7 service at issue could be considered "local".

Even if SBC Midwest were to consider a Qwest approach, we foresee many difficulties in implementation. First, the amount of traffic would have to be apportioned out to each carrier behind VeriSign in order to calculate the VeriSign PIU. Such carriers are not likely to agree on what constitutes "local traffic"; they certainly have not to date. Additionally, ICA terms vary from one carrier to the other. How could such a tariff accommodate all these differences? Also, this proposal does not address how transit traffic would be handled.

Finally, I must point out that this is not the first time our companies have held this debate. In 2003, VeriSign's predecessor in interest, Illuminet, withheld more than $3,000,000 of payments for such SS7 services based on the same arguments. In the end, VeriSign chose to pay the billed amount without any reservation of rights. In our view, VeriSign may have waived any right to complain of this matter now.[3] In any event, SBC Midwest did not expect VeriSign to resurrect this ancient issue now.

In short, while we are always willing to discuss these and any other matters which affect our business relationship, we cannot find any merit to your claim. Should you like to continue our conversation, however, please contact the undersigned. As I mentioned at the close of our last call, I should appreciate the professional courtesy of a call informing me of any formal action you may decide to take regarding this matter.

Very truly yours,



Paula J. Fulks

[3] See, e.g., BMG Direct Marketing, Inc. v. Peake, TX Supreme Court, 03-0547, November 18, 2005; http://www.supreme.courts.state.tx.us/historical/2005/nov/030547.htm

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-4

Cox Nebraska Telcom v Qwest Communications, Inc.,
Neb Pub Serv Comm'n Case No. FC-1297, Order Granting Relief, (Dec. 17, 2002)

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Cox Nebraska Telcom, LLC and Illuminet Complainants, v. Qwest Communications, Inc. Respondent.	)	Formal Complaint No. FC-1296
ALLTEL Nebraska, Inc., ALLTEL Communications of Nebraska, Inc. and Illuminet, Inc., Complainants, v. Qwest Corporation, Respondent.	)	Formal Complaint No. FC-1297 ORDER GRANTING RELIEF Entered: December 17, 2002

APPEARANCES:

For the Complainants:

Illuminet, Inc. Inc.
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Cox Nebraska Telcom, LLC
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ALLTEL Nebraska, Inc. and
ALLTEL Communications of Nebraska, Inc.
Paul M. Schudel
Woods & Aitken LLC
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For the Respondent Qwest Corporation:

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Stephanie Boyett-Colgan
Qwest Corporation
1801 California Street,
Denver, CO 80202

For: The Nebraska Public Service Commission

Chris A. Post
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

B A C K G R O U N D

Introduction

1. The Nebraska Public Service Commission (Commission) has before it for resolution two formal complaints, combined for record purposes and resolution. As discussed in more detail below, the Complainants are Cox Nebraska Telcom, LLC (Cox); Illuminet, Inc. (Illuminet); ALLTEL Nebraska, Inc.; and ALLTEL Communications of Nebraska, Inc. (together ALLTEL).

2. Generally, the Complainants allege that Qwest Corporation (Qwest) has improperly implemented the restructuring of Qwest's intrastate Signaling System No. 7 (SS7) services pursuant to a revision in Qwest's Nebraska Access Catalog that became effective June 6, 2001 (the Access Catalog). More specifically, the Complainants allege that Qwest, in its effort to establish separate charges for transport of SS7 signaling (which the parties have referred to as efforts to "unbundle" SS7 message charges, i.e., SS7 charges have been unbundled from the local switching and tandem switching rate elements associated with exchange access traffic), has implemented its Access Catalog structure in a manner that assesses SS7 message charges for all end-user traffic regardless of whether that end-user traffic is properly subject to the access charges. Accordingly, the Complainants requested this Commission to order Qwest to refund any improper charges assessed by Qwest under its unbundled SS7 rate structure, and that Qwest be ordered to withdraw this unbundled SS7 message rate structure unless and until Qwest properly implements it. Proper implementation of the unbundled SS7 rate structure at issue, according to the Complainants, would require Qwest to disaggregate billing of the various SS7 messages that it delivers and receives, and thereafter, to implement a billing mechanism (including bill detail) to ensure that the Access Catalog's SS7 message rates

are assessed only upon those SS7 messages associated with the intrastate end-user toll calls for which access charges are properly applied pursuant to the Access Catalog.

3. Qwest denies the allegations raised by the Complainants. In doing so, Qwest also denies that any relief is warranted.

4. For the reasons stated herein, we grant the relief Complainants request. As more fully described below, we direct Qwest to withdraw the Access Catalog terms that are at issue in this proceeding within five business days of the entry of this order, and within 10 days of this order, refund or credit all applicable intrastate SS7 message charges billed to date to the Complainants that are in dispute. Until such time as it can properly implement an intrastate unbundled SS7 message rate structure, Qwest shall not file any other Access Catalog revisions regarding SS7 rate structures or rates. To ensure this specific directive is achieved, and as more fully explained herein, we also direct Qwest to work with the Complainants in order to coordinate Qwest's election between the two options provided herein as to how it elects to implement properly its intrastate SS7 message rate structure within the Access Catalog.

Procedural Summary

5. On March 5, 2002, Cox and Illuminet initiated Formal Complaint No. FC-1296 by the filing of a formal complaint with the Commission. On March 26, 2002, ALLTEL initiated Formal Complaint No. FC-1297 by filing of a formal complaint with the Commission.

6. The Commission held a pre-hearing conference on May 14, 2002, after due notice to the interested parties. On May 22, 2002, the Commission entered a pre-hearing conference order consolidating these complaints for hearing and disposition. In addition, such order established a schedule for this matter, set hearing procedures and established a briefing schedule.

7. On May 24, 2002, ALLTEL and Illuminet filed an Amended Formal Complaint in Formal Complaint No. FC-1297. Qwest filed its Amended Answer in response thereto on June 5, 2002. Previously, Qwest had filed its Answer to the Formal Complaint in Formal Complaint No. FC-1296 on March 20, 2002.

8. On June 14, 2002, the Complainants jointly filed a Motion to Cease and Desist, requesting that the Commission enter an order requiring Qwest to discontinue any and all activity associated with its threats to suspend all service order activity and/or disconnect Complainants' connections to Qwest's SS7 signaling network. On July 12, 2002, and on July 15, 2002, respectively, the Complainants and Qwest filed separate Motions for Protective Order. The Commission held oral arguments relating to the aforementioned motions on July 22, 2002, and on July 23, 2002, the Commission entered Progression Order No. 1 in these dockets granting Complainants' Motion to Cease and Desist, and granting Complainants' Motion for Protective Order with modifications. In addition, the Commission modified the schedule established in the prehearing conference order. Subsequently, on September 11, 2002, pursuant to the agreement of the parties, the Commission entered Progression Order No. 2 that further revised the schedule pertaining to these dockets.

9. The public hearing on these dockets was held on October 22 and 23, 2002. At the outset of the public hearing in these dockets, legal counsel for ALLTEL made a motion to exclude evidence that might be offered by Qwest on the issue of the revenue neutrality of Qwest's unbundling of its SS7 services pursuant to the Access Catalog amendments that became effective June 6, 2001 (Exhibit 12). In support of such motion, ALLTEL offered Exhibits 1 through 11 which were received into evidence by the Commission and which described ALLTEL's efforts to obtain complete and timely responses to ALLTEL Discovery Request Nos. 2, 3, 6 and 41, among other discovery requests. Such discovery requests sought demand calculations and rate and revenue reduction data in connection with Qwest's unbundling of its SS7 services.[1] After

[1] The Commission notes that in Qwest's Supplemental Answers and Objections (Exhibit 7), "Response to Interrogatory No. 5" on page 5 thereof, Qwest states: "Confidential attachment A [Exhibit 2] is the documents [sic] Qwest used to reduce its access revenues and contains these demand calculations and the rate and revenue reductions. No other documents were used in this calculation." We further note that in the Surrebuttal Testimony of Scott A. McIntyre filed with the Commission on October 15, 2002, Mr. McIntyre states at page 18 " . . . Qwest disclosed to the Complainants all demand data regarding SS7 in its response to ALLTEL Request No. 41." However, at 4:14 p.m. on October 21, 2002, the afternoon before this hearing began, Qwest transmitted a facsimile to Complainants containing demand and revenue data (Exhibit 10) without any explanation for the untimely submission of this data.

a brief recess of the October 22 hearing, the Commission granted the motion made by ALLTEL, directing that the record be expunged of any evidence that Qwest would propose offering regarding whether the unbundled SS7 rate structure filed in the Access Catalog was revenue neutral to Qwest. We now affirm that ruling and provide our reasoning for it.

10. In granting the relief requested by ALLTEL, the Commission is mindful of the guidance from the Supreme Court of Nebraska that it "will not permit litigants to impede an opponent's legitimate discovery efforts through unfounded recalcitrance," and further that "playing games with the court will not be tolerated." *Stanko v. Chaloupka*, 239 Neb. 101, 103, 474 N.W.2d 470 (1991). Similarly, in *Schindler v. Walker*, 256 Neb. 767, 778, 592 N.W.2d 912 (1999) the Supreme Court stated that "[w]hile there is no applicable rule or statute governing a trial court's exclusion of evidence, a trial court's exclusion of evidence can be sustained as an exercise of a trial court's inherent powers."

11. As the parties to this proceeding are aware, Commission Rule of Procedure 016.11 makes the Nebraska Supreme Court's Rules of Discovery for Civil Cases applicable to proceedings before this Commission. Supreme Court Rule 26(e)(2) requires a party to seasonably amend a prior discovery response in certain circumstances as enumerated therein. Supreme Court Rule 37(b)(2)(C) provides for the imposition of sanctions in certain circumstances. In light of the directives and discretion granted triers of fact by the Supreme Court, we find that, based on the specific circumstances presented to us, Qwest failed to comply with Rule 26(e)(2), and that the parties' resolution of the discovery dispute concerning the ALLTEL Discovery Requests in question pursuant to the letter to the Hearing Officer (Exhibit 4) brings this matter within the ambit of Rule 37(b)(2)(C). The record demonstrates Qwest's failure to fulfill its obligations pursuant to applicable Commission rules. Accordingly, any evidence that might have been offered by Qwest on the issue of the revenue neutrality of Qwest's unbundling of its SS7 should be and hereby is excluded from the record that the Commission considers in deciding the merits of these Complaints.

12. We also had three additional procedural matters left unresolved at the hearing. The first matter concerns whether the Commission should entertain evidence by Qwest with respect

to the proper interpretation of its interconnection agreement (ICA) with ALLTEL. As indicated in the transcript of this matter, ALLTEL objected to this evidence provided by Qwest witness McIntyre on the basis of the lack of foundation.[2] The Commission overrules the objection. While the Commission acknowledges that such testimony appears to be hearsay and speculative in nature, no party invoked the rules of evidence applicable in district court. Furthermore, the Commission has historically accepted such testimony from individuals with general corporate knowledge and oversight of the circumstances being described in an effort to eliminate the need for a multitude of witnesses. Had ALLTEL, or for that matter any other party, chosen to part from the Commission's normal practice in allowing such testimony, they should have invoked the rules of evidence pursuant to *Neb. Rev. Stat.* § 84-914. Therefore, while the Commission recognizes ALLTEL's concern regarding the inability for ALLTEL to cross-examine those individuals from Qwest actively involved in the ICA drafting and negotiation process, the Commission will admit the testimony but give it the appropriate weight it deserves.

13. The second matter addresses a dispute regarding Qwest's efforts to submit certain testimony and a cost study, labeled for identification purpose as Exhibits 37 and 38, purportedly demonstrating the costs of Local Interconnection Service ("LIS") trunks. In essence, the issue before the Commission is whether Qwest should be able to introduce this evidence at the hearing. Our Progression Order #1, page 2, made clear that all exhibits except for rebuttal exhibits were required to be exchanged by the parties at the time of filing pre-filed testimony. Thus, Qwest was on notice that it would be required to exchange any exhibits with the Complainants at the time it exchanged its pre-filed testimony. The record indicates it did not. The only additional explanation provided was that the proffer was to rebut ALLTEL witness Fuller's responses to cross-examination questions that purportedly indicated her belief regarding SS7 allocated costs in LIS trunks. As to this Qwest assertion, we have reviewed the transcript of her cross-examination and we can find no specific reference to support Qwest's alternative theory.[3] We also note that, if Qwest's proffer of Exhibits 37 and 38 was to rebut Ms. Fuller's responses, there has been no explanation as to why Qwest did not proffer

[2] Tr. 328:22-329:5.
[3] Tr. 162:3-220:14.

Exhibits 37 and 38 at the time of the questioning of Ms. Fuller, or at least to offer some indication at that time that Qwest believed it possessed evidence rebutting Ms. Fuller's response. Accordingly, to ensure the integrity of the Commission's processes and to ensure that parties can properly rely upon the procedural directives of the Commission, we find that Exhibits 37 and 38 will be excluded from the record in this proceeding.

14. The final procedural matter relates to Illuminet's October 31, 2002, request for acceptance of late-filed Exhibit 42. This request was made to correct inadvertent factual inaccuracies regarding Illuminet witness Florack's response to his recollection of a meeting he and others held with Qwest regarding issues similar to those raised in the Complaints. We note that no party has objected to this request, and we find that acceptance of this late-filed exhibit will ensure the integrity and accuracy of the record before us. Accordingly, Illuminet's Late-Filed Exhibit 42 will be accepted and made part of the record.

O P I N I O N A N D F I N D I N G S

Commission Jurisdiction Over these Dockets

15. It is clear that the Commission's jurisdiction to resolve the issues raised in the Complaints is derived from the authority we have been granted by the Legislature.[4] Based on our governing statutes, we find that the procedures created and the authority specifically granted to the Commission by the Legislature to receive, hear and dispose of complaints by persons, including carriers, pursuant to Sections 75-131, 75-132, 75-132.01, 75-118.01, 75-119 and 86-803(7), confer jurisdiction on the Commission to adjudicate Complainants' property rights described in the Complaints in accordance with due process requirements of such statutes. We also find that this grant of jurisdiction and authority by the Legislature includes our ability to receive, hear and dispose of complaints such as are presented herein.

16. In *Neb. Rev. Stat.* Sec. 75-131 (Reissue 1996), the Legislature provides that "[a]ny person who complains of

[4] *Neb. Const.* Art. IV, Sec. 20 provides: "The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law."

anything done or omitted to be done by any common or contract carrier may request that the commission investigate and impose sanctions on such carrier by filing a petition which briefly states the facts constituting the complaint." *Neb. Rev. Stat.* Sec. 75-132 (Reissue 1996) directs that " . . . the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing." Section 75-132 further directs that following such hearing, "the commission shall make such order with respect to the complaint as it deems just and reasonable." Rule 005 of the Commission Rules of Procedure sets forth the specific procedures governing the filing and disposition of formal complaints before the Commission.

17. Similar to the foregoing grant of authority, the Legislature, through *Neb. Rev. Stat.* Sec. 75-132.01 (2001 Supp.), specified that " . . . the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) Section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810 by a telecommunications company. . . ." To this end, we note that Complainants have asserted that Section 75-609(2) is a basis for the Commission's jurisdiction of these matters, and as discussed in further detail below, Section 75-109(2) is also relevant to the resolution of the disputes in these formal complaints.

18. In addition to the foregoing Legislative directives, *Neb. Rev. Stat.* Sec. 75-118.01 (Reissue 1996) provides in pertinent part that " . . . the commission shall have original exclusive jurisdiction to determine the . . . scope or meaning of a . . . tariff" and *Neb. Rev. Stat.* Sec. 75-119 (Reissue 1996) provides in pertinent part that " . . .[w]hen any common carrier . . .petitions the commission alleging that . . . an existing . . . rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing." We also note that Section 75-119 requires, that if the matter in question is disputed, that matter shall proceed to hearing and the Commission shall issue an order granting or denying the petition.

19. With respect to Section 75-118.01, we note that upon complaint by any common carrier to determine the validity, scope or meaning of a tariff (we believe that the Access Catalog is a substantive equivalent of a tariff), the Commission shall give notice of such complaint, hear evidence and argument on the

complaint and thereafter render its decision on the matter. Our ability to do so has been confirmed by the Supreme Court. See *Nebco, Inc. v. Burlington Northern, Inc.,* 212 Neb. 804, 808, 326 N.W.2d 167 (1982) (The Nebraska Legislature has provided the Commission with the authority to review tariffs pursuant to Section 75-118.01.); and *Nebraska Public Service Commission v. A-1 Ambassador Limousine, Inc.*, 264 Neb. 298, 308, 646 N.W.2d 650 (2001) (Section 75-118.01 provides the Commission with authority to determine the scope and meaning of a tariff.).

20. Also applicable to the Commission's jurisdiction of these formal complaints is *Neb. Rev. Stat.* Sec. 75-109(2) (2000 Cum. Supp.) that specifies: "The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996 (the Act), Public Law 104-104, including Section 252 of the Act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies." As alleged by Cox and ALLTEL, the Commission approved the ICAs at issue, and Qwest is attempting to unilaterally alter their terms through Qwest's implementation of the SS7 message charge revisions to the Access Catalog. While we will address the merits of this claim later, we note that our ability to oversee the ICAs at issue is subject to the express grant of authority to the Commission pursuant to Section 75-109(2) and 47 U.S.C. Section 252.

21. We further note that *Neb. Rev. Stat.* Sec. 86-803(1) (2000 Cum. Supp.) is certainly relevant to this proceeding. This section provides that, subject to certain exceptions, telecommunications companies are not subject to rate regulation, and that telecommunications companies shall file rate lists, which for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission. While the constitutionality of this restriction in the Commission's rate regulation authority was sustained in *State, ex rel. Spire v. Northwestern Bell Tel. Co.,* 233 Neb. 262, 445 N.W.2d 284 (1989), the Supreme Court also found that the Commission's jurisdiction continued to extend to quality of service regulation, and Section 86-803(7) provides for a complaint procedure. Moreover, in *Spire,* the Supreme Court held that "a ratepayer's right to a fair and reasonable rate, a right which has emerged from the decisions of this court, is properly classified as a "property" entitlement protected by the due process clauses of the U.S. and Nebraska Constitutions." *Id.* at 283. In order to protect this property entitlement, it is cri-

tical that this Commission exercise its jurisdiction to receive, hear and dispose of complaints such as the Complaints filed herein.

22. Based upon the foregoing constitutional, statutory and case law authorities, the Commission finds that it has jurisdiction over each of the Complaints. Moreover, we find that we possess all necessary and requisite authority to make these findings and conclusions and those required to adjudicate the property rights of the parties raised in the Complaints.

A Primer on SS7 Signaling

23. Due to the importance of the issues raised by Complainants, we also take this opportunity to provide a brief description of the components of the SS7 network relevant to the issues vis-à-vis the traffic that is carried over the voice network.[5] We note at the outset that there is little disagreement between the parties regarding the configuration of the various SS7 components, or the prerequisite for the SS7 message generated by certain of those components (the charges for which are at issue in this case) to allow the establishment of calls between end users.

24. As the record reflects, the components that comprise the SS7 network allow for the setting up and tearing down of the voice network connections required for end-user traffic to be completed.[6] Prior to "out-of-band" signaling, the network functions required to establish end-user calls were done through "in-band" signaling such as multi-frequency signaling that actually used the same facilities to set up and transmit the end-user call.[7] By establishing "out-of-band" signaling through the SS7 network components,[8] the facilities required to carry the voice traffic are not put into service unless and until it is

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[5] For purposes of our discussion and findings, we make reference at times to the "voice network" and "voice traffic" although we recognize that data is likewise carried such as in the case of Internet connections. Similarly, we use the terms "end-user traffic" and "end-user calls" interchangeably as they both reflect the exchange of communications between customers such as through local or intrastate toll calls.

[6] See, e.g., O'Neal Testimony, Exhibit 27, 4:2; O'Neal Rebuttal, Exhibit 28, 3:14-18; McIntyre Rebuttal, Exhibit 34, 5:21-6:2; Craig Rebuttal Testimony, Exhibit 40, 7:21-8:5; Tr. 114:2-5.

[7] See, Lafferty Testimony, Exhibit 24, 6:3-5; Florack Testimony, Exhibit 31, 6:20-22; Tr. 377:13-17.

[8] See, e.g., O'Neal Testimony, Exhibit 27, 3:7-10; Lafferty Testimony, Exhibit 24, 5:18-20; Florack Testimony, Exhibit 31, 6:20-22.

clear that those facilities are available to carry the call.[9] Moreover, the record reflects that this set-up and tear down of calls is faster than, and otherwise provides for features and functions that are not available with, "in-band" signaling.[10] Accordingly, all parties seem to agree that the use of the SS7 signaling network is more efficient than in-band signaling, and the Commission likewise agrees with this conclusion.

25. Attached to the testimonies in this proceeding were various diagrams that depict how the typical SS7 components are configured.[11] For purposes of our decision, we need only address those elements required to set-up and tear down calls, since those are the functions for which Qwest has established discrete SS7 message charges.

26. The first SS7 component is the "Service Switching Point" (SSP). As described by the various witnesses, the SSP is part of the local switch of a Local Exchange Carrier (LEC).[12] In the SS7 environment, the SSP generates the signaling messages that are transported through the remaining components of the SS7 network.[13] It is these SS7 messages that establish the end-user call, i.e., the process required to set-up or tear down a call.[14] Each SSP has a unique address in the SS7 network identified through a "point code" assignment. The SS7 network, in turn, ensures that the SS7 messages are properly routed to the SSP that is associated with a given point code.[15] For our purposes, we also note that Illuminet owns no SSPs; its carrier/customers do.[16]

27. SSPs are connected to "Signal Transfer Points" (STPs) through redundant, bi-directional facilities called "A-links."[17]

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[9] See, e.g., Tr. 381:10-20.

[10] Accord, O'Neal Testimony, Exhibit 27, 3:15-22; Florack Testimony, Exhibit 31, 8:3-9.

[11] See O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, Exhibit A; Craig Rebuttal, Exhibit 40, attached Exhibit 1.

[12] See, e.g., O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, 7:15-18; Tr. 114:25 to Tr. 115:6; Tr. 127:14-17; Tr. 132:19-23.

[13] Tr. 379:21-25.

[14] See, e.g., O'Neal Testimony, Exhibit 27, 4:17-19, 5:9 through 6:10; Florack Testimony, Exhibit 31, 7:20-24; Craig Rebuttal, Exhibit 40, 9:20-10:17.

[15] See, Tr. 141:21-142:6; Tr. 379:6-20; Tr. 381:2-9, See also, Florack Testimony, Exhibit 31, 6:22-26.

[16] Accord, Florack Testimony, Exhibit 31,7:24-27; Craig Rebuttal, Exhibit 40, 15:13-16.

[17] See, Florack Testimony, Exhibit 31, 7:18-22.

STPs act like "traffic cops," routing (in conjunction with other STPs) the SS7 messages to the SSP operated by the carrier who provides service to the called party (in the case of a local call, for example), or another carrier that serves the end user (such as in the case of a pre-subscribed intra local access and transport area (LATA) toll call for an entity other than that which owns the SSP).[18]

28. The third and fourth components of the SS7 network that are relevant to these complaints are the bi-directional facilities that connect STPs, which are called "B-links," and the physical connection of those B-links to an STP called a "port."[19] These specific links and ports and the charges for them are not at issue in this proceeding because Illuminet, the SS7 network provider for Cox and ALLTEL, has paid and continues to pay these charges to Qwest.[20] Nonetheless, the discussion of these facilities and connections is important because they provide the physical connection of the Cox and ALLTEL SSPs to the various SSPs of Qwest, over which the various SS7 messages are exchanged between Cox and Qwest and between Qwest and ALLTEL.[21]

29. The record reflects two ways in which carriers deploy an SS7 network. Like Qwest, a carrier can deploy its own SS7 network (the SSPs and STPs as well as the A-links and B-links) necessary to connect directly to other SS7 networks.[22] ALLTEL has deployed its own SS7 network that creates call setup signaling and exchanges messages with Qwest.[23] Alternatively, a carrier can utilize a third party SS7 network provider such as Illuminet to provide certain portions of the SS7 network (such as the STPs and B-links and ports) required to connect that carrier's SSPs to other SS7 networks, or to connect its STPs to the STPs of Illuminet.[24] Regardless of the method of deployment, however, when examining the SS7 networks for purposes of call set-up and tear down, the SS7 networks have no independent func-

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[18] Tr. 114:10-115:15; Tr. 380:18-381:1.

[19] See, e.g., Florack Testimony, Exhibit 31, 7:11-13 and 25:21-22; Tr. 240:2-6.

[20] See, e.g., Florack Testimony, Exhibit 31, 25:2-4 and 21-23; Tr. 337:4-9.

[21] See, e.g., Lafferty Testimony, Exhibit 24, 13:7-12; O'Neal Testimony, Exhibit 27, 5:9 through 6:10; Tr. 379:10-17.

[22] See generally, Craig Rebuttal, Exhibit 40, attached Exhibit 1.

[23] See, e.g., Tr. 116:12-20.

[24] See generally, O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, attached Ex. A.

tion other than to provide a method to transport the various carrier SSP-initiated SS7 messages required for end-user calls to be completed.[25]

30. With respect to Illuminet, it purchases SS7 connections with Qwest via the links and ports available in Qwest's Access Catalog.[26] These connections, as the record confirms, provide a valuable consolidation of SS7 network capability to smaller carriers.[27] Even Qwest acknowledges the value of the economy of scale and scope that a third party SS7 network provider such as Illuminet brings to carriers that elect to limit their direct SS7 network investment and deployment.[28] The record is also clear that Qwest benefits from such arrangements through minimization of the maintenance, monitoring and actual number of facilities required to interconnect its SS7 network to other carriers.[29] Ultimately, however, it is clear that in those instances where SS7 has been implemented (such as here), no end-user traffic would be completed without the SS7 messages being generated.[30] Therefore, all carriers operating SSPs, that either receive or generate the SS7 messages, do benefit since the end users served can complete and receive calls.[31]

Positions of the Parties

31. Mr. Wayne Lafferty submitted pre-filed testimony and testified at the hearing on behalf of Cox. At the outset, we note that Cox is a certificated competitive local exchange carrier (CLEC) and provides as a common carrier, a variety of facilities-based end-user services in areas of Nebraska.[32] Mr. Lafferty described six issue areas that Cox believes define its complaint. First, Cox contends that an SS7 message is an inseparable component of a call.[33] Mr. Lafferty pointed out that

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[25] See, e.g., Lafferty Testimony, Exhibit 24, 18:1-2; O'Neal Rebuttal, Exhibit 28, 3:14-18; Tr. 116:5-11.

[26] See, Florack Testimony, Exhibit 31, 25:21-23.

[27] See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21.

[28] See, McIntyre Rebuttal, Exhibit 34, 11:10-12.

[29] See, Tr. 382:8 to 383:17; See also O'Neal Testimony, Exhibit 27, 6:20-7:3; Florack Testimony, Exhibit 31,10:25-11:7.

[30] See, Tr. 116:5-7; Tr. 315:10-17; See also Florack Rebuttal, Exhibit 33, 2:6-8.

[31] Accord, Tr. 335:19 to Tr. 336:2; Florack Rebuttal, Exhibit 33, 22:20-23:6.

[32] See, Cox Complaint, Para. 4, Exhibit 22.

[33] Lafferty Rebuttal, Exhibit 25, 11:16-22; Tr. 48:11-15. Mr. Lafferty also filed Direct Testimony in this matter (Ex. 24) on Aug. 30, 2002.

while SS7 is a unique technology, it is a critical function for set up, delivery and take down of calls. Second, Cox argued that Qwest was misapplying the SS7 message charges so as to violate existing regulatory policies by ignoring existing interconnection agreements between the companies.[34] Third, Mr. Lafferty contended on behalf of Cox that Illuminet was clearly authorized to act as the agent for Cox for SS7 network services, and discussed a "letter of agency" (LOA) that verifies that fact.[35] Fourth, Cox asserts that there is not and has not been a pricing arbitrage opportunity as contended by Qwest due to the "bill and keep" mechanism that exists in the companies' ICA to account for the transport and termination of local traffic.[36] Fifth, Cox contends the misapplied SS7 message charges provide a subsidy to Qwest.[37] Finally, Cox disagrees with Qwest's allegation in its Answer to the Cox Complaint that the SS7 message charge revisions in Qwest's Access Catalog are revenue neutral in Nebraska.[38]

32. We further note that ALLTEL Nebraska, Inc. is an incumbent local exchange carrier (ILEC) certificated to provide facilities-based local exchange, extended area service (EAS), enhanced local calling area service (ELCA), intraLATA and interLATA telecommunications services in this state.[39] ALLTEL Communications of Nebraska, Inc. is a provider of wireless telecommunications services in this state.[40] Mr. George O'Neal, Staff Manager, SS7, for ALLTEL, also submitted pre-filed testimony and testified at the hearing.[41] ALLTEL agrees with Cox that voice and SS7 networks must rely upon each other for the completion of messages for end-user customers.[42] ALLTEL further pointed out that, in almost all cases, the SS7 network is required to transport the call set up or teardown messages between the called and calling party local switches.[43] Mr. O'Neal also described how carrier billing systems and the application of compensation mechanisms, such as bill-and-keep, are dependent on the jurisdiction of a call since the

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34 Tr. 48:16-20.
35 Tr. 48:21-23.
36 Tr. 48:24-49:3.
37 Tr. 49:4-7.
38 Tr. 49:8-21.
39 Amended Complaint, Paras. 3 and 4, Exhibit 23.
40 *Id.*
41 O'Neal Testimony, Exhibit 27 and O'Neal Rebuttal, Exhibit 28.
42 O'Neal Rebuttal, Exhibit 28, 3:7-22; Tr. 115:8 through 116:16.
43 Tr. 115:5-16.

jurisdiction dictates how much compensation is applied.[44] In fact, Mr. O'Neal stated that Qwest could measure SS7 messages by jurisdiction and call type if it chose to do so,[45] or it could utilize a percent interstate usage (PIU) factor, and either a percentage local usage (PLU) factor or a percent non-chargeable usage (PNU) factor[46] to allocate SS7 message charges in proportion to the category of the underlying end-user traffic. ALLTEL also noted that it, too, had designated Illuminet as its agent to establish connectivity with Qwest's SS7 signaling network.[47]

33. The final witness for ALLTEL was Ms. Pamela S. Fuller, Staff Manager, State Government Affairs. As was done by Messrs. Lafferty and O'Neal, Ms. Fuller also submitted pre-filed testimony and testified at the hearing.[48] ALLTEL argues that existing ICAs continue to apply to wireless traffic within a Major Trading Area (intraMTA) and ILEC extended area service (EAS) and local traffic.[49] Ms. Fuller described details of the ICA between ALLTEL and Qwest that demonstrated that Qwest and ALLTEL had agreed to include the exchange of SS7 signaling messages within the reciprocal compensation terms and rates of the ICAs.[50] Ms. Fuller also expressed ALLTEL's view that Qwest's Access Catalog SS7 message rates do not apply to wireless intraMTA traffic[51] and ILEC EAS/ELCA SS7 messages and calls.[52] Ms. Fuller indicated that the only way Qwest may unbundle SS7 rates, as contemplated by the Federal Communications Commission (FCC), would be to properly measure and then properly bill pursuant to the applicable agreement covering the end-user traffic associated with the SS7 message, which ALLTEL contends Qwest is unwilling to do.[53] Finally, ALLTEL noted that it does not actually purchase intraMTA, local or EAS SS7 message signaling from Illuminet, nor does it purchase any call setup from Illuminet. ALLTEL, through its own SS7 network, creates its own call setup

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[44] O'Neal Rebuttal, Exhibit 28, 6:15-7:12; Tr. 117:4-9.
[45] O'Neal Rebuttal, Exhibit 28, 7:13-22; Tr. 117:10-19.
[46] Tr. 118:13-20.
[47] O'Neal Rebuttal, Exhibit 28, 8:4-9:5.
[48] Fuller Testimony, Exhibit 29 and Fuller Rebuttal, Exhibit 30.
[49] Fuller Rebuttal, Exhibit 30, 4:19-6:5; Tr. 155:9-156:6.
[50] *Id*.
[51] IntraMTA CMRS traffic has been deemed by the FCC to be "local" for purposes of applying terminating compensation requirements. See, 47 C.F.R. § 51.701(b)(2).
[52] Fuller Rebuttal, Exhibit 30, 6:20-7:14.
[53] Tr. 159:14-160:6. See also, *Access Charge Reform*, Report and Order, CC Docket No. 96-262, (12 FCC Rcd 15982, 16046(para. 147) 1997).

signaling, and purchases transport of those SS7 messages from Illuminet.[54]

34. Mr. Paul Florack submitted pre-filed testimony and testified on behalf of Illuminet.[55] Mr. Florack is Vice President for Network Services in Product Management and Development at Illuminet. As indicated by the other Complainant witnesses, Illuminet agrees that without SS7 signaling messages, no end-user traffic would be completed. As such, according to Mr. Florack, the SS7 signaling is an integral and essential part of voice traffic.[56] Moreover, Illuminet notes that only Illuminet carrier/customers carry end-user traffic and only those customers generate SS7 message signals for which Qwest has been assessing access charges under its Access Catalog.[57] Illuminet, like Cox and ALLTEL, asserts that Qwest has not properly implemented the Access Catalog because of Qwest's unwillingness to properly measure the type and jurisdiction of SS7 message charges, capabilities that are in fact available, and to provide the detail necessary to verify that billings are correct. Thus, Illuminet requests that the Commission direct Qwest to withdraw its Access Catalog amendment that took effect June 6, 2001 (Exhibit 12).[58]

35. Illuminet also went into significant detail to describe Qwest's recovery of SS7 costs from all services using the SS7 network, in accordance with FCC directives.[59] Mr. Florack described how the jurisdiction of the SS7 message is relevant because it naturally follows the voice traffic it supports.[60] Finally, Mr. Florack agreed with Cox and ALLTEL that the LOAs provided by each company to Illuminet authorize Illuminet as their agent for purposes of SS7 message transport. Mr. Florack pointed out that "while Qwest may rely upon that LOA for Qwest's own internal network security purposes, that limited use does not limit the scope of the authority Illuminet has been given as the agent of its carrier/customers.[61]

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[54] Fuller Rebuttal, Exhibit 30, 8:16-9:10; Tr. 157:17-158:10.

[55] Florack Testimony, Exhibits 31 and 32, and Florack Rebuttal, Exhibit 33.

[56] Florack Rebuttal, Exhibit 34, 2:5-12.

[57] *Id.*

[58] Florack Rebuttal, Exhibit 34, 3:16-4:3.

[59] Florack Rebuttal, Exhibit 34, 6:5-7:12. See also, *Provision of Access for 800 Service*, Report and Order, CC Docket No. 86-10, 4 FCC Rcd 2824, 2832 (1989)(core costs of SS7 should be borne by all network users).

[60] Florack Rebuttal, Exhibit 34, 7:18-10:4.

[61] Florack Rebuttal, Exhibit 34, 13:7-14:14.

36. Mr. Scott A. McIntyre, Director of Product and Market Issues for Qwest, also submitted pre-filed testimony and testified at the hearing.[62] According to Mr. McIntyre, Qwest has merely unbundled the SS7 message price out of the switching cost, lowered the switching rates and created a separate signaling rate.[63] Qwest also contends that the Complainants have the choice to purchase signaling through their ICAs, through the Qwest catalog, or through a third-party provider.[64] In the past, Qwest believes Complainants had a competitive advantage over other carriers who did not use third-party providers.[65] Now, however, with Qwest's new SS7 message rates in the Access Catalog, Qwest contends costs are more aligned with the cost causer.[66] Mr. McIntyre asserts that the rate structure is proper because it was modeled after that approved by the FCC and establishes rates for the SS7 network that is separate from the voice network. [67]

37. Qwest also asserts that the ICAs between the companies are irrelevant in this case as Illuminet, not Cox or ALLTEL, is Qwest's customer for SS7 services.[68] Qwest further asserts that the LOAs discussed by the Complainants were only created to allow Qwest to open point codes in its switches, and that Complainants were attempting to expand the authority granted by the LOAs.[69]

38. The sixth and final witness in the case, Mr. Joseph P. Craig, Director of Technical Regulatory in the Local Network Organization for Qwest, also submitted pre-filed testimony and testified at the hearing.[70] Through Mr. Craig's testimony, Qwest described how the SS7 network is an out-of-band signaling network, separate from the network that carries voice calls or traffic.[71] Qwest also claimed that the distinction between local and exchange access calls is not applicable to SS7 messages.[72] Finally, Mr. Craig opined that the Cox and ALLTEL LOAs are only

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62 McIntyre Rebuttal, Exhibit 34, McIntyre Surrebuttal, Exhibit 36, Erratum Testimony, Exhibit 35.
63 Tr. 301:11-302:1.
64 Tr. 303:11-18.
65 McIntyre Rebuttal, Exhibit 34, 10:8-12.
66 McIntyre Rebuttal, Exhibit 34, 11:14-18.
67 McIntyre Rebuttal, Exhibit 34, 6:16-7:5.
68 McIntyre Rebuttal, Exhibit 34, 31:5-20.
69 McIntyre Rebuttal, Exhibit 34, 32:4-36:7; Tr. 306:1-307:20.
70 Craig Rebuttal, Exhibit 40, and Erratum Testimony, Exhibit 41.
71 Craig Rebuttal, Exhibit 40, 3:3-18; Tr. 366:16-22.
72 Craig Rebuttal, Exhibit 40, 9:4-16.

valid to open Qwest point codes, not to allow Illuminet to act as either Cox's agent or ALLTEL's agent for purposes of purchasing SS7 signaling services.[73] Mr. Craig agrees with Mr. McIntyre that the SS7 network is separate from the voice network, going so far as to state that the SS7 network is "completely separate" from the voice network.[74]

SS7 is an Integral Component of End-user Traffic

39. At the outset, one of the fundamental policy issues for us to resolve is whether, as Qwest contends, the Commission should treat the SS7 messages and the network that carry them independently of the voice traffic.[75] If we were to agree with this contention, we would also, by necessity and logic, need to conclude that the regulatory treatment of the voice traffic has no relevance to the application of the SS7 message charges at issue in this proceeding. Complainants, however, offer a far different position. Complainants allege that the SS7 message is an integral component of the end-user traffic it supports and, accordingly, the interconnection agreements in place between the carriers of end-user traffic (such as those between Cox and Qwest and those between Qwest and ALLTEL) determine whether and how SS7 message charges should be assessed. We accept the latter conclusion as not only being supported in the record, but also being consistent with common sense and other regulatory decisions.

40. First, although we recognize the attractive simplicity of the "separate" network theory raised by Qwest,[76] we find that theory sorely lacking in fact and substance. While it is true that the SS7 network includes components different from those used to carry voice traffic, the record is abundantly clear that, where SS7 has been implemented (as in the case), there would be no voice traffic if the SS7 messages at issue were not exchanged between SSPs or if the SS7 network were not operating.[77] The record also confirms that the SSP that generates the SS7 message is part of the local switch, and the SSP effectively communicates with that switch to establish and

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[73] Craig Rebuttal, Exhibit 40, 14:13-16:4; Tr.371:20-372:12.
[74] Craig Rebuttal, Exhibit 40, 3:4.
[75] See, e.g., Craig Rebuttal, Exhibit 40, 16:9-12; Tr. 315:10-17.
[76] See, Craig Rebuttal, Exhibit 40, 8:21-22, 9:6-9; Tr. 51:16-18; Tr. 381:10-382:7.
[77] See, e.g., Fuller Rebuttal, Exhibit 30, 12:12-15; O'Neal Rebuttal, Exhibit 28, at 3:14-18, 5:13-15, 6:7-11; Florack Testimony, Exhibit 31, 12:13-16; Florack Rebuttal, Exhibit 33, 2:6-9; Tr. 116:5-11; Tr. 370:10-16.

release the voice path so that the call can be set up and subsequently completed.[78] Further, the record reflects that, for purposes of the charges at issue in this proceeding, the SS7 network has no independent purpose but to transport the SS7 messages,[79] and, again, that those messages must be sent and received by the SSPs (which are at least a part of the local switch owned by the LEC or CMRS provider) in order for the end-user call to be completed. Functionally, therefore, we see no basis for suggesting, as Qwest witness Craig did in his written testimony summary, that the SS7 network is separate from the voice network, let alone "completely separate" from the voice network.[80] Rather, the record is clear that the voice network must rely upon the SS7 network to initiate the SS7 messages required for any end-user traffic to be completed.

41. Second, we find no rational basis to suggest, as Qwest does,[81] that the jurisdiction of the voice traffic associated with SS7 messages is irrelevant to our inquiry. We find this suggestion to be interesting since it is clearly contradicted by the fact that Qwest "jurisdictionalizes" its SS7 message traffic (albeit not to the level Complainants seek),[82] and it relied upon its interstate message traffic in establishing the interstate SS7 message rates filed with the FCC.[83] Qwest's interstate tariff and Qwest's arguments here also establish that Qwest agrees with the principle that, at least for purposes of separating interstate SS7 messages from intrastate SS7 messages, it is appropriate for regulators and customers to look to the underlying voice or data message.[84] We note that Qwest's SS7 charges are an unbundling of the rate elements associated with voice traffic – the SS7 rate elements have not been divorced from the traffic, they've simply been unbundled from the local

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[78] See, e.g., O'Neal Testimony, Exhibit 27, 4:17-19, 5:9-6:10; Florack Testimony, Exhibit 31, 7:20-24; Craig Rebuttal, Exhibit 40, 9:20-10:17.

[79] See, e.g., O'Neal Rebuttal, Exhibit 28, 3:18-21; Florack Testimony, Exhibit 31, 12:3-16; Florack Rebuttal, Exhibit 33, 19:2-10.

[80] See, Craig Rebuttal, Exhibit 40, 3:4.

[81] See, e.g., McIntyre Rebuttal, Exhibit 34, 29:22-30:2; Craig Rebuttal, Exhibit 40, 12:22-23.

[82] See, McIntyre Surrebuttal, Exhibit 36, 19:8-10.

[83] See, McIntyre Rebuttal, Exhibit 34, 6:17-20; See also Lafferty Testimony, Exhibit 24, 27:8-17; O'Neal Rebuttal, Exhibit 28, 6:22-7:2; Florack Rebuttal, Exhibit 33, 9:14-16.

[84] We agree with the Complainants that the FCC's decision regarding Qwest's interstate tariff structure does not preempt this Commission's authority to decide the matter pursuant to Nebraska law and the record evidence in this proceeding (See, e.g., Lafferty Testimony, Exhibit 24, 11:21-12:9), and we do not read Qwest's testimony to suggest otherwise.

switching and tandem switching rate elements associated with that traffic. Accordingly, we find no plausible reason (and Qwest has provided none) as to why the jurisdiction of the SS7 messages was proper in the context of the federal tariff filing,[85] but not relevant in the context of the various intrastate end-user traffic types (such as local and EAS/ELCA) to which the Complainants allege that Qwest is improperly applying the Access Catalog rates. While Qwest may be correct that the SS7 network does not differentiate between the jurisdiction of the SS7 messages that are transported across the SS7 network,[86] Qwest's position would effectively negate the Commission's duty to take into account the distinct categories of intrastate end-user traffic (and its component parts), even though the determination of the proper category is one of our fundamental considerations in establishing the proper rate design and rate structure to be applied.[87] Finally, Qwest has not contested the fact that, in some situations, it jurisdictionalizes SS7 messages based on the jurisdiction of the associated voice traffic. For example, pursuant to its Statement of Generally Available Terms and Conditions ("SGAT"), Qwest's compensation arrangement for SS7 messages is driven by the compensation arrangement for the messages' associated traffic.[88]

42. Third, we find persuasive Complainants' position that, if the SS7 network were truly separate and apart from the voice network, there would have been no reason for the FCC to find that its costs should be treated as a "general network upgrade" by Qwest for cost recovery purposes.[89] In an earlier decision, the FCC addressed the regulatory treatment of SS7 capability that was then beginning to be deployed. The FCC determined that:

> SS7 represents a new network infrastructure that will not only support a number of new interstate and state services, but will also increase the efficiency with which LECs provide existing services, basic and non-basic. As such, CCS7 represents a general network upgrade, the core costs of which should be borne by

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[85] Tr. 316:16-317:5.

[86] See, Craig Rebuttal, Exhibit 40, 9:13-14.

[87] Accord, O'Neal Rebuttal, Exhibit 28, 4:9-18; Fuller Testimony, Exhibit 29, 5:19-6:2; Florack Rebuttal, Exhibit 33, 7:22-8:5.

[88] See, Lafferty Rebuttal, Exhibit 25, 12:16-18, 13:1-6 and footnote 5.

[89] Accord, Lafferty Rebuttal, Exhibit 25, 14:22-26 and 21:8-19; Florack Rebuttal, Exhibit 33, 6:14-7:4.

> all network users . . . . The costs of CCS7 components that will be used to support other services should be apportioned in accordance with existing rules for other network services.[90]

We need not determine whether the FCC's decision regarding the accounting and cost allocation of SS7 costs is binding on this Commission or on Qwest's intrastate services, but we do agree with the FCC's principle that regulated carriers must allocate their SS7 costs among the services supported by SS7. Given that cost allocation, the normal and expected practice would be that cost recovery should follow cost allocation, with the result that SS7 costs should be recovered from the users of the services supported by SS7.[91] Indeed, Qwest attempts (albeit improperly as discussed below) to justify its unbundling of SS7 charges on this "cost causation" principle.[92]

43. Finally, we note that the Access Catalog itself exposes the infirmities of Qwest's suggestion that the voice traffic and jurisdiction are irrelevant. As indicated in Illuminet's testimony, Qwest has used the voice traffic as a surrogate for applicability of the SS7 charges at issue where actual measurement by Qwest of the SS7 messages is not available.[93] Since Qwest has chosen not to implement actual measurement,[94] the voice traffic (and the necessity of its jurisdiction) becomes relevant based on Qwest's chosen implementation methodology. As such, we find unpersuasive Qwest's suggestion that Illuminet, as the customer, must be charged for all SS7 messages since it purchased the links and ports through the FCC tariff.[95] The record is clear that Illuminet carries no voice traffic; its carrier/customers do.[96] And, as found earlier, it is the voice traffic that requires the SS7 messages to be generated, and those messages are generated by the SSPs owned by the Illuminet carrier/customer and not Illuminet. Accordingly, it would not only be proper from a policy perspective but also based on the record before us, that the implementation of the Access Catalog revisions take into account the various and distinct intrastate end-user traffic

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90 *Provision of Access for 800 Service*, Report and Order, CC Doc. No. 86-10, 4 FCC Rc'd 2824, 2832 (1989) (internal citations omitted).

91 Accord, Florack Rebuttal, Exhibit 33, 8:14-19.

92 See, McIntyre Rebuttal, Exhibit 34, 6:6-14.

93 See, Florack Rebuttal, Exhibit 33, 9:6-10.

94 See, McIntyre Rebuttal, Exhibit 34, 23:16-18.

95 See, e.g., *Id.* at 9:1-4, 22:20-22, 31:7-10, 35:16-17 and 38:10-12.

96 See, Florack Testimony, Exhibit 31, 7:24-25, 8:22-27.

types when considering whether the SS7 message charges associated with those traffic types are properly chargeable under the Access Catalog.[97]

Proper Construction of the Access Catalog Should Avoid Windfalls to Qwest

44. Two final matters bear discussion. We are mindful of the facts presented by the Complainants with respect to their position that Qwest is receiving a windfall under the Access Catalog, and we are troubled by the casual approach that Qwest apparently believes the Commission should take with respect to Qwest's implementation of the Access Catalog. We agree with Complainants that Qwest's interpretation of its Access Catalog to apply to all SS7 messages is improper since Qwest cannot apply the Access Catalog unilaterally to non-exchange access traffic for which compensation arrangements are included in preexisting agreements. Absent this approach, Qwest would continue to gain a windfall under the SS7 message charges it currently assesses to Illuminet (which then passes through the charges without mark-up to its carrier/customers[98]) because those charges relate to end-user traffic addressed in other agreements in place between Qwest and the Illuminet carrier/customers which included compensation for the entire exchange of traffic between Qwest and those carrier/customers.[99]

45. Similarly, we also cannot ignore, regardless of Qwest's assertions to the contrary, the anti-competitive effects arising from Qwest's implementation of its intrastate SS7 Access Catalog revisions. The testimony of Mr. Lafferty and Mr. O'Neal reveals that Qwest's billings to Cox and ALLTEL represent additional annualized revenues nearly double the total additional revenue that Qwest claims to result from the unbundling of SS7 signaling. The Cox witness, Mr. Lafferty, testified that as a consequence of Qwest's application of its amendment to the Access Catalog to Cox's non-access SS7 messages, Cox has experienced an increase to Cox's net cost of operations of $90,000 per month or over $1 million annually arising from the pass-through of Qwest's SS7 message charges by Illuminet.[100] The ALLTEL witness, Mr. O'Neal, testified that the

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97 Accord, O'Neal Rebuttal, Exhibit 28, 7:3-12.

98 See, Florack Testimony, Exhibit 31, 26:13-18.

99 See, e.g., Lafferty Testimony, Exhibit 24,14:1-16:3, 20:2-21:2, and 22:7-24:25; Fuller Testimony, Exhibit 29, 9:1-5 and Exhibit A.

100 See, e.g., Tr. 63:13-25 and 104:24-105:1.

data contained in Exhibit 10 confirmed Qwest's discovery response that approximately $1,081,000 was Qwest's calculated amount of the reduction in local and tandem switching revenues and the increase in SS7 revenues due to unbundling.[101] Mr. O'Neal further testified that for the past 12 months, ALLTEL alone had received billings (passed through by Illuminet) of $939,738 for charges by Qwest under the revised Access Catalog, and that while ALLTEL only handles a small portion of the total SS7 messages that would be subject to charges under Qwest's revised Access Catalog, ALLTEL's billing increase equaled nearly 90 percent of the annual revenue increase that Qwest states will result from its unbundling of SS7 charges in Nebraska.[102] Illuminet's witness, Mr. Florack, testified that Illuminet has been billed approximately $2.9 million by Qwest since the effective date of Qwest's amendment to the Access Catalog pertaining to SS7 signaling which, as noted above, are passed through to its carrier/customers without charge. Additional billings to other carriers for SS7 message charges are unknown.

46. These charges are, in our view, significant and directly arise from Qwest's improper implementation of its intrastate SS7 message rate structure. That implementation, in turn, has the effect of unilaterally increasing the costs of Cox and ALLTEL (which will be recovered through rates they assess to their ratepayers and other carriers) from those costs that Cox and ALLTEL agreed to pay pursuant to their negotiated agreements with Qwest. When viewed in this light, we must conclude that the effect of Qwest's intrastate SS7 message rate structure is to deter competition by an improper increase of the costs to a competitor or at least a shift of Qwest's costs to other carriers, thus providing Qwest an improper competitive advantage vis-à-vis those carriers with which it does compete. In either instance, we will not allow that result to occur.

47. Further, we reject Qwest's contention that this result is somehow permissible because Qwest has properly implemented its intrastate SS7 structure pursuant to applicable FCC directives.[103] Even though the FCC's directives are not necessarily controlling on our implementation of the *intrastate* SS7 message structure at issue, Qwest has failed to comply with them. Specifically, the underlying FCC decision upon which Qwest relies, in part, for justifying its intrastate implementation of

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101 Tr. 118:21-120:2.
102 Tr. 120:3-22.
103 See, e.g., McIntyre Surrebuttal, Exhibit 36, 5:5–6:12.

the SS7 message structure required Qwest to "acquire the appropriate measuring equipment as needed to implement such a plan,"[104] but only where a carrier has elected to implement that structure.[105] Since it is clear that Qwest elected to make the revisions at issue, the only remaining question is whether the "measuring equipment" has been put in place to "implement" that election. The record is clear that Qwest has not,[106] as is confirmed by the lack of the billing detail required to properly identify (and thus measure) the SS7 messages associated with various intrastate end-user traffic types.[107] Therefore, Qwest cannot rely upon the FCC's SS7 rate unbundling pronouncements to support its efforts to cause this Commission to ignore the effects of the improper implementation of its intrastate SS7 message rate structure.[108]

48. ALLTEL and Cox, as common carriers, have challenged Qwest's application of its unbundling of SS7 message signaling charges as set forth in the amendment to Qwest's Access Catalog as improper and unjust. Pursuant to Section 75-119, it is the duty of the Commission to make a determination of such claims and pursuant to Section 75-118.01, the Commission has the duty to determine the scope or meaning of a tariff. The Commission finds that the lack of revenue neutrality in Qwest's unbundling of SS7 signaling warrants a finding that the revisions to Qwest's Access Catalog (Exhibit 12) are not fair, just and reasonable and that such Catalog provisions should be declared

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[104] *Access Charge Reform*, First Report and Order, 12 FCC RC'd 15982, 16090 (para. 253) (1997) ("Access Charge Reform Order").

[105] See, *id*. (Para. 252).

[106] See, McIntyre Rebuttal, Exhibit 34, 23:16-19.

[107] See, Florack Testimony, Exhibit 31, 13:26-29 citing to Confidential Exhibit B.

[108] We also note that Qwest relies, in part on the FCC's decision that permitted Qwest to unbundle its *interstate* SS7 costs. See, e.g., McIntyre Rebuttal, Exhibit 34, 6:16-7:8; see also, *US West Petition to Establish Part 69 Rate Elements for SS7 Signaling*, Order, CCB/CPD 99-37, DA 99-1474, released December 23, 1999 ("Order"). That decision, however, notes Qwest's ability "to assess rate elements on *each switched access originating or terminating call attempt . . ..*" Order at para. 6 (emphasis added). We agree with the Complainants, however, that in the interstate jurisdiction the "calls" are typically interstate toll carried by IXCs, which is confirmed by the FCC's reference to a "switched access . . .. call attempt," and the fact that switched access is exchange access. See, e.g., Lafferty Testimony, Exhibit 24, 6:21–7:1 citing to Access Charge Reform Order, 12 FCC Rc'd at 16042 (para. 138); Florack Rebuttal, Exhibit 33, 11:7-10. In the *intrastate* jurisdiction, however, there are more discrete "call types" that must be accounted for in any proper SS7 unbundling efforts. See, e.g., Florack Testimony, Exhibit 31, 23:9-21.

null and void. Further, pursuant to the Commission's authority pursuant to Section 75-109(2), the Commission finds that the implementation of Qwest's Access Catalog is inconsistent with the policies of the Telecommunications Act of 1996 because Qwest has implemented its intrastate SS7 message rate structure in a manner that permits Qwest to assess such charges for traffic that is otherwise subject to its ICAs with Cox and with ALLTEL, and does so for end-user traffic that Qwest initiates (a violation of applicable reciprocal compensation rules and policies as noted by Mr. Lafferty).[109]

49. Lastly, we are also concerned by Qwest's unilateral efforts to alter the concept of "cost causation."[110] As the record reflects, no changes occurred in the exchange of SS7 messages between Cox and Qwest and between ALLTEL and Qwest except for the new rate structure imposed by Qwest's revisions to the Access Catalog.[111] However, the undeniable fact is that, as a result of these revisions, Qwest is assessing (albeit though Illuminet) charges to Cox and ALLTEL for SS7 messages associated with calls made by another carrier's end-users (such as in the case of originating and terminating pre-subscribed toll calls of an interexchange carrier (IXC) carried by Qwest and Cox or ALLTEL in a 'meet point billed' arrangement) or all calls where Qwest is the initiating carrier. Thus, the "causer" of the SS7 messages in these instances is not ALLTEL or Cox, and therefore, no SS7 message charges should be assessed by Qwest.[112] Accordingly, we reject in its entirety Qwest's overly broad construction of cost causation espoused in this proceeding and we specifically reject Qwest's suggestions that the Complainants have taken advantage of some pricing "loophole" or have been subsidized by other carriers.[113] Nothing changed in the cost causation principles in place prior to the unbundling of SS7 message charges by Qwest, and Qwest has shown no rational basis as to why it should be allowed to unilaterally change such principles. This is particularly true where, as here, any

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[109] See, Lafferty Rebuttal, Exhibit 25, 6:10-7:18.

[110] See, Lafferty Testimony, Exhibit 24, 17:16-19; Lafferty Rebuttal, Exhibit 25, 18:15-19:12.

[111] Tr. 149:17-21

[112] Accord, Lafferty Rebuttal, Exhibit 25, 6:13-16; Florack Rebuttal, Exhibit 33, 4:7-15.

[113] See, e.g., McIntyre Rebuttal, Exhibit 34, iii, 9:9-17. Contrary to Qwest's suggestion, this case is not about "options" regarding the SS7 connectivity (see McIntyre Surrebuttal, Exhibit 36, 8:9-9:4) in that each "option" either requires a carrier to rely upon Qwest for the provision of SS7 network, or requires that carrier to be subject to an intrastate SS7 message rate structure that has not been properly implemented by Qwest.

additional costs shifted to another provider will be reflected in that provider's cost of providing service via its end-user rates. Increasing a competitor's costs of providing service by an improper application of cost causation principles or, as here, an improper construction and application of the Access Catalog is the antithesis of rational public policy.

50. Accordingly, for purposes of our remaining analysis, we agree with the Complainants that our decisions can and should be governed by the simple, common sense principle they have articulated that no carrier should implement a revision in its tariff or pricing catalog such that its inappropriate billing of other carriers results in a revenue windfall to such carrier. This principle is particularly appropriate where the application of such tariff or pricing catalog has the effect of unilaterally altering the compensation arrangements included in negotiated pre-existing agreements. Specifically, we agree with the Complainants that the SS7 message is an integral component of the end-user traffic it supports,[114] and the arrangements that govern the compensation of the end-user traffic equally govern the treatment of the SS7 signaling messages associated with that traffic.[115] Thus, if SS7 signaling messages are associated with intrastate toll end-user traffic, and intrastate toll is subject to the Access Catalog, the Access Catalog applies. If SS7 signaling messages are associated with intrastate toll end-user traffic and the exchange access associated with such intrastate toll is subject to some arrangement other than the Access Catalog, the terms of that arrangement should apply. Similarly, if SS7 signaling messages are associated with local end-user traffic, CMRS intraMTA traffic, Qwest-originated toll or jointly provided exchange access, and such traffic is subject to an ICA or other contract, the agreement or contract applies to the SS7 signaling messages for such traffic. As applied here, the fact that Cox and ALLTEL have chosen an intermediary to transport SS7 message signals between themselves and Qwest should produce no different result than if Qwest and Cox and/or Qwest and ALLTEL directly connected their own SS7 networks. The cost saving efficiencies that the Illuminet transport provides and its associated benefits to Qwest,[116] should not be denied to the rate paying public. This is especially true where, as here, the

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[114] See, e.g., Lafferty Rebuttal, Exhibit 25, 11:19-22.

[115] Accord, Florack Testimony, Exhibit 31, 19:20-20:3.

[116] See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21; McIntyre Rebuttal Testimony, Exhibit 34, 11:10-12; Tr. 382:8-383:17

facts demonstrate that the arrangement between Illuminet and its carrier/customers is well known to Qwest,[117] and as discussed below, proper agency authorizations have been provided regarding the point codes to which SS7 message signals are transported. We expect Qwest and all carriers subject to our jurisdiction to encourage network efficiencies, not create roadblocks with no apparent purpose other than to enhance their own revenues and/or disadvantage their competitors.

Illuminet is the Agent of Cox and ALLTEL for SS7 Transport Services

51. As indicated above, our analytical construct requires that we examine the arrangements in place between the carriers for the handling of end-user traffic. Although the application of this construct is made somewhat more difficult because Illuminet offers no end-user services,[118] the record is clear that Illuminet's carrier/customers do offer such services. Accordingly, we must address whether, in fact, Illuminet "stands in the shoes" of its carrier/customers for purposes of the SS7 messages that are components of its carrier/customers' end-user and exchange access service offerings, i.e., that Illuminet is the agent for its carrier/customers with respect to the SS7 messages Illuminet transports for them.

52. Under Nebraska law, whether agency exists depends on the facts underlying the relationship of the parties irrespective of words or terminology used by the parties to characterize or describe their relationship. *See, e.g., Kime v. Hobbs,* 252 Neb. 298, 562 N.W.2d 705 (1997). Using this as our guidepost, the record reflects that a LOA provided by Cox and dated July 2, 2001, was sent to Qwest indicating that "Cox Communications is authorizing Illuminet to conduct all negotiations and issue orders for (all services) point codes listed below for all US West LATAs; 001-218-140." (Exhibit 15). The very language of the LOA reveals that Cox made a general grant of agency authority to Illuminet relative to SS7 services in Qwest (formerly US West) LATAs, and that the agency relationship would continue until "rescinded in writing by Cox." Furthermore, as Mr. Lafferty testified for Cox, agency is a

[117] See, e.g.. Florack Testimony, Exhibit 31, attached Ex. E. We specifically find that, at least as of November 2000, Qwest was on notice of the specific relationship that Illuminet had with its carrier/customers, and that Qwest presumably ignored that relationship and the consequences arising there from when it elected to file its intrastate SS7 message rate structure.

[118] Tr. 233:10-13; Tr. 239:13-18.

common method of transacting business by telephone companies. For example, Cox hires agents to help with collocation, and Qwest allows those agents, who are not Cox employees, access to Cox's collocation cage.[119]

53. Similarly, a LOA provided by ALLTEL dated April 5, 2001, was sent to US West stating: "ALLTEL is authorizing Illuminet to conduct all negotiations and issue orders for all services for the point codes listed below, for all US West LATAs." (Exhibit 14). This LOA also provided that it "will remain in effect until rescinded in writing by ALLTEL." Mr. O'Neal testified that the ALLTEL LOA "is authorizing Illuminet to conduct all negotiations and to issue an order for all services for the point codes listed below."[120] Consistent with the Cox LOA, the language used by ALLTEL demonstrates that Illuminet was designated by ALLTEL to act as their agent with regard to SS7 services in Qwest (formerly US West) LATAs.

54. Accordingly, under the test in ***Kime***, we find that the LOAs do, in fact, establish Illuminet as the agent of Cox and ALLTEL generally, and, therefore, Illuminet stands in the shoes of Cox and ALLTEL with regard to the SS7 message charges at issue. In addition to this clear grant of agency, our finding is also independently supported by the record evidence that Qwest has been fully aware of the relationship between Illuminet and its carrier/customers (including the issues associated with the instant dispute),[121] and the fact that the concept of "agency" is not a novel idea. For example, the Cox/Qwest ICA, approved by this Commission in Application No. C-1473, mentions the word "agent" 33 times, testament to the fact that Qwest knew Cox would, like many new entrants, use agents to handle many of its needs. Mr. Lafferty's pre-filed testimony discussed this concept in depth, contending that only through third party vendors could a new entrant manage all the tasks required of it as it grows a business while also quoting from two of the 33 provisions in the Qwest/Cox ICA that discuss agency.[122] Similarly, the ALLTEL ICAs (Exhibits 16 and 17) contain numerous references to agents and agency. Based on the above-quoted LOAs and the evidence in the record, the Commission finds that Illuminet is the agent of Cox and of ALLTEL for SS7 messages at issues here within the Qwest LATAs.

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119 Tr. 56:20-57:2.
120 Tr. 145:14-17.
121 Florack Testimony, Exhibit 31, 9:8-15, 13:18-26, and 26:21-25.
122 *Id.*, Lafferty Rebuttal, Exhibit 25, 26:11-28:15.

55. In making this finding, we specifically reject Qwest's contention that its use of the LOA somehow limits the specific agency relationship established between Cox and Illuminet and between ALLTEL and Illuminet.[123] The record demonstrates facts that specifically identify the scope of and activities encompassed within the agency relationship established between Cox and Illuminet and between ALLTEL and Illuminet.[124] Similarly, we reject Qwest's inference that, regardless of the LOA, Illuminet would be a "third party" beneficiary of the ICAs that Qwest has with the Illuminet Co-Complainants.[125] We recognize that under Nebraska case law, a third party beneficiary's rights depend upon, and are measured by, the terms of the contract between the promisor and promisee, *see, Marten v. Staab*, 249 Neb. 299, 304, 543 N.W.2d 436 (1996), and the ICAs have provisions stating that there shall be no third party beneficiaries to the ICAs. However, just as *Marten* recognizes the distinction between agency and third party beneficiaries in the context of the facts in that case, *see id.*, so also in the instant matters, the LOAs constitute Illuminet as the agent for Cox and ALLTEL, respectively, and Illuminet's rights flow from the agency status and not from third party beneficiary status. Moreover, Qwest has provided no facts that would establish that Illuminet is seeking a benefit under the ICAs in question. Rather, the charges at issue are flowed through to Cox and ALLTEL without mark-up, as the record demonstrates. Accordingly, we specifically reject Qwest's theory that third party beneficiary rights are at issue in this proceeding.

56. We also reject Qwest's suggestion that the concept of "agency" as established between Cox and Illuminet and between ALLTEL and Illuminet is inconsistent with the Communications Act of 1934, as amended. Far from violating such Act, the FCC has embraced the very basis for its application established here. Provided that an agent acts in a manner consistent with the terms and conditions established in the underlying interconnection agreement between its carrier principal and a LEC, the FCC has found that:

> [W]hen a CLEC or an IXC (having entered an interconnection agreement with the relevant LEC) designates a DA provider to act as their agent, that competing DA

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123 See, e.g., McIntyre Rebuttal, Exhibit 34, 32:19-21.
124 See, e.g., Florack Testimony, Exhibit 31, 8:12-10:11.
125 See, e.g., McIntyre Surrebuttal, Exhibit 36, 16:9-17:12.

> provider is entitled to nondiscriminatory access to the providing LECs' local DA database. Naturally, the DA provider's database access will be consistent with the terms of the relevant interconnection agreement and with the terms of the DA providers' separate agreements with its carrier principal.[126]

57. While the above-quoted decision does not directly address the facts and circumstances presented in the instant complaints (which is acknowledged by Illuminet[127]), the FCC's decision nonetheless recognizes that the Communications Act of 1934 supports the same policies that the record demonstrates are present herein. For example, the FCC made clear that "inter-exchange carriers and competing LECs may not have the economies of scale to construct and maintain directory assistance platforms of their own,"[128] and that "the presence of such DA providers allows many carriers to offer a competitive directory assistance product without being forced either to go to the substantial expense of maintaining their own database or to purchase the service from the incumbent LECs."[129] These same FCC-recognized concepts are equally applicable herein.

58. The record reflects that Illuminet provides economies of scale and scope to its Co-Complainants,[130] which is at least acknowledged by Qwest.[131] Likewise, and as is the case with CLECs and IXCs *vis-à-vis* the provision of directory assistance, Illuminet's carrier/customers utilize Illuminet because of the expense and effort involved in acquiring and deploying all of the components required to provide connectivity to the SS7 networks. It is likewise clear that Qwest is the dominant provider of local exchange service and the associated SS7 signaling.

59. Finally, we reject Qwest's assertion that it has "no direct relationship" with Cox and with ALLTEL regarding SS7.[132] The interconnection agreements between Qwest and Cox and between Qwest and ALLTEL require that SS7 connectivity be implemented,

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126 Provision of Directory Listing Information, 16 FCC Rc'd 2736, 2748 (para. 27)(2001).
127 See, Florack Rebuttal, Exhibit 33, 15:13-14.
128 16 FCC Rc'd. at 2748 (para. 26) (footnote omitted).
129 *Id*. (para. 27).
130 See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21.
131 See, McIntyre Rebuttal, Exhibit 34, 11:10-12.
132 *Id.* at 35:19.

and the LOAs establish that Cox and ALLTEL have each separately designated Illuminet as their agent for this connectivity with Qwest. As confirmed by the fact that call set-up and teardown is being accomplished, there has been no allegation that the actions of Illuminet on behalf of either Cox or ALLTEL are inconsistent with the terms and conditions required for their respective SS7 connectivity with Qwest.

60. Accordingly, based on the entire record before us, we are confident that our decision regarding the existence and application of the agency relationship between Illuminet and Cox and between Illuminet and ALLTEL complies with the proper legal mandates and is otherwise consistent with the underlying policies of the Communications Act of 1934 as interpreted by the FCC.

The ICAs at Issue Do Not Permit Separate SS7 Message Charges to be Assessed By Qwest

61. Having found that Illuminet is acting as the agent for its respective Co-Complainants, we next turn to whether the SS7 message charges being assessed that relate to the various intrastate voice traffic types are proper under the two ICAs before us. Both Cox and ALLTEL provided their understanding of whether SS7 message charges are proper under their respective ICAs for such traffic types.[133] We note, however, that each of the Complainants agree that only the SS7 message charges assessed by Qwest for terminating both intraLATA toll originated by an end user pre-subscribed to Cox and that originated by an end user pre-subscribed to ALLTEL are proper.[134] Therefore, we need not address this type of end-user traffic.

62. Cox and ALLTEL maintain that the terms of their respective ICAs with Qwest include SS7 signaling as a part of the services that the parties agreed to provide reciprocally to one another.[135] A determination of the validity of this position turns on certain key provisions of the ICAs. In the Cox/Qwest ICA (Exhibit 26), those key provisions are section 6.7.4, which states that where available, all interconnection trunks will be

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[133] See, Lafferty Rebuttal, Exhibit 25, 4:4-15, 5:13-18, 6:21-7:3; Fuller Testimony, Exhibit 29, 5:1-6:6, 7:4-8:12.

[134] See, Lafferty Testimony, Exhibit 24, 14:1-5; Fuller Testimony, Exhibit 29, 10:8-10; Florack Testimony, Exhibit 31, 25:4-7.

[135] See, e.g., Tr. 47:21-25 and 155:9-19.

equipped with SS7 capabilities,[136] Section 5.13, which discusses Meet Point Billing (MPB)[137], and Section 5.5.1.2, which mandates a "Bill-and-Keep" arrangement for the termination of local traffic.[138] Cox has testified that no attempt has been made by Qwest to amend the terms of the Cox/Qwest ICA in order to change the compensation arrangement for SS7 messages.[139] In the ALLTEL/Qwest Reciprocal Compensation Agreement for Extended Area Service (Exhibit 17), those key provisions are Section 4.2 that provides that the parties will use SS7 signaling in the interconnection of their networks,[140] and Section 3.1 that discusses reciprocal compensation for transport and termination of EAS traffic.[141] In the ALLTEL/Qwest Wireless ICA (Exhibit 16), those key provisions are Article V.G.5 that provides that the parties will provide common channel signaling to one another (defined in Article III.L as SS7 signaling protocol),[142] and Article IV.A.1 that discusses reciprocal compensation for local traffic exchanged between the parties.[143] ALLTEL has established

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[136] Section 6.7.4 states: "The parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI), calling party category, charge number, etc. All privacy indicators will be honored." CCS is another term for SS7 signaling.

[137] Meet Point Billing (MPB) is a revenue-sharing agreement where Cox and Qwest have agreed to jointly provide access service to IXCs under separate access tariffs.

[138] Section 5.5.1.2 states: "If the exchange of local/EAS traffic between the Parties is within +/- 5% of the balance, the Parties agree that their respective call terminating charges will offset one another and no compensation will be paid."

[139] See, Lafferty Rebuttal, Exhibit 25, 4:22-23.

[140] Section 4.2 states: "To the extent available, the parties will interconnect their networks using SS7 signaling where technically feasible and available as defined in FR 905 Bellcore Standards including ISDN user part ("ISUP") for trunk signaling and transaction capabilities application part ("TCAP") for common channel signaling based features in the interconnection of their networks."

[141] Exhibit 1 to the ALLTEL/Qwest ICA provides the rates for this reciprocal compensation, and Exhibit 2 to the ALLTEL/Qwest ICA provides the exchanges subject to the reciprocal compensation arrangement.

[142] Article V.G.5 states: "The Parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored."

[143] Article IV.A.1 states in pertinent part: "Reciprocal traffic exchange addresses the exchange of traffic between Carrier subscribers and USWC end users. If such traffic is local, the provisions of this Agreement shall

that neither ALLTEL nor Qwest have amended the terms of the ALLTEL/Qwest ICAs in order to alter the compensation for SS7 messages.[144] It is fundamental that these ICAs are not subject to unilateral amendment by only one party. Thus the compensation terms of each ICA remain in effect.

63. Based on our review of the record and the ICAs at issue, the conclusion must be made that recovery of the costs of the SS7 message charges are included within the reciprocal compensation rates or bill-and-keep arrangements included in the ICAs. Consistent with our finding that the SS7 message is an integral component of the end-user traffic, the ICAs reflect no separate charges for SS7 messages associated with the treatment of the end-user traffic types addressed in the ICAs. Any other conclusion would allow a party to unilaterally alter the terms and conditions of an ICA, which we will not allow a party to do. Since Qwest has purportedly unbundled its SS7 rate in the SGAT, and such separate rates have not been included in the ICAs, we further find that it is more plausible that the compensation arrangements for SS7 messages were included in the reciprocal compensation rates or bill and keep construct. This latter finding is further supported by our expectation that carriers negotiate contracts in an effort to recover their costs and the fact that Qwest has not sought to renegotiate the ICAs. If however, Qwest neglected to account for these SS7 costs when it negotiated the ICAs, it is not free to simply impose these costs by unilateral changes in its Access Catalog, but rather, must follow the existing procedures and schedules to obtain revision of the ICAs.

Grant of Relief to the Complainants

64. Based on the record before this Commission, we find that a grant of the relief requested in the Complaints is necessary to ensure that the Access Catalog is applied in a fair and reasonable manner. We find this action is not only consistent with applicable state law and the underlying policies established therein, but also the Act and prudent public policy. Accordingly, for the specific reasons stated herein and the specific opinions and findings of facts made herein, we grant the Complainants the relief they seek and direct Qwest to take such action necessary to implement the following three directives.

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apply. Reciprocal traffic exchange covered by this Agreement is for Wireless interconnection for CMRS carriers only in association with CMRS services.

[144] See Tr. 155:21-156:1; Tr. 208:23- 209:4.

65. Within five business days of the entry of this order, the Commission directs Qwest to withdraw the Access Catalog revisions that are the subject to these Complaints and re-institute the SS7 rates, terms and conditions that had been in effect prior to June 2001 (including, should Qwest so wish, filing revised intrastate switched access rates), and not to re-file any "unbundled" SS7 rate structure within the Access Catalog until it can comply with the third directive below. We make clear that we do not expect Qwest to alter any SS7 facility charges (the links and port charges) since those charges are not the subject of the Complaints. We specifically note that any efforts by Qwest to modify such charges would call into question Qwest's effort to properly implement the directives of this order.

66. We direct that within 10 days of the issuance of this order, Qwest refund or credit all SS7 message charges and associated late charges or penalties, if any, that have been assessed under the June 6, 2001, Access Catalog revisions to Illuminet, both on the disputed non-access traffic of its Co-Complainants, Cox and ALLTEL, and on similar non-access traffic of Illuminet's other Nebraska carrier/customers. Subject to the Complainants' discretion, this refund may take the form of either a direct payment from Qwest or credits to be applied in a manner determined by the Complainants.

67. Finally, we direct Qwest not to file any further Access Catalog SS7 rate structure revisions that attempt to implement separate facilities and SS7 message charges without a substantial demonstration to this Commission that Qwest can properly segregate, identify and properly bill, and refrain from improperly billing, the SS7 message charges associated with the distinct types of intrastate end-user traffic its network currently carries (i.e., local, EAS/ELCA, intraMTA CMRS, Qwest-originated toll and Qwest-terminated toll), and jointly-provided exchange access (that service required for third-party IXCs to originate and terminate their respective end-user intrastate toll traffic via multiple LECs). This demonstration must be made prior to any effort to implement such structure within the Access Catalog, and must include, at a minimum, a demonstration that the implementation of such structure has been coordinated with the Complainants in this proceeding. The Commission finds that Qwest may fulfill this directive either though direct measurement or the adoption of one or more factors within Qwest's Access Catalog, the latter of which would exclude the SS7

messages related to intrastate traffic for which the Access Catalog does not apply (i.e., local, EAS, ELCA, intraMTA CMRS, Qwest-originated toll and jointly-provided exchange access). We also direct that Qwest apply its chosen methodology in a manner that Qwest's billing properly disaggregates and segregates those messages that are not subject to the charges included within the Access Catalog. Should any issues regarding proper implementation of such unbundled SS7 rate structure remain, Qwest shall provide a list of those issues and shall address efforts it has taken to resolve those concerns. With respect to this specific directive, we find that coordination among the parties to these Complaints will assist the Commission in determining good faith compliance by Qwest as well as avoid any unnecessary expenditure of resources by the Commission and the parties.

68. For the reasons stated herein, we find that each of these three directives is not only required to ensure a fair and reasonable application of the Access Catalog by Qwest, but is necessary to ensure that the public interest associated with competitive end-user service provisioning within the state of Nebraska is served.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the foregoing Opinion and Findings are hereby, adopted.

MADE AND ENTERED in Lincoln, Nebraska on this 17th day of December, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	)))))	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-5

Idaho Telephone Association et al v Qwest Corporation, Inc.,
Idaho Pub. Utils. Comm'n Case No. QWE-T-02-11 (April 15, 2003)

Office of the Secretary
Service Date
April 15, 2003

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO TELEPHONE ASSOCIATION, CITIZENS TELECOMMUNICATIONS COMPANY OF IDAHO, CENTURYTEL OF IDAHO, CENTURYTEL OF THE GEM STATE, POTLATCH TELEPHONE COMPANY AND ILLUMINET, INC.	)	**CASE NO. QWE-T-02-11**
COMPLAINANTS,	)	
vs.	)	
QWEST CORPORATION, INC.,	)	**ORDER NO. 29219**
RESPONDENT.	)	

INTRODUCTION

This case was initiated with a complaint filed by the Idaho Telephone Association (ITA), Citizens Telecommunications of Idaho (Citizens), CenturyTel of Idaho and CenturyTel of the Gem State, Potlatch Telephone, and Illuminet, Inc. The ITA is a nonprofit association of fourteen incumbent local exchange companies (ILECs) that provide local service and other telecommunication services in predominantly rural areas of Idaho. After the complaint was filed, a petition to intervene was filed by Electric Lightwave, Inc. (ELI), a competitive local exchange carrier (CLEC) operating in Qwest's service territory in Idaho. The Commission granted ELI's petition in Order No. 29074. Also after the complaint was filed, a motion to withdraw was filed by both CenturyTel companies and Potlatch Telephone, asserting the companies were not able to respond timely to Qwest's discovery requests and that "the arguments and positions of CenturyTel and Potlatch are essentially identical to those of the remaining Complainants and Intervenor in this case." Motion to Withdraw, p. 2. The Commission granted the motion to withdraw in Order No.29115.

The Complaint set forth several causes of action relating to new charges levied by Qwest after it revised its Southern Idaho Access Service Catalog (Access Catalog) effective June 1, 2001. Qwest added five new message charges to compensate Qwest for use of its Signaling System 7 (SS7) signaling network. The SS7 network provides a method for

exchanging call messages that are generated on each call made by a telephone customer. Call setup and call control information is routed between switches on a network of signaling points, which may be directly connected by network links or may be connected through intermediary signaling points. Tr. p. 26. Qwests' revised Access Catalog established a charge for each call message to cross its SS7 network. Tr. p. 429. Illuminet owns a separate SS7 network and is a third-party provider of SS7 services to some members of the ITA, Citizens and other companies in Idaho.

The Commission concludes that Qwest failed to take into account existing rates or arrangements by which it was already being compensated for call messages crossing its SS7 network when it implemented the new charges. As a result, Qwest's new SS7 message charges result in a double recovery for the Company, at the expense of Complainants or their customers. The Commission therefore directs the withdrawal of the June 1, 2001 Access Catalog revisions.

THE COMPLAINT

Complainants allege that Qwest, since June 1, 2001 when it revised its Access Catalog, has "billed Illuminet certain charges for the origination and termination of intraLATA telecommunications traffic that are contrary to tariff provisions and contractual obligations and in violation of the settled policy and precedents of the Commission." The Complainants also allege Qwest improperly assessed SS7 message charges on ILECs and CLECs for the origination and termination of non-toll telecommunications traffic. As a result, the Complainants contend Qwest improperly and unlawfully acted contrary to several long-standing Commission policies and standard industry practices without any investigation or opportunity for comment. More specifically, the Complainants allege Qwest's new charges do the following:

a. Contravene the Commission's traditional practice of bill and keep treatment for local and EAS calls;

b. Substitute an access catalog filing for the statutory requirement to negotiate interconnection agreements between Qwest and CLECs;

c. Implement new access charges on ILECs and CLECs for jointly provided access in violation of traditional "meet point billing" arrangements;

d. Unilaterally shift costs from interexchange carriers to Qwest's local competitors;

e. Effectively re-price residential and small business basic local exchange service without Commission review or approval.

Complainants requested an Order requiring Qwest to refund unlawful charges previously collected or charged, and to cease from making further unlawful payment demands. Specifically, the Complainants requested the Commission require Qwest "to cease and desist from levying the new SS7 signaling charges added to its Southern Idaho Access Service Catalog filed on May 17, 2001 except for SS7 signaling associated with toll traffic originated and carried by ILECs and CLECs." Complaint p. 13.

QWEST'S ANSWER

In its Answer, Qwest asserted that Illuminet purchases SS7 signaling from Qwest's service catalog, and that Qwest continues to bill and demand payment for the services used by Illuminet. Qwest admitted that it filed revisions to its Access Catalog for the pricing of SS7 as a finished service, that it introduced five message rate elements that had been approved by the Federal Communications Commission, and that the revision of the pricing structure was revenue neutral to Qwest. Qwest stated that SS7 signaling is an independent service developed and offered separately from the transport and termination of local exchange service, and that an ILEC has the option of purchasing signaling as a finished service through the Access Catalog or from a third party provider such as Illuminet. Qwest bills purchasers of its SS7 service on a per message basis as provided in the catalog. Qwest affirmatively alleged "that there is no relationship between the billing for the origination and termination of traffic and the billing for the generation of SS7 messages." Qwest denied it had wrongfully collected any SS7 charges and asked that the Complaint be dismissed and all relief denied to the Complainants.

The Commission scheduled a hearing on the Complaint to convene December 10, 2002. Despite its denials of any improper pricing of SS7 services, Qwest nonetheless pre-filed supplemental testimony on December 6, 2002, four days before the hearing, revising its position. The supplemental testimony stated that "Qwest is willing to modify its current SS7 catalog offering so that Illuminet and other entities purchasing out of the catalog would not be charged for messages associated with local traffic." Tr. p. 460.

THE COMMISSION HAS JURISDICTION OVER THE COMPLAINT

Complainants alleged Commission jurisdiction over their Complaint under *Idaho Code* § 62-614 and *Idaho Code* § 62-605(5). Qwest in its Answer denied that the Commission

has jurisdiction over Complainants' cause of action, and the parties argued jurisdiction at some length in their post-hearing briefs. We conclude that jurisdiction for the Complaint does lie with the Commission.

Idaho Code § 62-614 is a broad grant of authority to the Commission to resolve disputes between incumbent telephone companies, like Qwest, and any other telephone service provider. Section 62-614 permits a telephone corporation that has elected regulation under Title 62, Idaho Code, or any other telephone corporation, including any mutual, nonprofit or cooperative corporation over which the Commission normally has no authority, to apply to the Commission for resolution of their disputes. The subject matters of dispute that may be brought to the Commission are broadly defined: the Commission's authority is properly invoked whenever the parties "are unable to agree *on any matter relating to telecommunication issues* between such companies, then either telephone corporation may apply to the commission for determination of the matter." *Idaho Code* § 62-614(1) (italics added). The Commission has jurisdiction to "issue its findings and order determining such dispute in accordance with applicable provisions of law and in a manner which shall best serve the public interest." *Idaho Code* § 62-614(2).

Qwest's arguments against the Commission's jurisdiction are premised on its own narrow characterization of the dispute between the companies. First, Qwest claims Illuminet is the only party purchasing signaling services from the Access Catalog and therefore is the only party with a complaint against Qwest. Qwest contends Illuminet does not meet the definition of a "telephone corporation" set forth in *Idaho Code* § 62-603(14), and so is not entitled to file a complaint under Section 62-614. Qwest thus concludes this is not a dispute between "telecommunications corporations" which the Commission is authorized to resolve pursuant to Section 62-614.

Second, Qwest notes even if Illuminet were not the only Complainant and the other telephone companies' complaint was filed under Section 62-614, the Commission's authority is to grant relief "in accordance with applicable provisions of law." By offering to remove SS7 message charges on local traffic, Qwest argues the charges remaining at issue are associated only with toll traffic, a Title 62 service that is not price regulated by the Commission. Because, according to Qwest, Title 62 statutes "prevent the Commission from regulating Qwest's provision of SS7 signaling associated with toll traffic," Qwest concludes the Commission does

not have authority under applicable provisions of law to provide relief to the Complainants. Qwest Post Hearing Memorandum, p. 6.

The Commission need not address each argument on jurisdiction made by Qwest because it seems clear this case is precisely the type of dispute the legislature intended be brought to the Commission for resolution under *Idaho Code* § 62-614. This case was filed by several telecommunication companies in Idaho—some of them ILECs and some of them CLECs—as well as a company providing telecommunications services to those companies in competition with Qwest. The Complainants' case was not transformed into a dispute solely between Qwest and Illuminet merely by Qwest's offer to withdraw future charges for SS7 messages associated with local traffic. The remaining Complainants have not withdrawn, nor has Qwest filed a motion to dismiss, their claims.

In addition, when it offered to discontinue SS7 message charges on local traffic, Qwest specifically did not offer to forego *past* charges for local traffic signaling, leaving that issue involving all the Complainants for resolution by the Commission. Tr. p. 104. Even if no issues remained regarding SS7 message charges on local traffic, it is clear the parties disagree on and leave to the Commission resolution of SS7 charges on traffic subject to meet point billing and intraLATA toll traffic initiated by Qwest's end user customers. Tr. pp. 103-04, 228, 461. All the Complainants, not just Illuminet, are disputing those SS7 charges, and all of them potentially are obligated to pay them under Qwest's Access Catalog. It is clear in the record Illuminet's service agreements allows it to pass those charges on to its ILEC and CLEC customers, making them liable for SS7 charges claimed by Qwest under its Access Catalog. Tr. p. 227. There can be little doubt that the Complainants, including Illuminet, are proper parties able to file a Complaint under *Idaho Code* § 62-614.

Nor are we persuaded by Qwest's argument that applicable provisions of law prevent the Commission from granting relief to the Complainants merely because the Commission does

not price regulate toll related services subject to Title 62 regulation.[1] First, as already noted, a large part of the Complainants' issues relate to Qwest's pricing and billing for signaling separately from the local calls with which they are associated. The Commission in its review of those issues is not constrained by statute.

Second, if Qwest's argument were valid, the Commission would be unable to review any challenged implementation of new charges for telecommunication services subject to Title 62 regulation, potentially leaving injured parties with no remedy. It is one thing to say the Commission cannot set prices for a particular service, and quite another to conclude an improper application of those charges can never be challenged. That conclusion is directly at odds with the broadly stated purpose of Section 62-614, which provides a forum for resolution of disputes "on any matter relating to telecommunication issues" between Qwest and other companies. In this relatively new, considerably less regulated telecommunications environment, Qwest has increased ability to make adjustments in prices and services without review by the Commission. But when other telecommunication companies are affected and challenge the application of those charges, Section 62-614 provides the means for them to bring their complaint to the Commission for resolution.

Idaho Code § 62-614 confers jurisdiction on the Commission to resolve the issues raised in the Complaint. The legislature intended when it enacted the Idaho Telecommunications Act of 1988, of which Section 62-614 is a part, "to encourage innovation within the industry by a balanced program of regulation and competition." *Idaho Code* § 62-602(1). The legislature stated in 1997 amendments to the Act that "the telecommunications industry is in a state of transition from a regulated public utility industry to a competitive industry." *Idaho Code* § 62-602(4). In this environment, the legislature anticipated disputes would arise between companies

[1] The Commission is authorized by provisions of the federal Telecommunications Act and state law to establish prices for Qwest's unbundled network elements (UNEs). *Idaho Code* § 62-615(1) gives the Commission "full power and authority to implement the federal telecommunications act of 1996, including, but not limited to, the power to establish unbundled network element charges in accordance with the act." The Nebraska Commission relied on a similar statute—"the commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996"—as a basis for jurisdiction in its SS7 complaint case. Reference is made throughout Qwest's testimony to its "unbundling" of signaling, and Qwest's decision to revise its Access Catalog to offer SS7 signaling as a discrete network component. It is reasonable to conclude the Commission's jurisdiction over UNE charges under the Telecommunications Act goes beyond merely accepting a price proposed by Qwest, and is broad enough to reach questions of reasonable implementation. Other requirements of the Telecommunications Act also may be implicated by the allegations and issues raised by Complainants, including terms of an interconnection agreement between Qwest and ELI, and Qwest's obligation to provide nondiscriminatory access to its services and facilities under sections 251(c)(2)(D) and 251(c)(3) of the Act.

as they attempted both to work together as necessary and also to compete with one another. Thus, when telecommunication companies "are unable to agree on any matter relating to telecommunication issues between such companies," Section 62-614 establishes the Commission as the forum to resolve the dispute.

It is also possible to conclude the Commission has jurisdiction over most if not all the claims pursued by Complainants under *Idaho Code* § 62-605(5), referred to as the "claw-back" provision. Under that section, any telecommunication service that was subject to regulation under Title 61 before July 1, 1988, can be reviewed by the Commission, including the "terms and conditions under which it is offered." Upon complaint to the Commission, the Commission "shall have authority to negotiate or require changes in how such telecommunication services are provided." If the Commission finds the corrective action it has ordered to be inadequate, it can require that such services again be subject to regulation under Title 61 rather than Title 62, Idaho Code.

Qwest argued the Commission does not have jurisdiction under Section 62-605(5) because that section authorizes Commission action over certain "telecommunication services," and SS7 signaling does not meet the definition of "telecommunication service." Qwest also argues that SS7 signaling could not have been offered as a service prior to July 1, 1988, because it was only recently unbundled from switched access services. Prior to the June 2001 revisions to Qwest's Access Catalog, SS7 signaling was not sold on a per message basis, and Qwest contends cost recovery was borne by interexchange carriers and paid to Qwest through inter and intra state access charges. Tr. pp. 393-94; Qwest's Post Hearing Memorandum, p. 9.

As with its argument on Section 62-614, Qwest's argument regarding Section 62-605(5) amounts to little more than its own labeling of Complainants' claims in order to make a jurisdictional argument. The basis for most of the issues in the Complaint is the allegation that "since June 1, 2001, Qwest has applied the SS7 signaling message elements from the Access Catalog to all, or virtually all, intrastate telecommunication traffic, rather than confining the SS7 message charges to intrastate toll traffic covered by Qwest's Access Catalog." Complaint, p. 8. Until Qwest filed its revised Access Catalog, SS7 signaling was not separated from the traffic with which it was associated, including local traffic. Even under Title 62 regulation, the Commission regulates the price, terms and conditions by which Qwest offers basic local exchange service. Qwest's unilateral decision to unbundle signaling from local traffic did not by

itself convert that component of local services into an unregulated Title 62 service outside the reach of the Commission. It is possible Qwest erred in its approach to creating new SS7 message charges and offsetting anticipated signaling revenue with access charge reductions. That is the very essence of the Complaint.

DISCUSSION

Qwest's Implementation of New Signaling Charges Was Fundamentally Flawed

When Qwest determined to revise its Access Catalog and create new signaling charges, it assumed the approach it used successfully at the Federal Communications Commission (FCC) for its interstate Access Tariff would also apply without change to the intrastate telecommunications domain. To better understand the problems arising when Qwest initiated SS7 message charges for intrastate traffic, a brief review of events leading to the June 2001 catalog changes is helpful.

In 1999, Qwest (then U S WEST) petitioned the FCC for authority to restructure its federal Access Tariff to recover charges for SS7 signaling on a per message basis for interstate, interLATA toll traffic. According to Qwest, most of the out-of-band network signaling messages were generated by interexchange carriers (IXCs), and those costs were recovered in the switched access rates, charged on a per minute basis, paid by IXCs. Tr. p. 472. The FCC approved Qwest's petition to change its federal Access Tariff and the Company implemented separate SS7 message charges and reduced correspondingly its switched access rates for interLATA calls paid by IXCs, effective May 30, 2000.

Qwest subsequently began to implement the same revised rate structure for use of the SS7 network at the state level, filing its revisions to the Southern Idaho Access Service Catalog with the Commission, which became effective June 1, 2001. Mirroring the approach it used with its federal tariff, Qwest reduced its switched access rates for in-state, intraLATA toll calls to make the revisions to the Access Catalog revenue neutral. Because "[t]he FCC defined SS7 as an access service . . . it was therefore implemented in Idaho in that manner." Tr. p. 409. On cross examination, Qwest's witness summarized the logic it used to revise its Access Catalog:

> Well, first of all, our intent in this was to unbundle signaling because signaling is used differently by different people and purchased by different customers. And the underlying philosophy is that . . . the payment should be proportional to the use and it was inappropriate to recover that through a minutes – on a minutes basis because minutes of use don't translate well to

> signaling, which is event oriented rather than time oriented, we unbundled signaling from the switched access rate element.
>
> Following that philosophy to the next step which says a signal is signal and regardless of whether that's jurisdictionally a local call or jurisdictionally an intrastate call or jurisdictionally an interstate call, the signaling is essentially the same and everybody who uses those signals should pay and they should pay at an equal rate. So we approached it from an all-encompassing a signal is a signal, everybody should pay for the signals they use regardless of the jurisdictional issues that may be in place.

Tr. pp. 521-22.

Prior to the change, the Access Catalog included only charges "for access to the Qwest SS7 network through link and port charges," but did not include per message charges for each message crossing the network. Tr. pp. 396-97. With the June 2001 revisions, the Access Catalog "includes flat-rated and port charges for accessing the network and five usage sensitive rate elements (per-message charges) for utilizing the network." Tr. p. 396. Qwest began charging for all messages crossing its SS7 network, regardless of the origin of the call or traffic associated with the message, because "[s]ignaling messaging is charged on a per-message basis without regard to the nature of the underlying voice/data traffic." Tr. p. 408. This is because, according to Qwest, "In the signaling world, a message is a message – every call requires signaling in order for the call to be completed. It makes no difference whether the call is local, EAS, wireless or toll in nature." Tr. pp. 412-13.

The problem with using the same approach to SS7 charges at the state level as at the federal level is that the calling traffic, and the traditional arrangements for paying signaling costs associated with the traffic, are not the same. On the interstate side regulated by the FCC, the traffic predominately if not exclusively has been toll traffic carried by interexchange carriers. Prior to enactment of the federal Telecommunications Act in 1996, the IXCs were barred from carrying local, non-toll traffic. In order to access the local networks so their customers could complete their long distance calls, the IXCs paid access fees on each call to the local companies that own the networks. Tr. pp. 393 - 94. The intrastate telecommunications sector is much more complex, involving a wider variety of traffic, cost recovery and inter-carrier compensation arrangements than at the federal level. For example, "[i]ntraLATA traffic contains distinct sub-classifications of local/EAS, toll calls exchanged between Qwest and other local carriers, and

jointly-provided exchange access that must be taken into consideration." Tr. p. 30. In addition, most of the intrastate traffic, such as local calls and jointly provided exchange access, has not been subject to access charges between carriers. Tr. pp. 25, 30.

The approach by Qwest at the federal level when it implemented signaling charges and reduced access charges was a logical result of the existing arrangement. Because signaling is a necessary part of each call provided by the local companies to the IXCs, and signaling costs were recovered in the access fees paid by the IXCs, it made sense that Qwest could charge separately for signaling service and offset those charges with reduced switched access fees. In that comparatively simple environment, the FCC was primarily concerned that Qwest was able to identify interLATA toll traffic so that its FCC approved access and signaling charges were applied only to the traffic regulated by the FCC. Tr. pp. 224, 431. The FCC required carriers unbundling SS7 signaling messages from access services to acquire the appropriate measuring equipment or otherwise identify interstate traffic to ensure that the unbundled charges are confined to the appropriate scope. Thus the access tariff changes approved by the FCC include a percentage interstate usage factor (PIU) as the means for Qwest to identify and bill access and signaling charges only to the toll traffic carried by IXCs. Tr. pp. 53, 431. Because Qwest was able to implement its Idaho Access Catalog revisions without any oversight by the Commission, however, no similar conditions or safeguards were placed on the Company's new signaling charge structure at the state level.

Finally, Qwest improperly assumed that all signaling charges at the state level may be offset by reductions in switched access charges. The basis for this assumption was Qwest's conclusion that "the FCC defined SS7 as an access service." Tr. p. 409. Qwest applied the assumption even though it knew access charges do not apply to much of the intrastate telecommunications traffic, and even though it understood its signaling network is not an access network. Qwest's witness testified that "[a]ccess to the SS7 network is not exchange access. Access in terms of the Access Catalog simply means access to the SS7 network for the purpose of exchanging SS7 messages, while exchange access refers to offering access to the Public Switched Telephone Network for purposes of exchanging toll traffic....SS7 messages for *all* types of calls access the SS7 network." Tr. pp. 311-12. Because switched access charges do not apply to most of the intrastate traffic, there was no basis to impose SS7 message charges on all intrastate traffic and offset those charges with reductions in switched access fees.

The approach approved by the FCC for Qwest to create new SS7 message charges associated with interstate traffic, offset by access fee reductions, is not appropriate for intrastate traffic. By using that approach for its Idaho Access Catalog revisions, Qwest "ignored the relevant federal and state jurisdictional differences between interstate toll traffic, which is a single category of traffic, and intrastate traffic in general, which includes the categories of intraLATA toll, local/EAS, intraMTA wireless and jointly-provided exchange access." Tr. p. 34. The simple logic Qwest used to implement its Access Catalog revisions was fundamentally flawed, resulting in SS7 message charges that are unfair and unreasonable. Qwest did not consider the different payment structures in place for the different types of traffic (and the signaling that is a necessary part of it) involved in the intrastate domain, nor did it consider that a variety of arrangements were already in place that were intended to compensate Qwest for its signaling costs. The result is that Qwest implemented SS7 message charges that are already recovered in customer rates on local traffic, including EAS traffic, or pursuant to existing inter-carrier traffic arrangements.

Qwest Improperly Applied SS7 Message Charges to Local Traffic

Despite Qwest's offer to discontinue SS7 message charges on local traffic, the Complainants do not agree the issues relating to local traffic are fully resolved, nor does the record establish full resolution. The supplemental testimony of Qwest's witness states that "Qwest is willing to modify its current SS7 catalog offering so that Illuminet and other entities purchasing out of the catalog would not be charged for messages associated with local traffic." Tr. p. 460. The supplemental testimony only states the Company is willing to accept removal of message charges on local traffic if the Commission so orders. Qwest nonetheless asserts in its post-hearing brief that the change to eliminate per message signaling charges on local traffic is "now being implemented," and that the complaint "as it relates to local traffic is now completely irrelevant." Qwest's Post-Hearing Memorandum, p. 30 and p. 14.

During the hearing, a Qwest witness explained the Company's proposal to discontinue message charges on local traffic, stating "that while we still believe we are originally right, [Complainants] may have a point on local, including EAS." Tr. p. 523. To adopt the change proposed by Qwest, the Complainants would need to provide a "percentage local usage factor" to Qwest to identify an amount of traffic that is local and thus exempt from SS7 charges. Tr. p. 523. At the time of the hearing, the Complainants had not provided a local usage factor to

Qwest. Tr. p. 532. On cross-examination regarding removal of charges on local traffic, the Qwest witness reiterated that the change would be made if the Commission ordered it, stating "If the Commission were to order us to change our catalog, we would comply with that Commission's [sic] Order." Tr. p. 528. Qwest has not filed a revision to its Access Catalog removing charges from local traffic with the Commission. It is also clear in the record and the parties' post hearing memoranda that the parties do not agree on whether Qwest can collect for local traffic message charges already billed by the Company. Tr. p. 104.

On this record, we find that the Complaint as it relates to local traffic is not "completely irrelevant." The record indicates Qwest has not changed its Access Catalog to eliminate SS7 message charges on local traffic, but has stated its agreement to do so based on a Commission order. In addition, and because the errors made by Qwest in its approach to the June 2001 Access Catalog changes are exemplified in its application to local traffic, the Commission will next discuss Qwest's application of message charges to local/EAS traffic.

Qwest correctly conceded that Complainants "may have a point" regarding SS7 message charges on local traffic. As noted in the previous section of this Order, access charges are not applicable to local traffic, and thus there is no logical basis for implementing new signaling charges on local calls and offsetting those charges with access fee reductions. Qwest does not receive access fees from other companies for local calls, nor do customers pay separate fees for signaling service in their rates. Instead, the Commission establishes "just and reasonable rates" for local services and, as part of that process, determines an allocation of costs between Title 61 and Title 62 services that jointly use the same facilities. *Idaho Code* § 61-622A. As Complainants' witness correctly noted, "the Idaho Commission has been able to spread the recovery for SS7 expenses across all intrastate services, including basic local rates, intraLATA toll, enhanced features and intrastate access in the same manner as switching and transmission expenses." Tr. p. 86. In other words, unlike interstate traffic, Qwest receives compensation for its switching costs in a variety of ways. For local calls, the rates approved by the Commission and paid by customers were designed to cover all associated costs incurred by Qwest, including the signaling costs necessary to complete each call. Qwest improperly separated signaling from local traffic, imposed new charges for those signals, and reduced access fees that do not apply to local traffic as an offset.

Qwest Improperly Applied SS7 Message Charges to EAS Traffic Exchanged Under a Bill and Keep Arrangement

As with other local calls, the rates paid by customers in extended area service (EAS) local calling areas were designed to include the signaling component. For purposes of this case, the phrase "bill and keep" refers to an arrangement between two local exchange providers, usually with adjacent service areas, to handle non-toll traffic between their service areas. The result for the companies' customers is a large local calling area, or EAS, in which calls can be made that are not subject to toll charges. The bill and keep arrangement refers to the practice between the companies where each hands off calls to the other; neither company charges access fees to the other, and each bills its customers the local rate approved by the Commission. Tr. p. 403. The Commission approves each EAS area and also approves new local rates charged by each company after reviewing the costs associated with implementing the extended calling area. In this case, bill and keep applies to Citizens' and other ILECs' EAS traffic with Qwest. Tr. p. 399.

The logic Qwest applied in explaining why new signaling charges are appropriate in the bill and keep arrangement is the same it used in implementing its new Access Catalog. Qwest assumed it could create new signaling charges simply because signaling is on a separate network and because it is technically feasible to separate signaling from the associated voice and data traffic. When asked about the bill and keep arrangement for the EAS traffic between Qwest and Citizens, Qwest's witness stated that "signaling messages associated with that EAS voice/data traffic are handled separately because the signaling messages are on a completely separate network." Tr. p. 399. The following exchange occurred when the witness was asked about pre-existing traffic arrangements between carriers for EAS calls:

> Question: Now, if the Commission won't let you charge the other company for the entirety of switching costs for an EAS call, why would it allow you to charge the other company for the SS7 component?
>
> Answer: Well, because the SS7 network is entirely a separate network, first of all....And the last Order that I read that discussed EAS and the costs associated with the EAS said nothing about SS7, ... and there were no SS7 costs included in that EAS --as – EAS component. So the Signaling System Seven signals are outside the scope of the bill and keep arrangement that occurs for the traffic that is transmitted between those [EAS] companies.

Tr. pp. 476-77.

Qwest apparently assumed the Commission's failure to mention signaling costs in the last EAS orders meant the signaling costs were "outside the bill and keep arrangement." That assumption is unsound. First, it is clear in the record that SS7 signaling was not created as an "unbundled" component until Qwest filed its Access Catalog revision in June 2001, and the last Qwest EAS cases were completed in 1998. Tr. p. 397; Qwest's Reply Brief, p. 37, footnote 84. When the Commission reviewed the costs associated with implementing the EAS calling areas and approved rates to cover those costs, signaling costs were not separately identified from the other costs required to transmit the EAS traffic. In other words, as with other local traffic, signaling costs were not separately identified and priced. They were considered one with the traffic with which they were associated. It is not surprising, then, that the Commission's EAS orders do not specifically mention SS7 costs involved in the traffic to be exchanged between the implementing companies.

Second, simply because SS7 messages are now physically separate is not justification for creating new signaling charges without regard to pre-existing compensation arrangements between carriers. Qwest started with a conclusion that it is appropriate to apply signaling charges for every message generated simply because the SS7 network is separate from the voice/data network that carries traffic. Qwest's witness asserted on cross-examination that under its revised Access Catalog it was authorized "to charge SS7 costs, these SS7 pricing components, on any message that touches its system, whether Qwest originated or terminated or however it got there." Tr. p. 481. By Qwest's circular logic, "there is no reason to separate messages by call type because signaling charges apply to all types of calls." Tr. p. 436. That conclusion, of course, does not answer the question of whether existing inter-carrier arrangements or customer rates approved by the Commission are already intended to compensate for the signaling components of traffic exchanged between the companies.

The local rates approved by the Commission, including customer rates established when the Commission approves an EAS calling area, always were established to provide compensation to Qwest for all aspects of providing the service. Signaling charges were not separated from the pricing of the underlying local traffic until Qwest filed its revised Access Catalog and created new charges related to local/EAS traffic. Qwest's new SS7 message charges on EAS related calls are contrary to existing Commission approved arrangements through which companies recover their EAS costs in the rates paid by customers.

Qwest Improperly Imposed SS7 Charges on Traffic Exchanged Under Meet Point Billing Arrangements

The same concerns raised by Qwest's imposition of SS7 charges to bill and keep EAS traffic occur with traffic subject to "meet point billing." Meet point billing arrangements exist where two different LECs provide access to their networks to an interexchange carrier. Tr. p. 47. In that arrangement, each LEC agrees to recover its portion of revenue from IXCs that pay access charges to each LEC. The other LEC involved is not charged for terminating or originating the call without its exchanges. Tr. pp. 50, 216. According to the Complainants, "[a]ll of Qwest's costs associated with the exchange of access traffic between the LECs and IXCs should be (and likely are) recovered by Qwest's application of its Access Catalog charges (including SS7 rate elements) to the associated IXCs." Tr. p. 43.

Qwest does not dispute the existence of meet point billing arrangements with the ILEC Complainants, but as with EAS traffic, contends it can implement SS7 charges simply because the SS7 network is separate from the voice/data network. Qwest recognized the ILECs and Qwest provide joint network access to IXCs, but asserted "Meet point billing has to do with how network 'traffic' is exchanged between companies at negotiated locations known as 'meet-points.' The SS7 network is an entirely separate network with different signaling interfaces." Tr. p. 404. The witness asserted that "Qwest's restructure of signaling does not affect meet-point-billing arrangements." Tr. p. 404. Later, however, the witness discussed the importance of clarifying recovery for SS7 costs in the meet point bill domain, testifying

> if you're talking about any compensation between companies in terms of exchanging traffic, you better also address what the signaling issues are. If you're not and if one party is talking about meet-point-billing assuming that that includes all signaling issues and the other party is not assuming that includes all signaling issues, you've got a miscommunication.

Tr. p. 502. That's because

> you can't complete calls even in a meet-point-billing environment without some signaling arrangements. But you can't just assume that it's included because the words – the meaning of the words have changed over time and the signaling system has been separated over time, and you're leaving out a major portion of what's going on.

Tr. p. 504.

It was Qwest, however, that created the miscommunication. Until Qwest revised its Access Catalog and attempted to apply separate signaling charges to the ILECs for meet point billed traffic, everyone assumed traffic exchanged between LECs by that arrangement included the associated signaling. Qwest attempted to unilaterally change the arrangement by creating and implementing signaling charges separate from the calls associated with the SS7 messages. As demonstrated by the fact there is a complaint, all other parties that bill and keep still believe signaling is included in the existing arrangement. Qwest's own witness implied as much by testifying that if "the ILECs in this case wish to return to an arrangement that is more similar in expense to what they experienced when EAS was originally implemented, the ISA [Infrastructure Sharing Agreement] may be the answer." Tr. p. 442. Qwest should have done what its witness recommended: "regardless of the method of exchanging traffic, you need to discuss the signaling issues that revolve around that exchange of traffic." Tr. p. 502. Because Qwest is the one attempting to change existing arrangements, that discussion should have occurred prior to Qwest's implementation of new signaling charges.[2]

The evidence regarding Qwest's approach to implementing the new SS7 charges to local traffic, EAS traffic exchanged by bill and keep arrangements, and LEC exchanged traffic by meet point bill arrangements, demonstrate that Qwest improperly implemented signaling charges in its Access Catalog revision. Qwest failed to consider the various types of traffic comprising the intrastate domain and the effects of different rate and inter-carrier compensation agreements. Other evidence demonstrates Qwest's implementation of the new charges was hasty and in disregard of existing arrangements that previously controlled compensation for traffic and the signaling associated with it.

Qwest Improperly Applied SS7 Charges to Third Party SS7 Providers

Because Qwest created SS7 message charges to be separate from the calls that generated the messages, Qwest's application of its revised Access Catalog also imposed new charges on third-party SS7 signaling providers. Illuminet and a company called Syringa Networks LLC (Syringa) are independent providers of SS7 signaling services to LECs and other telecommunication companies. Syringa was created by eleven members of the ITA to provide,

[2] The Complainants also contend Qwest violated meet point billing terms in an interconnection agreement between Qwest and ELI. The Commission concludes Qwest improperly applied SS7 charges to ILEC traffic subject to meet point billing arrangements, and Qwest does not dispute that the ILECs, including ELI, provide joint network access by meet point billing arrangements with Qwest. It is not necessary to discuss the particular terms of the interconnection agreement between Qwest and ELI.

among other services, SS7 signaling to members of the ITA. Tr. p. 171. In June 2001, Syringa acquired System Seven, Inc., a company created earlier by six ITA members to provide signaling service to the LECs that created it. System Seven executed a contract with U S WEST, Qwest's predecessor, in February 1995 providing terms for interconnection and traffic exchange between the companies. Tr. p. 174. According to Syringa's witness, System Seven was created and operated consistently with the traditional understanding that signaling "has always been deemed part and parcel of the PSN [public switched network] and subject to the normal industry rules regarding the pricing of underlying traffic." Tr. p. 176. Syringa assumed the terms of the contract between System Seven and Qwest, and was unaware of the new SS7 charges in Qwest's Access Catalog until a few weeks before the Complaint was filed. Tr. pp. 175, 185.

It appears that Qwest was unaware when it began assessing message charges that ITA members were accessing Qwest's SS7 network according to the provisions of a pre-existing contract with Syringa's predecessor, System Seven. When Qwest was contacted by a Syringa representative in March 2002 regarding SS7 signaling, Qwest informed him that "Syringa needed to purchase SS7 services out of Qwest's tariff/catalog because Syringa was not a telecommunications carrier." Tr. p. 356. Qwest nonetheless allowed Syringa to continue under the terms of the 1995 agreement because Qwest did not yet have its Infrastructure Sharing Agreement (ISA) ready to offer to ILECs as an alternative to purchasing from the Access Catalog. Tr. p. 356. The ISA is available pursuant to Section 259 of the 1996 Telecommunications Act, which requires an ILEC to provide access to its public switched network to other carriers that meet certain conditions. Qwest subsequently notified Syringa in October 2002 that it was canceling the contract originally signed by U S WEST and System Seven, "now that alternatives [the ISA] are available to ILECs." Tr. pp. 196, 362. According to Qwest, once it became aware of the existing contract, "Qwest chose to maintain the old SS7 contract with Syringa for an interim period of time only while it assessed what options were available to entities (and particularly ILECs) under the new SS7 regime instead of unilaterally and immediately cutting off service to Syringa." Qwest Reply Brief, p. 49.

The events between Qwest and Syringa demonstrate errors by Qwest that are unique to Syringa and also ones similar to errors between Qwest and Illuminet. First, even though the arrangement between Qwest and Syringa had been in place since 1995 through each company's predecessor, Qwest made no effort to discuss new contract terms with Syringa prior to

implementing the Access Catalog and imposing new SS7 message charges. Instead, when learning of the existence of the contract after implementing its new charges, Qwest informed Syringa its only option was to purchase from the catalog, and later canceled the contract after it developed its ISA. It is also clear, however, that Qwest does not consider the ISA to be an option for either Syringa or Illuminet because neither company qualifies as a "telecommunications carrier" for application of Section 259 of the Telecommunications Act. Tr. p. 403. The record establishes that neither Syringa nor Illuminet asked to receive the new SS7 message services under Qwest's Access Catalog. Tr. p. 129. Instead, Qwest unilaterally imposed new charges on those companies after filing its revised Access Catalog.

The fundamental problem with Qwest's application of SS7 message charges to Illuminet and Syringa, however, is that Qwest unilaterally separated signaling charges from the calls using the signaling messages. As with the situations already discussed, that unilateral action contravened existing arrangements and pricing for inter-carrier traffic exchange. One example of Qwest's misapplication of signaling charges occurs with intraLATA toll calls originated by Qwest's own customers. Complainants testified a telecommunications carrier is never allowed under existing arrangements to charge other companies for the costs associated with the origination of that carrier's own intrastate toll traffic. Tr. pp. 75, 103. Complainants point out that "traditional pricing principles dictate that the carrier whose retail end user customer originates a call collects the revenue for that call from the end user customer and then compensates any other carriers involved for their costs of transporting or terminating that end user traffic." Complainants' Post Hearing Brief, p. 8.

Under its Access Catalog, Qwest charges third party SS7 providers (and their carrier/customers) for Qwest's own SS7 costs associated with its customer originated inter-carrier toll calls, notwithstanding that Qwest and its end user customer initiated the cost associated with the SS7 message. Tr. pp. 429, 465. Qwest does not dispute Complainants' characterization of the pre-existing arrangement for exchanging intraLATA toll traffic, and again justified its unilateral change to that arrangement by stating that signaling is not the same as traffic. Tr. p. 412. Merely because every call requires signaling in order for the call to be completed, "signaling is assessed and billed by Qwest to Illuminet regardless of the underlying nature of the call or the relationship between Illuminet and its carrier customers." Tr. p. 414.

Finally, the way SS7 charges apply under Qwest's Access Catalog to Illuminet and Syringa present significant issues of discriminatory or anti-competitive conduct. Because all traffic now requires SS7 signaling, it is necessary for all local telecommunication providers (ILECs and CLECs) to have SS7 capability. The LECs can invest in their own SS7 network, they can acquire network services from a third party SS7 provider, or from Qwest. Regardless, Qwest's application of its Access Catalog now charges for every SS7 message that crosses its network, even when the other LEC has its own network or has SS7 capability provided by a third party. Tr. p. 481. Thus Qwest's witness stated that "Qwest receives [SS7] messages from Syringa even though Syringa has not executed a contract with Qwest for the purchase of SS7 services." Tr. p. 358.

Under its infrastructure sharing agreement now available only to ILECs, Qwest would not impose *any* signaling charges on ILECs that enter into an ISA with Qwest, even if the ILEC does not have its own SS7 system. Tr. pp. 360, 433, 490. ILECs (or CLECs) that purchase SS7 signaling from third party providers, however, would be subject to all signaling charges under the Access Catalog. CLECs could be treated differently from ILECs by seeking an interconnection agreement with Qwest providing negotiated SS7 signaling terms, but would not be eligible for the favorable treatment accorded ILECs under an ISA. Tr. p. 485.

Qwest gave inadequate regard to existing arrangements by which carriers exchange traffic prior to imposing new charges on LECs and their SS7 providers. Until Qwest revised its Access Catalog, signaling was not charged for separately from the underlying traffic, so the existing arrangements for accessing each company's SS7 services, whether by a network owned by the LEC or a third party, did not provide for per message signaling charges. Those arrangements were in place long before Qwest filed its revised Access Catalog. Qwest also failed to consider adequately in what way, if any, SS7 charges could be imposed on LECs that provide their own SS7 capability, whether owned by the LEC or a third party. Qwest did not develop its ISA until long after it filed its Access Catalog, and then said it would make the benefits of that agreement available only to ILECs that do not use a third party SS7 provider. The effect is that some are granted favorable access to Qwest's SS7 services on terms not available to others. Tr. pp. 490-92.

In addition to unilaterally changing existing traffic and signaling arrangements, Qwest's application of its SS7 message charges may violate its obligation to provide

nondiscriminatory access to network elements under Section 251(c) of the Telecommunications Act and *Idaho Code* § 62-609(2). Qwest should have made these assessments prior to implementing and demanding new SS7 message charges. The burden was on Qwest in implementing new SS7 charges to consider existing inter-company arrangements that control the exchange of traffic, including the signaling necessarily associated with that traffic.

Qwest May Not Collect for SS7 Charges That Were Improperly Applied

The Commission concludes that Qwest improperly implemented its Access Catalog revisions in June 2001. Not all the signaling charges set forth in the Access Catalog are erroneous. The Complainants do not dispute the application of the Access Catalog charges to intraLATA toll calls originated by other LEC customers and terminated to a Qwest customer. Tr. p. 39. According to Complainants, consistent with the long-standing industry practice concerning the mutual exchange of intraLATA toll traffic, "LECs and Qwest have agreed to exchange such traffic and to compensate each another [sic] for the *termination* of such traffic according to each carrier's access tariff." (Italics added). Tr. p. 46. Under that arrangement, the originating LEC pays access charges to the terminating LEC for the toll traffic. Tr. p. 46.

There being no dispute between the parties regarding application of the Access Catalog to intraLATA toll calls terminating to a Qwest customer, Qwest may bill for SS7 message charges for that traffic. Of course, Qwest must identify to a reasonable degree of certainty the toll traffic for which the charges are appropriate to insure it is only collecting for signaling messages associated with that traffic.

Qwest may not collect for SS7 message charges it imposed on local/EAS traffic, on joint network access provided under a meet-point-bill arrangement, or to intraLATA toll traffic originated by a Qwest end user customer. Because the charges were wrong in their implementation, Qwest may not collect for improper SS7 message charges it sought to impose as of June 1, 2001. It is clear from the record, however, that it is not necessary for the Commission to order Qwest to pay a refund to Complainants because the Complainants have not paid the disputed SS7 message charges billed by Qwest, or Qwest has not actually billed for the charges. The ITA companies obtain SS7 services from either Illuminet or Syringa; Citizens and ELI use SS7 signaling provided by Illuminet. Tr. pp. 414, 430. Syringa's SS7 messages are received by Qwest through a point code identified to Project Mutual, an ITA member. Tr. p. 358. Qwest has not billed or has not received payment on the disputed SS7 message charges from ELI,

Citizens, Project Mutual or Syringa. Tr. pp. 186-87, 424, 430. Finally, to date Illuminet "has not and is not paying Qwest for SS7 services rendered." Tr. p. 455.

Qwest argued that even preventing it from collecting for past SS7 charges or requiring it to grant a credit for past, unpaid SS7 charges would violate the filed rate doctrine and constitute unlawful retroactive ratemaking. According to the filed rate doctrine, a utility provider may charge only the rate on file that has been duly approved by the Commission. Qwest quotes from a Commission Order issued in 1990 stating that "the rule further prohibits the refunding or remitting of any rates, tolls, rentals, or charges specified in the rates on file with the Commission." *In the Matter of Hayden Pines Water Company*, IPUC Case No. HPN-W-89-1, Order No. 23362 (1990). *See also Idaho Code* § 61-313. Qwest concedes that its Access Catalog did not undergo the same scrutiny as a regulated tariff prior to becoming effective, but argues the filed rate doctrine nonetheless applies to prohibit the Commission from ordering relief for past due charges.

The filed rate doctrine does not prohibit the Commission from denying recovery to Qwest for charges it improperly imposed by its revised Access Catalog. The Access Catalog Qwest filed with the Commission provides terms by which Qwest offers access services to other telecommunication companies. Those services are not price regulated by the Commission, and in fact, Qwest filed its Access Catalog without a formal review by the Commission. The Commission in previous orders has stated that price lists voluntarily filed by public utilities are not given the same regulatory effect as tariffs filed after formal review and approval by the Commission. See, e.g., *Idaho Local Exchange Telephone Companies v. Upper Valley Communications, Inc.*, IPUC Order No. 25933 issued March 16, 1995, p. 14. ("Title 61 tariffs are 'approved' by the Commission but Title 62 price lists are merely 'accepted for filing' once they meet the minimum filing qualifications such as form, public notice requirements, or averaging requirements for MTS. *Idaho Code* §§ 62-606 and -607. 'Accepting' price lists for filing is a ministerial function that should not and does not imply Commission approval of the service or rates.") The strict requirements of the filed rate doctrine, which are applicable to regulated tariffed rates that the Commission has determined are just and reasonable, do not

prevent the Commission from prohibiting Qwest's collection of charges it improperly imposed in a catalog it voluntarily filed.[3]

CONCLUSION

The Commission finds that the application of the Access Catalog charges to local/EAS traffic, to joint access traffic subject to meet-point-bill arrangements, and to intraLATA toll traffic originated by a Qwest customer, was improper and in violation of existing rates or inter-carrier arrangements. By implementing new SS7 charges the same way it did at the interstate level, Qwest "ignored the relevant federal and state jurisdictional differences between interstate toll traffic, which is a single category of traffic, and intrastate traffic in general, which includes the categories of intraLATA toll, local/EAS, intraMTA wireless and jointly-provided exchange access." Tr. p. 34. Qwest unilaterally imposed message charges on traffic for which it was already being fully compensated, including for the signaling component. In addition, Qwest (1) unilaterally changed payment terms by which companies traditionally and by agreement exchange telecommunications traffic, (2) implemented charges without regard to whether it was being fully compensated under existing rate structures, and (3) did not consider the underlying nature of the intrastate traffic to assess whether SS7 message charges could be offset by reductions in existing access charges. Qwest may not apply the per message signaling charges to the traffic subject to pre-existing rates and arrangements, nor may Qwest recover any improperly imposed SS7 message charges accrued since June 1, 2001.

In addition, because the way Qwest implemented its new SS7 message charges is fundamentally flawed, the Commission orders the Access Catalog revisions withdrawn. Should Qwest seek to restructure its Access Catalog, Qwest must carefully consider the existing rates and arrangements that traditionally have provided compensation for SS7 signaling service. Traditionally, inter-carrier compensation for intrastate SS7 messages has followed the same rules that govern inter-carrier compensation for the underlying end user traffic such SS7 messages support. Tr. pp. 219-20. The burden is on Qwest to determine the traffic properly subject to the per message signaling charges consistent with this Order, and refile it if it so desires.

[3]Even regarding services fully regulated under Title 61, Idaho Code, to which the filed rate doctrine would apply, the Commission is specifically authorized by statute to correct excessive or discriminatory charges. *Idaho Code* § 61-641 authorizes the Commission to order a public utility to make reparations if the Commission finds the utility "has charged an excessive or discriminatory amount for [a] product, commodity or service." The effect of the Commission's determination in this case is that the SS7 message charges Qwest improperly imposed by its Access Catalog are excessive and discriminatory. Section 61-641 specifically authorizes the Commission to require Qwest to make reparations, notwithstanding the filed rate doctrine.

Complainants identified different options available to Qwest to limit its SS7 message charges to the appropriate underlying intraLATA toll traffic. Tr. pp. 56-57, 221-23.

ORDER

IT IS HEREBY ORDERED that the SS7 per message signaling charges imposed in the June 1, 2001 Access Catalog on local/EAS traffic, on joint access traffic subject to a meet-point-bill arrangements, and on intraLATA toll traffic originated by a Qwest customer, are invalid. Qwest may not collect from Complainants for those charges. Qwest may collect SS7 signaling charges on intraLATA toll terminating to a Qwest end user customer if it is adequately identified by Qwest.

IT IS FURTHER ORDERED that Qwest withdraw the revisions it made to its Access Catalog effective June 1, 2001, and refile it only after providing the means to identify the intraLATA toll traffic properly subject to the SS7 per message charges consistent with this Order.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. QWE-T-02-11 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. QWE-T-02-11. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 15th day of April 2003.

PAUL KJELLANDER, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

DENNIS S. HANSEN, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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O:QWET0211_ws4

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-6

3 Rivers Tel Coop, Inc v US West Commc'ns, Inc, CV-99-80-GF-CSO, 2003 US Dist LEXIS 24871, at *65 (D Mont Aug 22, 2003)

LEXSEE 2003 US DIST LEXIS 24871

3 RIVERS TELEPHONE COOPERATIVE, INC.; RANGE TELEPHONE COOPERATIVE, INC.; BLACKFOOT TELEPHONE COOPERATIVE, INC.; NORTHERN TELEPHONE COOPERATIVE, INC.; INTERBEL TELEPHONE COOPERATIVE, INC.; CLARK FORK TELECOMMUNICATIONS, INC.; LINCOLN TELEPHONE COMPANY; RONAN TELEPHONE COMPANY; and HOT SPRINGS TELEPHONE COMPANY, Plaintiffs, vs. U.S. WEST COMMUNICATIONS, INC., Defendant.

CV 99-80-GF-CSO

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA, GREAT FALLS DIVISION

2003 U.S. Dist. LEXIS 24871

August 22, 2003, Decided
August 22, 2003, Filed

PRIOR HISTORY: *3 Rivers Tel. Coop. Inc. v. U.S. West Communs., Inc., 45 Fed. Appx. 698, 2002 U.S. App. LEXIS 18196 (2002)*

DISPOSITION: Motions ruled upon.

COUNSEL: [*1] For 3 RIVERS TELEPHONE COOPERATIVE, INC., RANGE TELEPHONE COOPERATIVE, INC., BLACKFOOT TELEPHONE COOPERATIVE, INC., NORTHERN TELEPHONE COOPERATIVE, INC., INTERBEL TELEPHONE COOPERATIVE, INC., CLARK FORK TELECOMMUNICATIONS, INC., plaintiffs: William A. Squires, ATTORNEY AT LAW, Missoula, MT.

For LINCOLN TELEPHONE COMPANY, RONAN TELEPHONE COMPANY, HOT SPRINGS TELEPHONE COMPANY, plaintiffs: Ivan C. Evilsizer, ATTORNEY AT LAW, Helena, MT.

For U.S. WEST COMMUNICATIONS, INC., defendant: John L. Alke, HUGHES KELLNER SULLIVAN & ALKE, Helena, MT.

For U.S. WEST COMMUNICATIONS, INC., counter-claimant: John L. Alke, HUGHES KELLNER SULLIVAN & ALKE, Helena, MT.

For 3 RIVERS TELEPHONE COOPERATIVE, INC., RANGE TELEPHONE COOPERATIVE, INC., BLACKFOOT TELEPHONE COOPERATIVE, INC., NORTHERN TELEPHONE COOPERATIVE, INC., INTERBEL TELEPHONE COOPERATIVE, INC., CLARK FORK TELECOMMUNICATIONS, INC., counter-defendants: William A. Squires, ATTORNEY AT LAW, Missoula, MT.

For LINCOLN TELEPHONE COMPANY, RONAN TELEPHONE COMPANY, HOT SPRINGS TELEPHONE COMPANY, counter-defendant: Ivan C. Evilsizer, ATTORNEY AT LAW, Helena, MT.

JUDGES: Carolyn S. Ostby, United State Magistrate Judge.

OPINION BY: Carolyn S. Ostby

OPINION:

ORDER

Plaintiffs, nine Montana independent local telephone companies, instituted this action to recover damages for breach of tariff and other related state law causes of action against Defendant U.S. West Communications, now known as Qwest (Qwest). n1 Plaintiffs generally allege that Qwest breached filed tariffs by refusing to pay

terminating carrier access charges for all interexchange calls Qwest transported to Plaintiffs for delivery to Plaintiffs' telephone service subscribers. n2

n1 The Court refers to Defendant as Qwest throughout this Order.

n2 The nine Plaintiffs are divided into two groups. The first group, represented by William A. Squires, includes 3 Rivers Telephone Cooperative (3 Rivers), Range Telephone Cooperative (Range), Blackfoot Telephone Cooperative (Blackfoot), Northern Telephone Cooperative (Northern), Interbel Telephone Cooperative (Interbel) and Clark Fork Telecommunications (Clark Fork). The second group of Plaintiffs, represented by Ivan C. Evilsizer, includes Ronan Telephone Company (Ronan), Hot Springs Telephone Company (Hot Springs) and Lincoln Telephone Company (Lincoln). John Alke represents Qwest.

[*3]

Before the Court are the following motions:

1. The motion of Ronan, Hot Springs and Lincoln for summary judgment on Counts One, Two and Three of the Complaint; n3

2. Qwest's Motion for Summary Judgment; n4

3. The motion of 3 Rivers, Range, Blackfoot, Northern, Interbel and Clark Fork for summary judgment on Counts One, Two and Three of the Complaint; n5

4. Qwest's motion to strike the affidavit of Jan Reimers; n6 and

5. Qwest's motion to strike the supplemental affidavit of Jan Reimers and the reply affidavit of Joan Mandeville. n7

n3 Court's Doc. No. 66.

n4 Court's Doc. No. 73.

n5 Court's Doc. No. 79.

n6 Court's Doc. No. 87.

n7 Court's Doc. No. 110.

Having reviewed the record, together with the parties' arguments in support of their respective positions, the Court is prepared to rule.

I. PROCEDURAL BACKGROUND

On February 5, 1999, Plaintiffs filed a complaint with the Montana Public Service Commission (PSC). The PSC dismissed the **[*4]** complaint for lack of subject matter, jurisdiction. n8 On April 6, 2000, Montana's First Judicial District Court affirmed the PSC's final agency decision dismissing the complaint for lack of subject matter jurisdiction. n9

n8 In the Matter of US WEST Communications, Inc., Complaint by Clark Fork Telecommunications, Inc., et al., Pertaining to Terminating Access Charges, Montana PSC Docket No. D99.2.26, Order No. 6185 (July 2, 1999) (attached as App. 2 to *Qwest's Reply Brief* (Court's Doc. No. 109)).

n9 Central Montana Communications, Inc., et al. v. U.S. West Communications, Inc., and the Montana PSC, Cause No. BDV 99-551 (April 6, 2000) (attached as App. 3 to *Qwest's Reply Brief* (Court's Doc. No. 109)).

On July 8, 1999, Plaintiffs filed the instant action in Montana's Ninth Judicial District Court alleging four claims: breach of tariff and switched access agreements (Count One); unjust enrichment (Count Two); estoppel (Count Three); and breach of the implied covenant of good faith and **[*5]** fair dealing (Count Four). n10 On August 16, 1999, Qwest removed the matter to this Court. n11

n10 This claim is incorrectly designated as

"Count Five" in the Complaint and Jury Demand.

n11 Court's Doc. No. 1.

On December 11, 2000, then-Magistrate Judge Richard F. Cebull n12 granted Qwest's motion for summary judgment. n13 On December 13, 2000, the Clerk of Court entered Judgment. n14 On January 9, 2001, Plaintiffs appealed. n15 On August 27, 2002, the Ninth Circuit Court of Appeals filed an unpublished Memorandum reversing Judge Cebull's decision, and remanding the matter "for further proceedings on the interpretation and application of the [Plaintiffs'] tariffs." n16

n12 Judge Cebull is now a U.S. District Court Judge.

n13 Court's Doc. No. 47.

n14 Court's Doc. No. 48.

n15 Court's Doc. No. 49.

n16 Court's Doc. No. 57 *(3 Rivers Telephone Cooperative, Inc., et al. v. U.S. West Communications, Inc., 45 Fed. Appx. 698 (9th Cir. 2002)* (unpublished)).

[*6]

On November 12, 2002, Chief U.S. District Judge Donald W. Molloy ordered that the case be reassigned to the undersigned. n17 On January 30, 2003, upon the parties' consent, U.S. District Judge Sam E. Haddon assigned the case to the undersigned for all purposes. n18

n17 Court's Doc. No. 59.

n18 Court's Doc. No. 64.

On February 20, 2003, the Court held a status hearing at which counsel for the parties advised the Court that a stay of this matter to allow declaratory proceedings before the Montana PSC, as suggested by the Ninth Circuit in its remand order, would not be appropriate in this case. n19 Thus, on February 24, 2003, with the parties' agreement, the Court issued an Order setting a briefing schedule for summary judgment motions.

n19 It appears, in any event, that a stay pending declaratory proceedings before the Montana PSC would be foreclosed by the PSC's prior determination that it lacks subject matter jurisdiction over this case, as well as by the Montana state court's affirmance of that decision. See *supra* notes 8 and 9.

[*7]

II. FACTUAL BACKGROUND

A. Plaintiffs

Plaintiffs are rural telephone companies registered with the Montana PSC as telecommunications carriers. n20 Plaintiffs, not being part of the original Bell system, are at times referred to as "Independents." n21 Plaintiffs are local exchange carriers (LECs) that provide local telephone service to their subscribers or "end users," *i.e.*, customers at the "ends" of telephone lines.

n20 On January 1, 2003, Clark Fork, a wholly-owned subsidiary of Blackfoot, merged into its parent and ceased operating as Clark Fork Telecommunications. As the successor in interest to Clark Fork, Blackfoot remains a concurring carrier, and "Telephone Company" under the MILEC tariff (discussed *infra)*, as of January 1, 2003, for the prior Clark Fork service areas. *Plaintiffs' Statement of Uncontroverted Facts* (Court's Doc. No. 68) [hereafter *Pltf.s' Stmt. of U.F.]* PP27 and 28; *Qwest's Statement of Genuine Issues* (Court's Doc. No. 89) [hereafter *Qwest's Stmt. of G.I.]* P1.

n21 *Pltf.s' Stmt. of U.F.* P1; *Qwest's Stmt. of G.I.* P1.

[*8]

B. Qwest

Qwest is one of the Regional Bell Operating Companies (RBOCs) established, in the 1982 antitrust breakup of the Bell system, n22 an event generally known as "Divestiture." Following Divestiture, Qwest and the other RBOCs were primarily limited to providing local exchange service, n23 and intra-local access and transport area (intra-LATA) n24 long distance service, n25 which is sometimes referred to as "local long distance." n26

n22 *Pltf.s' Stmt. of U.F.* P2; *Qwest's Stmt. of G.I.* P1.

n23 Thus Qwest, in addition to the other services it provides, is also an LEC. *Qwest's Statement of Uncontroverted Facts* (Court's Doc. No. 76) [hereafter *Qwest's Stmt. of U.F.]* P3.

n24 LATAs are "geographically based service islands created by the divestiture decree, marking the boundaries beyond which a Bell company may not carry telephone calls." Peter W. Huber, Michael K. Kellogg & John Thorne, *Federal Telecommunications Law* 1374 (2d ed., Aspen L. & Bus. 1999) [hereafter *Huber].*

n25 *Qwest's Stmt. of U.F.* P3.

n26 That portion of Montana within which Qwest operates was split into two LATAs. On December 20, 2002, the Federal Communications Commission (FCC) authorized Qwest to enter the inter-LATA long distance market in Montana. *Qwest's Stmt. of U.F.* P5.

[*9]

C. Relationship Between Plaintiffs and Qwest

Telephone calls between LECs are long distance calls that travel over long distance trunk groups. Long distance carriers provide long distance service for such calls.

Plaintiffs and Qwest historically have been interconnected in Montana in that Qwest has carried calls from originating LECs to terminating LECs in the same LATA - calls known as intra-LATA (local long distance) calls. Generally, when a carrier such as Qwest carries an intra-LATA call from one LEC to another, it pays the LEC that owns the local exchange in which the call originated an "originating carrier access charge." Further, it pays the LEC that owns the local exchange in which the call terminated a "terminating carrier access charge." These "access charges" n27 are for the use of the LECs' local telephone networks, and for services rendered in completing the calls on the LECs' facilities. n28

n27 Plaintiffs note, and Qwest does not dispute, that, "in the telecommunications industry, "carrier access charges (CAC)," "access service," "exchange access," and "switched access service/charges" are used interchangeably." *Brief in Support of Motion for Summary Judgment* of Ronan, Hot Springs and Lincoln [hereafter *Ronan et al.'s Opening Brief]* at 10, n.9. In this Order, the Court also uses the terms interchangeably.

[*10]

n28 *Pltf.s' Stmt. of U.F.* P3; *Qwest's Stmt. of G.I.* P2; *Qwest's Stmt. of U.F.* P7.

Under applicable tariffs, n29 Qwest purchased from Plaintiffs Feature Group C (FGC) access services, a network configuration allowing the commingling of traffic that may be originated by various carriers, but which is delivered entirely by Qwest to Plaintiffs for termination on their local networks. The FGC connection between Plaintiffs and Qwest does not provide for the identification of the originating carrier on a call transmitted to Plaintiffs by Qwest. n30

n29 The tariffs at issue herein are as follows: (1) the Telephone Carriers of Montana (TECOM) tariff, which was approved by the Montana PSC on December 21, 1995, and which has remained unchanged since that time; (2) the Montana Independent Local Exchange Carriers (MILEC) tariff, which was approved by the Montana PSC effective March 10, 1994, and which had

remained unchanged since that time; and (3) the Ronan Telephone Company tariff (Ronan tariff), and (4) the Hot Springs Telephone Company tariff (Hot Springs tariff), both of which the Montana PSC approved effective January 1, 1988, and both of which have remained unchanged in their basic service and rate provisions since PSC approval. *Pltf.s' Stmt. of U.F.* PP6-8; *Qwest's Stmt. of G.I.* P1. Also, Qwest has never challenged the tariffs, nor sought any amendment or change to the tariffs. *Id.*

[*11]

n30 *Pltf.s' Stmt. of U.F.* P23; *Qwest's Stmt. of G.I.* P1.

D. Dispute in the Instant Action

For a time prior to the events giving rise to this action, n31 Qwest, as the designated intra-LATA carrier for Plaintiffs' subscribers, paid Plaintiffs terminating carrier access charges. n32 During that time, when Plaintiffs' subscribers made intra-LATA long distance calls, Qwest was automatically the intra-LATA long distance carrier. Plaintiffs billed Qwest's intra-LATA long distance charges to their subscribers, collected the money for Qwest, and then charged Qwest a billing and collection fee. n33 Plaintiffs charged Qwest originating carrier access charges on the intra-LATA long distance calls placed by their subscribers (as measured by Plaintiffs' call records), and charged Qwest terminating carrier access charges for the intra-LATA long distance calls to their subscribers based upon a ratio of terminating to originating minutes (known as a "T/O ratio"). n34

n31 Qwest characterizes this time as "prior to the enactment of the Federal Telecommunications Act of 1996, Public Law 104-104, the implementation of intra-LATA equal access dialing parity, and Qwest's withdrawal as the designated intra-LATA carrier for [Plaintiffs], ..." Qwest's *Brief in Support of Motion for Summary Judgment* [hereafter *Qwest's Opening Brief]* at 3.

[*12]

n32 *Id.* (citing *Qwest's Stmt. of U.F.* PP13-18).

n33 *Id.* (citing *Qwest's Stmt. of U.F.* P15).

n34 *Id.* (citing *Qwest's Stmt. of U.F.* PP10-11, 17-18).

Sometime later, Qwest ceased to act as designated intra-LATA carrier for all of Plaintiffs' subscribers. Qwest then reasoned that if it was not originating traffic in the Plaintiffs' exchanges, its liability for terminating carrier access charges became zero under a T/O ratio. n35 Thus, in late 1998 and early 1999, Qwest notified Plaintiffs that it would begin paying them terminating carrier access charges only for its own customers' long distance calls into Plaintiffs' exchange. n36 In other words, Qwest advised Plaintiffs that it would no longer pay terminating carrier access charges for telecommunications traffic it delivered to Plaintiffs for termination that did not originate from Qwest subscribers. A short time later, Qwest stopped paying Plaintiffs the terminating carrier access charges. Plaintiffs' initiation of this action followed. n37

n35 *Id.* at 3 (citing *Qwest's Stmt. of U.F.* P19). Plaintiffs disagree with Qwest's reasoning. They argue that Qwest continues to originate toll traffic from the Lincoln exchange, even though Qwest is no longer the "designated intra-LATA carrier," and that Lincoln continues to use a T/O ratio to calculate terminating access minutes for purposes of billing Qwest. *Pltf.s' Stmt. of G.I.* PP1 and 6. Plaintiffs also argue that Ronan and Hot Springs used a T/O ratio to calculate terminating access minutes for billing Qwest until October of 1999, after which they billed Qwest based upon actual measured minutes of terminating traffic. *Pltf.s' Stmt. of G.I.* P2. Further, Plaintiffs argue that Qwest is still capable of originating toll traffic from an exchange even though it is no longer the designated intra-LATA carrier in that exchange, *Pltf.s' Stmt. of G.I.* P6, and still is, therefore, liable under the applicable tariffs for terminating carrier access charges on all traffic it carriers to Plaintiffs for termination.

[*13]

n36 *Id.* (citing *Qwest's Stmt. of U.F.* P34).

n37 A development in the telecommunications industry occurred during the years immediately preceding initiation of this action. From January of 1996 until December of 1999, Type 2 wireless traffic in Montana increased from 2.12 million minutes to 11.79 million minutes. *Qwest's Stmt. of U.F.* P23. During the same period, the increase in wireless traffic being terminated in Plaintiffs' exchanges increased from approximately 287,000 minutes of Type 2 usage to approximately 2,900,000 minutes of Type 2 usage. *Qwest's Stmt. of U.F.* P24. Because of this increase in wireless communications, a significant amount of the intra-LATA traffic carried through Qwest's facilities is wireless traffic. *Qwest's Opening Brief* at 4 (citing *Qwest's Stmt. of U.F.* PP23-25; 37).

Generally, Plaintiffs maintain that Qwest is liable for the terminating carrier access charges under filed tariffs that govern the relationships between the parties. n38 Plaintiffs argue that Qwest is liable for these types of charges under the applicable tariffs regardless **[*14]** of whether the traffic originates as wireline or wireless. n39

n38 *Ronan et al.'s Opening Brief* at 10-15; *Plaintiffs' Brief in Support of Motion for Summary Judgment* [hereafter *3 Rivers et al.'s Opening Brief]* at 7-14.

n39 *Id.*

Qwest generally maintains, *inter alia,* that it is not liable under the filed tariffs for the terminating carrier access charges, as they are measured by Plaintiffs, because Plaintiffs' access tariffs do not apply to Qwest as a transit carrier. n40 Qwest argues that the tariffs follow the industry standard for such charges, *i.e.,* that the carrier selected by the calling party pays both originating and terminating access charges. Thus Qwest, as a mere transit carrier for calls, is not responsible for terminating carrier access charges for calls that its subscribers do not originate. n41

n40 *Qwest's Opening Brief* at §§ I and II.

n41 *Id.*

[*15]

E. Judge Cebull's Decision and the Ninth Circuit's Remand

In granting Qwest's prior summary judgment motion, Judge Cebull determined, *inter alia,* that federal law, as interpreted by the FCC, relieved Qwest of any obligation to pay terminating carrier access charges for telecommunications traffic that its subscribers did not initiate. n42 Judge Cebull further determined that the filed tariff doctrine (also known as the filed rate doctrine) had no application because the case does not involve a dispute about rates. n43 On appeal, the Ninth Circuit reversed and remanded holding, *inter alia,* that Judge Cebull "erred in failing to interpret the tariffs at issue in this case." n44

n42 Court's Doc. No. 47.

n43 *Id.*

n44 Court's Doc. No. 57.

III. DISCUSSION

A. The Parties' Arguments

1. *Plaintiffs*

Plaintiffs cite the Ninth Circuit's remand order in urging the Court to apply the filed tariff doctrine, interpret the language **[*16]** of the applicable tariffs and apply that language to the facts of this case. n45 Plaintiffs predict that when the Court interprets the tariffs, it will become clear that they have met their obligation of providing Qwest with terminating access service, which involves accepting and terminating *(i.e.,* transmitting to

local telephones) interexchange (typically between two cities or towns) telephone calls sent to them by other telephone companies such as Qwest. n46

Plaintiffs further argue that the tariffs also impose upon Qwest an obligation which Qwest has failed to meet. Specifically, Plaintiffs argue that the tariffs require Qwest to pay them terminating access charges for the access service that Plaintiffs provide. Plaintiffs maintain that the tariffs require payment of access charges regardless of whether Qwest is the originating carrier for a call made by one of its own subscribers, or whether the subscriber of some other LEC originated the call, and Qwest then transported the traffic to Plaintiffs for termination. Plaintiffs also argue that the tariffs require Qwest to pay terminating carrier access charges regardless of whether the originating carrier that transmits the traffic **[*17]** to Qwest is a wireline or wireless carrier. n47 In sum, Plaintiffs maintain that Qwest unilaterally decided not to pay the terminating carrier access charges required by the tariffs, and has failed, since January of 1999, to pay Plaintiffs a large portion of the required charges for provision of the terminating access service. n48

n45 *Ronan et al.'s Opening Brief* at 4-5; *3 Rivers et al.'s Opening Brief* at 3-4.

n46 *3 Rivers et al.'s Opening Brief* at 3-4.

n47 *Ronan et al.'s Opening Brief* at 4-5.

n48 *Ronan et al.'s Opening Brief* at 4-5; *3 Rivers et al.'s Opening Brief* at 3-4.

Plaintiffs advance equitable claims in the alternative to their breach of tariff claim. n49 First, Plaintiffs argue that Qwest has been unjustly enriched at their expense, and that Qwest is, therefore, liable to them for compensation for services rendered. n50 Second, Plaintiffs argue that they are entitled to relief under the promissory estoppel doctrine. They argue that Qwest promised to **[*18]** abide by the rates, terms and conditions of the applicable tariffs, Plaintiffs relied on Qwest's promises, their reliance was reasonable and foreseeable and Plaintiffs suffered injury as a result of their reliance. n51

49 *Ronan et al.'s Opening Brief* at 16-17; *3 Rivers et al.'s Opening Brief* at 14-18.

n50 *Id.*

n51 *3 Rivers et al.'s Opening Brief* at 16-18.

2. ***Qwest***

Qwest advances a markedly different interpretation of the tariffs from that of Plaintiffs. According to Qwest, the tariffs under which Plaintiffs claim entitlement to terminating carrier access charges "clearly and unequivocally apply" a practice standard in the telecommunications industry known as "calling party's network pays" (CPNP). n52 CPNP, Qwest argues, requires the originating carrier, whomever it may be, to pay the terminating carrier access charges. n53 Qwest argues that the CPNP standard "is part of a national paradigm that has existed since Divestiture," n54 and is reflected in **[*19]** the tariffs' structures. n55

n52 *Qwest's Opening Brief* at 9.

n53 *Id.* at 5-7

n54 *Id.* at 4.

n55 *Id.* at 7-9

For example, Qwest argues, each tariff contains a general applicability provision for carrier access service that specifies that the originating carrier is responsible for paying the access charge. Further, Qwest maintains, certain definitions in the tariffs indicate applicability of the CPNP standard, and the tariffs' administrative provisions use language that contemplates that the originating carrier is responsible for both originating and

terminating access charges. n56 Also, Qwest notes, the Montana PSC twice has held that under the CPNP standard, carriers that transport third-party traffic from an originating carrier to a terminating carrier have no obligation to compensate the terminating carrier because the call did not originate on the transporting carrier's facilities. n57

n56 *Id.*

[*20]

n57 *Id.* at 5-7.

Next, Qwest argues that the filed rate doctrine, applied to this case, completely bars all of Plaintiffs' claims. n58 Specifically, Qwest argues that because the tariffs make the originating carrier responsible for payment of both originating and terminating carrier access fees, Plaintiffs "are precluded from extending the tariff specified liability to [Qwest] by asserting equitable theories of relief." n59 In other words, application of the filed rate doctrine precludes application of equitable forms of relief to vary the filed tariffs' terms.

n58 *Id.* at 10-11.

n59 *Id.*

Finally, Qwest argues that even if the Court were to interpret the tariffs in such a way as to make Qwest liable for terminating access charges on traffic originated by other carriers, federal law preempts any application of Plaintiffs' carrier access tariffs to intra-Major Trading Area (MTA) n60 wireless traffic. **[*21]** n61 Qwest argues that the FCC, within its comprehensive federal jurisdiction over Commercial Mobile Radio Service (CMRS or "wireless service"), has adopted "reciprocal compensation," which requires CMRS providers and LECs to compensate each other for terminating their respective traffic. n62 The FCC, Qwest argues, has prohibited LECs from charging terminating carrier access charges for terminating intra-MTA wireless traffic, and has limited the LECs to receiving only reciprocal compensation. Thus, Qwest argues, Plaintiffs cannot levy terminating carrier access charges against intra-MTA wireless traffic transported by Qwest without being in direct violation of the FCC prohibition. n63

n60 A Major Trading Area (MTA) is the local calling area for wireless telecommunications providers. See *47 C.F.R. § 51.701(b)(2)*, with MTAs determined pursuant to *47 C.F.R. § 24.202*.

n61 *Qwest's Opening Brief* at 11.

n62 *Id.* at 11-12.

n63 *Id.* at 12-13 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Carriers and Commercial Mobile Radio Service Providers, 11 F.C.C.R. 15499*, First Report and Order PP1035-1036).

[*22]

In further support of this position, Qwest argues that the *Supremacy Clause of the U.S. Constitution* supports the notion of preemption here because allowing Plaintiffs to assess terminating carrier access charges on intra-MTA wireless traffic transported on Qwest's facilities "would directly thwart the FCC prohibition against assessing access charges on intra-MTA wireless traffic." n64

n64 *Qwest's Opening Brief* at 13.

B. Interpretation of* the *Tariffs

In reversing Judge Cebull, the Ninth Circuit made clear that, on remand, the Court must apply the filed tariff doctrine and interpret the tariffs at issue. Because the Ninth Circuit's discussion of the applicable law in this case forms the framework for this Court's analysis, the Court repeats it here:

> Under the filed tariff doctrine, a tariff filed with and approved by a regulating agency forms the "exclusive source" of the terms and conditions governing the provision of

service of a common carrier to its customers. *Brown v. MCI WorldCom Network Servs., Inc., 277 F.3d 1166, 1170 (9th Cir. 2002)* **[*23]** (citation and internal quotation marks omitted); see also *Am. Tel. & Telegraph Co. v. Cent. Office Tel., Inc., 524 U.S. 214, 222, 227, 141 L. Ed. 2d 222, 118 S. Ct. 1956 (1998)*; *Evanns v. AT&T Corp., 229 F.3d 837, 840 (9th Cir. 2000)*. A filed tariff obtains the force of law binding the utility and its customers to its terms and may be interpreted and enforced by a court in a breach of tariff action such as this one. *Brown, 277 F.3d 1171-72*. Because the [Plaintiffs'] tariffs form the exclusive source of the obligations between the [Plaintiffs] and their customers, the district court erred in analyzing the parties' obligations under FCC interpretations of the Telecommunications Act of 1996, *47 U.S.C. § 251-52*, without interpreting the tariffs themselves. To interpret the tariffs in this case may also require further development of the record on technology and practices in the telecommunications industry, particularly as it relates to the transmission of calls in Montana. On this record, we therefore reverse the decision of the district court and remand for further proceedings on the interpretation and application of the [Plaintiffs'] tariffs. **[*24]** n65

n65 Court's Doc. No. 57 *(3 Rivers Telephone Cooperative, Inc., et al. v. U.S. West Communications, Inc., 45 F.ed Appx. 698 (9th Cir. 2002)* (unpublished) (footnotes omitted)).

Under the Ninth Circuit's mandate, the Court must apply the filed tariff doctrine. Thus, the Court's first task is to interpret the tariffs.

As noted *supra*, n66 the tariffs at issue are the TECOM, MILEC, Ronan and Hot Springs tariffs. The MILEC tariff was filed in 1994 in conjunction with the purchase by Plaintiffs 3 Rivers, Range and Clark Fork of various rural local exchange properties from Qwest. n67 As part of the purchase, Qwest demanded that the parties enter into Intra-LATA Switched Access Agreements, and that the terms of those agreements be incorporated in the MILEC tariff. n68

n66 See note 29.

n67 *Pltf.s' Stmt. of U.F.* P10; *Qwest's Stmt. of G.I.* P1.

n68 *Pltf.s' Stmt. of U.F.* P11; *Qwest's Stmt. of G.I.* P1.

[*25]

The "issuing" carriers for the TECOM and MILEC tariffs are those Plaintiffs that by statute are subject to full regulation by the Montana PSC. The "concurring" carriers under the TECOM and MILEC tariffs are those Plaintiffs that by Montana statute are not subject to full regulation by the Montana PSC, but that agree to offer intrastate access services under the terms of the tariffs. Both the "issuing" and the "concurring" carriers are referred to as the "Telephone Company" in the TECOM and MILEC tariffs. n69 Concurring carriers in the TECOM tariff include 3 Rivers, Range, Blackfoot, Northern and Interbel. Lincoln is included as an issuing carrier in the TECOM tariff. Concurring carriers in the MILEC tariff include 3 Rivers and Range. Clark Fork is included as an issuing carrier in the MILEC tariff.

N69 *Pltf.s' Stmt. of U.F.* P12; *Qwest's Stmt. of G.I.* P1.

As an initial matter, the parties acknowledge, and the record reflects, that the TECOM and MILEC tariffs are nearly identical with respect to the **[*26]** provisions relevant to determination of this dispute. n70 Further, the parties acknowledge, and the record reflects, that the Ronan and Hot Springs tariffs employ structures similar to those used in the TECOM and MILEC tariffs. The Ronan and Hot Springs tariffs, however, do contain certain differences in style and wording. n71 Accordingly, the Court will address the tariffs together except as necessary to emphasize relevant distinctions among the tariffs.

n70 *Qwest's Opening Brief* at 8-9; *3 Rivers et al.'s Opening Brief* at 10-14.

n71 *Qwest's Opening Brief* at 9; *Ronan et al.'s Opening Brief* at 11-15.

"The construction of a tariff, including the threshold question of ambiguity, ordinarily presents a question of law for the court to resolve." n72 Tariffs are considered to be contracts; thus, general principles of contract law apply. n73 "Claimed ambiguities or doubts as to the meaning of a rate tariff must have a substantial basis in light of the ordinary meaning of the words used ... **[*27]** ." n74 Interpretation of the tariffs at issue in this action necessarily begins with a review of their language. n75

n72 *Milne Truck Lines, Inc. v. Makita U.S.A., 970 F.2d 564, 567 (9th Cir. 1992)* (citations omitted); see also *BellSouth Telecommunications, Inc. v. Kerrigan, 55 F. Supp. 2d 1314, 1323-24 (N.D. Florida 1999)* (noting that "the common meaning of a tariff is a question of law.").

n73 *Milne, 970 F.2d at 567*.

n74 *Id. at 568* (citations omitted).

n75 The tariffs at issue herein are contained in Attachments to Plaintiffs' Additional Disclosure of Contracts filed October 18, 1999 (Court's Doc. No. 15). The Court hereafter will refer to provisions of the tariffs only by reference to the specific tariff and its section numbers.

The TECOM and MILEC tariffs state their applicability as follows:

1. Application of Tariff

1.1 This tariff contains regulations, rates and charges applicable to the provision **[*28]** of Carrier Common Line, Switched Access and Dedicated Access Services, and other miscellaneous services, hereinafter referred to as the Telephone Company, to Customer(s).

The TECOM and MILEC tariffs define "Customer(s)" as follows:

2.6 Definitions

* * *

Customer(s)

Any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which orders to the services offered under this tariff, including Local Exchange Carrier(s), Interexchange Carrier(s) (IC's), and End User(s).

These provisions, read together, demonstrate that the TECOM and MILEC tariffs apply to services, including switched access services, that Plaintiffs provide to Qwest as a "customer." Nowhere in the record does Qwest dispute that it received such services.

The TECOM and MILEC tariffs provide, in pertinent part, the following description of switched access service:

6. Switched Access Service

6.1 General

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a communication path between a customer's premises and an end user's premises. It provides **[*29]** for the use of common terminating, switching and trunking facilities, and both common subscriber plant and unshared subscriber plant (i.e., WATS access lines) of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises. and to terminate calls from a customer's premises to and (sic) end user's premises in the LATA where it is provided. Specific references to material describing the elements of Switched Access Service are provided in 6.2.

> Rates and charges for Switched Access Service depend generally on its use by the customer, i.e., for MTS or WATS services. Rates and charges for Switched Access Service are set forth in 6.9 following. The application of rates for Switched Access Service is described in 6.8 following.

(Emphasis added).

In describing the Switched Access Service, the tariffs do not distinguish between those calls that originate with an end user from an LEC other than Qwest, and those calls that originate with one of Qwest's own end users, for ultimate access to Plaintiffs' exchanges for termination. The tariffs speak of terminating calls from a customer's (Qwest's) **[*30]** premises, not "a customer's end user."

In other words, the section describes the "hand off" of a call from an originating end user, be it a Qwest subscriber or another LEC's subscriber whose call Qwest is transporting, to Plaintiffs' exchanges for termination. Thus, the tariffs contemplate the same access charges for all calls Qwest transports from its premises to Plaintiffs for termination, regardless of whether the calls originate with one of Qwest's own end users or with the end user of a different LEC, with Qwest only transporting the call to Plaintiffs for termination.

Based on the unambiguous language of this provision, the Court finds unpersuasive Qwest's argument that the provision "specifies that the access customer, the party responsible for paying the access charge, is the originating carrier." n76 This tariff provision's language states only that when Qwest uses Plaintiffs' access service to terminate access traffic from its premises, Qwest is liable for paying access charges resulting from provision of the terminating access service. In short, the tariff simply does not say what Qwest says it says.

n76 *Qwest's Opening Brief* at 7.

[*31]

Further, section 6.1 provides: "The application of rates for Switched Access Service is described in 6.8 following." Section 6.8.1(C) provides: "Rates as set forth in Section 6.9 apply to all Feature Group A, B, C, D and FGA-FX Switched Access Minutes, and will be accumulated for billing on a monthly basis, or another period."

Qwest has FGC access with Plaintiffs. As a matter of practice, Qwest sends FGC access traffic to Plaintiffs' network exchanges via FGC trunks. According to the tariffs, Plaintiffs must bill Qwest for this traffic on a monthly basis under the tariffs' rates. These sections, in this Court's opinion, further support the interpretation of the tariff that Qwest is the customer responsible for payment of terminating access charges.

Also, section 5.2(c) of the TECOM tariff, for example, provides:

> For Feature Group C . . . Switched Access Service, the customer shall specify;
>
> - The number of BHMC [Busy Hour Minutes of Capacity] from the customer designated premises to the end office . . .
>
> - The number of trunks desired between customer designated premises and an entry switch or Operator Transfer Service location."

(Emphasis **[*32]** added).

The TECOM and MILEC tariffs also address measurement of switched access service, in pertinent part, as follows:

> 6.8.4 Customer traffic to end offices will be measured (i.e., recorded and assumed) by the Telephone Company at end office switches or access tandem switches. Originating and terminating calls will be measured (i.e., recorded or assumed) by the Telephone Company to determine the basis for computing chargeable access minutes. In the event the customer message detail is not available because the Telephone Company lost or damaged tapes or incurred recording system

outages, the Telephone Company will use an estimate.

* * *

(E) Feature Group C Usage Measurement

* * *

Terminating calls over FGC to services other than 800, 900 or Directory Assistance may be measured by the Telephone Company. For terminating calls over FGC to services other than 800, 900 or Directory Assistance, if terminating FGC usage is not directly measured at the terminating entry switch, it will be imputed from originating usage, excluding usage from calls to 800, 900, WATS or Directory Assistance. A 1.0 terminating ratio will be assumed.

The Ronan and Hot Springs **[*33]** tariffs contain similar provisions in section 6.8.4. Pursuant to the foregoing language, Plaintiffs will measure, when possible, the terminating access traffic sent by Qwest (as the Customer) to Plaintiffs, and that the measurement will form the basis for the access charges. Plaintiffs maintain, and Qwest does not dispute, that they can and do measure this traffic, and continue to bill Qwest for terminating access traffic based on all actual measured minutes of traffic sent by Qwest to Plaintiffs on FGC trunks. Again, in this Court's opinion, the tariffs' language further supports an interpretation of the tariffs that makes Qwest responsible for paying Plaintiffs terminating access charges.

With respect to the Ronan and Hot Springs tariffs, the Ronan tariff states its applicability as follows:

1. Application of Tariff

1.1 This tariff contains regulations, rates and charges applicable to the provision of Carrier Common Line, Switched Access, and other miscellaneous services, hereinafter referred to collectively as services(s), provided by [Ronan] to Interexchange Carrier(s) (hereinafter, IC(s)), commercial mobile radio service providers (hereinafter CMRS providers), **[*34]** U.S. West Communications, other telecommunications carriers, and to End User(s), when service(s) is ordered or provided to an IC's location, a CMRS provider's location, other telecommunications carrier location, and/or to U.S. West Communications.

The Hot Springs tariff contains similar language. n77 A fair reading of this language makes clear that the tariffs apply to services, including switched access services, that Ronan and Hot Springs provide to Qwest.

n77 The Hot Springs tariff, rather than referring to U.S. West, refers to Mountain States Telephone and Telegraph Company (MST), which was a wholly-owned subsidiary of U.S. West. The parties do not appear to dispute that MST is now Qwest for purposes of this action.

Further, the Ronan and Hot Springs tariffs also expressly include Qwest in their definition of "Customer(s)," a term used throughout the tariffs to describe those individuals or entities that order or use telecommunications services provided by Ronan and Hot Springs. The Ronan tariff defines **[*35]** "Customer(s)" as follows:

2.6 Definitions

* * *

Customer(s)

Any individual person, partnership, association, cooperative, joint-stock company, trust, corporation, residence, business, government or private entity, or other

> entity, including interexchange carrier, CMRS provider, U.S. West Communications, or other telecommunications carrier, that subscribes, orders or uses the telecommunications services provided by [Ronan] offered under this tariff. For purposes of this tariff, unless the context otherwise requires, the terms "Customer" and "Subscriber" shall be interchangeable.

From this plain language, it is readily apparent that Qwest, as a user of services provided by Ronan and Hot Springs, and as an expressly named customer in the definition, falls within the tariffs' definition of customer.

The Ronan and Hot Springs tariffs also include various provisions with respect to the type of switched access services at issue, as well as with respect to the measurement and billing of such services. First, the tariffs provide that access rates apply whenever access to the local exchange is provided for any type of toll or switched telecommunications **[*36]** services.

> 3.3 Undertaking of [Ronan and Hot Springs]
>
> * * *
>
> (C) When access to the local exchange is required to provide any switched MTS or MTS type or WATS or WATS type service, or enhanced services, or any other switched telecommunications service utilizing [Ronan or Hot Springs] service(s), TS [Traffic Sensitive] Access Service Rates and Regulations, as set forth in Section 6 following will apply... n78

n78 Plaintiffs note, and Qwest does not dispute, that "'MTS' means 'Message Telephone Service' which is the industry name for standard switched telephone service (long distance or toll calls). WATS means 'Wide Area Telephone Service' which is a variant of MTS." *Ronan et al.'s Opening Brief* at 12, n.11 (citing Newton's Telecom Dictionary, pp. 485 and 819 (18th ed. 2002)).

The "switched MTS ... service" and "any other switched telecommunications services utilizing [Ronan's or Hot Springs'] service(s)" language in this provision must be read to include Qwest's use of **[*37]** Ronan's and Hot Springs' terminating carrier access service at issue herein. At a minimum, the plain meaning of "any other" indicates an all-encompassing expression of the types of services subject to the rates and regulations for Traffic Sensitive (TS) Access Service found in section 6 of the tariff.

Next, the Ronan and Hot Springs tariffs provide, in pertinent part, the following explanation of TS Access Service provided by Ronan and Hot Springs:

> 6. Traffic Sensitive Access Service
>
> 6.1 General
>
> Traffic Sensitive, hereinafter referred to as TS Access Service(s) which is available to customers for their use in furnishing their services to end users, provides a communication path between a customer's premises and an end user's premises. It provides for the use of common terminating, switching and trunking facilities, and common subscriber plants of [Ronan and Hot Springs]. TS Access Service(s) provides for the ability to originate calls from an end user's premises to a customer's premises or to the point of interface designated by [Ronan or Hot Springs] with [Qwest] or other customer or carrier to an end user's premises. n79

n79 The Ronan tariff goes on to provide:

> All transport and termination of intra-LCA (intra-local calling area) traffic that originates on [Ronan's] network and terminates on a CMRS provider's network, and all intra-LCA traffic that originates on a CMRS provider's network and terminates on [Ronan's] network, shall also be governed by the rates and charges contained in this tariff.

[*38]

This section of the tariffs, which is similar to that in the TECOM and MILEC tariffs discussed *supra*, also expressly describes the provision of "a communication path between a customer's premises and an end user's premises." The section also describes the TS Access Service's provision of "the ability to originate calls from an end user's premises to a customer's premises or to the point of interface designated by [Ronan or Hot Springs] with [Qwest] ... to an end user's premises ...."

In describing the TS Access Service, these tariffs, like the TECOM and MILEC tariffs, do not distinguish between those calls that originate with an end user from an LEC other than Qwest, and those calls that originate with one of Qwest's own end users, for ultimate access to Ronan or Hot Springs for termination. These tariffs also reference "an end user," not a "Qwest end user." Thus, the tariffs contemplate the same access charges for all calls Qwest transports to Ronan or Hot Springs for termination, regardless of whether the calls originate with one of Qwest's own end users or with the end user of a different LEC with Qwest merely transporting the call to Ronan or Hot Springs for termination. **[*39]**

Also, the Ronan and Hot Springs tariffs further describe the switching access service in sections 6.2 and 6.3. Those sections, read in conjunction with the tariff as a whole, indicate that Ronan and Hot Springs provide switched access service to their customers (including Qwest) without making any distinction, for purposes of applicable rates, between calls from other LEC's subscribers that Qwest then transports to Ronan or Hot Springs, and calls that originate with Qwest's subscribers. For example, section 6.3.1(E) provides:

> TS Access Service(s) switching when used in the terminating direction may be used to access valid telephone numbers in the local exchange area of the terminating end office switch.

The Ronan and Hot Springs tariffs define "terminating direction" in section 2.6 as "the use of Access Service for the completion of calls from an IC [Interexchange Carrier] or EC [Exchange Carrier] premises to an End User Premise[s]." Again, the tariff's language makes no distinction between the subscribers for whose calls Ronan and Hot Springs provide switching service for termination.

As noted above, Qwest urges a different interpretation of the tariffs. In **[*40]** arguing that the tariffs actually reflect the CPNP standard, Qwest directs the Court to the definitions of "customer message" and "end user" in the tariffs. Each tariff contains the following definitions:

> Customer Message
>
> A completed intrastate call originated by a customer's end user. A customer message begins when answer supervision from the premise of the ordering customer is received by [Plaintiff telephone company] recording equipment indicating that the called party has answered. A message ends when disconnect supervision is received by [Plaintiff telephone company] recording equipment from either the premise of the ordering customer or the customer's end user premise from which the call originated.
>
> End User
>
> Any customer of an intrastate telecommunications service that is not a carrier, except that a carrier shall be deemed to be an "end user" to the extent that such carrier uses a telecommunications service for administrative purposes, without making such service available to others, directly or indirectly.

Qwest argues, with very little explanation, that these definitions, together with the provisions already discussed above, "clearly **[*41]** contemplate[] that the same carrier (the originating carrier) is responsible for both originating and terminating access charges." n80 The Court does not agree.

n80 *Qwest's Opening Brief* at 8.

First, the Court has concluded that the tariffs' language, taken as a whole, unambiguously provides that Qwest is liable for terminating access charges for all traffic, regardless of its origin, that Qwest transports to Plaintiffs for delivery to Plaintiffs' telephone service subscribers.

Second, the definitions that are set out above do not help Qwest's position. The customer message definition, when the tariffs are read in their entirety, appears in the tariffs to determine chargeable access minutes. Similarly, the definition of end user contains no language that leads to the conclusion that it somehow reflects the presence of a CPNP regime in the tariffs. Qwest does not state where these terms are used in the tariffs to reflect a CPNP regime.

Based on the foregoing, the Court finds that the tariffs at issue **[*42]** in this action are unambiguous in that they impose upon Qwest liability for terminating access charges for all traffic Qwest transports to Plaintiffs for delivery to Plaintiffs' telephone service subscribers.

C. Historical Practices of the Parties

The parties' historical practices also support the conclusion that Qwest is liable for the terminating access charges. As set forth in Section II., *supra*, Qwest acknowledges that "under applicable tariffs, Qwest purchased from Plaintiffs Feature Group C (FGC) access services, a network configuration allowing the commingling of traffic that may be originated by various carriers, but which is delivered entirely by Qwest to Plaintiffs for termination on their local networks. The FGC connection between Plaintiffs and Qwest does not provide for the identification of the originating carrier on a call transmitted to Plaintiffs by Qwest." n81

n81 *Pltf.s' Stmt. of U.F.* P23; *Qwest's Stmt. of G.I.* P1.

Under this relationship, Qwest had been paying **[*43]** Plaintiffs terminating access charges under a terminating to originating (T/O) ratio. n82 It stopped paying, however, for those calls that its subscribers did not originate, reasoning that if it was no longer originating traffic in one of the Plaintiff's exchanges, its liability for terminating access charges became zero under a T/O ratio. n83 Thus, Qwest had been paying the terminating access charges, but stopped when the T/O ratio billing method "collapsed." n84

n82 *Qwest's Opening Brief* at 3.

n83 *Id.*

n84 *Id.*

The problem with Qwest's position is that, while the parties at one time used the T/O ratio method for measuring terminating access services as permitted under the tariffs, n85 the tariffs also permit the parties to measure actual minutes. n86 Disuse of the T/O ratio method of measuring minutes did not relieve Qwest of its obligation, under the tariffs, for paying terminating access charges on calls it transported to Plaintiffs for termination. Accordingly, no justification **[*44]** exists for Qwest's decision to stop paying terminating access charges.

n85 See TECOM and MILEC tariffs at § 6.8.4(E).

n86 *Id.*

These facts, in this Court's opinion, further demonstrate that Qwest is liable for paying Plaintiffs terminating carrier access charges for the provision of access services regardless of the identity of the originating carrier. The historical practice of the parties also appears to be consistent with this Court's interpretation, and Plaintiffs' apparent understanding, of the terms of the applicable tariffs.

D. Federal Preemption

The Court's foregoing interpretation of the tariffs does not resolve fully the issue of the scope of Qwest's liability. Qwest argues that even if the Court determines, as it has, that Qwest is liable under the tariffs for terminating access charges on traffic originated by other carriers, Qwest cannot be held liable for such charges related to intra-MTA wireless traffic that it delivers to Plaintiffs for termination. n87

n87 *Qwest's Opening Brief* at 11.

[*45]

Qwest maintains that Commercial Mobile Radio Service (CMRS or "wireless service") falls under a different regulatory scheme than does wireline traffic. Qwest argues that Congress, in an effort to create a "unified and comprehensive regulatory scheme" for wireless traffic, vested the Federal Communications Commission (FCC) with broad rulemaking authority under the *Communications Act of 1934*, and has enacted laws to give the FCC specific authority over interconnection between CMRS providers and other carriers of telecommunications service. n88

n88 *Id.*

Under this authority, Qwest contends, the FCC has adopted administrative rules that require CMRS providers and LECs to compensate one another for terminating their respective traffic under "reciprocal compensation." n89 Further, Qwest argues, "the FCC has expressly held that [LECs] are prohibited from charging their switched access charges for terminating intra-MTA wireless traffic, and are limited to reciprocal compensation." n90

n89 *Id.* at 12 (citing *47 C.F.R. § 20.11(b)*).

[*46]

n90 *Id.* at 12-13 (citing *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 Interconnection Between Local Carriers and Commercial Mobile Radio Service Providers, 11 F.C.C.R. 15499*, First Report and Order PP1035-1036) [hereafter *1996 Local Competition Order]*.

Relying on the foregoing, Qwest ultimately argues that federal law impliedly preempts Plaintiffs' state law claims because "allowing [Plaintiffs] to assess their terminating access charges on intra-MTA wireless traffic transiting Qwest's facilities would directly thwart the FCC prohibition against assessing access charges on intraMTA wireless traffic." n91

n91 *Id.* at 13

Further, Qwest maintains that Plaintiffs "cannot argue that the wireless carriers can avoid having terminating access charges levied on their intra-MTA wireless traffic by connecting directly to them, as the federal Telecommunications **[*47]** Act of 1996 expressly contemplates indirect interconnections; 'Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.'" n92

n92 *Id.* (citing *47 U.S.C. § 251(a)(1)*).

Plaintiffs advance three arguments in urging the Court to reject Qwest's preemption argument. First, Plaintiffs argue that the filed tariff doctrine, which makes a filed tariff the "exclusive source" of terms and conditions governing the provision of service of a common carrier to its customers, and which has the force of law, precludes a judicial challenge to the validity of a filed tariff. n93 Plaintiffs maintain that only the regulator with which a tariff is filed has the authority to invalidate it, and Qwest has failed thus far to present its preemption argument to the proper administrative forum. n94

n93 *Brief of Plaintiffs Ronan Telephone Company, Hot Springs Telephone Company and Lincoln Telephone Company in Support of Plaintiffs' Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment* [hereafter *Ronan et al.'s Resp. Brief]* at 9-10; *Plaintiffs' Brief in Opposition to Defendant's Motion for Summary Judgment* [hereafter *3 Rivers et al.'s Resp. Brief]* at 18-19.

[*48]

n94 *Ronan et al.'s Resp. Brief* at 9-10.

Second, Plaintiffs argue that Qwest's preemption argument is barred by the "law of the case" doctrine. n95 Plaintiffs contend that Qwest, in challenging Plaintiffs' appeal to the Ninth Circuit, expressly presented its preemption argument to the appellate court. In reversing Judge Cebull, remanding the case and directing the district court to apply the filed tariff doctrine and interpret the tariffs, Plaintiffs argue, the Ninth Circuit implicitly rejected Qwest's preemption argument. Plaintiffs argue that, had the appellate court agreed that the FCC intra-MTA rule preempted the tariffs, it would have simply affirmed Judge Cebull's decision, and not remanded the matter for the district court's interpretation of the tariffs. n96

n95 *Ronan et al's Resp. Brief* at 9-10; *3 Rivers et al.'s Resp. Brief* at 18-19.

n96 *Id.*

Third, Plaintiffs maintain that, even if **[*49]** the Court rejects their first two arguments, the FCC order upon which Qwest relies in advancing its preemption argument *(i.e., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Carriers and Commercial Mobile Radio Service Providers, 11 F.C.C.R. 15499*, First Report and Order PP1035-1036 [hereafter *1996 Local Competition Order])*, does not preempt state authority over LEC interconnection rates for intra-MTA wireless-originated calls. n97 Rather, Plaintiffs contend, *inter alia*, that the *1996 Local Competition Order* draws distinctions between access charges applicable to long distance traffic and reciprocal compensation applicable to local traffic that make the FCC's order inapplicable to the type of traffic at issue in this case. n98

n97 *Ronan et al.'s Resp. Brief* at 12-17; *3 Rivers et al.'s Resp. Brief* at 18.

n98 *Id.*

1. Filed Tariff Doctrine

The Court finds Plaintiffs' first **[*50]** argument unpersuasive. The filed tariff doctrine, in and of itself, does not wholly preclude Qwest's preemption argument. The preemption doctrine, which derives from the *Supremacy Clause of the United States Constitution*, n99 allows federal law to preempt and displace state law under certain circumstances. n100 As the Ninth Circuit Court of Appeals has noted, tariffs have the force and effect of law. n101 Thus, in the instant case, the filed tariffs at issue in this case, which have the force and effect of state law, are subject to potential preemption by federal law if the criteria for preemption are present. The filed tariff doctrine alone does not stave off potential federal law preemption.

n99 *U.S. CONST., ART. VI, cl. 2* ("This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.").

n100 See *Ting v. AT&T, 319 F.3d 1126, 1135-36 (9th Cir. 2003)* and discussion *infra.*

[*51]

n101 Court's Doc. No. 57 *(3 Rivers Telephone Cooperative, Inc., et al. v. U.S. West Communications, Inc., 45 Fed. Appx. 698 (9th Cir. 2002)* (unpublished)).

The same reasoning applies with equal force to Plaintiffs' argument that only the regulator with which a tariff is filed has the authority to invalidate it. For this argument, Plaintiffs rely on the Ninth Circuit's decision in Brown v. MCI Worldcom Network Services, Inc. n102

n102 *277 F.3d 1166 (9th Cir. 2002)*.

In Brown, as Plaintiffs correctly note, the court reiterated that "under the filed rate doctrine, no one may bring a judicial challenge to the validity of a filed tariff." n103 In advancing its preemption argument here, however, Qwest is not challenging the validity of the tariffs. Rather, Qwest maintains that the tariffs, with or without a pending challenge to their validity, are subject to federal preemption under appropriate **[*52]** circumstances.

n103 *Id. at 1170.*

Further, as noted *supra*, the tariffs in this case have the force and effect of state law. As such, they are as susceptible to federal preemption as any other state law. Accordingly, Plaintiffs' first argument fails. n104

2. The Law of the Case Doctrine

The Court also finds inapplicable the "law of the case" doctrine as a basis for Plaintiffs' challenge to Qwest's preemption argument. The Ninth Circuit has described application of the law of the case doctrine as follows:

> The law of the case doctrine provides that "a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *U.S. v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997)* (internal quotation and citation omitted); *U.S. v. Miller, 822 F.2d 828, 832 (9th Cir. 1987)* ("The rule is that the mandate of an appeals court precludes the district court on remand from **[*53]** reconsidering matters which were either expressly or implicitly disposed of upon appeal."). But a court may have discretion to depart from the law of the case if:
>
> 1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result. *Alexander, 106 F.3d at 876* (emphasis added). A court's "failure to apply the doctrine of the law of the case absent one of the requisite conditions constitutes an abuse of discretion." *Id.* (citation omitted). n105

n104 The Court notes that the record contains further support for its conclusion with respect to this issue. In the Reply Affidavit of Cheryl Gillespie (Court's Doc. No. 43) filed on May 5, 2000, reference is made to a PSC matter that involved a petition by Ronan (represented by Mr. Evilsizer), under *47 U.S.C. § 251(b)(5)*, for exemption from the requirement that it enter into a reciprocal compensation arrangement with Montana Wireless (MW) (represented by Mr. Squires), the wireless subsidiary of Blackfoot. In the Matter of the Petition of Ronan Telephone Company for Suspension or Modification of provisions of the 1996 Telecommunications Act, Pursuant to 47 U.S.C. § 251(f) (2) and 253(b), Mont. PSC, Docket No. D99.4.111. Exhibit 6 to Ms. Gillespie's Reply Affidavit is MW's objection to Ronan's prehearing memorandum. In it, Mr. Squires states, *inter alia*, that "the rating of [CMRS] calls as 'local' is a matter of Federal law, not a matter of [Ronan's] tariffs. It is irrelevant what the access tariffs provide with regard to CMRS traffic...." *Objection to Prehearing Memorandum of Ronan Telephone Company* at 2. From this statement, it appears that at one time, Blackfoot, through its subsidiary MW, took a position on the preemption issue which was consistent with that of Qwest in the instant case.

[*54]

n105 *U.S. v. Cuddy, 147 F.3d 1111, 1114 (9th Cir. 1998).*

However, application of the law of the case doctrine necessarily hinges on the threshold question of whether the appellate court actually decided the operative issue. n106 If the appellate court does not decide an issue, there is no law of the case. n107 Further, an issue does not become the law of the case merely because the appellate court could have decided it. n108

n106 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, *Federal Practice and Procedure* vol. 18B, § 4478, 649 (2d ed., West Group 2002) ("Actual decision of an issue is required to establish the law of the case. Law of the case does not reach a matter that was not decided.") (citations omitted).

n107 *U.S. v. Standard, 207 F.3d 1136, 1139 (9th Cir. 2000).*

n108 See, e.g., *Field v. Mans, 157 F.3d 35, 40-42 (1st Cir. 1998).*

[*55]

In remanding, the Ninth Circuit did not decide, either explicitly or implicitly, Qwest's preemption argument. n109 It may be true, as Plaintiffs argue, that Qwest raised the preemption issue during proceedings on appeal. The Ninth Circuit, however, declined to address the issue, opting instead to remand the matter to the district court for interpretation of the tariffs and possible "further development of the record." n110

n109 See generally Court's Doc. No. 64.

n110 *Id.*

The Ninth Circuit did not mention federal preemption and, in fact, signaled to this Court that the issue remained open when it suggested in a footnote that a stay may be appropriate to allow pursuit of a declaratory ruling from the Montana PSC. In discussing the PSC's possible authority and expertise in the matter, the Ninth Circuit noted that the PSC might "issue a declaratory ruling with regard to . . . whether a tariff, interpreted to require payment for such calls, is just and reasonable in light of the FCC's interpretation **[*56]** of federal law." n111 In sum, because the Ninth Circuit did not decide the preemption issue, and instead suggested that the Montana PSC might want to address it, no law of the case exists that would preclude Qwest from making its preemption argument here." n112

n111 *Id.*, n.2.

n112 The Court is mindful that Plaintiffs' opposition to Qwest's preemption argument could be construed as a collateral attack upon an FCC order which, under the Hobbs Act, *28 U.S.C. § 2342*, must be brought in a federal court of appeals. It is this Court's opinion, however, that the parties here are not asking the Court to determine the validity of the FCC's order. Rather, they are asking it to interpret the FCC's order. Thus, the Hobbs Act does not apply. See *Pacific Bell v. Pac-West Telecomm, Inc., 325 F.3d 1114, 1125 (9th Cir. 2003).*

3. Preemption

With respect to the preemption doctrine, the Ninth Circuit Court of Appeals recently reiterated that under the *Supremacy Clause*, **[*57]** federal law can preempt state law in three ways. n113 First, Congress may expressly preempt state law by enacting a statute with an explicit statutory command that state law be displaced (*i.e.*, "express" preemption)." n114 Second, Congress may impliedly preempt state law by establishing "a scheme of federal regulation [that] is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation'" (*i.e.*, "field" or "complete" preemption). n115 Third, federal law may impliedly preempt state law where a conflict exists between federal and state law (i.e., "conflict" preemption). n116

n113 *Ting, 319 F.3d at 1135-36.*

n114 *Id.* (citations omitted).

n115 *Id.* (citations omitted).

n116 *Id.* (citations omitted).

The FCC order n117 up on which Qwest relies does not contain preemptive text, so express preemption is not present here. Similarly, field preemption does not appear to be an issue here. Qwest **[*58]** neither argues that

federal law occupies the field, nor directs the Court to any relevant authority that so suggests. Further, it is beyond dispute that state law and regulatory agencies retain significant roles in telecommunications regulation." n118 Thus, Qwest's preemption argument appears to focus exclusively on implied conflict preemption." n119

n117 The phrase "laws of the United States" in the *Supremacy Clause* includes regulations lawfully promulgated by federal agencies pursuant to their congressionally-delegated authority. See *City of New York v. FCC, 486 U.S. 57, 64, 100 L. Ed. 2d 48, 108 S. Ct. 1637 (1988)*; *International Ass'n of Independent Tanker Owners v. Locke, 159 F.3d 1220, 1226 (9th Cir. 1998)*. There is no dispute in this action that the Federal Communications Commission (FCC) is a federal agency with congressionally-delegated authority to lawfully promulgate regulations with respect to the telecommunications industry.

n118 *Ting, 319 F.3d at 1136-37* (discussing state law's governance of formation of consumer long-distance contracts and detariffing's effect of creating a larger role for state law in the telecommunications industry as reasons "to preclude a finding that Congress intended to completely occupy the field").

[*59]

n119 *Qwest's Opening Brief* at 13 ("In this case, allowing [Plaintiffs] to assess their terminating access charges on intraMTA wireless traffic transiting Qwest's facilities would directly thwart the FCC prohibition against assessing access charges on intraMTA wireless traffic.").

Implied conflict preemption exists where "compliance with both federal and state regulations is a physical impossibility," or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." n120 Determining whether conflict preemption exists requires courts "to imply Congress' intent from the statute's structure and purpose." n121 If a statute or agency regulation does not specifically address the issue, courts are to "look to 'the goals and policies of the [statute or agency regulation]'" to determine its potentially preemptive effect. n122

n120 *Ting, 319 F.3d at 1136* (citations omitted).

n121 *Id. at 1135-36* (citations omitted).

[*60]

n122 *Id.* (citations omitted).

Congress passed the Telecommunications Act of 1996 (the Act, which is codified at *47 U.S.C. §§ 151-615*) in February of 1996. The Act was intended to stimulate competition in the local and long distance telephone markets. n123 As part of the statutory scheme relevant to this case, the Act required all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." n124

n123 *AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 371, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999)*; *Pacific Bell, 325 F.3d at 1117-18.*

n124 *47 U.S.C. § 251(b)(5)*. Rules applicable to telecommunications further emphasized the reciprocal compensation arrangement between LECs and CMRS carriers as follows:

> (b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.
>
> (1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.
>
> (2) A commercial mobile radio service provider shall pay

> reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider.

47 C.F.R. § 20.11(b).

[*61]

The Act's complexity prompted the FCC to create an order directing implementation of the Act. n125 In the *1996 Local Competition Order*, the FCC addressed the billing of those calls that a CMRS provider delivers to an LEC for termination in those instances in which the call both originates and terminates in the same MTA. n126 The parties disagree about the interpretation of the FCC's order. The Court addresses the operative paragraphs of the order in turn.

n125 *1996 Local Competition Order, supra.*

n126 *Id.* at PP 1035-1045.

First, in paragraph 1033, the FCC discussed the distinction between "transport and termination" and "access." The FCC noted that transport and termination of traffic, regardless of the location of its origination, implicates the same network functions. The FCC concluded, however, that a legal distinction remains between transport and termination of local traffic, and access services for long distance traffic. The FCC further emphasized that local traffic **[*62]** falls under the reciprocal compensation scheme, while termination of interstate and intrastate long-distance traffic is subject to access charges. These conclusions raised the question of what type of traffic is considered "local" and what is not. In the order's next three paragraphs, the FCC sought to answer that question.

In paragraph 1034, the FCC reaffirmed its stance in paragraph 1033, and concluded that the reciprocal compensation scheme applies only to traffic that originates and terminates in a "local area." The FCC in paragraph 1034 also discussed the historical application of access charges, which involved three carriers collaborating to complete a "long distance" call. The FCC contrasted those types of calls with those calls subject to the reciprocal compensation scheme in which two carriers work together to complete a "local call."

Next, paragraph 1035 provides, in pertinent part:

> 1035. With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under *section 251(b)(5)*, consistent with the state **[*63]** commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. . . . n127

n127 *Id.* at P 1035 (emphasis added).

In paragraph 1035, the FCC announced that state commissions are vested with the authority to determine what geographic areas are to be considered "local areas" for purposes of applying *section 251(b)(5)*'s reciprocal compensation obligations. However, paragraph 1035 specifically excepts from the state commission's authority "traffic to or from a CMRS [wireless] network." For that type of traffic, the FCC reserved for itself in paragraph 1036 the exclusive authority to define local services areas for traffic to or from CMRS networks.

In paragraph 1036, the FCC stated:

> 1036. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local **[*64]** service area for calls to or from a CMRS network for the purposes of applying reciprocal compensation obligations under *section 251(b)(5)*. Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA). Because wireless licensed territories are federally

> authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service area for CMRS traffic for purposes of reciprocal compensation under *section 251(b)(5)* as it avoids creating artificial distinctions between CMRS providers. Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under *section 251(b) (5)*, rather than interstate and intrastate access charges. n128

n128 *Id.* at P 1036 (emphasis added) (footnotes omitted).

It is Qwest's position that the foregoing provisions **[*65]** from the *1996 Local Competition Order* specifically provide that traffic between an LEC and a CMRS provider that originates and terminates within the same MTA is local traffic and is, therefore, not subject to terminating access charges, but rather to reciprocal compensation. The Court agrees.

Paragraph 1036 expressly states that the FCC, for purposes of applying *section 251(b)(5)*'s reciprocal compensation obligations, defines the local service area for calls to or from a CMRS network as the Major Trading Area (MTA). In other words, traffic that both originates and terminates in the same MTA is considered "local," and thus "subject to transport and termination rates under *section 251(b)(5)* [reciprocal compensation], rather than interstate or intrastate access charges." The FCC's order makes no distinction, with respect to CMRS traffic that originates and terminates in the same MTA, between traffic that flows between two carriers or among three or more carriers before termination. This traffic is all "local" traffic subject to the reciprocal compensation scheme. n129

n129 In *Iowa Network Services, Inc. v. Qwest Corp., 2002 U.S. Dist. LEXIS 19830, 2002 WL 31296324 (S.D. Iowa Oct. 9, 2002)*, the court rejected Iowa LECs' claim that Qwest owed access charges for intra-MTA wireless calls. The court held that such claims were precluded by the Iowa Utilities Board's prior decision that "the FCC had previously deemed intraMTA traffic as being local, and, therefore, access charges could not apply." *2002 U.S. Dist. LEXIS 19830, 2002 WL 31296324, *8*.

[*66]

This conclusion is further bolstered by language in paragraph 1043 of the *1996 Local Competition Order*, which provides, in relevant part:

> 1043. As noted above, CMRS providers' license areas are established under federal, rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under *section 251(b)(5)*, rather than interstate or intrastate access charges. Under our existing practice, most traffic between LECs and CMRS providers is not subject to interstate access charges unless it is carried by an IXC; with the exception of certain interstate interexchange service provided by CMRS carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. Based on our authority under *section 251(g)* to preserve the current interstate access charge regime, we conclude that the **[*67]** new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges. n130

n130 *Id.* at P 1043 (emphasis added)

(footnotes omitted).

In this Court's opinion, the underlined text further supports the conclusion that traffic between an LEC and CMRS network that originates and terminates in the same MTA is local and, therefore, subject to reciprocal compensation rather than access charges. The FCC order makes no distinction between such traffic and traffic that flows between a CMRS carrier and LEC in the same MTA that also happens to transit another carrier's facilities prior to termination.

Further, the Court is not persuaded by Plaintiffs' argument that the last sentence of paragraph 1043 "carved out an exception" "that preserves the access charge system for wireless **[*68]** calls that were subject to access charges prior to the 1996 Act (such as the calls at issue). n131 The referenced language in the last sentence of paragraph 1043 pertains to "interstate access charges" and does not specifically reference "local" calls, i.e. CMRS traffic that originates and terminates in the same MTA, as defined in paragraphs 1035 and 1036. In other words, the Court does not find these provisions inconsistent.

n131 *Ronan et al.'s Resp. Brief* at 15.

Based on the foregoing discussion, the Court concludes that *47 U.S.C. § 251(b)*, as implemented by the FCC's *1996 Local Competition Order*, preempts the tariffs in this case to the extent that the reciprocal compensation scheme applies to CMRS traffic that originates and terminates in the same MTA, regardless of whether it flows over the facilities of other carriers along the way to termination. Accordingly, Qwest is not liable to Plaintiffs for terminating access charges on CMRS (wireless) traffic that both originates **[*69]** and terminates in the same MTA. n132

n132 The Court is mindful that, because FGC traffic is commingled, Plaintiffs cannot identify what portion of Qwest incoming traffic is CMRS originated. Nonetheless, in deciding the issues raised by the pending motions, the Court is constrained to interpret and apply governing laws and regulations as they currently exist.

IV. MOTIONS TO STRIKE AFFIDAVITS

Qwest's Motion to Strike Affidavit of Jan Reimers will be denied. As the Plaintiffs note, the Ninth Circuit contemplated that the District Court may need to consider technology and practice in the telecommunications industry. n133 The Reimers affidavit does contain such information. Mr. Reimer's legal conclusions are given no weight by this Court.

n133 See *Plaintiff's Brief Opposing Defendant's Motion to Strike the Affidavit of Jan Reimers* at 4.

[*70]

Qwest's Motion to Strike the Affidavit of Joan Mandeville (Qwest's motion asks the Court to strike Ms. Mandeville's Reply Affidavit) also will be denied. Although the better practice is clear compliance with Local Rule 56.1(d), the parties recognize that the Court may grant leave to file "further affidavits" [see *Fed. R. Civ. P. 56(e)*] and it hereby does so.

Qwest's motion to strike to the Supplemental Affidavit of Jan Reimers will be granted. *Fed. R. Civ. P. 56(e)* requires that supporting and opposing affidavits "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated. therein." Reimer's supplemental affidavit fails to meet these standards. He repeatedly purports to instruct the Court on what evidence is relevant. n134 He opines on the legal obligations of the parties. n135 He speculates on what another affiant "knows." n136 And, he offers his opinion on the veracity of another affiant. n137 His supplemental affidavit is not helpful to the Court in understanding **[*71]** the facts. n138

n134 *Reimer's Supp. Aff.* at PP 7, 9, 10, 11 and 14.

n135 *Id.* at PP 8, 10 and 12.

n136 *Id.* at P 13.

n137 *Id.* at PP 7 and 14.

n138 See *Fed. R. Evid. 702*; see also *Kostelecky v. NL Acme Tools, 837 F.2d 828, 830 (8th Cir 1988)* (cited with approval in *Fireman's Fund Ins. Co. v. Alaskan Pride Partnership, 106 F.3d 1465, 1468 (9th Cir. 1997)*); CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, *Federal Practice and Procedure* vol. 10B, § 2738, 345-57 (3d ed., West Group 1998).

n139 Court's Doc. No. 66.

n140 Court's Doc. No. 73.

n141 Qwest's motion seeks summary judgment on all of Plaintiffs' claims. Qwest did not argue the basis for its motion with respect to Count Four of the Complaint. Accordingly, Qwest's motion for summary judgment is DENIED to the extent it relates to Count Four.

n142 Court's Doc. No. 79.

n143 Court's Doc. No. 87.

[*73]

n144 Court's Doc. No. 110.

V. CONCLUSION

Based on the foregoing,

IT IS ORDERED that:

1. The motion n139 of Ronan, Hot Springs and Lincoln for summary judgment on Count One is GRANTED in part, and DENIED in part, as set forth herein. The motion for summary judgment, as it relates to Counts Two and Three of the Complaint, is DENIED as MOOT in light of the Court's ruling on Count One;

2. Qwest's **[*72]** Motion n140 for Summary Judgment is GRANTED in part, and DENIED in part, as set forth herein; n141

3. The motion n142 of 3 Rivers, Range, Blackfoot, Northern, Interbel and Clark Fork for summary judgment on Count One is GRANTED in part, and DENIED in part, as set forth herein. The motion for summary judgment, as it relates to Counts Two and Three of the Complaint, is DENIED as MOOT in light of the Court's ruling on Count One;

4. Qwest's Motion n143 to Strike Affidavit of Jan Reimers is DENIED;

5. Qwest's Motion' n144 to Strike Affidavits of Jan Reimers and Joan Mandeville is GRANTED to the extent it relates to Mr. Reimer's supplemental affidavit, and DENIED to the extent it relates to Ms. Mandeville's reply affidavit.

IT IS FURTHER ORDERED that lead trial counsel for each party shall appear in the chambers of the undersigned, Room 210, Federal Building, 215 1st Avenue North, Great Falls, Montana, at 2:00 p.m., September 30, 2003, for the purpose of participating in a scheduling conference. The conference is intended to develop a case-specific plan for remaining discovery, and to prepare a schedule for disposition of the issue remaining in the case.

Lead counsel for all parties shall confer to consider matters listed in *Fed. R. Civ. P. 26(f)* on or before September 15, 2003. The parties shall jointly file with the Court a written report outlining the discovery plan formulated at the conference on or before September 23, 2003.

The parties will design the discovery plan to require disclosure of all experts. Expert disclosures must comply with *Fed. R. Civ. P. 26(a)(2)(B)* on or before the deadline for disclosure. Discovery shall close thirty (30) to sixty (60) days after the deadline **[*74]** for disclosure of Defendant's experts. The parties should propose a date certain for the close of discovery.

The Clerk of Court is directed to notify the parties forthwith of the making of this Order.

DATED this 22nd day of this August, 2003.

Carolyn S. Ostby

United States Magistrate Judge

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-7

Northern Ark Tel Co v Cingular Wireless, LLC, No. 05-3044, 2006 US Dist LEXIS 62507 (WD Ark Aug 31, 2006)

LEXSEE 2006 U.S. DIST. LEXIS 62507

NORTHERN ARKANSAS TELEPHONE COMPANY, INC., PLAINTIFF vs. CINGULAR WIRELESS, LLC; CINGULAR WIRELESS, as Successor to AT&T Wireless, Inc.; SOUTHWESTERN BELL, LLC; JOHN DOE # 1 CINGULAR WIRELESS ENTITY/AFFILIATED; JOHN DOE # 2 AT&T WIRELESS ENTITY/AFFILIATED; JOHN DOE # 3 SBC WIRELESS ENTITY/AFFILIATED; and JOHN DOE # 4, DEFENDANTS

Case No. 05-3044

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS, HARRISON DIVISION

2006 U.S. Dist. LEXIS 62507

August 31, 2006, Filed

COUNSEL: [*1] For Northern Arkansas Telephone Company, Inc., Plaintiff: George Hopkins, George Hopkins Attorney at Law, Malvern, AR; Kevin Mark Odum, Whetstone and Spears, Little Rock, AR.

For Cingular Wireless, L.L.C., Cingular Wireless, Successor, AT&T Wireless Inc., Southwestern Bell, L.L.C., Defendant: E. B. Chiles, IV, David Austin Curran, Quattlebaum, Grooms, Tull & Burrow PLLC, Little Rock, AR.

JUDGES: JIMM LARRY HENDREN, UNITED STATES DISTRICT JUDGE.

OPINION BY: JIMM LARRY HENDREN

OPINION:

ORDER

On this 31st day of August, 2006, comes on to be considered **Defendants' Motion to Dismiss (Doc. 4).** The Court, being well and sufficiently advised, finds that the motion should be **GRANTED.** The Court finds and orders as follows with respect thereto:

1. The Court's review of the pleadings and the other submissions by the parties reveals the following:

* Plaintiff is an Arkansas telecommunications provider that owns telephone lines and facilities that provide switched access services.

* Plaintiff instituted this action in state court against defendants, various wireless service providers, alleging that defendants had used plaintiff' s services and facilities to terminate calls but had **[*2]** refused to pay plaintiff a reasonable fee for the use of its services and facilities.

* Plaintiff seeks to recover for the use of its facilities "prior to April 29, 2005," under "its tariff provisions or the doctrines of Quantum Meruit, Quantum valebant, or conversion . . . ." (Compl. P P 12, 13.)

* Defendants removed the action to this Court on the basis of diversity jurisdiction and now move to dismiss plaintiff's complaint.

* Defendants argue that the Telecommunications Act of 1996, *47 U.S.C. § 251, et. seq.* (the "TCA"), provides the exclusive procedure by which plaintiff must pursue its claims prior to filing suit and that the Court should therefore dismiss the action without prejudice to allow the parties to proceed under the TCA.

2. Defendants insist that their motion to dismiss is good and should be granted. In support thereof, they argue:

* that when a call is delivered between customers of different telecommunications carriers, the Federal Communications Commission (FCC) requires the originating carrier to compensate the terminating carrier

-- and that this obligation is reciprocal. In other words, they argue, defendants have an obligation to compensate **[*3]** plaintiff for defendants' calls terminated on plaintiff's network -- and plaintiff has the same obligation to compensate defendants for plaintiff's calls terminated on defendants' network. *See In the Matter of Developing a Unified Intercarrier Compensation Regime, 20 F.C.C.R. 4855, P 2 (2005)*.

* that, under the TCA, issues of intercarrier compensation are required to be negotiated between the parties. Specifically, the parties are required to engage in good faith negotiations regarding the terms and conditions of an interconnection agreement. *See 47 U.S.C. § 252(b)(5)*.

* That, if negotiations fail, either party may petition the state public service commission for arbitration. *See 47 U.S.C. § 252(b)(1)*.

* that all interconnection agreements, whether adopted by mutual negotiation or arbitration, are subject to review by the state commission. *See 47 U.S.C. § 252(e)(4)*.

* that, when a state commission makes a determination, any party "aggrieved" by such determination may file suit in federal court. *See 47 U.S.C. § 252(e)(6)*.

* that, on March 16, 2004, a representative **[*4]** of plaintiff contacted a representative of defendants to begin interconnection negotiations under the Act;

* that, as part of the initial negotiations, plaintiff forwarded a proposed interconnection agreement for defendants' review and also raised the issue of intercarrier compensation allegedly owed by defendants for plaintiff's termination of defendants' traffic;

* that interconnection negotiations generally involve complex legal and technical issues, and it is not unusual for such negotiations to take many months, even longer than a year to produce a completed agreement; and

* that, on June 29, 2005, without attempting to complete negotiations or seek arbitration by the state Commission, plaintiff filed its Complaint in Arkansas state court.

3. In response of its contention that the motion is not good and should be denied, plaintiffs argue:

* that it "tried to negotiate with Defendants . . about resolving this matter, as would be done pursuant to the Act, with no response from Defendants;" and

* that, months later, a representative of defendants informed plaintiff that defendants were "not going to negotiate [and] [t]his left Plaintiff in the position of having to file **[*5]** this litigation."

4. Under the TCA, before a federal court can become involved, the state public service commissions are tasked with mediating and arbitrating between telecommunication companies when their private negotiations fail to reach an interconnection agreement. *See Contact Communications v. Quest Corp., 246 F. Supp.2d 1184, 1188 (D. Wy. 2003)*. While plaintiff characterizes its claims as arising under state law, those claims appear to be based on defendants' alleged failure to pay plaintiff for terminating defendants' traffic. The obligation of the parties regarding intercarrier compensation is governed by the TCA. It follows, therefore, that plaintiff cannot properly bypass the TCA's negotiation and arbitration requirements.

The Court concludes, therefore, that it lacks jurisdiction over plaintiff's claims, as plaintiff failed to petition the Arkansas Public Service Commission for arbitration of the parties' failed negotiations. *See id. at 1189-90* (federal courts lack jurisdiction over interconnection agreement disputes that have not been first presented to state utility regulatory commission and parties cannot avoid this requirement by **[*6]** characterizing claim as arising under state law); *Z-Tel Communications, Inc. v. SBC Communications, Inc., 331 F. Supp.2d 513, 549-50 (E.D. Tex. 2004)* (same).

5. Plaintiff argues that the TCA's negotiation and arbitration requirements do not apply, relying on the FCC's ruling in *In the Matter of Developing a Unified Intercarrier Compensation Regime, 20 F.C.C.R. 4855 (2005)*.

In this ruling, the FCC held that a carrier such as plaintiff could, without invoking the TCA's negotiation and arbitration procedures, enforce "wireless termination tariffs" for traffic terminated prior to February 17, 2005, the effective date of its ruling. Plaintiff argues that it may, therefore, recover on its state-law claims for compensation for the termination of calls prior to the effective date of the FCC ruling.

Plaintiff's argument is not persuasive. Defendants point out that plaintiff has not filed a wireless termination tariff in Arkansas. The Court believes that, in the absence of such an applicable tariff, the FCC ruling does not provide plaintiff with any right to recover intercarrier compensation other than through the negotiation and arbitration procedures set **[*7]** out in the TCA.

6. Based on the foregoing, **Defendants' Motion to Dismiss (Doc. 4)** is **GRANTED.** Plaintiff's complaint is hereby **DISMISSED WITHOUT PREJUDICE** so that the parties can proceed under the TCA.

Plaintiff's Request for Oral Hearing (Doc. 14) is DENIED.

IT IS SO ORDERED.

/S/ JIMM LARRY HENDREN

UNITED STATES DISTRICT JUDGE

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-8

Union Tel Co v Qwest Corp., No. 02-cv-209-D, 2004 US Dist LEXIS 28417, (D Wyo May 11, 2004)

LEXSEE 2004 U.S. DIST. LEXIS 28417

UNION TELEPHONE COMPANY, a Wyoming Corporation, Plaintiff, vs. QWEST CORPORATION, f/k/a/ US WEST COMMUNICATIONS, INC., a Colorado Corporation, Defendant.

Case No. 02-CV-209-D

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

2004 U.S. Dist. LEXIS 28417

May 11, 2004, Decided
May 11, 2004, Filed

SUBSEQUENT HISTORY: Motion denied by, Claim dismissed by *Union Tel. Co. v. Qwest Corp., 2004 U.S. Dist. LEXIS 30006 (D. Wyo., Sept. 3, 2004)*

PRIOR HISTORY: [*1] Case 2:02-cv-00209-WFD. *US West Communications v. Wyoming Pub. Serv. Comm'n, 907 P.2d 343, 1995 Wyo. LEXIS 211 (Wyo., 1995)*

COUNSEL: For Union Telephone Company, a Wyoming corporation, Plaintiff: Bruce S Asay, ASSOCIATED LEGAL GROUP, Cheyenne, WY.

For Qwest Corporation, a Colorado corporation formerly known as US West Communications Inc, Defendant: Paul J Hickey, Roger Fransen, HICKEY & EVANS, Cheyenne, WY.; Thomas Snyder, Denver, CO.

JUDGES: William F. Downes, Chief United States District Judge.

OPINION BY: William F. Downes

OPINION:

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendant's Motion for Summary Judgment. The Court, having reviewed the materials submitted in opposition and support, having heard oral argument on the matter, and being otherwise fully advised, hereby FINDS and ORDERS as follows:

BACKGROUND

The parties in the above-captioned matter share a litigious history spanning more than a decade. Union Telephone Company ("Union") is a telecommunications carrier and an incumbent local exchange carrier (ILEC) as defined in the federal Telecommunications Act of 1996 (1996 Act). n1 Union provides local exchange service, intraLATA toll service, interLATA toll service, and wireless (CMRS) service. n2 Although Union started as **[*2]** a wireline ILEC, its business today is overwhelmingly wireless. Union provides wireless service to approximately 40,000 subscribers, 30,000 of whom are located in western and southern Wyoming, and the remainder in parts of Utah and Colorado. Union provides wireline services to approximately 7,000 customers, 6,300 of whom are located in Wyoming, with the remaining customers located in Utah and Colorado. Qwest is a telecommunications carrier that provides local exchange and intraLATA toll telephone service in 14 western states, including Wyoming, Colorado, and Utah. n3 As a Regional Bell Operating Company (RBOC), Qwest is barred from providing interLATA long distance service. n4 Like Union, Qwest is an ILEC.

n1 An ILEC is defined generally as the company that was providing local exchange service in a particular geographic area on the date the 1996 Act became effective. *47 U.S.C. § 251(h)*. The 1996 Act imposes specific duties on ILECs with exemptions for certain rural ILECs.

Telecommunications carriers that enter a local exchange market after the effective date of the 1996 Act are generally referred to as competitive local exchange carriers (CLECs).

[*3]

n2 A Local Access and Transport Area (LATA) "means geographic regions created as part of the divestiture of AT&T which defined the areas where regional Bell operating companies were permitted to provide telecommunications services." *WYO. STAT. ANN. § 37-15-103(a)(vi)* (LexisNexis 2003). For instance, Wyoming is comprised of a single LATA; Colorado is divided into two LATAs.

n3 Pursuant to a merger closed on June 30, 2000, Qwest became the successor in interest to both Mountain States Telephone and Telegraph Company and U S West Communications, Inc.

n4 For most of the 20th Century, telecommunications were provided in the United States by AT&T (the Bell System). Divestiture was imposed upon the Bell System in 1982 pursuant to the Consent Decree issued in the federal anti-trust case. Following the divestiture, US West was one of seven regional Bell operating companies which were allowed to provide long distance service. RBOCs were allowed to provide intraLATA toll service, but not interLATA toll service. AT&T, as the interexchange carrier, would provide interLATA services. Just over a year ago, however, the FCC authorized Qwest to provide interLATA services in Wyoming through a separate affiliate. *See Application of Qwest Communications Int'l, Inc. for Authorization to Provide In-Region, InterLATA, Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming, 17 F.C.C.R. 26303, Memorandum Opinion and Order (FCC) released 2002.*

[*4]

"Local" or "local exchange" telecommunications service allows subscribers to place or "originate" calls to other subscribers located within the same local calling area. Local calling areas for calls placed and received by wireline telephones are often referred to as an "exchange", but may sometimes be comprised of contiguous exchanges.

Wireline local service is provided by local exchange carriers (LECs), usually on a "flat-rated basis" (*i.e.*, unlimited local calls for a fixed monthly fee). Each wireline local calling area is served by one ILEC offering local service to subscribers. Other local carriers (*i.e.*, CLECs) may and often do offer local service in the same area. Wireline local service is provided by carriers subject to the regulations of state public utility commissions. For example, wireline local calling areas are established by or subject to the approval of state commissions. In addition, wireline local service is offered and provided pursuant to tariffs, setting forth rates, terms and conditions, that are filed with and subject to the approval of the state public utilities commissions. The applicability of a state tariff to particular services or calls is usually **[*5]** determined by the commission for the state in which the tariff has been filed. According to the "filed rate doctrine," if a tariff applies to a particular telecommunications service, then the rates, terms, and conditions set forth in the tariff must be enforced. *US West Communications, Inc. v. Wyoming Pub. Serv. Comm'n, 907 P.2d 343, 348 (Wyo. 1995)*; *Montana-Dakota Utils. Co. v. Public Serv. Comm'n of Wyoming, 847 P.2d 978, 988 (Wyo. 1993)*.

In contrast to wireline local service, most aspects of wireless service have either been deregulated or are subject to regulation by the Federal Communications Commission (FCC). Local calling areas for calls placed or received by wireless devices are referred to as Major Trading Areas (MTAs), and are established by the FCC.

"Long distance" (also known as "toll" or "interexchange") service refers to service offered to subscribers that permits them to place (or originate) calls that terminate outside of their local calling area. An "intrastate" long distance call is one that originates and terminates in different local service areas, but within the borders of a single state. Intrastate long distance service provided **[*6]** by wireline service is subject to the jurisdiction of and regulations by state public utility commissions, and is generally offered to subscribers pursuant to tariffs filed with and approved by the state commissions. An interstate long distance call is one that originates and terminates in different states. Interstate long distance service is subject to the jurisdiction of and

regulation by the FCC under the *Communications Act of 1934*. *See 47 U.S.C. §§ 151 et seq.* None of the long distance traffic at issue in this lawsuit is interstate.

LECs, including ILECs such as Union and Qwest, use the same network facilities to originate and terminate both local and long distance calls. LECs are compensated for the use of their networks to terminate long distance calls placed to their local service customers by the subscribers of long distance carriers (such as AT&T, MCI, and Sprint) through tariffed "access charges," usually assessed on a per minute, per call, and/or per line basis, payable by the originating caller's long distance carrier. The long distance carrier, in turn, recovers these access charges through the long distance charges assessed on their subscribers. **[*7]**

Access charges have no application to local calls. Since 1996, compensation for the termination of local calls placed by the subscriber of one LEC to the subscriber of another LEC has been determined under the Telecommunications Act. *See 47 U.S.C. §§ 251(b)(5)* and *252(d)(3)*. Although the same facilities and equipment are used to transport and terminate local and long distance calls to the same customer, tariffed access charges for the termination of long distance calls substantially exceed the "cost-based" charges for the transport and termination of local calls.

Through the Telecommunications Act of 1996, Congress sought "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). To achieve these objectives, the Act imposes on telecommunications carriers a number of duties, including several relevant to this case, and prescribes a detailed process for the implementation and enforcement of these duties. *Section 251(a)(1)* **[*8]** requires all carriers to "interconnect, directly or indirectly," with other carriers. In addition, *section 251(b)(5)* imposes a duty on all local exchange carriers "to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Reciprocal compensation simply means that "when a customer of one local exchange carrier calls a customer of a different local exchange carrier who is within the same local calling area, the first carrier pays the second carrier for completing, or 'terminating,' the call." *Pacific Bell v. Pac-West Telecomm., Inc., 325 F.3d 1114, 1119 (9th Cir. 2003)*.

The 1996 Act also establishes a system of negotiations and arbitrations between carriers to implement its substantive requirements. For example, all local exchange carriers are required to establish reciprocal compensation arrangements in their interconnection agreements. If the parties fail to reach an agreement through voluntary negotiations, either party may petition the relevant state public utility commission to arbitrate and resolve any open issue. The final agreement, whether negotiated or arbitrated, must be approved by the state commission. n5 **[*9]** In addition to the FCC, several courts have held that the comprehensive process set out in *sections 251* and *252* is the exclusive means for establishing arrangements contemplated by the 1996 Act's substantive provisions. *See, e.g., Pacific Bell v. Pac-West Telecomm., Inc., 325 F.3d 1114, 1127 (9th Cir. 2003)* ("The point of *§ 252* is to replace the comprehensive state and federal regulatory scheme with a more market-driven system that is self-regulated through negotiated interconnection agreements."); *Verizon North, Inc. v. Strand, 309 F.3d 935, 941 (6th Cir. 2002)* (stating that neither carriers nor regulatory agencies may through a tariff filing bypass and ignore the "detailed process for interconnection set out by Congress" in the 1996 Act).

n5 If the terminating and originating carriers are unable to agree in negotiations upon the amount or form of compensation owed the former, the Act provides that such compensation shall be limited to a "reasonable proximation of the additional costs of terminating such calls." *47 U.S.C. § 252(d)(2)(A)(ii)*.

[*10]

Pursuant to its rulemaking authority, the FCC in 1996 released its *Local Competition Order*. Among the issues addressed by the FCC were the applicability to particular types of calls, including wireless calls, of the Act's provisions regarding reciprocal compensation and the formation of interconnection agreements. To resolve these issues, the FCC first addressed the applicability of *sections 251* and *252* to the regulation of local exchange carrier-wireless (LEC-CMRS) interconnection, and concluded that they provide an alternative basis for jurisdiction to *47 U.S.C. §§ 201* and *332*. *11 FCC Rcd. at*

16006 PP 1022-1023. Qwest Ex. 13. Observing that "all four sections are designed to achieve the common goal of establishing interconnection and ensuring interconnection on terms and conditions that are just, reasonable and fair," the FCC "opt[ed] to proceed under *sections 251* and *252*." *Id. at 16006 P 1023*.

Next, the FCC had to determine which calls are subject to reciprocal compensation for the transport and termination thereof under *section 251(b)(5)*. In this regard, the FCC distinguished between local calls and long distance calls. *Id. at 16013 P 1033*. **[*11]** The FCC determined that local calls would be subject to *section 251(b)(5)* reciprocal compensation, while long distance traffic would be subject to interstate and intrastate access charges. Finally, the FCC defined the local service area for calls to or from a wireless (CMRS) network for the purposes of applying *sections 251* and *252*, including the reciprocal compensation provisions of *section 251(b)(5)*, as the Major Trading Area (MTA). *Id. at 16014 P 1036*. "Accordingly, traffic to or from a CMRS network that originates and terminates within the same MTA is subject to transport and termination rates under *section 251(b)(5)*, rather than interstate and intrastate access charges." Id. The FCC also directed carriers and state commissions to use the negotiation and arbitration process set forth in *section 252* to ensure that interconnection agreements will be reached between incumbent LECs and telecommunications carriers, including CMRS providers. *Id. at 16005 P 1024*.

On July 21, 2000, Union filed with the Wyoming Public Services Commission (Commission or WPSC) a formal Complaint against Qwest's predecessor, US West Communications. Union's WPSC Complaint alleged **[*12]** that despite clear tariff provisions, US West had wrongfully withheld a portion of the terminating access charges invoiced to it for long distance traffic sent to Union's local networks. Qwest Ex. 14 at PP 7, 10. In its Claim for Relief, Union sought an order directing US West to compensate Union for all such terminating access charges US West had wrongfully withheld. Id. at P 2. Qwest denied liability on the ground that it had paid access charges on all long distance calls placed by its customers to Union's customers, and that it was not responsible for the payment of access charges on other calls, including calls placed by customers of third-party carriers that transited Qwest's network. *See, e.g.*, Qwest Ex. 5 at P 7. Qwest further argued that it had provided Union with sufficient information to identify and bill the originating carrier for the traffic transiting its network. Qwest Ex. 7 at PP 24-28, 31.

Following an opportunity for discovery, the parties submitted pre-filed testimony and presented witnesses for live testimony and cross-examination at an evidentiary hearing attended by all three members of the Commission. Union's witness, James Woody, reiterated Union's claim **[*13]** that Qwest, which had since acquired US West, was required by Union's Wyoming tariff to pay access charges on all traffic delivered by Qwest to Union. Qwest Ex. 6 at 50-51; Qwest Ex. 8 at 1. In response to questions by Chairman Ellenbecker regarding paragraph 7 of Union's WPSC Complaint invoking Union's Wyoming tariff, Mr. Woody confirmed that Union was requesting the Commission to direct a full payment by Qwest of the tariffed access charges invoiced it by Union. Ex. 6 at 60-61. Union presented no evidence that any of the calls for which Qwest had paid terminating access charges had been originated by Qwest as opposed to other carriers. Woody testified only that the information provided by Qwest to Union did not prove to its satisfaction otherwise. Id. at 30, 35.

In its post-hearing brief, Union repeated its allegations that Qwest is carrying intraLATA toll traffic to Union and is liable to pay terminating access charges in accordance with Union's access tariffs. Qwest Ex. 9 at 2. According to Union, these tariffs "provide for terms and conditions under which Union will accept and terminate long distance calls directed to them by interexchange carriers such as Qwest." Id. at 4. Union **[*14]** further claimed that under the filed rate doctrine, Qwest was required to pay the charges set forth in its tariffs. Id. at 4-5, 12-13, 18-23. As a necessary prerequisite to the application of the filed rate doctrine, Union asked the Commission to agree that Union's switched access tariff is applicable to all traffic carried by Qwest and terminated by Union, regardless of the nature of the traffic or the originating carrier. Id. at 30. In the alternative, Union asked the Commission to order Qwest to provide a connection that would allow Union to bill the originating carriers for its services provided. Id. at 12.

By Memorandum Opinion, Findings of Fact, Conclusions of Law and Order, issued January 24, 2001, the Commission rejected Union's claim that it was entitled, pursuant to tariff, to compensation for terminating the traffic. Qwest Ex. 1, Woody Depo. Ex. 8 at 29 P 44. Specifically, the Commission determined that

Union failed to carry its burden of proof on that issue. Id. Additionally, the Commission concluded that Union had not met its burden of proof on its allegations that the connection it sought from Qwest would provide the billing information Union seeks; that **[*15]** the desired connection would provide this information any better than the methods Qwest currently used to provide billing information to Union; or that Qwest's current methods are inaccurate. Id. at 28 P 43. Finally, the Commission dismissed all other issues contained in Union's Complaint. Id. at 29 P 1. Although entitled to do so, Union sought neither reconsideration nor clarification by the Commission, nor judicial review, of the WPSC Order. *WYO. STAT. ANN. § 37-2-214* (LexisNexis 2003).

On November 26, 2002, Union filed its Complaint with this Court. The Complaint alleges that Qwest provides long distance services that allow its long distance customers to originate calls terminated in Union's local service territory, that Qwest receives revenue from long distance subscribers for these toll calls, that Qwest is required to pay Union terminating access charges pursuant to industry custom and tariffs it has filed with the WPSC and state public utility commissions in Utah and Colorado, and that notwithstanding repeated demands, Qwest has refused to fully pay Union for its intrastate tariffed terminating access services. In summary, **[*16]** Union states the following four causes of action: (1) breach of tariff requirements; (2) discrimination by common carrier; (3) breach of contract; and (4) quantum meruit / unjust enrichment. Without qualification, Union concedes that the request for compensation in the Complaint before this Court is the same request asserted in its WPSC Complaint. Qwest Ex. 1, Woody Depo. Tr. at 115-16. Additionally, the tariff upon which Union relies in both its WPSC Complaint and the Complaint to this Court has not changed in any material respect since the 2000 WPSC proceeding. Qwest Ex. 10. Qwest denies the allegations contained in Union's Complaint and asserts seven affirmative defenses, including failure to comply with the applicable statute of limitations, laches and estoppel, lack of subject matter jurisdiction, and res judicata and collateral estoppel. In the present Motion, Qwest asks this Court to grant summary judgment in Qwest's favor on all claims stated in Union's Complaint.

STANDARD OF REVIEW

"By its very terms, [the *F.R.C.P. 56(c)*] standard provides that the mere existence of *some* alleged factual dispute between the parties will **[*17]** not defeat an otherwise properly supported motion for summary judgement; the requirement is that there is no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986)*.

The trial court decides which facts are material as a matter of law.

> Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgement . . . . While the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs.

Id. at 248. See also Carey v. United States Postal Serv., 812 F.2d 621, 623 (10th Cir. 1987). The relevant inquiry is "whether it is so one-sided that one party must prevail as a matter of law." *Carey, 812 F.2d at 623*. In considering the party's motion for summary judgement, the court must examine all evidence in the light most favorable to the non-moving party. *Barber v. General Elec. Co., 648 F.2d 1272, 1276 n.1 (10th Cir. 1981)*. Nevertheless,

> When a motion for summary **[*18]** judgment is made and supported as provided in [*Rule 56*], an adverse party may not rest upon the allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or otherwise provided in [*Rule 56*], must set forth specific facts showing that there is a genuine issue for trial."

FED. R. CIV. P. 56(e).

DISCUSSION

Applicability of the Doctrine of Collateral Estoppel to Union's Claims

Qwest argues that Union's Complaint raises the same

request for compensation made to and resolved by the Wyoming Public Service Commission in 2001, and is thus barred by the doctrine of collateral estoppel. A federal court sitting in diversity follows the law of the forum state when considering the applicability of collateral estoppel. *University of Tennessee v. Elliott, 478 U.S. 788, 799, 92 L. Ed. 2d 635, 106 S. Ct. 3220 (1986)*. The four factors identified by the Wyoming Supreme Court to consider in applying collateral estoppel are: (1) whether the issue decided in the prior adjudication was identical with the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment on the merits; **[*19]** (3) whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *Kahrs v. Board of Trustees, 901 P.2d 404, 406 (Wyo. 1995)*.

The first factor to consider in determining the applicability of collateral estoppel is whether the issues decided in the 2000 WPSC hearing are identical with the issues presented in the present action. A side-by-side comparison of Union's WPSC Complaint and the Complaint filed in this Court reveals that the allegations contained in Union's breach of tariff (Complaint at 8-9 PP 18-20) and breach of contract (Complaint at 10-11 PP 24-26) claims are substantially the same as the claims found in Union's WPSC Complaint (WPSC Complaint at 3-4 PP 7-9). Additionally, in his deposition, James Woody, a member of both Union's management team and its board of directors, testified that Union's claim in the present action that Qwest owes it terminating switched access charges pursuant to its Wyoming tariffs is "the same request for compensation" **[*20]** that was presented to the WPSC in 2000. Qwest Ex. 1 Woody Depo. Tr. at 69.

A thorough review of the transcript of the 2000 hearing before the Commission reveals substantial testimony and discussion pertaining to Union's claims that Qwest owed Union payment of access charges under Union's filed tariffs. Intertwined in this allegation seem to be Union's claims that Qwest was providing inadequate information to allow Union to bill the appropriate carriers for traffic Union terminated on its network. Also included were claims that Qwest should pay for transit traffic -- calls that do not originate with Qwest customers, but are handed off by the originating carrier for transport by Qwest to Union, where the calls are terminated by Union to a Union customer. While these claims may appear on their face to be distinct, the nature of the examination of witnesses tended to combine the claims into one. Essentially, the argument Union advanced through testimony and discussion was that since Qwest did not provide the type of information needed to permit Union to bill the proper carrier, as between Qwest and Union, Qwest should bear the costs because the traffic comes to Union over Qwest's network. **[*21]** The Court is satisfied that significant evidence was presented to the Commission in the form of oral testimony, prefiled written testimony, pre- and post-hearing briefs, and exhibits to determine that the issues alleged in Union's breach of tariff and breach of contract claims, as far as they pertain to Wyoming traffic, are the same as those litigated in the 2000 WPSC proceeding. A close reading of the collateral portion of Union's Opposition to Qwest's Motion for Summary Judgment reveals that Union does not take issue with this conclusion. n6

> n6 With respect to "changed circumstances" since the 2001 WPSC Order, though Union does not make this argument, the Court finds from the record that any changed circumstances, if they exist at all, are not material and, therefore, do not amount to controlling facts sufficient to avoid the application of collateral estoppel to the issues identified above. WRIGHT, MILLER & COOPER, FEDERAL PRACTICE AND PROCEDURE: JURISDICTION 2D § 4417. *See also Scooper Dooper, Inc. v. Kraftco Corp., 494 F.2d 840, 846 (3rd Cir. 1974)*.

[*22]

The second factor to be considered in applying collateral estoppel is whether the prior adjudication resulted in a judgment on the merits. The Wyoming Supreme Court has consistently held that collateral estoppel applies to final adjudicative determinations which have been rendered by administrative tribunals. *Wilkinson v. State, 991 P.2d 1228, 1233 (Wyo. 1999)*; *Slavens v. Board of County Comm'rs, 854 P.2d 683, 685 (Wyo. 1993)*. Absent actual and adversarial litigation in an administrative hearing, however, principles of collateral estoppel do not hold fast. *Regions Hospital v. Shalala, 522 U.S. 448, 464, 139 L. Ed. 2d 895, 118 S. Ct. 909 (1998)*.

The Commission issued an Order on January 24, 2001, *In the Matter of the Complaint of Union Telephone Company vs. Qwest Corp., f/k/a US West Communications, Inc. Regarding IntraLATA Toll Services.* Docket Nos. 70008-TC-00-34 and 70000-TC-00-594, Memorandum Opinion, Findings of Fact, Conclusions of Law and Order (WY PSC January 24, 2001), Qwest Ex. 1, Woody Depo. Ex. 8. In the Order, the Commission characterized Union's relevant allegations as follows:

> (1) that Qwest['s] . . . Feature Group C (FG-C) connection with **[*23]** Union does not allow for the proper identification and billing of telecommunications traffic between Qwest and Union; (2) that Qwest refuses to compensate Union for terminating toll traffic or to cease sending toll traffic to Union's local network for which it refuses to pay terminating access; . . . (4) that Qwest has arbitrarily applied a ten percent (10%) charge or reduction to Union's terminating access billing without any justification or support . . . .

Id. at 1-2.

The Order then recounts the highlights of the day-long hearing held on November 28, 2000. Of significance to the present case are portions of paragraphs 15-20, 30, 38-41, 43-44, and paragraph 1 of the Order. Paragraphs 15-20 and 30 are summaries and selected portions of testimony regarding Union's allegation of Qwest's underpayment / responsibility to pay access charges. The remaining paragraphs represent the Commission's decision in the proceeding. Specifically, the Commission found that Union failed to meet its burden of proof regarding its claim that Feature Group D service would provide the information Union seeks to enable it to bill carriers whose traffic Union terminates. The Commission also concluded **[*24]** that Union failed to meet its burden of proof as to whether Qwest is entitled to take a 10% reduction from Union's access billing. As a result of these failures, the Commission dismissed Union's complaint on those issues. In paragraph 1 on page 29 of the Order, the Commission dismissed all other issues contained in the Complaint.

Based on the Court's painstaking examination of the record, the Court finds that sufficient evidence was presented on this issue to allow the Commission to reach a decision on the merits. Ultimately, after reviewing the evidence, the Commission dismissed Union's claims. Nowhere does the Order say that the Commission dismissed those claims without prejudice. On the contrary, dismissal of claims for failure to carry the burden of persuasion or production after some effort is made to litigate the issue is sufficient to invoke collateral estoppel. *Yates v. United States, 354 U.S. 298, 336, 1 L. Ed. 2d 1356, 77 S. Ct. 1064 (1957)* (overruled on other grounds). Moreover, that the Commission's decision appears to be broadly-based with respect to its dismissal of Union's claims gives little reason to infer that it was reached with less care than a narrow decision. Finally, because **[*25]** the burden of proof is more relaxed in an agency hearing than in a federal court, it is reasonable to believe that a party who cannot carry its burden of proof under a lower standard could not carry its burden under a higher standard.

The third factor in the application of collateral is whether the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication. This factor is met. The fourth factor is whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. This factor also is met. It is clear from the administrative record that both parties fully and vigorously litigated the issues that Qwest now seeks to bar by collateral estoppel.

Union argues that collateral estoppel is inapplicable to the present case. Though this argument is far from clear, the Court nevertheless presents it as argued and addresses each premise appropriately. Union characterizes Qwest's argument as, "in essence, that the [WPSC] has ruled that a utility may take services without paying for [them]." Union Opp'n at 17. Then, in an attempt to disprove this statement, Union **[*26]** delves into a1993 WPSC Order issued *In the Matter of the Application of Union Telephone Company, Inc. for a Certificate of Public Convenience and Necessity to Provide Mobile Cellular Telecommunications Services in Wyoming,* Docket No. 62006-RA-89-1 (WY PSC August 6, 1993), wherein the Commission made several findings with respect to Qwest's obligation to pay terminating access charges for each call made by a Qwest customer within Qwest's certificated local exchange service areas to a Union cellular customer located in Union's

certificated wireless area (RSA). Previously, Qwest had agreed to pay access charges for cellular calls terminated within Union's RSA, but outside Union's certificated wireline service area. In the 1993 proceeding, Union sought compensation for calls terminated anywhere in its RSA, regardless of whether the customer was within the certificated wireline service area.

The Commission concluded that there was no difference in the switching costs for terminating access to Union's cellular customers within any part of its RSA, and found that Union was entitled to charge Qwest for terminating access beginning in 1992. Qwest Ex. 1, Woody Depo. Ex. 4 at 11. The Commission **[*27]** determined that terminating access payments for cellular calls should be equal to that charged for terminating access in Union's landline service areas. Id.

The Court finds that Union mischaracterizes the argument advanced by Qwest in its Motion for Summary Judgment. From the information presented to the Court in Qwest's Memorandum and oral argument in support of its motion, the Court understands that Qwest is willing to pay to Union any sum owed, as determined by proper calculation under applicable tariffs, state and federal regulations, and state and federal laws. The Court also finds Union's reliance on the 1993 WPSC Order to be misplaced. In 1995, the Wyoming Supreme Court reversed the 1993 decision of the Commission. In *US West Communications, Inc. v. The Wyoming Public Service Commission, 907 P.2d 343 (Wyo. 1995)*, the Wyoming Supreme Court determined that Union had not filed the proper tariffs to entitle it to receive access payments for terminating cellular calls within Union's RSA. The court noted:

> Union's cellular operations are distinct and separate from its landline operations. Under the law [*WYO. STAT. ANN. § 37-3-110* **[*28]** (LexisNexis 2003)], Union is required to file rates for its cellular operations. There is no evidence in the record that Union has ever filed the appropriate rates. This is contrary to law and, accordingly, the PSC's decision must be reversed.

Id. at 348. Accordingly, the Court disregards the language of the 1993 WPSC Order, as well as any relevant propositions for which Union believes it stands.

Union refers the Court to *Airtouch Communications, Inc. et al. v. State Dept. of Revenue, 2003 WY 114, 76 P.3d 342 (Wyo. 2003)*, for the proposition that the Wyoming Supreme Court no longer distinguishes between wireline and wireless traffic. This case, however, is readily distinguishable. In *Airtouch*, four cellular service providers argued that they were not telephone companies for purposes of reduced taxation levels. The Wyoming Supreme Court disagreed, finding that cellular companies are telephone companies for tax purposes. In no way does this opinion indicate that wireline and wireless traffic are the same for the purposes for which that distinction would be relevant to the present case.

In a further attempt to bolster its argument that collateral estoppel **[*29]** is inapplicable to the present case, Union refers the Court to an unpublished opinion of the United States Court of Appeals for the Ninth Circuit in an apparent attempt to offset the effect of the 2001 WPSC Order. Union cites *3 Rivers Telephone Cooperative, Inc. v. U.S. West Communications, Inc., 45 Fed. Appx. 698, 2002 WL 1986469 (9th Cir. 2002)*(unpublished), for the proposition that "at least one appellate court has found that terminating access charges may require payment if controlled by an applicable tariff." Union Opp'n at 21-22. Five months prior to the issuance of the 2001 WPSC Order, a United States District Court in Montana refused to require Qwest to compensate independent telephone companies for providing terminating access services to Qwest. This decision was reversed and remanded by the Ninth Circuit in *3 Rivers*. Union suggests that perhaps the Commission might have incorrectly relied on the initial decision of the United States District Court for the District of Montana in reaching its decision in the 2001 Order. On remand, however, the trial court agreed with the FCC and found that tariffs do not apply to local wireless (intraMTA) traffic. The court concluded that **[*30]** IntraMTA traffic is governed by provisions of the Telecommunications Act of 1996 (*i.e., 47 U.S.C. § 251(b)(5)*) and FCC regulations promulgated thereunder. Qwest Ex. 12 at 44-49.

The Court is unpersuaded by Union's use of the Ninth Circuit opinion in *3 Rivers* and its accompanying effort to encourage the Court to place less weight on the 2001 WPSC Order. The Court notes that in a situation similar to this case, the United States District Court for the Southern District of Iowa applied principles of

collateral estoppel to bar the claims of independent carriers who, following a state agency adjudication unfavorable to them, filed an independent claim in federal court rather than seek judicial review of the agency decision. *Iowa Network Servs., Inc. v. Qwest Corp., 2002 U.S. Dist. LEXIS 19830, 2002 WL 31296324 (S.D. Iowa 2002)* (unpublished) (appeal pending). INS argued that collateral estoppel should not bar their claims in federal court because the agency proceeding was not a final judgment on the merits. *2002 U.S. Dist. LEXIS 19830, [WL] at *13*. The court disagreed. The court had "little doubt that during the [agency] proceeding, INS had a chance to, and did in fact, fully and fairly litigate **[*31]** the ultimate issue at the heart of this case, that issue being whether or not access charges apply to the traffic at issue." *Id.* Following the close of the hearing, the agency determined that access charges do not apply to the traffic at issue. *Id.* Having decided the issue, the parties were bound by the agency's conclusions. Thus, INS was collaterally estopped from bringing the same claims in federal court.

Based on the foregoing analysis, the Court holds that Union's breach of tariff and breach of contract claims are barred by the doctrine of collateral estoppel only as pertaining to intrastate wireline traffic originating on or transiting Qwest's network and terminated by Union in Wyoming.

Applicability of Union's Filed Tariffs to the Traffic at Issue

Filed Rate Doctrine

Before discussing the applicability of Union's tariffs to traffic originating on or transiting Qwest's network for termination on Union's network, it is important to discuss the filed rate doctrine. The filed rate doctrine was developed by courts to prohibit a regulated service provider and its customers from charging rates for its services other than those specified in its duly filed **[*32]** tariff. *AT&T v. Cent. Office Tel., Inc., 524 U.S. 214, 222, 141 L. Ed. 2d 222, 118 S. Ct. 1956 (1998)*. Under this doctrine, duly filed rates bound both carriers and customers with the force of law. *Lowden v. Simonds-Shields Lonsdale Grain Co., 306 U.S. 516, 520, 83 L. Ed. 953, 59 S. Ct. 612 (1939)*. The rights and liabilities defined by the tariff could not be "varied or enlarged by either contract or tort of the carrier." *Cent. Office Tel., 524 U.S. at 227* (quoting *Keogh v. Chicago & Nw. Ry., 260 U.S. 156, 163, 67 L. Ed. 183, 43 S. Ct. 47 (1922)*. According to the filed rate doctrine, if a tariff applies to a particular telecommunications service, then the rates, terms, and conditions set forth in the tariff must be enforced. *US West Communications, Inc. v. Wyoming Pub. Serv. Comm'n, 907 P.2d 343, 348 (Wyo. 1995)*; *Montana-Dakota Utils. Co. v. Public Serv. Comm'n of Wyoming, 847 P.2d 978, 988 (Wyo. 1993)*.

The filed rate doctrine applies to bar all claims for services for which a filing is required. *AT&T Co. v. Cent. Office Tel., Inc., 524 U.S. 214, 222, 141 L. Ed. 2d 222, 118 S. Ct. 1956 (1998)*. Similar principles apply to traffic that is subject to interconnection agreements. *Verizon Delaware v. Covad Communications Co., 232 F. Supp. 2d 1066, 1070-72 (N.D. Cal. 2002)*. **[*33]** Courts universally refuse to invoke equitable remedies to avoid the filed rate doctrine. *Ting v. AT&T, 319 F.3d 1126, 1131 (9th Cir. 2003)*. *See also AT&T v. Cent. Office Tel., 524 U.S. at 222*; *Illinois Cent. Gulf R.R. v. Golden Triangle Wholesale Gas Co., 586 F.2d 588, 592 (5th Cir. 1978)*. Moreover, claims under state law for equitable relief that would permit carriers to bypass and ignore federal regulatory requirements are preempted. *Verizon North, Inc. v. Strand, 309 F.3d 935, 944 (6th Cir. 2002)*. *See also Bastien v. AT&T Wireless, 205 F.3d 983, 987 (7th Cir. 2000)* (stating that state law claims raising "regulatory issues preempted by Congress" fail as a matter of law).

Wireline Traffic

The Wyoming Supreme Court in *US West Communications, Inc. v. The Wyoming Public Service Commission* found that Union's filed switched access tariff is applicable to all long distance wireline traffic. Because the Commission refused in its 2001 Order to enlarge the applicability of Union's filed tariff, the Court likewise finds that Union's filed switched access tariff applies only to long distance wireline **[*34]** traffic. It is for this reason that the Court limited the application of the doctrine of collateral estoppel to wireline traffic terminated in Wyoming.

Wireless Traffic

The majority of the calls for which Qwest has not paid access charges invoiced to it under Union's state access tariffs are wireless calls. According to Mr. Woody, 60-70% of the charges alleged to be due and unpaid are

for termination of wireless calls. Union concedes that it has no interconnection agreement with Qwest. Qwest Ex. 6 at 49; Qwest Ex. 1, Woody Depo. Tr. at 79, 116. Other than the tariffs at issue, Union has identified no other agreement pursuant to which Qwest is required to pay access charges for Union's termination of wireless traffic.

As explained above, the Wyoming Supreme Court held that in an attempt to collect access charges for terminating wireless traffic, Union cannot "simply adopt the landline terminating access charges without a filing under the cellular service." *US West Communications, 907 P.2d at 348*. As the Court explained:

> [A] rate for each and every service must be filed. The cellular operations are distinct from the landline, both in terms of technology **[*35]** and geographic scope. By law, rates for those services in the cellular RSA must be filed once the PSC has established the appropriate rate.
>
> * * * *
>
> No tariff was filed [by Union] establishing any rate [for] terminating access charges for cellular calls. . . . Union is, therefore, precluded from receiving access charges for cellular calls until such tariffs are properly filed.

Id. Union concedes that the tariffs upon which Union's Complaint relies are landline tariffs, and that Union has not subsequent to the Supreme Court's decision made "any tariff filings for the wireless operations of Union." Qwest Ex. 1, Woody Depo. Tr. at 119-120. More importantly, since the Court's opinion in *US West*, Wyoming enacted legislation deregulating all aspects of cellular and wireless telecommunications services, with three exceptions not important to the resolution of this case. *WYO. STAT. ANN. § 37-15-104(a)(vi)* (LexisNexis 2003). Thus, Wyoming has left regulation of wireless traffic in the state to the federal government.

Having concluded that Union's tariffs are inapplicable to wireless traffic, the Court next examines Union's ability under **[*36]** federal law to charge Qwest for terminating wireless traffic. Pursuant to the Telecommunications Act of 1996 and the FCC's implementing regulations, the termination of wireless calls that originate and terminate within the same local service area (MTA) are subject to reciprocal compensation set forth in interconnection agreements, not access charges set forth in tariffs. *See* Local Competition Order, *11 FCC Rcd. at 16014 P 1036*. *Section 251(b)(5) of the Act* imposes a duty on all local exchange carriers, including Union, to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *47 U.S.C. § 251(b)(5)*. As a matter of federal law, telecommunications carriers cannot impose access charges pursuant to filed tariffs for terminating intraMTA traffic.

Compensation for the transport and termination of intraMTA and other local wireline calls is to be determined by following the process established in the 1996 Act for negotiation and (if necessary) state commission arbitration of bilateral interconnection agreements. If the parties are unable to agree during negotiations on compensation to be included in **[*37]** their agreement, the Act requires that it be established by the relevant state commission based on "a reasonable approximation of the additional" (*i.e.*, incremental) costs caused by the call, *see 47 U.S.C. § 252(d)(2)(A)(ii)*, thereby excluding the subsidies and embedded costs reflected in access charges. Union has never entered into nor requested an interconnection agreement with Qwest. Therefore, under federal law Union cannot demand compensation from Qwest for intraMTA traffic originating on or transiting Qwest's network and terminated on Union's network until it complies with the mandatory process prescribed by Congress.

To the extent that Union's Complaint seeks compensation for long distance (interMTA) wireless traffic terminated on Union's network, the Court determines that no agreement exists between Union and Qwest for the payment of access charges to Union for terminating interMTA wireless traffic. In the absence of an agreement, *section 332(c)(1)(B) of the Communications Act*, which incorporates by reference *section 201* of that Act, governs. Pursuant to *section 332(c)(1)(B)*, Union may request of the FCC an order directing Qwest to establish **[*38]** physical connections with Union's wireless service pursuant to the provisions of *47 U.S.C. § 201*. *Section 201* requires Qwest, upon such an order, to establish just and reasonable access charges, as well as the divisions of such charges. *47 U.S.C. § 201(a)* and *(b)*. Compliance with these procedures is a mandatory precondition to requiring the

payment of access charges. *See 47 U.S.C. § 332(c)(1)(B)*; *AT&T Corp. v. FCC, 352 U.S. App. D.C. 104, 292 F.3d 808, 812-13 (D.C. Cir. 2002)* (rejecting efforts to enforce FCC tariff imposing access charges absent compliance with the procedures specified in *47 U.S.C. § 201(a)*, which is incorporated by reference in *section 332(c)(1)(B)*). The parties point to nothing in the record indicating that Union has attempted to comply with this procedure. Therefore, until such time as Union either enters into an agreement with Qwest, or obtains an order from the FCC requiring Qwest to pay access charges to Union for terminating interMTA wireless traffic, Union is prevented from collecting such charges from Qwest. n7

n7 While the obligation to jump through these regulatory hoops falls upon Union, nothing bars Qwest from informally working with Union to establish interconnection agreements regarding reciprocal compensation for intraMTA traffic and access charges for interMTA traffic. This Court encourages the parties to do so. It is high-time this 12-plus years of litigation ended.

[*39]

Applicability of the Statute of Limitations to the Traffic at Issue

As an alternative ground for narrowing Union's claims, Qwest asserts that the statute of limitations bars Union's claims for calls terminated by Union more than two years prior to the filing of its Complaint. The Court notes that the statute of limitations applicable to this case is *47 U.S.C. § 415(a)*. n8 *Section 415(a)* applies to all actions at law to recover lawful charges. The Court finds the statute of limitations inapplicable to this situation simply because Union has no lawful charges. The Court does not decide whether Qwest owes Union money. The Court simply notes that Union has done nothing to be entitled to lawful charges. The Court recognizes that entitlement to lawful charges requires a carrier such as Union to jump through many administrative hoops. Nevertheless, this is the law. Union is not entitled to recover charges from Qwest for intraMTA wireless traffic because it has failed to follow the procedure established in *47 U.S.C. §§ 251-252* and applicable regulations promulgated thereunder. Union is not entitled to recover charges from Qwest for interMTA **[*40]** wireless traffic because it has failed to follow the procedure established in *47 U.S.C. §§ 332* and *201* and applicable regulations promulgated thereunder. In short, in spite of the claims in Union's Complaint, Union has no contract or tariff applicable to the termination of wireless traffic upon the breach of which it could bring an action at law. Thus, the statute of limitations is inapplicable. n9

n8 In its Memorandum in support of its Motion for Summary Judgment, Qwest asserts the applicable statute of limitations is *47 U.S.C. § 415(b)*. *See* Qwest Mem. at 23 n.66. *Section 415(b)*, however, governs complaints filed with the FCC seeking the recovery of damages not based on overcharges. The statute of limitations applicable to this type of proceeding is *section 415(a)*, which states, "All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after." *47 U.S.C. § 415(a)*.

n9 If the statute of limitations were applicable, however, Union would have been barred from asserting a cause of action for the recovery of any charges more than two years after their accrual. *47 U.S.C. § 415(a)*. *See also Ward v. Northern Ohio Tel. Co., 251 F. Supp. 606, 611 (N.D. Ohio 1966)* (stating that the statute of limitations bars claims against any common carrier for damages when filed in the district court more than one year (now two years) after their accrual). Union's cause of action against Qwest accrued for purposes of the statute of limitations on the date the bills became due, rather than on the date the services were rendered. *See Central Scott Tel. Co. v. Teleconnect Long Distance Servs. & Sys. Co., 832 F. Supp. 1317, 1320 (S.D. Iowa 1993)* (stating that LEC's cause of action against long distance carrier for recovery of charges for access services accrued for statute of limitations purposes on date that bills became due, rather than on date access services were rendered).

[*41]

The Applicability of Union's Filed Tariffs to Transiting Traffic

In addition to Union's claims for access charges on calls originated on Qwest's network and terminated on Union's network, Union seeks payment of access charges on calls originated by customers of third-party carriers that transit Qwest's network for termination by Union. n10 Union claims that its filed tariffs impose access charges on Qwest for terminating both wireline and wireless transiting traffic. Because the Court has found both that Union's filed tariffs are inapplicable to wireless traffic and that Union has failed to follow procedures applicable to establishing agreements and rates under which Union can charge Qwest for terminating wireless traffic, the Court concludes as a matter of course that Union's filed tariffs are inapplicable to transiting wireless traffic.

> n10 As stated in the Complaint, Union's breach of contract and breach of tariff claims seek payment for terminating Qwest's intrastate traffic. Implicit in these claims is the issue of intrastate transiting traffic which does not originate on Qwest's network, but is delivered to Union for termination by Qwest. Transiting intrastate traffic may be either wireline or wireless.

[*42]

Insofar as Union's claims pertain to Wyoming intrastate transiting wireline traffic, those claims are barred by the doctrine of collateral estoppel. As stated above, the Court finds that collateral estoppel acts as a bar to Union's breach of contract and breach of tariff claims as they pertain to the recovery of access charges for Wyoming intrastate wireline traffic. This includes traffic transiting Qwest's network for termination in Union's network in Wyoming.

Union's Claim of Discrimination by Common Carrier

Contrary to Qwest's assertion, the Court finds that Union has stated a claim for discrimination by common carrier. At this stage of the proceedings, however, one must do more than merely state a claim. To put it idiomatically, one must "put up or shut up." Both parties agree that telecommunications carriers are prohibited from unjustly or unreasonably discriminating in the provision of rates, charges, classifications or services. *See, e.g., 47 U.S.C. § 202(a)*; *WYO. STAT. ANN. § 37-15-404(a)* (LexisNexis 2003). In essence, similarly situated customers must be treated alike. To prove discrimination under *47 U.S.C. § 202(a)*, **[*43]** Union must show that like services are being provided, that these services are provided under different terms and conditions, and that any differences are unreasonable. *National Communications Ass'n v. AT&T Corp., 238 F.3d 124, 127 (2d Cir. 2001)*. Union alleges that while Qwest has refused to accommodate Union's attempts to obtain appropriate compensation for terminating Qwest traffic, in other jurisdictions, Qwest has allowed for differing methodologies which more accurately allow for the payment of access services.

Union's evidence of discrimination consists of the deposition testimony of three Qwest witnesses. According to Union, these witnesses testified that Qwest uses a "clearinghouse" method in New Mexico and Oregon to more accurately measure, record and bill for access services, Qwest Ex. 4 at 57-68, and that Qwest uses the "residual billing" method in North Dakota, Minnesota and Iowa to pay for terminating access services. Qwest Ex. 4 at 64-66. Residual billing, Union explains, allows the provisioning provider to measure the traffic transiting the local switch and to bill Qwest for all traffic that is not identified. Union concludes by arguing that in **[*44]** refusing to utilize a more accurate method of billing in its dealings with Union, Qwest continues to underpay Union for the services it uses. These practices, Union contends, are discriminatory.

Because Union relies exclusively upon the deposition testimony of Qwest witnesses in support of its discrimination claim, it is beneficial to the discussion to clarify that deposition testimony. The most significant deposition of the three Qwest witnesses is that of Mr. Staebell. He testified that Qwest uses the clearinghouse method in New Mexico and Oregon. Staebell also testified that since at least three years ago, Qwest has not allowed use of the residual billing method. It is still used in North Dakota because it was part of a 1995 settlement agreement. As of the date of his deposition, however, Staebell indicated that the method was being reexamined in North Dakota. Qwest Ex. 4 at 66-69.

In response to Union's argument, Qwest directs the Court's attention to Qwest's Interrogatory No. 9 propounded to Union during discovery. Union was asked to "identify every carrier that Union asserts was situated similarly to Union and was treated more favorably than Union by Qwest with respect to compensation **[*45]** for origination, transport or termination of traffic." In its

response, Union indicated that it presently was not sufficiently familiar with the factual situations surrounding other carriers to respond, but that it would discuss the matter with other carriers and update its response. To date, Union has never updated its response to Interrogatory No. 9. Qwest also points to the expert witness designation of Woody and Larson. Union's designation makes no mention of discrimination and contains no suggestion that the testimony of either witness will establish facts that would support a discrimination claim. Moreover, Mr. Larson testified at his deposition that he had no knowledge that Qwest was treating any other Wyoming local exchange or wireless carrier differently from Union.

In short, the Court determines that Union is unable to "put up" any evidence showing that Qwest's use of other billing methodologies in other jurisdictions amounts to "unjust or unreasonable discrimination" as explained in *47 U.S.C. § 202(a)*. To the extent that this discrimination claim represents a disguised attempt to force Qwest to provide Union with a Feature Group D connection, the **[*46]** Court finds that this issue was fully litigated and conclusively decided by the WPSC in its 2001 Order. Specifically, Union did not meet its burden of proof sufficient to enable the Commission to determine that Feature Group D will provide the information Union seeks to enhance its billing capabilities, or that Feature Group D would provide that information better than the methods Qwest currently employs. 2001 WPSC Order at 28 P 43. Accordingly, the Commission dismissed Union's Complaint with regard to those issues. Therefore, in light of the obvious lack of evidence on this issue, the Court determines that Union's claim of discrimination by common carrier should be dismissed.

Quantum Meruit / Unjust Enrichment Claim

In its Complaint, Union requests "that it be compensated for carrier access services as Qwest has been unjustly enriched in that it charges its own customers for the services provided by Union but refuses to remit payment to Union." Union Opp'n at 16. This argument appears to the Court to be an alternative argument. Union spends much of its brief attempting to persuade the Court that its tariffs (*i.e.*, "contracts" as described in paragraph **[*47]** 25 of the Complaint) should be applied to all traffic originating on or transiting Qwest's network for termination by Union. Should the Court not be convinced by this argument (and it is not), Union argues alternatively that in the absence of applicable contract or tariff provisions, Union should be permitted to recover its access charges under a equitable theory of unjust enrichment.

The Court finds that Union has very ably stated a claim for unjust enrichment. Yet, the Court finds that Union's claim is barred by the filed rate doctrine. The Court has already determined that Union's filed tariffs apply only to intrastate wireline traffic. Moreover, with respect to the Wyoming tariffs, the Court finds them to be inapplicable to transiting traffic. The Court does not decide that Union is not entitled to compensation from Qwest for terminating wireless traffic. The Court merely points out that Union has failed to comply with applicable statutes and regulations to acquire the tariffs, agreements, and orders necessary to recover access charges for wireless traffic. Based on these facts, as applied to the filed rate doctrine, Union's unjust enrichment claim necessarily fails. Equitable **[*48]** doctrines cannot apply to relieve Union of its obligation to comply with state and federal statutory and regulatory requirements. Positing arguments that compensation may be appropriately based on equitable doctrines in the face of such overwhelming failure to comply with applicable requirements is unavailing.

Utah and Colorado Tariffs

The Court notes that throughout its Order any discussion of intrastate wireline traffic has been limited to that which originates on or transits Qwest's network for termination by Union in Wyoming. The Court has expressed no opinion on the applicability of tariffs filed by Union in Colorado and Utah to intrastate wireline traffic terminated by Union in those states. Based on the record before this Court, Qwest does not seem to dispute the application of filed tariffs in these states to intrastate wireline traffic that originates on Qwest's network and terminates on Union's network. Yet, Qwest disputes the application of Union tariffs presently on file in Utah and Colorado to intrastate wireline traffic that transits Qwest's network for termination on Union's network in those states. Thus, this issue remains to be determined. The Court will **[*49]** stay this claim pending the interpretation of those tariffs by the appropriate state agencies.

Unlike the Court's ruling on wireline traffic, the Court has determined that Union's tariffs are inapplicable

to intraMTA wireless traffic that terminates on Union's network, regardless of whether the traffic originates on or transits Qwest's network and irrespective of whether that traffic terminates in Wyoming, Utah, or Colorado. With respect to interMTA wireless traffic, the Court has ruled that Union's Wyoming tariffs are inapplicable to such traffic, regardless of whether that traffic originates on or transits Qwest's network. Moreover, it is the Court's belief that, like Wyoming, neither Utah nor Colorado regulates telecommunications services using cellular or other wireless technology in any way relevant to the claims in this lawsuit. Thus, it is the Court's belief that, following the passage of the Telecommunications Act of 1996, neither the Utah Public Service Commission nor the Colorado Public Utilities Commission would find the Union tariffs filed in those states applicable to interMTA traffic originating on or transiting Qwest's network for termination by Union in those states. **[*50]**

Accordingly, while it is the Court's intent to dismiss Union's claims pertaining to the applicability of its Utah and Colorado tariffs to originating and transiting interMTA traffic, it will withhold judgment on this issue for 10 days following the filing of this Order. The Court grants the parties 10 days to provide evidence to the Court that one or both of these state commissions regulates interMTA traffic to the extent necessary to resolve the claims before this Court - *i.e.*, the applicability of Union's filed tariffs to interMTA traffic. Provided that such evidence is received, then the Court will stay Union's claims as they pertain to interMTA traffic terminated in such state(s) pending the outcome of the state agency proceedings. If no such evidence is received, then the Court will issue an Order granting summary judgment in Qwest's favor as to these claims.

Though jurisdiction of this claim in this Court is proper, the Court finds it prudent to stay the above-described claims pending the interpretation of the Utah and Colorado tariffs by the appropriate state agencies. A reading of the statutes applicable to both the Utah Public Service Commission and the Colorado Public **[*51]** Utilities Commission leaves little doubt that those commissions also have jurisdiction to interpret the applicability of a filed tariff. *See, e.g., UTAH CODE ANN. § 54-4-1* (1953); *COLO. REV. STAT. ANN. §§ 40-6-111* and *119* (West 2003). Thus, the Court invokes its primary jurisdiction over the issues remaining in this lawsuit. The United States Court of Appeals for the Tenth Circuit explains that "primary jurisdiction is invoked in situations where the courts have jurisdiction over the claim from the very outset but it is likely that the case will require resolution of issues which, under a regulatory scheme, have been placed in the hands of an administrative body." *Marshall v. El Paso Natural Gas Co., 874 F.2d 1373, 1376 (10th Cir. 1989).* Under this doctrine, the judicial process is suspended pending referral of the issues to the administrative body for its views. Several factor relevant to the application of primary jurisdiction are "whether the issues of fact raised in the case are not within the conventional experience of judges; or whether the issues of fact require the exercise of administrative discretion, **[*52]** or require uniformity and consistency in the regulation of the business entrusted to a particular agency." *Id. at 1377.*

Instructive in the Court's determination to permit the parties to refer the above-described claims to the state commissions for interpretation of the filed tariffs is the opinion of the United States Court of Appeals for the Ninth Circuit in *3 Rivers Telephone Cooperative Inc. v. U.S. West Communications, Inc., 45 Fed. Appx. 698, 2002 WL1986469 (9th Cir. 2002)* (unpublished). As explained previously, in that case, independent telecommunications carriers brought a breach of tariff action against Qwest alleging that Qwest breached their filed tariffs by refusing to pay terminating access charges. *45 Fed. Appx. 698, [WL] at *1.* The district court granted summary judgment for Qwest without interpreting and applying the Independents' tariffs. The Ninth Circuit found the trial court's failure to interpret the tariffs to be reversible error. *Id.* On remand, the Ninth Circuit instructed:

> Given the complexity of the issues raised in this case, the district court may deem it necessary to stay proceedings so that the parties may commence declaratory proceedings before the Montana **[*53]** Public Services Commission ("PSC") It does . . . appear to be within the PSC's authority and expertise to issue a declaratory ruling with regard to (1) whether the calls for which the Independents seek payment are covered by the Independents' tariffs, and (2) whether a tariff, interpreted to require payment for such calls, is just and reasonable in light of the FCC's interpretation of federal law. . . .

Id. See also Mical Communications, Inc. v. Sprint Telemedia, Inc., 1 F.3d 1031, 1038 (10th Cir. 1993) (deciding that under doctrine of primary jurisdiction, district court should have stayed lawsuit pending FCC's action on a petition currently before FCC dealing with same issue).

The interpretation of a tariff to determine its applicability to particular types of telecommunications traffic for purposes of recovering access charges involves expertise beyond the conventional experience of this Court. This being said, the Court fears that plowing ahead and deciding the issues likely could result in an interpretation that is inconsistent with interpretations of these and similar tariffs by the state commissions charged with regulating the telecommunications industry. **[*54]** Accordingly, the Court will stay these proceedings with respect to the above-described claims to permit the parties to obtain the appropriate relief before the appropriate state agencies.

Union's Motion for Partial Summary Judgment

Union argues that pursuant to the filed rate doctrine, Union asks this Court to enter partial summary judgment in Union's favor on the issue of whether Qwest must pay access charges for intrastate wireline calls. Based upon the record before this Court, Qwest does not dispute the applicability of Union's filed tariffs in Wyoming, Utah, or Colorado to intrastate long distance traffic originating on Qwest's network and terminated by Union. Though at this point the Court finds Union's motion to be more of a housekeeping matter, pursuant to *Yu v. Peterson, 13 F.3d 1413, 1415 n.3 (10th Cir. 1993)*, the Court grants summary judgment in favor of Union only with respect to the applicability of Union's filed tariffs to intrastate long distance traffic that originates on Qwest's network and terminates on Union's network.

Therefore, it is hereby

ORDERED that Qwest's Motion for Summary Judgment is **GRANTED** in part and **[*55] DENIED** in part. Specifically, Qwest's Motion for Summary Judgment on Union's discrimination by common carrier and unjust enrichment claims is **GRANTED.** In addition, Qwest's Motion for Summary Judgment on Union's breach of tariff and breach of contract claims is **GRANTED** with respect to all intrastate wireline and wireless traffic originating on or transiting Qwest's network for termination by Union in Wyoming. Moreover, Qwest's Motion for Summary Judgment on Union's breach of tariff and breach of contract claims is **GRANTED** with respect to all intraMTA traffic originating on or transiting Qwest's network and terminated on Union's network in Utah and Colorado.

It is further **ORDERED** that Qwest's Motion for Summary Judgment on Union's breach of tariff and breach of contract claims pertaining to the applicability of Union's Utah and Colorado tariffs to intrastate wireline traffic transiting Qwest's network for termination by Union in those states is **DENIED** subject to renewal.

It is further **ORDERED** that Union's breach of contract and breach of tariff claims pertaining to the applicability of Union's Utah and Colorado tariffs to intrastate wireline **[*56]** traffic transiting Qwest's network for termination by Union in those states is **STAYED** pending the interpretation of those tariffs by the appropriate state agencies. With respect to Union's breach of tariff and breach of contract claims pertaining to the applicability of Union's Utah and Colorado tariffs to interMTA traffic originating on or transiting Qwest's network for termination by Union in those states, the Court will withhold judgment for 10 days following the filing of this Order. Following this time period, the Court will determine whether these claims should be stayed pending the interpretation of such tariffs by the appropriate state agencies or dismissed with prejudice.

In conjunction with the foregoing, it is further **ORDERED** that Union's Motion for Partial Summary Judgment is **GRANTED** only with respect to the applicability of Union's filed tariffs in Wyoming, Utah, and Colorado to intrastate long distance wireline traffic originating on Qwest's network and terminated by Union.

It is further **ORDERED** that all other claims in Union's Complaint are **DISMISSED** with prejudice.

DATED this 11th day of May, 2004.

William F. Downes

Chief United States **[*57]** District Judge

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-9

Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic, Wisc Pub Serv Comm'n Docket No. 5-TI-1068, Final Decision, (Dec 11, 2006).

PSC REF#:66299

DATE MAILED

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Public Service Commission of Wisconsin
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BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic — 5-TI-1068

FINAL DECISION

This is a final decision to resolve certain legal issues surrounding the treatment of, and method of billing for, transit traffic. The parties to this docket are set forth in Appendix A.

Introduction

Transit traffic is telecommunications traffic which originates with one provider, transits through the network and tandem switch facilities of one or more providers and terminates on the network of a final, delivering provider.

The Public Service Commission of Wisconsin (Commission) opened this docket to consolidate and investigate factual and legal issues raised in disputes between the smaller, rural local exchange carriers (RLECs)[1] and the larger incumbent local exchange carriers (ILECs) that operate tandem switches and trunks which provide connections between the RLECs and the rest of the telecommunications world. Technical conferences and discussions were conducted over several months and the results are summarized in the First Status Report on Transiting Traffic Collaboratives, dated September 2005, attached to the staff's memorandum to the Commission, dated October 5, 2005 (PSC ERF No. 42116).

[1] The complete list of the party RLECs is attached as Appendix B.

The technical conferences and discussions reached an impasse over several legal issues. The Commission issued an Amended Notice of Proceeding on February 2, 2006, which requested briefs on four issues and converted the investigation docket into a contested case proceeding.

Findings of Fact

1. The Wisconsin State Telecommunications Association (WSTA) Intrastate Access Tariff No.1 sets forth intrastate access charges for termination service and is currently on file with the Commission.

2. The RLECs each have filed with the Commission an individual carrier intrastate access charge tariff that integrates with the WSTA Intrastate Access Tariff No. 1.[2]

3. The tariffs identified in Findings of Fact 1 and 2 above are the basis for the RLECs' demand that Wisconsin Bell, Inc., d/b/a AT&T Wisconsin (AT&T), pay access charges for all traffic delivered over Feature Group C (FGC) trunks.

4. AT&T denies that it is liable for any access charges on transit traffic under the tariffs identified in Findings of Fact 1 and 2 above.

5. All party carriers, other than the RLECs, agree on brief that the charges in the Access Tariffs may not be applied to termination services for local, nontoll traffic that transits the network facilities of one or more other carriers.

6. Any other issues raised in the briefs and comments not discussed in this decision are either not ripe, or inappropriate, for decision at this time.

[2] The WSTA Intrastate Access Tariff No. 1 and the individual RLEC access tariffs that integrate with the WSTA Tariff are referred to collectively herein as the "Access Tariffs."

7. It is reasonable for the staff to consult in technical conferences with interested parties and to then submit a further status report regarding further action in this docket.

Conclusions of Law

1. AT&T, Verizon North, Inc. (Verizon), the RLECs, and the competitive local exchange carrier (CLEC) parties in this proceeding are public utilities as defined in Wis. Stat. § 196.01.

2. The RLECs' assertion that a transit service provider is liable for termination services with respect to local, nontoll traffic that has originated with commercial mobile radio service (CMRS or wireless) providers, CLECs, or other providers, and AT&T's (or other transit provider's) denial of any liability for access charges under the Access Tariffs, is a dispute about compensation for usage of another carrier's network. The dispute is therefore subject to Commission jurisdiction under Wis. Stat. §§ 196.02(1), 196.04(2), 196.199, 196.219, and 196.37(2).

3. The Commission has jurisdiction under Wis. Stat. § 195.39 and Wis. Stat. §§ 196.02(1), 196.03, 196.04, 196.199(2), and other pertinent provisions of Wis. Stat. ch. 196, to determine that 47 U.S.C. § 251(b), as interpreted by the Federal Communications Commission (FCC) in its orders and at 47 C.F.R. §§ 51.701-51.717, establishes reciprocal compensation, and not access charges, as the method of compensation for a local exchange carrier that terminates a transited local call, and that the originating carrier is properly the carrier liable and billable for terminating services.

4. The Commission has jurisdiction under Wis. Stat. §§ 196.02(1), 196.03, 196.04(2), 196.19, 196.20, 196.37(2), and other pertinent provisions of Wis. Stat. ch. 196, to

interpret its *Third Interim Order,* in docket 05-TR-102,[3] and conclude that the requirement for the transport of intraLATA toll traffic on FGC trunks did not expressly preclude the use of the trunks for other types of traffic by AT&T or other similarly situated carriers.

5. The Commission has jurisdiction under Wis. Stat. §§ 196.02(1), 196.03, 196.04(2), 196.203, 196.37(2), 196.50(2)(h), other pertinent provisions of Wis. Stat. ch. 196, and Wis. Admin. Code §§ PSC 165.01(3), 165.08, 165.081, and 165.085-165.087, to determine the arrangement and capacity of trunking among telecommunications carriers on a case-by-case basis or by rule, but it is unnecessary to exercise such jurisdiction until such time as the public interest may warrant Commission action in, or with respect to, a dispute among carriers.

6. The Commission has the jurisdiction and discretion under Wis. Stat. § 196.02(1), 196.03, 196.04, 196.199(2), 196.219, 196.28, 196.37(2), 196.50, and other pertinent provisions of Wis. Stat. chs. 196 and 227, to determine that no additional legal issues need be addressed at this time, make findings of fact based upon the official notice of tariff filings and the parties' stipulation to certain facts (PSC ERF No. 55254), provide the ordered relief, issue this final decision while continuing the docket for technical conferences and further investigation of the adequacy of transit traffic identification, and act or refrain from acting as set forth herein.

Opinion

This proceeding generally investigates issues related to the billing by local exchange carriers for termination services rendered with respect to local, nontoll transit traffic. This

[3] Findings of Fact, Conclusions of Law and Third Interim Order, *Investigation of Intrastate Access Charges, Costs, Settlements, and Intrastate Access Charges,* docket 05-TR-102 (Nov. 22, 1989) (*Third Interim Order*).

phase of the proceeding, however, is narrower, involving a determination of who is legally obliged to pay for the termination services provided by several incumbent RLECs with respect to certain traffic from third-party carriers delivered to them by AT&T and potentially other transit service providers. The services for which compensation is sought are rendered when local, nontoll traffic originates on the networks of CMRS or wireless providers, CLECs, or other providers, is transferred to the tandem switching and transport facilities of AT&T or other providers for delivery to a third party (e.g., an RLEC), and is then terminated by the third-party provider's network by delivery of the communications to the premises of the called parties. In its intermediary role, AT&T is a transit carrier. Sometimes this transit function is provided by more than one carrier on a particular exchange of traffic between the originating and terminating carriers.[4] This docket phase deals with the compensation of the RLECs for their termination of nontoll traffic transited by AT&T and other transit carriers (e.g., Verizon), that are parties to this docket.

As discussed further below, the Commission is addressing legal issues only on a very limited set of facts involving the applicability of certain access tariffs to traffic transited by AT&T, or other providers, to the RLECs. Many technical issues remain unresolved regarding the practical operating ability of RLECs to effectively identify the originators of local transit traffic in order to bill them for termination services rendered. These issues will be the subject of further investigation and technical conferences following this decision.

Four legal issues are presented in this phase:

1. With respect to transit traffic, which participating carrier or carriers may an [ILEC] properly bill for termination services?

[4] For convenience, this decision will apply to multiple transit provider situations even though the discussion will refer to the single transit provider situation.

2. What types of traffic may be properly transported over the Feature Group C (FGC) trunks connecting LEC end offices and the tandem switches of AT&T or another provider?

3. May the Commission require the relevant participating carriers to establish dedicated, as opposed to shared, trunking on routes between tandem switches and end offices of small telecommunications utilities?

4. Is there any other legal issue that needs to be resolved as a predicate to establishing or barring a carrier's liability for transit traffic termination services?[5]

Background

Trends in Telecommunications Technology and Regulation

Over the past 25 years the telecommunications industry has experienced a rapid expansion of new varieties of delivery technologies such as broadband delivered over copper wires and cable TV facilities (coax), and mobile, or cellular, service for a variety of voice, video and data functions. The number of cell phone subscribers in Wisconsin, in fact, now exceeds the number of landlines.

Concurrent with this technological trend came pressures to reduce or remove traditional government regulation in order to break up monopolies and to encourage innovation and adequate market rewards for investment in riskier, untested technologies. This deregulatory trend is marked by the 1984 break-up of "old" AT&T Corp., resulting in the creation of the seven "Baby Bells," while assigning AT&T Corp. to the long distance market and the Bell Operating Companies to local markets, or Local Access and Transport Areas (LATAs). In the LATAs, each state-based Bell Operating Company (Wisconsin Bell, Inc., in Wisconsin) provided short haul toll service within the LATA and local exchange service in the municipalities it had been authorized to serve by its relevant state commission.

Twelve years later, Congress enacted the Telecommunications Act of 1996[6] to develop competition in local exchange telecommunications markets under rules promulgated by the FCC but administered on a cooperative basis by state commissions. The 1996 Act provisions relevant here are 47 U.S.C. § 251(a), which requires every local exchange carrier to connect, either directly or indirectly, with every other carrier, and 47 U.S.C. § 251(b), which establishes reciprocal compensation as the mode of compensation between two carriers exchanging local traffic for transport and termination.

In permitting indirect interconnection, the new federal regime fostered the development of transit service to link originating carriers to terminating carriers where local traffic volumes did not justify direct interconnection. In practical operation, this has meant, in light of the growth of wireless provider traffic volumes, much traffic moving from wireless carriers to RLECs via tandem transit services on the pre-existing facilities of the traditional Bell Operating Company. The chief tandem transit service provider in the Wisconsin version of this routing development is AT&T, but transit service is also furnished by other carriers, such as Verizon and CenturyTel, Inc. (or its operating subsidiaries).

This new arrangement of network interconnections arising from the 1996 Act has generated complaints that unidentified and unidentifiable traffic is transiting the facilities of AT&T and is delivered to the facilities of the RLECs without adequate information for billing, either on a real time basis or through accurate monthly reports. A group of rural ILECs filed a

[5] Amended Notice of Proceeding, *Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic*, docket 5-TI-1068, at 2 (Feb. 2, 2006).
[6] Pub. L. 104-104, 110 Stat. 56 (1996) (codified at scatter sections in Title 47, United States Code) (1996 Act).

complaint against AT&T regarding this issue in June 2003,[7] and AT&T filed, shortly thereafter, a complaint[8] against certain RLECs for attempting to bill it access charges for delivery of traffic for which the defendant carriers claimed they had no other party that they could identify and bill for the services rendered.[9]

In light of the industry-wide import of the complaints, the Commission opened this generic docket on June 8, 2004, on its own motion, and directed staff to convene a series of technical conferences to investigate the technical issues related to unidentified or misidentified traffic, and how transiting traffic should be identified for billing purposes. Two technical conferences were held on July 12, and August 17, 2004, and the participants did a considerable amount of work outside those technical conferences to identify and test certain aspects of transiting traffic. The participants also identified some potential sources of unidentified traffic and did substantial work in identifying both the potential methods of traffic identification and the limitations of those methods. The foregoing work is described in the First Status Report, dated September 2005.

Further progress along these lines, however, was limited by some fundamental disagreements among the providers on certain underlying legal issues. By Amended Notice dated February 2, 2006, the Commission requested briefs and reply briefs on the four issues listed above at p. 6. These are discussed below.

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[7] *Complaint of Chequamegon Communications Cooperative, Inc., et al. Against Wisconsin Bell, Inc., d/b/a SBC Wisconsin*, docket 6720-TI-181 (docket not opened by Commission).

[8] *Complaint of Wisconsin Bell, Inc., d/b/a SBC Wisconsin, Against Chequamegon Communication Cooperative, Inc.*, docket 1070-TI-100 (docket not opened by Commission).

[9] The issue of transit traffic is part of a broader industry debate regarding intercarrier compensation and an arguable need to unify compensation regimes regardless of carrier technologies or geography. *See generally*, Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, FCC 05-33 (Mar. 3, 2005).

Issue 1: Liability for Termination Services on Transit Traffic

This docket was established, in part, to determine whether transit carriers were legally responsible for local exchange carriers (LECs) terminating service charges for traffic that originated from third party carriers. The RLECs have, at various times in this docket, proposed that the transiting providers be billed for this traffic. The transiting providers deny that they are liable for charges on traffic that has transited from a third-party carrier.

All parties, with the exception of the RLECs, agree that terminating providers should bill, and collect from, the originating providers (not transiting providers) for transit traffic. The parties also generally agree that the originating and terminating LECs should negotiate interconnection agreements based on principles of reciprocal compensation. The RLECs are alone in their contention that they may charge the transiting providers, in particular AT&T, for this traffic.

The traffic at issue here, as acknowledged by the RLECs, is not traditional long distance, interexchange traffic subject to access charges, but local traffic that originates with a wireless, CLEC, or other provider and transits a tandem switching carrier, such as AT&T. Pursuant to 47 U.S.C. § 251(b)(5), that traffic is subject to a regime of "'reciprocal compensation,' which means that when a customer of one [LEC] calls a customer of a different [LEC] who is within the same *local* calling area, the first carrier pays the second carrier for completing, or 'terminating,' the call." *Pacific Bell v. Pac-West Telecomm., Inc.*, 325 F.3d 1114, 1119-20 (9th Cir. 2003) (emphasis added).

The RLECs advance only one case in which they can claim their access tariffs were found to apply to the termination of local traffic delivered by a transit carrier, *3 Rivers Tel.*

Co-op., Inc. v. U.S. West Commc'ns. Inc., No. CV 99-80-GF-CSO, 2003 WL 24249671 (D. Mont. 2003) (*3 Rivers*). With that case and their other arguments, the RLECs have not persuaded the Commission that access charges may be applied to local exchange traffic, let alone be applied to transit providers. Rather, the Commission is persuaded by the arguments of the opposing carriers that, because federal law requires a reciprocal compensation regime, application of access tariffs to transited local traffic is generally pre-empted.[10]

For several reasons, the Commission concludes that local exchange, nontoll traffic that originates with one carrier, transits the facilities of one or more intermediary carriers and terminates on the network of the carrier serving the called party, is not subject to access charges. Accordingly, the Access Tariffs may not be used to bill AT&T or any other transit service provider for this traffic.

First, even the *3 Rivers* court concluded that, notwithstanding the apparent applicability of the access tariff, federal law nonetheless pre-empted application of access charges for termination of local services. *3 Rivers* at *18. Moreover, the *3 Rivers* decision is distinguishable from the instant situation in two respects. First, because the pre-emption analysis was the determinative case holding, the tariff analysis may be considered dicta because it was conducted to fulfill a Ninth Circuit directive. Secondly, the *3 Rivers* decision was effectively superseded

[10] This holding does not cover the situation in which a transit service provider removes or fails to provide originating carrier identification on transited traffic for the purpose of frustrating the ability of terminating carriers to identify and bill originating carriers. However, the record and briefs in this phase of the docket do not raise or address this particular situation where essentially a form of transit carrier deception or fraud may be at issue. The Commission also is not addressing what rates or pricing methodology must apply to transit service rates.

18 months later by the FCC's nationally binding clarification and rule change respecting termination tariffs in the *T-Mobile Order,*[11] discussed more fully below.

Second, the 1996 Act has, in 47 U.S.C. §§ 251 and 252, expressed a clear preference for negotiated contracts between originating and terminating carriers of local exchange traffic rather than the use of tariffs beyond start-up needs before negotiation of an interconnection agreement. *See generally, Wisconsin Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003) (state-mandated tariffing cannot effect bypass of interconnection negotiation procedures in 47 U.S.C. §§ 251 and 252).

Third, the FCC made clear in the 1996 *Local Competition Order* that wireless-originated traffic moving within a Metropolitan Trading Area (MTA) is local traffic subject to reciprocal compensation.[12] Traffic moving within a state-defined local exchange territory and originated by a CLEC or another ILEC is also subject to reciprocal compensation.[13] The FCC's position that wireless originated traffic is subject to reciprocal compensation, and not access charges, was further reinforced in 2005 by the *T-Mobile Order*. In the *T-Mobile Order*, the FCC, while holding permissible the ILECs' prior use of default nonaccess termination tariffs for wireless originated traffic, endorsed negotiated agreements--not tariffs--to charge for nonaccess, local

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[11] Declaratory Ruling and Report and Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 F.C.C.R. 4855 (2005) (*T-Mobile Order).*

[12] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499, 16014, ¶ 1036 (subsequent history omitted) (*Local Competition Order*). ("Accordingly, traffic to or from a CMRS network that originates and terminates with the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges."). (*See also* 47 C.F.R. § 51.701(b)(2) defining the MTA as the local area for wireless traffic.)

[13] *Local Competition Order*, 11 F.C.C.R. at 16013, ¶ 1035 ("With the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered 'local areas' for the purpose of applying reciprocal compensation under section 251(b)(5), consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate or intrastate access charges.").

traffic termination services. The FCC amended its rules to enable ILECs to demand that wireless providers enter negotiation of reciprocal compensation agreements pursuant to §§ 251 and 252. In so doing, the FCC re-affirmed that ILECs may not use access tariffs to charge for terminating wireless-originated local traffic that is subject to reciprocal compensation. *T-Mobile Order*, 20 F.C.C.R. at 4864, ¶¶ 3, 14-15. *See also* 47 C.F.R. § 20.11(e)–(f).

In addition, the FCC in a CLEC-to-wireless transit situation has adhered to the principle that attribution of costs must be on a "cost-causative basis," meaning that the cost of delivering traffic is assigned to the carrier whose customers originated the traffic at issue. Thus, when a LEC provides a transit service, "[w]here the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic . . . ." *Texcom, Inc. v. Bell Atlantic Corp.*, 16 F.C.C.R. 21493, 21495, ¶ 6 (2001) (*Texcom Order*); *Texcom Inc. v. Bell Atlantic Corp.* 17 F.C.C.R. 6275 (2002) (*Texcom Reconsideration Order*). In the *Texcom* decisions, the FCC did not hold the ILEC providing transit service liable for any charges. Rather, the FCC held that when traffic from a CLEC transits an ILEC's network to a wireless provider, the CLEC pays the costs for delivering the traffic to the ILEC for transit, and the wireless provider's customers are liable for the costs of transporting the calls from the ILEC's network to their network. *Texcom Reconsideration Order*, 17 F.C.C.R. 6275, ¶ 4. Applied here, the FCC's cost causation principles would excuse AT&T from liability because AT&T's customers do not generate the transit traffic at issue.

The holdings in two court decisions, *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850 (S.D. Iowa 2005), *aff'd,* 466 F.3d. 1091 (8th Cir. Oct. 31, 2006) (*Qwest*) and *State ex rel. Alma Tel. Co. v. PSC*, 183 S.W.3d 575 (Mo. 2006), apply and reinforce the holdings of

the FCC in situations having factual elements parallel to those present here. In *Qwest*, the district court held that access charges could not be applied to local transit traffic, even in a situation where the transit carrier Qwest commingled--the case here--both wireline and wireless traffic. *Qwest*, 385 F. Supp. 2d at 870, 878. In the Missouri case, the court applied the *T-Mobile Order* to hold that the ILECs' pre-existing wireless tariffs could not be applied to wireless-originated transit traffic because the tariffs were, in reality, impermissible access tariffs, the type of tariffs the RLECs seek to apply here. *Alma Tel.*, 183 S.W.3d at 577-78.

Based on the foregoing, the Commission determines that federal law pre-empts the application of the identified access tariffs to transit traffic originating with wireless, CLEC, and even other ILEC providers because reciprocal compensation is required under 47 U.S.C. § 251(b)(5) for local traffic as defined by the FCC. The Commission finds it unnecessary to interpret the applicability of terms of the Access Tariffs under state law, although the Commission observes that its 1989 decision authorizing the tariffs, as discussed below, showed that the tariffs were intended to apply access charges to interexchange intraLATA toll traffic.

Issue 2: Use of Feature Group C Trunks

The FGC trunks used to connect RLEC end offices with ILEC tandems are capable of transporting a mix of toll and local traffic, and are currently doing so. The RLECs provide three arguments for restricting the trunks to intraLATA toll: prior agreements, tariffs, and the *Third Interim Order* in docket 05-TR-102.

The RLECs failed to cite agreements between the RLECs and the tandem operators that would cover this traffic. The Access Tariffs themselves make no mention that traffic subject to

terminating access charges must be the only traffic on FGC trunks. Consequently, no written contract or tariff provision supports the RLECs' argument.

The RLECs' main argument is that the *Third Interim Order* in docket 05-TR-102 requires RLECs to transport all intraLATA toll services over FGC trunks. Thus, according to the RLECs, if traffic is on an FGC trunk, it is toll traffic subject to access charges. The Commission finds that the *Third Interim Order* requires such use of FGC trunks, but nowhere does it state that the FGC switched access service described, and trunks carrying it, are usable *only* for intrastate interLATA toll. The Commission's ultimate finding of fact para. 25[14] in the *Third Interim Order* states an operational fact, and order point para. 16[15] states a directive to AT&T and Verizon to use FGC trunks when providing interLATA toll service. However, neither provision includes a tariff requirement or limitation that FGC trunks carry only intraLATA toll traffic. The one arguable ambiguity in the discussion portion of *Third Interim Order*, slip op. at 15,[16] cannot reasonably create an entire regime of access charges for transit traffic, given the lack of any explicit exclusive use restriction in the finding of fact and the controlling order provision. Consequently, AT&T and other transit service providers are not barred by the *Third Interim Order* from routing other types of traffic over FGC trunks. Finally, the *Third Interim Order* notes that the "integrated nature of the intraLATA network precluded differentiation among trunks for local, toll and access services,"[17] indicating that those trunks, as early as 1989, already carried a mix of traffic, and that the order did not change that use.

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[14] "It is reasonable and in the public interest to require WBI and GTE to use Feature Group C exclusively when providing toll service in the intraLATA jurisdiction." *Third Interim Order*, slip op. at 26.
[15] "That WBI and GTE shall use Feature Group C exclusively when providing toll service in the intraLATA jurisdiction." *Id.*, slip op. at 31.
[16] "[T]he Commission finds it sufficient simply to direct that WBI and GTE carry intraLATA toll exclusively using Feature Group C access." *Id.*, slip op. at 15.
[17] *Third Interim Order*, slip op. at 18.

Since none of the RLECs' points relating to the *Third Interim Order* support restricting the traffic carried over FGC trunks solely to intraLATA toll traffic, the Commission finds that joint usage of FGC trunks by AT&T and other tandem transit providers is not prohibited and, therefore, lawful.

Issue 3: Dedicated Trunking

The issue of dedicated trunking addresses whether the Commission can require that each provider deliver terminating traffic to small telecommunications utility end offices over dedicated trunks, instead of having that traffic delivered to the tandem, then intermingled with other traffic and carried over shared trunks connecting the tandem and the LEC end office. The RLECs contend on brief that the Commission has jurisdiction to compel direct trunking between providers, but also argues that the use of particular trunks is in the "sole discretion of the interconnected parties." (RLEC Reply Br. at 8-10.) AT&T argues that dedicated trunking is inefficient, extremely costly, probably pre-empted as interfering with the right of indirect interconnection in 47 U.S.C. § 251(a)(1), and unnecessary, as terminating LECs may negotiate interconnection agreements that address traffic exchange issues such as trunking. One CLEC in particular, Time Warner Telecom of Wisconsin, L.P., contends that the Commission is wholly without jurisdiction to order dedicated trunking.

At present, the Commission concludes that it does not have to decide to require any implementation of dedicated trunking. Carrier negotiations should be allowed to proceed to the extent practicable. However, the Commission affirms that, at a minimum, it has authority to order interconnection trunking and to approve an interconnection agreement, either negotiated or arbitrated, that includes a requirement for dedicated trunking.

State law, particularly Wis. Stat. § 196.04, allows the Commission to order dedicated trunking. However, in order to do so, the Commission would likely have to examine a factual record, determine that the public interest is best served by dedicated trunking, and determine that no less expensive options could meet the public need. It is also clear that development of a factual record would mean that such investigations would likely have to be carried out on a route-by-route basis, or at least a limited bundle of similar routes. The Commission also has jurisdiction under Wis. Stat. §§ 196.02(1), 196.219, 196.37(2), and 196.50(2)(h), and implementing regulations (see conclusion of law para. 5 above) over the practices and actions of utilities which can include trunking practices affecting service quality. *See, e.g.*, Wis. Admin. Code § PSC 165.085 (97 percent of all calls on interoffice trunks not to experience an all-trunks busy signal).

Sections 251 and 252 of the 1996 Act permit trunking to be an issue for interconnection agreement negotiations and state commission approval when carriers seek to arrange the mutual exchange of traffic. *See* 47 U.S.C § 251(a)(1) (duty to interconnect directly or indirectly) and 47 U.S.C. § 252(e)(3) (enforcement of state law requirements in review of interconnection agreements). In addition, a Commission order for direct trunking may be justified under 47 U.S.C. § 253(b) where a state service quality concern is at issue, or under § 261(c) if the action would further competition and not be inconsistent with FCC regulations. *See Michigan Bell Tel. Co. v. Chappelle*, 222 F. Supp.2d 905, 915-18 (E.D. Mich. 2002) (holding that state commission imposition of a transiting duty upon a carrier in an interconnection agreement was permitted under § 261(c) as additional state action furthering competition and not inconsistent with FCC regulations).

The Commission encourages carriers to negotiate interconnecting trunking arrangements because they have the best information to assess the quality and cost efficiency of interconnection arrangements. But, if action is necessary, the Commission has the jurisdiction to require direct trunking in the appropriate circumstances.

Issue 4: Other Issues

Various parties raised several additional issues. Some of these, like the accuracy of the reports supplied by AT&T to identify traffic transiting its tandems, are reiterations or updates of the issues which initially prompted this docket. These issues are discussed in the Staff White Paper on Transiting Traffic (PSC ERF No. 19146) and the First Status Report. Other issues, such as compensation for intermediary providers located between the ILEC tandem and the RLEC end office, are new. None of these, however, are legal issues that are ripe for review at this time.

The issues raised, both previously or for the first time in this round of legal briefing, show that further actions may be required, especially with respect to the adequacy of transit traffic origination identification as needed for billing by terminating carriers. The Commission directs the staff to promptly consult with the parties in further technical conferences in this docket and prepare a further status and progress report. The status report should update the issues raised and propose a schedule for moving forward with the docket.

The Commission has reviewed all the relevant briefs and record documents and any party arguments not addressed here are rejected as unpersuasive or unnecessary to the resolution of the questions presented.

Order

1. This order is effective upon mailing.

2. Local exchange carriers that are party to this docket are hereby prohibited from billing or collecting access charges, as set forth in the Access Tariffs, from those local exchange carriers that have provided a transit service for nontoll, local telecommunications traffic originated by other carriers, such as wireless providers, CLECs, or other ILECs. Specifically, AT&T Wisconsin is not liable for access charges on transit traffic that it has delivered, or is delivering, to the RLECs.

3. The RLECs may not charge access rates for local, nontoll telecommunications traffic.

4. Commission staff shall consult with the parties in further technical conferences and prepare a further status report with recommendations as to further action in this docket.

5. Jurisdiction is retained.

Dated at Madison, Wisconsin, December 11, 2006

By the Commission:

Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

SJP:PRJ:reb:slg:g:\order\pending\5-TI-1068 Phase 1 Order 11-8-06

See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A

This proceeding is a contested case under Wis. Stat. ch. 227. Therefore, in order to comply with Wis. Stat. § 227.47, the following persons who appeared before the agency are considered parties as defined by both Wis. Stat. § 227.01(8) and Wis. Admin. Code § PSC 2.02(6), (10), and (12), for purposes of any review under Wis. Stat. § 227.53.

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APPENDIX B

The following are the RLECs which submitted briefs in this docket.

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Citizens Telephone Cooperative, Inc.
Clear Lake Telephone Company
Cochrane Cooperative Telephone Company
Coon Valley Farmers Telephone Company, Inc.
Farmers Independent Telephone Company
Hager Telecom, Inc.
Indianhead Telephone Company
Lakefield Telephone Company
Lavalle Telephone Cooperative
Lemonweir Valley Telephone Company
Luck Telephone Company
Manawa Telephone Company, Inc.
Marquette-Adams Telephone Cooperative, Inc.
Mount Horeb Telephone Company
Nelson Telephone Cooperative
Price County Telephone Company
Richland-Grant Telephone Cooperative, Inc.
Sharon Telephone Company
Siren Telephone Company, Inc.
Spring Valley Telephone Company, Inc.
State Long Distance Telephone Company
Tri-County Telephone Cooperative, Inc.
Union Telephone Company
Vernon Telephone Cooperative, Inc.
West Wisconsin Telcom Cooperative, Inc.
Wittenberg Telephone Company

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the Matter of the Complaint and Application for Resolution of Alltel Communications, Inc. against Michigan Bell Telephone Company d/b/a AT&T Michigan for Improper Assessment of SS7 Messaging Charges	Case No. U-15166

PRE-FILED DIRECT TESTIMONY OF RON WILLIAMS

EXHIBIT C-10

Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic, Wisc Pub Serv Comm'n Docket No. 5-TI-1068,
AT&T Wisconsin's Initial Brief Relating to Transit Traffic (Apr 17, 2006).

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Public Service Commission of Wisconsin
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BEFORE THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation on the Commission's Own Motion Into the Treatment of Transiting Traffic	05-TI-1068

AT&T WISCONSIN'S INITIAL BRIEF ON LEGAL ISSUES RELATING TO TRANSIT TRAFFIC

Wisconsin Bell, Inc. (d/b/a AT&T Wisconsin) ("AT&T Wisconsin") hereby respectfully submits its initial brief on the four legal issues that the Commission identified in its February 2, 2006 Amended Notice of Proceeding relating to transit traffic.

EXECUTIVE SUMMARY

AT&T Wisconsin transits traffic originated by other providers to the terminating ILECs.[1] AT&T Wisconsin transits the traffic pursuant to Commission-approved interconnection agreements. AT&T Wisconsin's customers neither dial nor receive those calls. Since at least 1997, the terminating ILECs have known they were receiving transit traffic originated by third parties over the common, pre-existing trunks running between the terminating ILECs' and AT&T Wisconsin's networks. And the terminating ILECs have been aware, for that entire period, of AT&T Wisconsin's position that the originating provider – not AT&T Wisconsin – is responsible to pay the terminating ILECs for handling the traffic. In addition, the terminating ILECs have had access to monthly reports, furnished by AT&T Wisconsin, which identify the originating providers of transit traffic and the relative volume of transit traffic originated by each.

[1] For purposes of this brief, the term "terminating ILECs" is intended to refer to the rural or small ILECs who have intervened in this proceeding and who have claimed or will claim that AT&T Wisconsin is liable for the payment of access charges or other amounts for the termination of transit traffic.

Despite their knowledge that AT&T Wisconsin would not pay for termination of transit traffic, despite their knowledge of the identity of the originating providers, and despite their duty to *indirectly* interconnect with the originating providers under federal law and to establish reciprocal compensation arrangements with them, the terminating ILECs contented themselves to bill AT&T Wisconsin under inapplicable intrastate long-distance access tariffs. It was not until wireless communications became so ubiquitous as to generate a decline in the historical levels of intraLATA toll revenue – revenue much more lucrative than considerably lower reciprocal compensation charges – that the terminating ILECs began to complain about transit traffic. Even then, the terminating ILECs waited years before bringing their concerns to the Commission. Now, after sitting on their hands for years, the terminating ILECs seek to stick AT&T Wisconsin with the bill for terminating the transit traffic, even when doing so would do voilence to the federal reciprocal compensation scheme.

Consistent with the developing case law on the transit issue in courts around the country and at the FCC, the Commission should leave responsibility for the payment of termination for transit traffic where it has always rested in this industry – with the providers whose end user customers originate and terminate the telephone calls in question. In addition, the Commission should reject any suggestions that would impose inefficient limitations on use of the existing network or which would require inefficient and expensive network modification requirements. Such limitations and requirements are not only antithetical to the goals and objectives of state and federal telecommunications law; they are likely preempted by – or at best are inconsistent with – federal law.

In sum, AT&T Wisconsin should not be punished for providing a point of indirect interconnection between originating and terminating providers. Likewise, AT&T Wisconsin

should not be blamed for the industry's failure to agree on a standard signaling protocol for routing and identifying transit traffic. AT&T Wisconsin has done, and is willing to continue to do, its fair share to ensure that enough information is available for the terminating ILECs to establish compensation arrangements with the providers who originate the transit traffic.

BACKGROUND

During the investigation phase of this docket, Telecommunications Division Staff ("Staff") submitted two reports which together provide comprehensive regulatory and historical background relating to transit traffic.[2] Rather than recapitulate all of that background here, AT&T Wisconsin emphasizes the background it views as most relevant to discussion of the issues identified by the Commission.[3]

I. AT&T WISCONSIN'S ROLE AS A TRANSIT SERVICE PROVIDER.

AT&T Wisconsin has served and continues to serve as the intermediary for transit traffic originated by third-party carriers (the "originating providers") and terminated to several local exchange carriers in Wisconsin (the "terminating providers" or "terminating ILECs"). AT&T Wisconsin provides transit service pursuant to negotiated or arbitrated interconnection agreements approved by the Commission. As a transit service provider, AT&T Wisconsin serves as nothing more than an intermediary switching point for transit traffic, providing an indirect interconnection from the originating providers' networks to the terminating providers' networks.

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[2] October 3, 2005 *Staff Memo to Commission re: Treatment of Transiting Traffic including First Status Report* (ERF Ref. No. 42116); July 20, 2004 *Staff report on transitting traffic issues as requested by the Commission in dockets 6720-TI-181 and 1070-TI-100* (ERF Ref. No. 19146). For ease of reference, the Staff's memo and the attached report are appended to this brief under Tabs A and B respectively.

[3] AT&T Wisconsin provides this background section for basic factual context. AT&T Wisconsin has attempted to limit this section, however, to background information that it anticipates would not be reasonably subject to dispute.

During the dramatic growth of the wireless industry from the early '90s through the promulgation of the Telecommunications Act of 1996 (the "Federal Act") and later, AT&T Wisconsin was the only telecommunications provider in its service territory that had preexisting interconnections with wireless carriers as well as the terminating ILECs in adjacent territories. The preexistence of these interconnections allowed competitive LECs and CMRS providers alike the opportunity to interconnect indirectly with small ILECs. Indeed, the efficiencies created by indirect interconnection has prompted CLECs and CMRS providers alike to argue to the FCC that ILECs like AT&T Wisconsin are required by the Federal Act to provide transit service, and even now urge the FCC to ensure continued access to transit service as part of any FCC ruling in the pending intercarrier compensation rulemaking. *In re Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, ¶15 (Released March 3, 2005).

AT&T Wisconsin has always maintained that it is not required to provide transit service under the Act. However, while a Commission arbitration panel agreed long ago with AT&T Wisconsin that the Federal Act does not formally impose the transit obligation on AT&T Wisconsin, it strongly hinted in one arbitration soon after the Telecommunications Act was promulgated that AT&T Wisconsin may have the obligation to provide transit service under *state* law.[4] Indeed, though AT&T Wisconsin's counterparts in other states have taken the position in interconnection arbitrations that their interconnection duties under the Telecommunications Act do not include mandatory use of its network to facilitate indirect interconnections between other

[4] *Petition of MCI Telecommunications Corporation for Arbitration per § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin*, PSCW Docket No. 3258-MA-101 and 6720-MA-104, Arbitration Award, p. 13 (December 26, 1996) (concluding that various provisions in Wis. Stat. ch. 196 "may together create a statutory obligation to provide the transit service that MCI requests.").

carriers, every state that has addressed the issue has disagreed, concluding that transiting is an obligation.[5] And now, the FCC has asked providers to comment on whether it ought to impose going forward obligations on all LECs to provide transit services, given the FCC's observation that transit services are "increasingly critical to establishing indirect interconnection – a form of interconnection explicitly recognized and supported by the Act." *In re Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, ¶¶ 125-133 (March 3, 2005) ("*Further NPRM*").

II. FOR TRANSIT TRAFFIC, AT&T WISCONSIN OBTAINS REVENUE ONLY FOR ORIGINATING PROVIDERS' USE OF AT&T WISCONSIN'S NETWORK.

AT&T Wisconsin's provision of transit service has hardly been an economic windfall for AT&T Wisconsin. Under the terms of its interconnection agreements, AT&T Wisconsin charges the originating providers only for their use of AT&T Wisconsin's facilities. The transit rate does not provide cost recovery of either reciprocal compensation charges for the transport and termination of local traffic or terminating long distance switched access – the jurisdictional variants of charges associated with terminating telecommunications traffic. Instead, AT&T Wisconsin only recovers the costs for functions AT&T Wisconsin performs. Indeed, AT&T Wisconsin's transit charges are only a small fraction of the charges that the terminating ILECs seek to impose on AT&T Wisconsin for terminating transit traffic.

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[5] *See, e.g., Petition for Arbitration of Rates, Terms and Conditions and Related Arrangements with MCImetro Access Transmission Services, Inc., Intermedia Communications LLC, and MCI WorldCom Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Indiana Cause No. 42893-INT-01, Issue Transit at 50-54 (Order dated January 11, 2006) *("MCI Indiana Order*"); *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Texas Docket No. 28821, Intercarrier Compensation Issue SBC-17 at 23 (Arbitration Award dated February 23, 2005) ("*Texas Award*"); *MCImetro Access Transmission Services, Inc., MCI WorldCom Communications, Inc., and Intermedia Communications, Inc. Petition for Arbitration of Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Illinois Docket No. 04-0469, Issue NIM 31 at 118-124 (Arbitration Decision dated November 30, 2004) ("*MCI Illinois Decision*").

AT&T Wisconsin gets no revenue from any source, including retail revenue, in relation to transit traffic other than the charges it imposes on the originating providers for transit service under Commission-approved interconnection agreements. That AT&T Wisconsin's revenue for transit traffic is limited to a small amount of compensation from the originating providers and no retail revenue is consistent with standard practice in the telecommunications industry, where retail providers assume the responsibility of providing "end-to-end" service to their subscribers. *See generally Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 542 n.9 (8th Cir. 1998) ("*SWBT v. FCC*") (explaining that long distance carriers use the "LEC facilities" to provide "end-to-end" service that they "sell as [their] product to [their] own customers"). End-to-end service means that the provider serving and having a billing relationship with the caller is responsible to the caller (its end user), for all segments of the call, from origination to termination (*i.e.*, delivery to the premises of the called party), and are compensated by their subscribers accordingly. *Id.* In other words, the end user originating the third-party originated traffic receives a bill only from his or her retail provider, not from any other carrier involved in the transport or termination of his or her calls. Accordingly, and as discussed in much greater detail in the Argument section of this brief, the provider responsible for paying for the routing and termination of a call is the one whose end user dialed it and who received the retail revenue for the call.

III. EARLY ON, AT&T WISCONSIN DISCLOSED ITS TRANSIT PROVIDER ROLE AND MADE INFORMATION AVAILABLE TO THE TERMINATING LECS REGARDING THE ORIGIN AND VOLUME OF TRANSIT TRAFFIC.

As explained above, AT&T Wisconsin's role with respect to transit traffic was strictly limited to switching transit traffic from the point of AT&T Wisconsin's interconnection with the third-party-originating carriers to the point of AT&T Wisconsin's pre-existing interconnection with the terminating ILECs. When AT&T Wisconsin began to route transit traffic over the preexisting LEC to LEC common trunks, AT&T Wisconsin was careful to make full and early

disclosure regarding the existence of transit traffic, and the need for the terminating ILECs to negotiate separate arrangements with the originating providers. Specifically, in July 1997 AT&T Wisconsin notified all of the managers and CEOs of all interconnected terminating ILECs in Wisconsin – including all of those represented in this proceeding – to inform them that AT&T Wisconsin had concluded reciprocal compensation arrangements with several wireless carriers for the transport and termination of local wireless traffic.[6] After disclosing the fact of these new agreements, AT&T Wisconsin explained as follows:

> Your company will be impacted if you receive terminating traffic from any of the wireless carriers, or the competitive LECs with whom Ameritech[7] has signed reciprocal compensation agreements. Ameritech will only collect compensation for the traffic between Ameritech and the wireless provider, or competitive LEC. Therefore, you will need to negotiate compensation agreements for calls that originate from the wireless provider or competitive LEC and terminate to your end office.

(Id.). AT&T Wisconsin also identified three options in its letter by which the LECs could obtain compensation for the traffic from the third-party-originating carriers. First, AT&T Wisconsin offered to make available "terminating traffic reports" to the terminating ILECs which would identify the minutes of use transited for the originating carriers, thereby allowing the terminating ILECs to bill those carriers directly. In fact, AT&T Wisconsin made good on that offer by providing the terminating LECs with monthly transit reports available to the terminating ILECs for the entire relevant period which identified the source and volume of the third-party-originated traffic that AT&T Wisconsin transited pursuant to its interconnection agreements. In general, however, the terminating ILECs did not use this information to seek out compensation arrangements with the originating providers, choosing instead to lay the problem in the lap of AT&T Wisconsin and the Commission.

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6 The letter AT&T Wisconsin sent is attached under Tab C.

7 Wisconsin Bell, Inc. formerly did business as "Ameritech Wisconsin" or "Ameritech."

A second option AT&T Wisconsin identified in the July 1997 letter was for the LEC "to make arrangements with the wireless [provider] . . . to provide you with the necessary records" from which the LEC could bill the originating carriers. AT&T Wisconsin understands, however, that for most of the period since 1996, few if any of the terminating ILECs exercised this option or even made efforts to contact third-party carriers to seek any compensation arrangements regarding the traffic they originated. A third option identified in AT&T Wisconsin's July 1997 letter was "for the wireless, or competitive LEC to order direct trunks to your office[s]." While this may have happened in some limited circumstances, the general state of affairs, as observed by the FCC in the *Further NPRM*, is that the originating providers prefer to use indirect interconnection to route their calls. Meanwhile, the terminating LECs contented themselves with continuing to bill AT&T Wisconsin for traffic originated by others.

IV. TRANSIT TRAFFIC IS OVERWHELMINGLY LOCAL WIRELESS TRAFFIC.

While the Commission has broadly defined transit traffic for purposes of this proceeding as originating from any number of sources, AT&T Wisconsin's experience is that the great bulk of transit traffic is wireless – that is, transit traffic is originated by wireless carriers, transited through AT&T Wisconsin's network, and sent by the terminating ILECs to their end users. In contrast to wireline calls, the jurisdictional nature of a wireless call (that is, whether it is subject to local reciprocal compensation charges or long distance access charges) does not depend on whether the call crosses local exchange or LATA boundaries. Instead, the local versus long distance nature of a wireless call depends on whether the call is originated and terminated within the same "Major Trading Area" or MTA. For wireless communications, the country is divided into 51 MTAs rather than local exchange areas or LATAs. All of AT&T Wisconsin's tandems

are located within two MTAs in Wisconsin – MTA No. 12 and 20.[8] While there may currently be no technically feasible way for a terminating provider to determine whether a given incoming wireless call is an intraMTA or interMTA wireless call (and that would not change with any of the network or signaling modifications suggested by the terminating LECs earlier in this docket), there can be little dispute that the great bulk of wireless/LEC interconnection agreements on file at the Commission provide that the vast majority, if not the totality, of the traffic subject to those agreements is intraMTA traffic and therefore local. That transit traffic is overwhelmingly local wireless traffic is legally significant in that the terminating provider is not allowed under the Act to charge *any provider* intrastate access charges, since long distance access charges are simply inapplicable to local traffic. As argued below, the terminating provider's recourse to recover costs associated with terminating wireless local traffic is (and was) to enter into reciprocal compensation arrangements with the *originating carriers* for the transport and termination of local traffic, and to determine the appropriate ratio of local to long distance traffic in the course of establishing those agreements – not to bill the transit provider.

V. HISTORICALLY, TERMINATING LECS HAVE DONE LITTLE OR NOTHING TO OBTAIN COMPENSATION FOR TRANSIT TRAFFIC EXCEPT BILL AT&T WISCONSIN UNDER THEIR ACCESS TARIFFS.

Wisconsin ILECs who have terminated transit traffic that was routed through AT&T Wisconsin have known for nearly a decade – or for all of their existence if they have been in operation for a shorter time – that AT&T Wisconsin was transiting the disputed wireless traffic to them, that the traffic was local in its jurisdictional nature, and that separate arrangements between those terminating ILECs and the originators of the traffic were necessary for the

[8] SBC Wisconsin's Eau Claire tandem is located in MTA no. 12, which comprises most of Northwestern Wisconsin and much of Minnesota and the Dakotas. SBC Wisconsin's Appleton, Green Bay, Madison, Milwaukee and Stevens Point tandems are all located within MTA no. 20, which covers the remainder of Wisconsin except for relatively small portions of Southwestern and Southeastern Wisconsin. A map depicting the locations of MTAs in the Midwest region is attached for reference under Tab D.

terminating ILECs to obtain reciprocal compensation (as opposed to access charges) for transport and termination of that traffic on the terminating ILECs' facilities.

Despite that knowledge, and despite AT&T Wisconsin making available the information identifying the originating providers and the relative volume of traffic they originated, terminating LECs in Wisconsin generally opted for a strategy of sitting on their hands and expecting payment from AT&T Wisconsin for the termination of transit traffic under their intrastate long distance access tariffs.[9]

In short, the terminating LECs have generally been unwilling to "play ball" when it comes to the comprehensive regulatory reforms implemented by the Federal Act unless and until doing so is on their own terms, an untenable position which AT&T Wisconsin must not be required to finance either for past or future transactions. Even if the terminating ILECs perceive the federal regulatory scheme of indirect interconnection and reciprocal compensation to be unfair, that is not a shortcoming for which AT&T Wisconsin must be made to pay.

ARGUMENT

I. INCUMBENT LOCAL EXCHANGE CARRIERS MAY NOT BILL TRANSIT PROVIDERS FOR THE TERMINATION OF TRANSIT TRAFFIC.[10]

The principle that the originating carrier pays for costs of termination is one of long standing that is articulated repeatedly in relevant FCC and court decisions. Under this principle, a transit provider is not responsible for paying terminating carriers, no matter what the jurisdictional classification of the traffic. In addition, where (as here) the transit traffic is local

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[9] A few terminating providers filed "wireless tariffs." These tariffs are nothing more than access tariffs and therefore an illegitimate basis under federal for billing *any* provider for wireless traffic, much less AT&T Wisconsin.

[10] The organization of this brief follows the order of the four issues the Commission identified in its February 2, 2006 Amended Notice. Subsequent to the issuance of that notice, Telecommunications Division Staff issued a "*non-binding*" (Staff emphasis in original) list of "sub-issues" that Staff was encouraging parties to brief. AT&T Wisconsin does not organize this brief along the lines of those sub-issues, but does attempt to address each of them.

wireless traffic, federal law goes further to specifically preempt the application of access charges on *any* provider. Case law also forbids terminating providers to employ alternative theories of recovery to circumvent these principles, which for retroactive applications would also be prohibited under the filed rate doctrine. Rather, charges relating to the termination of traffic are to be billed to the originating carrier in the form of reciprocal compensation arrangements developed through the interconnection agreement negotiation and arbitration provisions of the Act.

A. Federal Law Instructs Against Imposition Of Termination Charges On Transit Providers Generally, Regardless Of The Jurisdictional Nature Of The Traffic.

Regardless of the jurisdictional nature of transit traffic, federal law instructs that originating providers, not the transit providers are subject to the charges for terminating transit traffic. Existing law on who can be billed for transit traffic is best summed up in the FCC's 2001 notice of proposed rulemaking to consider comprehensive changes to its "intercarrier compensation" regulations. *In re Developing a Unified Intercarrier Compensation Regime (Notice of Proposed Rulemaking)*, 16 FCC Rcd. 9610, ¶ 91 n.148) (Apr. 19, 2001). There, the FCC explained that where there is an indirect interconnection between the originating provider and terminating provider, "[t]he [originating] carrier pays the ILEC [the transiting carrier in the FCC's example] for switching and transport." *Id*. (emphasis added). The FCC explained that "the rural LEC can seek recovery of its termination costs … by *asking* the ILEC to charge the [originating] carrier," but noted that "[i]ncreasingly, the large ILEC is unwilling to bill for the rural carrier." *Id*. (emphasis added).[11] This language confirms that under existing standards, the

[11] *See also In re Petition Regarding Interconnection Disputes With Verizon-Virginia, Inc.*, 17 FCC Rcd. 27039, ¶ 541 (2002) ("*FCC Virginia Arbitration Order*").

transiting carrier has the option, but not the obligation, to act as billing agent for and compensate the terminating carrier.

A year later, the FCC reiterated the limit on transit provider obligations in its *Texcom* decisions.[12] At issue were calls that originated on the networks of third-party carriers, transited the network of Defendant GTE North ("GTE"), and terminated on the network of Complainant, Answer Indiana, a wireless provider. *Texcom Order*, ¶ 1. In denying Answer Indiana's complaint, the FCC discussed the application of its transport and termination rules to the transit traffic situation:

> 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.*** Thus, through reciprocal compensation payments, the cost of delivering LEC-originated traffic is borne by the persons responsible for those calls, the LEC's customers. As we stated in the *Local Competition Order*, "[t]he local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call." … In the case of third-party originated traffic, however, the only relationship between the [transiting carrier's] customers and the call is the fact that the call traverses the [transiting carrier's] network on its way to the terminating carrier. ***Where the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic*** from a CLEC's network to that of a CMRS carrier like Answer Indiana. Thus, the originating third party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network.

Texcom Order, ¶ 6 (emphasis added). On reconsideration, the FCC reiterated that a transit provider "may charge a terminating carrier for the portion of facilities used to deliver transiting traffic to the terminating carrier. Thus, [the transit provider] may charge [the terminating carrier] for the cost of the portion of [the transit carriers' facilities] used for transiting traffic, and [the terminating carrier] may seek reimbursement of these costs from the originating carriers through reciprocal compensation."[13] But in no instance did the FCC conclude it would be appropriate for

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[12] *Texcom, Inc., v. Bell Atlantic Corp.*, 16 FCC Rcd. 21493 (2001) ("*Texcom Order*"); *Texcom Inc. v. Bell Atlantic Corp.*, 17 FCC Rcd. 6275 (2002) (Order on Reconsideration) ("*Texcom Reconsideration Order*").

[13] *Texcom Reconsideration Order*, 17 FCC Rcd. 6275, ¶ 4 (citing 47 U.S.C. § 251(b)(5) and 47 C.F.R. § 51.702).

the terminating carrier to recover charges from the transit provider associated with terminating the traffic. Indeed, the FCC emphasized the voluntary nature of transit provider participation in the billing and payment of such charges, noting that "carriers are free to *negotiate* different arrangements for the costs associated with indirect interconnection."[14]

Similarly, in a decision issuing from an arbitration of an interconnection agreement, the FCC determined the appropriate compensation mechanism for calls that originate on the network of a third-party LEC, transit Verizon's network, and terminate to an AT&T customer. *FCC Virginia Arbitration Order*, 17 FCC Rcd. 27039, ¶ 541 (2002).[15] Specifically, AT&T "propose[d] that Verizon treat all such calls as Verizon's own traffic." (*Id.*) The FCC, however, rejected AT&T's arguments, agreeing with Verizon that "when a third-party LEC places a call that terminates to [an AT&T customer], AT&T must bill the [originating] third-party LEC directly." *Id.*, ¶ 544. The FCC specifically cited the FCC's *Texcom* decisions governing compensation arrangements when traffic originated by third-party carriers "transits the network of an incumbent or other carrier, such as Verizon." *Id.*, ¶ 544 and n.1807.

The FCC thus instructs that under cost causation principles applicable to intercarrier compensation generally, transit providers do not pay termination-related charges because they are not the source of cost causation. And it does not appear that the FCC is likely to change this view. In the *Further NPRM*, the FCC has asked parties to comment on a range of alternatives for billing and interconnection regarding transit traffic. The FCC described the transit traffic issue as follows:

> It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly

[14] *Id.*, ¶ 4 n. 12 (citing 47 U.S.C. § 252(a)(1)) (emphasis added).

[15] The state commission for Virginia had declined to conduct the arbitration. *Id.*, ¶ 1. In that circumstance, the 1996 Act requires the FCC to conduct the arbitration. *See* 47 U.S.C. § 252(e)(5).

> interconnected may have no efficient means by which to route traffic between their respective networks.
>
> Moreover, it appears that indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic. Competitive LECs and CMRS carriers claim that indirect interconnection via the incumbent LEC is an efficient form of interconnection where traffic levels do not justify establishing costly direct connections. As [pre-merger] AT&T explains, "transiting lowers barriers to entry because two carriers avoid having to incur the costs of constructing the dedicated facilities necessary to link their networks directly." This conclusion appears to be supported by the widespread use of transiting arrangements.

In re Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33, ¶¶ 125-126 (March 3, 2005) ("*Further NPRM*"). Acknowledging rural ILECs' concerns about compensation for the termination of the traffic sent over these indirect interconnections, the FCC solicited comments on a specific range of solutions:

> We recognize that a formal negotiation and arbitration process could impose significant burdens on the parties. One possible alternative to the negotiation and arbitration process would be to establish national terms and rates for LEC-CMRS interconnection, perhaps available only where traffic volume between the two carriers is *de minimis*. We seek comment on the merits and drawbacks of this approach, on whether it would provide a better option than the section 252 process, and on how the terms and rates would be determined and applied. Alternatively, we seek comment on whether we can and should authorize states to establish uniform terms or master agreements for interconnection between CMRS providers and small incumbent LECs within the state. We also invite parties to comment on measures or procedures we could adopt to make the negotiation and arbitration process more efficient, such as measures to promote the consolidation of cases.

Further NPRM, ¶ 140. Conspicuously absent from the FCC's set of proposed solutions is any which would require the transit provider to pay for the termination of transit traffic. In a nutshell, the FCC is interested in a range of solutions that would facilitate efficient intercarrier compensation arrangements ***between the providers who originate and terminate transit traffic***. As seen next, the FCC's approach is consistent with this Commission's approach to transit traffic, as reflected in its interconnection arbitration decisions involving AT&T Wisconsin.

B. Federal Law Preempts Recovery of Access Charges for Local Wireless Traffic.

Federal law not only instructs that transit providers are generally excused from paying the termination charges relating to transit traffic, but goes further to specifically preempt the application of intrastate access charges to the local wireless traffic that comprises the vast bulk of transit traffic in Wisconsin. Rather, federal law provides that such traffic is exclusively subject to reciprocal compensation between the originating and terminating carriers, to be worked out in negotiated and arbitrated interconnection agreements under the Federal Act. In short, federal law preempts terminating LECs from imposing the charges under their access tariffs or otherwise on any provider, including a transit provider, in the absence of a valid reciprocal compensation tariff or interconnection agreement.

1. The Federal Preemption Standard

The preemption doctrine arises from the Supremacy Clause of the United States Constitution which states that "the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. "Pursuant to this authority, Congress may preempt state law." *Chambers v. Osteonics Corp.*, 109 F.3d 1243, 1246 (7th Cir. 1997). Preemption can occur when Congress expressly declares its intention to preempt state regulation through a direct statement in the text of federal law. *Fifth Third Bank v. CSX Corp.*, 415 F.3d 741, 745-46 (7th Cir. 2005). Preemption can also occur by implication in the "structure and purpose" of federal law showing Congress' intent to preempt state law. *Id.*

Finally, preemption can occur by an actual conflict between state and federal law. *Id.* at 746. Preemption of this nature occurs when it is impossible for a private party to comply with

both federal and state law requirements. *Id*. In this case, there is no means by which terminating ILECs can pursue their claim for intrastate access charges from AT&T Wisconsin, while still honoring the spirit and letter of existing federal law. Instead, as relates to wireless transit traffic, the tariffs upon which the terminating ILECs would rely to impose access charges on AT&T Wisconsin are impliedly preempted, because the FCC has expressly determined that intra-MTA wireless-originated calls are jurisdictionally local, and thus are not subject to tariffed access charges, whether intrastate or interstate.

2. The Federal Act imposes indirect interconnection duties and requires originating and terminating carriers to pay one another for the exchange of local traffic.

The Federal Act imposes on telecommunications carriers a number of duties and prescribes a detailed process for their implementation and enforcement. The FCC is charged with implementing and enforcing the provisions of the Federal Act, and FCC regulations and decisions are binding on the industry and state commissions. *See generally AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999). Most fundamentally, the Federal Act requires all carriers to "interconnect directly or indirectly," with other carriers. 47 U.S.C. § 251(a)(1). The Federal Act also imposes a "dut[y]" on all LECs "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." *See* 47 U.S.C. § 251(b)(5). As one court explained, "'reciprocal compensation' means that when a customer of one [LEC] calls a customer of a different [LEC] who is within the same *local* calling area, the first carrier pays the second carrier for completing, or 'terminating,' the call."[16]

The Federal Act also establishes a system of negotiations and arbitrations in order to facilitate voluntary agreements between competing carriers to implement its substantive requirements. Under the Federal Act, "all [LECs] are required to establish reciprocal

[16] *Pacific Bell v. Pac-West Telecomm., Inc.*, 325 F.3d 1114, 1119-20 (9th Cir. 2003) (emphasis added).

compensation arrangements" *in their interconnection agreements*.[17] Both the incumbent local exchange carrier ("ILEC") and the other carrier "have a duty to negotiate in good faith the terms and conditions of an agreement that accomplishes the Act's goals."[18] If the parties fail to reach an agreement through voluntary negotiations, either party may petition the relevant state public utility commission to arbitrate and resolve any open issue. The final agreement, whether negotiated or arbitrated, must be approved by the state public utility commission.[19]

As held by several courts, the "comprehensive" process set out in sections 251 and 252 is the "exclusive" means for establishing arrangements contemplated by the Act's substantive provisions.[20] Neither carriers nor regulatory agencies may, through a tariff filing, "bypass" and "ignore" the "detailed process for interconnection set out by Congress" in the Act.[21] That rule applies with even greater force to "unilateral" tariff filings that have not been ordered by the agency.[22]

3. The FCC's Local Competition Order declared that the MTA is the local calling area for wireless traffic.

In August 1996, six months following the passage of the Federal Act, the FCC released its First Report and Order in *In re Local Competition and Interconnection Docket*, FCC No. 96-325, 11 FCC Rcd. 15499 (1996) (the "*Local Competition Order*"). Among the many issues addressed by the FCC was the Act's applicability to wireless carriers. *Id*.

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17 *Id*. at 1119 (quotations and citations omitted) (emphasis added).

18 *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 792 (8th Cir. 1997) ("*Iowa Utils. Bd.*") (citing 47 U.S.C. §§ 252(c)(1), 252(a)(1)).

19 *Id*. (citing 47 U.S.C. §§ 252(b), 252(e)(1)).

20 *Verizon North, Inc. v. Strand*, 309 F.3d 935, 939 (6th Cir. 2002); *see also MCI Telecomms. Corp. v. GTE Northwest, Inc.*, 41 F. Supp. 2d 1157, 1178 (D. Or. 1999); *see generally Pacific Bell*, 325 F.3d at 1127 ("[T]he point of § 252 is to replace the comprehensive state and federal regulatory scheme with a more market-driven system that is self-regulated through negotiated interconnection agreements"); *Iowa Utils. Bd.*, 120 F.3d at 801 (noting "Act's design to promote negotiated binding agreements").

21 *Verizon North*, 309 F.3d at 941; *Wis. Bell, Inc. v. Bie*, 340 F.3d 441 (7th Cir. 2003)*; See also TSR Wireless, LLC v. U.S. West Commc'ns, Inc.*, 15 FCC Rcd. 11166, ¶ 29 (2000) (1996 Act and FCC's implementing regulations apply "regardless [of any inconsistent] federal or state tariff").

22 *See also Verizon North Inc. v. Strand*, 367 F.3d 577, 584-85 (6th Cir. 2004) ("unilateral" tariff filing is "a fist slamming down on the [negotiating] scales").

In particular, the *Local Competition Order* addressed charges associated with the transport and termination of wireless traffic, and the role of interconnection agreements in establishing those charges. In its *Local Competition Order*, then, the FCC had to determine which wireless calls were "local" calls subject to "reciprocal compensation" for "transport and termination" and those wireless calls that were "long-distance", the latter of which had historically been subject to "access" charges. *Id*., ¶ 1033. The FCC concluded in paragraph 1034 of the *Local Competition Order* that "section 251 (b)(5) reciprocal compensation," and not tariffed "access charges," like the terminating ILECs would apply "to traffic that originates and terminates within a local area, as defined [in] paragraph [1035 of the *Order*]." In contrast, traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges (*see Local Competition Order*, ¶ 1034), payable by the long distance carriers using the LEC's networks to provide the "end to end" service that they "sell[ ] as [their] product to [their] own customers" (*Southwestern Bell*, 153 F.3d at 542 n.9).[23]

The FCC then "define[d] the local service area for calls to or from a [wireless] network for the purposes of applying" sections 251 and 252, including the reciprocal compensation provisions of section 251(b)(5). *Local Competition Order*, 11 FCC Rcd. at ¶ 1036. The FCC determined that the MTA serves as the most appropriate definition for local service area for wireless traffic for these purposes. *Id*. It stated as follows:

> 1036. On the other hand, in light of this Commission's exclusive authority to define the authorized license areas of wireless carriers, we will define the local service area for calls to or from a [wireless] network for the purposes of applying reciprocal compensation obligations under section 251(b)(5). Different types of wireless carriers have different FCC-authorized licensed territories, the largest of which is the "Major Trading Area" (MTA). Because wireless licensed territories are federally authorized, and vary in size, we conclude that the largest FCC-authorized wireless license territory (i.e., MTA) serves as the most appropriate definition for local service

[23] The Eighth Circuit has affirmed the FCC's determinations to require LECs to charge rates for the use of their networks to transport and terminate "local" calls that differ from the rates they are permitted to charge for the transport and termination of "long distance" calls. *Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1073 (8th Cir. 1997).

> area for [wireless] traffic for purposes of reciprocal compensation under section 251(b)(5) as it avoids creating artificial distinctions between [wireless] providers. ***Accordingly, traffic to or from a [wireless] network that originates and terminates within the same MTA is subject to transport and termination rates under section 251(b)(5), rather than interstate and intrastate access charges.***

Id., ¶ 1036 (emphasis added); see also Tr., pp. 91, 2240-41.

The FCC again stressed the regulatory scheme for charges pertaining to local wireless traffic as follows:

> 1043. As noted above, [wireless] providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. ***We reiterate that traffic between an incumbent LEC and a [wireless] network that originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section* 251 *(b)* (5), *rather than interstate and intrastate access charges:***. Under our existing practice, most traffic between LECs and [wireless] providers is not subject to interstate access charges unless it is carried by an IXC, with the exception of certain interstate interexchange service provided by [wireless] carriers, such as some "roaming" traffic that transits incumbent LECs' switching facilities, which is subject to interstate access charges. Based on our authority under section 251 (g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and [wireless] providers so that [wireless] providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.

Id., ¶ 1043 (emphasis added).

The FCC has also codified rules prohibiting the imposition of access charges on intraMTA wireless calls. For example, 47 CFR § 51.701(b)(2) defines local wireless traffic as "traffic between a LEC and a [wireless] provider that, at the beginning of the call, originates and terminates within the same Major Trading Area." Consistent with this definition, the FCC held that local wireless traffic is "subject to transport and termination rates under section 251(b)(5) [reciprocal compensation], rather than interstate ***and intrastate*** access charges." *Local Competition Order*, 11 FCC Rcd. at ¶ 1043 (emphasis added). Despite the FCC's clear admonition, the terminating ILECs have for nearly a decade effectively ignored the FCC's rules and prior orders by continuing to bill AT&T Wisconsin their intrastate access charges for such

traffic, rather than local traffic subject to reciprocal compensation to be paid by the originating carrier according to terms arrived at through the negotiation or arbitration under the Act.

4. The Exclusive Means For Establishing Reciprocal Compensation Arrangements Is The Negotiation And Arbitration Process

In order to effectuate the goals of the Federal Act, the terminating ILECs' only recourse to compensation for the third-party-originated traffic was to enter into reciprocal compensation arrangements with the originating providers through negotiation if not arbitration. The plain reading of section 251 (b) of the Act clearly shows that *all* local exchange carriers, including *rural* and wireless carriers and CLECs, have a duty to enter into reciprocal compensation arrangements for the exchange of local traffic. 47 U.S.C. § 251(b)(5). Second, the FCC *Local Competition Order* stated that since all wireless carriers offer telecommunications, LECs are obligated, pursuant to section 251(b)(5), to enter into reciprocal compensation arrangements with all wireless carriers for the transport and termination of traffic on each other's networks. *Local Competition Order*, 11 FCC Rcd. at ¶ 1008. The FCC stated:

> Under section 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of 'telecommunications.' [Citation to 47 U.S.C., § 251(b)(5).] Under section 3(43), "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." [Citation to 47 U.S.C., § 153(43).] All [wireless] providers offer telecommunications. Accordingly, LECs are obligated, pursuant to section 251 (b)(5) (and the corresponding pricing standards of section 252(d)(2)), to enter into reciprocal compensation arrangements with all [wireless] providers, including paging providers, for the transport and termination of traffic on each other's networks, pursuant to the rules governing reciprocal compensation set forth in Section XI.B., below.

Id. (footnote omitted).

Nowhere in the *Local Competition Order* did the FCC even hint that it intended to exempt any terminating ILECs (including rural ILECs) from being required to enter into reciprocal compensation arrangements simply because the traffic is transited through an indirect

interconnection. Rather, the FCC has explained that reciprocal compensation obligations apply to all local traffic (*i.e.*, all wireless traffic within an MTA) transmitted between LECs and wireless carriers. Specifically, the FCC stated:

> Section 251 (b)(5) obligates LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic. Although section 252(b)(5) does not explicitly state to whom the LEC's obligation runs, we find that LECs have a duty to establish reciprocal compensation arrangements with respect to local traffic originated by or terminating to any telecommunications carriers. [Wireless] providers are telecommunications carriers and, thus, ***LECs' reciprocal compensation obligations under section 251(b)(5) apply to all local traffic transmitted between LECs and [wireless] providers***.

Id., ¶ 1041 (citation omitted) (emphasis added).

* * *

In sum, the Federal Act the FCC's implementing regulations conclusively subject the termination of local wireless calls that originate and terminate within the same local service area (MTA) to reciprocal compensation set forth in interconnection agreements, not access charges set forth in tariffs. *See Local Competition Order*, 11 FCC Rcd. at ¶ 1036. Section 251(b)(5) of the Act imposes a duty on all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251(b)(5). As a matter of federal law, telecommunications carriers cannot impose access charges pursuant to filed tariffs for terminating intraMTA traffic. But that is precisely what the terminating ILECs have done for most of the period since the Federal Act was implemented. That doing so was unlawful and preempted by federal law is something that AT&T Wisconsin made plain to the terminating ILECs nearly ten years ago.

5. The FCC's *T-Mobile* decision reaffirms that access charges do not apply, a conclusion that applies to the period both before and after the *T-Mobile* decision.

On the question of which providers the terminating ILECs may properly bill for transit traffic, the FCC's recent "*T-Mobile*" order is dispositive. *In re Developing a Unified Intercarrier Compensation Regime*; *T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, FCC* Docket No. 01-92, 2005 FCC LEXIS 1212, ¶ 12 (2005) (the "*T-Mobile Order*"). First, the *T-Mobile Order* fully forecloses any claim by the terminating ILECs claim that they are entitled to compensation under their intrastate access tariffs from AT&T Wisconsin or any other transit provider for terminating wireless traffic. Specifically, the FCC explains that from the time the Federal Act was passed, 47 U.S.C. 251(b)(5) has obligated LECs (including all of the terminating ILECs participating in this proceeding here) to establish reciprocal compensation arrangements for the exchange of traffic between LECs and CMRS providers. *T-Mobile Order*, ¶ 3. Whatever form those arrangements might take, the FCC is clear that wireless traffic is "non-access" traffic that is subject to reciprocal compensation under section 251(b) (5), "rather than interstate or intrastate access charges." *Id.* (citing *Local Competition First Report and Order*, 11 FCC Rcd at 16014, ¶ 1036). Thus, the *T-Mobile Order* eliminates any claim for compensation under the terminating ILECs' intrastate access tariff, including any other tariff under which a terminating ILEC seeks access charge-based compensation from *any party* for the transport and termination of wireless traffic, including the Chequamegon CMRS tariff that is the subject of AT&T Wisconsin's complaint in this proceeding.

Second, like the numerous cases discussed in Section I.B.6 below, the *T-Mobile Order* correctly proceeds from the principle that the party responsible for paying the terminating ILECs

the appropriate rate is the provider who originates the traffic, *despite* claims by small LECs in state fora that the transiting providers bear responsibility. See *T-Mobile Order,* ¶¶ 6-7. A third and equally important aspect of the *T-Mobile Order* is its implementation of new FCC rules clarifying that wireless providers are subject to the negotiation and arbitration provisions of the 1996 Act. The new rules "ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today" *Id.* at ¶ 16. The terminating ILECs may now "request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act." *Id.* A CMRS provider receiving such a request "must negotiate in good faith and must, if requested, submit to arbitration by the state commission." *Id*. These new rules swept away any contention that the terminating ILECs' are unable to force the wireless providers to the table to negotiate interconnection and compensation arrangements, or that the terminating ILECs therefore need recourse to transit providers like AT&T Wisconsin to determine traffic volumes for billing purposes or to obtain payment for use of the terminating ILECs' networks. The FCC's new rules now empower the terminating ILECs to arbitrate the terms of interconnection, billing arrangements and rates with wireless providers directly.

In short, the *T-Mobile Order* confirms what AT&T Wisconsin has asserted since 1997: (1) that the party responsible for compensating a terminating ILEC for wireless carrier-originated traffic terminated on the terminating ILEC's system is the party that originates the traffic, not the provider who transits it; (2) that the appropriate compensation regime for the termination of any non-access traffic, including wireless-originated traffic, is reciprocal compensation pursuant to 47 U.S.C. § 251(b)(5), not access charges or never-approved "wireless tariffs" which are nothing more than disguised access charges, and; (3) that the process for putting those arrangements in

place is the negotiation/arbitration process under the Federal Act. The solution is for the terminating LECs to negotiate compensation arrangements with those providers from whom they expect payment.

The terminating LECs may protest that because they could not *require* a CMRS provider to negotiate an interconnection agreement until the FCC issued the *T-Mobile* decision, it should be allowed to charge AT&T Wisconsin for terminating transit traffic under intrastate access tariffs. The extent to which the terminating ILECs had the leverage to force arbitration under the Federal Act is not legally relevant, however, to the question of ***which*** providers terminating ILECs may properly bill for the termination of transit traffic. That the FCC may not originally have seen fit to expressly articulate a terminating LEC's ability to compel negotiation and arbitration of those arrangements does nothing to mitigate the duty that they and all other carriers have had since 1996 to interconnect directly or indirectly and to enter into reciprocal compensation arrangements for the termination of local traffic. In short, the asserted lack of an ability on the terminating ILECs' part to compel arbitration prior to the *T-Mobile Order* is nothing more than a complaint about the lack of a pre-ordained set of tools to force the conclusion of such arrangements. It is not a basis to claim that in the absence of such tools, transit providers or anyone else is required to pay access charges to the terminating ILECs for the termination of transit traffic sent prior to the FCC's issuance of the *T-Mobile Order*. Indeed, both state and federal courts have held that the *T-Mobile Order* does not allow for imposing charges under access tariffs for transit traffic exchanged prior to the *T-Mobile Order*, despite the asserted absence of an ability on behalf of the terminating ILECs to force arbitration. *See generally State ex rel. Alma Tel. Co. v. PSC*, 183 S.W.3d 575 (Mo. 2006); *Iowa Network Servs.*,

Inc. v. Qwest Corp., 385 F. Supp. 2d 850, 902 (S.D. Iowa 2005)(holding that the *T-Mobile Order* represents "merely a clarification of existing standards, and not a change in the law").

Given *T-Mobile* and the court cases discussed in Section I.B.6 below, the circumstances in which it is appropriate for a terminating ILEC to bill for the termination of wireless transit traffic pursuant to tariff are extremely narrow for the period before the *T-Mobile Order* and nonexistent for the period after the *T-Mobile Order* was issued. For the "pre-*T-Mobile*" period, only valid and effective *reciprocal compensation* tariffs could have been used, and only then to charge the *originating provider* for the transport and termination of local traffic.

AT&T Wisconsin is unaware of any such tariffs in Wisconsin. While some terminating LECs submitted "wireless tariffs" which purport to apply to transited CMRS traffic and which hold the transit or originating provider liable at the terminating ILECs' option, those tariffs do not qualify. First, AT&T Wisconsin is unaware that these tariffs ever became effective in terms of obtaining any necessary approval or filing by the Commission. Even if they were properly filed or approved, these "wireless tariffs" were nothing but access tariffs in disguise, in that they simply appear to have adopted the access charges and applied them to CMRS transit traffic. A perfect example of these thinly disguised access charges is Chequamegon Communication Cooperative's "wireless tariff," attached hereto under Tab E, which imposes a "transport and termination" charge of a whopping $.08 per minute of use, an amount roughly equivalent to the per-minute rate that Chequamegon charges under its access tariff, and one that could never be supported as a reciprocal compensation charge under the cost-based pricing requirements of the Federal Act. Third, no terminating LEC except Chequamegon has ever billed AT&T Wisconsin under their "wireless tariffs," and even Chequamegon stopped billing under that tariff after the FCC issued the *T-Mobile Order*. For the period following *T-Mobile*, terminating ILECs' use of

tariffs to charge reciprocal compensation would be categorically improper. Instead, during the period while arrangements are being negotiated or arbitrated, the terminating ILEC may implement the interim pricing provisions for reciprocal compensation set forth in 47 C.F.R. § 51.715. *See T-Mobile Order*, ¶ 16 & n. 65; 47 C.F.R. § 51.715(a).

6. Courts Applying The Federal Act's Mandatory Standards Have Uniformly Held That Transit Providers Are Not Liable For Access Charges For Wireless-Originated Traffic.

Several recent cases have been presented to state and federal courts – most arising out of state commission proceedings – in which terminating LECs have sought recovery of access charges from the transit provider or otherwise for local wireless traffic. In each and every instance, the courts have rejected application of access charges on the transit provider. *See, e.g.*, *WWC License, L.L.C. v. Boyle et. al.*, No. 4:03CV3393, 2005 U.S. Dist. LEXIS 17201, at *9 (D. Neb. Jan. 20, 2005)(unpublished) (holding that under the FCC's decisions, originating carriers must pay compensation to terminating carriers under the reciprocal compensation provisions of the 1996 Act "whether or not the call was delivered via an intermediate carrier"); *Union Tel. Co. v. Qwest Corp.*, No. 02-CV-209D, 2004 U.S. Dist. LEXIS 28417, at *36, 49 (D. Wyo. May 11, 2004) (unpublished) (finding that "the termination of wireless calls that originate and terminate within the same local service area . . . are subject to reciprocal compensation . . . not access charges set forth in tariffs . . . regardless of whether the traffic originates on or transits [the networks of other carriers] and irrespective of whether that traffic terminates in Wyoming, Utah, or Colorado"); *3 Rivers Tel. Coop., Inc. v. U.S. West Commc'ns, Inc.*, No. CV 99-80-GF-CSO, 2003 U.S. Dist. LEXIS 24871, at **65, 68 (D. Mont. Aug. 22, 2003) (unpublished) (holding that traffic between a local exchange carrier and a wireless provider that originates and terminates within the same major trading area is local traffic and "is not subject to terminating access charges, but rather to reciprocal compensation . . . regardless of whether it flows over the

facilities of other carriers along the way to termination"); *In re Complaint of Union Tel. Co.*, No. 05-054-01 (Utah P.S.C. September 28, 2005) (holding that Union Telephone was not entitled to tariffed access charges in lieu of reciprocal compensation where Union Telephone did not have an interconnection agreement in place during the relevant time period); *In re Mark Twain Rural Tel. Co.'s Proposed Tariff to Introduce Its Wireless Termination Serv.*, No. TT-2001-139, 2001 Mo. PSC LEXIS 760, *22, 10 Mo. P.S.C.3d 29 (Feb. 8, 2001) (noting that "intraMTA traffic to and from a wireless carrier is local traffic and that local traffic is not properly subject to switched access charges").

a. Iowa Network Services, Inc. v. Qwest Corporation and RIITA v. Iowa Utilities Board

In August 2005, the United States District Court for the Southern District of Iowa issued two decisions directly addressing the question of whether a terminating ILEC may bill a transit provider for the termination of transit traffic. *Iowa Network Servs., Inc. v. Qwest Corp.*, 385 F. Supp. 2d 850 (S.D. Iowa 2005) ("*Qwest*"); *Rural Iowa Independent Tel. Ass'n v. Iowa Utils. Bd.*, 385 F. Supp. 2d 797 (S.D. Iowa 2005)) ("*RIITA*"). These cases are companion cases arising out of Iowa Utilities Board proceedings, in which the IUB concluded that transit provider *Qwest* was not liable under any theory for paying termination related charges to the terminating ILECs for wireless transit traffic.[24]

In *Qwest*, the plaintiff INS – an entity owned by terminating rural ILECs, including those in Rural Iowa Independent Telephone Association – sought payment of access charges from Qwest for transit traffic that was originated by wireless carriers and transited by Qwest to the plaintiff over what the plaintiff asserted were trunks whose purpose was only to transport Qwest-

[24] Both are entirely consistent in their holdings and address similar issues, although the court in *Qwest* more broadly interprets federal law on the transit issue. For this reason and for efficiency, AT&T Wisconsin focuses on the court's decision in *Qwest.*

originated toll traffic. Importantly, the litigants in *Qwest* did not agree that the third-party traffic at issue was limited to intraMTA wireless traffic. Instead, INS maintained that the "relative proportion" of wireless calls compared with other third-party calls was unknown and that Qwest had simply failed to prove that the third-party traffic was exclusively wireless intra-MTA traffic. *See* 385 F. Supp. 2d at 870.

Like AT&T Wisconsin, Qwest's network collected both wireline and wireless traffic and directed this traffic to INS. *See id.* at 857. Qwest commingled all of this traffic before transmitting it to INS. *See id.* As a result, it was undisputed that the identity of the wireless or other originating carrier was not readily ascertainable by INS' equipment. *See id.* at 857-58. Seizing on these facts, INS relied on its intrastate tariff[25] as the basis for its authority to recover access charges from Qwest for third-party wireless traffic. *See id.* at 855. Alternatively, INS sought recovery of access charges under a theory of unjust enrichment. *See id*.

In granting Qwest's motion for summary judgment, the court rejected both of INS' claims. As to INS' tariff claims, the *Qwest* court determined that the third-party traffic at issue in the litigation was local, as supported by both "the 1996 Act and the FCC decisions implementing and explaining the Act." *Id.* at 870. Moreover, the court determined that the local nature of the traffic "holds regardless of whether transiting carriers are involved in the transportation of the call from the originating customer to the end user being called." *Id*.

Having determined that third-party traffic was local, the court went on to hold that Qwest was not liable for access charges because access charges are not available for local traffic. *See id.* at 878. Instead, the Court held that local traffic is subject only to reciprocal compensation, which is determined exclusively by negotiations between the originating and terminating carriers. *See id.* at 890. Accordingly, INS had no claim against Qwest for access charges

[25] INS also claimed charges under its interstate access tariff filed at the FCC.

stemming from third-party traffic. It is noteworthy that the court was not swayed by INS' claim that there was no proof that all traffic was wireless intra-MTA. Instead, the court stated in relevant part as follows:

> [T]he exact nature of each of the calls at issue is not dispositive of Qwest's motion for summary judgment. While a factual dispute is apparent, this does not generate a *material* issue of fact if the law requires INS to proceed through the process of negotiation and arbitration, rather than pursuant to tariffs or equitable remedies, before a legally supportable claim may be advanced in this Court.

See id. at 871.

The *Qwest* court dispensed with INS' equitable claim for unjust enrichment by finding that INS had an obligation to negotiate and arbitrate interconnection agreements for reciprocal compensation with the originating carrier, and thus could not recover under a theory of unjust enrichment. The court held "[i]t is well-settled that a claim for unjust enrichment must be dismissed if applicable federal or state regulation provides a compensation mechanism to the plaintiff." *See id.* at 905. If it were otherwise, the court noted, then INS would be in a position to bypass the very regulatory scheme, described at length above, that has been mandated by the Act and the FCC. *See id* at 909.

b. 3 Rivers Telephone Coop., Inc. v. US WEST Communications, Inc.

Similarly in *3 Rivers Telephone Coop., Inc. v. US WEST Communications, Inc.,* No. CV 99-80-GF-CSO, 2003 U.S. Dist. LEXIS 24871 (D. Mont. Aug. 22, 2003), the court found that U.S. West (now known as Qwest), a LEC and long distance telecommunications provider, was not liable for terminating access charges on wireless traffic that originated and terminated within the same MTA. *3 Rivers*, 2003 U.S. Dist. LEXIS 24871. Qwest argued that if it was not the carrier originating the traffic, it should not be liable for terminating carrier access charges. *Id.*

The plaintiffs sued Qwest, alleging that Qwest breached access tariffs by failing to pay terminating long distance access charges that it transported to plaintiffs for delivery to plaintiffs' subscribers. The plaintiffs also claimed unjust enrichment. Plaintiffs made claim that Qwest was liable for the access charges under the applicable tariffs regardless of whether the traffic originated as a wireline or wireless call. *Id.* at *13-14. Qwest, however, maintained that as a mere transit provider, it could not be liable for terminating access charges that its own subscribers did not originate. *Id.* at *14.

The court found that Qwest was not liable for paying plaintiffs' terminating carrier access charges under the tariffs on wireless traffic that originated and terminated in the same MTA. *Id.* at *68-69. In interpreting the applicable provisions of the Act and the *Local Competition Order*, the court found that traffic between a LEC and a wireless provider that originates and terminates in the same MTA is local traffic and is subject to reciprocal compensation, not terminating access charges. *Id.* at *65. The court ruled that federal law preempted the tariffs to the "extent that the reciprocal compensation scheme applies to [local wireless] traffic that originates and terminates in the same MTA, regardless of whether it flows over the facilities of other carriers along the way to termination." *Id.* at *68. As such, plaintiffs were not entitled to recovery for this type of traffic under its long distance access charge tariffs. *Id.* at *68-69.

c. Union Telephone Company v. Qwest Corporation

The District Court of Wyoming's decision in *Union Telephone Co. v. Qwest Corp.*, No. 02-CV-209-D, 2004 U.S. Dist. LEXIS 28417 (D. Wyo. May 11, 2004) also addressed issues similar to those in this proceeding. The dispute in that case was whether Qwest was required to pay Union Telephone terminating intrastate access charges set forth in intrastate tariffs that Union had filed with the state public utility commissions in Wyoming, Utah and Colorado. *Id.* at *15. Union Telephone complained that Qwest was providing and profiting from long distance

services which allowed Qwest's long distance customers to originate calls terminated in Union's local service territory. *Id.* Pursuant to various legal theories, including breach of tariff requirements and unjust enrichment, Union Telephone claimed that it was entitled to compensation from Qwest for its intrastate tariffed terminating access services. *Id.* at *15-16. Qwest sought summary judgment on all of Union Telephone's claims.

Two aspects of the court's decision in *Union Telephone* apply directly to this docket. First, the court held that the filed rate doctrine prevented Union Telephone from recovering for the wireless traffic through reliance on its traditional wireline access charge tariffs. *Id.* at *34-35. Notably, Union Telephone conceded that its complaint relied tariffs applicable only to landline traffic. It had no interconnection agreement with Qwest, and there was no other agreement under which Qwest was required to pay access charges for Union's termination of wireless traffic. *Id.* On these facts, the Wyoming Supreme Court had previously found that Union Telephone could not, "in an attempt to collect access charges for terminating wireless traffic . . ., simply adopt the landline terminating access charges without a filing under the cellular service." *Id.* at *34. Since the "*majority* of the calls for which Qwest ha[d] not paid access charges invoiced to it under Union's state access tariffs [were] wireless calls," and Union Telephone failed to file tariffs for wireless services, the court found that there was no basis for recovery. *Id.* at *34-35 (emphasis added).

The court also relied on the Federal Act as an additional basis to deny Union Telephone's claim. *Id.* at *36. The court ruled that, as a matter of law, telecommunications carriers could not impose access charges pursuant to filed tariffs for terminating intraMTA traffic. *Id.* The court reasoned that under the Federal Act and the FCC's regulations, "the termination of wireless calls that originate and terminate within the same [MTA] are subject to reciprocal compensation set

forth in interconnection agreements, not access charges set forth in tariffs." *Id.* The court also stated that the Federal Act requires LECs, such as Union Telephone, to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Id.* Such compensation arrangements must be established through procedures and negotiations as set forth in the Federal Act. However, since Union failed to follow those procedures, the court found that it was not entitled to recover from Qwest for the intraMTA wireless traffic transiting Qwest's network. *Id.* at *37.

d. State ex rel. Alma Tel. Co. v. Missouri PSC.

A recent Missouri Supreme Court case is also instructive, particularly in its application of the *T-Mobile* order. In *State ex rel. Alma Tel. Co. v. PSC.*, 183 S.W.3d 575 (Mo. 2006), the court applied *T-Mobile* to preclude the application of pre-existing "wireless tariffs" to transit wireless traffic. In *Alma Tel. Co.*, the PSC had previously ordered the CMRS providers to seek reciprocal compensation arrangements with the terminating LECs for the termination of the wireless traffic or, otherwise, to cease delivering wireless traffic to the terminating LECs. *Alma Tel. Co.*, 183 S.W.3d at 576. Despite its order, few reciprocal arrangements were entered, and the CMRS providers continued to transmit wireless originated traffic to the terminating LECs, which were unable to block the wireless calls. *Id*. In an effort to obtain compensation, the terminating LECs billed the CMRS providers under existing access tariffs, which established the rates that the LECs could charge for completing long distance or toll calls on their local exchanges. *Id.* at 576-77. However, the CMRS providers refused to pay on the grounds that the tariffs did not apply to wireless originated traffic, which the FCC deemed to be intraMTA, or local traffic. *Id.* at 577.

In 1999, the LECs filed proposed amended access tariffs with the PSC to clarify the tariffs' applicability to wireless originated traffic. Under the proposal, each tariff was to be amended as follows:

> The provisions of this tariff apply to all traffic regardless of type or origin, transmitted to or from the facilities of the Telephone Company, by another carrier, directly or indirectly, until and unless superseded by an agreement approved pursuant to 47 U.S.C. 252, as may be amended.

Id. The Missouri PSC rejected the proposed amended tariffs. On appeal, the Missouri supreme court relied heavily on the FCC's *Local Competition Order* and its *T-Mobile Order* to affirm the Missouri PSC's rejection of the terminating ILECs wireless termination tariffs, because they were, in effect, access tariffs. *Id.* at 577-78.

Noting that the *T-Mobile Order* does allow for compensation in the absence of reciprocal compensation arrangements under "the terms of otherwise applicable state tariffs" for traffic exchanged prior to the decision, the court concluded that access tariffs are not "otherwise applicable state tariffs." *Id.* at 577. In so concluding, the court relied on the *Local Competition Order*, which "makes a critical distinction between transport and termination tariffs, which are applicable to local traffic, and access tariffs, which are applicable to long-distance traffic." *Id.* at 578 (citing *Local Competition Order,* ¶¶ 1033, 1035-36). On the basis of this distinction, and because the traffic at issue was intraMTA wireless traffic, the court concluded that "only tariffs pertaining to transport and termination [i.e., reciprocal compensation] rates may be imposed, and conversely, tariffs pertaining to interstate and intrastate access charges may not be imposed." *Id.* Thus, the court concluded, the Missouri PSC was correct in disallowing the tariffs at issue as impermissible access tariffs. *Id.*

The court rejected the terminating ILECs reliance on an earlier Missouri case, *State ex rel. Sprint Spectrum, L.P. v. Missouri PSC,* 112 S.W.3d 20 (Mo. Ct. App. 2003). In *Sprint*, the tariffs in question were not access tariffs but were instead filed and effective tariffs specifically addressing reciprocal compensation charges for intraMTA traffic – tariffs explicitly approved under the *Local Competition Order*. *Alma Tel.*, 183 S.W.3d at 578. They were not the kind of re-

packaged access charge tariffs that some of the terminating ILECs have filed in Wisconsin. The court also rejected the terminating ILEC's reliance on the Federal Act's "safe harbor" provision in 47 U.S.C. § 251(g). That provision, the Missouri court explained, provides that until reciprocal compensation agreements are entered into, LECs may rely on the same state tariffs that applied to wireless traffic before the Federal Act was enacted. *Id.* However, just as in Wisconsin, the intrastate access tariffs available to the terminating LECs at the time of the Federal Act's passage did not purport to cover intraMTA wireless traffic. *Id.* Noting that it was precisely the absence of that coverage which prompted the terminating LECs to seek to enlarge the scope of those access tariffs in the first place, the court concluded that the pre-existing tariffs applied only to long-distance traffic, rather than wireless traffic placed within the MTA. *Id.* The terminating LECs' access tariffs in Wisconsin are similarly inapplicable. Also inapplicable are "wireless tariffs" which do not truly impose reciprocal compensation charges that conform with the Federal Act but which are merely poorly disguised access tariffs.

* * *

Each of the authorities discussed above instructs that AT&T Wisconsin, as the transit provider, is not liable under the terminating ILECs' intrastate access tariffs for the disputed traffic, either for pre *T-Mobile* or post *T-Mobile* transit traffic. In addition, they instruct that the only compensation that the terminating ILECs may be entitled to for transit traffic is that which they may arrange on a going-forward basis in reciprocal compensation agreements with the originating providers.

C. Each Time The Public Service Commission Of Wisconsin Has Arbitrated The Transit Issue, It Has Ruled That AT&T Wisconsin Is Not Required To Pay For Termination of Transited Calls.

In proceedings for the arbitration of interconnection agreements before the Commission, AT&T Wisconsin has taken the position that it is not required to collect or pay the terminating providers any charges relating to the termination of traffic that it transits for third-party providers. In those cases, the Commission decided that AT&T Wisconsin was not required to pay the termination freight on transit traffic. The Commission most recently addressed the issue of terminating compensation for transit calls in the 2001 arbitration of an interconnection agreement ("ICA") for AT&T Wisconsin (then doing business as "Ameritech") and TDS Metrocom. The arbitration Panel's conclusion, which the Commission adopted, was as follows:

> The Panel is not convinced that the obligation of Ameritech to transit the traffic originating with a third-party carrier to TDS carries with it the obligation to pay TDS for terminating the traffic. The Panel does agree that Ameritech should provide TDS with all of the calling party information that it has when transmitting traffic originating with a third-party that terminates on TDS' network. . . . TDS will then be responsible for using this information to recover its terminating costs from the originating carrier.

PSCW Docket No. 05-MA-123, *TDS Metrocom Petition for Arbitration of Interconnection Terms, Conditions, and Prices from Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin,* Arbitration Award, pp. 91-92 (March 12, 2001). Just as it does for TDS and other LECs, AT&T Wisconsin provides the calling party information it receives to the terminating ILECs when transmitting the traffic. In addition, AT&T Wisconsin made available monthly reports to the terminating ILECs which identified the originating carriers and the volume of traffic they originated for the month. The terminating ILECs rarely bothered, however to use the information provided to "recover its terminating costs from the originating carrier."

The Commission also considered transit-related terms and conditions in the 2000 arbitration of an interconnection agreement between AT&T Wisconsin (then doing business as "Ameritech") and two other providers – AT&T Communications of Wisconsin, Inc. and TCG Milwaukee (collectively "TCG"). In that arbitration the Commission specifically considered how terminating compensation arrangements were to be made for TCG-originated transit calls completing to a third-party. The arbitration Panel's conclusion, again adopted by the Commission, was as follows:

> In some sense, this [transit] issue concerns how to [sic] Ameritech should be treated in the competitive environment created by the Telecommunications Act. Is Ameritech another competitor providing local service, or does the company have responsibilities beyond that of other competitors? Section 251 answers this question some degree. It imposes additional requirements upon ILECs. However, [TCG's] proposal on this issue goes well beyond any requirement of § 251. The Panel agrees that neither carrier should have to act as a billing agent or conduit for compensation between other carriers that exchange traffic that transit its network. The Panel also finds that [TCG] is not required to give Ameritech proof of its authority to deliver traffic to other CLECs as a precondition to Ameritech providing transit service.

Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin), PSCW Docket No. 05-MA-120, Arbitration Award, pp. 128 – 130 (October 12, 2000).

The Commission thus not only excused AT&T Wisconsin from having to compensate the terminating provider, it also precluded any requirement that the originating carrier be required to provide the transit provider any documentation of its authority to deliver traffic destined for third-party providers prior to sending the transit traffic through AT&T Wisconsin. In substance, the Commission thus considered and rejected the theory that all traffic must have a "license" in the form of an agreement with the terminating carrier before traffic can legitimately be routed to its network.

While the Commission typically provides in its arbitration orders that the orders are not binding as pronouncements of general application, nothing justifies deviating from the conclusions that it has made about transit traffic in those orders. Indeed, the Commission's conclusions in these arbitration orders are not only correct with respect to transit traffic generally, they comport with mandatory federal law with respect to the transit traffic overwhelmingly at issue in Wisconsin – local wireless traffic.

D. The Terminating LECs Cannot Impose Charges On AT&T Wisconsin Under Any Other Theory Of Liability.

Up to this point, AT&T Wisconsin's argument has primarily focused on whether terminating LECs may bill AT&T Wisconsin under their intrastate access tariffs including their so-called "wireless tariffs" for the termination of transit traffic. Because recovery under those tariffs is not allowed for the traffic at issue in this proceeding, and because no utility can recover amounts which are not covered by an effective tariff or agreement, there are no theories under which AT&T Wisconsin could be held liable for past transit traffic. For going-forward transit traffic, none of the factors or theories posited in Staff's suggested issues list can displace the authorities discussed above or the policies underlying them, which preclude forcing transit providers to pay the freight on traffic they did not originate.

1. In addition to federal preemption, the Filed Rate Doctrine precludes the imposition of termination charges on AT&T Wisconsin for any transit traffic not covered by an effective tariff or interconnection agreement.

As demonstrated above, federal law preempts terminating ILECs' from imposing access charges on any provider, including the transit provider, for wireless traffic. With their access tariffs (including their so called "wireless tariffs") thus rendered inapplicable, the terminating ILECs are without an effective vehicle for recovering past transit charges except where such recovery may be possible under future negotiated or arbitrated interconnection agreements. This

includes recovery under any of the several circumstances and theories posited in Staff's suggested issues list.[26]

In short, recovery is available only under valid reciprocal compensation tariffs (prior to *T-Mobile*) or under interconnection agreements (before or after *T-Mobile*) or not at all, since alternative bases for recovery – whether it be theories of agency, equity or based on the putative purpose of a trunk – are plainly precluded by the long-established Filed Rate Doctrine. Wis. Stat. § 196.22 is Wisconsin's statutory expression of the filed rate doctrine. That doctrine generally forbids a regulated utility – and all terminating LECs are regulated utilities for purposes of access charges in Wisconsin – from charging rates for services other than those properly filed in an effective tariff. Section 196.22 provides as follows:

> No public utility may charge, demand, collect or receive more or less compensation for any service performed by it within the state, or for any service in connection therewith, than is specified in the schedules for the service filed under s. 196.19, including schedules of joint rates, as may at the time be in force, or demand, collect or receive any rate, toll or charge not specified in the schedule.

The Wisconsin Supreme Court has held that Wis. Stat. § 196.22 operates to prohibit the receipt of compensation by a utility that is either greater or lesser than the filed rate. *See GTE North Inc. v. PSC*, 176 Wis. 2d 559, 569-570, 500 N.W.2d 284 (1993) (citing *Wisconsin Power & Light Co. v. Berlin Tanning & Mfg. Co.*, 275 Wis. 554, 559, 83 N.W.2d 147 (1957)). This is because the "filed rate alone governs the relationship between the parties." *Prentice v. Title Ins. Co.*, 176

[26] In its suggested list of issues for briefing, Staff inquired whether there might be other grounds for imposing the costs of terminating transit traffic on the transit provider rather than the originating provider. Specifically, Staff asked whether "putative purpose of the trunks" over which transit traffic is routed has any impact on the treatment of transit traffic for billing purposes, whether a transit provider might be liable for transit traffic under a theory of agency, and whether a transit provider ought to be required to pay termination charges where it transits unidentified traffic to the terminating ILEC. As an initial matter, issues relating to what constitutes "unidentified traffic," what the standards are for identifying traffic and the "purported use of the trunks" are factual issues which could not be decided without hearing. But, as discussed in this section, none of these factors or theories is sufficient to displace the authorities discussed above, which together place the onus on originating providers to pay reciprocal compensation for the termination of transit traffic.

Wis. 2d 714, 721, 500 N.W.2d 658 (1993)(citing *Texas & Pacific Ry. Co. v. Mugg*, 202 U.S. 242 (1906)).

The limitation of a party's rights to those that might be available under its tariff stands in stark contrast to the law of alternatives to contract such as unjust enrichment. Where a service is not effectively tariffed, the utility lacks any authority to charge any money for its services. *See GTE North*, 176 Wis. 2d at 569-570. The Wisconsin courts have not only expressly adopted the filed rate doctrine, but will often rely on the federal decisions interpreting and applying the doctrine. *Prentice*, 176 Wis. 2d at 723-24; *Servais v. Kraft Foods, Inc.*, 2001 WI App 165, ¶ 10, 246 Wis. 2d 920, 631 N.W.2d 629. In such cases, including the directly on-point *Qwest* case discussed above, the federal courts have disallowed alternative claims, for example, based on theories of unjust enrichment. *See Qwest*, 385 F. Supp. 2d at 908-09; *Ting v. AT&T*, 319 F.3d 1126, 1131 (9th Cir. 2003); *see also AT& T v. Central Office Tel.*, 524 U.S. 214, 222 (1998); *Illinois Cent. Gulf R.R. Co. v. Golden Triangle Wholesale Gas Co*., 586 F.2d 588, 592 (5th Cir. 1978). In particular, claims under state law for alternative relief that would permit carriers to bypass and ignore federal regulatory requirements are preempted under the Filed Rate Doctrine. *Union Tel.*, 2004 U.S. Dist. LEXIS 28417, at * 33 (citing *Verizon North, Inc. v. Strand*, 309 F.3d 935, 944 (6th Cir. 2002)); *see also Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 987 (7th Cir. 2000).

Under the Filed Rate Doctrine, particularly as applied in the squarely on-point *Qwest* case, alternative theories of liability for termination of transit traffic may not be considered. To do otherwise would constitute an impermissible bypass of the comprehensive negotiation, arbitration and approval process set forth in the act, and invent, out of whole cloth, "a hypothetical rate, the 'fair value', in violation of the filed rate doctrine." *Public Util. Dist. No. 1*

v. Idacorp Inc., 379 F.3d 641, 651 (9th Cir. 2004). Equitable doctrines simply may not be employed to relieve the terminating ILECs of their obligations to comply with federal statutory and regulatory requirements.

These cases do not preclude the terminating ILECs from seeking compensation from third party originating carriers for terminating their traffic. However, the terminating LECs must first comply with applicable statutes and regulations to acquire the agreements and order necessary to recover access charges for such third-party traffic.

2. AT&T Wisconsin cannot be made liable under an "agency" theory.

As discussed above in Sections I.A. through I.C., there can be no grounds for imposing any liability on AT&T Wisconsin for past transit traffic, because existing interconnection agreements and tariffs do not apply and the filed rate doctrine precludes the terminating ILECs from obtaining compensation in the absence of effective agreements or tariffs. Thus, there is no basis for allowing the terminating ILECs to bill AT&T Wisconsin for transit traffic on a going forward basis, including under an "agency" theory.

Furthermore, the agency theory is a non-starter on the merits. As an initial matter, the interconnection agreements between AT&T Wisconsin and the originating providers typically contain express provisions disclaiming agency. For example AT&T Wisconsin's interconnection agreement with U.S. Cellular provides as follows:

> 20.2 Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

Cellular/PCS Interconnection Agreement By and Between United States Cellular Corporation and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, ¶ 20.2 (Approved April 18, 2005) (http://psc.wi.gov/apps/via/document/5TI1248/01%201-US%20Cell-Multi%20State%20GTC%20120904%20FINAL%20R2%20.pdf. The provisions in AT&T Wisconsin's interconnection agreements specifically relating to transit traffic also preclude any notion that AT&T Wisconsin is an "agent" of the originating providers for purposes of the traffic. Again, by way of example, the current AT&T Wisconsin interconnection agreement with U.S. Cellular provides as follows:

> W[ireless] S[ervice] P[rovider] shall establish separate interconnection and billing arrangements directly with any Third Party Telecommunications Carrier. Except as specifically provided in this Agreement, unless WSP does so pursuant to separate agreement or tariff, WSP is not authorized to send Third Party Traffic through the **SBC-13STATE** network, and doing so shall be a material breach of this Agreement.

Id., APPENDIX RECIPROCAL COMPENSATION CELLULAR/PCS, ¶ 5.3. While the language of interconnection agreements obviously varies among the various providers with whom AT&T Wisconsin has concluded them, this provision is typical. AT&T Wisconsin has thus taken care in its interconnection agreements to ensure that there is no misunderstanding that AT&T Wisconsin is an "agent" of the originating provider when it comes to transit traffic.

Moreover, AT&T Wisconsin never held itself out to any of the terminating ILECs as an agent of the originating providers. Instead, recall that AT&T Wisconsin took concrete steps nearly a decade ago to inform the terminating ILECs that AT&T Wisconsin was *not* taking responsibility for the traffic, as evidenced by the July 1997 letter that AT&T Wisconsin sent to all terminating ILEC Managers and CEOs. The central message of that correspondence bears repeating:

> Your company will be impacted if you receive terminating traffic from any of the wireless carriers, or the competitive LECs with whom Ameritech has signed reciprocal compensation agreements. Ameritech will only collect compensation for the traffic

> between Ameritech and the wireless provider, or competitive LEC. Therefore, you will need to negotiate compensation agreements for calls that originate from the wireless provider or competitive LEC and terminate to your end office.

It is difficult to imagine a clearer notification to the terminating ILECs that AT&T Wisconsin was not acting as the originating providers' agent for transit traffic.

II. NOTHING PRECLUDES THE CURRENT USE OF THE COMMON INTERCONNECTION TRUNKS.

The Commission has asked the parties to identify which types of traffic may be properly transported over the "Feature Group C (FGC) trunks connecting LEC end offices and the tandem switches of AT&T [Wisconsin] or another provider."[27] As Staff pointed out in its July 2004 memorandum to the Commission in this docket, these shared interconnection trunks – also referred to as "common trunks" or "shared trunks" – carry a variety of traffic, including:

- intraLATA traffic from the tandem operator.
- intraLATA traffic originating from another ILEC provider, which is routed from that provider's tandem.
- ECC traffic.
- Wireless traffic.
- Terminating traffic from other CLECs which interconnect at the tandem.
- Overflow IXC traffic

July 2004 Staff memo, p.4. In addressing the appropriate uses of the common trunks, Staff suggested that the parties address "how and to what extent . . . original agreements govern the FGC trunks" and "what relevance . . . the existing and prior tariffs have to the propriety of

[27] While the Commission's Amended Notice denominates the facilities that are the subject of its inquiry as "Feature Group C trunks" without further explication, AT&T Wisconsin understands that what is meant by this term as used by in the Amended Notice are the jointly provided LEC to LEC facilities that in most cases predate AT&T divestiture and which typically run between SBC Wisconsin's tandem switches and the tandems or end offices of the terminating LECs, and over which SBC Wisconsin routes, among other things, the intraLATA toll traffic that its end users originate and which is bound for the terminating LEC end users. In its business, AT&T Wisconsin refers to these facilities as the "common trunks" or "common trunk groups" and employs those terms in this brief.

transporting various types of traffic on a trunk." AT&T Wisconsin's answer to these questions is that nothing – including original agreements, tariffs or requirements of state or federal law – precludes AT&T Wisconsin or any other LEC from using the shared trunk groups as AT&T Wisconsin and others are currently using them.

As Staff explained to the Commission in its July 2004 report at page 3, the use of common trunks has steadily evolved to carry different kinds of traffic since divestiture in the '80s. This evolution is not driven by particular agreements or tariffs, but by the evolution of the telecommunications industry as a whole. Indeed, as Staff observed in its October 2005 report to the Commission at page 13, "neither SBC nor the small telcos can produce any existing interconnection agreements covering the trunks used to transport traffic between tandems and end offices."

If the terminating ILECs or other participants in this proceeding wish to identify particular contracts, tariffs, or other requirements that they believe limit the current uses of the common trunks, AT&T Wisconsin will address them in reply. But even if other participants are able to identify authorities that purport to limit the use of the shared trunks to certain kinds of traffic, such limitations could be preempted by the Federal Act to the extent they deny originating carriers the ability to efficiently and indirectly interconnect with the terminating providers over existing indirect interconnections. The efficiencies associated with indirect interconnection derive from the fact that indirect interconnection uses ***existing*** interconnection architecture between the transit provider and the terminating provider. Limiting the presence of transit traffic on the existing shared trunks – which necessarily would require a substitute arrangement – would thus necessarily compromise the efficiencies which make indirect interconnection an attractive alternative. This preemption concern becomes even more palpable

when one considers that terminating LECs have expressly indicated that they are going to use separate trunking as a means to block traffic in order to obtain favorable billing terms from originating providers. Network reconfiguration cannot not be employed as a tool to subvert the duties and requirements imposed by the Federal Act.

Any limitation on the use of the common trunks to carry particular kinds of traffic could also have significant and tangible consequences for AT&T Wisconsin in that AT&T Wisconsin's transit customers will have route the traffic to the terminating ILECs by means other than the common trunks. Certainly, the Commission may not order potential alternatives to placing certain kinds of traffic on the common trunks without a hearing to determine whether an alternative would produce the desired result, much less at a cost that is reasonable under the circumstances. But a hearing is unnecessary to rule out such an order. Terminating providers have had the information necessary to obtain compensation without network modifications, as they have known the identity of third party originators and the relative volumes of traffic sent by those providers. Thus, there is no practical legitimate need for the Commission to impose any limitations on the use of the common trunks for transit traffic, and therefore to create inefficiencies or the risk of federal preemption.

For assurance that it is unnecessary to tinker with the use of the common trunks, the Commission need look no further than the FCC's *T-Mobile Order* and the related authority discussed in Section I above. The FCC's rules empower the terminating ILECs to negotiate and arbitrate interconnection agreements under which they can obtain both compensation and billing information directly from wireless providers. Such information as the wireless carriers provide to the terminating ILECs pursuant to those agreements (together with the monthly transit information that AT&T Wisconsin has always provided to the terminating ILECs) negates any

purported need to issue a Commission order to segregate the transit traffic off of the common trunk groups.

III. THE COMMISSION SHOULD NOT REQUIRE DEDICATED TRUNKING, WHICH IS AT BEST INEFFICIENT AND PROBABLY PREEMPTED BY THE FEDERAL ACT. IF THE COMMISSION DOES REQUIRE IT, IT SHOULD TREAT ALL CARRIERS EQUALLY.

Staff indicated in its October 2005 report to the Commission on page 13 that "the question of whether SBC should use FGC trunking or convert to FGD is, in effect, the same issue" as whether there ought to be direct trunking between originating providers and terminating providers. AT&T Wisconsin could not agree more. For the same reasons that the Commission should not limit the use of the common trunks or require LEC to LEC network modifications for the transport of transit traffic, the Commission should also decline to require dedicated trunking as a general matter. In short, dedicated trunking 1) is inefficient; 2) is probably preempted; 3) is extremely costly, and 4) is completely unnecessary given the ability of terminating LECs to negotiate and arbitrate interconnection agreements that will address issues of traffic exchange. Staff's recommendation earlier in this proceeding contained similar conclusions, including Staff concerns about the "severe" costs associated with dedicated trunking, its basic inefficiencies, and the likelihood that dedicated trunking would be challenged as preempted by the Federal Act. (See July 2004 Staff report, pp. 9-10).

On Staff's question of whether a dedicated trunking should be required for all or just some carriers, AT&T Wisconsin's response is straightforward: there is no legally defensible basis for a dedicated trunking requirement that discriminates among providers. If the principles behind requiring direct trunking are applicable to AT&T Wisconsin or a CMRS carrier, then they are just as applicable to a CLEC. In any event, if the Commission does not reject dedicated trunking as unnecessary and inappropriate for the reasons articulated here, it could not order

dedicated trunking without first holding a hearing on its practical necessity, its efficacy, its costs, and any other related factual issues.

IV. AT&T WISCONSIN RESERVES ITS RIGHT TO ADDRESS ANY LEGAL OR FACTUAL ISSUE INTERPOSED IN INITIAL BRIEFS OR CONSIDERED BY THE COMMISSION IN MAKING ITS DETERMINATION IN THIS DOCKET.

Finally, the Commission asks whether there is "any other legal issue that needs to be resolved as a predicate to establishing or barring a carrier's billing liability for transit traffic termination services." In this brief, AT&T Wisconsin has raised the legal issues that bar terminating carriers from billing AT&T Wisconsin for termination-related charges on transit traffic. AT&T Wisconsin reserves its right to address any arguments presented in other parties' submissions. AT&T Wisconsin also reserves the right to an evidentiary hearing on any issue of fact whose determination forms the basis of any Commission decision in this case.

CONCLUSION

For all the foregoing reasons, AT&T Wisconsin respectfully requests that the Commission issue an order providing that:

1. Terminating LECs may not bill transit providers for any charges associated with termination of transit traffic, either for the period before or after the FCC's *T-Mobile Order*. They must instead obtain compensation for transit traffic from the originating carriers pursuant to the negotiation and arbitration provisions of the Federal Act.

2. Unless specifically precluded by tariff or enforceable agreement, transit traffic may be routed from transit providers to terminating LECs over the common trunk groups between transit provider tandems and terminating LECs.

3. Dedicated trunking shall not be required as a general matter but may be addressed in individual negotiations and arbitrations.

Dated this 17th day of April, 2006.

Respectfully Submitted,

By: /s/

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