

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Commission, on ) Application No. C-3012  
its own motion, seeking to )  
conduct a critical cost analysis )  
for Aliant Communications Co., )  
d/b/a Alltel as a result of the ) ORDER ADOPTING AVERAGING  
Nebraska Technology & Telecom- ) METHODOLOGY  
munications, Inc. and Alltel )  
arbitration conducted in )  
Application No. C-2648. ) Entered: May 18, 2004

BY THE COMMISSION:

O P I N I O N   A N D   F I N D I N G S

On September 23, 2003, the Nebraska Public Service Commission (Commission) opened the above-captioned proceeding to commence a critical cost analysis for Alltel addressing the following issues:

1. Determine the appropriate rates associated with the provisioning of telephone directories.
2. Determine the appropriate rates at which Alltel must provide unbundled network elements (UNEs), including unbundled network elements-platform (UNE-P).
3. Determine appropriate nonrecurring rates for Alltel.

Dr. David Rosenbaum, on behalf of Commission staff, submitted to the Commission a summary of staff's review entitled "A Preliminary Analysis of Alltel's Proposed UNE Loop Rates in Nebraska." In light of Dr. Rosenbaum's analysis, the Commission requested comment regarding whether the Commission should further scrutinize and apply the Alltel cost model or apply the Commission's averaging methodology, previously adopted in Docket No. C-2516 to develop UNE loop rates for Alltel in Nebraska. Alltel, Nebraska Technology & Telecommunications (NT&T), and Dr. Rosenbaum filed comments on March 24, 2004. Oral argument was held regarding these comments on April 14, 2004.

Jurisdiction

As a preliminary matter, the Commission must determine whether it has the requisite jurisdiction to render a decision regarding the appropriate costing method to be utilized.

As previously discussed in the September 23, 2003, order opening this docket, this Commission has jurisdiction over the

parties and jurisdiction over NT&T's Petition for Arbitration subject to § 252(b) and other applicable provisions of the Telecommunications Act (the Act) to be exercised in accordance with the Commission's Mediation and Arbitration Policy, established in Application No. C-1128, Progression Order No. 3, dated April 8, 1997 (Arbitration Policy), and NEB. REV. STAT. § 86-122. Section 252(e)(1) of the Act requires that any interconnection agreement adopted by arbitration be submitted to the state commission for approval. The Commission's review of the arbitrated agreement is limited by section 252(b)(4) of the Act, which provides, "Action by State Commission. (A) The State commission shall limit its consideration of any petition [for arbitration] under paragraph (1) [of section 252(b) of the Act] (and any response thereto) to the issues set forth in the petition and the response, if any, filed under paragraph (3)." Thus, in reviewing this matter, the Commission is statutorily constrained to only consider the issues raised by the parties in the petition and response within the meaning of section 252(b)(4). The Commission may request that the parties provide any information necessary to reach a decision. Section 252(b)(4)(B).

The Commission may reject "an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section." <sup>1</sup>

Pursuant to section 252(e)(3) of the Act, state commissions are permitted to utilize and enforce state law in its review of arbitrated interconnection agreements. Accordingly, the Commission may also consider what the Nebraska Legislature has declared, in that "it is the policy of the state to: . . . [p]romote fair competition in all Nebraska telecommunications markets in a manner consistent with the federal act." NEB. REV. STAT. § 86-801. In an effort to ensure such fair competition, the Nebraska Legislature has provided that "Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets." NEB. REV. STAT. § 86-122(1).

To assess whether interconnection agreements are "consistent with the establishment of fair competition" as contemplated by § 86-122(1) necessarily requires that the

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<sup>1</sup> Section 252(e)(2)(B) of the Act.

Commission evaluate whether the cost methods utilized in developing rates in those agreements are equitable and further the ultimate goal of fair competition.

Based upon the foregoing, the Commission finds that it has jurisdiction to determine which costing method should be utilized in developing UNE and UNE-P rates.

#### Appropriate Cost Model

The averaging methodology, previously adopted in Docket No. C-2516 relies upon well-established, TELRIC-based<sup>2</sup>, cost models including the HAI, the Synthesis Model (HCPM), and the Benchmark Cost Proxy Model (BCPM). As the Commission has previously found, the Federal Communications Commission (FCC) implicitly approved the averaging methodology is TELRIC compliant.

As Dr. Rosenbaum stated, a primary advantage of the averaging methodology is that it reduces any potential biases that may be present in any one model. Reducing such biases will result in nondiscriminatory, TELRIC-based, forward-looking UNE rates for the state of Nebraska and will foster fair and meaningful competition throughout the state.

Utilizing the averaging methodology with respect to Alltel's rates treats each incumbent local exchange carrier equitably as it has already been applied to Qwest and will further the Commission's statutory charge to foster competition in the telecommunication industry within the state of Nebraska.

The Commission shares Dr. Rosenbaum's concerns regarding Alltel's cost model. Dr. Rosenbaum surmises that the first component of Alltel's cost model likely employs some methodology to design plant and determines the required investment expenditures in providing service to Alltel's Nebraska service areas. The principles, methods and underlying assumptions used to determine the investment expenditures are unclear. As that information has not yet been provided, Commission staff cannot adequately determine whether the first component meets FCC requirements. Furthermore, several questions remain regarding the method and inputs used in the second component of Alltel's cost model.

NT&T and Alltel entered into a negotiated service resale interconnection agreement on February 25, 1999, which was later, approved on March 30, 1999. In early 2000, NT&T notified Alltel that it wished to negotiate a successor agreement. However,

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<sup>2</sup> Total Element Long Run Incremental Cost (TELRIC).

Alltel did not agree to provide UNE-P to NT&T until July 2001. NT&T's efforts to provide competition in areas served by Alltel began over five years ago. "Fair competition" necessarily requires that competitors be able to enter a market in a timely fashion. The excessive time and allocation of resources necessary to fully scrutinize Alltel's model further supports the use of the averaging methodology.

During the hearing, counsel for Alltel argued that the averaging methodology previously adopted in C-2516 should not be applied in this case because one of the models contained within the averaging methodology was determined by the FCC to be inappropriate for rural carriers. Counsel asserted that Alltel was a "rural" company pursuant to §3 and § 251(f)(1). However, counsel for Alltel later admitted that although Alltel may petition this Commission for suspension or modification as a carrier with fewer than two percent of the nation's subscriber lines, pursuant to 251(f)(2), Alltel is not in fact a "rural" company pursuant to § 251(f)(1). Their argument on that basis is therefore without merit.

Finally, Alltel's subsidiary previously supported the use of the averaging methodology with respect to rates for Qwest in Docket No. C-2516/PI-49, In the Matter of the Commission, on its own Motion, to Investigate Cost Studies to Establish Qwest Corporation's Rates for Interconnection, Unbundled Network Elements, Transport and Termination, and Resale. Alltel specifically stated,

Dr. Rosenbaum's approach using the average of multiple models to provide UNE loop rates is reasonable and practical. This mitigates the bias and shortcomings inherent in each individual model. The truth or real cost is somewhere in between the extremes supported by Qwest and AT&T. Dr. Rosenbaum's approach comes the closest to the truth.

C-2516/PI-49, Transcript, Pg. 115, Lines 14-21. Alltel's current position is inconsistent with its prior support of the averaging methodology in C-2516.

As such, the Commission finds that the averaging methodology is consistent with the Commission's duty to ensure nondiscriminatory interconnection agreements and to promote fair competition in all Nebraska telecommunications markets.

The Commission, therefore, finds that the averaging methodology should be applied to develop Alltel's UNE and UNE-P rates in Nebraska.

Alltel has suggested that the present proceeding be stayed based upon the recent developments in the United States Court for the District of Columbia ("DC Circuit") in *USTA v. FCC*, No. 00-1012 (March 2, 2004) and the Commission's decision in Application No. C-3026 to suspend the TRO proceeding based upon the DC Circuit's decision. As previously stated, "fair competition" necessarily requires that competitors be able to enter a market in a timely fashion. Therefore, the Commission finds such stay is unwarranted and that the present matter should proceed in a timely fashion to promote fair and meaningful competition.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that it has jurisdiction to determine whether it should rely upon and further scrutinize Alltel's cost model or whether it should adopt the Commission's averaging methodology previously adopted in C-2516 in developing Alltel's UNE and UNE-P rates.

IT IS FURTHER ORDERED that the Commission adopts the averaging methodology to develop UNE and UNE-P rates for Alltel in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of May, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director