

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
2001 Annual Access Tariff Filings ) CC Docket No. 01-206  
 )  
 )  
 )

**MEMORANDUM OPINION AND ORDER**

**Adopted:** December 3, 2001

**Released:** December 3, 2001

By the Commission: Commissioner Martin approving in part, concurring in part, and issuing a statement.

**I. INTRODUCTION**

1. Under section 201 of the Communications Act of 1934 (the Act), as amended, all charges, practices, classifications, and regulations for communication services are required to be just and reasonable.<sup>1</sup> Sections 204 and 205 of the Act authorize the Commission to review the reasonableness of carriers' rates, and to prescribe just and reasonable charges.<sup>2</sup>

2. On July 2, 2001, the Competitive Pricing Division (Division) of the Common Carrier Bureau (Bureau) released the *Suspension Order*,<sup>3</sup> which, *inter alia*, suspended for five months and set for investigation the rates for the traffic sensitive basket filed by Moultrie Independent Telephone Company, Inc. (Moultrie), suspended for one day ALLTEL Telephone Systems' (ALLTEL's) rates for local switching, imposed an accounting order, and initiated an investigation into the lawfulness of issues raised by these carriers' 2001 annual access tariff filings.<sup>4</sup> The Bureau designated for investigation the increase in Moultrie's traffic sensitive rates, particularly of its local switching per minute rate, as reflected in Moultrie's Transmittal Number 4

<sup>1</sup> 47 U.S.C. § 201(b).

<sup>2</sup> 47 U.S.C. §§ 204 and 205.

<sup>3</sup> *2001 Annual Access Tariff Filings*, CCB/CPD File No. 01-08, Memorandum Opinion and Order, 16 FCC Rcd 13123 (Comp. Pric. Div. 2001) (*Suspension Order*).

<sup>4</sup> The Division subsequently reconsidered on its own motion its decision to suspend and investigate the proposed multi-line business subscriber line charges of Ameritech Operating Companies, Frontier Telephone of Rochester, Inc., Pacific Bell Telephone Company, Qwest Communications, Inc., and Sprint Local Telephone Companies-Nevada. *2001 Annual Access Tariff Filings*, CCB/CPD File No. 01-08, Order on Reconsideration, 16 FCC Rcd 14857 (Comp. Pric. Div. 2001).

to Tariff FCC Number 1.<sup>5</sup> The Bureau also designated for investigation ALLTEL's derivation of a dial equipment minutes (DEM) allocation factor in setting local switching rates in Transmittal Number 90 to its Tariff FCC Number 1.<sup>6</sup> Moultrie and ALLTEL filed their direct cases on September 13, 2001,<sup>7</sup> AT&T filed oppositions to the direct cases on September 26, 2001,<sup>8</sup> and Moultrie and ALLTEL filed rebuttals to the opposition on October 3, 2001.<sup>9</sup>

3. After a thorough review of the record, we conclude in this order that Moultrie and ALLTEL have failed to demonstrate the reasonableness of their local switching rates. As discussed more fully below, we direct Moultrie to file tariff revisions reflecting corrected local switching rates, taking into account the amount of universal service fund (USF) local switching support that is available to Moultrie. We also find that ALLTEL incorrectly computed its DEM allocation factor and order it to recalculate its local switching rates using corrected DEM allocation factors. We direct Moultrie and ALLTEL to file tariff revisions reflecting these changes within ten days from the release date of this order. In addition, we require ALLTEL to make refunds to its customers for overcharges resulting from the unreasonable local switching rates that went into effect on July 3, 2001.

## II. MOULTRIE'S CALCULATION OF LOCAL SWITCHING RATES

4. When Moultrie made its 2001 annual access tariff filing, it proposed to increase its local switching rate by more than 335 percent, from \$0.05713 per minute to \$0.191586 per minute, to reflect the loss of USF local switching support payments.<sup>10</sup> Moultrie's loss of USF support stems from a dispute with the National Exchange Carrier Association (NECA) over Moultrie's treatment of certain assets in its separations cost studies. In 1997, Moultrie transferred ownership of certain non-loop-related assets to an affiliate and leased them back.<sup>11</sup> This

---

<sup>5</sup> *2001 Annual Access Tariff Filings*, CC Docket No. 01-206, Order Designating Issues for Investigation, 16 FCC Rcd 15929, 15932, paras. 7-8 (Comm. Carr. Bur. 2001) (*Designation Order*).

<sup>6</sup> *Designation Order*, 16 FCC Rcd at 15934-35, paras. 11-14.

<sup>7</sup> Direct Case of Moultrie Independent Telephone Company, CC Docket No. 01-206 (filed Sept. 13, 2001) (Moultrie Direct Case); Direct Case of ALLTEL Telephone Systems, Inc., CC Docket No. 01-206 (filed Sept. 13, 2001) (ALLTEL Direct Case). Both parties filed motions to accept late-filed pleadings which we hereby grant.

<sup>8</sup> Opposition of AT&T Corp. to the Direct Cases of ALLTEL Telephone Systems, Inc. & Moultrie Independent Telephone Company, CC Docket No. 01-206 (filed Sept. 26, 2001) (AT&T Opposition).

<sup>9</sup> Rebuttal of Moultrie Independent Telephone Company, CC Docket No. 01-206 (filed Oct. 3, 2001) (Moultrie Rebuttal); Reply Comments of ALLTEL Communications, Inc. to the Opposition of AT&T Corp. to the Direct Case of ALLTEL Telephone Systems, Inc., CC Docket No. 01-206 (filed Oct. 3, 2001) (ALLTEL Rebuttal). Moultrie also filed a supplement to its direct case on October 3, 2001. *See* Supplement to Direct Case of Moultrie Independent Telephone Company, CC Docket No. 01-206 (filed Oct. 3, 2001) (Moultrie Supplement).

<sup>10</sup> *See* Letter from Steve Bowers, President, Moultrie Independent Telephone Company, Inc., to Secretary, FCC, Description and Justification (June 18, 2001) (Moultrie Transmittal No. 4).

<sup>11</sup> *See* Moultrie Independent Telephone Company Petition for Declaratory Ruling, CC Docket No. 96-45 at 5 (filed Mar. 29, 1999) (Moultrie Petition). These assets include motor vehicles, other work equipment, land and (continued....)

transaction was designed to maximize Moultrie's USF support recovery.<sup>12</sup> In reporting the transaction to NECA for determining its USF support allocation, Moultrie removed the investment in the sold assets from its cost calculations while including the lease payments to the affiliate in its operating expenses. The calculation used to derive USF loop costs compares a company's loop-related investment to total investment.<sup>13</sup> After the sale of its non-loop assets, Moultrie's loop investment represented a much higher percentage of its total company investments. As a result of this transaction, Moultrie's loop cost and expense adjustment data for 1997 increased significantly.<sup>14</sup>

5. NECA sought a determination from the Bureau as to the calculation of USF expense adjustments when affiliate sale/lease-back arrangements are involved,<sup>15</sup> and Moultrie filed a Petition for Declaratory Ruling seeking clarification of the "patent ambiguity" between the treatment of affiliate sale/lease-back transactions under sections 32.27(a)-(c), for accounting purposes, and 36.2(a) and (c), for separations purposes.<sup>16</sup> On August 4, 1999, the Bureau responded to NECA's request by indicating that, for calculating USF expense adjustments, Moultrie's sale/lease-back arrangement as described by NECA should be accounted for under section 36.2(c)(2), i.e., by including the property and related expenses with, and excluding the

(Continued from previous page) \_\_\_\_\_

buildings, furniture, office equipment, general purpose computers, circuit equipment, and non-loop-related buried cable. *See* Letter from Gina Harrison, Senior Counsel and Director, NECA Washington Office, to Magalie Roman Salas, Secretary, Federal Communications Commission at 2 (Mar. 10, 1999) (NECA Mar. 10, 1999 *Ex Parte* Letter).

<sup>12</sup> In its petition, Moultrie states, "Moultrie structured the transfer to optimize its recovery under the USF and to maximize tax benefits." Moultrie Petition at 5.

<sup>13</sup> *See* NECA Mar. 10, 1999 *Ex Parte* Letter at 2.

<sup>14</sup> Specifically, the sale/lease-back transaction as reported by Moultrie would have increased Moultrie's USF support by 2887 percent, from \$15 per loop per year to \$433 per loop per year. *See* NECA Mar. 10, 1999 *Ex Parte* Letter at 3.

<sup>15</sup> *See* NECA Mar. 10, 1999 *Ex Parte* Letter. In its direct case and rebuttal, Moultrie claims that NECA violated the Commission's *ex parte* rules by failing to serve a copy of the March 10, 1999 letter on Moultrie. *See* Moultrie Direct Case at 4; Moultrie Rebuttal at 4. Moultrie is incorrect. The Commission's *ex parte* rules do not require filers to serve copies on parties to the proceeding; on the contrary, the definition of an *ex parte* presentation is "[a]ny presentation which . . . [i]f written, is not served on the parties to the proceeding." 47 C.F.R. § 1.1202(b)(1). NECA complied with the *ex parte* rule requirements by submitting two copies of the filing to the Commission's secretary. 47 C.F.R. § 1.1206(b)(1).

<sup>16</sup> Moultrie Petition at 1. *See also* Moultrie Independent Telephone Company Motion for Stay of Section 69.605 of the Commission's Rules, CC Docket No. 96-45 (filed Feb. 2, 2001) (Motion for Stay) (seeking to preclude NECA from collecting cost information from Moultrie until the Commission rules on the Petition for Declaratory Ruling); Moultrie Independent Telephone Company Amendment to Petition for Declaratory Ruling, CC Docket No. 96-45 (filed Apr. 6, 1999) (requesting the Commission to direct NECA to re-open the 24-month window in which members may adjust cost studies); *and* Moultrie Independent Telephone Company Amendment to Motion for Stay of Section 69.605 of the Commission's Rules, CC Docket No. 96-45 (filed Feb. 6, 2001) (requesting expedited action on the Motion for Stay).

rent expenses from, the carrier's regulated telephone operations.<sup>17</sup> Based upon this guidance, NECA requested that Moultrie file amended cost studies reflecting the sale/lease-back arrangement in accordance with section 36.2(c)(2). Moultrie refused to do so.<sup>18</sup> As a result, the Universal Service Administrative Company (USAC), the administrative body tasked with administering USF support, determined that it could no longer rely on the cost data submitted by Moultrie and suspended all high cost loop and local switching support USF payments to Moultrie, effective January 1, 2001.<sup>19</sup>

6. On October 5, 2001, the Commission denied Moultrie's petition for declaratory ruling, request for waiver of part 36, and motion for stay.<sup>20</sup> The Commission found that there was no patent ambiguity between sections 32.27(a)-(c) and 36.2(c)(2). Section 32.27(a)-(c) directs carriers on how to value their assets or services involved in transactions with affiliates and how to account for such transactions on the carriers' books. The rules in section 36.2(c), on the other hand, govern the treatment of rented property, related expenses, and lease payments between carriers and their affiliates for ratemaking purposes, specifically for application of jurisdictional separations and high-cost loop expense adjustments.<sup>21</sup> Therefore, the Commission directed Moultrie to reflect the application of section 36.2(c)(2) by including the property and related expenses with, and excluding the related rent expenses from, the carrier's regulated telephone operations in revised cost studies where the affiliate sale/lease-back arrangement exists.<sup>22</sup>

7. In the instant tariff investigation, Moultrie asserts that it followed the Commission's rules in calculating its per-minute local switching rates. Specifically, section 69.106(b) states:

The per minute [local switching] charge described in paragraph (a) of this section shall be computed by dividing the projected annual revenue requirement for the Local Switching element, excluding any local switching support received by the carrier pursuant to § 54.301 of this chapter, by the projected annual access minutes of use for all interstate or foreign services that use local exchange

---

<sup>17</sup> Letter from Lisa Zaina, Acting Deputy, Federal Communications Commission Common Carrier Bureau, to John A. Ricker, Executive Director-Universal Service Program Support, National Exchange Carrier Association, Inc. (Aug. 4, 1999) (Aug. 4 Bureau Letter).

<sup>18</sup> See Letter from David A. Irwin, Irwin, Campbell & Tannenwald, P.C., to Jane Mago, General Counsel, Federal Communications Commission, Attachment (July 17, 2001).

<sup>19</sup> See Letter from David A. Irwin, Irwin, Campbell & Tannenwald, P.C., to Dorothy Attwood, Chief, Federal Communications Commission Common Carrier Bureau, Attachment (Dec. 29, 2000).

<sup>20</sup> *Moultrie Independent Telephone Company, Motion for Stay of Part 69.605(a) of the Commission's Rules and Petition for Declaratory Ruling, Request for Waiver of Part 36 of the Commission's Rules, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-292 (Oct. 5, 2001) (*Moultrie Order*).

<sup>21</sup> See *Moultrie Order* at paras. 9-10.

<sup>22</sup> See *Moultrie Order* at para. 17.

switching facilities.<sup>23</sup>

According to Moultrie, because it has not received any local switching support, it must recover its entire local switching revenue requirement through its rates.<sup>24</sup> We find that this is an unreasonable application of the Commission's rules.

8. Moultrie notes in its rebuttal that it "has received no local switching support for 2001 and none is expected, depending only on the outcome of the pending petition for declaratory ruling."<sup>25</sup> The Commission has now ruled upon that petition, and Moultrie will receive local switching support after it files its revised cost studies.<sup>26</sup> Moultrie's projection of \$0 in local switching support for 2001 is therefore incorrect and must be revised.

9. Even though Moultrie has not yet received its local switching support from the USF due to the dispute, Moultrie is not entitled to recover this support from its access charge customers. In accordance with the *Moultrie Order*, Moultrie has submitted revised cost studies to NECA,<sup>27</sup> and USAC will confirm the amount of USF support available to Moultrie. Moultrie's access rates should reflect the amount of local switching support available to it, which it has foregone pending resolution of the dispute. By contrast, allowing Moultrie to recover local switching support instead through interstate access charges would create an implicit subsidy.<sup>28</sup> Section 254(e) of the Act states that USF support should be explicit,<sup>29</sup> and the Commission regularly has eliminated implicit subsidies in favor of explicit USF support.<sup>30</sup> As AT&T notes in

---

<sup>23</sup> 47 C.F.R. § 69.106(b).

<sup>24</sup> See Moultrie Direct Case at 4-5; Moultrie Rebuttal at 2.

<sup>25</sup> Moultrie Rebuttal at 2.

<sup>26</sup> See *Moultrie Order* at para. 21.

<sup>27</sup> Moultrie submitted the revised cost studies to NECA on November 2, 2001. See Letter from David A. Irwin, Irwin, Campbell & Tannenwald, P.C., to Roberta L. Alvir, Manager, Midwest Region, National Exchange Carrier Association (Nov. 2, 2001).

<sup>28</sup> See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 623 (5<sup>th</sup> Cir. 2000) (finding that the distinction between explicit funding and implicit funding "turns on the difference between direct subsidies from support funds and recovery through access charges and rate structures.").

<sup>29</sup> 47 U.S.C. § 254(e).

<sup>30</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8940-42, paras. 303-04 (1997) (converting the DEM weighting factor from implicit recovery through interstate access rates to explicit recovery through the USF), *aff'd in part, rev'd in part by Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5<sup>th</sup> Cir. 1999) (*TOPUC*); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, 12 FCC Rcd 15982, 15986-87, paras. 5-8 (1997) (*Access Charge Reform Order*) (determining that implicit support for universal service should be identified and removed from interstate access charges and should be provided instead through explicit support mechanisms), *aff'd sub nom., Southwestern Bell v. FCC*, 153 F.3d 523 (8<sup>th</sup> Cir. 1998); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board* (continued....)

its opposition, interexchange carriers and others that contribute to the USF have already paid the local switching support that has been collected by USAC on Moultrie's behalf.<sup>31</sup> The interexchange carriers should not have to pay the USF support again in the form of Moultrie's increased local switching rates.

10. We therefore find that Moultrie's proposed local switching rates are unreasonable. We direct Moultrie to recalculate its local switching rate pursuant to section 69.106(b), excluding from its projected local switching annual revenue requirement the amount of USF local switching support available to Moultrie. Moultrie must refile its tariff to include this corrected local switching rate within ten days from the release date of this order. In the interim, Moultrie's current local switching rates will remain in effect until Moultrie's tariff revisions filed pursuant to this order become effective.

### III. ALLTEL'S DEM ALLOCATION FACTOR

11. DEM factors are used in calculating access service costs and in allocating local switching equipment investment costs between the interstate and intrastate jurisdictions. DEMs are defined in section 36.125(a)(3) of the Commission's rules as the minutes of holding time of the originating and terminating local switching equipment.<sup>32</sup> For each one-minute call, there is one minute during which the switching equipment originating the call is in use (an originating minute), and one minute during which the switching equipment terminating the call is in use (a terminating minute). The interstate DEM factor is the ratio of the interstate DEM to the total DEM.<sup>33</sup> Under section 36.125(a)(3), each minute of use is treated as two DEMs, one terminating and one originating.<sup>34</sup> Historically, because there has to be a terminating minute for each originating minute, and to provide a simple method for counting DEMs, carriers have counted one terminating minute for each originating minute. Although this method does not account for

(Continued from previous page) \_\_\_\_\_

*on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 13039-62, paras. 185-232 (2000) (*CALLS Order*) (identifying as implicit support for universal service a specific amount of interstate access charges and replacing this implicit support with an explicit interstate access universal service support mechanism). See also *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304, para. 8 (Nov. 8, 2001) (*MAG Order*) (concluding that leaving the removal of implicit support to the discretion of individual carriers is neither consistent with the mandate of the 1996 Act nor justified from a public policy standpoint).

<sup>31</sup> See AT&T Opposition at 5.

<sup>32</sup> 47 C.F.R. § 36.125(a)(3). Holding time is the time in which an item of telephone plant is in actual use either by a customer or an operator. 47 C.F.R. Part 36 Appendix-Glossary.

<sup>33</sup> 47 C.F.R. § 36.125(a)(5).

<sup>34</sup> See *id.* See also *General Communication, Inc. v. Alaska Communications Sys. Holdings, Inc.*, EB-00-MD-016, Memorandum Opinion and Order, 16 FCC Rcd 2834, 2852, para. 44 (2001) (*GCI Order*).

imbalances in specific types of traffic, it provides carriers with an administratively simple method for separating traffic minutes between the interstate and intrastate jurisdictions.<sup>35</sup>

12. In ALLTEL's 2001 access tariff filing, the interstate DEM factor increased in several study areas. ALLTEL explained that it had changed its method for estimating terminating interlocal minutes of use.<sup>36</sup> This change reduced in some ALLTEL study areas the amount of total DEMs attributable to local traffic, and this caused a corresponding increase in the DEMs attributable to interstate traffic. Therefore, the interstate DEM factor increased in these study areas.

13. ALLTEL states that it is able to determine and allocate between local and interstate the total number of originating minutes on each of its switches. ALLTEL also explains that it can count the total number of terminating minutes on each of its switches. When shared trunks carrying both toll and interlocal traffic terminate at an ALLTEL switch, however, ALLTEL states that it cannot determine how many of the total terminating minutes on those trunks are toll and how many are interlocal because switch measurements cannot determine where an incoming call originated. Therefore, ALLTEL has to estimate how many minutes of traffic on these shared trunks should be counted as local.

14. Prior to 2000, ALLTEL had attributed the same number of terminating interlocal minutes as originating interlocal minutes on the shared trunks. In 2000, however, ALLTEL conducted traffic studies which indicated that Internet traffic does not follow this one-terminating-minute-to-one-originating-minute relationship.<sup>37</sup> This, ALLTEL argues, is because ALLTEL's customers call ISPs in other carriers' exchange areas, creating originating minutes, but those ISPs do not call back, therefore ALLTEL does not receive terminating minutes corresponding to these originated Internet calls. For purposes of calculating its DEM factors, ALLTEL applied a one-terminating-minute-to-one-originating-minute relationship only to non-Internet interlocal traffic, and applied a factor of 0.5 to Internet interlocal originating minutes to derive Internet interlocal terminating minutes (i.e., a one-terminating-to-two-originating minutes relationship) over the shared trunks.<sup>38</sup>

---

<sup>35</sup> See, e.g., *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Recommended Decision and Order, 2 FCC Rcd 2551, 2559, para. 48 (Fed.-State Jt. Bd. 1987) (Recommending the use of measured DEM "because it is a simple allocator that is easy to implement and administer.").

<sup>36</sup> Reply Comments of ALLTEL Corporation, CCB/CPD File No. 01-08, (filed June 29, 2001) (ALLTEL Reply). Interlocal calls are those in which lines are connected to local trunks, i.e., calls with different originating and terminating switches.

<sup>37</sup> ALLTEL Reply at 1.

<sup>38</sup> To determine the number of its originating Internet minutes, ALLTEL identified numbers with high call durations, i.e., calls that lasted for more than 60 minutes with at least 500 total minutes to the number per month. ALLTEL then called the numbers to which these calls were placed. Any numbers that were answered with a modem tone were determined to be ISP numbers and the corresponding minutes were determined to be Internet (continued...)

15. ALLTEL assigned all originating interlocal traffic, including Internet, plus the lower number of derived interlocal terminating minutes to the local jurisdiction. This decrease in the number of minutes attributed as interlocal terminating minutes reduced the total amount of traffic allocated as interlocal, and created a corresponding increase in the percentage of traffic allocated to other jurisdictions, including interstate.<sup>39</sup> Therefore, ALLTEL's decision to apply a 0.5 factor rather than a 1.0 factor to terminating Internet interlocal traffic caused its interstate DEM allocation factors to increase. This change increased the costs attributable to interstate traffic, resulting in an increase in ALLTEL's interstate charge for a minute of use of its switches.

16. We find that the DEM allocation factors proposed by ALLTEL in this matter are not reasonable, and therefore ALLTEL's local switching rates calculated based on these factors are unreasonable in violation of section 201(b) of the Communications Act of 1934, as amended.<sup>40</sup> Where carriers are unable to accurately measure the number of terminating DEMs, the Commission has affirmed the standard industry practice of counting one terminating DEM for each originating DEM.<sup>41</sup> ALLTEL did not use this one-originating-minute-to-one-terminating-minute approach, but instead used a flawed method of calculating terminating DEMs over shared traffic trunks. ALLTEL did not adequately address types of traffic imbalances other than the purported Internet traffic imbalance. For example, ALLTEL has not shown that it properly accounted for the fact that ISPs may be served by ALLTEL's exchanges and that these ISPs may receive calls from customers of other carriers. In that circumstance, ALLTEL's switch serving its ISP customer would be receiving more traffic in terminating minutes, but would have fewer originating minutes because ALLTEL's ISP customer would not be making any outgoing calls. ALLTEL adjusted its DEM factors only to account for ISPs served by other carriers' exchanges. If we were to allow carriers selectively to calculate their DEM factors in this manner, reducing terminating DEMs for outgoing ISP calls without making any similar increases to terminating DEMs for incoming ISP calls, the DEM factor would be improperly skewed. Minutes that should properly be attributed to the intrastate jurisdiction would be included in the interstate jurisdiction, and interstate access rates would be unreasonably inflated.

17. Furthermore, ALLTEL made an adjustment to correct for only one type of traffic imbalance. ALLTEL chose to adjust DEMs for Internet traffic, which caused its intrastate DEM factors to decrease and its interstate DEM factors to increase, but did not address other imbalances that would presumably have the opposite effect, such as wireless traffic. Due to typical calling patterns, it is likely that ALLTEL switches terminate more minutes of calls from wireless carriers than they originate, yet ALLTEL did not address this issue, instead continuing to rely on the one-originating-minute-to-one-terminating-minute ratio for this type of traffic. We find that it is unreasonable to allow ALLTEL to choose to address purported Internet traffic

(Continued from previous page) \_\_\_\_\_

minutes. See Letter from David Bartlett, ALLTEL Corporation, to Magalie Roman Salas, Secretary, Federal Communications Commission (July 23, 2001) (ALLTEL July 23 *Ex Parte* Letter).

<sup>39</sup> ALLTEL Reply at 1-2.

<sup>40</sup> 47 U.S.C. § 201(b).

<sup>41</sup> See *GCI Order*, 16 FCC Rcd at 2852, para. 44.

imbalances while ignoring other traffic imbalances that may offset the effect of the Internet traffic. Allowing carriers to pick and choose which traffic imbalances to address would undermine the one-originating-minute-to-one-terminating-minute approach, which provides all carriers with an administratively simple method of separating traffic between the jurisdictions without requiring them to measure and account for each and every type of traffic imbalance.

18. In the *Separations Freeze Order*, the Commission recognized that some parties believed that Internet usage may be affecting local DEMs. The Commission found that commenters had not supplied reliable data upon which to set the amount of any local DEM factor reduction that might be warranted.<sup>42</sup> Instead, the Commission committed to seek specific comment on the status of this issue when it examines the effects of the separations freeze at a future date, and to work with the Joint Board to address the impact of the Internet and the growth of local minutes during the interim freeze.<sup>43</sup> The Commission to date has not altered its jurisdictional separations rules or policies due to Internet usage, therefore ALLTEL is not justified in its attempt to alter its DEM allocation factors to account for the alleged Internet traffic imbalance.

19. Therefore, we direct ALLTEL, in the absence of a reasonable manner of estimating this traffic, to recalculate its DEM allocation factors counting one terminating minute for each minute of originating traffic, and to recalculate its interstate local switching rates based on the revised DEM allocation factors. In accordance with the *Separations Freeze Order*, ALLTEL must use only data from calendar year 2000 in calculating its DEM allocation factors.<sup>44</sup>

#### IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, that, pursuant to sections 4(i), 4(j), 201(b), 203(a), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(a), 204(a), 205, and 403, Moultrie Independent Telephone Company, Inc. SHALL FILE REVISED RATES, as described in paragraphs 3 and 10 above, no later than ten (10) calendar days from the release date of this order. These rates SHALL BE EFFECTIVE on five (5) days' notice. For this purpose, we waive section 61.58 of the Commission's rules, 47 C.F.R. § 61.58.

21. IT IS FURTHER ORDERED, that, pursuant to sections 4(i), 4(j), 201(b), 203(a), 204(a), 205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(a), 204(a), 205, and 403, ALLTEL Telephone Systems SHALL FILE REVISED RATES, as described in paragraphs 3 and 19 above, no later than ten (10) calendar

---

<sup>42</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11402, para. 40 (2001) (*Separations Freeze Order*) (“We have no reliable data, therefore, upon which to set any reasonable local DEM reduction on an across-the-board, nationwide basis in order to compensate for any effects that Internet usage may have had on jurisdictional allocations or consumers.”).

<sup>43</sup> *Separations Freeze Order*, 16 FCC Rcd at 11403, para. 42.

<sup>44</sup> *See Separations Freeze Order*, 16 FCC Rcd at 11396, para. 27.

days from the release date of this order. These rates SHALL BE EFFECTIVE on five (5) days' notice. For this purpose, we waive section 61.58 of the Commission's rules, 47 C.F.R. § 61.58.

22. IT IS FURTHER ORDERED, that ALLTEL Telephone Systems SHALL ISSUE REFUNDS, plus interest, for the period from July 3, 2001 through the effective date of its revised local switching rates filed as prescribed in this order.

23. IT IS FURTHER ORDERED, that ALLTEL Telephone Systems SHALL submit to the Common Carrier Bureau for review and approval plans for issuing refunds pursuant to our delegation of authority under section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, within 60 days of the release of this order. Refunds shall be calculated in accordance with the requirements of this order.

24. IT IS FURTHER ORDERED, that the investigation and accounting order imposed in the July 2, 2001 Memorandum Opinion and Order, DA 01-1563, IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN, APPROVING IN PART AND CONCURRING  
IN PART**

*Re: 2001 Annual Access Tariff Filings, Memorandum Opinion and Order, CC Docket No. 01-206*

I have concerns with this Order's discussion of ALLTEL's tariff filing and thus, with respect to that part of the Order (Part III), I concur only in the result. Part III of the Order addresses ALLTEL's effort, in setting its access rates, to account for the impact of Internet traffic. Although I agree with the Commission that the particular method used by ALLTEL was not reasonable, I reject the Order's suggestion that carriers may not, in allocating costs between the interstate and intrastate jurisdictions, attempt to account for the unique nature of Internet traffic. Despite requests from the States and the Federal-State Joint Board on Separations to provide a systematic method to address Internet traffic in the separations process, the FCC has failed to do so. In the absence of Commission action on this issue – which I continue to encourage – carriers should not be prohibited from addressing the problem.

At issue here is ALLTEL's recognition that Internet phone calls frequently move in only one direction: customers call ISPs, but ISPs do not call customers. Based on this premise, ALLTEL assumed that, for calls made from its exchanges to ISPs in other exchanges, there would be only half as many minutes of calls being made to ALLTEL's exchanges. For other calls made from its exchanges to other exchanges, ALLTEL assumed an equal number of minutes of calls would be made to its exchanges.

The Commission finds this methodology unreasonable, concluding that ALLTEL measured traffic imbalances selectively. According to the Commission, ALLTEL took into account only ISPs in other exchanges, failing to address the fact that ISPs served by its local exchanges will generate more terminating traffic than originating traffic. Additionally, however, the Commission finds fault with the fact that ALLTEL addressed only imbalances caused by Internet usage and did not consider other traffic imbalances, such as those caused by the use of wireless phones. The Commission strongly encourages ALLTEL to use a one-to-one presumption for all traffic.

While I agree that ALLTEL should have considered ISPs served by its local exchanges and thus concur with the Commission's resolution of this issue, I have concerns with the rest of the Commission's discussion. Specifically, I disagree with the Commission's suggestion that ALLTEL was required to account for all types of traffic imbalances or else use a one-to-one presumption for all traffic. There is no Commission rule stating such a requirement, and I am unaware of any reason why we should create one. A fair and balanced approach to consider solely the impact of Internet traffic should not render a tariff unreasonable – especially when States and the Separations Joint Board specifically called on the Commission to adjust the separations process to take this phenomenon into account and the Commission failed to do so.

As many States and the Separations Joint Board have recognized, the growing amount of Internet traffic has a significant impact on cost allocations. The Commission has nevertheless

failed to act on their request to reform the separations process. As I have stated, I believe the Commission should move forward on this issue and alter the separations rules in some manner, as was proposed by the Joint Board. The Separations Joint Board even suggested a specific adjustment if the Commission could not determine the precise impact of Internet traffic. The Commission rejected this proposal, arguing that it had insufficient information to make such an estimate. It is thus particularly ironic that we find fault with a carrier that has attempted to gather some of this information and adopt a process to address an issue that we failed to address. In the meantime, while the Commission has failed to act, I cannot find fault with individual carriers taking reasonable steps to address the impact of Internet traffic.

Accordingly, I concur in the result of Part III and approve the remainder of the Order.