

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPROVAL OF THE RESALE AGREEMENT)	
NEGOTIATED BY ALLTEL COMMUNICATIONS)	
SERVICE CORPORATION AND JILAPUHN, INC.)	
D/B/A TEL-AMERICA COMMUNICATIONS,)	CASE NO. 2000-377
PURSUANT TO SECTIONS 251 AND 252 OF)	
THE TELECOMMUNICATIONS ACT OF 1996)	

O R D E R

On August 1, 2000, ALLTEL Communications Service Corporation (“ALLTEL”) and Jilapuhn, Inc. d/b/a Tel-America Communications (“Tel-America”) submitted to the Commission their negotiated agreement for resale of ALLTEL's services to end-users. The agreement was negotiated pursuant to the Telecommunications Act of 1996 (“1996 Act”), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

The Commission has reviewed the agreement and finds that no portion of the agreement discriminates against a telecommunications carrier not a party to the agreement. The Commission also finds that the implementation of this agreement is consistent with the public interest, convenience, and necessity, except to the extent it does not reflect the Commission-ordered default discount rate of 17 percent. On September 26, 1996, the Commission ordered that “[f]or all LECs, other than GTE and BellSouth, the discount rate shall be 17 percent.”¹

¹ Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate, at 14 (“PSC Local Competition Order”).

The Commission's refusal to accept the tariffed price in an inter-carrier contract between an incumbent local exchange carrier ("ILEC") and a new carrier proposing to enter the telecommunications market by reselling the ILEC's services is fully grounded in the pro-competitive policy which Congress itself found to be in the public interest when it enacted the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56, 47 U.S.C. §§ 151 et seq.; which the Federal Communications Commission ("FCC") has upheld in its discussions regarding the federal policies geared toward developing meaningful competition in rural areas; and which this Commission has, as a matter of state policy, upheld in numerous Orders. Competition will not develop in the area currently subject to ALLTEL's monopoly until prices to new entrants are sufficiently low to enable them to make a profit.

As explained in the Joint Explanatory Statement of the Committee of Conference, Congress's purpose in passing the Telecommunications Act of 1996 was to open "*all* telecommunications markets to competition." (Emphasis added.) As the FCC has observed, Congress "did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service."² Similarly, this Commission has long made clear to incumbent carriers in Kentucky that it favors a pro-competitive policy and believes that policy serves the public interest:

The Commission favors a pro-competitive policy for all geographic areas of Kentucky and expects that the decisions made in this and subsequent orders will ensure compliance with the 1996 Act while providing the benefits of competition to all of the Commonwealth's citizens.³

² *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98 (F.C.C. Aug. 8, 1996) ("FCC Local Competition Order"), Paragraph 1262.

³ PSC Local Competition Order at 51.

We recognized in 1996 that Kentucky's urban areas would be more lucrative, and thus more attractive to new market entrants, and that competition would not develop "at the same pace throughout the state."⁴ Accordingly, we ordered ALLTEL, and other rural carriers, to file cost studies within three years of the date of the Order.⁵ ALLTEL did not appeal that Order, pursuant to which its cost studies were due to this Commission a year ago. Nevertheless, it has not filed its cost studies, pursuant to which an accurate wholesale discount rate could have been calculated.⁶ We also, in that same Order, refused to establish a rural exemption that would continue for a set number of years, explaining that new entrant requests to enter rural carriers' markets would initiate the appropriate public interest inquiry. We then set an automatic default rate of 17 percent for all ILECs other than BellSouth Telecommunications, Inc. and GTE South Incorporated,⁷ and warned the rural companies that they were expected "to undertake all steps necessary to compete effectively in an expeditious manner."⁸

⁴ PSC Local Competition Order at 49.

⁵ PSC Local Competition Order at 53.

⁶ We later rescinded the three-year deadline for rural carriers in Administrative Case No. 355, An Inquiry into Local Competition, Universal Service and the Non-Traffic Sensitive Access Rate and Case No. 99-376, Approving Duo County's Avoided Cost Methodology and Study (Order dated Sept. 22, 1999). However, we have never wavered from our intention to require the filing of such cost summaries and the calculation of the appropriate discount prior to the execution of any resale agreement between a rural carrier and a new market entrant.

⁷ PSC Local Competition Order at 53. The default rates for BellSouth and GTE South were set at 19.20 percent and 18.81 percent, respectively.

⁸ PSC Local Competition Order at 48.

Finally, we warned the rural ILECs that, three years from the date of our Local Competition Order, we would not consider failure to complete an appropriate cost study “as an adequate basis in support of petitions to maintain an exemption or to be given a suspension or modification.”⁹

The Telecommunications Act of 1996, the FCC’s Local Competition Order, and this Commission’s Local Competition Order are now over four years old, and the first small steps toward competition in ALLTEL’s monopoly market are beginning to be taken: new competitors wish to provide resold services. However, ALLTEL signed an agreement with Tel-America that would provide ALLTEL with windfall profits, since it would sell at its tariffed rate while not incurring the costs associated with retailing the service. Competition cannot develop when would-be competitors pay, as their cost, the same rate paid by end-use customers to the incumbent. Such circumstances would only result in the incumbent maintaining its captive customer base and perpetuating its monopoly.

We have concluded that this interconnection agreement should be permitted to go into effect as submitted pending the outcome of the proceedings ordered in Case Nos. 2000-027 and 2000-083.¹⁰ When those proceedings are concluded, then the resale rates contained in ALLTEL’s agreement with Tel-America will be subject to immediate and appropriate adjustment.

Tel-America must comply with all relevant Commission mandates for serving in this Commonwealth.

⁹ PSC Local Competition Order at 48.

¹⁰ Case No. 2000-027, The Interconnection Agreement Between Universal Telecom, Inc. and ALLTEL Telecommunications Service Corporation. Case No. 2000-083, The Application by Comm South Companies, Inc. d/b/a Kentucky Comm South and ALLTEL Communications Service Corporation for Approval of Resale Agreement Pursuant to the Federal Telecommunications Act of 1996.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The negotiated agreement between ALLTEL and Tel-America is effective as of the date of this Order, and the pricing terms thereof are subject to adjustment pending the outcome of the proceedings in Case Nos. 2000-027 and 2000-083 referenced herein.

2. Within 20 days of the date of this Order, ALLTEL shall file with the Commission a true and complete copy of the agreement approved herein in Microsoft® Word 97 format on 3.5-inch high-density diskette.

Done at Frankfort, Kentucky, this 26th day of October, 2000.

By the Commission

ATTEST:

Deputy W. H. Fowler
Executive Director