

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF SOUTHEAST)	
TELEPHONE, INC. FOR ARBITRATION)	
OF CERTAIN TERMS AND)	
CONDITIONS OF THE PROPOSED)	CASE NO. 2003-00115
AGREEMENT WITH KENTUCKY)	
ALLTEL, INC., PURSUANT TO THE)	
COMMUNICATIONS ACT OF 1934, AS)	
AMENDED BY THE)	
TELECOMMUNICATIONS ACT OF 1996)	

O R D E R

On February 17, 2004, Kentucky ALLTEL, Inc. (“ALLTEL”) and SouthEast Telephone, Inc. (“SouthEast”) submitted, pursuant to the Commission’s Orders in this matter, their arbitrated agreement concerning, among other things, interconnection of their networks and the unbundling of specific network elements as required by 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 arbitration to submit the agreement for approval to the Commission.

ALLTEL also filed, on February 18, a Petition for Reconsideration, stating that it plans to appeal the initial arbitration Order as well as the Commission’s February 6, 2004 Order. That Order clarified that there is, pursuant to current Federal Communications Commission (“FCC”) rules, no four-line DSO limit after which a customer must be considered an “enterprise” customer for purposes of SouthEast’s right to obtain the unbundled network element platform (“UNE-P”). ALLTEL claims, among other things, that

the lack of a limit is “vague” and will result in “confusion and disagreement” between the parties, as SouthEast claims that it may order an unlimited number of DSO lines per customer.

ALLTEL repeats the arguments it has previously made against the lack of a limit to such lines, and offers nothing new. ALLTEL also repeats its arguments against our requirements, pursuant to state and federal law, that it provide unbundled switching and the UNE-P to SouthEast, noting that the FCC’s Triennial Review Order (“TRO”) may be reversed in the near future.

Subsequent to ALLTEL’s filing, on March 2, 2004, the United States Court of Appeals for the D.C. Circuit entered an opinion that does, in fact, vacate large portions of the TRO, including the FCC’s provisional finding of mass market “impairment” and the delegation to the states of final determinations on mass market issues.¹ We have reviewed the decision to determine its effect on our decision here and conclude that there is no immediate effect. The decision, by its own terms, stays the partial vacatur until no later than “the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from [March 2].”² Thus, as a matter of law, the TRO remains in effect for at least another 60 days. It is likely to remain in effect even longer, for petitions for rehearing are all but inevitable. Even if the vacatur were immediately effective, the Court does not purport to vacate the FCC’s treatment of the four-line cutover rule. Nor does it do anything more than vacate the FCC’s current requirements concerning the mass market impairment

¹ *United States Telecom Ass’n v. Federal Communications Comm’n*, Docket No. 00-1012 (D.C. Cir., March 2, 2004).

² *Id.*, Slip Op. at 62.

issue. It does not specify a different analysis. We are, with respect to the mass market UNE-P question, returned to the legal environment that existed prior to entry of the TRO. Nothing in that legal environment is contrary to our Orders in this case.

Based on the foregoing analysis, we affirm our previous Orders in this matter.

We also have reviewed the parties' agreement, and conclude that no portion of the agreement discriminates against a telecommunications carrier not party to it. We also find that the implementation of this agreement is consistent with the public interest, convenience, and necessity.

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

1. The Petition for Reconsideration of ALLTEL is denied.
2. The arbitrated agreement between ALLTEL and SouthEast is approved.
3. Within 10 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 5th day of March, 2004.

By the Commission

ATTEST:


Executive Director