

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF ALLTEL KENTUCKY FOR) CASE NO.
AN INCREASE IN RATES) 2004-00193

O R D E R

On April 23, 2004, ALLTEL Kentucky, Inc. ("ALLTEL Kentucky") filed notice of its intent to increase its rates pursuant to KRS 278.516, which provides, among other things, an alternate rate filing procedure for small telecommunications utilities.¹ ALLTEL Kentucky also filed on that date a tariff reflecting the proposed increase with a proposed effective date of August 1, 2004. ALLTEL Kentucky modified the proposed tariff and changed the effective date to August 7, 2004. By this Order, we suspend the tariff, make certain interim findings, and order ALLTEL Kentucky to file responses to questions as described herein.

KRS 278.516 permits a small telephone utility, within certain parameters, to increase its rates based on the GDP for the preceding two calendar years. If those parameters are met, and if 5 percent or 500 of the small utility's customers, whichever is greater, have not requested Commission review of the proposed increase, that increase

¹ On October 13, 1998, ALLTEL Kentucky filed its notice stating its election to be regulated pursuant to KRS 278.516. This Commission recognized the election by Order dated December 30, 1998, in Case No. 1998-00529, Board Resolution of ALLTEL Kentucky, Inc., Pursuant to Kentucky Revised Statute Chapter 278.516, Alternative Regulation Process for Small Telephone Utilities.

becomes effective without a Commission rate proceeding pursuant to KRS 278.190. ALLTEL Kentucky's filing in this case raises two questions: (1) Given the 2002 acquisition of the Kentucky properties of Verizon South, Inc. by Kentucky ALLTEL, Inc. ("Kentucky ALLTEL"), an affiliate of ALLTEL Kentucky,² may ALLTEL Kentucky still be defined as a "small telephone utility" pursuant to KRS 278.516(2) such that the alternate regulation provisions of the statute still apply to it? (2) Given that the statute explicitly prescribes that the increase permitted under KRS 278.516(3) is "not to exceed the sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years," may a small telephone utility increase its rates based on the annual percentage changes of a sub-category of the GDP so that its increase would in fact exceed the GDP percentage change for the preceding two calendar years? We tentatively conclude that the answer to both questions is no.

KRS 278.516 makes available expedited, simplified regulatory procedures to small telephone utilities based on the legislative finding that, among other things, they "lack the resources to fully participate in existing regulatory processes." KRS 278.516(1)(a). Consequently, the statute defines "small telephone utility" as a "local exchange carrier providing telephone utility service and having not more than fifty thousand (50,000) access lines in Kentucky." KRS 278.516(2)(d). The statute requires the Commission to calculate the number of access lines by counting "the number of access lines provided by all telephone utilities under common ownership or control, as

² Case No. 2001-00399, Petition by ALLTEL Corporation to Acquire the Kentucky Assets of Verizon South, Incorporated (Order dated February 13, 2002).

defined in KRS 278.020(5).” KRS 278.516(2)(f). KRS 278.020(5), in turn, defines “control” to mean:

[T]he possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility.

KRS 278.020(5).

Based on these statutory provisions, the acquisition of the Verizon Properties by Kentucky ALLTEL – which is, like ALLTEL Kentucky, an entity wholly owned by the ALLTEL Corporation of Little Rock, Arkansas – appears to have terminated the applicability of KRS 278.516 to ALLTEL Kentucky. The records of the Commission definitively show that the access line count of both ALLTEL entities in Kentucky far exceeds the 50,000 line limitation specified in the statute, and we take administrative notice of same. We also note that the notice of ALLTEL Kentucky’s proposed rate increase was, in fact, sent by the manager of state government affairs of the corporate parent, and that the notice specified a return address in Little Rock, Arkansas, rather than in Shepherdsville, Kentucky.

Next, KRS 278.516 specifically limits rate increases to the “sum of the annual percentage changes in the GDP for the immediately preceding two (2) calendar years multiplied by the existing rate or charge to be adjusted.” The “GDP” is defined in the statute as “the real Gross Domestic Product Price Index, as it may be amended from time to time, as it is published by the Bureau of Economic Analysis of the United States Department of Commerce.” KRS 278.516(2)(g). The “annual percentage change in the GDP” is defined as “the annual percentage change in the GDP as it is calculated by the

Bureau of Economic Analysis of the United States Department of Commerce.”
KRS 278.516(2)(h).

ALLTEL Kentucky’s proposed increase is based upon a sub-category of the GDP, the percentage increase of which has been larger than that of the total GDP. Accordingly, we tentatively conclude, as a matter of law, that the increase mechanism proposed is not authorized by KRS 278.516.

Although the conclusions reached herein are based on our interpretation of the applicable law, they are tentative conclusions only. ALLTEL Kentucky should be given an opportunity to respond to these conclusions, offering any arguments it may have in support of its alleged right to adjust its rates pursuant to the KRS 278.516 procedure and in support of the alleged propriety of measuring a small telephone utility rate increase by use of a sub-category of the GDP rather than by use of the GDP as a whole. In the alternative, ALLTEL Kentucky may withdraw its petition in this matter and, if it deems a rate increase necessary, file pursuant to KRS 278.190.

The Commission having reviewed the record and having been sufficiently advised, HEREBY ORDERS that:

1. The tariff of ALLTEL Kentucky, filed on April 23, 2004 and containing proposed rate increases, is hereby suspended for 5 months from August 7, 2004, up to and including January 6, 2005.

2. No later than 30 days from the date of this Order, ALLTEL Kentucky shall file one of the following:

a. An argument in support of its alleged right to adjust its rates pursuant to the KRS 278.516 procedure for small telephone utilities and an argument in

support of a small telephone utility's alleged right to calculate an increase under KRS 278.516 based upon the percentage increase in a sub-category of the GDP rather than the percentage increase of the GDP as a whole; or

b. A notice stating that its petition to increase rates pursuant to KRS 278.516 shall be withdrawn.

3. In the event that ALLTEL Kentucky does not file in support of its petition to increase rates pursuant to KRS 278.516 as described in Ordering Paragraph 2(a) herein, the tentative findings and conclusions contained herein shall become final.

4. Nothing herein shall be construed to prevent the Commission from entering dispositive orders in this case prior to the termination of the suspension period.

Done at Frankfort, Kentucky, this 1st day of June, 2004.

By the Commission

(See document named "200400193_06012004apx.pdf" for Appendix.)

ATTEST:



Executive Director

Case No. 2004-00193