COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On April 23, 2004, ALLTEL Kentucky, Inc. ("ALLTEL Kentucky") filed notice of its intent to increase rates pursuant to KRS 278.516, which provides, among other things, an alternate rate filing procedure for small telecommunications utilities.[1] By Order dated June 1, 2004, the Commission tentatively concluded the following: (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] ALLTEL Kentucky may not still be defined as a "small telephone utility" pursuant to KRS 278.516(2), and (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," a small telephone utility may not

[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.

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

increase its rates based on the annual percentage changes of a sub-category of the GDP.

The Commission's tentative conclusion was further explained as follows:

> 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 defined in KRS 278.020(5)." KRS 278.516(2)(f). KRS 278.020(5), in turn, defines "control" to mean:
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>> [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.
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> KRS 278.020(5).
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> 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.

The Commission determined that ALLTEL Kentucky should be given an opportunity to respond to its tentative conclusions. ALLTEL Kentucky has filed extensive comments, prefiled testimony, and has appeared at a public hearing held April 21, 2005. At the conclusion of this public hearing, this matter stood submitted to the Commission and is ripe for decision.

The Commission finds that the tentative conclusions reached in its June 1, 2004 Order have not been rebutted by ALLTEL Kentucky. On its own motion, however, the Commission finds that ALLTEL Kentucky submitted sufficient evidence to warrant an exemption from certain regulatory requirements, pursuant to KRS 278.512.

ALLTEL Kentucky asserts that competition from “nontraditional” local exchange carriers, wireless carriers, cable providers, and providers of voice over internet protocol has proliferated.[3] ALLTEL Kentucky also asserts that alternative regulation has benefited its consumers, created investment incentives, and encouraged providers to expand service offerings. ALLTEL Kentucky’s basic service rates are among the lowest in Kentucky.[4] ALLTEL Kentucky receives fewer than five customer complaints per year. Approximately 96 percent of its customers have DSL available.[5] ALLTEL Kentucky has requested that this Commission consider this evidence as sufficient to meet the criteria of KRS 278.512(3) to determine that the public interest dictates alternative regulation.[6] The Commission finds that ALLTEL Kentucky should continue to be regulated in the manner prescribed by KRS 278.516(3), (4), (5), and (6).

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 278.512, ALLTEL Kentucky shall be regulated pursuant to an alternative regulation plan as specified in KRS 278.516(3), (4), (5) and (6).

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[3] Prefiled testimony at 8; Transcript of Evidence at 14.

[4] Prefiled testimony at 11.

[5] Prefiled testimony at 12.

[6] Transcript of Evidence at 62-64.

2. ALLTEL Kentucky's proposed tariff addressed in this proceeding shall be denied without prejudice to refiling in accordance with the alternative regulation plan established herein.

Done at Frankfort, Kentucky, this 28th day of April, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

ATTEST:

Executive Director