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February 15, 2005

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FEB 15 2005

PUBLIC SERVICE
COMMISSION

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RE: The Petition of ALLTEL Kentucky for an Increase in Rates,
Case No. 2004-00193

Dear Ms. O'Donnell:

Enclosed for filing in the above-referenced matter is an original and eleven (11) copies of the Direct Testimony of J.T. Meister, Jr. filed on behalf of ALLTEL Kentucky, Inc. Please file-stamp the extra copy and return it to me in the self-addressed, pre-stamped envelope I have enclosed for your convenience.

Thank you for your cooperation in this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

WYATT, TARRANT & COMBS, LLP

Noelle M. Holladay

Enclosures

cc: J.T. Meister, Jr.

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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**

DIRECT TESTIMONY

OF

J.T. MEISTER, JR.

ON BEHALF OF ALLTEL KENTUCKY, INC.

Filed: February 15, 2005

DIRECT TESTIMONY OF J.T. MEISTER, JR.

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Q. Please state your name and business address.

A. My name is J.T. Meister, Jr. My business address is One Allied Drive, Little Rock, Arkansas 72202.

Q. By whom are you employed and in what capacity?

A. I am employed by ALLTEL Communications as Staff Manager of State Government Affairs. I am testifying in this proceeding on behalf of ALLTEL Kentucky, Inc.

Q. Please describe your experience in the telecommunications industry.

A. I have worked in the telecommunications industry approximately nine years. I joined ALLTEL in 1996 as an Analyst in State Regulatory Matters. During my nine years with ALLTEL, I have been involved in regulatory issues affecting ALLTEL local exchange carriers in several of the 15 states in which ALLTEL local exchange carriers operate. My current responsibilities include monitoring and managing state regulatory and legislative activities for various states, including Kentucky, Pennsylvania, New York and Ohio. I've also participated directly in issues concerning alternative regulation in various states, including specifically Kentucky, Pennsylvania and North Carolina.

Q. Please provide an overview of your testimony.

1 A. ALLTEL Kentucky, Inc. ("ALLTEL Kentucky") satisfied the requirements of
2 KRS §278.516 at the time its Board of Directors elected to be regulated
3 thereunder on October 13, 1998. By law, that election remains effective until
4 ALLTEL Kentucky's Board of Directors determines (which it has not) that the
5 election should be withdrawn and the Board's verified resolution to that effect is
6 filed with the Commission. ALLTEL Kentucky's customers have benefited from
7 the company's alternative regulation election. Indeed, customers benefit when
8 companies are allowed to compete freely in the marketplace - where the
9 marketplace incents increased technological innovation. The focus of this
10 proceeding, therefore, should not be whether ALLTEL Kentucky may continue to
11 operate under KRS §278.516 but rather how this Commission can ensure the
12 continuation of ALLTEL Kentucky's existing alternative regulation and expand
13 existing alternative regulation options to other telecommunications providers.

14
15 **Q. What is the history of this proceeding?**

16 A. On October 13, 1998, ALLTEL Kentucky's Board of Directors made an election
17 pursuant to KRS §278.516 to be regulated under the statutory alternative
18 regulation plan for small companies in Kentucky. Although no action was
19 required of the Kentucky Commission to make the election effective, it approved
20 ALLTEL Kentucky's election on December 30, 1998.

21
22 On April 23, 2004, ALLTEL Kentucky filed a notice of intent and associated
23 tariff in the current proceeding with respect to increasing certain basic rates

1 pursuant to KRS §278.516 in the amount of \$199,467. The Commission issued an
2 Order on June 1, 2004 indicating that it had suspended ALLTEL Kentucky's tariff
3 filing and questioned whether ALLTEL Kentucky could still be defined as a
4 "small telephone utility" under KRS §278.516 given the 2002 acquisition of
5 Verizon's Kentucky properties by ALLTEL Kentucky's wholly separate affiliate,
6 Kentucky ALLTEL.

7

8 On August 2, 2004, ALLTEL Kentucky filed its response to the Commission's
9 suspension order and requested an informal conference. The Commission
10 acknowledged ALLTEL Kentucky's response in its further order on November
11 22, 2004 and required ALLTEL Kentucky to submit any additional legal
12 arguments or other comments and request a hearing. On December 13, 2004,
13 ALLTEL Kentucky filed its response to the November 22, Order and requested a
14 hearing in this matter. On January 5, 2005, the Commission issued an Order
15 granting a hearing as requested and requiring that direct testimony be filed by
16 February 15, 2005.

17

18 **Q. When ALLTEL Kentucky elected alternative regulation, did it satisfy the**
19 **statutory requirements to elect under KRS §278.516?**

20

21 **A.** Yes. It is undisputed that ALLTEL Kentucky satisfied the statutory requirements
22 to elect under KRS §278.516 at the time of its election and as previously stated,
23 the Commission acknowledged that ALLTEL Kentucky satisfied the requirements
24 in its Order on December 30, 1998 in Case No. 1998-00529. A copy of that
25 Order is attached as Exhibit 1.

1

2 **Q. Did the Kentucky Legislature establish any requirement that electing**
3 **companies must continue to satisfy the access line criteria on an ongoing**
4 **basis?**

5
6 A. No. KRS §278.516 only requires that electing companies satisfy the statutory
7 access line criteria at the time of election. The statute does not require review or
8 recertification in the years following an initial election. Again, ALLTEL
9 Kentucky clearly satisfied the requirements to elect alternative regulation under
10 KRS §278.516 in 1998 and continues as a distinct corporate entity operating in
11 compliance with the statute today.

12

13 **Q. Does the Commission have authority under KRS §278.516 to order an**
14 **electing company to discontinue operating under KRS §278.516?**

15
16 No. The Legislature did not provide any authority or basis in KRS §278.516 for
17 the Commission to order electing companies to exit alternative regulation and
18 return to rate of return ("ROR") regulation.

19

20 **Q. Can an electing company decide to discontinue operating under KRS**
21 **§278.516?**

22
23 A. Yes. Just as the Legislature provided companies that satisfy the statutory criteria
24 at the time of election the sole discretion to elect under KRS §278.516, similarly,
25 the Legislature authorized an electing company's board of directors the discretion
26 to decide whether the company should cease operating under KRS §278.516. In
27 other words, the Kentucky Legislature specified that the decisions to *begin* and
28 *end* being regulated under KRS §278.516 *rest solely with a company's board of*

1 *directors* (or other similar governing bodies) as long as the electing company
2 satisfies the initial test of eligibility at the time of election:

3 *A small telephone utility may elect, at any time, to be*
4 *regulated by the provisions, in their entirety only, of this*
5 *section by filing a verified resolution of the utility's board*
6 *of directors, or other governing body, so electing with the*
7 *commission. An election shall be effective immediately*
8 *upon filing with the commission and shall remain effective*
9 *until withdrawn by the filing with the commission of a*
10 *verified resolution of the small telephone utility's board of*
11 *directors or other governing body*; provided, however, that
12 all resolutions of election or withdrawal shall remain in
13 effect for at least one (1) year from the date of their filing
14 with the commission. A resolution electing to be regulated
15 by the provisions of this section shall mean that the small
16 telephone utility so electing shall be regulated by this
17 section and *shall not be regulated by KRS 278.020(1) and*
18 *278.300.* Nothing in this section, however, shall be
19 construed to alter the applicability of KRS 278.020(3) or
20 278.030(2) to small telephone utilities electing to be
21 regulated by the provisions of this section.

22
23 (Emphasis added.) (K.R.S. §278.516(7).)
24

25 In compliance with KRS §278.516, ALLTEL Kentucky satisfied the requirements
26 at the time of its election in 1998, and its election remains effective because
27 ALLTEL Kentucky's Board of Directors has not determined that the election
28 should be withdrawn.

29

30 **Q. Do the legislative policies established by the Kentucky Legislature also**
31 **support continued alternative regulation?**

32
33 **A. Yes.** As mentioned previously, in 1992 (even before the United States Congress
34 enacted the Telecommunications Act of 1996), the Kentucky Legislature had the
35 foresight to establish the following policies in support of alternative regulation:

1 (a) *Competition and innovation have become commonplace* in the
2 provision of certain telecommunications services in Kentucky and
3 the United States;

4
5 (b) *Flexibility in the regulation of the rates of providers of*
6 *telecommunications service is essential* to the well-being of this
7 state, its economy, and its citizens; and

8
9 (c) The public interest requires that the Public Service Commission
10 be authorized and encouraged to formulate and adopt rules and
11 policies that will permit the commission, in the exercise of its
12 expertise, to regulate and control the provision of
13 telecommunications services to the public in a *changing*
14 *environment*, giving due regard to the interests of consumers, the
15 public, the providers of the telecommunications services, and the
16 continued availability of good telecommunications service.
17

18 (Emphasis added.) (K.R.S. §278.512.) Additionally, the Kentucky Legislature
19 established the following policies supporting alternative regulation specific to
20 telephone utilities electing under KRS §278.516:

21 (1) The legislature finds and determines that:

22
23 (a) *Small telephone utilities lack the resources to fully participate in*
24 *the existing regulatory processes, particularly under traditional*
25 *rate of return and certificate of public convenience and necessity*
26 *regulation;*

27
28 (b) *Regulation, if not tailored specifically to the needs of small*
29 *telephone utilities, can retard the growth and development of small*
30 *telephone utilities by requiring the expenditure of excessive time*
31 *and money responding to and addressing regulatory processes*
32 *instead of devoting those resources to customer service and more*
33 *productive business concerns* and issues; and

34
35 (c) *It is in the public interest to provide regulatory flexibility to*
36 *small telephone utilities to better enable them to adjust to the*
37 *competition and innovation that has come and is coming to the*
38 *telecommunications industry* as found and determined by the
39 legislature at KRS 278.512(1).
40

41 (Emphasis added.) (K.R.S. §278.516.) All of these policies clearly favor increased
42 regulatory flexibility.

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In 1992, the Legislature established multiple ways for companies to elect alternative regulation. First, a telephone utility having at the time of election not more than 50,000 access lines in Kentucky can elect under K.R.S. §278.516(7) to be regulated under the provisions set forth in KRS §278.516. Second, utilities which do not meet this access line criterion or which desire flexibility beyond that in the existing statutory plan can petition the Commission to adopt an alternative regulation plan upon demonstration that the plan is in the public interest pursuant to the criteria set forth in K.R.S. §278.512. (See Exhibit 2 for a list of these criteria.)

Indeed, the "changing [communications] environment" recognized by the Legislature in 1992 has expanded and accelerated significantly in the decade since 1992. In the years following enactment of KRS §278.516, competition from non-traditional LECs, wireless carriers, cable providers, and providers using technologies such as voice over Internet protocol ("VoIP") has proliferated. The way people communicate has changed profoundly in the last several years. Consumers can place voice calls over the Internet and access the Internet over wireless phones. More than 8 million Americans have only a wireless telephone, and more than 56 million use wireless technology to stay connected to the Internet. By 2006, 55 million households will be able to buy phone service from their cable companies. In 2004, more Americans connected to the Internet with broadband than with dial-up, and VoIP subscribers number approximately 1

1 million compared to 130,000 the previous year. Today, local telephone, wireless,
2 cable, and VoIP providers are all competing for the same customers.

3
4 The Legislature's recognition thirteen years ago that regulatory flexibility was
5 "essential" rings more true today. Telecommunications carriers must be able to
6 respond quickly and effectively to customers, who generally have no patience for
7 delays or regulatory constraints. Customers demand that carriers immediately
8 respond to their individual needs and requests; carriers must be allowed to
9 develop rates, terms, and conditions in a timely manner and on an individual-case
10 basis to respond to competitive circumstances. Consumers benefit when
11 competitive responses result in additional choices.

12
13 There have been significant changes in the telecommunications market, but the
14 regulatory environment in which traditional telephone companies operate has not
15 changed to keep pace. As a result, traditional phone companies are at a serious
16 competitive disadvantage. Real competition is only possible when all providers
17 are permitted to respond to consumer needs in a flexible and prompt manner.

18

19 **Q. Even if the Commission had the authority to order an electing company to**
20 **discontinue operating under KRS §278.516, would it be good policy for the**
21 **Commission to determine that ALLTEL Kentucky should cease being**
22 **alternatively regulated?**

23

24 A. No. Sound public policy and future economic growth in the Commonwealth
25 demand *increased* regulatory flexibility. The Commission should, at a minimum,
26 preserve the existing regulatory flexibility for small telephone utilities under

1 KRS §278.516 and find ways to *expand* such flexibility to better accommodate
2 the needs of small and large telephone utilities in this dynamic communications
3 marketplace. For instance, the Commission has pending before it an *Inquiry into*
4 *the Use of Contract Service Arrangements by Telecommunications Carriers in*
5 *Kentucky* (Administrative Case No. 2002-00456) ("CSA case"). The CSA case,
6 like this one, presents an opportunity for the Commission to increase regulatory
7 flexibility and to take steps to recognize and endorse the competitive
8 telecommunications environment.

9
10 Kentucky currently ranks 44th in the nation in its proportion of high-tech
11 companies, 45th in household computer use, and 43rd in citizen Internet use.
12 Governor Fletcher indicated the solution is to - *ease regulatory roadblocks*,
13 create supply-side incentives, and invest in demand-side policies. The Governor's
14 vision of economic development - "Welcome to Kentucky. We are Open for
15 Business." - acknowledges the benefits to consumers and Kentucky's economy of
16 enacting policies that encourage businesses to invest in new technologies and
17 predicts that full broadband deployment in Kentucky will result in 14,000 jobs
18 and \$5 billion added to the Gross State Product annually.

19
20 **Q. Does expanded alternative regulation in the Commonwealth's**
21 **telecommunications market align with the Governor's initiatives?**

22
23 **A.** Yes it does. Alternative regulation removes the regulatory uncertainty
24 surrounding a company's ability to respond to competitive pressures in order to

1 meet customers' needs. When the company is free to respond openly and
2 rapidly, the consumer benefits.

3

4 **Q. How do ALLTEL Kentucky's customers benefit from the company's existing**
5 **alternative regulation?**

6

7 A. Alternative regulation benefits consumers, incents investment, and encourages
8 providers to expand available service offerings. In the years following ALLTEL
9 Kentucky's election of the statutory alternative regulation plan under KRS
10 §278.516, the company's basic service rates have remained among the lowest
11 rates in the Commonwealth as demonstrated by the chart below.

12

Company	Lowest Residential Rate	Lowest Business Rate
ALLTEL Kentucky, Inc.	\$8.12	\$14.18
BellSouth	\$15.20	\$33.75
Cincinnati Bell	\$16.95	\$46.25
South Central Rural	\$16.65	\$26.35
Duo County Telephone	\$13.37	\$20.87
Brandenburg Telephone	\$5.60	\$8.40
Mountain Rural	\$10.63	\$17.63

13

14 Additionally, ALLTEL Kentucky has continued to meet or exceed Commission-
15 required service quality standards. In fact, a review of the last three years service
16 quality reports shows that ALLTEL Kentucky has consistently met service
17 objectives.

18

1 **Q. Has ALLTEL Kentucky experienced any service quality issues as a result of**
2 **operating under alternative regulation?**

3
4 A. No. ALLTEL Kentucky receives fewer than five (5) customer complaints per
5 year. Again, ALLTEL Kentucky's rates are among the lowest in the state.
6 ALLTEL Kentucky provides a very modern network providing state of the art
7 services to its customers.

8
9 ALLTEL Kentucky now offers DSL to approximately 96% of its customers in its
10 three exchanges. This widespread availability of advanced services compliments
11 the efforts of Governor Fletcher and the Legislature in their efforts to expand the
12 availability of broadband across the Commonwealth. As noted above, the
13 Governor's "Prescription for Innovation" recognizes that full broadband
14 deployment in Kentucky will result in thousands of new jobs for the citizens of
15 Kentucky.

16
17 **Q. Is the existing regulatory framework in Kentucky outdated?**

18 A. Yes. Despite the Kentucky Legislature's foresight in establishing a framework for
19 alternative regulation more than a decade ago, the existing regulatory framework
20 continues to overlook the groundwork laid by the Legislature as well as efforts in
21 many other states to achieve full market-based competition rather than
22 government-managed competition. In Kentucky, local exchange carriers (even
23 those operating under existing statutory alternative regulation plans) can only
24 achieve rate changes upon tariff filings submitted thirty (30) days in advance of
25 the requested effective dates. Legacy local exchange carriers cannot set prices or

1 terms on a location- or market-specific basis without establishing the same prices
2 and terms across their entire service territories. Certain providers of services that
3 are functionally the same as those provided by local exchange carriers are not
4 required to comply with any of the constraints imposed upon the local exchange
5 carrier and have the freedom to set rates on a “door-to-door” basis immediately
6 upon talking to the customer. Unlike their VoIP and cable provider counterparts,
7 most local exchange carriers cannot serve customers through contract service
8 arrangements without filing the contracts for Commission approval thirty (30)
9 days in advance and cannot even file the contracts with the assurance of
10 confidentiality protection. Additionally, local exchange carriers are subject to
11 service quality standards that are not relevant to customer satisfaction, are
12 inequitably applied and which are not applicable to their broadband, VoIP, and
13 wireless competitors.

14
15 Such constraints and disparity make it impossible for legacy local exchange
16 carriers to meet customer demands in a flexible and speedy way. Customers are
17 denied the benefits of full competition because government-regulated carriers are
18 not allowed to respond adequately to the competitors' offers. It is imperative that
19 Kentucky modernize its regulatory framework to fit more appropriately with
20 today's competitive communications environment.

21
22 **Q. Does the present form of regulation disadvantage the citizens of Kentucky?**

1 A. Yes. The regulatory framework in Kentucky limits consumers' choice. While
2 there are many companies in Kentucky providing services that are the same as
3 those provided by the local exchange company, the local exchange company is
4 the only company that cannot offer discounts to individual customers. Non-
5 traditional companies such as cable companies offering local telephone service
6 are offering their services at different prices depending on their individual
7 customers' desires; however, ALLTEL Kentucky, even with its existing statutory
8 alternative regulation, cannot alter its offer for one customer without suffering a
9 significant delay or being required to provide the same rate to all customers - all
10 of which frustrates and deters the customers in a competitive market. In the end,
11 such regulatory constraints serve only to inhibit competition by limiting consumer
12 choice. Customers who prefer legacy telephone service have a choice of only one
13 rate. Likewise, those customers who choose non-traditional carriers do not
14 achieve the benefit of truly competitive rates because those carriers are not
15 incented to engage in truly competitive exchanges - instead, they merely have to
16 reduce their rates slightly below the rates offered by the legacy carriers because
17 these legacy carriers have no ability to respond in a timely manner. The
18 regulatory framework in the Commonwealth is out of step with the competition
19 taking place in the telecommunications industry.

20

21 **Q. Is there evidence that the Legislature continues to believe that consumers will**
22 **benefit from increasing regulatory flexibility?**

23

24 A. Yes. The Legislature passed House Bill 627 during the 2004 session, eliminating
25 state regulation of broadband. This act is a clear indication that the Legislature is

1 just as concerned with promoting market-based competition and
2 expanding/encouraging investment within the Commonwealth in 2004 as it was
3 back in 1992 when it laid the initial framework for alternative regulation.

4

5 **Q. Have others expressed a similar belief that consumers benefit from**
6 **increasing regulatory flexibility?**

7

8 A. Yes. As discussed previously, the Governor's "Prescription for Innovation"
9 contains similar objectives with respect to encouraging investment in new
10 technologies and strengthening businesses within Kentucky, while providing great
11 benefit to the citizens of Kentucky. The Governor's key solution for modernizing
12 Kentucky's economy is to *ease regulatory roadblocks*. His policies are intended to
13 spur companies to invest in new technologies - in Kentucky.

14

15 Additionally, FCC Commissioner Jonathan Adelstein was right in line with such
16 efforts when he noted that the FCC should "encourage broadband deployment by
17 increasing incentives for investment and promoting competition." He said that
18 the FCC "can do both with a policy framework that is flexible and keeps pace
19 with rapid technological changes." (See, November 18, 2004 [TRDaily](#).) This is
20 the same vision for which the Kentucky Legislature laid a foundation in 1992 and
21 on which the Kentucky Commission should now set the stage for freedom from
22 unnecessary regulatory restraints.

23

24 **Q. What is the trend with respect to state regulation of traditional telephone**
25 **companies?**

26

1 A. The progressing trend across the country is to expand the availability of
2 regulatory flexibility and alternative regulation options. Many other states have
3 recognized the need for updated rules and have taken steps to modernize their
4 regulatory systems.

5 For example:

- 6 • In Arkansas, the legislature passed regulatory reform in 1997, providing
7 companies an alternative regulation option including customer-specific
8 pricing flexibility.
- 9 • In Georgia, the legislature enacted alternative regulation in 1995 that provides
10 pricing flexibility. Georgia companies also have the ability to establish
11 customer specific/location specific solutions for customers in the competitive
12 world.

13
14 States including South Carolina, North Carolina and Pennsylvania have recently
15 passed laws providing traditional local telephone companies more flexibility in
16 pricing. In South Carolina, the state legislature enacted legislation that empowers
17 consumers and carriers by allowing alternatively regulated local exchange carriers
18 to bundle services on an individual-customer basis free from "any requirements
19 related to the terms, conditions, rates, or availability of any bundled or contract
20 offering" imposed by the South Carolina Commission. (S.C.A. §58-9-285.)
21 Similarly, the new Pennsylvania alternative regulation legislation provides for
22 bundling of services at a price selected by the company and provides for
23 companies to price services on a location specific basis to meet competition.

24

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2

The FCC has also endorsed market-based regulation. On March 31, 2004, the FCC urged carriers to enter into market-based negotiations with respect to continued use of unbundled network elements following multiple unproductive attempts at historical governmental regulation which have failed and continue to result in extensive litigation. Similarly, on November 17, 2004, the United States Telecom Association, like other industry groups, adopted legislative principles advocating, among other things, a fundamental modernization of federal telecom regulation to encourage investment in and rapid deployment of advanced communications. A key aspect of these principles is the replacement of government-managed competition with market-based competition.

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Q. Does this conclude your testimony?

14

A. Yes, at this time.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE BOARD RESOLUTION OF ALLTEL KENTUCKY,)
INC. PURSUANT TO KENTUCKY REVISED STATUTE) CASE NO. 98-529
CHAPTER 278.516 ALTERNATIVE REGULATION)
PROCESS FOR SMALL TELEPHONE UTILITIES)

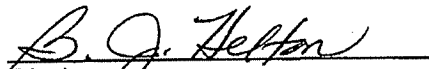
O R D E R


On October 13, 1998, ALLTEL Kentucky, Inc. ("ALLTEL") filed a Notice with the Commission that it was electing to be regulated pursuant to KRS 278.516, a procedure for alternative regulation for small telecommunications carriers in Kentucky. Pursuant to the statute, the election of ALLTEL is effective on the date filed. The Commission has reviewed ALLTEL's filing and finds that it complies with the requirements of the statute. ALLTEL shall file a tariff which sets forth the alternative regulation process, describing the means for rate adjustments and other details contained in the statute.

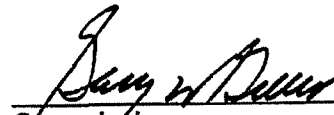
IT IS THEREFORE ORDERED that within 45 days of the date of this Order ALLTEL shall file the tariff described herein.

Done at Frankfort, Kentucky, this 30th day of December, 1998.

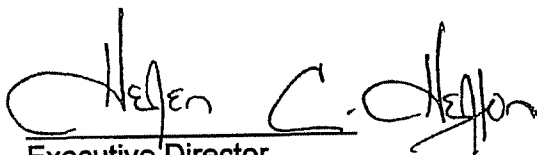
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

EXHIBIT

tabbles

1

EXHIBIT 2

The public interest criteria include the following:

- (a) The extent to which competing telecommunications services are available from competitive providers in the relevant market;
- (b) The existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available;
- (c) The number and size of competitive providers of service;
- (d) The overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates;
- (e) The existence of adequate safeguards to assure that rates for services regulated pursuant to this chapter do not subsidize exempted services;
- (f) The impact of the proposed regulatory change upon efforts to promote universal availability of basic telecommunications services at affordable rates and upon the need of telecommunications companies subject to the jurisdiction of the commission to respond to competition;
- (g) Whether the exercise of commission jurisdiction inhibits a regulated utility from competing with unregulated providers of functionally similar telecommunications services or products; and
- (h) The overall impact on customers of a proposed change to streamline regulatory treatment of small or nonprofit carriers.

