

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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DEC 16 2005

PUBLIC SERVICE  
COMMISSION

In the Matter of:

KENTUCKY TELEPHONE COMPANY  
Complainant

v.

KENTUCKY ALLTEL, INC.  
Respondent

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Case No. 2005-00475

**Motion to Dismiss and Response To Kentucky Telephone  
Company Emergency Motion**

Kentucky Alltel, Inc. ("Kentucky Alltel"), for its Motion to Dismiss and Response to the Emergency Motion of Kentucky Telephone Company ("KTC" or "Movant") filed on or about November 25, 2005, and in accordance with the Commission order dated December 6, 2005, requiring Kentucky Alltel to either satisfy or answer KTC's motion, states as follows:

1. Except as specifically admitted herein, Kentucky Alltel denies all allegations contained in KTC's Motion.
2. KTC's Motion should be denied or dismissed because it does not establish or even allege facts to establish that an emergency situation exists. The Motion does not allege and could not truthfully allege that any situation exists which requires or justifies this Commission granting any emergency relief prior to providing a hearing in this matter and all associated due process. Kentucky Revised Statute §278.260 provides that no order affecting the service complained of shall be entered by the Commission without a formal public hearing. Therefore, Kentucky Alltel the right to a hearing on this matter prior to the entry of any order, and Kentucky Alltel hereby request a hearing as provided by law.

In order to alleviate the fear, albeit unjustified fear, that Kentucky Alltel is or intends to take any action which might harm Movant, Alltel filed the attached letter (Exhibit 1).

3. Movant cites KRS §278.520 (“Transmission of long distance messages from other telephone lines”) as its authority for the relief requested. However, KTC's Motion addresses local traffic originated by Movant's end users in Elizabethtown and terminated to end users that are within the same Kentucky Alltel local calling area. The Motion does not allege any basis, right or demand for Kentucky Alltel to transit toll or interexchange traffic. The statute on which Movant relies concerns only toll (interexchange) traffic and expressly applies to “Telephone companies operating exchanges in different cities”. The traffic and exchanges of Movant and Kentucky Alltel are both in Elizabethtown. Additionally, even if the statute were applicable, which it is not, it would require Kentucky Alltel to cause the “talking circuits to be connected over the toll line leading through or from the receiving exchange through any other connecting exchanges to the point of destination”. Movant does not seek toll calling for its end users. The statute in question, which is clear on its face, further provides, “It is the intention of this section to compel the connecting up and usage of toll wires through the various intervening exchanges....” (KRS §278.520.) Movant, however, seeks to connect and transit local traffic by means of local facilities. The statute is simply inapplicable and does not entitle Movant to the relief requested.
4. Movant is seeking relief that also is contrary to the terms of Movant's former and even present interconnection agreements. Movant refers to Section 74.1 of the former interconnection agreement, although that section reference is to the parties' current agreement. The applicable section in the former agreement is Section 12.1 (although the

substance of the two provisions is the same). Section 12.1 was applicable when these discussions between the parties began and provides (as does Section 74.1 of the new agreement) that Kentucky Alltel was required to provide transit service only to offices that subtend the Kentucky Alltel tandem to which the traffic is delivered. The office to which Movant seeks transit is the tandem switch of Brandenburg CLEC and ILEC located in Radcliff. This switch is not identified in the Location Exchange Routing Guide ("LERG") as subtending the Kentucky Alltel tandem. The service sought by Movant clearly is beyond that required by this provision of the parties' former interconnection agreement.

5. Movant asserts that a prior decision by this Commission changed the law with respect to such a provision. Movant cites this Commission's decision in Case No. 2002-00143. While Kentucky Alltel disagrees that such decision is applicable and believes the decision to be incorrect and subject to more recent changes in the law, assuming for the sake of argument that this decision is a change of applicable law and is relevant, Movant has not complied with the interconnection agreement in attempting to change the relevant transit provision. Section 4.1 of the interconnection agreement, attached as Exhibit 2, required the Parties to "attempt to arrive at an agreement respecting the modifications to the Agreement required." While Movant apparently seeks to invoke what it contends is a change in law, Movant refuses to renegotiate as required by the interconnection agreement. Because Movant was seeking to change several aspects of the agreement related to miscellaneous issues in addition to transit service and because the agreement was beyond its stated term and subject to renegotiation, Kentucky Alltel first informally suggested that the parties renegotiate the agreement. When Movant rejected those

informal suggestions and yet persisted in its attempts to change various sections of the interconnection agreement, Kentucky Alltel provided notice of termination of the agreement and formally requested renegotiation. A copy of Kentucky Alltel's notice is attached hereto as Exhibit 3. In response to this attempt by Kentucky Alltel to move the parties to renegotiate the former interconnection agreement in order to address all of the changes sought by Movant in open dialogue, Movant filed notice with the Commission that it was electing to opt into another interconnection agreement pursuant to the Federal Telecommunications Act of 1996.

6. Movant's opt-in, however, does not resolve the basic problem regarding transit language. The interconnection agreement into which Movant has now elected, in addition to also being beyond its term and the subject of likely termination and renegotiation, contains the same transit language to which Movant objects and contends is subject to a change of law. Therefore, with respect to transit traffic language, Movant has no additional support for its position, and the parties are no closer to resolution of applicable language than they were before. By the terms of its newly elected interconnection agreement, transit service is only provided to offices that subtend the Kentucky Alltel tandem to which it delivers traffic. Therefore, if there has been a change of law, then the need to renegotiate transit language is simply inevitable, and Movant's attempt to unilaterally dictate the provision is unlawful.
7. Kentucky Alltel remains willing to negotiate in good faith with KTC with respect to transit service. However, Kentucky Alltel will do so under all applicable law with respect to this issue. This issue is or has also been the subject of other proceedings before this Commission and the Federal Communications Commission ("FCC") and, therefore, any

relevant determinations in those proceedings and others will be relevant to the negotiations and any resulting arbitration or other proceeding that may be necessary to resolve any remaining issues.

8. Kentucky Alltel denies that it has taken any actions as wrongfully alleged by Movant that were intended to cause harm to Movant or its end users. On page 5 of KTC's Motion, Movant describes three incidents where it contends that Kentucky Alltel deliberately blocked calls originating from Movant's customers intending to harm Movant. The following, however, are the relevant accurate facts with respect to each of these incidents:

- Friday, November 11, 2005 – KTC claims long distance calls sent to Kentucky Alltel's tandem for transmission to long distance providers were not completed due to problems caused by Kentucky Alltel. From the written documentation provided by KTC to Kentucky Alltel, it was not all long distance providers as stated by KTC in the Motion, but only one provider, MCI. At the time the problem was reported to Kentucky Alltel, KTC did not provide detailed information as to the specific MCI carrier code to which the calls were directed. Upon investigation by Kentucky Alltel, Kentucky Alltel customers with MCI carrier code 555 were experiencing problems when placing long distance calls. After further discussion with KTC, KTC provided the carrier code being used by KTC customers as 555. Kentucky Alltel contacted MCI, and MCI confirmed an SS7 problem with the facilities used in routing traffic to MCI's carrier code of 555. Once MCI corrected the SS7 issue, calls completed. KTC's statement in its Motion that the problem was caused solely by Kentucky Alltel is factually incorrect and, in fact, was not in Kentucky Alltel's control and only pertained to one long distance carrier.
- Thursday, November 17, 2005 - The issue reported on this date occurred due to Kentucky Alltel maintenance work performed on the Elizabethtown tandem switch. Kentucky Alltel routinely performs network maintenance to ensure calls are routed correctly according to industry standards that are used by all telecommunications carriers. Kentucky Alltel adjusted the routing of traffic to be consistent with the LERG. The LERG provides details of each telecommunication carrier's telephone numbers and the switch location to which calls should be delivered for termination to the carrier's numbers. Essentially, the LERG provides a roadmap for all industry participants to utilize to exchange calls between customers.

This problem resulted from KTC sending calls to Kentucky Alltel's Elizabethtown tandem switch for Kentucky Alltel to forward to the Brandenburg ILEC tandem switch for termination to a Brandenburg ILEC customer. The telephone numbers for the Brandenburg ILEC customers are listed with a switch location of the Brandenburg

tandem. All telecommunications carriers with customers originating calls for termination to a Brandenburg ILEC customer deliver the calls to the Brandenburg ILEC tandem as identified in the LERG. KTC is not following the industry standard utilized by other telecommunication carriers and is sending all calls for termination to a Brandenburg ILEC customer to Kentucky Alltel for termination. KTC has not established any network facilities as do all other telecommunications carriers seeking to terminate traffic to Brandenburg ILEC but rather is attempting to utilize Kentucky Alltel's network without compensating Kentucky Alltel. Because Kentucky Alltel follows the industry standards and routinely checks its facilities to assure proper routing and conformance to industry standards, adjustments to conform to industry standards can result in affects that would not be known or identified at the time the changes are made. Upon being advised of the result of its changes to conform to industry standards, Kentucky Alltel on an interim basis reversed the change to allow the calls to complete to Brandenburg ILEC customers that are originating from a KTC customer that is dialed as a local call. This action is not required under the parties' current interconnection agreement or law, is contrary to industry standards, and will be the subject of any renegotiation between the parties.

- Friday, November 18, 2005 – KTC alleges that Kentucky Alltel intentionally blocked traffic to calls originating from KTC customers for termination to certain numbers within the Leitchfield rate centers. The two examples provided by KTC are 270-287-3080 and 270-320-3525. These numbers belong to Kentucky RSA 4, a wireless service provider. Because the NPA-Nxx (270-287 and 270-320) is utilized by both Kentucky Alltel and Kentucky RSA 4, in order to assure proper routing the originating carrier should perform a Local Number Portability ("LNP") query to determine the correct company for termination of the call. When the LERG identifies the NPA-Nxx is used by more than one company, querying the number ensures that a call will be sent correctly and customers will not be impacted. Nevertheless, KTC chose not to perform this query function. After Kentucky Alltel informed KTC in writing as to the reason calls were not completing, KTC began to query the calls and send the traffic correctly for termination to Kentucky RSA 4's customers. This problem would not have occurred if KTC had initially complied with industry standards.

9. Contrary to Movant's assertions, Kentucky Alltel has not taken any actions with intent to harm Movant or its customers. Telecommunications routing is very complex and in today's world of multiple providers, unintended consequences of changes in translations can and will result especially where one carrier such as KTC does not follow industry standards. As explained above, two of the three incidences about which Movant complains were brought about by Movant's failure to follow the routing guide and

standards that are a necessary part of being a telecommunications carrier in an interconnected network. Therefore, Movant itself could have avoided two of the incidents above if Movant had performed in accordance with the LERG. Additionally, issue two above also would not have occurred if Movant had complied with the parties' interconnection agreement and the LERG.

WHEREFORE, for the reasons set forth above, Kentucky Alltel requests that the Commission dismiss or deny KTC's Motion or, in the alternative, grant appropriate proceedings and hearings scheduled as required by Kentucky law and grant all other proper relief to which Kentucky Alltel is entitled.

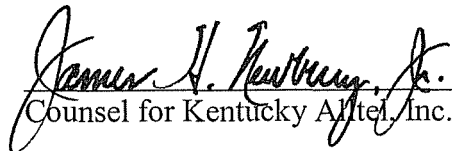
Dated this 16<sup>th</sup> day of December, 2005.

Respectfully submitted,

Stephen B. Rowell  
Attorney at Law  
Alltel Corporation  
One Allied Drive  
P.O. Box 2177  
Little Rock, AR 72202  
(501) 905-8460

James H. Newberry, Jr.  
Wyatt, Tarrant & Combs, LLP  
250 West Main Street, Suite 1600  
Lexington, KY 40507-1746

By:

  
Counsel for Kentucky Alltel, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the forgoing was served by regular mail to the following, this 16<sup>th</sup> day of December, 2005:

Douglas F. Brent, Esq.  
Deborah T. Eversole, Esq.  
Stoll, Keenon & Park, LLP  
400 West Market Street, Suite 2650  
Louisville, KY 40202

  
COUNSEL FOR KENTUCKY ALLTEL, INC.



Stephen B. Rowell  
Vice President  
Wireline Legal

One Allied Drive  
Little Rock, AR 72202  
P.O. Box 2177, 72203-2177

501-905-8460  
501-905-4443 fax



November 30, 2005

Ms. Amy Dougherty, Attorney  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, Kentucky 40602

Re: Kty Telephone Company Emergency Motion  
Docket Number 2005 - 00475

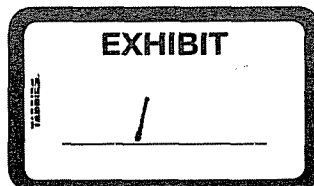
Dear Ms. Dougherty:

As discussed yesterday, I wish to confirm my statements that (1) Alltel is not aware of any current number blocking or traffic routing problems being experienced by Kentucky Telephone and (2) that Alltel is not presently making changes in or planning changes in its Elizabethtown switch with the intent or expectation that such changes will block Kentucky Telephone Company CLEC customer calls to locations that are local calling for Alltel to the extent those calls are currently transiting the Alltel switch. While we do not concede, but rather, expressly reserve our rights with respect to our position that such is not required by the parties' interconnection agreement or applicable law and not consistent with industry practice and standard routing practices, we do not during our discussions presently intend to take any action to intentionally block such calls. We of course do not speak for or make any representations with respect to other carriers (including Kentucky Tel) actions or routing practices or network changes that may in anyway alter or change the ability or quality of Kentucky Tel calling and can not assure that routine maintenance or such related activities will not have unintended or unknown consequences; however, as always we will attempt to remedy those as soon as practical after discovery.

As needed and appropriate, we will respond to the Kentucky Tel motion and look forward to properly resolving this matter. Thank you for your prompt attention.

Sincerely,

  
Stephen B. Rowell



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**AGREEMENT**

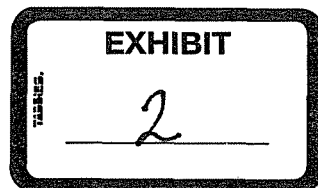
**by and between**

**BRANDENBURG TELECOM LLC**

**and**

**Kentucky ALLTEL, INC.**

**FOR THE COMMONWEALTH OF KENTUCKY**



requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between BTLIC and ALLTEL; or, (b) the date one (1) year after the proposed date of termination.

- 2.4 If either BTLIC or ALLTEL provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither BTLIC nor ALLTEL has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or SGAT.

### **3. Glossary and Attachments**

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment  
Interconnection Attachment  
Resale Attachment  
UNE Attachment  
Collocation Attachment  
911 Attachment  
Pricing Attachment

### **4. Applicable Law**

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Kentucky, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material

11.5.3.2 ALLTEL shall provide an appropriate EMI record to BTLLC to facilitate billing to the LEC toll free service access code service provider

11.5.3.3 ALLTEL shall bill the LEC toll free service access code service provider the query charge associated with the call and any other applicable ALLTEL charges.

11.6 ALLTEL will not direct unqueried toll free service access code call to BTLLC.

## **12. Tandem Transit Traffic**

12.1 As used in this Section 11, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on BTLLC's network, and is transported through a ALLTEL Tandem to the Central Office of a CLEC, ILEC other than ALLTEL, Commercial Mobile Radio Service (CMRS) carrier, or other LEC, that subtends the relevant ALLTEL Tandem to which BTLLC delivers such traffic. Neither the originating nor terminating customer is a Customer of ALLTEL. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide (LERG). Switched Exchange Access Service traffic is not Tandem Transit Traffic.

12.2 Tandem Transit Traffic Service provides BTLLC with the transport of Tandem Transit Traffic as provided below.

12.3 Tandem Transit Traffic may be routed over the Local Interconnection Trunks described in Sections 3 through 6. BTLLC shall deliver each Tandem Transit Traffic call to ALLTEL with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability of CLASS Features and billing functions. The Parties will mutually agree to the types of records to be exchanged until industry standards are established and implemented.

12.4 BTLLC shall exercise commercially reasonable efforts to enter into a reciprocal Telephone Exchange Service traffic arrangement (either via written agreement or mutual Tariffs) with any CLEC, ILEC, CMRS carrier, or other LEC, to which it delivers Telephone Exchange Service traffic that transits ALLTEL's Tandem Office.

12.5 BTLLC shall pay ALLTEL for Transit Service that BTLLC originates at the rate specified in the Pricing Attachment, plus the third party CLEC, ILEC, CMRS carrier, or other LEC's tariff or contract rates on file with and approved by the Public Service Commission of the Commonwealth of Kentucky for the delivery or termination of such traffic.

12.6 ALLTEL will not provide Tandem Transit Traffic Service for Tandem Transit Traffic to be delivered to a CLEC, ILEC, CMRS carrier, or other LEC, if the volume of Tandem Transit Traffic to be delivered to that carrier exceeds one (1) DS1 level volume of calls.

12.7 If or when a third party carrier's Central Office subtends a BTLLC Central Office, then BTLLC shall offer to ALLTEL a service arrangement equivalent to or the same as Tandem Transit Service provided by ALLTEL to BTLLC as defined in this Section 11 such that ALLTEL may terminate calls to a Central Office of a CLEC, ILEC, CMRS carrier, or other LEC, that subtends a BTLLC Central Office ("Reciprocal Tandem Transit Service"). BTLLC shall offer such Reciprocal



Alltel  
One Allied Drive  
Little Rock, AR 72202

Jimmy Dolan  
Negotiations  
501-905-7873  
501-905-6299 fax  
jimmy.dolan@alltel.com

November 4, 2005

**Via Certified Mail and Electronic Mail**

Joe McClung  
Bluegrass Telephone Company  
101 Mill Street  
Leitchfield, KY 42754

**RE: Interconnection Negotiations pursuant to Sections 251 and 252 of the Telecommunications Act of 1996.**

Dear Mr. McClung:

Pursuant to Sections 2.2 and 2.3 of the General Terms and Conditions of the Parties effective Interconnection Agreement ("Agreement"), Kentucky Alltel, Inc. ("Alltel") hereby provides notice of termination and requests renegotiation of the Agreement with Bluegrass Telephone Company ("Bluegrass"). The new Interconnection Agreement will replace Bluegrass' adopted interconnection agreement, pursuant to §252(i) of the Act, between Southeast Telephone and Alltel which has a termination date of March 5, 2005.

I am enclosing Alltel's standard interconnection agreement for your review. If this agreement is acceptable I will prepare the executables for signature.

Alltel looks forward to the successful completion of an agreement between our two companies.

Sincerely,

Jimmy Dolan

