Mayor Teresa Ann Isaac
LEXINGTON - FAYETTE URBAN COUNTY GOVERNMENT
Department of Law

May 10, 2006

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

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MAY 11 2006
PUBLIC SERVICE
COMMISSION

Re: Case No. 2005-00534
(Alltel Merger)

Dear Ms. O'Donnell:

Please find enclosed herewith for filing an original and 10 copies of the Lexington-Fayette Urban County Government's Brief in the referenced matter. Please contact me should you have any questions pertaining to the same.

Yours truly,

David J. Barberie
Corporate Counsel

ENC

DJB/let482

HORSE CAPITAL OF THE WORLD
200 East Main Street Lexington, KY 40507 (859) 258-3500 Fax: (859) 258-3538 www.lfucg.com

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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MAY 11 2006
PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR APPROVAL OF THE TRANSFER OF CONTROL OF ALLTEL KENTUCKY, INC. AND KENTUCKY ALLTEL, INC. AND FOR AUTHORIZATION TO GUARANTEE INDEBTEDNESS	))))	CASE NO. 2005-00534

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S BRIEF

Comes now the Lexington-Fayette Urban County Government (the "LFUCG"), by counsel, in accordance with the procedural schedule, and submits this Brief in support of its positions in this action.

I. STATEMENT OF THE CASE

Alltel Kentucky, Inc., Kentucky Alltel, Inc., Alltel Communications, Inc., Alltel Holding Corp., Valor Communications Group, and Alltel Holding Corporate Services, Inc. (collectively referred to herein as the "Applicants") originally filed a transfer of control case with the Commission, which was then amended to include certain guarantees and liens by Alltel Kentucky, Inc., and Kentucky Alltel, Inc. (collectively referred to herein as the "Kentucky companies").

Prior to the April 25, 2006 public hearing, the Applicants represented that the guarantees and liens as to the Kentucky companies were withdrawn. With this action, this case appears to now only involve the ultimate transfer of control of the Kentucky companies to "Windstream" Corporation (or a similarly-named "Windstream" entity)(referred to herein as "Windstream").

II. STANDARD OF REVIEW

Under the law, an acquirer of a Kentucky-regulated utility must possess not only the "financial, technical, and managerial abilities to provide reasonable service"[1], but the acquisition itself must be "for a proper purpose" and "consistent with the public interest."

This Commission has previously opined that with respect to these additional requirements:

> [A]ny party seeking approval of a transfer of control must show that the proposed transfer will not adversely affect the existing level of utility service or rates or that any potentially adverse effects can be avoided through the Commission's imposition of reasonable conditions on the acquiring party. ***The acquiring party should also demonstrate that the proposed transfer is likely to benefit the public through improved service quality, enhanced service reliability, the availability of additional services, lower rates, or a reduction in utility expenses to provide present services.*** Such benefits, however, need not be immediate or readily quantifiable [emphasis added].

(See July 10, 2002 Order from PSC Case No. 2002-00018, Application for Approval of the Transfer of Control of Kentucky-American Water Company, at page 9).[2]

In other words, this transfer of control cannot be approved by the Commission unless the Applicants ensure that the customers of the Kentucky companies will likely be better

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[1] The LFUCG substantially defers to the testimony and arguments of the Attorney General of the Commonwealth of Kentucky on the issue of the financial abilities of the Applicants and Windstream, and adopts the same herein.

[2] It has also indicated that it was not adopting a mere "no harm" standard, as other states have done. See Order of July 10, 2002, PSC Case No. 2002-00018 at page 10.

off than they are today. This is traditionally accomplished through the placement of meaningful conditions on the Applicants.[3]

III. IF THE APPLICATION IS APPROVED, MEANINGFUL CONDITIONS MUST BE PUT IN PLACE

Assuming that the Commission decides to approve the proposed transfer, it must place significant conditions on the Applicants in order to satisfy the law and ensure that any potential adverse effects to the public are avoided. The Applicants have already acknowledged at the public hearing that they were willing to accept at least the following conditions:

1. There will be no reduction in the employee headcount in Kentucky as a result of this transaction (See Transcript of the April 25, 2006 Public Hearing, Cross Examination of Jeffery Gardner, page 116, lines 20-25);

2. The headquarters of Kentucky Alltel, Inc. (regardless of future name) will remain in Lexington, Kentucky. (Gardner, page 117, lines 1-4, 9, 12-17);

3. The ratepayers will not bear directly or indirectly, any costs, liabilities or obligations incurred with the proposed Application. (Gardner, page 117, lines 18-23);

4. There will not be a rate case increase sought or filed as a result of the transaction. (Gardner, page 117, line 24 through page 118, line 2);

5. Windstream and the Kentucky companies will seek the Commission's approval prior to placing any liens or guarantees on the assets of the Kentucky

[3] In accordance with the Commission's prior practice, all such conditions must be agreed to by the Applicants

companies. (Gardner at page 121, line 23 through page 122, line 1; page 122 lines 12 through 17);

6. The Commission and the parties to this action will be notified of any downgrading of the Windstream debt within seven days of such downgrade, and that such notification will include:

a. the complete report of the issuing bond rating agency,

b. a report on whether this is anticipated to result in a short or long-term deterioration of the credit metrics, and

c. a report on the company's liquidity with an explanation of its financial condition that is verified and attested to by any appropriate corporate officer.

(Gardner at page 124, lines 7 through 23);

7. Windstream will provide to the Commission and the parties to this action any initial credit rating agency reports within fifteen days of issuance (Gardner at page 124, line 24 through page 125, line 5);

8. Windstream and the Kentucky companies will employ and continue to employ adequate resources to meet the quality of service standards established by the Commission (Gardner at page 125, lines 9-16);

9. Windstream shall continue to invest in wireline-based high speed internet access facilities and capabilities in the Commonwealth of Kentucky. (Gardner at page 125, line 25 through page 126, line 23); and

10. Any additional costs of non-investment grade debt (rated below BBB -) are not to be recovered from the Kentucky ratepayers (Gardner at page 151, lines 7 through 22).

In order to ensure that the public is adequately protected going forward in time, the Commission should also, at a minimum (and in addition to those conditions listed above), also impose at least the following conditions[4], as well as any other reasonable condition suggested by the other intervenors to this action:

1. Windstream and the Kentucky companies will not continue to have a relationship with, or do business with the spun-off ALLTEL wireless entity after the initial two year period following consummation of the proposed transfer unless such relationship is in the best interest of Windstream, the Kentucky companies, and their customers;

2. Any significant change in the financial condition of Windstream that might impair or negatively effect its ability to meet any of the commitments and/or conditions related to this case must be reported to the Commission within ten days of it receiving such information;

3. The Kentucky companies will not apply to the Commission for a rate adjustment or make any other filing that has the effect of increasing its rates for basic telephone service, or otherwise increase the existing rates for basic telephone service, for a period of at least one year from that date of the consummation of the proposed transfer;

4. Windstream will obtain Commission approval prior to the transfer of any asset of either of the Kentucky companies with an original book value in excess of $1

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[4] All of these conditions are based upon conditions that the Commission has imposed in the past in other transfer and/or merger cases. See e.g., the 61 conditions placed upon Kentucky-American Water Company and its co-applicants in Case No. 2002-00317, Appendix A to Order of December 20, 2002.

million dollars, or real property or real estate with a net original book value in excess of $200,000;

5. Any costs related to this transaction will not be "pushed down" to the Kentucky companies and will not be recovered from their respective ratepayers;

6. Each of the Kentucky companies' respective current corporate officers will continue in his or her current position and perform his or her current duties for a period of at least one year from the date of the consummation of this transaction unless he or she requests reassignment or retirement, is unable to continue to perform the duties of that position due to some physical, mental, or civil disability, has engaged in some misconduct that requires his or her removal or reassignment, or the position has previously been disclosed as one that is in the process of being filled or changed;

7. Windstream and the Kentucky companies will notify the Commission in writing within ten days of any changes in corporate officers and management personnel for a period of at least one year from the date of the consummation of this transaction;

8. The Kentucky companies will not be the employer or purchaser of last resort for employees, assets, and products associated with any failed or troubled Windstream affiliate venture;

9. The Kentucky companies' wireline utility operations will continue to be a priority and will not be used to solely benefit non-utility or non-wireline-related projects or affiliates;

10. Windstream will notify the Commission in writing as soon as practicable (and prior to the event) if it issues new debt or equity in excess of $100 million;

11. Windstream will notify the Commission in writing no later than thirty days after the public announcement of any acquisition of a regulated or non-regulated business representing five percent of more of its total capitalization;

12. Windstream will report in writing to the Commission on the Kentucky companies' proportionate share of its total assets, total operating revenues, operating and maintenance expenses, and number of employees for the most recently completed fiscal year by no later than March 31 of each year following the consummation of the proposed transfer;

13. Windstream will file a detailed organization chart showing all affiliates of Windstream as of the end of the previous calendar year by no later than March 31 of each year;

14. The customers of the Kentucky companies will experience no material adverse change in utility service due to the transfer;

15. Windstream will adequately fund and maintain the Kentucky companies' transmission and distribution systems, comply with all applicable Kentucky statutes and regulations, and supply and fulfill the service needs of their respective customers;

16. When implementing its new practices, Windstream will take into full consideration the related effects on the levels of customer service and customer satisfaction in Kentucky, including any negative effects resulting from any future work force reductions; and

17. Windstream will notify the Commission in writing of the planned reduction of five percent or more of the workforce of either of the Kentucky companies, and will include with such notice a written study of the reduction's expected effects on service

as well as any plan for maintaining service quality at the reduced work force level, at least thirty days prior to said reduction;

18. Windstream will maintain or exceed Alltel's and the Kentucky companies' levels of commitment to high quality utility service and will fully support maintaining or exceeding their respective records for service quality;

19. Windstream and the Kentucky companies will actively support economic development and social and charitable activities throughout the areas in Kentucky in which they serve for as long as they continue to serve those areas;

20. The Kentucky companies will maintain a substantial level of involvement in community activities, through annual charitable and other contributions, on a level comparable to or greater than the participation levels experienced prior to the date of the transfer;

21. Windstream will maintain and support the relationship between the Kentucky companies and the communities that they serve;

22. Windstream will hold all of the Kentucky companies' respective common stock and shall not transfer any of that stock without prior Commission approval, even if the transfer is pursuant to a corporate reorganization as defined in KRS 278.020(6)(b);

23. If any state regulatory commission imposes conditions on Windstream as a condition for its approval of the proposed transfer and those conditions would benefit ratepayers in any other jurisdiction, proportionate net benefits and conditions will be extended to Kentucky ratepayers; and

24. The Kentucky-entities will remain organized under Kentucky law and continue in their respective corporate form, with the exception of an anticipated change in name;

25. Windstream and the Kentucky companies will honor all existing contracts, easements, or other agreements with the LFUCG, and will negotiate with the LFUCG in good faith regarding the renewal of those agreements; and

26. The Kentucky companies will not, for at least one year from the date of the consummation of the merger, eliminate any nonmanagement or union employee positions, except for those positions that were planned prior to the announcement of the transfer and previously disclosed as part of this case.

The LFUCG also respectfully requests that the Commission open a separate case to monitor the Applicants' compliance with any conditions.

IV. CONCLUSION

If the Commission approves the transfer contemplated in the application, it must impose on the Applicants at least the thirty-six conditions listed above (as well as any other reasonable standard suggested by any other intervenor) in order to satisfy the law and adequately protect the public, and it should also open a separate case to monitor compliance with these conditions.

WHEREFORE, the Lexington-Fayette Urban County Government respectfully requests that in the event that the application is approved and the transfer authorized, that at a minimum the foregoing listed conditions be placed on said approval by the Commission and a separate case opened to monitor compliance.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
Department of Law
200 East Main Street
Lexington, Kentucky 40507
(859) 258-3500
E-Mail:dbarberi@lfucg.com

BY: ______________________________
David J. Barberie
Corporate Counsel
Leslye M. Bowman
Director of Litigation

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the Lexington-Fayette Urban County Government's Brief were served by first class U.S. Mail delivery, postage prepaid, to Beth O'Donnell, Executive Director, Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615; furthermore, it was served by mailing a copy by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 10th day of May, 2006.

Hon. Amy Dougherty
Public Service Commission
P.O. Box 615
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

Hon. Dennis Howard, III, and
Hon. Lawrence W. Cook
Assistant Attorney Generals
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, Kentucky 40601-8204
dennis.howard@ag.ky.gov

Mark Overstreet, Esq.
Stites & Harbison PLLC
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634
moverstreet@stites.com

Daniel Logsdon
Kentucky Alltel, Inc.
130 West New Circle Road
Suite 170
Lexington, Kentucky 40505

Steve Mowery
ALLTEL Communications, Inc.
One Allied Drive
P. O. Box 2177
Little Rock, Arkansas 72203-2177

Don Meade, Esq.
Priddy, Isenberg, Miller & Meade, PLLC
800 Republic Building
429 West Muhammad Ali Blvd.
Louisville, Kentucky 40202
dmeade@pimmlaw.com

Jonathon N. Amlung
Attorney at Law
AMLUNG Law Offices
616 South 5th Street
Louisville, Kentucky 40202
info@amlung.com

Bethany Bowersock
Southeast Telephone Company
106 Scott Avenue
P.O. Box 1001
Pikeville, Kentucky 41502
beth.bowersock@setel.com

Douglas F. Brent, Esq.
Stoll, Keenon, Ogden, PLLC
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202
douglas.brent@skofirm.com

John E. Selent, Esq.
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
john.selent@dinslaw.com

James H. Newberry, Jr., Esq.
Wyatt, Tarrant & Combs, LLP
250 West Main Street
Suite 1600
Lexington, Kentucky 40507-1746
jnewberry@wyattfirm.com

ATTORNEY FOR LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT