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March 22, 2004

Thomas M. Dorman
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

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MAR 22 2004

PUBLIC SERVICE
COMMISSION

Re: *In the Matter of: Brandenburg Telephone Company v. Kentucky ALLTEL, Inc. before the Public Service Commission of the Commonwealth of Kentucky Case No. 2004-00090*

Dear Mr. Dorman:

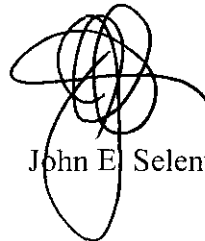
Enclosed is an original and eleven (11) copies of a Motion for Immediate Relief of behalf of Brandenburg Telephone Company for filing in the above-styled matter.

Would you please bring this to the attention of the Public Service Commission as soon as possible.

Thank you, and if you have any questions, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt
Enclosures

cc/All parties of record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

MAR 22 2004

BRANDENBURG TELEPHONE COMPANY)
)
Complainant)
)
v.)
)
KENTUCKY ALLTEL, INC.)
)
Defendant)
_____)

PUBLIC SERVICE
COMMISSION

Case No. 2003-00090

MOTION FOR IMMEDIATE RELIEF

Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, on Friday morning, March 19, 2004, filed a complaint with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") against Kentucky ALLTEL, Inc. ("Kentucky ALLLTEL"). The basis for that complaint was summarized at numerical paragraph 3 of Brandenburg's complaint, which alleged as follows.

3. The facts supporting this complaint are set forth more fully below; but briefly, this complaint concerns Kentucky ALLTEL's refusal to revise the "Agreement for the Provision of Subscriber List Information ("SLI")" in violation of applicable law in the following three ways. First, Kentucky ALLTEL will not execute this agreement with Brandenburg Telephone; instead, it is demanding that Brandenburg Telephone execute the agreement with ALLTEL Publications, and not with Kentucky ALLTEL. Second, the standard form contract for the provision of SLI mandates that Delaware, rather than Kentucky law govern the agreement. And, third, the standard form contract for providing SLI requires that all disputes between the parties be arbitrated. Brandenburg Telephone objects to these provisions and has asked that the standard SLI agreement be revised. Kentucky ALLTEL has refused.

Upon the basis of its complaint, and otherwise, Brandenburg Telephone hereby moves the Commission to enter an order requiring Kentucky ALLTEL to immediately provide Brandenburg Telephone with Kentucky ALLTEL's subscriber list information ("SLI") for the following county; Hardin County, Kentucky. As additional grounds for this motion, Brandenburg Telephone states as follows.

1. Brandenburg Telephone has contacted the president of Kentucky ALLTEL about this situation and its immediate need for Kentucky Alltel's SLI and has yet to receive a satisfactory response to that telephone call. (Brandenburg Telephone first requested this SLI on October 21, 2003.)

2. Without Kentucky ALLTEL's SLI, Brandenburg Telephone's telephone directory will be largely useless to its approximately 30,000 subscribers. Kentucky ALLTEL serves territories contiguous with the service territory of Brandenburg Telephone, and Brandenburg Telephone subscribers need to call Kentucky ALLTEL subscribers. To do so, they frequently need a telephone directory which contains Kentucky ALLTEL's SLI. (Kentucky ALLTEL's service territory (Hardin County) and Brandenburg Telephone's service territory constitute a community of interest).

3. Kentucky ALLTEL should be required to provide Brandenburg Telephone with its SLI because the failure to do so: (a) would irreparably injure Brandenburg Telephone's reputation in its service territory as a quality provider of local exchange carrier service; and (b) would seriously undermine the public interest in the availability of a Brandenburg Telephone directory which enables its subscribers to call all persons who reside both within the service territory of Brandenburg Telephone, and the service territory of Kentucky ALLTEL (Hardin County). *See Maupin v. Stansbury, Ky.App.*, 575 S.W.2d 695 (1978):

Therefore, in light of the above discussion, applications for temporary injunctive relief should be viewed on three levels. First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing irreparable injury. This is a mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been presented. If the party requesting relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded. However, the actual overall merits of the case are not to be addressed in CR 65.04 motions. Unless a trial court has abused its discretion in applying the above standards, we will not set aside its decision on a CR 65.07 review.

Supra, at 5. See, also, *Commonwealth Revenue Cabinet v. Pickelmaster*, Sup.Ct., 879 S.W.2d 482, 484 (1994).

4. Moreover, Brandenburg Telephone's complaint presents the Commission with a substantial question or questions. Specifically, at numerical paragraphs 18-20 of its complaint Brandenburg Telephone alleges the following substantial questions.

18. Kentucky ALLTEL's insistence that the SLI Agreement be with ALLTEL Publications (which is not a utility) rather than with Kentucky ALLTEL (which is a utility) is unreasonable within the meaning of KRS 278.030(2) because it represents the delegation of a non-delegable duty of a utility to an entity which is not a utility. For the same reason, because ALLTEL Publications is not a "telecommunications carrier" within the meaning of 47 U.S.C. §222(e), Kentucky ALLTEL's refusal to execute the SLI Agreement with Brandenburg Telephone is a violation of its duty to provide Brandenburg Telephone with SLI "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions" *Id.*

19. Kentucky ALLTEL's insistence that the SLI Agreement be governed by Delaware law, rather than Kentucky law, is also a violation KRS 278.030, which requires a utility to "establish *reasonable* rules governing the conduct of its business

and the conditions under which it shall be required to render service." *Id.* (Emphasis supplied). Because the SLI Agreement will be entered into in Kentucky, performed in Kentucky (by at least one Kentucky corporation), and subject to the jurisdiction of the Public Service Commission of the Commonwealth of Kentucky, Kentucky ALLTEL's insistence that the SLI Agreement be governed by the laws of Delaware is unreasonable.

20. Kentucky ALLTEL's insistence upon an arbitration clause in the SLI Agreement is in violation of KRS 278.030 and 47 U.S.C. § 222(e). The provision of SLI upon the condition that the requesting carrier relinquish its rights to seek redress from regulatory bodies or courts under these statutes is unreasonable.

5. Brandenburg Telephone is due to publish its directory as of August 2004, and, therefore, needs Kentucky ALLTEL's SLI immediately because it must have this SLI to timely publish in about one month.

6. There is no reason not to provide Brandenburg Telephone with Kentucky ALLTEL's SLI during the pendency of Brandenburg Telephone's complaint with the Commission because: (i) the public interest demands it; (ii) the failure to do so would result in irreparable injury to Brandenburg Telephone's reputation; and (iii) Brandenburg Telephone's complaint presents a substantial question or questions.

Therefore, Brandenburg Telephone respectfully requests that its motion be **GRANTED** and that Kentucky ALLTEL be ordered to immediately provide Brandenburg Telephone with Kentucky ALLTEL's SLI for its service territories in the county of Hardin County, Kentucky.

Respectfully submitted,



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**COUNSEL TO BRANDENBURG
TELEPHONE COMPANY**

CERTIFICATE OF SERVICE

It is hereby serviced that the foregoing was served by mailing a copy of the same by First Class United States mail to Stephen B. Rowell, ALLTEL Communications, Inc., One Allied Drive. P. O. Box 2177, Little Rock, AR 72202, this 22nd day of March, 2004.



**COUNSEL TO BRANDENBURG
TELEPHONE COMPANY**