

April 9, 2004

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

Drop Box
RECEIVED

APR 9 2004

PUBLIC SERVICE
COMMISSION

RE: Brandenburg Telecom, LLC et al. v. Kentucky ALLTEL, Inc.,
Case No. 2004-00090

Dear Mr. Dorman:

Enclosed please find Kentucky ALLTEL, Inc.'s Answer and Response to Motion for Immediate Relief in the above-referenced case. An original and eleven (11) copies of each document are enclosed. Please file-stamp the extra copies and return them 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

Noelle M. Holladay

Enclosures

cc: John Selent
Kimberly K. Bennett (w/enclosure)
James H. Newberry, Jr. (w/o enclosure)

COMMONWEALTH OF KENTUCKY

Drop Box
RECEIVED

BEFORE THE PUBLIC SERVICE COMMISSION APR 9 2004

PUBLIC SERVICE
COMMISSION

In the Matter of:

BRANDENBURG TELEPHONE COMPANY)	
Complainant)	CASE NO.
)	2004-00090
v.)	
)	
KENTUCKY ALLTEL, INC.)	
Defendant)	

ANSWER

Kentucky ALLTEL, Inc., ("Kentucky ALLTEL") hereby submits this Answer to the Complaint filed by Brandenburg Telephone Company ("Brandenburg") on March 19, 2004 with the Kentucky Public Service Commission ("Commission") and in support thereof states as follows:

1. Affirmatively, with respect to Kentucky ALLTEL's directory subscriber list information ("SLI"), Kentucky ALLTEL has not acted unlawfully by requiring Brandenburg to obtain the information directly from its publishing affiliate, ALLTEL Publishing, Inc. ("ALLTEL Publishing"). An exchange carrier's use of a separate directory affiliate is common industry practice. Brandenburg itself contracts with a separate directory publishing entity. Indeed, since the mid-1980's ALLTEL Publishing acted as publishing agent for Brandenburg until 2003, at which time Brandenburg decided to transfer to L.M. Berry for its directory publishing needs. (Attached as Exhibit A is a letter from Brandenburg to ALLTEL Publishing dated September 5, 2003 notifying ALLTEL Publishing that Brandenburg intended to change directory publishing companies and that "L.M. Berry will be contacting [ALLTEL Publishing's] designated directory transition

coordinator to initiate the transfer of records and publishing materials.") Curiously, in the Complaint (at ¶18) Brandenburg alleges that by requiring Brandenburg to work directly with ALLTEL Publishing to obtain SLI, Kentucky ALLTEL is unlawfully delegating a "non-delegable duty of a utility to an entity which is not a utility." Again, Brandenburg itself requires requesting carriers to work directly with its own publishing agent (which was formerly, ALLTEL Publishing and then recently, L.M. Berry) in order to obtain Brandenburg's SLI. Despite Brandenburg's contentions that use of a publishing agent that is not a "telecommunications carrier" with the meaning of 47 USC §222(e) is somehow unlawful, neither of the entities (*i.e.*, ALLTEL Publishing and L.M. Berry) which Brandenburg has employed to fulfill its own publishing obligations is a "telecommunications carrier." (In addition, Kentucky ALLTEL and Brandenburg are currently parties to an Interconnection Agreement which governs Kentucky ALLTEL's provision of SLI and expressly states in Section 38, "A Party may use a contractor of the Party (including, but not limited to, an Affiliate of the Party) to perform the Party's obligations under this Agreement....")

2. Moreover, Kentucky ALLTEL affirmatively states that the ALLTEL Publishing standard SLI publishing contract that Brandenburg is complaining about in this case is similar in form to that required by Brandenburg and L.M. Berry to provide Brandenburg's SLI to ALLTEL Publishing. Thus, it is disingenuous, in bad faith, and otherwise improper for Brandenburg to allege (as it did in the Complaint) that such practice is prohibited or otherwise restricted under the Telecommunications Act of 1996 ("the Act"). Actually, it is Brandenburg that is acting in violation of federal regulations by

charging \$0.75 for its SLI given that the Federal Communications Commission (“FCC”) has determined that a \$0.04/0.06 charge is reasonable.

3. Affirmatively, Kentucky ALLTEL states that Brandenburg overcharged ALLTEL Publishing in the amount of \$7,667.29 for SLI Brandenburg provided to ALLTEL Publishing in July of 2003. (Attached as Exhibit B is an invoice from Brandenburg to ALLTEL Publishing showing that Brandenburg billed for 10,799 listings at a rate of \$0.75 per listing for a total of \$8,099.25. Attached as Exhibit C is a copy of ALLTEL Publishing's payment made under protest.) Brandenburg's rate of \$0.75 per listing is grossly unreasonable as the FCC concluded that \$0.04 (for base file SLI) and \$0.06 (for updated SLI) are reasonable rates and that any carrier whose rates exceed these rates should be prepared upon complaint to the FCC to provide cost data justifying the higher rate. (*See*, 14 FCC Rcd. 15550 at ¶8.)

4. Affirmatively, with respect to all but one issue set forth in the Complaint, **Brandenburg refused to engage in good faith negotiations with respect to said issues and, in fact, refused to discuss the additional seven issues with Kentucky ALLTEL** or to attempt to resolve them without the need for Commission intervention, despite Kentucky ALLTEL's admonition to Brandenburg that Brandenburg's refusal to engage in negotiations would require the Commission to unreasonably and unnecessarily spend extra time and resources dealing with these issues. Kentucky ALLTEL continues to believe that many (if not all) of the issues set forth in the Complaint can be resolved between the parties without any need to expend the Commission's time and resources.

5. Kentucky ALLTEL denies each and every allegation contained in the Complaint unless specifically admitted herein.

6. With respect to the introduction and Paragraph 1 of the Complaint, Kentucky ALLTEL states that KRS §278.260 speaks for itself and admits that the Commission does have jurisdiction for limited purposes. Kentucky ALLTEL denies that the Complaint is a proper action pursuant to KRS §278.260 as Brandenburg is not being denied SLI but is instead merely being requested (pursuant to its existing Interconnection Agreement with Kentucky ALLTEL) to work directly with ALLTEL Publishing to obtain the SLI. The practice of maintaining a separate publishing affiliate is common in the industry, is used by Brandenburg itself, is the same as that which Brandenburg observed with Kentucky ALLTEL's Verizon predecessor, and is not restricted under the Act. In its Interconnection Agreement with Kentucky ALLTEL, Brandenburg agreed to work directly with ALLTEL Publishing, and Brandenburg has done just that since at least April of 2003. As noted above, Brandenburg has a long history of working with ALLTEL Publishing as it in fact engaged ALLTEL Publishing as its own directory publishing agent from the mid-1980's to 2003. As Kentucky ALLTEL's provision of SLI is not unreasonable, unjustly discriminatory, insufficient, inadequate, or unobtainable, KRS §278.260 cannot be utilized to support the allegations in the Complaint.

7. With respect to the allegations in Paragraph 2, Kentucky ALLTEL admits that it is a local exchange carrier but states that it maintains its principal place of business in the Commonwealth at 230 Lexington Green Circle, P.O. Box 1650, Lexington, Kentucky 40588. Further, Kentucky ALLTEL denies that its publishing affiliate is "ALLTEL Publications" and states that its affiliate is ALLTEL Publishing, Inc.

8. Kentucky ALLTEL denies the allegations contained in Paragraph 3 and specifically denies that it has "refused" Brandenburg the three items listed therein. In fact, Brandenburg refused to even discuss the second and third items with Kentucky ALLTEL counsel and,

therefore, denied Kentucky ALLTEL an opportunity to negotiate resolution of those items. Specifically as to the first item, Kentucky ALLTEL affirmatively states that its utilization of a separate directory publishing affiliate is not unlawful and is in fact common industry practice, which practice is employed by Brandenburg itself. Despite the fact that Brandenburg and its separate directory publishing entity (L.M. Berry) each require ALLTEL Publishing to sign a similar publishing contract to obtain SLI, Brandenburg is refusing to execute a Publishing Agreement with ALLTEL Publishing, which refusal is contrary to Sections 38 and 4.12 of Brandenburg's Interconnection Agreement with Kentucky ALLTEL. As noted above, Section 38 allows the parties to use contractors to perform their obligations, and Section 4.12 of the Interconnection Agreement states: “[Brandenburg] acknowledges that if [Brandenburg] desires directory services in addition to those described herein, such additional services must be obtained under separate agreement with ALLTEL’s directory publishing company.” (Emphasis added.) Significantly, when ALLTEL Publishing exchanges SLI information with Brandenburg, it does so directly with Brandenburg's directory publishing entity, L.M. Berry.

9. With respect to Paragraph 4, Kentucky ALLTEL states that KRS §278.040 speaks for itself and admits that the Commission has jurisdiction for limited purposes pursuant to KRS §278.040.

10. With respect to Paragraph 5, Kentucky ALLTEL states that KRS §278.260 speaks for itself but denies that the Commission’s limited jurisdiction over complaints thereunder supports the allegations set forth in the Complaint.

11. With respect to Paragraph 6, Kentucky ALLTEL states that 47 U.S.C. §222(e) speaks for itself. Affirmatively, Kentucky ALLTEL states that whether ALLTEL Publishing is or is not a “telecommunications carrier” is not relevant to this proceeding.

12. With respect to Paragraph 7, Kentucky ALLTEL states that KRS §278.030(2) speaks for itself but specifically denies that the provisions thereunder have any relevance to this proceeding. Kentucky ALLTEL further denies that whether ALLTEL Publishing is or is not a utility has any relevance to this proceeding. Affirmatively, Kentucky ALLTEL avers that Brandenburg is not being denied SLI and that Kentucky ALLTEL has established reasonable rules governing the conduct of its business by utilizing its publishing affiliate to provide its legal and business obligations dedicated to fulfilling the requirement to provide and furnish directories and SLI. Again, Brandenburg similarly governs its business by using L.M. Berry to fulfill its publishing and SLI responsibilities.

13. Kentucky ALLTEL is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 8 as to Brandenburg's motives in seeking an SLI agreement with Kentucky ALLTEL and therefore denies all allegations contained therein.

14. With respect to Paragraph 9, Kentucky ALLTEL denies that it provided Brandenburg with a "blanket" agreement for SLI information. Kentucky ALLTEL does not generate such a form. Affirmatively, Kentucky ALLTEL states that ALLTEL Publishing provided Brandenburg with its standard Publishing Agreement, which is proffered to all of ALLTEL Publishing's SLI subscribers and which is the same form that was previously offered to Brandenburg in April of 2003. Further, ALLTEL Publishing's standard Publishing Agreement is similar in form to those regularly used by publishing entities, including Brandenburg and L.M. Berry.

15. Kentucky ALLTEL denies the allegations set forth in Paragraph 10, except that Kentucky ALLTEL admits that it is aware of correspondence from Brandenburg dated December 30, 2003, which was addressed to Connie Flanagan, who is an employee of ALLTEL Publishing and not Kentucky ALLTEL. Affirmatively, Kentucky ALLTEL states that – despite Brandenburg's

many dealings with Ms. Flanagan at ALLTEL Publishing – Brandenburg’s correspondence incorrectly referred to Ms. Flanagan as an employee of Kentucky ALLTEL and was incorrectly addressed to One Allied Drive, Little Rock, AR 72202. Ms. Flanagan’s correct address is 2936 W. 17th Street, Erie, PA 16505-0522. Prior correspondence from Brandenburg to Ms. Flanagan (including Brandenburg’s original facsimile order for business listings) was properly forwarded to ALLTEL Publishing’s Pennsylvania location. Randall Bradley of Brandenburg initially faxed suggested changes to the Publishing Agreement to ALLTEL Publishing in Pennsylvania on November 26, 2003. Kentucky ALLTEL further affirms that such previous correspondence between Brandenburg and ALLTEL Publishing demonstrates Brandenburg’s knowledge and acceptance of ALLTEL Publishing’s role in compiling and providing SLI.

16. Kentucky ALLTEL denies the allegations in Paragraph 11 and affirmatively states that Mr. Dolan indicated that he did not anticipate a problem correcting any typographical errors in the Publishing Agreement (not “the changes proposed by Brandenburg Telephone” as Brandenburg suggests). Mr. Dolan further informed Brandenburg that any substantive revisions to the Publishing Agreement would have to be discussed and negotiated with ALLTEL Publishing.

17. Kentucky ALLTEL denies the allegations in Paragraph 12, except that Kentucky ALLTEL states that Connie Flanagan of ALLTEL Publishing timely responded to Brandenburg via letter dated January 12, 2004 and that Ms. Flanagan’s letter speaks for itself.

18. Kentucky ALLTEL denies the allegations in Paragraph 13, except that it admits that Brandenburg’s legal counsel may have contacted Mr. Dolan sometime in January, 2004. Mr. Dolan is without information or belief to recall whether he indicated that someone from Kentucky ALLTEL would be in contact with Brandenburg “within the next day or so.”

19. With respect to Paragraph 14, Kentucky ALLTEL denies all allegations therein but admits that Stephen Rowell contacted Brandenburg's legal counsel on or around February 17, 2004, that Stephen Refsell subsequently contacted Brandenburg, and that Mr. Refsell stated that the parties' outstanding primary concerns were "probably resolvable" and that "other issues can probably be resolved as is or with minor wording changes."

20. Kentucky ALLTEL denies all allegations set forth in Paragraph 15 and states affirmatively that Brandenburg refused to even discuss items (b) and (c) with Kentucky ALLTEL's counsel.

21. Kentucky ALLTEL denies all allegations set forth in Paragraph 16 and states affirmatively that Brandenburg refused even to discuss items (a) through (e) with Kentucky ALLTEL's counsel.

22. Kentucky ALLTEL denies all allegations set forth in Paragraph 17 and affirms that counsel for both parties attempted to schedule calls with respect to all outstanding issues (not just three items as Brandenburg contends). Kentucky ALLTEL further avers that while a conference call was conducted on March 4, 2004, Brandenburg refused even to discuss proposed suggestions for resolution regarding any issues except for the issue dealing with which ALLTEL entity would contract with Brandenburg for the provision of SLI.

23. Kentucky ALLTEL denies the allegations set forth in Paragraph 18, and affirms that Brandenburg itself delegates its publishing responsibilities to a separate directory publishing agent (L.M. Berry) which is not a utility. Thus, it is disingenuous for Brandenburg to allege that the very practice it maintains is unlawful as between Kentucky ALLTEL and ALLTEL Publishing. Further, Brandenburg cites KRS §278.030(2) which speaks for itself and which Kentucky ALLTEL denies is applicable as Kentucky ALLTEL's provision of SLI is neither

inadequate nor unreasonable. Kentucky ALLTEL further affirms that Brandenburg has repeatedly ignored suggested resolutions by Kentucky ALLTEL's counsel.

24. Kentucky ALLTEL denies all allegations contained in Paragraph 19 and states that KRS §278.030 speaks for itself and is not applicable on these facts as there is nothing unreasonable about Kentucky ALLTEL's procedures for providing SLI through ALLTEL Publishing. Affirmatively, Kentucky ALLTEL states that the issue of governing law was one of the issues which Brandenburg refused to even discuss with Kentucky ALLTEL's counsel. Had Brandenburg been willing to discuss this issue, it would have learned that the preference for Delaware law was based on the fact that Delaware has the largest body of law interpreting agreements than any other state and is, therefore, regularly used by attorneys as the preferred choice of law in contracts.

25. Kentucky ALLTEL denies all allegations contained in Paragraph 20 and states that KRS §278.030 and 47 U.S.C. §222(e) speak for themselves and are not applicable on these facts as there is nothing discriminatory or unreasonable about Kentucky ALLTEL's procedures for providing SLI through ALLTEL Publishing. Affirmatively, Kentucky ALLTEL states that the arbitration clause issue was one of the issues which Brandenburg refused to even discuss with Kentucky ALLTEL's counsel.

26. For the foregoing reasons, Kentucky ALLTEL denies that the relief requested in the Complaint is appropriate or necessary and affirmatively states that said relief should be denied in its entirety.

27. Kentucky ALLTEL reserves the right to plead further in this matter as it deems necessary.

WHEREFORE, Kentucky ALLTEL requests that the Commission deny the requested relief; dismiss the Complaint in its entirety with prejudice; order Brandenburg to immediately remit payment to Kentucky ALLTEL in the amount of \$7,667.29 representing refund of the overcharges by Brandenburg for provision of its SLI to ALLTEL Publishing in October of 2003; and grant all other necessary and proper relief including payment of Kentucky ALLTEL's attorney's fees and costs.

Dated this 9th day of April, 2004.

Respectfully submitted,

KENTUCKY ALLTEL, INC.

By: Noelle M. Holladay

James H. Newberry, Jr.
Noelle M. Holladay
Wyatt, Tarrant & Combs, LLP
Counsel for Kentucky ALLTEL, Inc.
1600 Lexington Financial Center
Lexington, KY 40507-1746
Telephone: 859-233-2012
Facsimile: 859-259-0649

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served on the following by first class mail, on this the 9th day of April, 2004:

John Selent
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 W. Jefferson Street
Louisville, KY 40202

Noelle M. Holladay

EXHIBIT A

BRANDENBURG TELEPHONE COMPANY

200 Telco Drive
PO Box 599
Brandenburg, KY 40108
270-422-2121

September 5, 2003

Alltel Publishing
Attn: Ms. Leanne Bartholet
2936 West 17th Street
PO Box 8522
Erie, PA 16505-0522

Dear Ms. Bartholet:

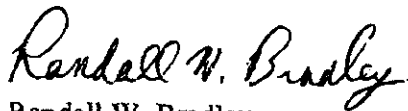
A new agreement has been entered into with L.M. Berry commencing with the following directories and applicable issue(s):

<u>Telephone Company Name</u>	<u>Directory Name, State</u>	<u>First Issue with L.M. Berry</u>
Brandenburg Telephone Company	Brandenburg Telephone Company, KY	June, 2004

L.M. Berry will be contacting your designated directory transition coordinator to initiate the transfer of records and publishing materials.

We appreciate your willingness to work with us in the orderly transfer of data to L.M. Berry. The task of changing directory companies is not an easy one, but we are firm in our belief that it is in the best interest of our Company to do so.

Sincerely,



Randall W. Bradley
Controller

cc: Sue Pelfrey, Contract Manager, L.M. Berry, PO Box 6000, Dayton, OH 45401-6000

EXHIBIT B

Brandenburg Telephone Company

332 East Broadway
BRANDENBURG, KENTUCKY 40108

(502) 422-2121

0
B
R

ALLTEL PUBLISHING

ACCOUNTING DEPARTMENT

100 EXECUTIVE PKWY

HUDSON OH 44236

TERMS: 30 DAYS

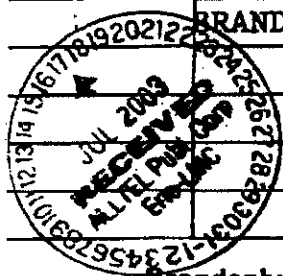
PLEASE DETACH AND RETURN WITH YOUR REMITTANCE



7-3-03 103356A BALANCE FOR

LISTING EXTRACT FOR ELIZABETH TOV
2003 DIRECTORY RADCLIFF & VINE C
10,799 LISTINGS @ .75¢ EACH

PLEASE REMIT PAYMENT TO:
CARMON MATTHEWS
BRANDENBURG TELEPHONE CO.
P.O. BOX 599
BRANDENBURG KY 40108-0599



Brandenburg Telephone Company

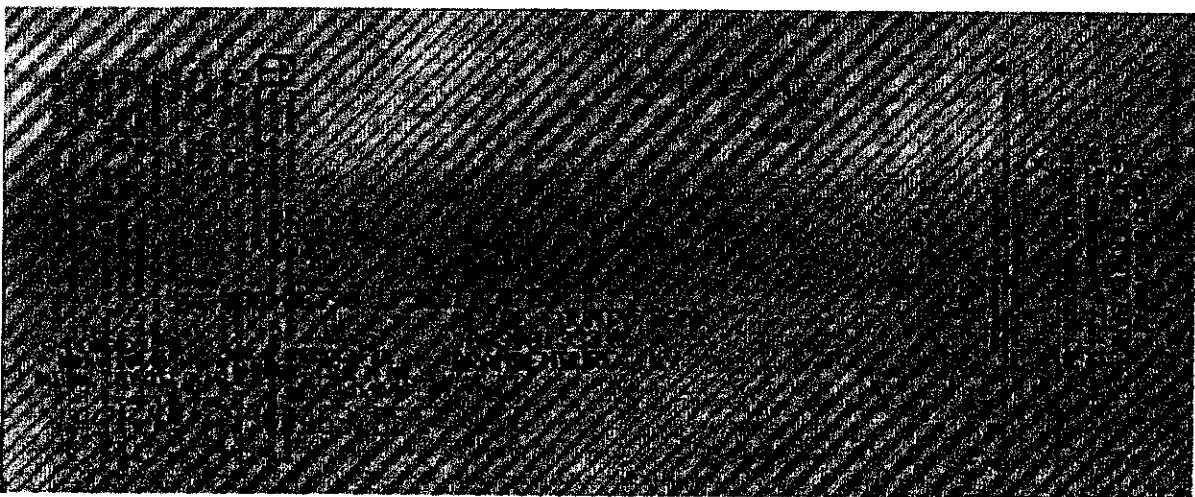
Th.

EXHIBIT C

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT. CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

ALTEL	ALTEL CORPORATION	LITTLE ROCK, AR 72203	
	PO BOX 3373 AP HELPDESK (501) 905-7388		
		Check Number: 1098703	
EIGHT THOUSAND NINETY NINE AND 25/100 *****			
Pay to the order of:		Control Number	Date
BRANDENBURG TELEPHONE COMPANY ATTN ALLISON T WILLOUGHBY 332 EAST BROADWAY BRANDENBURG KY 40108		18223738	10/24/03
			Pay this Amount
			\$*****8,099.25
NOT VALID AFTER 180 DAYS			
<small>Bank of America, N.A. Attn:2, DeKalb County, Georgia</small>	<i>Scott Sattalmyer</i> <small>AUTHORIZED SIGNATURE</small>		

#01696703# 10611127881 329 902 5355# #0000809925#
 SEVERAL ADDITIONAL SECURITY FEATURES ARE DETAILED ON THE BACK OF THIS DOCUMENT. CONFIRM WHEN CHECKING ENDORSEMENTS.



ALLTEL PUBLISHING

100 Executive Parkway
Hudson, OH 44236
330-650-7100

Steve Gidorkis
Vice President - Production
330-650-7677



October 28, 2003

Brandenburg Telephone co.
C/o Carmon Matthews
P. O. Box 599
Brandenburg, KY 40108-0599

RE: Invoice# 523000

Enclosed is a check for \$8099.25 in payment of your invoice number 523000. Please note, however, that payment of this invoice does not signify ALLTEL Publishing's acceptance of, or agreement with, your charges for the listings in question. Rather, this payment is intended as a good faith effort on our part as we continue to try and resolve the dispute over the proper charges for subscriber list information.

As you may know, the Federal Communications Commission has adopted rules governing the provision of SLI (Subscriber List Information) by telecommunications companies to directory publishers. Under these rules, the FCC has adopted a "presumptively reasonable" rate of \$0.04 per listing for base file SLI and \$0.06 per listing for SLI updates. Additionally, the FCC has determined that in any disputes regarding these rates, the burden of proof lies with the carrier to prove their need for an amount exceeding the presumptively reasonable rates. You may also want to refer to the FCC Memorandum Opinion and Order adopted March 18, 2002, in the matter of McLeodUSA Publishing Company v. Wood County Telephone Company, Inc.

October 28, 2003

Page 2

Brandenburg Telephone Company

Obviously, we are not in a position to determine if Brandenburg Telephone Company is indeed subject to the FCC requirements regarding sale of SLI. If you do not believe your company needs to comply with the FCC requirements we would appreciate a written response in the next sixty (60) days outlining the reasons why these rules are not relevant or a reduction in the price of your listings to \$0.04 per listing, resulting in a refund to ALLTEL Publishing in the amount of \$7667.29. If we do not receive a response we reserve the right to take further action, up to and including, the filing of a formal complaint with the Federal Communications Commission.

Thank you for your attention to this matter.

Regards,



Steve Gidorkis

CC: Ken Beach, President, ALLTEL Publishing
Gene DeChellis, Vice President Accounting, ALLTEL Publishing
Glen Rabin