



S T O L L · K E E N O N · O G D E N
P L L C

2650 AEGON Center
400 West Market Street
Louisville, KY 40202-3377
(502) 568-9100
Fax: (502) 568-5700
www.skofirm.com

DOUGLAS F. BRENT
502-568-5734
douglas.brent@skofirm.com

May 12, 2006

RECEIVED

MAY 17 2006

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602


RE: 2005-00534 - Kentucky Alltel, Inc., and Alltel Kentucky, Inc.'s Intent to Transfer Assets to Valor Communications Group, Inc.

Dear Ms. O'Donnell:

Enclosed please find an original and 10 copies of Nuvox Communications, Inc.'s Post-Hearing Brief. Please indicate receipt of this filing by placing your file stamp on the extra copy of this letter and return to me in the enclosed self addressed postage paid envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC


Douglas F. Brent

Enc.

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 17 2006

PUBLIC SERVICE
COMMISSION

In the Matter of:

KENTUCKY ALLTEL, INC., AND ALLTEL)
KENTUCKY, INC.'S INTENT TO TRANSFER)
ASSETS TO VALOR COMMUNICATIONS) CASE NO.
GROUP, INC.) 2005-00534

POST-HEARING BRIEF OF NUVOX COMMUNICATIONS

NuVox Communications, Inc. ("NuVox"), by its undersigned counsel, submits this brief in the above-captioned proceeding.

I. Statement of Interest.

NuVox is a rapidly growing, facilities-based integrated communications provider delivering a full array of communications services in Kentucky and fifteen other states across the Midwest and Southeast. NuVox interconnects with and is party to an interconnection agreement with Kentucky ALLTEL, Inc. ("ALLTEL"), one of the applicants in this matter.

As a competitor to ALLTEL, NuVox has an interest in how the proposed transaction and changes to ALLTEL's business model may affect ALLTEL's performance of its contractual and other obligations to competitive carriers. NuVox takes no position on whether the Commission should approve the proposed transaction. However, should the Commission determine to approve the merger, the public interest requires that a post-merger condition be applied to ALLTEL to ensure that existing intercarrier agreements and UNE rates are not disturbed.

II. Statement of the Case.

The ALLTEL-affiliated applicants assert that, except for the name change to Windstream, this transaction will be transparent for all ALLTEL and ALLTEL Kentucky customers, including competing carriers who purchase network elements and access services. The applicants assert this transparency is guaranteed insofar as the operating subsidiaries of ALLTEL Corporation will remain the same and will not change as a result of the proposed merger.

At the public hearing ALLTEL reaffirmed that the transaction will have no effect on wholesale relationships. (Powell, video transcript, 3:50, 3:53) However, during cross-examination by the Attorney General, Windstream president Jeffery Gardner testified that “the very reason we’re putting this [wireline] company together. . .is so that we can more aggressively compete. . .” (Gardner, video transcript, 10:15:30)

The aggressive competition desired by Windstream is apparently to occur only in the markets where Windstream will control incumbent carriers. Windstream appears to have no interest in competing against BellSouth or other Kentucky ILECs.¹

III. The Public Interest Requires a Merger Condition Related to UNE Rates.

NuVox certainly has no quarrel with Windstream’s desire to be competitive. Vigorous wireline competition, where it actually occurs, serves the public interest. However, NuVox is concerned that any incumbent intending to compete “aggressively” against CLECs should not

¹ ALLTEL does not compete as a CLEC in Kentucky, and although ALLTEL claims to be a CLEC in seven other states, it has not entered a new market in “four or five years.” (Powell, video transcript, 3:50) Mr. Gardner described ALLTEL’s approach to the CLEC business as “judicious,” stating that the company is focused on current operations as opposed to expanding into new markets. (3:52)

shirk its duties arising under Sections 251 and 252 of the Telecommunications Act. The Commission must make sure that does not happen here.

ALLTEL's merger partner, Valor Communications Group ("Valor"), is an incumbent provider which operates solely in rural areas of Texas, Oklahoma, New Mexico and Arkansas. Nothing in the record of this case suggests that Valor faces significant competition in the rural areas it serves. And since no Valor employees testified in support of the application, there is no way for the Commission to know how Valor's management influence on the new entity might affect Windstream's commitments to competitive carriers or its philosophy as to meeting legal obligations arising under the Telecommunications Act.

In evaluating the joint merger application the Commission must consider how this proposal will affect the public interest. KRS 278.020(6). Any post-merger efforts to inhibit competitive entry would not be in the public interest. For example, attempting to raise rates for network elements and wholesale services would be one way for an incumbent to discourage competitive entry.² The Commission can impose a modest condition to ensure this does not happen.

In his oral testimony ALLTEL's president of wireline operations, Daniel A. Powell, assured the Commission that the proposed merger will not require rate increases and will not increase any costs of providing service. (Powell, video transcript, 3:53) Mr. Powell also testified that the merger would not be a basis to delay consideration of permanent UNE rates

² Another way would be to strategically lower retail rates for those services either subject to actual competition or to possible competitive entry. After filing its merger application ALLTEL lobbied successfully for HB 337, which will enable ALLTEL to deregulate business services which compete with NuVox services.

should the Commission determine to move forward with a rate proceeding. (Powell, video transcript, 3:54)

NuVox raised the issue of UNE rates out of an abundance of caution. As the Commission is aware, due in large part to prior merger activity³ affecting ALLTEL's exchange territory, there has never been a determination of permanent, cost-based rates for network elements ALLTEL is required to make available under Section 251 of the Act. In contrast, the Commission has set UNE rates for BellSouth and has adopted the Ohio UNE rates for Cincinnati Bell.

In light of this, the Commission should impose a condition which harmonizes and extends the interconnection-related conditions imposed in the two prior merger cases affecting the Lexington exchanges. ALLTEL agreed to honor interconnection agreements assigned to ALLTEL by Verizon as part of the sale of Verizon's Kentucky exchanges to ALLTEL. Many of these agreements, including the currently effective agreement between ALLTEL and NuVox, incorporate UNE rates adopted by a joint stipulation and approved by the Commission in its March 24, 2000 Order in Administrative Case No. 382. When that joint stipulation was entered GTE South owned the exchanges now owned by ALLTEL. The stipulation provided that rates would "remain in effect until they are replaced by UNE rates established as a result of any Commission proceeding (e.g., an arbitration proceeding or UNE cost proceeding)." Joint Stipulation, para. 3. The Commission's ordering paragraph approving the stipulation stated that the rates contained in the Joint Stipulation "are the rates for the non-rural carriers in Kentucky effective May 1, 2000." March 24, 2000 Order at 2.

³ ALLTEL's Kentucky exchanges include former GTE and Contel exchanges which became part of Verizon as part of a merger approved in Case No. 99-296 (1999). These exchanges were sold to ALLTEL as part of a transaction approved by the Commission in Case No. 2001-00399 (2002).

Neither ALLTEL nor NuVox were signatories to the Joint Stipulation in Administrative Case No. 382. GTE South owned the exchanges and signed the Joint Stipulation. The affected GTE interconnection agreements became Verizon South agreements as a result of a name change. Later, in Case No. 2001-00399, the Commission approved ALLTEL's purchase of the Verizon South exchanges, ordering ALLTEL to honor all Verizon interconnection agreements. ALLTEL has operated under that condition for four years. That same order contemplated that permanent UNE rates would be established for ALLTEL. That has not happened yet. The Commission closed the generic rate case, without prejudice, in 2005.

NuVox believes the public interest requires that ALLTEL continue to charge the stipulated rates until new rates are determined (1) for an individual carrier through negotiation or arbitration, or (2) for carriers generally through completion of a UNE cost proceeding. This proposal is in harmony with merger conditions applied to the last two merger cases affecting Lexington. NuVox is not proposing to limit the ability of ALLTEL, or for that matter, any carrier, to request negotiations under Section 252 of the Act.

The NuVox proposal should not appear controversial given the record. Mr. Powell testified that ALLTEL agrees not use the proposed merger as an excuse to delay further consideration of permanent UNE rates. (Powell, video transcript, 3:55:40) Mr. Powell also agreed that CLEC competition serves the public interest. The modest merger condition proposed below acknowledges ALLTEL's pledge to the Commission while protecting the public interest and providing a degree of certainty to the CLECs which utilize network elements obtained from ALLTEL. This certainty is in keeping with the conditions imposed on the two prior merger cases affecting customers in Lexington.

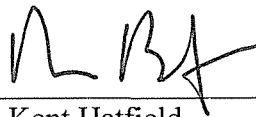
IV. Proposed Findings, Conclusions of Law and Ordering Paragraph.

If the Commission determines to approve the proposed transaction, the public interest requires that the merged entity not do anything to undermine competition within its exchange territory. NuVox proposes the following findings, conclusions of law and ordering paragraph as part of any approval:

1. KRS 278.020(6) requires that approval of the proposed transaction must be consistent with the public interest.
2. Any post-merger effort to evade interconnection obligations or to delay the establishment of cost-based rates for network elements would be inconsistent with the public interest.

Accordingly, IT IS HEREBY ORDERED that:

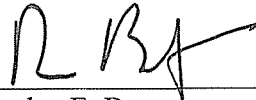
1. Kentucky ALLTEL shall continue to honor all rates contained in any interconnection agreement in effect as of the date of this Order until (1) cost-based rates are determined by the Commission or (2) negotiated rates for a replacement agreement are filed pursuant to Section 252(e)(1) of the Telecommunications Act.



C. Kent Hatfield
Douglas F. Brent
STOLL, KEENON OGDEN PLLC
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202
Telephone: (502) 568-9100
douglas.brent@skofirm.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing brief has been mailed to the following parties this 12th day of May, 2006.



Douglas F. Brent

Hon. David Jeffrey Barberie
Corporate Counsel
Lexington-Fayette Urban County Government
Department of Law
200 East Main Street
Lexington, KY 40507
dbarberi@fucg.com

Lawrence Cook
Assistant Attorney General
Office of the Attorney General
Utility & Rate Intervention Division
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204
Larry.Cook@ag.ky.gov

Hon. Bethany L. Bowersock
P.O. Box 1001
Pikeville, KY 41502
beth.bowersock@setel.com

Daniel Logsdon
Kentucky Alltel, Inc.
130 West New Circle Road
Suite 170
Lexington, KY 40505
daniel.logsdon@alltel.com

Hon. Don Meade
Priddy, Isenberg, Miller & Meade
800 Republic Building
429 W. Muhammad Ali Boulevard
Louisville, KY 40202
dmeade@pcmmmlaw.com

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

Hon. Mark R. Overstreet
Stites & Harbison
421 West Main Street
P.O. Box 634
Frankfort, KY 40602-0634
moverstreet@stites.com

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