

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE)
COOPERATIVE CORPORATION, INC.)
COMPLAINANT)
)
V.)
)
KENTUCKY ALLTEL, INC.)
RESPONDENT)

CASE NO. 2006-00198

RECEIVED
JUN 19 2006
PUBLIC SERVICE
COMMISSION

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Kentucky Alltel, Inc. (“Kentucky Alltel”) states as follows in support of its Response to the Motion for Summary Judgment by Mountain Rural Telephone Cooperative Corporation, Inc., d/b/a Mountain Telephone (“Mountain Rural” or “Complainant”) dated June 6, 2006:

1. The Motion for Summary Judgment by Mountain Rural seeks an order circumventing further procedural processes and fact finding in this matter, including Kentucky Alltel’s requested discovery, and merely directing Alltel to pay \$449,244.99 plus interest. The motion is wholly improper as key facts are in dispute and should be denied. In fact, although the Commission has not incorporated the Civil Rules of Procedure, to the extent it employs procedures available under the rules it should employ them in a fashion consistent with the Courts. Under Kentucky law, a summary judgment is not a substitute for a trial (as Mountain Rural would have it) and “is proper only where the movant shows the adverse party can not prevail under any circumstances.” *Steelvest, Inc v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 479 (Ky. 1991). All doubts must be resolved in favor of Kentucky Alltel. *Id.* at 480.

2. Mountain Rural's statement of a single issue in this matter is misguided. The issue is not simply whether Alltel must pay "Mountain Telephone past-due, tariffed, switched access service charges that are properly filed with and approved by the Commission" as Mountain Rural suggests. Instead, as to carrier common line ("CCL") charges for all previous periods alleged by Mountain Rural, the issues include at a minimum whether Mountain Rural's tariff even applies to the charges alleged and for all periods. For example, if Mountain Rural did not include ACS minutes in the development of its CCL rates, then its tariff provisions relating to these charges and the filed rate doctrine are irrelevant and inapplicable. Without sufficient discovery as to Mountain Rural's rate development (for example, whether ACS minutes were included for all claimed periods), it is impossible for Kentucky Alltel or the Commission to determine whether the tariff even applies as asserted by Mountain Rural. Before granting summary judgment the body hearing the matter must give the party resisting summary judgment an opportunity to take discovery. *Hartford Insurance Group v. Citizens Fidelity Bank & Trust Co.*, 579 S.W.2d 628, 630 (Ky. App. 1978) ("summary judgment may not properly be entered before the respondent has had an opportunity to complete discovery.")

3. Further, with respect to any prospective relief asserted by Mountain Rural, the issues include at least whether the tariff should apply (which again depends on Mountain Rural's CCL rate development) and whether it is appropriate for the Commission to investigate Mountain Rural's rates going forward given that at least Mountain Rural's rate-per-line appears not to have been adjusted since 1991 and is the highest of all the issuing carriers in the Duo County Telephone Cooperative Corp., Inc. tariff. Whether such rate of return investigation is appropriate in this proceeding or in the context of a secondary, broader rate proceeding is an issue more

appropriately briefed at the conclusion of this proceeding after the parties have conducted sufficient discovery with respect to Mountain Rural's relative costs and earnings.

4. Clearly, the outcome of this case turns on several key facts that remain in dispute, and the issue is not as one-dimensional as Mountain Rural suggests. Mountain Rural admits on page 7 of its filing that “[p]ursuant to Ky R. Civ. P. 56.03, it is appropriate to grant summary judgment *if a party shows that there is no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law.” (Emphasis supplied.) That is simply not the case in the instant proceeding. Despite Mountain Rural’s misrepresentations, material facts are very much in dispute, and for that basis alone, the Motion for Summary Judgement must fail.

5. Additionally, Kentucky Alltel will address only a couple of the misrepresentations made throughout Mountain Rural’s motion. For instance, Mountain Rural states that as of May 12, 2006, Alltel had not responded to Mountain Rural's request for resolution and that due to the "lack of any genuine response from AllTel [*sic*], Mountain Telephone filed its formal complaint...." The notion that Kentucky Alltel was non-responsive is inaccurate. Attached as Exhibit A is an email exchange between counsel for the parties confirming that Kentucky Alltel had committed to providing "a written response to Mountain Rural on/by May 15" and that Kentucky Alltel would "address the substance of Mountain Rural's claim along with Alltel's requests for accounting data/records from Mountain Rural." This particular email exchange followed telephone communications between counsel in which Kentucky Alltel's counsel explained that due to the volume of activity Docket No. 2005-00534 (Application for Approval of the Transfer of Control of Alltel Kentucky, Inc. and Kentucky Alltel, Inc.) and its limited resources, Kentucky Alltel wanted to ensure that it provided Mountain Rural a date on which it could commit to providing Mountain Rural a substantive response. However, prior to the May 15

date agreed upon by counsel, Mountain Rural filed a Complaint in this matter and also in Docket No. 2005-00534 on May 12, 2006. Despite its purported willingness to amicably resolve this issue, Mountain Rural continues to pursue motions like the instant one and its letter on June 14, 2006, threatening immediate disconnection of all services.¹

6. Similarly, Mountain Rural incorrectly alleges that Kentucky Alltel's payment of traffic sensitive charges was "AllTel's [*sic*] first effort in nine months to effectively respond to Mountain Telephone's complaint." Again, this statement is false. Attached as Exhibit C is an email communication from Kentucky Alltel to Mountain Rural acknowledging that it does not dispute the traffic sensitive charges and requesting from Mountain Rural applicable invoices for usage for certain periods.

7. Finally, with respect to Mountain Rural's claims that it should be entitled to discontinue service during the pendency of this dispute before the Commission, it is this Commission's practice and regulations not to allow such action, as acknowledged by counsel for Mountain Rural in an informal telephone conference between the parties and Commission Staff on June 14, 2006.

WHEREFORE, Kentucky Alltel, Inc. respectfully requests that the Commission dismiss the Motion for Summary Judgment; enjoin Mountain Rural from terminating service during the pendency of this dispute; establish a procedural schedule allowing for sufficient discovery with respect to Mountain Rural's rate development and allowable return; and grant all other relief to which Kentucky Alltel may be entitled.

¹ On June 14, 2006, Mountain Rural's counsel provided a letter threatening immediate disconnection of services to Kentucky Alltel for alleged outstanding undisputed charges. During an emergency informal conference with Commission Staff on the same day, Mountain Rural's counsel stated his understanding that there were charges outstanding in the amount of "\$30,000 to \$40,000. Attached as Exhibit B is Kentucky Alltel's response to the assertions and a copy of Mountain Rural's latest invoice showing a credit to Kentucky Alltel.

Dated: June 19, 2006.

Respectfully submitted,

STITES & HARBISON



Mark R. Overstreet
STITES & HARBISON PLLC
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(502) 223-3477
moverstreet@stites.com

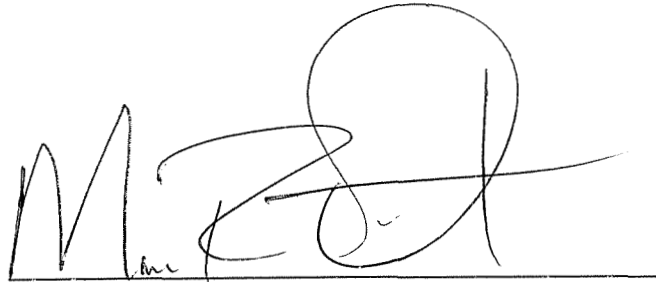
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via United States Postal Service, First Class Mail, postage prepaid, and electronic transmission upon the following:

John E. Selent
Dinsmore & Shohl, LLP
1400 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202
e-mail: selent@dinslaw.com

Amy E. Dougherty
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615
e-mail: aedougherty@ky.gov

on this the 19th day of June, 2006.

A handwritten signature in black ink, appearing to read 'Mark R. Overstreet', written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke.

Mark R. Overstreet

EXHIBIT A
(Emphasis supplied)

-----Original Message-----

From: SELENT, JOHN [mailto:SELENT@DINSLAW.com]
Sent: Wednesday, May 17, 2006 10:45 AM
To: Bennett, Kimberly K
Subject: RE: Re: Mountain Rural Telephone

I am instructed by Mountain Rural to advise Alltel that Mountain Rural remains interested in resolving this matter expeditiously and without the further and possibly unnecessary involvement of the Kentucky Public Service Commission and we therefore solicit whatever information or proposal Alltel believes would facilitate such a resolution, both retroactively and prospectively. I emphasize that I believe that the Commission would favor and encourage such a resolution, even in the context of the pending formal complaint. Administrative efficiency and economy, as well as those of Alltel and Mountain Rural, would be well served by such an effort to resolve the dispute described in the complaint. I await your productive response. Thank you.

Dinsmore & Shohl
John E. Selent
Attorney
1400 PNC Plaza, 500 W. Jefferson St., Louisville, KY 40202
Phone: (502) 540-2315; Fax: (502) 585-2207
john.selent@dinslaw.com; www.dinslaw.com

Assistants:

Kerry W. Ingle - Paralegal (502) 540-2354; kerry.ingle@dinslaw.com
Marlene Troxle - Secretary (502) 540-2317; marlene.troxle@dinslaw.com

-----Original Message-----

From: Kimberly.K.Bennett@alltel.com
[mailto:Kimberly.K.Bennett@alltel.com]
Sent: Monday, May 15, 2006 6:39 PM
To: SELENT, JOHN
Subject: Re: Mountain Rural Telephone

John,

We had originally discussed the desire of our clients to amicably work through this traffic dispute and that Alltel would provide you a written response today. I'm not certain what changed, but in light of your client's filing on Friday, Alltel obviously will not be providing a written response on the issues to you today. We will focus our attention instead on defending the "brief" filed Friday. While this is certainly not our preferred approach to matters, that is nevertheless the position in which Mountain Rural has placed the parties.

Please feel free to call if you have any questions.

Kimberly

-----Original Message-----

From: Bennett, Kimberly K

Sent: Tuesday, May 02, 2006 9:18 AM
To: 'john.selent@dinslaw.com'
Cc: Weeks, Stephen; Smith, Kerry C; Caballero, Cesar
Subject: RE: Re: Mountain Rural Telephone

John - As we discussed this morning, Alltel will provide a written response to Mountain Rural on/by May 15, and we currently are working on that. Our response will address the substance of Mountain Rural's claim along with Alltel's requests for accounting data/records from Mountain Rural.

I hope this helps clarify the intent of our email below, but feel free to call if you have further questions.

Kimberly

-----Original Message-----

From: Caballero, Cesar
Sent: Monday, May 01, 2006 5:12 PM
To: 'john.selent@dinslaw.com'
Cc: Bennett, Kimberly K; Weeks, Stephen; Smith, Kerry C
Subject: Re: Mountain Rural Telephone

John,

Steve Rowell forwarded to me your voice mail regarding Mountain Rural Telephone. Please note that Kimberly Bennett and I are the appropriate contacts for this matter. We received your letter dated March 31, 2006 and acknowledge that you had requested a response by April 21, 2006. While Alltel is actively reviewing your client's request, we did not have a response finalized by the date you requested. As Steve Weeks advised your clients on April 21, Alltel is preparing a written response. We will work to have that back to you by May 15, 2006.

Thank you,

Cesar Caballero

The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, ALLTEL requests that you immediately notify the sender and asks that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone else.

NOTICE: This electronic mail transmission from the law firm of Dinsmore & Shohl may constitute an attorney-client communication that is privileged at law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail, so that our address record can be corrected.

-----Original Message-----

From: Angie Pennington [mailto:apennington@mountaintelephone.com]
Sent: Wednesday, May 24, 2006 10:03 AM
To: Holmes, Janann
Cc: sison@mountaintelephone.com
Subject: RE: Alltel Billing

D701304 is a disconnect order. The DD was 12/16/05 but the order was not completed until sometime in January. The credit will be calculated during billing so I'm not sure what it will be yet.

According to our records, Alltel had 8 T1's total - and 5 were disconnected leaving 3 - 2 to the tandem and 1 to our switch. So yes, we do show a total of 3 now. We had 7.5 on the CABS bill because the T1 to our switch used to be split to half to the switch and the other half to the tandem. At some point that was changed and the billing clerk was not made aware of it. That will also be corrected on the bill in June.

Angie

-----Original Message-----

From: Janann.Holmes@alltel.com [mailto:Janann.Holmes@alltel.com]
Sent: Monday, May 22, 2006 3:41 PM
To: apennington@mountaintelephone.com
Cc: sison@mountaintelephone.com
Subject: RE: Alltel Billing

I made a mistake on the last circuit ID - the 120 s/b to the WLBTKYXADS1 switch, not the tandem. Sorry!

-----Original Message-----

From: Holmes, Janann
Sent: Monday, May 22, 2006 2:13 PM
To: 'apennington@mountaintelephone.com'
Cc: Shayne
Subject: RE: Alltel Billing
Importance: High

Angie - although our circuit ids are different than what you have listed, we show 7 T1s in service until 12/16/05. Four T1's shb disconnected as of 12/16/05 (we show 102-105 disconnected). Can you please answer some more questions for me?

1.) For the order listed below - D701304 - do you show that order as a disconnect order & credit will be issued to ALLTEL for 12/16/05-5/31/06? (I want to clarify the meaning of "re-groom".) If you do show as a disconnect order, can you provide the credit amount and calculation, that will be issued on the 6/1/06 bill?

2.) We show only 7 T1s were in service up thru 12/16/05. How is the 7.5 derived?

3.) As of 12/16/05, we show 3 T1s still in service - a 101/T1/MRHDKYXA02T/WLBTKYXA01T; 101/T1/MRHDKYXA02T/WLBTKYXADS1; 102/T1/MRHDKYXA02T/WLBTKYXA01T. Do you show the same?

Please let me know ASAP! I would like to get this issue completely resolved by month end.

THANKS!

-JHJ-

-----Original Message-----

From: Angie Pennington [mailto:apennington@mountaintelephone.com]
Sent: Wednesday, May 17, 2006 11:01 AM
To: Holmes, Janann
Cc: Shayne
Subject: RE: Alltel Billing

The trunks have actually been in place since the 80's so unfortunately, we longer have the original order. I do have an order to augment the existing group from 2000. It's GTE order GN03773..006. Circuit ID's are 102/T1/MRHDKYXA02T/WLBTKYXA01T thru 108/T1/MRHDKYXAK01/WLBTKYXA01T. Maybe this helps? We do have an order pending in billing that will appear on the next bill to re-groom the trunk group - ORD# D701304. This may help as well.

There are 7.5 T1's and the POP is Winchester which is 51 miles.

I'm happy to answer any questions that you might have.

Angie

-----Original Message-----

From: Janann.Holmes@alltel.com [mailto:Janann.Holmes@alltel.com]
Sent: Wednesday, May 17, 2006 10:43 AM
To: apennington@mountaintelephone.com
Cc: sison@mountaintelephone.com
Subject: RE: Alltel Billing
Importance: High

Angie - I understand what the bill is for, but I have to verify that the circuit I'm getting billed for is/was actually in place & is a 1 way to you, or 2 way circuit & is carrying our traffic. Can you please supply the TSC/PON and from/to points for the circuit so I can send to my ICSC group & get it verified? Once I am able to verify the circuit exists/existed, I can get the bills submitted for payment.

I do have one question regarding the quantities - the facility has 382.5 - how many T1's are you billing & what is the mileage for each? Please answer the same question for the term charges.

Sorry to have to ask all the questions, but normally I receive a CSR for circuit charges & can figure this out for myself.

Please let me know ASAP!

THANKS!

-JHJ-

-----Original Message-----

From: Angie Pennington [mailto:apennington@mountaintelephone.com]
Sent: Wednesday, May 17, 2006 9:16 AM
To: Holmes, Janann
Cc: sison@mountaintelephone.com

EXHIBIT B

421 West Main Street
Post Office Box 634
Frankfort, KY 40602-0634
15021 223-3477
15021 223-4124 Fax
www.stites.com

June 19, 2006

VIA E-MAIL AND FIRST CLASS U.S. MAIL

Mark R. Overstreet
(502) 209-1219
(502) 223-4387 FAX
moverstreet@stites.com

Holly C. Wallace
Dinsmore & Shohl, LLP
500 West Jefferson Street
1400 PNC Plaza
Louisville, KY 40202-2810

Re: P.S.C. Case No. 2006-00198

Dear Holly:

This is in response to your letter dated June 14, 2006, threatening immediate disconnection of services to Kentucky Alltel by Mountain Rural and as a follow-up to the parties' conference call with Commission Staff. In your letter you asserted there were undisputed charges owed by Kentucky Alltel that subsequently were identified during the call as totaling "\$30,000 to \$40,000." As stated during the call, Kentucky Alltel is not aware of any such outstanding undisputed charges with the single exception of the late payment charges in the amount of \$899.01 with respect to the traffic sensitive charges previously paid. A copy of Kentucky Alltel's check in the amount of \$899.01 is attached. It was sent to Mountain Rural via overnight delivery on June 14, 2006.

With regard to your client's request for verification, also attached is a series of email communications between Angie Pennington of Mountain Rural and Janann Holmes of Alltel demonstrating that verification of the facilities charges already had taken place prior to your June 14, 2006 letter and had resulted in a credit in the amount of \$24,809.69 on the invoice from Mountain Rural to Kentucky Alltel for the period June 1, 2006 through June 30, 2006. A copy of that invoice is also attached. As noted in the email communications, Kentucky Alltel requested the appropriate invoices from Mountain Rural as early as March 29, 2006. Ms. Holmes followed up by telephone with "Alicia" at Mountain Rural after which Ms. Pennington responded with her May 16, 2006 email. On May 17, 2006, Ms. Holmes again requested information from Mountain Rural regarding the "TSC/PON and from/to points for the circuit" in order to verify that the circuits Mountain Rural was billing were still in place. Alltel also requested information regarding the number of T1s that Mountain Rural was billing and the associated mileage. In Mountain Rural's May 24, 2006 email, Ms. Pennington notes that "a credit will be calculated during billing" and that the overcharge by Mountain Rural occurred when its billing clerk was not made aware of the facilities change. These overcharges resulted in a credit to Kentucky Alltel as reflected on the June invoice.

STITES & HARBISON PLLC

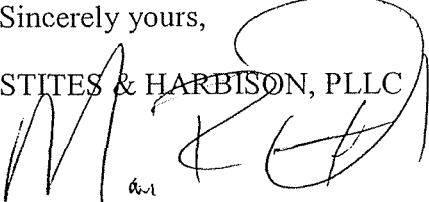
ATTORNEYS
Holly C. Wallace
June 19, 2006
Page 2

Finally, as Kentucky Alltel requested during the conference call last week, if your clients have information contrary to the latest invoice provided by Mountain Rural to Kentucky Alltel, please forward it to our attention immediately along with a reconciliation of that information to the credit on the June invoice. To date, Kentucky Alltel has not received anything from Mountain Rural in support of the "\$30,000 to \$40,000" outstanding balance asserted during the call.

We appreciate your attention to these matters.

Sincerely yours,

STITES & HARBISON, PLLC


Mark R. Overstreet

cc: Amy E. Dougherty

KE242:00KE5:14289:1:FRANKFORT

Subject: RE: Alltel Billing

Janann,

The facilities bill that Alltel has is for the direct trunk transport or flat fee for FGD service. It is based on the number of T1's that are in place. When BellSouth took their traffic off the Intralata route, Alltel re-groomed the trunks and some of the T1's were disconnected at that time. Our Central Office staff worked with Sherri Bingham and Steven Weeks at Alltel on the re-groom. I would suspect that all NECA companies that you have trunks with would bill this type of facility charge. If you need the tariff sections that support direct trunk transport, just let me know and I can provide that as well.

Angie

-----Original Message-----

From: Janann.Holmes@alltel.com [mailto:Janann.Holmes@alltel.com]
Sent: Tuesday, May 16, 2006 5:17 PM
To: apennington@mountaintelephone.com
Cc: sison@mountaintelephone.com
Subject: RE: Alltel Billing

Angie - I did actually call earlier today (around 1:00/2:00) regarding the facility invoice that we have been receiving from MRTC. The circuit ID listed on the bill is not the circuit ID ALLTEL uses. I talked w/ Alicia & requested a TSC, order number, contact name/number or some other type of identification so we can verify the circuit & get the bill in for payment. She told me that the circuit had been disconnected effective 5/9/06 & I requested the same info again (for the disconnect), hoping to find someone (w/in ALLTEL) that can verify the circuit was truly in place between ALLTEL & MRTC during the time period billed. She told me she would pull the file & call me back.

Could you please make sure I get that information asap?

THANKS!

-JHJ-

-----Original Message-----

From: Angie Pennington [mailto:apennington@mountaintelephone.com]
Sent: Tuesday, May 16, 2006 3:27 PM
To: Holmes, Janann
Cc: Shayne
Subject: RE: Alltel Billing

Janann,

Please e-mail any questions that you may have and we'll try to answer them promptly.

Thanks,

Angie Pennington
Office Manager
Mountain Telephone

-----Original Message-----

From: Janann.Holmes@alltel.com [mailto:Janann.Holmes@alltel.com]
Sent: Wednesday, March 29, 2006 11:10 AM
To: apennington@mountaintelephone.com
Subject: RE: Alltel Billing

Angie - We're trying to get payments ready to send to Mtn Rural. However, I only have the 3/06 usage invoice. Could you please fax (501-905-6878) or email the invoices between the Nov '05 date on the spreadsheet & the 3/1/06 invoice that I do have? I am also missing the 2/1/06 invoice for the special access account. Could you please also send it?

THANKS!

-JHJ-

-----Original Message-----

From: Angie Pennington [mailto:apennington@mountaintelephone.com]
Sent: Monday, February 06, 2006 11:50 AM
To: Holmes, Janann
Subject: Alltel Billing

Janann,

The spreadsheet detailing the previous balance on your access bill is attached. There is also a previous balance on the facility bill as well that is not reflected on the statement itself but is included in the spreadsheet. Please let me know if you have questions.

Thanks,

Angie Pennington
Office Manager
Mountain Telephone

The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, ALLTEL requests that you immediately notify the sender and asks that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone else.

EXHIBIT C
(Emphasis supplied)

-----Original Message-----

From: Bratton, John
Sent: Thursday, March 30, 2006 9:09 AM
To: 'Eileen Bodamer'
Cc: Holmes, Janann
Subject: Re: NTSRRR charges

Eileen,

I have visited with Janann and reviewed the payment history. As best I can tell, the last payment that we remitted to you all was at the end of December for October usage off of the Bellsouth ACS settlement. I believe that we owe based upon past history the traffic sensitive charges for usage from November through February. Janann has received the invoice representing February usage (1/26 to 2/23). She has sent an email to Angie requesting invoices for the other time periods. As soon as we receive those, we will get totally caught up on the outstanding traffic sensitive charges.

I am aware that you continue to visit with Steve and Kerry regarding the outstanding CCL charges.

Thanks,

John