

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN RURAL TELEPHONE)	
COOPERATIVE CORPORATION)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 2006-00198
)	
KENTUCKY ALLTEL, INC.)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

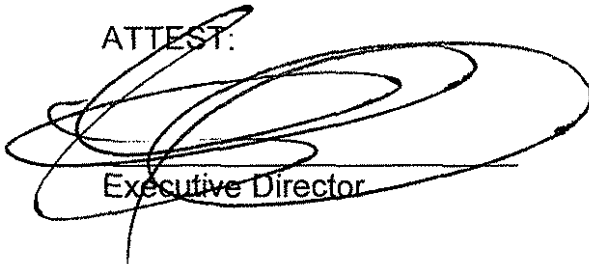
Kentucky ALLTEL, Inc. ("ALLTEL") is hereby notified that it has been named as defendant in a formal complaint filed on May 12, 2006, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, ALLTEL is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 17th day of May, 2006.

ATTEST:



Executive Director

By the Commission

Factual Background

4. Since purchasing the Kentucky assets of Verizon in early 2002, AllTel has delivered to Mountain Telephone switched access traffic associated with AllTel intraLATA toll calling or one of its optional calling plans.

5. Prior to December of 2005, this AllTel traffic was commingled by AllTel with BellSouth toll and optional calling traffic that was delivered to Mountain Telephone on a BellSouth intraLATA toll trunk group connecting Mountain Telephone with the AllTel tandem.

6. Although the trunk group over which this traffic traveled was once considered a BellSouth facility, AllTel (not BellSouth) owned the tandem through which the trunks and traffic were routed.

7. In addition to the AllTel traffic, those trunks also carried BellSouth's own intraLATA toll and optional calling traffic, CMRS traffic, and traffic originated by Mountain Telephone subscribers as BellSouth intraLATA toll calling that was recorded, rated and billed to Mountain Telephone end-users on behalf of BellSouth by Mountain Telephone.

8. Pursuant to historical arrangement, Mountain Telephone (like the many other rural LEC's who had similar arrangements with BellSouth and AllTel (or its predecessor, Verizon)) was paid for its traffic pursuant to a settlement process in which Mountain Telephone reported the end-user toll minutes of usage ("MOU's") and revenues, and BellSouth self-determined the amount of switched access compensation, including non-traffic sensitive revenue ("NTSR"), due to Mountain Telephone.

9. Pursuant to this settlement process, BellSouth determined what percentage of the settlement amount it was responsible for, based on whatever percentage of the total traffic constituted BellSouth traffic, and also determined what percentage of the traffic belonged to AllTel.

10. Historically, Mountain Telephone then received payment from both BellSouth and AllTel.

11. Those percentage determinations with respect to Verizon or AllTel (depending on the time frame at issue) were conducted solely between BellSouth and Verizon or AllTel, as applicable; Mountain Telephone was not involved in making those percentage determinations.

12. Starting in early 2004, Mountain Telephone repeatedly attempted to end the old settlement process employed by BellSouth, and sought to replace that process with its own carrier access billing system ("CABS") that would permit Mountain Telephone to determine for itself the amount of compensation due (rather than relying on BellSouth) with respect to traffic being delivered to it over the BellSouth trunks.

13. A significant dispute ensued with BellSouth regarding various aspects of Mountain Telephone's CABS conversion including, specifically, Mountain Telephone's inclusion of AllTel traffic on the BellSouth access invoice and whether Mountain Telephone had the right to assess the NTSR portion of its access tariff on traffic self-labeled by BellSouth and AllTel as "optional calling."

14. Mountain Telephone and BellSouth have since settled their dispute, but the dispute did not affect AllTel's independent liability to Mountain Telephone for AllTel's portion of the traffic delivered to Mountain Telephone.

15. Since that settlement with BellSouth, BellSouth no longer delivers any traffic to Mountain Telephone by means of the historical trunk group that AllTel is still using.

16. Thus, the only traffic being delivered to Mountain Telephone over the intraLATA trunk groups between Mountain Telephone and the AllTel tandem is AllTel intraLATA toll and optional calling plan traffic terminated to Mountain Telephone end-users.

17. Today, when AllTel delivers traffic to Mountain Telephone over the historical intraLATA toll trunks, Mountain Telephone – as it has done with BellSouth since June of 2004 – generates CABS bills and sends them to AllTel for payment.

18. AllTel refuses to pay any charges associated with those CABS bills, despite the fact that Mountain Telephone continues to receive and terminate AllTel's traffic over the trunks in question.

19. These unpaid bills that are more than thirty (30) days overdue presently total approximately \$509,678.48, which includes late charges of \$6,340.50.

20. Not only is this practice inconsistent with AllTel's previous practice of paying for a pro rata percentage of the services being provided by Mountain Telephone, it is inconsistent with the terms of Mountain Telephone's tariff that was filed and approved by the Kentucky Public Service Commission (the "Commission").

21. That tariff (which adopts the Duo County Telephone Cooperative Corporation, Inc. tariff) imposes charges for switched access services and further provides:

3.9 Non-Traffic Sensitive Revenue Charge

All customers of the Telephone Company's Switched Access Services provided in Section 6, excluding Feature Group A Access Service provided to end users for intraLATA Foreign Exchange (FX) service, will be subject to a Non-Traffic Sensitive Revenue (NTSR) charge.

(*Id.* at PSC KY NO. 2A, Original Page 3-21.)

22. There can be no dispute that the NTSR charges apply to the traffic being delivered by AllTel to Mountain Telephone because AllTel's General Customer Services Tariff, section S3.6.2(l) states that "Local Calling Plans service will not be offered in connection with Coin Telephone Service, WATS, Feature Group A, Foreign Exchange, ISDN or Business Ovation services." (*Id.* at PSC KY NO. 1, Original Page 20.)

23. To date, AllTel has only disputed the application of the NTSR component as it applies to AllTel's optional calling plans.

24. AllTel has also informed Mountain Telephone that it is not obligated to pay Mountain Telephone for the NTSR or for services rendered in connection with the optional calling traffic delivered from AllTel to Mountain Telephone because some unspecified "gentleman's agreement" or "handshake agreement" absolves it of that responsibility.

25. AllTel has also claimed that the "gentleman's agreement" or "handshake agreement" may have been drafted and signed at some unspecified time.

26. Despite this claim, an exhaustive search by Mountain Telephone, and presumably AllTel, has failed to uncover any such agreement.

27. While managers of other companies recall the conference call between the companies and GTE (at that time) regarding the application of the NTSR to this type of traffic, at least one company manager distinctly recalls informing GTE that: (i) NTSR charges would apply; (ii) any optional calling plan that GTE chose to introduce was GTE's own business decision; and (iii) any such optional calling plan would not be subsidized by the other companies.

Count I

Failure to Pay Tariffed Charges

28. Mountain Telephone restates and incorporates by reference each of the preceding allegations, as if fully set forth herein.

29. The filed-rate doctrine, codified at KRS § 278.160(1)-(2), provides that telephone service provided in this Commonwealth shall be provided in accordance with a telephone utility's filed and approved tariff.

30. The Commission has interpreted this statute and doctrine to require that any "special contract that touches upon rates (or service)... [be] filed with the Commission in the same manner as the utility's generally available tariffs." *In the Matter of Kentucky Utilities Company Revised Special Contract with North American Stainless, L.P.*, Case No. 2003-00137, 2005 Ky. PUC LEXIS 885 (October 19, 2005); *see also* 807 KAR 5:011 § 13 (providing, "Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff.").

31. Thus, fundamentally, Kentucky law requires that telephone utilities provide service only in accordance with filed tariffs or filed contracts that specify the conditions and circumstances under which service will be furnished.

32. Mountain Telephone's tariff—entitled, "Regulations, Rates and Charges apply to the provision of Access Services within a Local Access and Transport Area (LATA) or equivalent market area for connection to intrastate communications facilities for Customers..."—imposes charges on Mountain Telephone customers receiving switched access services from it.

33. Moreover, the tariff goes on to provide that customers receiving switched access services from Mountain Telephone "will be subject to a Non-Traffic Sensitive Revenue (NTSR) charge." (*See supra*) (emphasis added).

34. Because AllTel is receiving intraLATA switched access services from Mountain Telephone, the tariff requires that AllTel is liable for Mountain Telephone's switched access charges, including the NTSR charges.

35. Based on the information presently known to Mountain Telephone, it appears that AllTel disclaims its obligation to pay for the intraLATA switched access services and/or the NTSR

charges because of an alleged agreement (perhaps written, perhaps unwritten) that allegedly absolves it of its tariff-imposed obligation to pay.

36. Even assuming such an agreement existed, in order for it to have any preemptive effect over Mountain Telephone's existing tariff, it would need to be filed and approved by the Commission.

37. Mountain Telephone is not aware of any such contract; a review of the Commission's website has not uncovered any such contract on file with the Commission, and, in fact, some of AllTel's own statements indicate that no such written contract exists.

38. Therefore, even if such an alleged agreement exists, it is not on file at the Commission.

39. Because the alleged agreement is not on file at the Commission, AllTel cannot rely on it to invalidate or "trump" the terms of MRTC's filed and approved tariff. *See specifically, In the Matter of Kentucky Utilities, supra.*

40. To date, AllTel has incurred in excess of \$400,000.00 in switched access charges, including NTSR charges, pursuant to Mountain Telephone's tariff on file with the Commission.

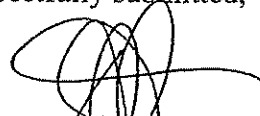
40. Therefore, AllTel is obligated to pay Mountain Telephone's switched access charges, including NTSR charges.

WHEREFORE, Mountain Telephone respectfully requests that the Commission take the following actions.

1. Declare that AllTel is liable to Mountain Telephone for all past and future switched access service charges (including NTSR charges) incurred pursuant to Mountain Telephone's tariff on file with the Commission;
2. Order AllTel to pay all unpaid, tariffed charges due to Mountain Telephone; and

3. Grant Mountain Telephone any and all other legal and equitable relief to which it is entitled.

Respectfully submitted,



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