

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF CONTRACT)
SERVICE ARRANGEMENTS BY) ADMINISTRATIVE
TELECOMMUNICATIONS CARRIERS) CASE NO. 2002-00456
IN KENTUCKY)

DIRECT TESTIMONY

OF

STEVE R. MOWERY

ON BEHALF OF KENTUCKY ALLTEL, INC.
AND ALLTEL KENTUCKY, INC.

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DIRECT TESTIMONY OF STEVE R. MOWERY

1 **Q. Please state your name and business address.**

2 A. My name is Steve Mowery. My business address is One Allied Drive, Little Rock,
3 Arkansas 72202.

4

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by ALLTEL Communications as Vice President of State
7 Government Affairs. I am testifying in this proceeding on behalf of Kentucky
8 ALLTEL, Inc. and ALLTEL Kentucky, Inc. (collectively, "ALLTEL"), which are
9 incumbent local exchange carriers ("ILECs") serving various exchanges
10 throughout the Commonwealth.

11

12 **Q. Please describe your experience with ALLTEL and in the**
13 **telecommunications industry.**

14 A. I began my telecommunications career in 1978 with Allied Telephone Company,
15 a predecessor of ALLTEL Corporation, as an accountant. I have served in
16 various managerial positions in accounting, revenue requirements, regulatory and
17 government affairs over the last 24 years and have served on various industry
18 committees and boards. I was named Vice President of State Government Affairs
19 in 1999. My responsibilities in this position include management of state
20 regulatory and legislative matters for ALLTEL's communications subsidiaries.

21

1 **Q. What is the purpose of your testimony in this proceeding?**

2 **A.** The primary purpose of my testimony is to demonstrate that, in order to quickly
3 respond to customer demands and to sustain real competition throughout their
4 respective territories, ILECs like ALLTEL must be allowed to use mechanisms
5 like contract service arrangements ("CSAs") and pricing flexibility to develop,
6 bundle, and price services in a timely and flexible manner. In responding to the
7 request of the Public Service Commission of Kentucky ("Commission") for
8 information pertaining to the use of CSAs, I will discuss the need for relaxed
9 regulation of CSAs and pricing flexibility that are necessary for consumers to
10 realize the benefits of true, unencumbered competition.

11

12 **Q. Please provide an overview of your testimony.**

13 **A.** Minimizing existing regulatory processes with respect to CSAs is absolutely
14 necessary to permit the development of true competition and its associated
15 benefits to consumers. Carriers should be permitted to use CSAs for any service
16 in lieu of tariff offerings in order to timely meet individual customers' needs and
17 respond to competitive circumstances. Rates, terms, and conditions should be
18 permitted to be developed on an individual case basis and provided to customers
19 in writing. While prior Commission review or approval of CSAs should not be
20 required, CSAs and the services thereunder may continue to be subject to
21 Commission complaint and investigative procedures. Finally, CSAs should not be
22 required to meet the LRSIC price floor if they are offered by a carrier to meet a
23 competitor's equally low price.

24

1 Relaxing CSA regulations does not hinder competition and does not insure an
2 ILEC's survival or retention of customers. However, subjecting the CSA process
3 to unnecessary regulations stifles and denies customers the benefits of true
4 competition. As CSAs are merely one tool (albeit an important tool) that ILECs
5 need to be able to compete fairly, ILECs also need the ability to competitively
6 price services at some geographic level less than company- or exchange-wide just
7 as other competitive carriers do. Arbitrarily denying select market participants (in
8 this case, ILECs) the tools they need to timely compete to meet customers'
9 demands jeopardizes their ability to offer universal services at affordable rates
10 and to maintain their carrier of last resort obligations.

11

12 **Q. Is ALLTEL requesting at this time that the Commission deregulate CSAs?**

13 A. No. In this proceeding, the Commission requested that carriers comment on the
14 "deregulation" of CSAs. To clarify, although ALLTEL has used the Commission's
15 term "deregulation" in previous comments in this proceeding, what ALLTEL
16 advocates at this time is *relaxed regulation* of CSAs. While CSAs would not be
17 subject to prior Commission review and approval or filing requirements, they may
18 continue to be subject to Commission complaint and investigative procedures.
19 ALLTEL does not currently propose to wholly deregulate CSAs and the services
20 thereunder, although the status of telecommunications competition in Kentucky
21 may at some future point justify such Commission action.

22

23 **Q. How are CSAs currently being regulated?**

1 A. It is my understanding that CSAs are subject to Commission tariffing
2 requirements which provide that all utilities under the Commission's jurisdiction
3 must file tariffs and copies of all special contracts setting out rates or conditions
4 of service not included in their general tariffs and which require utilities to give
5 the Commission thirty days' notice of any rate changes.

6

7 **Q. Should carriers be exempt from filing and seeking prior Commission**
8 **approval of CSAs?**

9 A. Yes. As I mentioned above, minimizing existing regulatory processes with respect
10 to CSAs is absolutely necessary to permit the development of true competition
11 and its associated benefits to consumers. Carriers should be allowed to use CSAs
12 to develop rates, terms, and conditions on an individual case basis. Prior
13 Commission review or approval of CSAs should not be required, although CSAs
14 may continue to be subject to Commission complaint and investigative
15 procedures. Additionally, it is not necessary that CSAs be required to meet the
16 LRSIC price floor as long as they are offered by a carrier to meet a competitor's
17 equally low price. Given the presence of competition, failure to eliminate
18 unnecessary regulations from the CSA process stifles and denies customers the
19 benefits of true competition.

20

21 **Q. Does ALLTEL currently experience competition in its markets?**

22 A. Yes. Services such as basic local exchange service, non-basic custom calling
23 features, and advanced services are available in ALLTEL territories from various

1 competitive sources. These sources include, but are not limited to, competitive
2 local exchange carriers (“CLECs”), wireless providers, cable providers, and
3 Internet service providers (“ISPs”). There are over forty CLECs and numerous
4 wireless providers operating throughout ALLTEL territories. Cable providers
5 offer residential telephony service in ALLTEL territory to only the consumers
6 they choose, and competitive carriers bundle residential telephone service with
7 video service. Further, many of these competitors only serve a specific geographic
8 area within ALLTEL's territory; for instance, facility-based providers typically
9 only serve the immediate geographic proximity to their facilities. These
10 competing entities provide residential and business telecommunications
11 customers in ALLTEL's territories the same services (or the functionally
12 equivalent or substitute services) as those offered by ALLTEL.

13

14 **Q. Does ALLTEL currently use CSAs in its markets? Why or why not?**

15 A. Yes, on a limited basis. The existing CSA filing and approval processes in
16 Kentucky are much too time consuming to be effective in responding to
17 customers' needs in a competitive market. Customers should not have to (and
18 usually will not) wait for a carrier to seek regulatory approval of a service offering
19 which they may more timely receive through a competitor. Given the great need
20 for flexibility in the Kentucky telecommunications markets, the elimination of the
21 requirements to file and receive approval of CSAs would enable the effective use
22 of CSAs and facilitate true competition and associated consumer benefits within
23 those markets.

1

2 **Q. Will minimizing existing CSA regulations help carriers better serve**
3 **customers in competitive areas? If so, how?**

4 A. Yes. Minimizing existing filing requirements and approval processes with respect
5 to CSAs would allow all competitors to respond to customer demands in a timely
6 manner and therefore engage in a true competitive exchange with other
7 competitors. Customers should not be forced to (and in fact usually will not)
8 endure delays in receiving competitive pricing arrangements while ILECs seek
9 regulatory approval. Additionally, the current CSA process stops prematurely
10 after a CLEC merely offers a price lower than the ILEC. If given the opportunity
11 to timely match such an offer via the use of CSAs, all competitors could respond
12 in a timely manner to other competitors' offers to a customer, thereby fostering
13 more of a true competitive exchange. Eliminating administrative burdens would
14 allow all competitors to develop in a timely manner competitively priced services
15 that are tailored to better meet customers' needs.

16

17 **Q. Will granting pricing flexibility to ILECs help them better serve customers in**
18 **competitive areas? If so, how?**

19 A. Yes. Allowing ILECs to competitively price services in only those geographic
20 areas or to those customers targeted by competitors would continue the
21 development of true competition. ILECs must be able to offer competitive prices
22 on the same terms and in the same manner as competitors. Again, eliminating
23 administrative burdens, whether they be CSA or pricing requirements, would

1 allow ILECs to better tailor services to meet customer demand and to more timely
2 meet customers' needs.

3

4 **Q. Should carriers be exempted from existing requirements with respect to**
5 **CSAs?**

6 A. Yes. There is good cause to exempt CSAs from Commission tariffing regulations.
7 It is in the public interest to allow all competitors the means with which to
8 respond to the significant competition that currently exists. All competitors should
9 be able to offer customers special non-tariffed terms, rates, and conditions on a
10 less burdensome basis and in a much shorter timeframe than that currently
11 provided. Customers should not be forced to endure delays in receiving
12 competitive pricing arrangements while carriers seek regulatory approval.
13 Exemption of CSAs from existing Commission tariffing regulations and statutory
14 filing requirements is not only in the public interest but is absolutely necessary to
15 permit carriers to participate in the development of true competition and delivery
16 of its associated benefits to consumers.

17

18 **Q. How is it in the public interest to exempt carriers from current CSA**
19 **requirements?**

20 A. There are several criteria that support exempting CSAs from existing tariffing
21 requirements. First, as noted previously, services (e.g., basic local exchange
22 service, non-basic custom calling features like Call Waiting and Caller ID, voice
23 mail services, Internet, high speed data services, digital video services, etc.) are

1 widely available in many ILEC territories from various competitive sources
2 including CLECs, wireless providers, cable providers, and ISPs.

3

4 Second, as evidenced by the presence of over forty CLECs and abundance of
5 wireless providers operating in ALLTEL territories, competitive providers are
6 ready to provide and are in fact providing residential and business
7 telecommunications customers in ALLTEL's territories the same services (or the
8 functionally equivalent or substitute services) as those offered by ALLTEL. Cable
9 providers establish residential telephony service within ALLTEL's territory to
10 only the consumers they choose. Additionally, these competitive carriers bundle
11 residential telephone service with video service and restrict the bundled offers
12 however they choose. While it may appear that they charge tariffed rates for those
13 services, they indirectly discount tariffed non-recurring charges by heavily
14 discounting non-telephone services (e.g., essentially waive installation charges
15 through deep discounts on cable service).

16

17 These competitors are not burdened by the same regulatory limitations as ILECs.
18 It is my understanding that the Commission has previously exempted CLECs
19 from all tariffing requirements except the general requirements to provide tariffs
20 and revisions thereto upon 30 days' notice to the Commission. At least one CLEC
21 has interpreted the Commission's decision as nullifying CSA filing requirements
22 for CLECs and admitted in its comments in this present proceeding that similarly
23 situated CLEC customers are afforded competitive offerings and are not

1 discriminated against in terms of price *because the market will not support such*
2 *discrimination.*¹ Likewise, neither will ILEC customers with competitive
3 alternatives allow discrimination. As competitive providers are offering customers
4 the same services (or their functional equivalent), the current regulatory oversight
5 of CSAs has been replaced by market oversight. Therefore, exemption of CSAs
6 from existing regulatory restrictions referenced herein is reasonable and in the
7 public interest.

8
9 Third, lessening existing CSA administrative burdens would have positive
10 impacts to end users. To begin, customers would receive a fully competitive rate
11 instead of merely a slight reduction of the ILEC's rate. Further, if a carrier is
12 forced to offer a below-cost rate for a select CSA in order to meet competition,
13 then the carrier has an opportunity to retain some contribution toward its sunk
14 costs which minimizes upward rate pressure for its remaining customers. A
15 carrier's ability to use CSAs to timely respond to consumer demand benefits all
16 end users by offering them true competition and real choices in providers and
17 services.

18
19 Fourth, safeguards exist to ensure that rates for regulated services do not subsidize
20 exempted services. For instance, a regulated rate of return carrier is subject to the
21 Commission's audit and complaint processes. Likewise, an alternatively regulated
22 company has limitations on its basic rate increases. Again, ALLTEL is not at this

¹ See, Cinergy Communications Company Response dated May 21, 2003 in Case No. 2002-00456 (pages 2 and 5).

1 time advocating deregulation of CSAs and the services thereunder but is instead
2 requesting that the Commission merely minimize existing CSA filing and
3 approval requirements. Other safeguards with respect to CSAs remain as CSAs
4 may continue to be subject to Commission investigation and complaint processes.

5
6 Furthermore, one CLEC (Cinergy) has indicated that it adjusts its terms or prices
7 as necessary to attract particular customers in an increasingly competitive
8 marketplace and that these deviations from its tariff are closely analyzed to insure
9 that an acceptable profit margin is maintained. To the extent then that competitive
10 carriers are not pricing below cost, no harm results when an ILEC (or any other
11 competitor) merely matches a competitor's price.

12
13 As long as a CSA covers the costs of the service, then there can be no cross-
14 subsidization. Pricing below cost to match a competitor's price, however, is
15 economically sound policy as its allows a carrier to retain contribution from the
16 customer. Allowing *all* market participants to match competitive offerings fosters
17 true competition rather than merely encouraging a select group of market
18 participants to "cherry pick" only high profit or high volume customers.

19
20 Fifth, failure to exempt ILECs' CSAs from existing filing and approval
21 regulations and to grant them the requisite pricing flexibility to match
22 competitor's offerings could negatively impact their ability to provide universal
23 service at affordable rates. In order for real competition to exist, ILECs must be

1 permitted to respond to customer demand and market pressures in a timely
2 manner. Restricting ILECs' effectiveness in responding to market demands serves
3 only to erode their customer base, not as a result of any competitive innovation
4 but due to regulatory restraint. This places in jeopardy an ILEC's ability to
5 perform its carrier of last resort obligations, to maintain a quality network, and to
6 provide universal service at affordable rates throughout its territories.

7
8 Sixth, to the extent that the Commission imposes unnecessary filing and approval
9 requirements on CSAs, then regulated utilities are prohibited from competing
10 with unregulated providers of functionally similar telecommunications services
11 and products. In other words, as CSA and pricing restrictions are enforced only as
12 to one set of market participants (i.e., the ILECs), such regulatory restraint
13 inhibits the ability of those participants to compete with other market participants.
14 Streamlining the regulatory treatment of CSAs would allow *all* carriers in a given
15 territory to fairly meet customers' demands in a timely manner. Real,
16 unencumbered competition also frequently results in increased technological
17 innovations and service quality improvements. In fact, a market where all
18 participants do not have the same ability to respond to consumers' demands
19 cannot be said to truly be competitive. For these reasons, exempting CSAs from
20 existing regulatory burdens is clearly in the public interest.

21

22 **Q. To your knowledge, have other state commissions exempted CSAs from**
23 **regulatory filing and approval requirements?**

1 A. Yes, it is my understanding that many state regulatory commissions have
2 demonstrated a clear movement toward eliminating the burdens on carriers in
3 filing and/or seeking approval of CSAs. Outside of Kentucky, ten of the
4 fourteen states in which ALLTEL ILEC affiliates operate do *not* require
5 commission approval of CSAs. Seven of the ten states do *not* require CSAs to be
6 filed. For instance, the Florida Public Service Commission significantly reduced
7 the regulatory burdens imposed on CSAs by eliminating filing requirements for
8 periodic CSA reports and specifically concluded that the reports did *not* offer a
9 mechanism for determining the existence of anti-competitive or discriminatory
10 behavior in the marketplace (e.g., below-cost contract arrangements,
11 discriminatory contracts among similarly-situated customers, and imposition of
12 onerous terms). Similarly, the Missouri Public Service Commission concluded
13 that its Reporting of Bypass and Customer Specific Arrangements Rules were
14 obsolete given the implementation of the Federal Telecommunications Act of
15 1996 and the increase in telecommunication competition in Missouri and
16 subsequently rescinded the rules. Additionally, Georgia, Nebraska, New York,
17 North Carolina, Ohio, Oklahoma, Pennsylvania, and South Carolina do not
18 require commission approval of CSAs. Specifically, the Oklahoma, North
19 Carolina, and Ohio state commissions allow CSAs to be filed after they become
20 effective.

21

22 **Q. Should the Kentucky Commission require that CSAs be publicly filed?**

1 A. No. Requiring all CSAs to be filed publicly is not in the best interest of
2 consumers and does not facilitate long-term competition. In fact, *any* filing
3 requirement or approval process with respect to CSAs impedes competition and is
4 unnecessary in an environment where market forces protect consumer interests.
5 By making carriers publicly file CSAs, competitors need only match or slightly
6 improve another carrier's rate(s) in order to lure away a customer. There is no
7 economic incentive for a competitor to provide any further price variance to the
8 customer, and the competitive process would stop there with no real ability of the
9 other carrier to respond. The existence of competition within an area or market
10 makes obsolete the need for CSAs to be filed and is detrimental to carriers trying
11 to quickly respond to consumer demands.

12
13 It is also my understanding that making CSAs publicly available may also violate
14 the Federal Communications Commission's CPNI rules by revealing customer
15 proprietary network information such as service conditions and descriptions. Such
16 a requirement seems to also be inconsistent with Kentucky law, which provides
17 that a utility does not have to disclose special contract provisions that are not filed
18 in its general schedule if they are otherwise excluded from the Kentucky Open
19 Records Act, which grants such provisions confidential protection if their
20 disclosure would allow competitors an unfair commercial advantage.

21

22 **Q. Should carriers be allowed to use CSAs to price their services differently**
23 **depending on the existence of a competitor?**

1 A. Yes. If a carrier is allowed to offer service only to select customers within a
2 certain territory, then other carriers should be allowed to compete for those
3 customers in a similar manner. Further, if a competitor offers services only to a
4 particular market segment, such as businesses or multi-tenant dwellings, or if a
5 competitor serves only specific geographic areas within an exchange, then other
6 carriers (including ILECs) should be allowed to develop specially priced packages
7 to respond to those particular market participants targeted by the competitor. The
8 mere willingness of any carrier to lower its prices is itself objective evidence of
9 the need for flexible pricing. Carriers do not typically choose to lower prices
10 without some type of market pressure (e.g., the threat of not satisfying customer
11 demand or the loss of a customer to a competitor). A competitor's offering of
12 similar or interchangeable services also evidences the need for flexible pricing.
13 Given a carrier's willingness to lower its prices to meet customer demand (which
14 necessarily implies the existence of competitive offerings), the carrier must be
15 allowed to respond competitively with geographic or customer specific pricing. In
16 short, carriers (including ILECs) *must* be able to price and bundle services in a
17 way that permits them to effectively respond to customer needs.

18

19 **Q. Based on your experiences in the telecommunications industry, do**
20 **competitors typically make their offerings available to all customers within a**
21 **given geographic area or market?**

22 A. No, competitors (other than ILECs) do not typically offer services to everyone in
23 a geographic market. For example, facilities-based competitors, in particular, do

1 *not* target or serve all customers within a given geographic market. In many
2 cases, competitors enter an exchange and "cherry pick" customers by offering
3 services to only the most profitable customers like large businesses, multi-tenant
4 dwellings, or customers in areas adjacent to where the competitors already have
5 existing facilities.

6

7 **Q. Should ILECs be required to make their CSA offerings available to all**
8 **customers within a given geographic area or market? Why or why not?**

9 A. No, the "geographic area" for the ILEC should be equal to the area targeted by its
10 competitors. Requiring an ILEC to offer a common rate throughout a large
11 geographic area when competition may only exist in a small portion of that area
12 does not benefit consumers because it does not allow effective competition to
13 develop. Customers benefit only when effective competition is allowed to
14 prosper, which means that *all* providers within that market area can respond to
15 and satisfy customer demands in a similar timeframe and manner. A policy that
16 defines a geographic area or market differently for ILECs than for competitors
17 arbitrarily restricts ILECs, and impedes their ability to compete to the detriment
18 of the very customers they are attempting to serve.

19

20 **Q. Is it reasonable to allow ILECs to make their CSA offerings available only to**
21 **those customers or market segments targeted by competitors?**

22 A. Yes, as stated above, competition works best and benefits customers the most
23 when all players are able to participate fully and timely in the competitive
24 process. It is my understanding that even the legislative findings in K.R.S.

1 §278.512 acknowledge the changing telecommunications environment and a
2 utility's corresponding need for regulatory flexibility. Customers who have
3 received offers from competitors or who have threatened to disconnect service
4 with their current providers are similarly situated. It is unreasonable to deny an
5 ILEC facing such competitive pressures the means to respond to customers'
6 demands in the same manner as other competitors in that locality. However, it is
7 reasonable to allow the ILEC to exercise pricing flexibility with respect to a
8 certain locality where competitive conditions exist or with respect to certain
9 customers who have competitive alternatives. In short, non-uniform pricing is *not*
10 anti-competitive and is entirely reasonable in a competitive environment.

11

12 **Q. What would be the overall impact on competition in Kentucky's**
13 **telecommunications industry if the Commission were to minimize existing**
14 **regulatory burdens with respect to CSAs?**

15 A. Very simply, minimizing existing restrictions on CSAs would foster and
16 strengthen competition, while failing to do so would have a chilling effect on true
17 competition. Again, competition works best when all carriers are allowed to
18 timely respond to competitive entry and when there is subsequent and continual
19 action and reaction by all providers. In this robust scenario, customers benefit.
20 Denying any market participant the ability to respond and react curtails true
21 market activity as no response/counter-response is allowed. Consumers are the
22 losers in this limited process.

23

1 Lessening existing CSA regulatory restrictions is just one way in which the
2 Commission may speed the effects of competition, namely customer choice for
3 service offerings and competitive pricing from alternative sources. Doing so
4 would also allow ILECs in particular to pinpoint competitive responses rather
5 than being forced to respond with an overall rate decrease or to face the loss of all
6 contributions previously provided by exiting customers. Such losses are
7 ultimately supported by remaining customers, the effects of which can be
8 particularly devastating to carriers responding to consumer demand and
9 competitive pressures within residential telecommunications markets.

10

11 **Q. Does this conclude your testimony?**

12 A. Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Testimony was served upon the parties in the attached service list via regular U.S. mail postage prepaid this 30th day of April, 2003:

Noelle Holladay

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