

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

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

**REBUTTAL TESTIMONY**

**OF**

**STEVE R. MOWERY**

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

Filed May 21, 2003

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**REBUTTAL 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?**

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").

9

10 **Q. Did you file direct testimony in this proceeding and for what purpose?**

11 A. Yes. My direct testimony on behalf of ALLTEL on April 30, 2003 in this  
12 proceeding discussed the need for relaxed regulation of contract service  
13 arrangements ("CSAs") and pricing flexibility as necessary for consumers to  
14 realize the benefits of true, unencumbered competition.

15

16 **Q. Have you reviewed the direct testimony filed by other participants in this  
17 proceeding?**

18 A. Yes, I have and believe it is necessary to respond to one particular issue raised  
19 therein related to measuring the level of competition within the Commonwealth's  
20 telecommunications markets.

21

1 **Q. Specifically to what aspect of the parties' direct testimony are you**  
2 **responding?**

3 A. I am responding to statements by Edward H. Hancock who filed direct testimony  
4 on behalf of the Frankfort Electric and Water Plant Board. On page 2 of Mr.  
5 Hancock's direct testimony, he states that "consumers have no competitive  
6 alternative to the incumbent local exchange companies (ILECs) for local service  
7 in most areas of the state. He appears to base this belief on the ILECs'  
8 "market power and large base of residential and small business customers."  
9

10 **Q. Has the Kentucky Public Service Commission indicated that it also considers**  
11 **access line loss or market share to be an adequate measure of competition?**

12 A. Yes. In its Order issued in Case No. 2002-00276 with respect to the Petition of  
13 BellSouth Telecommunications, Inc. ("BellSouth") for Presumptive Validity of  
14 Tariff Filings, the Kentucky Public Service Commission ("Commission") also  
15 applied this same logic and denied BellSouth's petition based largely on a report  
16 published by the Federal Communications Commission ("FCC"). Relying on this  
17 FCC report (which the Commission acknowledged did not contain data on  
18 wireless carriers), the Commission found that as BellSouth had lost only 7.3 to 9.3  
19 percent of its access lines to Kentucky competitive local exchange carriers  
20 ("CLECs") it continued to exercise market power. The Order then seemed to find  
21 that as BellSouth possessed "market power" as measured only in terms of access  
22 lines lost to CLECs, there were not sufficient levels of competition to reasonably  
23 justify BellSouth's petition.

1

2 **Q. Do you agree that loss of access lines or market share is an adequate measure**  
3 **of the existence of competitive alternatives?**

4 A. No, I do not. Competition is not measured in terms of access lines or market  
5 share. Competition is measured by customer choice, and customers throughout  
6 Kentucky (both residential and business) have a wide range of choices and  
7 competitive alternatives with respect to telecommunications services.

8

9 **Q. Why are access lines lost to CLECs or market share not good indicators of**  
10 **competition?**

11 A. Access line or market share calculations are not good indicators of competition  
12 because they do not measure consumer choice. To begin, a simple calculation of  
13 access lines lost to CLECs does not account for lost access line *growth* which has  
14 been significant. Additionally, access lines lost to CLECs do not provide any  
15 indication of disconnected lines or decreased minutes of use ("MOUs") resulting  
16 from wireless alternatives, which again has been substantial. For example, one  
17 report posted by The Yankee Group states that wireless telephone subscribers  
18 spend, on average, more minutes talking on cellular phones than on traditional  
19 landline telephones, with the average American subscriber logging 490 minutes of  
20 use per month on his or her mobile phone compared to 480 minutes per month of  
21 residential landline usage. (*See*, April 28, 2003 News Release based on The  
22 Yankee Group's latest quarterly Wireless/Mobile North American Carrier  
23 Tracker, at [www.yankeegroup.com](http://www.yankeegroup.com).)

1 Reports like that the Commission relied on in BellSouth's presumptive validity  
2 tariff case fail to acknowledge the availability of competitive alternatives from  
3 cellular systems and Internet-based communication sources which pose "the most  
4 serious threat to traditional providers" as explained by Motohiro Tsuchiya  
5 (associate professor for the Center for Global Communications) and Adam  
6 Thierer (director of telecommunications studies at the Cato Institute). (See, "Is  
7 America Exporting Misguided Telecommunications Policy?" at [www.cato.org](http://www.cato.org).)  
8 The *Wall Street Journal* also considers wireless cellular service and cable  
9 television providers, who are increasingly offering voice telephone service over  
10 their systems, to be significant threats to incumbent telephone companies. (See,  
11 "More Consumers Answer Cable's Call on Phone Service," by Peter Grant,  
12 September 5, 2002.) A recent Gallup poll confirms this shift from wireline to  
13 wireless alternatives and found that almost one in five wireless users considered  
14 his or her mobile phone to be the primary phone. (See, "18% See Cell Phones as  
15 Their Main Phones," by Michelle Kessler, *USA Today*, January 31, 2002.)  
16 Similarly, an April 2003 study by Ernst & Young considered the potential  
17 replacement of the primary residential wireline phone with a wireless alternative  
18 and found the threat posed by wireless service to wireline telephone companies to  
19 be "staggering." Some attribute the popularity of such wireless alternatives to that  
20 sector's ability to offer bundled pricing programs. (See, "20 Million Access Lines  
21 Lost to Wireless," *MobileInfo.com*, January 2002.) Equally as important are  
22 competitive alternatives offered by cable telephone service providers and  
23 broadband Internet protocol networks.

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The fact is that, notwithstanding any access line calculation or FCC CLEC report, services such as basic local exchange service, non-basic custom calling features, voice mail services, Internet, high speed data services, and digital video services are widely available throughout Kentucky from various competitive sources including CLECs, wireless providers, cable providers, and internet service providers. These competing entities offer residential and business telecommunications customers in ILECs' territories the same services (or the functionally equivalent or substitute services) as those offered by ILECs. The presence of these competing entities and the choices they offer consumers are appropriate and sensible measures of competition and the key factors that this Commission need consider when deciding whether minimizing the administrative burdens surrounding the CSA process is reasonable and in the public interest.

A targeted division of market share among providers is not indicative of real and beneficial competition for consumers. It is by removing unnecessary regulations that serve to restrain certain competitors from responding to the demands of their customers that consumers will enjoy the true benefits of a competitive market.

**Q. Does any harm result from using access lines or market share calculations to measure competition?**

A. Yes. The use of such calculations overlooks the existence of real competition and could lead this Commission to reach the "wrong" decision with respect to the

1 regulation of CSAs. In its Order in the BellSouth presumptive validity tariff case,  
2 the Commission notes that there "is a point at which traditional regulation could  
3 actively harm an incumbent local exchange carrier that has lost market  
4 dominance." The reality is that using concepts like market dominance or market  
5 share to insist on the continuation of "traditional regulation" in the midst of  
6 competition will necessarily harm all local exchange carriers. Restricting carriers'  
7 effectiveness in responding to market demands only creates artificial regulatory  
8 restraints, which deny customers the benefits of robust competition and in the  
9 particular case of an ILEC, impair its ability to perform carrier of last resort  
10 obligations, maintain a quality network, and provide universal service at  
11 affordable rates throughout its territories. To avoid such harmful consequences in  
12 this proceeding, the Commission should focus on the availability of consumer  
13 choice to measure the existence of competition and the corresponding need for  
14 relaxation of CSA regulations, rather than on some measure of access lines lost to  
15 CLECs or division of market share.

16

17 **Q. Does this conclude your rebuttal testimony?**

18 A. Yes, at this time.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Rebuttal Testimony was served upon the parties in the attached service list via regular U.S. mail postage prepaid this 21<sup>st</sup> day of May, 2003:

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Noelle Holladay

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