



Lexington Financial Center
250 West Main Street, Suite 1600
Lexington, Kentucky 40507-1746
859.233.2012
Fax: 859.259.0649

Noelle M. Holladay
859.288.7633
nholladay@wyattfirm.com

October 24, 2003

Noelle M. Holladay
RECEIVED

OCT 24 2003

PUBLIC SERVICE
COMMISSION

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

RE: Review of the Federal Communications Commission's Triennial
Review Order Regarding Unbundling Requirements, Case No.
2003-00379

Dear Mr. Dorman:

Enclosed please find a Petition filed on behalf of Kentucky ALLTEL, Inc. in the above-referenced case. An original and eleven (11) copies are enclosed. Please file-stamp the extra copy and return it to me in the self-addressed, pre-stamped envelope I have enclosed for your convenience.

Thank you for your cooperation in this matter. Please do not hesitate to contact me with any questions you may have.

Sincerely,

WYATT, TARRANT & COMBS, LLP

Noelle M. Holladay

Noelle M. Holladay

Enclosure

cc: Steve Refsell (w/enclosure)
John Bassett (w/enclosure)
James H. Newberry, Jr. (w/o enclosure)

0.1

www.wyattfirm.com

250 West Main Street, Suite 1600
Lexington, KY 40507-1746
859.233.2012

918 State Street
Bowling Green, KY 42101
270.842.1050

1715 Aaron Brenner Drive, Suite 800
Memphis, TN 38120-4367
901.537.1000

500 West Jefferson Street, Suite 2800
Louisville, KY 40202-2898
502.589.5235

311 West Main Street
Frankfort, KY 40601-1807
502.223.2104

2525 West End Avenue, Suite 1500
Nashville, TN 37203-1423
615.244.0020

101 West Spring Street, Suite 500
New Albany, IN 47150-3610
812.945.3561

Drop Box
RECEIVED
OCT 24 2003
PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)
COMMISSION'S TRIENNIAL REVIEW ORDER) CASE NO.
REGARDING UNBUNDLING REQUIREMENTS) 2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS)

KENTUCKY ALLTEL, INC.'S
PETITION FOR FINDING OF NO IMPAIRMENT

Comes, Kentucky ALLTEL, Inc. ("ALLTEL"), pursuant to the Commission's October 2, 2003, Order in this case, hereby submits this Petition For Finding of No Impairment seeking to overcome the presumption that impairment exists in the mass market with respect to local switching and transport.

1. While Section 25(c)(3) of the Telecommunications Act of 1996 (the Act) requires incumbent local exchange carriers ("ILECs") to provide requesting telecommunications carriers access to unbundled network elements (UNEs) these requirements are subject to certain statutorily defined circumstances, exceptions, and any suspensions or modifications of the requirements. In determining which UNEs must be made available by ILECs, the Act requires consideration, at a minimum, as to whether access to a particular UNE is necessary and whether failure to provide access to such UNE would impair the ability of the telecommunications carrier seeking access thereto to provide the services that it seeks to offer. 47 U.S.C. §251(d)(2) [emphasis added].

In *USTA v. FCC*, 290 F.3d 415 (DC Cir, 2002), the US Court of Appeals for the DC Circuit remanded the Federal Communications Commission's ("FCC's") UNE rules regarding Line Sharing and Local Competition (i.e., substantially all of the then existing required UNEs) "for further consideration" with respect to the "necessary" and "impairment" standard of §251(d)(2). The overturned UNE rules which were under such "further consideration" by the FCC pursuant to *USTA v. FCC* and the FCC's Triennial Review (FCC Docket No. CC 01-338) include, in part, unbundled local circuit switching, packet switching, signaling networks, call-

related data bases, local loops, subloops, dedicated transport, network interface devices, (“NIDs”), shared transport, and combinations of UNEs (such as; UNE-Platforms or UNE-P and Enhanced Extended Links (“EELs”). On August 21, 2003, the FCC released its written order with respect to said remand and Triennial Review (“TRO”), providing new rules concerning ILECs’ obligations to make UNEs available to competitive entrants which includes new and changed rules regarding the impairment standard that requires analysis of “market-specific variations” as well as new “clarifications” of the TELRIC pricing rules.

2. The TRO is on appeal by various parties and those appeals have now been consolidated in the DC Circuit. This petition, while filed pursuant to the Commission’s order of October 2, 2003 and the TRO, is filed without waiving any and all arguments that the TRO is invalid as it is in conflict with the Act and *USTA v. FCC*. The TRO acknowledges that requirements that may be determined applicable to Bell Operating Companies may not necessarily be applicable or should not be applicable to rural carriers. As Kentucky ALLTEL, Inc. is a 2% rural carrier under the Act and entitled to seek suspensions or modifications of Act requirements, it reserves the right to seek such suspensions or modifications as may become necessary due to any final determinations made in this proceeding.
3. The TRO requires the commission to define the markets in which it will evaluate impairment by determining a geographic determination/definition of each market. To define the markets, the Commission must consider the locations of mass market customers actually being served (if any) by competitors, the variation in factors affecting competitor’s ability to serve each group of customers and competitors’ ability to target and serve specific markets profitably and efficiently using currently available technologies. The TRO further requires the state commission to define the market broadly enough so that competitors serving that market alone would be able to take advantage of available scale and scope economies from serving a wider market.
4. Competitive local exchange carriers are currently utilizing and are capable of utilizing their own self provisioned switch to serve customers throughout the state, and in some instances may be utilizing switching provided across state lines to serve customers in the Commonwealth. Therefore, the market with respect to determining that no impairment exists without ILEC unbundled local switching should be determined to be the

maximum size market that it is economically feasible to serve customers from available switching. The market with respect to local switching can be shown to be as large as the entire Commonwealth of Kentucky or certainly large segments of the state and, at minimum, possibly LATA or MSA wide. As there are CLEC switches, for example, in Louisville and in Lexington that are used to serve customers in those exchanges and at distances no less than the distance between Louisville and Lexington, some combination of MSAs or LATAs may be necessary and appropriate.

5. CLECs seeking to serve ALLTEL local service territory, have access to switching from a number of sources and vendors. There are presently numerous switches providing service in Kentucky according to Telecordias' Local Exchange Routing Guide (the LERG), several of those are supporting services within and around Louisville and Lexington. Three or more carriers unaffiliated with ALLTEL or each other, are serving mass market customers using self-provisioned switches and, upon information and belief, it may be shown that two or more unaffiliated competitive wholesale suppliers of unbundled local switching exists in the Kentucky markets. Consequently, unbundled local switching is not an element that meets the "necessary and impair" standard under the Act.
6. Even if one of the applicable triggers was not met, the Commission should find that no impairment exists as there are no barriers to CLEC self-deployment of local switches. There is no impairment as the self-provisioning of local switching is economic. The switches deployed in the market permit competitive entry in the absence of unbundled local circuit switching. There are carriers comparable in quality to that of the ILEC, using a self-provisioned switch to serve end users using DS0 capacity loops. The switch or switches can be used to serve end users using DS0 or DS1 capacity loops in the market in an economic fashion. Further, there are no operational barriers as ALLTEL's performance in provisioning loops, in providing collocation space, in provisioning or in providing cross-connects in its wire centers will not render entry uneconomic for requesting telcos in the absence of unbundled access to local circuit switching.
7. There is abundant and economically priced transport available throughout most market areas of the Commonwealth and therefore, impairment does not exist with respect to transport. In order to analyze where

transport impairment exists or not, the Commission should require all owners of transport, including, but not limited to, gas and electric utilities, ILECs, IXCs, CATV companies, CMRS providers, and CAPs to identify at minimum the location, capacity and availability of all existing, planned and under construction transport facilities. Additionally, the costs of new transport facilities must be determined and included in the evaluation.

Wherefore, ALLTEL petitions the Commission to propound discovery to all known transport owners and all switch owners to ascertain the current availability of transport and switching, conduct proceedings in accordance with the Act and determine that no impairment exists with respect to such.

Respectfully submitted,

KENTUCKY ALLTEL, INC.

By: Noelle M. Holladay

James H. Newberry, Jr.
Noelle M. Holladay
Wyatt, Tarrant & Combs, LLP
Counsel for Kentucky ALLTEL, Inc.
1600 Lexington Financial Center
Lexington, KY 40507-1746
Telephone: 859.233.2012
Facsimile: 859.259.0649

Stephen Rowell
Attorney
Kentucky ALLTEL, Inc.
One Allied Drive
P.O. Box 2177
Little Rock Arkansas 72203
Telephone: 501.905.8460
Facsimile: 501.905.4443

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following via regular U.S. mail postage prepaid this 24th day of October, 2003:

Honorable Jonathon N. Amlung
Attorney at Law
1000 Republic Building
429 W. Muhammad Ali Boulevard
Louisville, KY 40202-2347
jonathon@amlung.com

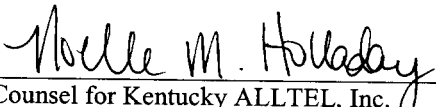
Honorable Dorothy J. Chambers
General Counsel/Kentucky
BellSouth Telecommunications, Inc.
601 West Chestnut Street, Room 410
P. O. Box 32410
Louisville, KY 40232
dorothy.chambers@bellsouth.com

Honorable C. Kent Hatfield
Attorney at Law
Middleton & Reutlinger
2500 Brown & Williamson Tower
Louisville, KY 40202
khatfield@middreut.com

Patricia L. Rupich
Cincinnati Bell Telephone Company
201 East Fourth Street
P. O. Box 2301
Cincinnati, OH 45201-2301
pat.rupich@cinbell.com

Honorable R. Douglas Lackey
Suite 4300, Bellsouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375
douglas.lackey@bellsouth.com

Mark Romito
Director - Government Relations
Cincinnati Bell Telephone Company
201 East Fourth Street
P. O. Box 2301
Cincinnati, OH 45201-2301
mark.romito@cinbell.com


Counsel for Kentucky ALLTEL, Inc.