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

In the matter of:

**APPLICATION FOR THE APPROVAL OF)
THE TRANSFER OF CONTROL OF) CASE NO. 2005-00534
ALLTEL KENTUCKY, INC. AND FOR)
AUTHORIZATION TO GUARANTEE)
INDEBTEDNESS)**

**ATTORNEY GENERAL'S MOTION TO DISMISS THE AMENDED AND
RESTATED APPLICATION OR, IN THE ALTERNATIVE,
ATTORNEY GENERAL'S REPLY TO APPLICANTS' RESPONSE TO
MOTION OF INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS FOR FULL INTERVENTION**

Comes now the Attorney General, by and through his Office of Rate Intervention,
and moves the Commission to dismiss the Applicants' Amended and Restated
Application or, in the alternative, to grant the motion for intervention by the International
Brotherhood of Electrical Workers. As grounds for his motion, the Attorney General
states as follows.

STATEMENT OF FACTS

This case involves a change of control pursuant to KRS 278.020 and the issuance or assumption of securities under KRS 278.300.¹ In particular, the Applicants have asked for authorization to separate its wireless business from the wireline business and to allow the latter to perform a reverse acquisition of, and merge into, Valor. Both surviving entities would then be held by a holding company not yet named. Both of Alltel's Kentucky subsidiaries, along with all other Alltel subsidiaries, would pledge their assets to guarantee the loans taken out at the holding company level to consummate the transaction and pay a special dividend totaling \$2,400,000,000 to the Alltel Wireless entity. The loans, totaling at least \$5,740,000,000, would be held by certain lenders. The proposed transactions are financially complex as is evident from the information provided from the Applicants to date.

The chronological development of this case related generally to the various filings before the Commission provides the necessary information to address the argument at hand; i.e., the date which triggers the 120 day period by which the Commission must render a decision under KRS 278.020² and whether the Commission's procedural schedule violates statutory time lines.

The original application was formally filed on 12 December 2005 with a supplemental filing on 5 January 2006. By letter dated 9 January 2006, the Commission

¹ See Amended and Restated Application for Approval of Transfer and Authorization to Guarantee Indebtedness at page 1.

² Under KRS 278.020, the right exists to file for a change of control. However, there is no inherent right that an approval with, or without conditions, will be ordered.

issued a “no deficiency letter.”³ However, on 23 January 2006, the Applicants filed an amended and restated application which was then followed by pre-filed testimony on 16 February 2006. An informal conference was held telephonically on 23 February 2006 wherein the parties discussed the procedural schedule currently at place in this proceeding.

Subsequent to the informal conference, the Commission entered its order stating that the applicants did not complete their filing until the pre-filed testimony was submitted. Hence, the Applicants were placed on notice that their application was deemed filed.

Now, in response to a motion to intervene filed by the International Brotherhood of Electrical Workers, the Applicants present the parties and the Commission with the argument that the time period for a decision runs on May 23rd, or 120 days from the date of the amended and restated application. At no point during the informal conference wherein the procedural schedule was discussed, or at any time following the Commission’s order, have the Applicants asserted any statutory violation with the time line at issue.

³ While the original application did not contain pre-filed testimony, the transaction was represented as transparent and that essentially it would involve a simple name change. The amended application, however, involved significant changes whereby the Applicants would pledge all of their assets to guarantee certain loans. Based on the new application, and information provided by the Applicants, it is obvious that the transaction is far from transparent to Kentucky’s ratepayers.

ARGUMENT I

THE AMENDED AND RESTATED APPLICATION MUST BE DISMISSED DUE TO ITS FAILURE TO COMPLY WITH FILING REQUIREMENTS.

Incredibly, Applicants maintain that the procedural schedule established by the Commission, and with the participation by all parties including the Applicants, extends beyond the statutory authority for the Commission to act because it dates from the time Applicants allegedly completed their filing with the submission of their testimony rather than from the time the document titled “Amended and Restated Application” was filed.⁴

In essence, the Applicants infer that it is they who determine whether a filing is complete, regardless of the applicable statutory or regulatory requirements to the contrary. A filing made pursuant to KRS 278.020 and KRS 278.300 must comply with a number of regulations. KRS 278.020(6) requires the application “to be in a form and contain the information as the Commission requires.” The application must meet 807 KAR 5:001 Section 8, which in pertinent part, mandates “fully the facts on which the application is based.” To date, all of the change of control cases in which the undersigned has been involved have included pre-filed testimony, an essential part of the filing necessary to fully state the facts on which the application is based. Indeed, the filing of the pre-filed testimony is a tacit admission by the Applicants of this need because it was not requested nor demanded.

While the Applicants may argue that the Commission filed a letter of “no deficiency” with the first application which did not contain pre-filed testimony, the fact

⁴ See Response To Motion Of International Brotherhood Of Electrical Workers For Full Intervenor Status in general, and paragraphs 3, 5, 6, 7, and 9 in particular.

remains that it is the Commission which determines whether the application is complete as clearly evinced with the language of KRS 278.020(6).⁵

Furthermore, with regard to an application under KRS 278.300(2), the “application for authority to issue or assume securities or evidence of indebtedness shall be made in such form as the Commission describes.” While some specific requirements are listed within the paragraph, the Commission is given discretion to determine what additional information is necessary in its deliberation process. Reference 807 KAR 5:001 Section 11 Paragraph (1)(f) wherein the Commission may demand “such other facts as may be pertinent to the application.” Obviously in the case at hand, the pre-filed testimony would be critical in understanding a complex series of transactions with a multi-billion dollar impact involving the Applicants’ pledging all of their assets, and which involves provision of universal service to over 500,000 Kentuckians.

Also, in order to comply with KRS 278.300, the application must meet certain specific requirements under 807 KAR 5:001 Section 11. At paragraph (1)(b), the Applicants are required to provide the amount of notes, bonds or other evidence of indebtedness with the terms and rate of interest. Paragraph (1)(c) mandates the filing of the amount to be used for the acquisition. None of this information is included in the filing, at least in a discernable way as it pertains to the Applicants.⁶ At paragraph (2), a financial exhibit must be filed. Pursuant to 807 KAR 5:001 Section 6, detailed information is required - stock (paragraphs (1), (2) and (3)), mortgage (paragraph (4)),

⁵ The Attorney General disagrees with the Commission that the first application was complete. However, he never took issue with the Commission as it was made clear by a letter from counsel for the Applicants on 20 January 2006 that the filing was going to be amended.

⁶ The Attorney General pursued this information in his Initial Data Request at No. 34. The Applicants referred to the Amended and Restated Application at Exhibit 6. However, no specific data is presented from the Applicants.

bonds (paragraph (5)), notes (paragraph (6)), other indebtedness (paragraph (7)), dividends (paragraph (8)), and a detailed income statement and balance sheet (paragraph (9)). The Applicants have provided no specific data as it applies to them and only limited information as it applies to Alltel and Valor as a whole.

In light of the Applicants' position that the amended and restated application **by itself** is the document which triggers the 120 day deadline, the Commission must review that one document for filing completeness. Given the fact that it is replete with statutory and regulatory filing omissions, if the Applicants intend to stand on that document alone on this matter, the Commission must dismiss it with or without prejudice.

ARGUMENT II

THE APPLICATION MUST BE DISMISSED BECAUSE APPLICANTS ARE ATTEMPTING TO THWART DUE PROCESS.

While the Attorney General disagrees with the absurd suggestion that the mere filing of a document titled "Amended and Restated Application" automatically triggers the statutory deadline of 120 days, this motion must be tendered because Applicants are clearly positioning themselves to claim that any decision tendered after 23 May 2006 is null and void.⁷ Stated another way, unless the Commission grants or denies the amended and restated application on or before 23 May 2006, it is approved by default, at least as inferred by the Applicants. The Applicants have unabashedly put the Commission on notice that they will consider the Application approved on 24 May 2006 if the Commission has taken no action by May 23rd.

⁷ Taken to the extreme, Applicants could tender **one** single piece of paper titled "Application Pursuant to KRS 278.020" and demand the Commission to render a decision on it within 120 days notwithstanding filing deficiencies.

Applicants have unequivocally stated that they believe the Commission will have approved the amended and restated application on May 24 if the Commission takes no action on it as filed, regardless of whether the Commission denies it or approves it, and regardless of whether it contains conditions, if that action is taken on or after May 24.

This possible, albeit unlikely, outcome jeopardizes the Attorney General's right to due process. He entered into negotiations in good faith with the Applicants and arrived at the current procedural schedule. The prospect of having a hearing, submitting a brief, and awaiting a decision only to have it mooted as untimely is a patent violation of his due process rights. Moreover, it is an affront to the Commission to be faced with such an outcome. Should the Commission acquiesce to the Applicants' demands, such action would constitute an abrogation of the Commission's statutory duties.

The Applicants' position on the trigger date for a ruling on the application attempts to make the Commission captive under its own jurisdiction and to deny the Attorney General of his representation of ratepayers' interests in the matter. Simply stated, the Applicants' position would deny a meaningful, evidentiary hearing with conclusory, meaningful findings. In order to avoid this potential travesty of justice, the Commission must dismiss the amended and restated application with or without prejudice.

ARGUMENT III

IN THE ALTERNATIVE, IF THE APPLICATION IS NOT DISMISSED, THE IBEW SHOULD BE ENTITLED TO INTERVENE.

In the alternative, if the amended and restated application is not dismissed, the Commission should grant the IBEW intervention as the IBEW has requested intervention in a timely manner; i. e., only three weeks after the Commission entered the order deeming the application filed. Moreover, IBEW has a special interest under 807 KAR 5:001 Section 3 (8) as it represents a specific organization not otherwise independently involved in the proceeding and which may lead to the presentation of issues and development of facts to assist the Commission. Their involvement will not prejudice the Applicants as the IBEW does not ask that the current schedule in place to be altered. In fact, the IBEW has indicated that it will not serve data requests but will instead only be permitted to participate in the hearing. As a consequence, the Commission should grant the intervention.

CONCLUSION

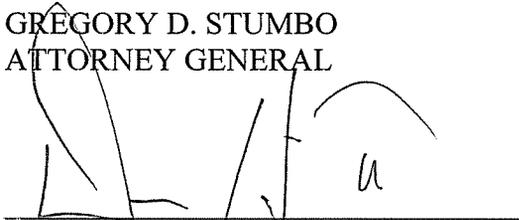
The Applicants maintain that the current procedural schedule violates KRS 278.020(6) and KRS 278.300(2) which require a Commission decision within a maximum 120 days. They claim that the amended and restated application **by itself** triggers the 120 day deadline, and that consequently, the Commission must review that one document for filing completeness. Given the fact that it is replete with statutory and regulatory filing omissions, the Commission must dismiss it with or without prejudice.

Moreover, the Applicants' position on the trigger date for a ruling on the application would deny a meaningful, evidentiary hearing with conclusory, meaningful findings.

In the alternative, if the amended and restated application is not dismissed, the Commission should grant the IBEW intervention.

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the Attorney General's Motion to Dismiss Application or, in the Alternative, Attorney General's Reply to Applicants' Response to Motion of International Brotherhood of Electrical Workers For Full Intervention were served and filed by hand delivery to Beth O'Donnell, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; furthermore, it was served by mailing a true and correct copy of the same, first class postage prepaid, to:

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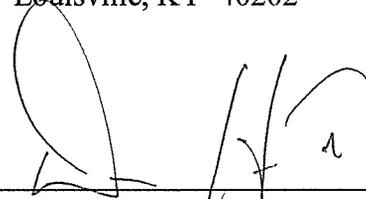
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This 31st day of March, 2006.

A handwritten signature in black ink, appearing to read "Dennis G. Howard, II.", written over a horizontal line.

DENNIS G. HOWARD, II.
ASSISTANT ATTORNEY GENERAL