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August 28, 2003

Via Hand Delivery

Ms. Reneé J. Jenkins  
Director of Administration  
Secretary of the Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, Ohio 43215

RE: Ohiotelnets.com, Inc. v. ALLTEL Ohio, Inc.  
PUCO Case No. 03-166-TP-CSS

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of ALLTEL's Supplemental Memorandum in Opposition to Ohiotelnets's Motion for Summary Judgment, to be filed in connection with the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

Carolyn S. Flahive

Enclosure

cc: Doug Jennings, Attorney Examiner

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Case No. 03-166-TP-CSS

Ohiotelnet.com, Inc. (“Ohiotelnet”) filed its Motion for Summary Judgment in this matter with the Public Utilities Commission of Ohio (“PUCO” or “Commission”) on March 31, 2003 (“Ohiotelnet’s SJ Motion”). ALLTEL Ohio, Inc. (“ALLTEL”) filed its Memorandum in Opposition to Ohiotelnet’s Summary Judgment Motion on April 4, 2003, (“ALLTEL’s Memorandum”). Well before those filings, the FCC had issued a press release (February 20, 2003) and several individual FCC Commissioner’s decisions regarding the FCC vote in the Triennial Review Docket.<sup>1</sup> Last week, on August 21, 2003, the FCC issued its final order in the Triennial Review Docket.<sup>2</sup> ALLTEL believes it would be of assistance to the Commission and the parties in resolving this matter to consider the Triennial Review Order and its impact on Ohiotelnet’s BFR request for an

<sup>2</sup> Report an Order on Remand, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (Released: August 21, 2003), (“Triennial Review Order”).

alleged “new” UNE combination, which ALLTEL has demonstrated is identical to or the functional equivalent of an EEL.

In Ohiotelnet’s SJ Motion, Ohiotelnet cited the February 20, 2003 FCC press release and argued, “While the order itself has not yet been released or published, it appears certain that CLECs may continue to order combinations of UNEs, and specifically including EELs.” (Ohiotelnet’s SJ Motion, page 9. Emphasis added). ALLTEL’s Memorandum, on the other hand, pointed out that Ohiotelnet’s citation and argument were misleading in that Ohiotelnet failed to quote from another section of the same FCC press release, which made it clear that the FCC’s final Triennial Review Order would continue to place certain “service eligibility criteria” as restrictions on requesting CLECs and IXC’s to “prevent gaming” in the ordering of EELs. (ALLTEL’s Memorandum, pages 16-18.)

The portion of the final FCC Triennial Review Order that deals with the availability of UNE combinations, including EELs, appears at paragraphs 569 through 625. To be entitled to order an EEL from ALLTEL, Ohiotelnet is required under paragraph 597 of the Order, *inter alia*, to demonstrate that it provides a local voice service over the requested circuits by having one local number assigned to each circuit and by providing 911 and E911 service to each circuit. In addition, the circuits must terminate in an Ohiotelnet *collocation space in an ALLTEL central office*, not in the Ohiotelnet or MSM/ISP serving office as now requested by Ohiotelnet. Plus, the whole circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic.

Ohiotelnet's request can not meet any of these "service eligibility requirements." Ohiotelnet currently has no collocation space in any ALLTEL central office. These requirements are also set forth in the new Rules ordered by the FCC implementing the Triennial Review Order. (See new Rule 47 CFR §51.318, Appendix B, pages 6-7, of the final FCC Triennial Review Order).

Now that the final FCC Triennial Review Order has been issued (August 21, 2003), the Commission can see for itself what is required by the final Order. ALLTEL believes this Supplemental Memorandum is not only appropriate, given that the law has become clearer since the last submissions of the parties, but also that it will be extremely useful to the Commission in its final deliberation of this matter. ALLTEL, of course, is willing to have the Commission grant Ohiotelnet leave and a reasonable amount of time to respond to this Supplemental Memorandum.

For all the foregoing reasons ALLTEL respectfully submits this Memorandum in Opposition to Ohiotelnet's Motion for Summary Judgment to the Commission in the above entitled matter and renews ALLTEL's request that Ohiotelnet's BFR request be denied and that this matter be dismissed, with prejudice.

Respectfully submitted,

ALLTEL Ohio, Inc.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Supplemental Memorandum in Opposition to Ohiotelnet's Motion for Summary Judgment was served by U.S. mail, postage pre-paid, and electronic mail, this 28th day of August 2003, on the following:

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