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CHARLES E. THOMAS
(1913 - 1998)

November 3, 2005

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

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In re: James W. Kramer v. ALLTEL Pennsylvania, Inc.
Docket No. C-20055421

Dear Secretary McNulty:

Enclosed for filing on behalf of ALLTEL Pennsylvania, Inc. are an original and three (3) copies of its Answer and New Matter and Notice to Plead in the above-referenced proceeding. Copies have been served in accordance with the attached Certificate of Service. The Company's Motion to Dismiss is being simultaneously filed under separate cover.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Michael L. Swindler

Encl.
cc: Certificate of Service
Laura Zatezalo

ORIGINAL

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

James W. Kramer,
Complainant

v.

ALLTEL Pennsylvania, Inc.,
Respondent

Docket No. C-20055421

NOTICE TO PLEAD

To: James W. Kramer
6035 Maplegrove Road
Bulger, PA 15019

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Pursuant to 52 Pa. Code § 5.62 (c), you are hereby notified that, if you do not file a written response to the enclosed New Matter of ALLTEL Pennsylvania, Inc. within twenty (20) days from service of this notice, the facts set forth in the New Matter may be deemed to be true, without requiring other proof. All pleadings such as a Reply to New Matter must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel for ALLTEL Pennsylvania, Inc.



Michael L. Swindler

Attorney for
ALLTEL Pennsylvania, Inc.

Dated: November 3, 2005

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

**DOCUMENT
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James W. Kramer,
Complainant

v.

ALLTEL Pennsylvania, Inc.,
Respondent

Docket No. C-2005541

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ANSWER AND NEW MATTER

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, comes ALLTEL Pennsylvania, Inc. ("ALLTEL" or "Company"), Respondent herein, pursuant to 52 Pa. Code § 5.61, and answers the complaint of James W. Kramer ("Complainant"), as follows:

1. Admitted.
2. Admitted. However, for purposes of clarification, the full name of Respondent is ALLTEL Pennsylvania, Inc.
3. Admitted.
4. Admitted in part. Denied in part. It is admitted that Complainant resides in Bulger, Washington County, in ALLTEL's Midway exchange. It is denied that the area served by ALLTEL is surrounded by service by Verizon. It is denied that ALLTEL prohibits other telecommunications carriers from offering local telephone service within ALLTEL's service territory. It is denied that ALLTEL is responsible for other telecommunications carriers "not being allowed" in ALLTEL's service area. As to the remainder of Complainant's complaint, Respondent is

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without information sufficient to form a belief as to the truth of the matters asserted and same are denied and proof thereof is demanded.

NEW MATTER

By way of further Answer and relevant background, ALLTEL provides the following:

a. Complainant is provided local telephone service by ALLTEL at account (724) 796-1469. Service is provided in the name of James W. Kramer with a billing address of 6035 Maplegrove Road, Bulger, Pennsylvania 15019.

b. ALLTEL's Midway exchange within which Complainant resides is bordered to the north by Armstrong Telephone Company of Pennsylvania, to the south by Hickory Telephone Company and to the east and west by Verizon Pennsylvania Inc. ALLTEL's Midway exchange is not contiguous to any other ALLTEL exchange.

c. Contrary to Complainant's allegations, the telephone industry in general within the Commonwealth, including the provision of telecommunications service by ALLTEL, is in the midst of a competitive renaissance. On February 8, 1996, the Telecommunications Act of 1996 ("TA-96") became law, and with it began the wholesale revision of the telecommunications industry. The purpose of TA-96 is best summarized in the Congressional Conference Report as follows:

...to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes.

With regard to local service, neither TA-96 nor the Pennsylvania Public Utility Commission ("Commission") have prohibited facilities-based competitive local exchange carrier ("CLEC") competition in rural service territories such as ALLTEL's. See 47 U.S.C. §§ 151, et seq.; Amended Application of Vanguard Telecom Corp. Docket No. A-310621 (Order entered April 2, 1999). That other telecommunications providers have elected not to provide such competitive local exchange service within ALLTEL's service territory, and specifically within ALLTEL's Midway exchange, is outside the control of ALLTEL. As such, ALLTEL is not accountable for the problem described by Complainant. Feinstein v. Philadelphia Suburban Water Co., 50 Pa. P.U.C. 300 (1976).

d. ALLTEL avers that it does not block competition nor is it empowered to do so.

e. Following the Commission's Global Order,¹ the Commission approved several facilities-based CLEC applications in rural service territories throughout Pennsylvania, asserting that "[f]acilities-based service is true competition, clearly what the Congress envisioned with the passage of TA-96. The burden is on the facilities-based CLEC to make a go of its business, and its performance in the market will dictate the success or failure of that business."² That facilities-based

¹Joint Petition of Nextlink Pennsylvania, Inc. et al., and Joint Petition of Bell Atlantic-Pennsylvania, Inc., et al., Docket Nos. P-00991648 and P-00991649, Order entered September 30, 1999 ("Global Order").

²Vanguard I at 13. See also Application of AT&T Communications of Pennsylvania, Inc. and TCG Pittsburgh, Docket Nos. A-310125F0002 and A-310213F0002 (Order entered April 10, 2001) (AT&T/TCG); Application of PECO Hyperion Telecommunications and Adelphia Business Solutions Operations, Inc., Docket Nos. A-310387F0002AMA, A-310923F0002AMA et al., (Order entered October 9, 2001) (Adelphia).

CLECs have elected not to provide such competitive local exchange service within ALLTEL's service territory is outside the control of ALLTEL.

f. Moreover, the availability of wireless telephone service in ALLTEL's Midway exchange within which Complainant resides, evidences that Complainant does, contrary to the allegations set forth in his complaint, currently have a choice of carriers to make and receive local calls.

g. ALLTEL's rates are set forth in its tariff on file with the Commission and are just and reasonable.

h. There is no allegation in Complainant's complaint that ALLTEL has actively prevented any facilities-based CLEC from offering local telephone exchange service in ALLTEL's service territory.

i. A DSL connection uses a special modem or "router" to split the analog and digital signals on a customer's telephone line and routes them to the local phone company's central office, from which the customer is connected to the Internet. The digital signals transmit more data, much faster, than an analog dial-up signal and the DSL connection is always on, at speeds that are multiple times faster than a traditional 56K dial-up connection. Moreover, because DSL uses different frequencies of the telephone line than those used to provide voice-grade service, it is possible with DSL to be connected to the Internet and make phone calls on the same line simultaneously.

j. DSL is distance sensitive. Specifically, installation of the requested DSL service is impacted by the distance between the customer's residence and the Company's central office switching facilities serving the customer. DSL is provided

at an extremely high bandwidth, subject to loss of transmission and degradation of service beyond 18,000 feet from the central office or remote carrier service location from which the DSL service is generated.

k. Complainant is served from the Company's Midway central office switch. Since ALLTEL's Midway exchange is not contiguous to any other ALLTEL service territory, DSL is not currently offered due to transport issues. Complainant is not located within the technical parameters that make provision of DSL service to Complainant feasible. Such operational limitations and system requirements or compatibility issues are specifications of the service and beyond the control of ALLTEL.

l. Similar complaints requesting that telephone utilities be required to provide DSL service have been dismissed. See, Initial Decision Granting Respondent's Motion to Dismiss Complaint of Administrative Law Judge Fred R. Nene in Todd. E. Kepple v. ALLTEL Pennsylvania, Inc., Docket No. C-20042846, dated July 21, 2004, adopted by Final Order of the Commission entered September 9, 2004.

m. ALLTEL avers that, to the extent it is providing access to the public switched telephone network, it provides adequate voice grade service.

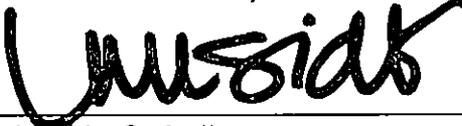
n. With respect to requests for broadband service in areas where it does not currently provide broadband, ALLTEL complies with the terms of its Bona Fide Retail Request Program pursuant to 66 Pa. Code § 3104(c).

5. The corresponding Paragraph 5 of Complainant's complaint merely sets forth the relief requested and an answer is not required. Should an answer be deemed appropriate, ALLTEL submits that the relief requested is not warranted, as set forth in Paragraph 4, above.

WHEREFORE, ALLTEL Pennsylvania, Inc., for the reasons set forth herein, respectfully requests that the instant complaint be dismissed.

Respectfully submitted,

ALLTEL PENNSYLVANIA, INC.

By 
Michael L. Swindler

Attorney for
ALLTEL Pennsylvania, Inc.

THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108
(717) 255-7609

Dated: November 3, 2005

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STATE OF PENNSYLVANIA :
COUNTY OF ARMSTRONG : SS:
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Donna French, being duly sworn according to law, deposes and says that she is Executive Secretary of ALLTEL Pennsylvania, Inc.; that she is authorized to and does make this affidavit for it; and that the facts above set forth are true and correct to the best of her knowledge, information and belief and she expects the said ALLTEL Pennsylvania, Inc. to be able to prove the same at any hearing.

Donna L. French

Donna L. French
Executive Secretary

Sworn and subscribed before me this 28th day of October, 2005.

Susanna Streightif
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Susanna Streightif, Notary Public
Kittanning Boro, Armstrong County
My Commission Expires July 15, 2008
Member, Pennsylvania Association Of Notaries

ORIGINAL

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

James W. Kramer,
Complainant

v.

ALLTEL Pennsylvania, Inc.
Respondent

Docket No. C-20055421

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of November, 2005, served a true and correct copy of the foregoing Answer and New Matter and Notice to Plead on behalf of ALLTEL Pennsylvania, Inc., upon the person and in the manner listed below:

FIRST CLASS MAIL, POSTAGE PREPAID

James W. Kramer
6035 Maplegrove Road
Bulger, PA 15019



Michael L. Swindler

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