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May 9, 2007

VIA HAND DELIVERY

Ann Cole
Office of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 060582-TP – Petition of Alltel Communications, Inc. for
Designation as Eligible Telecommunications Carrier in Certain Rural
Telephone Company Study Areas Located Entirely in Alltel's Licensed Area**

Dear Ms. Cole:

Enclosed for filing in the above referenced docket are an original and five copies of TDS TELECOM's response to Alltel Communications, Inc.'s Petition. If you have any questions please contact me at (850) 875-5207.

Sincerely,

Thomas M. McCabe
Manager – External Affairs
TDS TELECOM

CMP _____

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

TALLAHASSEE, FLORIDA

Petition of Alltel Communications, Inc. for)
Designation as Eligible Telecommunications) Docket No. 060582-TL
Carrier (ETC) in Certain Rural Telephone)
Company Study Areas Located Entirely in)
Alltel's Licensed Area)

COMMENTS OF TDS TELECOM

TDS Telecom ("TDS") submits these comments on behalf of Quincy Telephone Company d/b/a TDS Telecom/Quincy ("TDS") regarding the Petition of ALLTEL Communications, Inc. request for ETC designation in certain rural telephone company study areas.

I. INTRODUCTION

1. TDS is a small incumbent local exchange company within the meaning of Section 364.052(1), Florida Statutes. TDS also qualifies as a "rural telephone company" within the meaning of 47 U.S.C. § 153(47).
2. On August 28, 2006, Alltel Communications, Inc. filed an application for designation as an ETC in the wire centers of TDS Telecom, Frontier Communications of the South, and GTC, Inc.
3. On September 23, 2003, the Florida Public Service Commission ("FPSC") issued Order No. PSC-03-1063-DS-TP, in Docket Nos. 030346-TP and 030413-TP, finding that the FPSC did not have jurisdiction over Commercial Mobile Radio Service (CMRS)

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providers for determining ETC status because the Florida Legislature expressly excluded CMRS providers from the jurisdiction of the FPSC.

4. On April 3, 2006, the FPSC issued Order No. PSC-07-0288-PAA-TP, in Docket Nos. 060581-TP and 060582-TP, finding that with the enactment of Section 364.011, Florida Statutes, the Florida Legislature has granted the FPSC limited authority over CMRS providers to those matters specifically authorized by federal law. Therefore, pursuant to §214(e)(2) of the Federal Act which authorizes states to designate ETC carriers, the FPSC is now asserting jurisdiction over CMRS providers for the purpose of considering ETC applications.

5. Alltel Communications, Inc.'s ETC application is the first instance in which the FPSC will be considering granting ETC status in service areas served by rural incumbent local exchange carriers.

II. Universal Service and ETC

6. Section 254 of the federal Communications Act of 1996 ("the Act"), 47 U.S.C. § 254(b)(1-7) sets forth the following principles:

1. Quality service should be available at just, reasonable, and affordable rates.
2. Access to advanced telecommunications and information services should be provided in all regions of the Nation.
3. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available

at rates that are reasonably comparable to rates charged for similar services in urban areas.

4. All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

5. There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.

7. The federal universal service principles outline in Section 254(b) of the Act are consistent with the principles of universal service set forth in Section 364.025, Florida Statutes, which describes universal service as:

“...an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services the commission determines should be provided at just, reasonable, and affordable rates to consumers, including those in rural, economically disadvantaged, and high-cost areas...”

8. It is generally accepted that universal service, at a minimum, includes basic local telecommunications services, as defined under Section 364.02(1), Florida Statutes.

9. Section 214(e) provides for State commissions to designate ETCs which affords the provider to receive federal universal service support. Before designating an ETC in a rural LECs serving area, a State commission must first find that the designation of additional ETCs in a rural LEC service area is in the public interest.

III. Alltel Communications, Inc. Does Not Meet the Statutory and Regulatory Requirements for ETC Designation

10. It appears that Alltel relies on the FCC's March 17, 2005 ETC Designation Order as the basis for its belief that they meet the Statutory and Regulatory Requirements of ETC Designation. Although the FCC Order took significant steps to improve the haphazard process that the FCC utilized to approve ETC applications, the order falls short of requiring full compliance with the applicable statutory requirements. For example, on page 8 of its Petition, Alltel certifies that it will provide service throughout the proposed ETC area using its standard customer equipment and offerings where available. This certification is inconsistent with the Statutory requirement of Section 214(e)(1), which explicitly provides that designated ETCs "shall" offer and advertise all supported services "throughout the service area for which the designation is received." No where in Section 214(e) does it indicated this provision is limited to where service is available.

11. Alltel certification does not meet the statutory requirements of Section 254(e) of the Act which requires that a carrier that receives universal service support "shall use that support only for the provision maintenance, and upgrading of facilities and services for which the support is intended." TDS acknowledges that Alltel states on page 17 of their Petition that they commit to use available federal high-cost support for its intended purpose; however a careful reading of their Petition raises serious questions. For example, in reference to their Five Year Service Improvement Plan on page 9 of their Petition, Alltel states that the five year plan "must be flexible and are subject to change

in response to general consumer demand, changes in technology and other appropriate factors. The priority under which each cell site is to be constructed is subject to change depending upon requests for service and other market factors.” The mere fact that Alltel may believe that customer demand or market factors may dictate a change in build out requirements or system upgrades would not justify receiving high cost support in rural areas only to use those funds in areas outside the designated ETC service area. For example, high cost support received in the TDS service area would need to be utilized in the TDS service area. Based on Alltel’s Petition, they have not indicated a commitment to use high-cost support as the support is intended.

IV. Designation of Alltel Communications, Inc. as an ETC in Rural Service Areas is Not in the Public Interest

12. Alltel offers the same flawed arguments as many other CMRS ETC applicants with respect to the public interest issue. Reduced to its most basic elements, the argument is that designating additional ETCs in a rural study area creates competition, competition is in the public interest, and therefore designating Alltel as an additional ETC in the rural study area is in the public interest.

If accepted, this argument nullifies the public interest test contained in Section 214(e)(2) because it results in the conclusion that designating additional ETCs in rural study areas is always in the public interest. If increasing competition were enough to satisfy the public interest test, Congress never would have limited the designation of additional ETCs in rural study areas to those instances when such designation is in the

public interest. Instead, it could have applied the same standard to both rural and non-rural areas.

Congress, however, by adopting the public interest test and delegating to states the discretion to determine whether and how many ETCs to designate in rural study areas, recognized that it does not always make sense to designate additional ETCs in such areas. As FCC Commissioner Kevin Martin has noted, the designation of additional ETCs for the purpose of creating competition is problematic;

“I also note that I have some concerns with the Commission’s policy – adopted long before this Order – of using universal service support as a means of creating “competition” in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive even for one carrier. This policy makes it difficult for any one carrier to achieve economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.”¹

13. Contrary to Alltel’s claim, designating Alltel as an ETC will not increase competition in TDS’ service area, nor will it likely increase competition in the other rural study areas. In addition to Alltel, there are three other national CMRS providers offering wireless service in the TDS service area. It should be noted to date that none of the other CMRS providers have requested ETC designation in the rural study areas. Thus

¹ Separate Statement of Commissioner Kevin J. Martin, Second Report & Order and Final Notice of Proposed Rulemaking in CC Docket No. 00-256...,

there is no basis to Alltel's claim that granting them ETC designation will increase competition.

14. Recognizing the importance that Lifeline and Link-Up service has become in Florida, Alltel attempts to place a significant emphasis that designating them as an ETC is in the public interest in that it will enhance the availability of Lifeline service in rural areas. Unfortunately, Alltel's statements do not comport with the company's actions. First, the FCC designated Alltel non-rural ETC status in September 2004 and has received close to \$1 million dollars in federal universal service support. Yet, according to the FPSC 2006 Lifeline Report, Alltel had only 31 Lifeline customers as of September 2006.

15. Any public interest determination must take into consideration the potential impact that the loss of high-cost support to the incumbent could have on public policy. For example, the FPSC submitted comments in response to the federal Public Notice released August 11, 2006 relating to the use of auctions, the FPSC noted the potential existed for the "incumbent to be forced to leave the market due to insufficient support..." Yet, there is no indication in Alltel's Petition that they are willing and able to take on the universal service responsibilities that have been established by FPSC Order or Florida Statutes.

V. Pending Federal Action

16. While TDS believes that the FPSC should deny Alltel's ETC designation in the rural service areas identified in its Petition, we believe at a minimum the Commission should defer any action in this proceeding until the conclusion of pending federal action. On May 1, 2007, the Federal-State Joint Board on Universal Service issued a

recommended decision to the Federal Communications Commission (“FCC”) recommending that the FCC take immediate action to control the explosive growth of the universal service support disbursements. Specifically, the Joint Board recommended that:

“the Commission (FCC) impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers (ETCs) may receive for each state based on the average level of competitive ETC support distributed in that state in 2006. We also recommend that the Joint Board and the Commission further explore comprehensive high-cost distribution reform. As part of that effort, today in a companion Public Notice we seek comment on various proposals to reform the high-cost universal service support mechanisms. We also commit to making further recommendations regarding comprehensive high-cost universal service reform within six months of this Recommended Decision. Finally, we recommend that the Commission act of these further recommendations within one year from the date of our further recommended decision.

VI. ETC Criteria

17. If the FPSC believes that Alltel should be designated as an ETC, TDS recommends that the Commission implement eligibility criteria consistent with the universal service obligations of the incumbent LECs. By requesting ETC designation, Alltel has requested financial assistance that is generally not available to other CMRS

providers or CLECs in order to fulfill universal service obligations. By requesting such financial assistance, Alltel wireless or any ETC should be required to accept the social responsibilities and obligations of a universal service provider. While the FCC's ETC Designation Order was a positive step in establishing eligibility criteria, the FPSC clearly retains the authority to impose additional requirements for designation of an ETC. See *Texas Office of Public Utility Council v. FCC*, 183 F3d 393 (5th Cir. 1999).

18. In addition to the FCC ETC eligibility criteria, TDS recommends that the FPSC adopt additional ETC eligibility requirements as set forth below. TDS' recommendations are based on existing FPSC rules, orders, and FL Statutes.

A. All ETCs should be required to assume carrier-of-last-resort responsibility.

The state carrier-of-last-resort requirement imposed on the incumbent LEC is indistinguishable from the federal universal service obligations and Section 214(e)(1) of the Act which requires service to be provided "throughout the service area..."

B. All ETCs should be required to establish a rate that is comparable to the basic rate charged by the incumbent LEC. Alltel indicates in its Petition that the local usage plans they offer are comparable to those of the incumbent LEC in the service area for which they seek designation.

However, TDS provides unlimited basic local exchange service at a tariffed rate of \$13.20 compared to Alltel's cheapest offering of \$29.99 for five hours of calling per month. Anything over 5 hours incurs an additional charge of \$0.45 per minute. With the passage of HB 529, the Florida Legislature sent a clear signal as to the appropriate rate for basic local

exchange service by eliminating the statutory provisions that afforded the incumbent LECs to rebalance basic local rates.

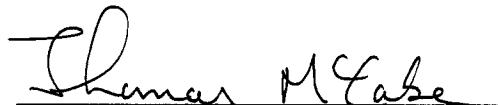
- C. All ETCs should be required to offer Lifeline service at a rate comparable to the incumbent LEC in addition to matching the state and federal discounts. For example, Quincy's Lifeline rate equates to an unlimited basic service rate of \$6.20 per month, compared to Alltel's Lifeline plan of \$16.49 for 5 hours of calling per month. When Florida's lawmakers passed the rate rebalancing legislation in 2004, the legislation capped the incumbent LECs Lifeline rate at the existing rate levels. By imposing such a cap, the legislature effectively set forth a public policy that the appropriate rate for Lifeline service is the existing rate level of the incumbent LEC in that service area.
- D. The FPSC should establish as rule, that ETCs shall meet all FPSC service quality standards, be required to file service quality reports with the FPSC, and be subject to service quality audits.
- E. All ETCs should be responsible for addressing consumer complaints filed with the FPSC.
- F. All ETCs should be required to pay regulatory assessment fees. The purpose of regulatory assessment fees is to share in the cost of the FPSC regulatory oversight.

VII. Summary

19. TDS Telecom believes that designating Alltel Communications, Inc. as an ETC in the rural study areas identified in their Petition is not in the public interest, that such designation will not bring increased consumer benefits, and that Alltel's public interest argument should be rejected. At a minimum, TDS recommends that the FPSC defer taking any action until the conclusion of pending federal action on universal service disbursements.

This _____ day of May, 2007.

Respectfully submitted,



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