

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone company study areas located entirely in Alltel's licensed area.

DOCKET NO. 060582-TP
ORDER NO. PSC-07-0870-FOF-TP
ISSUED: October 30, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER SETTING MATTER FOR HEARING

BY THE COMMISSION:

I. Case Background

On August 30, 2006, Alltel Communications, Inc. (Alltel) filed two Petitions for Designation as an Eligible Telecommunications Carrier in the State of Florida (Petitions).¹ Docket No. 060581-TP, which has been withdrawn,² addressed Alltel's petition requesting ETC designation in rural telephone company study areas³ that are located partially within Alltel's licensed service area and for redefinition of the study area requirement in the rural telephone company areas. Docket No. 060582-TP was opened to address the petition requesting ETC designation in rural telephone company study areas⁴ that are located entirely within Alltel's licensed service area in the state of Florida.

¹ On October 13, 2005, Alltel filed a petition with the FCC seeking designation as an ETC in the State of Florida. As of the filing of this recommendation, the FCC has yet to rule on Alltel's petition (CC Docket No. 96-45). In Public Notice DA 05-3005, the FCC requested comment on the Alltel Communications petition seeking designation as an eligible telecommunications carrier in Georgia, Virginia, Alabama, North Carolina and Florida.

² A Notice of Withdrawal of Petition was filed on April 17, 2007 for Docket No. 060581-TP: Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone company study areas located partially in Alltel's licensed area and for redefinition of those study areas. By Order No. PSC 07-0458-FOF-TP, issued May 29, 2007, we acknowledged Alltel's Notice of Voluntary Withdrawal of its Petition, without prejudice.

³ Alltel Florida, Inc. (n/k/a Windstream Florida, Inc.) and Sprint-Florida, Inc. (n/k/a Embarq Florida, Inc.).

⁴ Frontier Communications of the South, GTC Inc., and Quincy Telephone Company d/b/a TDS Telecom.

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On October 11, 2006, Embarq Florida, Inc. (Embarq) petitioned to intervene in both dockets. On January 8, 2007, Order No. PSC-07-0020-PCO-TP was issued granting intervention to Embarq in these proceedings. On December 12, 2006, Embarq filed a Notice of Withdrawal to Intervene in Docket No. 060582-TP.

On December 8, 2006, Quincy Telephone Company, d/b/a TDS Telecom (TDS) filed a Petition to Intervene in Docket No. 060582-TP. By Order No. PSC-07-0087-PCO-TP, issued January 30, 2007, we granted permission for TDS to intervene in Docket No. 060582-TP, noting that it appears that TDS's substantial interests may be affected because it provides incumbent local exchange service in areas of Florida where Alltel has requested designation as an ETC.

On March 13, 2007, we addressed the issue of whether or not we have jurisdiction to designate commercial mobile radio service (CMRS) providers as ETCs. On April 3, 2007, we 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 this Commission limited authority over CMRS providers to those matters specifically authorized by federal law. Therefore, pursuant to §214(e)(2) of the Telecommunications Act of 1996 which authorizes states to designate ETC carriers, we are now asserting jurisdiction over CMRS providers for the purpose of considering ETC petitions.

II. Analysis and Decision

On June 7, 2007, our staff filed a proposed agency action recommendation addressing whether Alltel should be granted ETC status in certain rural telephone study areas located entirely in Alltel's licensed area in the state of Florida. At the June 19, 2007 agenda, we had some concerns regarding the current ETC designation process and the need for better information, better accountability, more accurate numbers, and the need to have clear policy and procedures in place for consistency. We voted to defer consideration of Alltel's petition with the understanding and direction that our staff continue the technical workshops and ETC rule development process and continue to monitor the developments and discussions at the federal level.

On August 3, 2007, Alltel submitted a letter requesting that we schedule this docket for a Section 120.57, Florida Statutes, hearing. Alltel stated that the hearing would effectively serve to address the concerns raised at the June 19th agenda conference in regard to having an adequate record to make the most informed decision.

On August 20, 2007, our staff conducted a workshop to discuss certain policy issues in regard to eligible telecommunications carriers. Discussions included the specifics of filing an ETC petition with this Commission, annual ETC certification, revocation and relinquishment of ETC status, requirements for previously designated ETCs and future designations, Lifeline and Link-up requirements, and review of ETC records. The workshops revealed several issues that should be developed through the hearing process.

On September 6, 2007, the FCC issued a Public Notice⁵ which contained a statement from the Federal-State Joint Board on Universal Service (Joint Board) regarding long term, comprehensive high-cost universal service reform. The Joint Board has tentatively agreed that support mechanisms for the future will focus on voice, broadband, and mobility. It also stated that in addition to the principles set forth in the statute, support mechanisms for the future will be guided by the principles of cost control, accountability, state participation, and infrastructure build out in unserved areas. The Joint Board stated that the identical support rule⁶ will not be part of future support mechanisms. We find that further review of Alltel's petition is appropriate in order to determine if the issues outlined by the Joint Board statement are relevant to Alltel's petition.

There are additional questions to be answered in Alltel's rural ETC petition. They include the following:

- Should there be a requirement that universal service funds received by Alltel be used specifically in the state of Florida? If so, should there be a requirement that the funds be used in the specific study area where Alltel is designated ETC status?
- What degree of accountability should be placed on Alltel to be sure ETC commitments are met?
- What after-the-fact evaluations should be done to be sure Alltel's ETC commitments are met?
- Are there citizens in these rural areas with no services right now? Would ETC designation of Alltel in these areas provide these citizens the needed service?
- How would granting Alltel rural ETC status impact the federal universal service fund?
- What degree of service quality oversight will this Commission have over Alltel if ETC status is granted?

⁵ Federal-State Joint Board on Universal Service Statement of Long Term Comprehensive High-Cost Universal Service Reform, FCC 07J-3 released September 6, 2007, WC Docket No. 05-337, CC Docket No. 96-45.

⁶Under the identical support rule, both incumbent rural LECs and competitive ETCs receive support based on the incumbent rural LECs' costs. Therefore, incumbent rural LECs' support is cost-based, while competitive ETCs' support is not. (FCC 07J-1, p.6) The identical support rule seems to be one of the primary causes of the explosive growth in the universal service fund. (FCC 07J-I, p.12) In comments submitted to the FCC June 21, 2007, we opined that the identical support rule should be eliminated. We explained that competitive neutrality should not be interpreted as requiring that all carriers receive the same amount of support, but rather that all eligible carriers have an equal opportunity to compete for support. We also stated that universal service should not be used as a tool to create entry incentives for uneconomic competition.

- Would granting Alltel rural ETC status be in the public interest?
- What cost, additional burden, or benefit would Florida consumers experience if rural ETC status is granted to Alltel?
- What carrier of last resort obligations will Alltel have if its ETC petition is granted? What, if anything, would be the difference between a carrier of last resort obligation and an ETC universal service obligation for Alltel?

Given the concerns expressed at the June 19, 2007 agenda regarding ETC designation, the differing opinions provided at the ETC workshop as to what the role and authority of this Commission is in the USF process and what criteria should be used for ETC designation, and the September 6, 2007 statement issued by the Joint Board, we find that a hearing for this docket would be appropriate to flesh out the necessary criteria and details for considering Alltel's ETC petition. Therefore, we hereby find that this docket shall be set for hearing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that this matter shall immediately be set for hearing. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 30th day of October, 2007.



ANN COLE
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.