

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-08-0264-FOF-TP  
ISSUED: April 28, 2008

The following Commissioners participated in the disposition of this matter:

KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

ORDER ACKNOWLEDGING NOTICE OF WITHDRAWAL

BY THE COMMISSION:

I. Case Background

On August 30, 2006, Alltel Communications, Inc. (Alltel) filed two Petitions for Designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida (Petitions). Docket No. 060581-TP, which was withdrawn,<sup>1</sup> addressed Alltel's petition requesting ETC designation in rural telephone company study areas<sup>2</sup> 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 areas<sup>3</sup> that are located entirely within Alltel's licensed service area in the state of Florida.

Pursuant to Order No. PSC-07-0961-PCO-TP (Order Granting Continuance), issued December 3, 2007, Docket No. 060582-TP was continued pending notification from Alltel that it was prepared to proceed.

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<sup>1</sup> 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, the Commission acknowledged Alltel's Notice of Voluntary Withdrawal of its Petition, without prejudice.

<sup>2</sup> Alltel Florida, Inc. (n/k/a Windstream Florida, Inc.) and Sprint-Florida, Inc. (n/k/a Embarq Florida, Inc.).

<sup>3</sup> Frontier Communications of the South, GTC Inc., and Quincy Telephone Company d/b/a TDS Telecom.

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On March 14, 2008, Alltel filed its Notice of Withdrawal of Petition, without prejudice. We have jurisdiction, pursuant to Chapter 364, Florida Statutes (F.S.).

II. Analysis and Decision

It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.<sup>4</sup> Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>5</sup> Both of these legal principles have been recognized in administrative proceedings.<sup>6</sup> Accordingly, Alltel can dismiss its petition as a matter of right, which is in accord with our past decisions.<sup>7</sup>

Therefore, we acknowledge Alltel's Notice of Withdrawal of its Petition, without prejudice, and find that the voluntary dismissal renders any and all outstanding motions moot.

Because there is nothing further in the docket for this Commission to address, the docket shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Alltel's Notice of Withdrawal of its Petition, without prejudice, is hereby acknowledged. It is further

ORDERED that this voluntary dismissal renders any and all outstanding motions moot. It is further

ORDERED that this docket shall be closed.

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<sup>4</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975).

<sup>5</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978).

<sup>6</sup> Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

<sup>7</sup> See Order No. PSC-05-0724-FOF-TP, issued July 6, 2005, in Docket Nos. 040489-TP, In re: Emergency complaint seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs) and 040520-TP, In re: Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC, and MCI WorldCom Communications, Inc.; Order No. PSC-02-0857-FOF-TP, issued June 24, 2002, in Docket No. 011615-TP, In re: Complaint of KMC Telecom, Inc. for enforcement of interconnection agreement with Sprint-Florida, Incorporated; But see Order No. PSC-07-0297-FOF-SU, issued April 9, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. and Order No. PSC-96-0992-FOF-WS, issued August 5, 1996, in Docket No. 950758-WS, In Re: Petition for approval of transfer of facilities of Harbor Utilities Company, Inc., to Bonita Springs Utilities and cancellation of Certificates Nos. 272-W and 215-S in Lee County (voluntary dismissal cannot be utilized to divest the Commission as an adjudicatory agency of its jurisdiction granted to it by the legislature).

By ORDER of the Florida Public Service Commission this 28th day of April, 2008.



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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.