

**Ruth Nettles**

**From:** Stephen.B.Rowell@alltel.com  
**Sent:** Tuesday, January 27, 2009 2:42 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket number 080234-TP  
**Attachments:** alltel prehearing statement final.pdf

Attached for filing in the referenced Docket is the Prehearing Statement of Alltel Communications, LLC filed by Alltel. If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

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B. Docket No. 080234-TP In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

C. Filed by Alltel Communications, LLC

D. Number of pages: 5

E. Description: Prehearing Statement

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00667 JAN 27 '09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

DOCKET NO. 080234-TP

PREHEARING STATEMENT OF ALLTEL COMMUNICATIONS, LLC

In accordance with the Order Establishing Procedure issued September 15, 2008, as modified by the First Order Modifying Procedure issued December 24, 2008 (as modified, the "Procedural Order"), Alltel Communications, LLC ("Alltel") submits this Prehearing Statement setting forth the information requested by the Procedural Order.

**(1.) The name and subject matter of all known witnesses prefiled or to be called:**

As the issue in this proceeding is a narrow and strictly legal question, specifically, "whether the Commission erroneously interpreted 47 CFR 54.403(b)", Alltel has not prefiled testimony and does not presently intend to call any witnesses. However, Alltel may cross examine witnesses to the extent they have addressed any questions of law relevant to this matter and will file post hearing briefs and present any oral argument desired by and helpful to the Commission.

This proceeding concerns various parties', including Alltel, challenge to the Commission's determination in Order No. PSC-08-0417-PAA-TP issued June 23, 2008 (the "Order") that Federal Communication Commission rule codified at 47 CFR §54.403(b) (the "Rule") mandates that "ETCs are required to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service". (Order page 12). The Commission erred in ignoring the plain unambiguous language of the Rule that Lifeline is required to be applied to the "lowest tariffed

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(or otherwise generally available) rate plan”. This Commission did not adopt its conclusion through a rule making in accordance with Florida Statutes Section 120.54 or reach it based on a conclusion that Florida law requires that result. It is, therefore, irrelevant in this proceeding whether it may or should impose lifeline discounts on all rate plans or even whether such is good or bad policy. This proceeding is not a rule making where the Commission is asked to impose or is considering imposing such a requirement. This is a challenge to its erroneous interpretation of an FCC rule. Therefore, the only issue relevant in this proceeding is whether the Commission erroneously interpreted the FCC rule as requiring such, as that was the sole basis for its decision. Clearly the Commission did err by ignoring the plain unambiguous language of the rule. The conclusion of the Order is therefore inconsistent with federal law.

The Commission also erred as its conclusion violates both federal and Florida law. Federal law precludes states from both the regulation of entry and rates of wireless carriers. 47 USC § 332(c). The result that the Commission reached in this matter in combination with other rules that the Commission now apparently believes are applicable attempts to alter and dictate the rates of wireless carriers. Wireless carriers like Alltel offer many rate plans for consumers and no one plan is or can be defined as “basic” in the former wireline sense of the word. Wireline basic service has historically been easily identified as it was tariffed as dial tone with unlimited local calling in a defined local calling area. Wireless plans on the other hand vary by numbers of minutes included in the set price and the local calling area differs depending on the customer’s need. Wireless carriers do not simply add vertical features to a local unlimited plan to create bundles. The concept of “basic service” and the ability to distinguish a “basic service” within wireless rate plans make little sense; alternatively, the entire plan is basic.

Another example is the sale of a smart phone which includes the ability to send and receive emails and data. The customer is paying for the instrument, use, and various measured services depending on the plan selected. If the customer does not pay the entire bill, it is simply not possible to conclude he has or has not paid enough to cover "basic service," and if he has not paid enough to cover the pro-rated hand set costs (again not a defined amount), then the company can not be expected to allow the consumer to retain the services or the handset. Simply stated, even if this were a rule making, which it is not, the wireline concept of "basic service" does not transfer to wireless, and the Commission's action is an attempt to dictate changes in the rates and rate structure of wireless carriers. This action is clearly preempted and unlawful.

**(2) Description of all prefiled exhibits and other exhibits that may be used**

Alltel has not identified any exhibits other than copies of relevant statutes, rules and decisions that may be attached to its brief in this matter.

**(3) Statement of a party's basic position**

See response to item 1 above.

**(4) A statement of each question of fact, question of law, and policy that the party considers at issue, along with the party's position on each issue, and , where applicable , the names of witnesses who will address each issue.**

See response to item 1 above.

**(5) Issues to which the parties have stipulated**

None of which Alltel is aware.

**(6) Statement of all pending motions**

None of which Alltel is aware.

**(7) Statement of party's pending requests or claims for confidentiality**

None pending at present.

**(8) Any objections to a witness' qualifications as an expert.**

Alltel is not aware that any witness has been offered or qualifies as an expert on the relevant legal issues described above.

**(9) A statement as to any requirement set forth in this order that cannot be complied with and the reasons therefore.**

Alltel has not presently identified any such matter.



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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline program involving bundled service packages and placement of additional enrollment requirements on customers.

DOCKET NO. 080234-TP

DATED: NOVEMBER 19, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one correct copy of the Prehearing Statement of Alltel Communications, LLC has been served to the following by US Mail and email this \_\_\_\_ day of January, 2009:

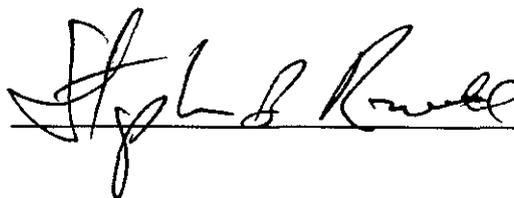
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