

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

SCANNED

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 27, 2007

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Competitive Markets & Enforcement (Casey) *PC*  
Office of the General Counsel (Teitzman) *AT* *picw* *DM*

**RE:** Docket No. 060582-TP – 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.

**AGENDA:** 10/09/07 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Argenziano

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\060582.RCM.DOC

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### 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).<sup>1</sup> Docket No. 060581-TP, which has been withdrawn,<sup>2</sup> addressed Alltel's petition requesting ETC

<sup>1</sup> 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.

<sup>2</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

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designation in rural telephone company study areas<sup>3</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>4</sup> that are located entirely within Alltel's licensed service area in the state of Florida.

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, the FPSC 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, the FPSC addressed the issue of whether or not the FPSC has jurisdiction to designate commercial mobile radio service (CMRS) providers as ETCs. On April 3, 2007, 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 Telecommunications Act of 1996 which authorizes states to designate ETC carriers, the FPSC is now asserting jurisdiction over CMRS providers for the purpose of considering ETC petitions.

This recommendation addresses whether the issues raised in Alltel's petition should be set for hearing.

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

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

### **Discussion of Issues**

**Issue 1:** Should the Commission set this docket for hearing?

**Recommendation:** Yes. Staff recommends this docket be set for hearing. (Casey, Teitzman)

**Staff Analysis:** On June 7, 2007, staff filed a proposed agency action recommendation for the Commission's consideration 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, Commissioners brought forth 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. The Commission voted to defer its consideration of Alltel's petition with the understanding and direction that staff continue the technical workshops and ETC rule development process. The Commission would continue to monitor the developments and discussions at the federal level.

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

On August 20, 2007, 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 the 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 Notice<sup>5</sup> 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 rule<sup>6</sup> will not be

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<sup>5</sup> 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.

<sup>6</sup>Under 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, the PSC opined that the identical support rule should be eliminated. The PSC 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. The PSC also stated that universal service should not be used as a tool to create entry incentives for uneconomic competition.

part of future support mechanisms. Staff believes 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.

Staff also believes 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 the Commission have over Alltel if ETC status is granted?
- 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 the 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, staff believes a hearing for this docket would be appropriate to flesh out the necessary criteria and details for considering Alltel's ETC petition. Therefore, staff recommends that this docket be set for hearing.

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**Issue 2:** Should this docket be closed?

**Recommendation:** No. This docket should remain open pending disposition of the Alltel petition. (Teitzman)

**Staff Analysis:** This docket should remain open pending disposition of the Alltel petition.