

ALLTEL COMMUNICATIONS, INC.
One Allied Drive
Little Rock, AR 72202

ORIGINAL



June 2, 2003

Ms. Blanca Bayo, Director
Commission Clerk and Administrative
Services
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, Florida 32399-0850

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Re: Docket No. 030413-TP

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen (15) copies of Response of ALLTEL Communications, Inc. to Petitions to Intervene.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Stephen B. Rowell
Stephen B. Rowell *by [Signature]*

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Enclosures

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Before the Florida Public Service Commission

In Re: Petition of ALLTEL Communications, Inc. for) Docket No: 030413
Declaratory Statement with Respect to Jurisdiction)
Regarding CMRS Eligible Telecommunications Carrier)
Applications) Filed: June 3, 2003

**ALLTEL COMMUNICATIONS, INC. RESPONSE
TO NORTHEAST FLORIDA TELEPHONE COMPANY
AND GTC, INC. D/B/A GT COM AND TDS TELECOM/QUINCY TELEPHONE
PETITION TO INTERVENE**

ALLTEL Wireless Holdings, L.L.C and New York NEWCO Subsidiary, Inc. subsidiaries of ALLTEL Communications, Inc., (“ALLTEL”), pursuant to Rule 28-106.204, Florida Administrative Code, Uniform Rules of Procedure, hereby respond to and oppose Northeast Florida Telephone Company (“NEFCOM”) and GTC, Inc. D/B/A GT COM (“GT COM”) and TDS D/B/A Quincy Telephone’s (“Intervenors”) Petition to Intervene in ALLTEL’s Petition for Declaratory Statement solely with respect to Intervenors contentions that ALLTEL’s Petition should be denied stating as follows:

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FPSC-COMMUNICATIONS CLERK

1. On April 28, 2003 ALLTEL filed a petition for Declaratory Statement, seeking a determination from the Commission that ALLTEL is not subject to the jurisdiction of the Commission for purposes of determining eligibility for Eligible Telecommunications Carrier (“ETC”) Status pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. §214(e)(6) and the Universal Service eligibility rules set forth in Part 54, Subpart C of the Rules of the Federal Communications Commission, 47 C.F.R. §54.201 *et seq.*
2. On May 22, 2003, the Intervenor filed a Petition to Intervene in this docket. While ALLTEL does not oppose the intervention of these entities, the Intervenor asserts that the Commission should deny ALLTEL’s Petition for Declaratory Statement on the grounds that it violates the procedures contemplated by Order No. PSC-1262-FOF-TP¹ and that it fails to meet the pleading requirements for purposes served by a petition for a declaratory statement.

ARGUMENT

3. Pursuant to 47 U.S.C. §214(e)(6), the Federal Communications Commission (“FCC”) may, upon request, designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”
4. Section 364.01(2), F.S. gives “exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies...” (emphasis added). The definition of “Telecommunications Company”

¹ In re: Establishment of Eligible Telecommunications Carriers Pursuant to Section 214(e) of the Telecommunications Act of 1996, 97 F.P.S.C (1997)

in the Florida Statutes specifically excludes CMRS carriers such as ALLTEL.

Section 364.02(12) states in part:

"Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include: (a) An entity which provides a telecommunications facility exclusively to a certificated telecommunications company; (b) An entity which provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection; (c) A commercial mobile radio service provider; (d) A facsimile transmission service; (e) A private computer data network company not offering service to the public for hire; or (f) A cable television company providing cable service as defined in 47 U.S.C. s. 522. (emphasis added).

5. Although section 364.02(12) specifically states that CMRS carriers "shall continue to be liable for any taxes imposed pursuant to chapters 203 and 212 and any fees assessed pursuant to section 364.025," there is no provision in the Florida law that provides the Commission jurisdiction over CMRS carriers for any other purpose, including for purposes of determining whether to grant ETC status.
6. For the Intervenor's argument they quote Order No. PSC-97-1262-FOF-TP, issued October 14, 1997 as stating that "other carriers who wish to be designated as a "competitive" ETC in the service area of a rural ILEC must file a petition with the Commission and must demonstrate why it is in the public interest to have more than one ETC in the service area of the rural ILEC." As the Commission lacks statutory authority with respect to CMRS carriers, it cannot create such authority by its own order. Additionally, while the Order states that all other carriers who wish to receive ETC status in the service area of a rural LEC must show why it is in the public interest to have more than one ETC in that service area, it does not and could not

lawfully require that such petitions be filed with the Commission rather than the FCC as the Commission has no such jurisdiction with respect to CMRS carriers. There is simply nothing in state law that provides the Commission the authority to determine whether a CMRS carrier may be designated an ETC. Consistently, Section 364.025 of Florida Statutes specifically describes the procedure for ALECs to apply to the Commission for ETC status, however, there is no such provision under which a wireless carrier such as ALLTEL may file.² Accordingly, in ALLTEL's case, ETC status as well as the public interest determination are for the FCC to determine.

7. While in paragraph 14 of their Petition, the Intervenors apparently contend that ALLTEL has failed to address, for example, the necessary public interest determination, ALLTEL has not filed its application, which would address the relevant requirements and may not do so with this Commission, as this Commission lacks jurisdiction over the matter. In its application to the FCC for ETC status, ALLTEL will demonstrate that it meets all the statutory and regulatory prerequisites for ETC designation, including that ALLTEL's designation will serve the public interest.
8. As stated in ALLTEL's petition herein, Section 214(e)(6) Public Notice of the FCC states that a carrier must demonstrate it "is not subject to the jurisdiction of a state commission."³ In its Twelfth Report and Order in Docket No. 96-45, the FCC stated that where a carrier provides the Commission with an "affirmative statement" from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation, the FCC would consider requests filed

² Section 364.025(5)

pursuant to 214(e)(6).⁴ ALLTEL's Petition for Declaratory Statement is the appropriate means for obtaining the "affirmative statement" required by the FCC. Rule 28-105.001, Florida Administrative Code, states "A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances." In its Petition, ALLTEL seeks an affirmative statement from this Commission that indeed, the statutes, rules and orders of this Commission are not applicable to ALLTEL, a CMRS carrier, for the purpose of determining its ETC status. For example, ALLTEL is asking the Commission to declare that orders such as Order No. PSC-97-1262-FOF-TP do not apply to ALLTEL. ALLTEL is not requesting this Commission make a general statement of policy regarding all CMRS carriers.

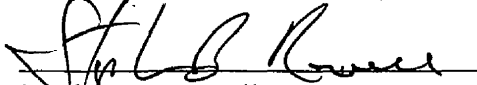
9. Accordingly, ALLTEL requests the Commission issue an affirmative statement that ALLTEL is not subject to the jurisdiction of the Commission for purposes of determining eligibility for Eligible Telecommunications Carrier ("ETC") status pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. §214(e)(6) and the Universal Service eligibility rules set forth in Part 54, Subpart C of the Rules of the Federal Communications Commission, 47 C.F.R. §54.201 et seq.

³ Section 214(e)(6) Public Notice, at 22948.

⁴ Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000).

Respectfully submitted this 2nd day of June, 2003.

ALLTEL Communications, Inc.

A handwritten signature in black ink, appearing to read "Stephen B. Rowell", written over a horizontal line.

Stephen B. Rowell

ALLTEL Communications

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Florida Bar No. 789917

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that a copy of the foregoing Response of ALLTEL Communications, Inc. was furnished by Overnight Mail and U.S. Mail to the following this 2nd day of June, 2003:

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STEPHEN B. ROWELL