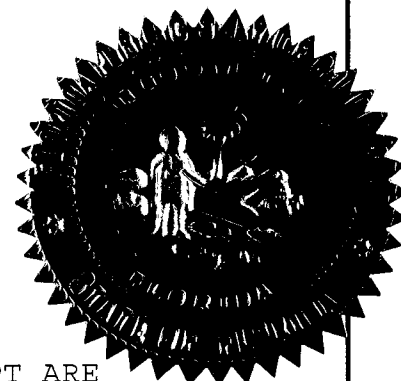


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF ALLTEL COMMUNICATIONS, DOCKET NO. 060581-TP
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.

PETITION OF ALLTEL COMMUNICATIONS, DOCKET NO. 060582-TP
INC. FOR DESIGNATION AS ELIGIBLE
TELECOMMUNICATIONS CARRIER (ETC) IN
CERTAIN RURAL TELEPHONE COMPANY STUDY
AREAS LOCATED ENTIRELY IN ALLTEL'S
LICENSED AREA.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 19

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. MCMURRIAN

DATE: Tuesday, March 13, 2007

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official Commission Reporter
(850)413-6732

DOCUMENT NUMBER-DATE

1 PARTICIPATING:

2 BETH KEATING, ESQUIRE, STEVE MALLORY and DENISE
3 COLLINS, representing ALLTEL Communications, Inc.

4 ADAM TEITZMAN, ESQUIRE, and PAT WIGGINS,
5 ESQUIRE, representing the Florida Public Service Commission
6 Staff.

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P R O C E E D I N G S

CHAIRMAN EDGAR: Okay. So we have three remaining items to take up, 19, 25, and 30.

And we will go into Item 19.

MR. TEITZMAN: Adam Teitzman on behalf of Commission staff. Item 19 addresses whether the Commission has authority to consider Alltel's application to be designated a wireless ETC in the state of Florida. Section 214(e)(2) of the Telecom Act authorizes states to designate common carriers as ETCs. Section 214(e)(6) sets forth that if a state commission does not have jurisdiction over a particular common carrier, then the FCC shall make the designation.

In 2003, this Commission issued a declaratory statement finding that it did not have jurisdiction over wireless carriers and, therefore, wireless providers would need to apply to the FCC for ETC designation. Subsequently, in 2005, the Legislature enacted 364.011, which sets forth that the Commission does not have authority over wireless providers unless specifically authorized by federal law. Accordingly, because the Commission is authorized to designate ETCs pursuant to Section 214(e)(2) of the Act, staff recommends the Commission find that it does have authority to consider Alltel's application for ETC designation.

If approved, staff intends to bring a recommendation to the next agenda on whether or not to grant or deny the

1 application. Staff is available for any questions you might
2 have, and I believe there are representatives from Alltel.

3 CHAIRMAN EDGAR: Thank you, Mr. Teitzman.

4 Ms. Keating.

5 MS. KEATING: Good afternoon, Madam Chair,
6 Commissioners. Thank you for this opportunity to appear before
7 you today. I'm Beth Keating with the law firm of Ackerman,
8 Senterfitt here today on behalf of Alltel. With me to my left
9 are Steve Mallory, Vice-President, State Government Affairs,
10 and Denise Collins, the Regional Manager, State Affairs, both
11 with Alltel.

12 Commissioners, the very narrow issue that is before
13 you today is whether or not you have the authority to determine
14 whether Alltel should be designated as an ETC. Now, your staff
15 has strongly recommended that based on the change that took
16 place in the statute in 2005, that you do have that
17 jurisdiction, and obviously we strongly agree with that
18 recommendation.

19 We appreciate your consideration, first, of this
20 jurisdictional question, and we hope that you will take this
21 opportunity to move forward on the jurisdictional question, so
22 that you can get to the heart of the matter and address
23 Alltel's petition for designation. We think this provides a
24 key opportunity for you to look at the merits of this
25 application and the benefits that Alltel can bring to Florida.

1 We think that this provides an opportunity for you to decide
2 that you are the best situated to decide who can meet the
3 criteria to be an ETC in Florida, who meets your standards, who
4 doesn't meet your standards, who can best serve Florida
5 citizens.

6 And we think that the Legislature has clearly
7 provided you with an avenue to address ETC designation for a
8 wireless carrier by providing a very specific exception to your
9 otherwise direction to take a hands-off approach to wireless
10 carriers. And obviously we strongly support your staff's
11 recommendation, and we hope, again, that you will move forward
12 on this jurisdictional issue, and we look forward to
13 entertaining any questions or concerns that you may have.

14 CHAIRMAN EDGAR: Thank you, Ms. Keating.

15 Commissioners, questions? Commissioner McMurrin.

16 COMMISSIONER McMURRIAN: I have more along the line
17 of comments, but if you would like me to wait, if Commissioner
18 Carter has questions, or if you have --

19 CHAIRMAN EDGAR: Questions?

20 Comments.

21 COMMISSIONER McMURRIAN: I did meet with staff on
22 this rec several weeks ago. We went through my questions, and
23 they were helpful. And, you know, I have analyzed a lot since
24 then, and of course, and I appreciate -- Chairman, by the way,
25 I did ask for the last deferral, and appreciate the opportunity

1 to do this one. I feel well.

2 As stated in the rec, Alltel cites to the FCC's
3 March 17th, 2005, Federal/State Joint Board on Universal
4 Service Report and Order which states that the 47 U.S.C.
5 214(e)(2), as Mr. Teitzman referenced, provides state
6 commissions with the primary responsibility for designating
7 ETCs.

8 But when you take a closer look at the actual
9 language in 47 U.S.C. of the Act, you, of course, also have to
10 look at (e)(6), which basically said -- and I think
11 Mr. Teitzman referenced this, too, that in the case when the
12 state doesn't have jurisdiction, and I'm not quoting exactly,
13 but that the FCC shall, upon request, designate such common
14 carriers that meet the requirements of Paragraph 1 for ETC
15 status.

16 The language in federal law that allows states to
17 have jurisdiction over ETC designation indicates that it
18 relates to states that have jurisdiction, as I just mentioned,
19 and indeed it has to. Federal law can't create jurisdiction
20 where none otherwise exists. Florida law clearly and precisely
21 delineates our jurisdiction and it specifically excludes
22 wireless companies from our jurisdictional reach, and I
23 reference the intent language under 364 as well as the
24 definition section. And I will go over it, although I'm sure
25 everyone here is familiar with it. It just helps me outline my

1 thinking so that it's clear to everyone where I am.

2 Under the intent language in Number 1, 364.01,
3 Subsection 1, the Florida Public Service Commission shall
4 exercise over and in relation to telecommunications companies
5 the powers conferred by this chapter. The same thing in Number
6 2, you get a reference to telecom companies. It says it is the
7 legislative intent to give exclusive jurisdiction in all
8 matters set forth in this chapter to the Florida Public Service
9 Commission in regulating telecom companies, telecommunications
10 companies. And then in Number 3, communications activities
11 that are not regulated by the PSC, including but not limited to
12 VoIP, wireless, and broadband, are subject to the state's
13 generally applicable business regulation, and it goes on.

14 But that point in Number 3 sort of goes -- also
15 follows along with the definition section. And under the
16 definition of a telecom company, which is what we have
17 jurisdiction over, it specifically says, as you all are
18 familiar, that the term telecommunications company does not
19 include, and it goes to Part C, a commercial mobile radio
20 service provider. And the only exceptions it provides to that
21 are taxes imposed under some other chapters and fees referenced
22 under other chapters, which I believe is regulatory assessment
23 fees, but I'm not sure. No, universal service fees.

24 Notably, this language that has been there for
25 awhile, maybe with the exception of Part 3, that may be the new

1 language there under the intent statute, it wasn't revised when
2 the provision that we are discussing today that sort of led
3 staff to a different conclusion than what we had in 2003, that
4 language has been there a long time and it wasn't revised or
5 stricken. And in my reading of some case law, it must be given
6 import, those provisions must be given import. It must be
7 assumed to remain valid.

8 Had the Legislature wanted the Commission to exercise
9 jurisdiction over wireless companies, it certainly could have
10 provided for that. It could have provided that the Commission
11 have jurisdiction to make ETC determinations or to regulate
12 other terms and conditions of wireless service and it didn't do
13 that, at least not in my opinion. The statutory exclusion of
14 wireless from the purview of Commission jurisdiction is clear
15 and must be respected by this agency.

16 As the U.S. Supreme Court -- and this was the case
17 law I mentioned -- in Morton versus Mancari, there were a few
18 provisions there that I think are on point where there is no
19 clear intention otherwise, a specific statute will not be
20 controlled or nullified by a general one, regardless of the
21 priority of enactment. And, in fact, that case goes on to say
22 the courts are not at liberty to pick and choose among
23 congressional enactments, and when two statutes are capable of
24 coexistence, it is the duty of the courts, absent a clearly
25 expressed congressional intention to the contrary, to regard

1 each as effective. And then there is another statement, when
2 there are two acts upon the same subject, the rule is to give
3 effect to both if possible. The intention of the Legislature
4 to repeal must be clear and manifest.

5 In light of the factors there, and in light of the
6 fact that there was no repeal to that existing language that
7 defines a telecom company, it specifically excludes a wireless
8 company. I don't think we can conclude that they consciously
9 abandoned that longstanding policy. And that's similar to the
10 case in Morton versus Mancari where they were specifically
11 looking at a later enactment of Congress and comparing it to at
12 least some sort of perceived conflict in the original language.

13 Commissioners, the existing and specific language
14 excluding wireless from our jurisdictional reach was not
15 repealed, as I said earlier, and to me it cannot be ignored.
16 It is clearly more specific than the phrase or specifically
17 authorized by federal law that is in 364.011. So to me if it
18 is read to be consistent with the staff's rec interpretation it
19 is far more general.

20 To me staff's broad reading of the phrase at issue
21 ignores the plain language of the longstanding parts of the
22 statute specifically with the definition telecom company that
23 excludes wireless. And to me there is just simply no evidence
24 that the Legislature intended to so extensively broaden our
25 jurisdiction to anything and everything presently in federal

1 law or that may become federal law. And, Commissioners, I am
2 concerned that it can be read so that future acts of Congress
3 that suggest we have some inroad in the wireless industry that
4 we would then have jurisdiction over that, and I don't think
5 that that's what Alltel Wireless is pursuing today, but I think
6 that is the effect of getting to a jurisdictional conclusion
7 that staff has made here. I think that we are sort of opening
8 a door into other things that I'm not sure that the Legislature
9 intended.

10 Given the cause for the national approach at the
11 federal level, as well, it seems to me that there would have
12 been a groundswell of opposition had the Legislature intended
13 to have wireless regulated at the state level, which I believe
14 is what staff is ultimately asking us to conclude. To me the
15 risk of supporting the staff rec far outweighs the risk of
16 denying staff. And without some clear legislative direction in
17 support of that interpretation, I'm just not willing to jump
18 off that cliff on this general phrase and virtually ignore the
19 specific marching orders that I believe are there under the
20 definition of telecom company and the other intent language.
21 And, in my mind, to go beyond that would put us in a role of
22 being somewhat judicial activists. To me, we follow the law,
23 we don't make it up. And for me this would be a stretch.

24 I should add with respect to ALLTEL Wireless, I'm
25 aware of the suggestion that wireless companies would be

1 ignoring their fiduciary duty to not seek out ETC status, and I
2 don't have any strong opinions about whether you get ETC status
3 or not. If the Commission were to ultimately do that, then we
4 would look at the factors, and I think the FCC would look at
5 the factors. It's not about -- for me it truly is a
6 jurisdictional issue, and it is not about whether or not you
7 should have ETCs. And I don't want to get into ETC policy and
8 that sort of thing. It's truly about whether or not the state
9 legislature as given us authority through that phrase, and I
10 just can't make that work. So, in my opinion, in order to seek
11 ETC designation, you would need to go to the FCC.

12 I think that's pretty much it, Commissioners. I
13 really just wanted you to know where I stood on this. Again, I
14 have asked a lot of questions in order to get me here, and, you
15 know, I think -- you know, staff makes some arguments that I
16 just can't make work with the existing statutes, and that's why
17 I did the analysis to look at, you know, case law to see if
18 there was any way of shedding light on when you had two
19 statutory provisions and whether or not one being later
20 controlled, and it seems to me that is not the case. And I
21 just don't believe that the Legislature intended to broaden our
22 jurisdiction over wireless in such a fashion.

23 CHAIRMAN EDGAR: Thank you, Commissioner.

24 A question for staff. Mr. Teitzman, in your opinion,
25 does the staff recommendation include a recommendation that we

1 regulate wireless at the state level?

2 MR. TEITZMAN: Oh, certainly not, no.

3 CHAIRMAN EDGAR: Is it implied?

4 MR. TEITZMAN: No, I think the recommendation is
5 strictly limited to ETC designation. So I don't believe it is
6 implied in the recommendation, either.

7 CHAIRMAN EDGAR: Ms. Keating.

8 MS. KEATING: Madam Chair, if I could, perhaps
9 respond. And I appreciate the Commissioner's concerns.
10 Obviously those are valid concerns. I do think that we have a
11 different perspective on the change in the law, though.

12 Two things happened when the law changed in 2005.
13 First of all, the statute that there has been the most
14 discussion of, 364.011, was created, and that sort of
15 reemphasized the Legislature's direction to take a hands-off
16 approach in four areas, wireless, VoIP, long distance, and
17 broadband. There is, however, a phrase that the Legislature
18 included in that statute that exempts the regulation of these
19 four areas when the state commission is authorized to act
20 pursuant to a federal direction.

21 Now, you have to give every portion of that statute
22 some meaning. Obviously, the Legislature meant to take a
23 hands-off approach, as I have said, and that ties in with your
24 references to the other statute. But there still is specific
25 language that they included in the statute that you have to

1 give some proper due intent to. You have to assume that the
2 Legislature meant something when they put that language in the
3 statute.

4 Now, at the same time they made that change, they
5 also changed the language in 364.10, which is the Lifeline
6 statute. The original language in the Lifeline statute
7 referred to local telecommunications companies that are
8 carriers of last resort. The Legislature changed that language
9 to eligible telecommunications carriers. That is a term that
10 is otherwise undefined in state law except to the extent that
11 it is defined in 364.10. The definition refers back to federal
12 law.

13 Now, as we look at that, we view that as a
14 demonstration by the Legislature that this Commission would and
15 the state would participate in the federal universal service
16 program. And that is what we are seeking designation under,
17 under the federal universal service program.

18 Clearly, the Legislature intended participation by
19 referencing eligible telecommunications carriers. Clearly it
20 intended for there to be oversight in that area with regard to
21 wireless carriers by providing the exception in 364.011 for you
22 to take action with regard to wireless carriers when authorized
23 by federal law. Section 214(e)(2) of the federal law allows
24 the state to act. In fact, it requires the state to act if you
25 have jurisdiction. And in this instance the Legislature in

1 2005 made a conscious decision that, a, they wanted the state
2 to participate affirmatively in the federal universal service
3 program and wanted the Commission and, in fact, viewed the
4 Commission as being best situated to make decisions about who
5 can best serve Florida's citizens when it comes to universal
6 service issues, and particularly when it had to do with
7 Lifeline issues. We think those are two very important
8 statutory considerations that need to be considered, but then,
9 in fact, that that is a key point where the Legislature did
10 intend for you to look at ETC designation.

11 CHAIRMAN EDGAR: Commissioner McMurrin.

12 COMMISSIONER McMURRIAN: Maybe I will get to a
13 question here.

14 Ms. Keating, I do agree that they probably meant
15 something by those words. I just can't interpret them the way
16 that apparently you and staff do. Again, I think it so broadly
17 opens the door. If it were really intended to give us
18 jurisdiction over ETCs, it could have specifically addressed
19 ETCs somehow, and said with respect to wireless, although we
20 have taken a hands-off approach as you characterized it, we
21 want the Commission to look at ETC status, and then I would
22 clearly agree that's what we need to do and I wouldn't have a
23 problem with it at all.

24 I am afraid this language, though, if you use it to
25 open the door and pull in the federal law that says states can

1 do this and if they don't have jurisdiction then we will do it,
2 I think you really are -- whether it's staff's intent, and I'm
3 not saying it's staff's intent, but I think that when you read
4 it that way you are absolutely opening up the door to include
5 anything in federal law that relates to wireless and that
6 suggests the state commission may or is authorized to have some
7 sort of role.

8 And, quite frankly, I think that under
9 Section 332 that references terms and conditions, and then
10 there is another part that references rates and charges, I
11 think that you could make an argument the state commission,
12 under this type of language, would have -- under this type of
13 language would pull in terms and conditions over wireless
14 companies. And I just cannot accept that, because to me that
15 seems directly in conflict with what the Legislature has said
16 and the language they left there under the definition of a
17 telecom company and the other ways that they showed that
18 wireless was an exception to our jurisdiction.

19 I think that you can't pull it in just for ETC status
20 and then say, whoa, I didn't mean to go anywhere else. I'm
21 afraid that once you use it that way that someone else is going
22 to come in and argue for it to be broader. And, in my opinion,
23 I don't believe they had those kind of discussions at the
24 Legislature. And, of course, I wasn't there the whole time,
25 and I wasn't listening to every meeting, so I can't swear that

1 they didn't, but something tells me it would have been
2 something that were on our radar screen if the Commission was
3 faced with taking on wireless jurisdiction.

4 CHAIRMAN EDGAR: Commissioner Carter.

5 COMMISSIONER CARTER: Thank you, Madam Chairman.

6 I think what we have here is a question of how do we
7 interpret the statutes passed by our bosses downtown, the
8 Legislature. The PSC is the only agency that's an agency of
9 the Legislature, and we are charged with interpreting and
10 employing the meaning of these statutes. And I think that --
11 here is where I'm coming from. Because we are saying whether
12 or not this statute applies or whether or not this statute
13 gives us the authority that we think we have, I think what
14 staff has put together here gives us a basis for the decision
15 that we make.

16 So if the Legislature said based upon the situation,
17 based upon the facts, based upon the circumstances, based upon
18 the four corners of the documents here that is not what we
19 meant, it's a good thing that they are meeting now so they can
20 say that and look at this. But I think that in order for us to
21 do otherwise, we will be making a supposition, and I don't
22 think that you can make a supposition unless you have something
23 in the record. And in the record that's presented before us, I
24 think you can read it one way or the other.

25 I mean, I feel strongly in the opposite direction,

1 and based upon the fact that for whatever reason the
2 Legislature chose to amend this statute a year or so ago, and
3 for whatever reason they knew at the point in time that we did
4 not have jurisdiction over wireless. They also knew, and we
5 just submitted a report, I think, at the first of the year
6 about our participation in the Lifeline program.

7 And all of us, you know, the three of us, and some of
8 our former predecessors have gone around the state and the
9 country and all like that saying that we want to increase our
10 participation in Lifeline, increase our participation and
11 opportunities. And I think the facts, not necessarily a part
12 of this docket, but certainly in other dockets that we have had
13 before us, a number of companies have said that there is a
14 tremendous growth in the use of wireless communications,
15 particularly in low income areas. So if there is a tremendous
16 growth in low income areas of people utilizing wireless, then
17 it may be. It may be that the opportunity for them to
18 participate in the Lifeline program exists, but I think that
19 without further information, or without further documentation,
20 or without further anything, I think that we run the risk of
21 making a decision of not deciding. And I think that this is a
22 good decision to -- if the Legislature didn't mean this, then
23 they are meeting, they can change their mind.

24 The other thing that gets my attention on this matter
25 here is that whereas we are talking about one company, if it

1 were really, you know, the situation where you open the gate up
2 after the cattle have gone, I think that there would be a ton
3 of companies that have joined into this process here, but I
4 don't see that. I don't see a hallelujah chorus.

5 I see a perspective here to where we are simply
6 asking a very specific question. That question is whether or
7 not we have the authority to designate a commercial mobile
8 radio service provider as an eligible telecommunications
9 carrier. And we say yes, we do, based upon our reading of
10 364.011, based upon our reading of the federal law, and based
11 upon the facts and circumstances of this case.

12 I think to do otherwise is to say we made a decision
13 based upon how we feel. But this is all we have before us, and
14 I am reticent, Madam Chairman, to make a decision when we don't
15 have the facts before us. If the Legislature were to ask,
16 okay, you denied staff in this motion about whether or not you
17 had jurisdiction. What was the basis for that? And I don't
18 think we have a basis. I think the documents before us is what
19 we have, and what we have is, in my opinion, at least good
20 enough to force them to say if they didn't mean what they said,
21 then they can be more specific. And they are meeting now, and
22 I just think that to do nothing leaves us in a quagmire, and
23 quagmires are not good. I can't think of any context where the
24 word quagmire is good.

25 So, I think, Madam Chairman, that we proceed on here.

1 If people have got problems with it, take it to the courts. If
2 you have got problems with it, take it to the Legislature. But
3 to do nothing is to say that we prefer to walk around in the
4 dark. And we don't have any direction otherwise. If we make a
5 decision today based upon the recommendations here from staff,
6 we can justify it. We can support it based upon this, and I
7 think we can. But to do otherwise puts us in a process where
8 we are arguing federal law against the Legislature, and I don't
9 think we want to be in that posture.

10 CHAIRMAN EDGAR: So quagmires and Missoula, both bad.
11 Both bad.

12 Commissioner McMurrin, I both appreciate and respect
13 the time that you have put in, and I know you have, a lot of
14 careful thinking and analysis and research, all I which I also
15 often rely on. But in this instance, I would say the -- and
16 you didn't use these phrases and they are over used, but the
17 camel's nose under the tent, or the slippery slope -- I was
18 hoping, Commissioner Carter, you would have a catchier one for
19 me to use. I just don't see that here. I understand those
20 concerns, but my reading of what is before us, which I know I
21 don't remember -- my apologies if it was Ms. Keating or Mr.
22 Teitzman that said that it is a kind of very narrow issue
23 before us, and I do see this as a very narrow jurisdictional
24 question that fortunately or unfortunately may lead us into
25 more discussion at a later date about ETC policy and role and

1 rules, some of which I look forward to and some of which I
2 don't. But I do see this as a narrow jurisdictional rule. And
3 the phrase judicial activism seems a little extreme to me in
4 this instance.

5 Ms. Keating, I think you were wanting to make an
6 additional comment. No?

7 MS. KEATING: I was just going to agree and say,
8 particularly with what Commissioner Carter had just said, and
9 say as far as the slippery slope, I think the exception is very
10 limited, and that sort of stops the slide down the slippery
11 slope. And that if a problem arises, as you, Commissioner
12 Carter, had suggested, the Legislature is fully capable of
13 addressing any sort of broad expansion or venture into wireless
14 authority.

15 And the last thing I will just point out, you can
16 always put some language in your order that sort of
17 specifically defines where this Commission might feel its
18 jurisdiction is.

19 CHAIRMAN EDGAR: I would just add that in only my one
20 personal subjective opinion, the phrase broad expansion doesn't
21 come anywhere near close to what is before me.

22 Commissioner McMurrin, do you have additional
23 comments?

24 COMMISSIONER McMURRIAN: I do, thank you. And it
25 will be no surprise that I will probably dissent, but I just

1 wanted to address a few of the things that came up.

2 I agree with Ms. Keating that the Legislature is
3 quite capable of dealing with any confusion as to what their
4 statute says. And I do think that if there are concerns that
5 this broadens it too much that they can step in and do
6 something on that. I still feel personally that it is opening
7 it up broader than what I feel like the Legislature has
8 intended through the intent language that remains and through
9 the telecom company definition. And perhaps I didn't use the
10 right word about judicial activism, but I feel like in looking
11 at the case law and things that you have to give meaning to
12 those other parts. And there is a suggestion that if you don't
13 change the existing parts, that they are still just as valid.

14 And, again, I'm not sure exactly what this phrase
15 means, but, again, if it were intended to address ETC, I think
16 it could have said -- I think it would have said we want the
17 Commission to deal with ETCs. And something Commissioner
18 Carter said about, you know, acting how we feel, I mean, I do
19 have strong opinions about carrying out our legislative duties,
20 absolutely. But as far as feeling like we should or shouldn't
21 grant ETC status for wireless carriers, I really don't have an
22 opinion other than what our jurisdiction is.

23 In other words, if we were given clear jurisdiction
24 in my mind to decide ETC matters, I think we would do it as
25 good as or better than the FCC, absolutely. I think we are

1 quite capable of doing it. And I don't think that the company
2 has asked -- in asking for ETC designation has asked for
3 something that's foreign. I think there was a process set in
4 place for that a long time ago. I just think that it is
5 something that is more appropriately handled at the FCC.

6 And I realize in voting on this issue our intent may
7 not be to open it up any broader, I'm just saying that once you
8 interpret a phrase in a statute that way, and there is the
9 other technologies that are listed there, too, IXC, broadband,
10 and VoIP, that I believe that interpreting that language that
11 way you are also incorporating future actions of Congress that
12 we don't have any idea what those would be, and I just think it
13 is a stretch to think that the Legislature sort of handed that
14 over to future acts of Congress.

15 But, again, I think reasonable people can disagree
16 here on this, as well. And perhaps this never does become a
17 bigger issue in some way, perhaps it never leads to a request
18 for us to somehow get into the wireless jurisdiction realm and
19 deal with terms and conditions. But, in my mind, it's a
20 reasonable argument based on a decision to interpret that
21 phrase that way. And so for that reason, I will dissent
22 whenever we get into the motion mode.

23 CHAIRMAN EDGAR: Thank you, Commissioner McMurrian.
24 Commissioner Carter.

25 COMMISSIONER CARTER: Let me, before I begin my

1 remarks, extend to my colleague an apology if you think that I
2 would suggest that you would interpose your opinion. That's
3 not what I was saying. What I was saying is that in the four
4 corners of the document, what is before us is what is before
5 us. And if we are going to send something to the courts or the
6 Legislature other than what is before us, then it has to be in
7 a forum that they can use. It has to be writing. Those were
8 my comments, not to say whether or not that you were
9 interposing your personal opinions. Because, I mean, I think
10 that we all have personal opinions, but sometimes we have to --
11 so I apologize to you for that. Those were never my intentions
12 or even to suggest that.

13 What I am suggesting is that, as I started my
14 comments before, is that it is a question of the interpretation
15 of the law itself as it pertains to the Florida Public Service
16 Commission and 364.011. And I think that if it is a problem or
17 a concern about interpretation of a statutory grant given to us
18 by our bosses at the Legislature, then based upon the
19 circumstances and the facts presented to us, we act upon that.
20 If they say that is not what we meant, like I say, they are
21 meeting right now and there is plenty enough time for them to
22 change their mind.

23 I believe, Madam Chairman, that based upon what we
24 have in front of us we have no choice but to support this, and
25 at the appropriate time I will move the staff recommendation in

1 this issue.

2 CHAIRMAN EDGAR: Further comments?

3 COMMISSIONER McMURRIAN: Commissioner Carter, I
4 certainly didn't take any offense at what you said. I was just
5 trying to make clear to everyone here sort of what my thinking
6 is. And I guess my reaction to some of the things that you
7 have said is that I feel like we would be in that posture
8 either way we decide. If we said that we didn't have
9 jurisdiction, I think that the Legislature could act in
10 response to that and say, no, we really wanted you to have
11 jurisdiction in this area and we are going to make it clear.
12 Or you can, you know, support the staff rec, and I think you
13 would still be in the same posture. Either way, they would
14 have the ability to clarify it. So I don't see that -- you
15 know, either way they don't have the opportunity to make that
16 right. But I understand where you are coming from and am
17 willing to accept defeat.

18 CHAIRMAN EDGAR: Commissioner Carter for a motion.

19 COMMISSIONER CARTER: Madam Chairman, I would move
20 staff recommendation in this case.

21 CHAIRMAN EDGAR: And I'm going to second that motion.

22 And I believe -- Mr. Cook, is there anything else
23 procedurally I need to do in order to be able to do that?

24 MR. COOKE: Madam Chairman, I think I'm comfortable
25 with not having you pass the gavel to the second. I think it

1 will be a formality, given the size of our Commission.

2 CHAIRMAN EDGAR: Okay. With that direction and the
3 cooperation of my colleagues, then Commissioner Carter has made
4 a motion and I have seconded it. And so just for clarity, I
5 will go ahead and say all those in favor say aye.

6 COMMISSIONER CARTER: Aye.

7 CHAIRMAN EDGAR: Aye.

8 Opposed?

9 COMMISSIONER McMURRIAN: Nay.

10 CHAIRMAN EDGAR: Show the motion carried.

11 MR. TEITZMAN: There is an Issue 2, the close docket
12 issue.

13 CHAIRMAN EDGAR: And, Commissioner Carter.

14 COMMISSIONER CARTER: My motion was the whole docket,
15 for the entire case.

16 CHAIRMAN EDGAR: Yes, the staff recommendation in its
17 entirety.

18 MR. TEITZMAN: Okay.

19 MS. KEATING: Thank you very much, Commissioners.
20 Thank you all.

21 CHAIRMAN EDGAR: Thank you.

22 Commissioners, thank you for the discussion.

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1 STATE OF FLORIDA)
2 :
3 COUNTY OF LEON)

CERTIFICATE OF REPORTER

4
5 I, JANE FAUROT, RPR, Chief, Hearing Reporter Services
6 Section, FPSC Division of Commission Clerk and Administrative
7 Services, do hereby certify that the foregoing proceeding was
8 heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 19th day of March, 2007.

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22 _____
23 JANE FAUROT, RPR
24 Official FPSC Hearings Reporter
25 FPSC Division of Commission Clerk and
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