

MASON, ERWIN & HORTON, P.A.  
ATTORNEYS AT LAW  
1311-A PAUL RUSSELL ROAD, SUITE 101  
TALLAHASSEE, FLORIDA 32301

ORIGINAL  
FILE COPY

Edwin L. Mason  
David B. Erwin  
Norman H. Horton, Jr.

(904) 878-7138

January 29, 1991

Steve Tribble, Director  
Division of Records and Reporting  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, FL 32399-0850

870790-72

Re: Request for Extended Area Service (EAS) throughout  
Gilchrist County.

Dear Mr. Tribble:

Enclosed please find the original and 15 copies of ALLTEL  
Florida, Inc.'s Response to the Gilchrist County Board of County  
Commissioners' Petition on Proposed Agency Action.

Please accept this for filing in the docket.

Sincerely,



David B. Erwin

Attorney for ALLTEL Florida,  
Inc.

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 6
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- W/S \_\_\_\_\_
- OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

00899 JAN 29 1991

REC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: request for extended  
area service (EAS) throughout  
Gilchrist County.

Docket No. 870790-TL

Filed: January 29, 1991

-----  
ALLTEL FLORIDA, INC.'S RESPONSE TO  
THE GILCHRIST COUNTY BOARD OF COUNTY COMMISSIONERS'  
PETITION ON PROPOSED AGENCY ACTION

ALLTEL Florida, INC., pursuant to Rule 25-22.037(1), F.A.C., files this response to the Petition on Proposed Agency Action filed on December 27, 1990, by the Gilchrist County Board of County Commissioners (Gilchrist County, Florida), and states as follows:

1. The gravamen of the Gilchrist County Commission's petition is that the Florida Public Service Commission (PSC) ought to waive its own rules that govern the establishment of EAS, to wit: Rules 25-4.057 through 25-4.063, F.A.C.

2. Unless there is a waiver of the PSC's EAS rules, it would not be appropriate to require the provision of EAS throughout Gilchrist County. Order No. 23856 sets forth the results of traffic studies that show a failure to satisfy the threshold requirements of Rule 25-4.060(2), F.A.C. Consequently, there is no community of interest and no basis for further investigation. By the Commission's rules, there is no lawful basis on which to establish EAS. See Rule 25-4.060(3), F.A.C.

00899 JAN 29 1991

PSC-RECORDS/REPORTING

3. The Commission is not at liberty to waive its own rules because the Commission is uncomfortable with the unintended consequences of a rule or because, as the rule reads, it has proven impractical in operation. The Commission must honor its own rules until they are lawfully amended or abrogated. Gadsden State Bank v. Lewis, 348 So. 2d 343 (1st DCA 1977); Artificial Kidney Center v. Department of Health, 493 So. 2d 1055 (1st DCA 1986); and Williams v. Department of Transportation, 531 So. 2d 994 (1st DCA 1988).

WHEREFORE, ALLTEL Florida, Inc. requests that the PSC deny the Petition on Proposed Agency Action filed by Gilchrist County.

Respectfully submitted,

By:   
David B. Erwin

Mason, Erwin & Horton, P.A.  
Attorneys at Law  
1311-A Paul Russell Road  
Suite 101  
Tallahassee, Florida 32301  
(904) 878-7138

Attorneys for ALLTEL Florida,  
Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by United States Mail this 29<sup>th</sup> day of January, 1991, to the following:

Theodore M. Burt  
Post Office Box 308  
Trenton, Florida 32693

E. Barlow Keener  
General Attorney  
c/o Marshall M. Criser, III  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301

Susan Clark  
General Counsel  
Florida Public Service Commission  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

Michael W. Tye  
AT&T Communications of the  
Southern States, Inc.  
106 East College Avenue  
Suite 1410  
Tallahassee, Florida 32301

Florida Interexchange Carriers Association  
c/o Joseph Gillan  
Post Office Box 547276  
Orlando, Florida 32854

Richard H. Brashear  
ALLTEL Florida, Inc.  
Post Office Box 550  
Live Oak, Florida 32060

  
David B. Erwin