

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Determination of  
appropriate subscriber plant  
factor to apply to ALLTEL  
Florida, Inc.

DOCKET NO. 950146-TL  
ORDER NO. PSC-00-0081-PAA-TL  
ISSUED: January 10, 2000

The following Commissioners participated in the disposition of  
this matter:

JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION  
ORDER RELEASING FUNDS OF ALLTEL FLORIDA, INC.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

In March 1995, by Order No. PSC-95-0370-FOF-TL, we directed ALLTEL Florida, Inc. (ALLTEL) to place \$1.353 million, plus interest, in annual revenues beginning January 1, 1995, subject to further disposition by us pending a ruling by the Federal Communications Commission (FCC) on our Request for Interpretation of 47 Code of Federal Regulations (C.F.R.) §36.154(f), Limit on Change in Interstate Allocation. ALLTEL was so ordered because in determining ALLTEL's level of earnings for 1995, one of our concerns was the proper interpretation of 47 C.F.R. §36.154(f) and how ALLTEL's earnings would be affected.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

In 47 C.F.R. §36.154(f), a limit on the decrease in the interstate allocation of five percent was adopted by the FCC to help mitigate a large shift in revenue requirements from the interstate to the intrastate jurisdiction in one year during the transition to a flat 25 percent Subscriber Plant Factor (SPF) in 1993. The FCC elected to phase in the flat allocation rate over a period of eight years, ending in 1993. To prevent a LEC's interstate allocation from decreasing too rapidly, the FCC provided that no LEC's interstate allocation for non-traffic sensitive costs "shall decrease by a total of more than five percentage points from one calendar year to the next," when taking into account the combined effect of the reduction in SPF and the possible additional costs allocated to the interstate jurisdiction under the universal service fund.

It was not clear, however, in 47 C.F.R. §36.154(f) whether the limit on the five percent decrease applied after 1993 and after a company's SPF has reached 25 percent. ALLTEL took the position that once its SPF reached 25 percent, the five percent decrease limit no longer applied. Another interpretation of the relevant FCC rules was that there was no prohibition against applying the five percent decrease limitation after 1993 and after a study area's SPF had reached 25 percent. This interpretation of the FCC rules meant that ALLTEL's intrastate earnings would be increased by approximately \$1,353,000 in 1995 due to an estimated interstate allocation higher than 25 percent.

We requested a declaratory ruling from the FCC in May 1995, due to the fact that the LECs in Florida were interpreting the rule in two different ways. In March 1996, the FCC's Accounting and Audits Division (AAD) staff issued an order (Staff Order) that clarified that the five percent limitation does not apply to LECs that had already reached the desired 25 percent interstate allocation. Certain National Exchange Carriers Association (NECA) members filed a request with the FCC to review the AAD Staff Order. In 1997, the FCC agreed with and affirmed the AAD's interpretation of 47 C.F.R. §36.154(f).

Those NECA members then filed petitions for review of the FCC order with the Ninth and Tenth Circuit Courts of Appeals. Both

petitions were transferred to the Tenth Circuit Court and consolidated. In November 1997, the appeal was placed in abeyance so that the petitioners could seek clarification from the FCC as to whether the FCC order was to have retroactive effect. In 1998, the FCC clarified the order and asserted that neither the AAD Staff Order nor the FCC Order required NECA to require intrapool adjustments between NECA members for any period of time preceding the Staff Order issued in 1996.

The petitioners resumed their appeal to the Circuit Court. On July 19, 1999, the Tenth Circuit Court of Appeals issued its decision. The Court upheld the FCC's interpretation of 47 C.F.R. §36.154(f), and found that the FCC's ruling has no prohibited retroactive impact stating that:

We do agree with petitioners that a retroactive application of the FCC's interpretation will impose a burden on them. However, this burden arises not from their reliance on any previous FCC policies, but from their reliance on NECA's faulty interpretation of the regulation.

No appeals were filed by the petitioners on the Tenth Circuit Court of Appeals' ruling. According to the FCC's interpretation, since ALLTEL's SPF reached 25 percent in 1993, the five percent limit test can no longer be applied. Therefore, ALLTEL's interpretation of 47 C.F.R. §36.154(f) was consistent with the FCC's and the Circuit Court's interpretation.

ALLTEL elected price cap regulation effective March 1, 1999, pursuant to Section 364.051(2)(b), Florida Statutes. ALLTEL's earnings are currently under review up through February 28, 1999, as required by Section 364.052, Florida Statutes, to determine the need for disposition of any overearnings. We find that the release of the \$1.353 million will not have an effect on the earnings of the company. Upon consideration, we find it appropriate to allow ALLTEL to release the \$1.353 million plus interest in annual revenues being held subject to further disposition since the January 1, 1995, effective date.

ORDER NO. PSC-00-0081-PAA-TL  
DOCKET NO. 950146-TL  
PAGE 4

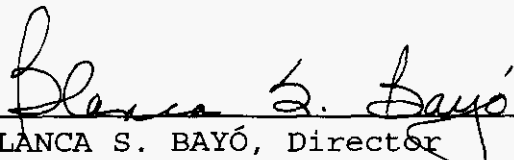
Therefore, it is

ORDERED by the Florida Public Service Commission that ALLTEL Florida, Inc. may release the \$1.353 million, plus interest, in annual revenue it has been holding pending further disposition by this Commission. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 10th day of January, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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ORDER NO. PSC-00-0081-PAA-TL  
DOCKET NO. 950146-TL  
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on January 31, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.