

State of Florida



Public Service Commission

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COMMISSION
CLERK

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DATE: June 23, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Competitive Markets & Enforcement (Bates) *[Signature]*
Office of the General Counsel (Scott, McKay) *[Signature]*

RE: Docket No. 040343-TP – Petition by Volo Communications of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc. for adoption of existing interconnection agreement between ALLTEL Florida, Inc. and Level 3 Communications, LLC.

AGENDA: 07/05/05 – Regular Agenda – Motion to Approve Settlement Agreement – Parties May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Edgar

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Attachment A is not included in the Word version of this document.

FILE NAME AND LOCATION: S:\PSC\CMP\WP\040343.RCM.DOC

Case Background

On April 19, 2004, Volo Communications of Florida, Inc. d/b/a Volo Communications Group of Florida, Inc. (“Volo”) filed a Petition to Adopt (“Petition”) the ALLTEL Florida, Inc. (“ALLTEL”) and Level 3 Communications, LLC (“Level 3”) Interconnection Agreement, which was effective through June 30, 2004. In its Petition, Volo requested that the Commission acknowledge Volo’s immediate adoption of the ALLTEL and Level 3 Interconnection Agreement (the “Agreement”), in its entirety, pursuant to §252(i) of the Telecommunications Act of 1996.

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On May 7, 2004, ALLTEL filed its Motion to Dismiss (“Motion”) the Petition on the basis that it failed to state a cause of action and was not filed within a reasonable time as set forth in 47 C.F.R. §51.809(c). Alternatively, ALLTEL requested that if the Commission decided not to grant the Motion, that the Commission set the matter for a hearing under §120.57(1), Florida Statutes.

On May 19, 2004, Volo filed its Response to ALLTEL’s Motion in which it contended that the reasonable time argument as set forth by ALLTEL was not a valid basis for the Motion or to prevent Volo’s adoption of the Agreement.

A staff recommendation to deny ALLTEL’s Motion was issued on September 9, 2004. Staff’s recommendation was scheduled for the October 19, 2004, Agenda Conference where after lengthy discussion the Commission voted to approve staff’s recommendation.

Order No. PSC-04-1109-PCO-TP, issued November 8, 2004, denied ALLTEL’s Motion to Dismiss, and proceedings were held in abeyance for sixty (60) days to allow the parties more time to negotiate. Furthermore, it was ordered that if negotiations were not successful, then the matter would be set for hearing.

Staff counsel contacted counsels for ALLTEL and Volo approximately a week prior to the end of the sixty (60) days, January 7, 2005, to verify the status of negotiations between the parties. Staff counsel was informed that the holidays had interfered in negotiations, and more time was needed to continue to negotiate and reach a resolution. In order to foster negotiations and a settlement, staff revised the Case Assignment and Scheduling Record to give the parties more time. Shortly thereafter, staff counsel was advised by counsel for Volo that discussions between the parties had come to a halt, however, this stalemate was temporary. Counsels for Volo and ALLTEL were informed that the matter would be set for hearing if it was determined that the parties had reached an impasse.

Throughout the months of February, March, and April, the parties informed staff counsel each time a status call was made or an e-mail message was sent that negotiations were ongoing and the parties were nearing settlement. Finally, on May 17, 2005, ALLTEL filed a Motion to Approve Settlement Agreement. The Settlement Agreement (“Attachment A”) has been signed by representatives for Volo and ALLTEL.

The Motion to Approve Settlement Agreement is the subject of staff’s recommendation in which staff recommends the Commission approve the Settlement Agreement and close the docket.

Discussion of Issues

ISSUE 1: Should the Commission grant ALLTEL's Motion to Approve Settlement Agreement?

RECOMMENDATION: Yes. Staff recommends the Commission grant ALLTEL's Motion to Approve Settlement Agreement between ALLTEL and Volo. **(SCOTT, BATES)**

STAFF ANALYSIS: Staff has reviewed the parties' proposed Settlement Agreement and believes it is reasonable and resolves the issues in this docket. A summary of the relevant terms of the Settlement Agreement between ALLTEL and Volo is as follows:

- (a) Upon Commission approval of the Settlement Agreement, Volo shall be deemed to have adopted the existing interconnection agreement between ALLTEL and Level 3 (the "Agreement"), in its entirety.
- (b) The Agreement remains in effect until ALLTEL and Level 3 sign a Successor Agreement and such agreement is filed with the Commission. Upon execution of a Successor Agreement, ALLTEL will provide Volo with written notice in accordance with the notice provisions in the Agreement.
- (c) If Volo does not advise ALLTEL in writing of its intent to adopt the Successor Agreement or other agreement at the end of the notice period, then ALLTEL shall terminate its interconnection relationship with Volo without further notice.
- (d) The Settlement Agreement shall become effective upon approval by the Commission.

Based on the foregoing, staff recommends the Commission grant ALLTEL's Motion to Approve Settlement Agreement.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there is no need for further proceedings. **(SCOTT)**

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, this docket should be closed as there is no need for further proceedings.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to Adopt the ALLTEL
Interconnection Agreement Pursuant
to Section 252(j) of the Telecommuni-
cations Act of 1996

DOCKET NO. 040343-TP

SETTLEMENT AGREEMENT

ALLTEL Florida, Inc. ("ALLTEL" or the "Company") and Volo Communications of Florida, Inc., d/b/a/ Volo Communications Group of Florida, Inc. ("Volo"), hereby agree to settle their dispute in this docket as follows:

Recitals

1. On April 19, 2004, Volo filed a Petition to Adopt the ALLTEL Florida, Inc. and Level 3 Communications, LLC Interconnection Agreement ("Petition"). Therein, Volo petitioned the Commission "to adopt the rules, terms and conditions" of the Interconnection Agreement between ALLTEL and Level 3 Communications ("Level 3 Agreement"). The Level 3 Agreement was filed with the FPSC for approval on June 13, 2002 in Docket No. 02-0517-TP. (See Exhibit A to Petition.) The Level 3 Agreement was approved by the FPSC in September 2002.

2. By its terms, the Level 3 Agreement is effective through "June 30, 2004 and thereafter, unless terminated or modified." Thus, Volo filed its Petition to Adopt the ALLTEL Level 3 Agreement about 10 weeks before that Agreement was set to expire. ALLTEL was renegotiating its agreement with Level 3 at the time VOLO filed its Petition to Adopt and is still in the process of renegotiating that agreement. By its terms, the Level 3 agreement

remains in effect until it is replaced by a successor agreement between ALLTEL and Level Three.

3. On May 7, 2004, ALLTEL filed a motion to dismiss VOLO's petition. Therein, ALLTEL argued that VOLO should not be allowed to "opt-in" to the Level 3 agreement, because doing so was inconsistent with 47 C.F.R. § 51.809(c), which states: "an ILEC only make available an interconnection for "opt-in" for a reasonable period of time after the approved agreement is available for inspection." ALLTEL cited two cases from other states support this conclusion, i.e., In re: Global NAPs South, Inc., 15 FCC Rcd 23318 (Aug. 5, 1999) and In re: Petition of Global NAPs South, Inc., Case No. 8731 (Md. PSC July 15, 1999). VOLO responded to the motion to dismiss on May 19, 2004, and therein argued that it should be allowed to opt-in to the Level 3 agreement as it could remain in effect for a long time after its scheduled termination date of June 30, 2004.

4. The Staff of the Commission issued a staff recommendation on the motion to dismiss on September 9, 2004. Therein, the staff recommended denying ALLTEL's motion to dismiss and holding the case in abeyance for 60 days so the parties could attempt to negotiate an interconnection agreement and to thereafter set the matter for hearing should negotiations prove unsuccessful.

5. The Commission held oral argument on ALLTEL's motion to dismiss on October 19, 2004. Following argument by the parties and discussion by the Commissioners, the Commission voted to approve the staff's recommendation. Order No. PSC-04-1109-PCO-TP memorialized that decision and was issued on November 8, 2004.

6. Sometime in the first week of January 2005, VOLO contracted ALLTEL for the purpose of discussing the agreement. ALLTEL sent its standard interconnection to VOLO

and a conference call was held to discuss VOLO's concerns about the agreement. ALLTEL Requested that VOLO send back a "redlined" version of the agreement with VOLO's proposed changes, but VOLO never did. Rather, VOLO decided that it did not want to engage in further discussions with ALLTEL and advised its counsel to so advise the staff of the Commission, which he did. Accordingly, the Staff of the Commission has notified the parties of their intent to set the matter for hearing.

NOW, THEREFORE, in light of the foregoing recitals and the inherently uncertainty of litigation, and VOLO having been fully advised of the possibility that the existing agreement between Level 3 and ALLTEL could terminate at any time and the ramifications of that event to VOLO, the parties agree to resolve their differences in this docket as follows:

1. Effective upon approval of this Settlement Agreement, VOLO shall be deemed to have adopted or "opted-in" to the existing interconnection agreement between ALLTEL and Level 3 Communications, LLC without modification. Thereafter, the parties will work together in good faith and in accordance with the 1996 Act to implement the resulting agreement between ALLTEL and VOLO ("Agreement").

2. The Agreement shall remain in effect until such time as ALLTEL and Level 3 sign an agreement that replaces their now existing agreement and such replacement agreement ("Level 3 Successor Agreement") is filed with the FPSC. ALLTEL shall give VOLO notice in writing of the execution of the Level 3 Successor Agreement. Such notice shall be given in accordance with the notice provisions of the Agreement, and service as notice of termination of the agreement between VOLO and ALLTEL.

3. If at the end of the notice period specified in the agreement, VOLO has not advised ALLTEL in writing that it will either: (1) adopt or "opt-in" to the Level 3 Successor

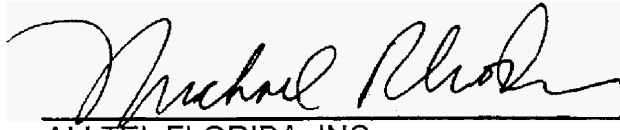
Agreement, (2) adopt or "opt-in" to some other agreement between ALLTEL and another CLEC operating in Florida or (3) execute ALLTEL's then-existing standard offer interconnection agreement, ALLTEL shall terminate its interconnection relationship with VOLO without further notice to VOLO.

4. This agreement shall become effective upon approval by the Florida Public Service Commission and shall have no force or effect until then or thereafter if not approved by the Commission.

DATED this ____ day of May, 2005.



Shawn M. Lewis, President/CEO
Volo Communications, Inc.



ALLTEL FLORIDA, INC.