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May 30, 2007

**VIA HAND DELIVERY**

Ms. Ann Cole  
Office of the Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 060582-TP - Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone company study areas located entirely in Alltel's licensed area.**

Dear Ms. Cole:

Enclosed for filing in the above reference Docket, please find the original and 7 copies of Alltel's Response to Comments of TDS Telecom. If you have any questions, please don't hesitate to contact me. Thank you for your assistance in this matter.

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SGA \_\_\_\_\_ cc: Service List
- SEC \_\_\_\_\_
- OTH Kim

Sincerely,

**Beth Keating**  
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# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Alltel Communications, Inc. for )  
designations as an eligible telecommunications ) Docket No. 060582-TP  
carrier (ETC) in certain rural telephone company )  
study areas located entirely in Alltel's licensed area. ) Filed: May 30, 2007  
\_\_\_\_\_ )

### ALLTEL'S RESPONSE TO COMMENTS OF TDS TELECOM

Comes now Alltel Communications, Inc. ("Alltel"), and respectfully offers its response to the Comments of TDS Telecom ("TDS Comments"), so stating as follows:

1. While TDS correctly states that this application is the first instance in which the Florida Public Service Commission ("FPSC") will be considering granting ETC status in service areas served by rural incumbent local exchange carriers (TDS Comments paragraph 5), the FCC and other states have granted numerous applications for ETC status in rural telephone service areas. In fact, the FCC has granted ETC status to Sprint Nextel in rural telephone areas in Florida. Alltel is presently designated as an ETC in over 25 states and in the service areas of numerous rural local exchange carriers. Alltel has not been denied ETC status in any area where it has sought designation. In each of these applications, the same federal law and in more recent applications, same FCC criteria, was applied and determined to be met by Alltel's application. TDS has failed to allege a single distinguishing new fact or issue for consideration by this Commission that has not been raised by it or others in countless other ETC applications. Regardless of the fact that the TDS's arguments have already been often heard and soundly rejected in other jurisdictions, Alltel will address each TDS argument in this response.

2. TDS criticizes both the FCC's Designation Order (*In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, March 17, 2005), as well as Alltel's natural reliance on the FCC's designation criteria identified in that Designation Order, (TDS Comments paragraph 10). However, Alltel emphasizes that TDS took no position to oppose this Commission's finding that pursuant to "Section 364.011, Florida Statutes, the Florida Legislature has granted the FPSC limited authority over CMRS providers to those matters specifically authorized by federal law." (TDS Comments paragraph 4). In spite of its lack of opposition and the finality of this finding that federal law is the underlying source of the Commission's limited authority, TDS now asks this Commission to reject the FCC's specific implementation of ETC designation criteria, because the FCC "falls short of requiring full compliance with the applicable statutory requirements". (TDS Comments paragraph 10). An agency, be it federal or state, must be given deference in interpreting and applying its own statutory authority; thus, TDS's novel argument must be rejected.
3. TDS further contends that Alltel does not meet the statutory and regulatory requirements for ETC designation. TDS represents that Alltel certified that it will provide service only where Alltel service is available. However, TDS fails to note that in the next phrase of that same sentence Alltel certifies that "... (2) if a request within Alltel's licensed service area but outside its existing network coverage is received from a potential customer, Alltel will follow the steps described in Section 54.202(a)(1)(a) of the FCC rules. " (Alltel Application page 8) Alltel further certifies

that it will report to the Commission with respect to any customer requests that are not fulfilled pursuant to the six step process identified in 47 C.F.R. § 54.202.

4. In paragraph 11 of its comments, TDS again endeavors to cast doubt on the sufficiency of Alltel's application. Alltel has acknowledged that the details of the 5-year network plan required by the FCC (47 C.F.R. § 202(a)(i)) are subject to change in response to customer and market changes, which is only realistic and practical. However, TDS implies that such an acknowledgement is somehow an admission that funds would not be used in the manner required by law. That is certainly not Alltel's intent. Quite the contrary, the acknowledgement is merely a practical recognition of a changing market place and changing needs of Alltel's customers. Few, if any, telecommunications companies, including TDS, would be prepared to lock in the details of their network development for five years, and consequently, ignore changes in the competitive market and customer demand for next five years. In this changing market, any company that dared do so would risk quickly becoming out of touch with its customers' needs, and find itself at a distinct competitive disadvantage. Alltel's disclosure that the details of its 5-year plan remain fluid should in no way be interpreted as meaning that the funds will not be used for the purpose intended by federal law; rather, it is merely an indication that specific expenditures may change from year to year, and likely will change in the latter years of the 5-year plan. Alltel's certification that it will use the funds for the purpose intended by federal law is unequivocal and unqualified and will be thereafter demonstrated through annual reporting requirements under 47 C.F.R. § 54.209. (Alltel Application pages 9 and 17)

5. TDS also tries to argue that designation is not in the public interest. (TDS Comments paragraph 12) TDS is simply wrong on this point. TDS first contends that the stimulation of competition is Alltel's sole basis for a finding that designation is in the public interest. TDS ignores, however, the portions of Alltel's application that specifically discuss the public interest benefits of designation beginning on page 14 and continuing that showing through page 17. As stated in the Alltel Application, the FCC codified a fact-specific public interest analysis that it developed in prior orders as the appropriate process for determining that an ETC designation is in the public interest. *See In the Matter of Federal-State Joint Board on Universal Service*, FCC 05-46, CC Docket No. 96-45, ¶ 18, March 17, 2005. Specifically, the FCC determined that it will consider the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering in making such a determination. (Alltel Application pages 14 and 15). Inevitably, enabling an alternative service provider to extend its services, provide Lifeline discounts, and improve its service in already served areas will bring about price and service competition, which is rarely welcomed by an incumbent provider. Alltel makes the commitment to offer and provide Lifeline discounts and participate in the automatic lifeline enrollment. The Commission should not, however, preclude the availability of such benefits to TDS's customers on the basis that the incumbent would prefer to avoid competition. The public interest is better served in approving designation of Alltel as an ETC.
6. TDS also argues that ETC designation will not improve Lifeline and Linkup service. TDS cites the 2006 Commission Lifeline Report, but in doing so, unfairly discounts

the value that 31 customers received. Undoubtedly those 31 customers would disagree strongly with TDS's characterization that designation of an ETC in their location (thereby enabling them to receive Lifeline support) is not worthwhile and not a significant public benefit. Clearly, but for such designation, these 31 customers and their families would not have the service upon which they rely. Whether the number is 31 or 331, Lifeline is important in Florida, and each Lifeline customer is important. As evidenced by the Commission's hard work in this regard, it too agrees that Lifeline is important in Florida. Alltel commits to assisting in the Commission's efforts in this regard. While the allegations of paragraph 15 are somewhat unclear, if TDS is arguing that designation of Alltel will deprive TDS of support, then TDS is simply wrong. TDS receives support based on its own costs not the number of its access lines. Therefore, its allegation has no factual basis under today's USF program, unless TDS is speculating that someday USF support will be reformed to be truly portable and that, as a result, it will lose USF when the customer switches service to that of the wireless CETC.

7. TDS also seeks to delay the Commission's consideration of Alltel's application, by arguing that "at a minimum the Commission should defer any action in this proceeding until the conclusion of pending federal action". (TDS Comments paragraph 16) The pending federal action referenced is the May 10, 2007 Recommended Decision of the Federal-State Joint Board on Universal Service ("Recommended Decision"). While the Recommended Decision has now been published by the FCC for comment and consideration, it has no direct impact for this Application as it does not address the issue of *designating* wireless ETCs. The

substantive recommendation set forth therein pertains to the imposition of a cap on the total per state amount of USF available to competitive ETCs. Again, the Joint Board has not recommended changes in designation criteria at this time. Furthermore, this Commission should act with regard to Alltel's application based upon the law as it stands at this time, and should not try to anticipate what the FCC might do in the future with regard to the Universal Service Fund. Moreover, the Joint Board did NOT recommend that ETC applications be stayed or abated pending final resolution of the cap issue by the FCC.

8. Beginning at paragraph 17 and continuing through the remainder of the TDS Comments, TDS essentially asks the Commission to turn back time by imposing ILEC-specific requirements on Alltel and applying rules designed for a monopoly environment upon a competitive provider in a competitive market. To do so would ignore the simple facts that: 1) competitive providers do exist; and 2) today's technology and services are driven by customer needs and market demands. The imposition of requirements along the lines of those suggested by TDS would only serve to impair the advancement in technology and thwart innovation. Specifically TDS argues for the following:

A. TDS argues for imposition of "carrier-of-last resort responsibility" ("COLR") on ETCs. TDS suggests that the COLR requirement is unduly burdensome requirement; however, it would seem that, logically, any LEC that is losing access lines to competition should be jumping at the chance to serve rather than considering it a burden. Furthermore, the mere existence of Alltel as an ETC will provide a level of relief for the LEC from the COLR obligation,

because CETC's accept COLR-like responsibilities by agreeing to provide service in response to all reasonable requests. Even if the request for service is from an area where it does not currently provide service, the ETC is bound to analyze the request under the FCC 6 part analysis in 47 C.F.R. § 54.202, before it may decline service. Thereafter, if the CETC does ultimately decline to serve, it must inform the Commission of that decision, and may be called to justify that conclusion if the customer is not satisfied.<sup>1</sup>

- B. TDS also argues that CETCs should be required to establish “a rate that is comparable to the basic rate charged by the incumbent LEC”. (TDS Comments page 9, paragraph 17B). TDS refers to the differences in rates and minutes of use between the basic service offerings of Alltel and TDS. TDS does not, however, take into account the significant differences between the service, and associated rate plans, provided by TDS and Alltel. By way of example, a wireless plan provides mobility while the wireline service is limited to a single location and local calling scope. The calling scope of a wireless plan is many times greater than that offered by TDS. In order to place calls to that same wireless calling scope, TDS customers would incur significant toll charges resulting in monthly bills larger than the wireless carrier service charge. Further, without additional charges, the wireless customer receives call forwarding, call waiting, three way calling, caller ID and other services in the same plan. TDS is asking this Commission to apply

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<sup>1</sup> Alltel also notes that a LEC is not left without recourse to seek assistance when required to serve pursuant to the COLR requirement. In many, if not most, circumstances, the LEC can seek a contribution in aid of construction in accordance with PSC rules.

rate regulation to Alltel and require it to develop a service offering that would, match the TDS service offering exactly and be inferior to anything Alltel currently provides. Likewise, it asks the Commission to require Alltel to mimic TDS's Lifeline offering, to which Alltel offers the same argument. Certainly, that is not what rural and Lifeline customers want or deserve. Furthermore, the FCC has already rejected similar such arguments.

- C. Finally, the other arguments presented by TDS concerning the imposition of LEC service quality requirements and regulatory assessment fees are similarly inapplicable to wireless CETCs that are guided by FCC rules and federal law. The FCC has already determined that a wireless ETC meets service requirements if it complies with the CTIA Code of Conduct, which Alltel does. Furthermore, imposition of requirements geared toward a monopolistic regime does not make sense in the development of a competitive market. As previously stated, the requirements suggested by TDS were relevant in a world in which only one provider existed, and it was necessary to find regulatory means to ensure customers were provided a reasonable quality of service. In a competitive environment, however, the very fact that competitors exist in the market serves to assure high service quality. Such requirements should not be used to hamper the new entrant's ability to compete. To do so, would, ultimately, only prolong the need to retain service quality requirements for the incumbent.

In conclusion, Alltel respectfully requests that the Commission reject the comments and suggestions of TDS and proceed to approve Alltel's Application in this Docket.

RESPECTFULLY SUBMITTED, this 30<sup>th</sup> day of May, 2007.

By:

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Comments of TDS Telecom has been furnished by U.S. Mail to the following parties of record this 30th day of May 2007.

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