

Ruth Nettles

From: Kelly, Tamela D [EQ] [Tamela.Kelly@Embarq.com]
Sent: Monday, November 05, 2007 12:58 PM
To: Filings@psc.state.fl.us
Cc: Susan Masterton
Subject: 060582-TP, Embarq's Petition to Intervene
Attachments: 060582-TP, EQ Petition to Intervene, 11-5-07.doc

Filed on Behalf of: Susan S. Masterton

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Docket No. 060582-TP

Title of filing: Embarq Florida, Inc.'s Petition to Intervene

Filed on behalf of: Susan Masterton

No of pages: 8 pages

Description: Embarq Florida, Inc.'s Petition to Intervene

<<060582-TP, EQ Petition to Intervene, 11-5-07.doc>>

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FPSC-COMMISSION CLERK



Embarq
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November 5, 2007

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
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 on behalf of Embarq Florida, Inc. is Embarq's Petition to Intervene in Docket No. 060582-TL.

Copies are being served on the parties in this docket pursuant to the attached certificate of service.

If you have any questions regarding this electronic filing, please do not hesitate to call me at 850/599-1560.

Sincerely,

s/Susan S. Masterton
Susan S. Masterton

Enclosure

Susan S. Masterton
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DOCUMENT NUMBER-DATE

10036 NOV-5 8

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**CERTIFICATE OF SERVICE
DOCKET NO. 060582-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic and U.S. Mail this 5th day of November, 2007 to the following.

Alltel Communications, Inc.
Stephen B. Rowell
One Allied Drive
Little Rock, AR 72202

Florida Public Service Commission
Adam Teitzman, Office of the General Counsel
2540 Shumard Oak Blvd.
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s/Susan S. Masterton
Susan S. Masterton

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone study areas located entirely in Alltel's licensed area company.	Docket No. 060582-TP Filed: November 5, 2007
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PETITION TO INTERVENE

In accordance with Rule 28-106.205 and Rule 25-22.039, Florida Administrative Code, Embarq Florida, Inc. (“Embarq”) respectfully requests the Commission to allow Embarq to intervene in this proceeding. In support thereof Embarq states as follows:

1. Petitioners’ name and address are:

Embarq Florida, Inc.
555 Lake Border Drive
Altamonte Springs, Florida

2. Embarq’s representative, who is authorized to receive all notices, pleadings, and orders, is:

Susan S. Masterton
Embarq Florida, Inc.
1313 Blair Stone Road
Tallahassee, FL 32301
(850) 599-1560 (phone)
(850) 878-0777 (fax)
susan.masterton@embarq.com

3. Embarq Florida, Inc. is an incumbent local exchange telecommunications company (ILEC) authorized by the Commission to provide local exchange service in the State of Florida. Embarq has been designated an eligible telecommunications carrier (ETC) in Florida and receives certain federal universal service funds.

BACKGROUND

4. Initially, Alltel simultaneously filed two Petitions for ETC status in certain rural areas in Florida. The first Petition, assigned Docket No. 060581-TP, involved rural ILEC areas which Alltel proposed to serve partially and was accompanied by a request to

DOCUMENT NUMBER - DATE
10036 NOV-5 2007
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redefine the study areas of the affected ILECs. Embarq's serving territory was one of the ILEC study areas affected by this Petition. The second Petition is the instant Petition, where Alltel proposes to serve the entire study areas of the affected ILECs, identified as GT Com, TDS Telecom and Frontier Communications.

5. Originally the procedural plan contemplated considering the two dockets together. Embarq intervened in both dockets, but withdrew its Petition to Intervene in the instant docket, believing that it would be able to fully present its positions through its participation in Docket No. 060581. Subsequently, Alltel withdrew the Petition filed in Docket No. 060581, stating that "In order to more efficiently focus its efforts in proceedings before this Commission to obtain approval as an ETC in Florida, and to minimize the costs of litigation, Alltel has determined that it is prudent to withdraw its application for Docket No. 060581 *at this time.*" (Alltel's Notice of Withdrawal of Petition, filed April 17, 2007 in Docket No. 060581-TP, emphasis supplied) The withdrawal was "without prejudice" meaning that Alltel is free to re-file the petition at any time.

6. Prior to 2006, the Commission had determined that it did not have jurisdiction to consider petitions from wireless carriers for eligible telecommunications carrier status in the state. See, Order No. PSC-03-1063-DS-TP. In 2006 Alltel filed its Petitions for ETC status arguing that the 2005 enactment of s. 364.011, Florida Statutes, accorded the Commission jurisdiction to consider wireless ETC Petitions under federal law. The Commission considered the issue of whether the statutory change had affected its authority to rule on wireless ETC petitions and determined that it did. See Order No. PSC-07-0288-PAA-TP.

7. In ruling on Alltel's Petition in this docket, the Commission will consider for the first time a petition to grant a wireless carrier ETC status in the state of Florida. While Embarq's service territory is not directly impacted by the Petition, as recipient of federal universal funds Embarq's interests will be affected if Alltel's petition is granted. In addition, Embarq's interests will be affected by the Commission's resolution of the policy issues that necessarily will be determined by the Commission in ruling on Alltel's Petition and will set precedent for future petitions.¹ Therefore, Embarq's substantial interests will be affected by the Commission's determinations in this docket.

Federal Universal Service Fund

8. The federal universal service fund ("USF") dollars that a wireless carrier would be eligible to receive if it were granted ETC status are dollars that would come from the portion of the federal USF called "Interstate Access Support (IAS)". This is sometimes referred to as "CALLS" support because it was implemented as a result of an FCC Order that is commonly referred to as the CALLS Order (Sixth Report and Order in CC Docket 96-262 and 94-1; Report and Order in CC Docket 99-249; released May 31, 2000). The federal USF dollars in the IAS portion of the fund are unique in that they are **capped**; the overall size of the IAS fund is capped at approximately \$650 million annually. This cap means that whenever a competitor is granted ETC status, if that competitive ETC draws from the IAS fund, the amount of IAS support that other carriers receive decreases.² Therefore, if a wireless company granted ETC status receives \$1 of CALLS support there is one less dollar to be distributed to the remaining carriers receiving support from that

¹ Initially, the Commission directed its staff to pursue rulemaking to address these policy determinations. See, 6/19/07 Agenda Conference Transcript, Item No. 6, pages 74-79. However, subsequently, the Commission decided instead to consider these issues in the context of Alltel's specific petition. Order No. PSC-07-0870-FOF-TP.

² The reduction is spread across all carriers that receive dollars from the IAS fund.

fund. Accordingly, it is reasonable that Embarq would have a substantial interest in this proceeding, particularly the “public interest” aspects.

Public Interest Analysis

9. The FCC’s ETC Designation Order sets forth certain criteria that a wireless carrier must meet to demonstrate that it is in the public interest for the carrier to be granted ETC status by the FCC.³ The FCC determined that these public interest criteria are applicable to ETC applications in both rural and nonrural ILEC serving areas, although the FCC acknowledged that the application of the criteria may differ in rural ILEC territories. (¶43) While these criteria are not binding on state commissions, the FCC encouraged states to implement the criteria set forth in the order and also acknowledged the states’ authority to apply additional public interest criteria. (¶¶41, 61)

10. Since this is the first petition for wireless ETC status this Commission will consider, it will be necessary for the Commission to address certain policy issues related to the applicable public interest criteria and analysis. The Commission’s decision will set precedent for future petitions for wireless ETC status in Florida. Given Alltel’s Petition for ETC certification in Embarq’s territory, which was withdrawn with a clear reservation of Alltel’s right to re-file, the precedential affect of the decision in this docket on future consideration of petitions directly affecting Embarq is imminent.

11. Attachment A to Order No. PSC-07--PCO-TP, establishing the procedural framework for the docket, includes two issues addressing the public interest criteria, specifically:

2. What are the factors the Commission should consider in deciding if the application is in the public interest?

³ *In the Matter of Federal-State Joint Board on Universal Service*, FCC 05-46, released March 17, 2007 in Docket No. CC 96-45.

3. Would designation of Alltel Communications as an ETC in certain rural areas served by GT Com, TDS Telecom, and Frontier Communications serve the public interest and further the goals of universal service?

The Commission's resolution of these issues, especially the broad public policy considerations inherent in Issue No. 2, will inevitably provide guidance and establish precedent for future wireless ETC applications.

12. In other proceedings addressing issues involving specific parties, but where precedential policy issues also have been considered, the Commission has been liberal in allowing intervention. See, for example, *In Re: Implementation of requirements arising from Federal Communications Commission's Triennial UNE Review: Local Circuit Switching for Mass Market Customers*, Order No. PSC-04-0343-FOF-TP, granting AARP's petition to intervene under the discretionary authority accorded an agency in section 120.52(12)(c), Florida Statutes, even though AARP had not demonstrated that it met either prong of the applicable test to establish standing. See, also, *In re: Application of United Telephone Long Distance for resale certificate*, Docket No. 870285-TI, in which several long distance carriers were granted intervention to address the application for certification of a local exchange company's long distance affiliate.

WHEREFORE, Embarq respectfully requests that the Commission grant this Petition and allow Embarq to intervene in this docket to address the appropriate public interest criteria and analysis the Commission should apply in considering wireless ETC petitions, including Alltel's petition in this docket.

Respectfully submitted this 5th day of November 2007.

s/Susan S. Masterton
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