

Ruth Nettles

From: Jan.Mead@alltel.com
Sent: Monday, July 14, 2008 4:32 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 080234-TP
Attachments: docket 080234-TP.PDF

Attached for filing in the referenced Docket is Alltel Communications, LLC's Opposition to Order No. PSC-08-0417-PA A-TP and Petition for Formal Proceeding filed by Alltel. If you have questions, please do not hesitate to contact Steve Rowell. Thank you for your assistance.

A: Person responsible for Filing:

Stephen B. Rowell
Alltel Communications, LLC
One Allied Drive
P.O. Box 2177
Little Rock, AR 72202
501.905.8460
501.905.5489 Facsimile
Stephen.b.rowell@alltel.com

*Done
7/15/08
P.V.N.*

B: Docket No. 080234-TP in re: Implementation of FL lifeline program involving bundled service packages and placement of addition enrollment requirements on customers

C: Filed by Alltel Communications, LLC

D: Number of pages - 9

E: Description: Opposition to Order No. PSC-08-0417-PAA-TP and Petition for Formal Proceeding

<<docket 080234-TP.PDF>>

Jan Mead | Alltel Corporation
Corporate Executive Assistant
for Will Creasman, SVP and Associate General Counsel
501-905-0060 office | 501-905-5489 fax

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DOCUMENT NUMBER-DATE

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7/14/2008

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Implementation of Florida lifeline
program involving bundled service packages
and placement of additional enrollment
requirements on customers

Docket No. 080234-TP

ALLTEL COMMUNICATIONS, LLC'S OPPOSITION TO ORDER NO.
PSC-08-0417-PAA-TP AND PETITION FOR FORMAL PROCEEDING

Petitioner, Alltel Communications, LLC¹ ("Alltel"), by and through its
undersigned attorneys and pursuant to Florida Statute § 120.57 and Rules 25-22.029 and
28-106.201, Florida Administrative Code, files this Opposition to Order No. PSC-08-
0417-PAA-TP and Petition for Formal Proceeding with regard to Order No. PSC-08-
0417-PAA-TP issued June 23, 2008 (the "Order"), and in support thereof states:

1. The name and address of the affected agency and the agency's file or
identification number is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Docket No. 08023-TP

2. The name, address and telephone number of the Petitioner are:

Alltel Communications, LLC
1 Allied Drive
Little Rock, AR 72202
Telephone: (501) 905-8460

3. Correspondence and communications regarding this proceeding should be
directed to:

Stephen Rowell
1 Allied Drive
Little Rock, AR 72202
Telephone: (501) 905-8460

¹ Formerly named Alltel Communications, Inc.

stephen.b.rowell@alltel.com

Denise Collins
1410 Market Street
Tallahassee, FL 32312
Telephone: (850) 847-4116
denise.collins@alltel.com

4. Explanation of how the Petitioner's substantial interests will be affected by the agency determination:

a. Alltel's substantial interests are affected by the Order because Alltel is an eligible telecommunications carrier ("ETC") in Florida.² As an ETC, Alltel has an obligation to provide the Lifeline discount to eligible subscribers in its designated ETC areas. 47 C.F.R. § 54.405(a). The Order would require ETCs to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service. This requirement is significantly different from and not required by the Federal Communications Commission ("FCC") requirements in 47 C.F.R. § 54.400 et seq. The FCC Rules merely require that ETCs make the lifeline discount available with respect to the "lowest tariffed (or otherwise generally available) residential rate," whereas the PSC Order is expanding the requirement to require that ETCs apply the discount to all rate plans regardless of price.

² *In the Matter of Federal-State Board on Universal Service; Alltel Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the state of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the state of Florida; Petition for Designation as an Eligible Telecommunications Carrier in the state of Georgia; Petition for Designation as an Eligible Telecommunications Carrier in the state of North Carolina; Petition for Designation as an Eligible Telecommunications Carrier in the state of Virginia*, CC Docket No. 96-45, Order D.A. 04-0346 (2004).

5. A statement of when and how the Petitioner received notice of the agency decision:

Alltel received the Order via electronic mail from Commission Staff, Bob Casey on June 25, 2008.

6. A statement of disputed issues of material fact:

There are no disputed issues of material fact.

7. A concise statement of the ultimate facts alleged, including the specific facts the Petitioner contends warrant reversal or modification of the agency's proposed action:

There are no issues of fact that warrant reversal or modification of the Commission's proposed action as the Order is based on an erroneous interpretation of the FCC's rules, rather than facts.

8. A statement of disputed issues of law:

Alltel disputes the interpretation of the FCC's rules and orders, specifically, but not limited to, 47 C.F.R. 54.403(b) and *In the Matter of Lifeline and Link-Up*, 19 F.C.C.R. 8302 (April 29, 2004) (Report and Order and Notice of Proposed Rulemaking).

9. A statement of the specific rules or statutes the Petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes:

Pursuant to 47 C.F.R. § 54.405(a) all ETCs shall "make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers." Lifeline is defined in 47 C.F.R. § 54.401 as "a retail local service offering: (1) that is available only to qualifying

low-income consumers; (2) for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403; and (3) that includes the services or functionalities enumerated in § 54.101 (a)(1) through (a)(9).” The nine supported services enumerated in § 54.101 are voice grade access to the public switched network, local usage, dual tone multi-frequency signaling, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory assistance and toll limitation.

Commission Rule 54.403(b) governs the application of the Lifeline discount to qualifying customer’s basic residential rate, which provides in relevant part:

Other eligible telecommunications carriers shall apply the Tier-One federal Lifeline support amount, plus any additional support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.³

The FCC clarified that a federal ETC must apply the federal Lifeline support it receives to the carrier’s lowest generally available rate for the supported services:

Other eligible telecommunications carriers will receive, for each qualifying low income consumer served, support equal to the federal SLC cap for primary residential and single-line business connections, plus \$1.75 in additional federal support conditioned on state approval. The federal support amount must be passed through to the consumer in its entirety. In addition, all carriers providing Lifeline service will be reimbursed from the new universal service support mechanisms for their incremental cost of providing toll-limitation services to Lifeline customers who elect to receive them. The remaining services included in Lifeline must be provided to qualifying low-income consumers at the carrier’s lowest tariffed (or otherwise generally available) rate for those services.⁴

³ CMRS providers, like Alltel, do not provide service pursuant to utility tariffs, but rather enter into individual service contracts with subscribers. See 47 C.F.R. § 20.15(c). Accordingly, CMRS providers are obligated under Section 54.403(b) of the FCC’s Rules to apply the Lifeline discount to their lowest “generally available” residential rate.

⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 8971, CC Docket No. 96-45, FCC 97-105, ¶ 368 (1997) (emphasis added)

The FCC unambiguously stated its intention in 54.403(b) to only require application of the Lifeline discount to an ETC's lowest cost residential rate. In doing so, the FCC relied on the Joint Board's recommendation that the "Lifeline rate" must be "the carrier's lowest comparable non-Lifeline rate" reduced by the amount of federal support.⁵ The rule provides that the Lifeline discount shall be applied to the "lowest tariffed (or otherwise generally available) residential rate"- not the many residential rate plans and packages that include the nine supported services listed above. There is no reference to nonbasic service or applying the discount to all service offerings.

In the Order, the Commission relies on an erroneous interpretation of the FCC's rules from Commission Staff. In writing the Memorandum to the Commission, Staff basically ignored and then rewrote the key language in order to reach their intended conclusion. The rule provides that the Lifeline discount shall be applied to the "lowest tariffed (or otherwise generally available) residential rate," not the lowest tariffed residential rate or any other generally available rate. The plain meaning of the directive is that the discount is to be applied to the lowest tariffed or generally available residential rate. Staff's interpretation is incorrect and the Commission's reliance on that interpretation is inconsistent with FCC Rule 54.403(b)

The Commission's Order also violates 47 U.S.C. § 254(f). Section 254(f) of the Telecommunications Act of 1996 (the "Act") provides that a state may adopt additional regulations governing the provision of universal service within its jurisdiction, provided that any additional regulations are not inconsistent with the FCC's universal service rules.

⁵ *In the Matter of Federal State Joint Board on Universal Service, Recommended Decisions*, 12 FCC Rcd 87, 303, CC Docket No. 96-45 (1996)

Thus, while the Commission may have some discretion to adopt additional Lifeline requirements, it cannot implement a rule that is inconsistent with FCC Rule 54.403(b).

The Commission also incorrectly relies on the FCC order *In the Matter of Lifeline and Link-Up*, 19 F.C.C.R. 8302 (April 29, 2004) (Report and Order and Notice of Proposed Rulemaking) as support for its requirement to apply the Lifeline discount to the basic local service rate or the basic local service rate portion of any service offering which combines both basic and nonbasic service. The Order quotes the FCC order on page 9:

We adopt the Joint Board's recommendation not to adopt rules prohibiting Lifeline/Link-Up customers from purchasing vertical services, such as Caller-ID, Call Waiting, and Three-Way Calling. Like the Joint Board, we believe any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the program.

This language does not support the Commission's actions in the Order. In the FCC Order, the FCC expressed support for Lifeline customer access to vertical services. However, permitting Lifeline customers to have access to vertical services as part of the Lifeline service is very different than applying the Lifeline discount to any and all rate plans which could include much more than Caller ID, Call Waiting and Three-Way Calling- the types of vertical services the FCC envisioned. The Commission's reliance on an incorrect interpretation of the FCC's rules and orders that is inconsistent with § 254(f) of the Act requires reversal of the Order.

10. A statement of the relief sought by the Petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action:

- a. Rescind the Order and close this docket; or in the alternative

b. Set this matter for a formal proceeding and issue a procedural order to resolve the disputed issues law identified herein and to allow Alltel a full opportunity to present evidence and arguments as to why the Order should be rescinded.

Respectfully submitted,

ALLTEL COMMUNICATIONS, LLC

Stephen B. Rowell

by Jessie Kentner

By: Stephen B. Rowell (#789917)

Attorney for Alltel
One Allied Drive
P.O. Box 2177
Little Rock, Arkansas 72202
(501) 905-8460
(501) 905-5489 Facsimile
stephen.b.rowell@alltel.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via U.S. mail to persons listed below this 14th day of July, 2008:

Adam Teitzman
Charlene Poblete
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Curtis Williams
Robert Casey
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Larry Wright
American Dial Tone
2323 Curlew Road, Ste. 7C
Dunedin, FL 34683-9332

Gregory Follensbee
AT&T Florida
150 South Monroe St., Ste. 400
Tallahassee, FL 32301-1561

Lakisha Taylor
Budget Phone
1325 Barksdale Blvd., Ste. 200
Bossier City, LA 71111-4600

Sandra Khazraee
Embarq Florida, Inc.
Mail Code: FLTLHO0201
P.O. Box 2214
Tallahassee, FL 32316-2214

Robert Ellmer
FairPoint Communications
502 Cecil G. Costin, Sr. Blvd.
Port St. Joe, FL 32456-1754

Angela McCall
Frontier Communications
300 Bland St.
Bluefield, WV 24701-3020

Robert Post, Jr.
ITS Telecommunications Systems
P.O. Box 277
Indiantown, FL 34956-0277

Bruce Schoonover, Jr.
Knology of Florida, Inc.
1241 O.G. Skinner Drive
West Point, GA 31833-1789

Midwestern Telecommunications, Inc.
P. O. Box 1401
Chicago Heights, IL 60412-7401

Ms. Deborah Nobles
NEFCOM
505 Plaza Circle, Suite 200
Orange Park, FL 32073-9409

Nexus Communications TSI, Inc.
3629 Cleveland Avenue, Suite C
Columbus, OH 43224-2911

Smart City Telecom
P. O. Box 22555
Lake Buena Vista, FL 32830-2555

Mr. Thomas M. McCabe
TDS Telecom/Quincy Telephone
Suite 3, Box 329
1400 Village Square Blvd.
Tallahassee, FL 32312-1231

Mr. David Christian
Verizon Florida LLC
106 East College Avenue, Suite 710
Tallahassee, FL 32301-7721

Vilaire Communications, Inc.
P. O. Box 98907
Lakewood, WA 98496-8907

Mr. James White
Windstream Florida, Inc.
4651 Salisbury Road, Suite 151
Jacksonville, FL 32256-6187

Stephen B. Rowell
by Christie Kentner

By: Stephen B. Rowell (#789917)
Attorney for Alltel
One Allied Drive
P.O. Box 2177
Little Rock, Arkansas 72202
(501) 905-8460
(501) 905-5489 Facsimile
stephen.b.rowell@alltel.com