

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

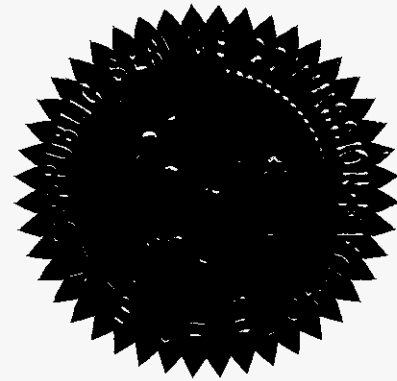
In the Matter of:

DOCKET NO. 090507-TP

PETITION FOR DESIGNATION AS
ELIGIBLE TELECOMMUNICATIONS
CARRIER (ETC) BY T-MOBILE
SOUTH LLC.

PETITION FOR DESIGNATION AS
ELIGIBLE TELECOMMUNICATIONS
CARRIER (ETC) BY T-MOBILE
SOUTH LLC.

DOCKET NO. 090510-TP



PROCEEDINGS: AGENDA CONFERENCE
ITEM NOS. 9 and 10

COMMISSIONERS
PARTICIPATING: CHAIRMAN NANCY ARGENZIANO
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER NATHAN A. SKOP

DATE: Tuesday, July 13, 2010

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER DATE

05849 JUL 16 09

FPSC-COMMISSIONER CLERK

P R O C E E D I N G S

1
2 **CHAIRMAN ARGENZIANO:** Okay. Now, we are
3 on -- we are going to move to Item 9. We are going
4 to take up 9 and 10 together, but we are going to be
5 voting on them independently. So we will give staff
6 a moment.

7 (Pause.)

8 **CHAIRMAN ARGENZIANO:** Item 9. Good to go.
9 Thank you.

10 **MR. POLK:** Good morning, Commissioners.
11 Jim Polk on behalf of staff. Items 9 and 10 both
12 address petitions by T-Mobile.

13 Item 9 addresses T-Mobile's request for
14 designation as an eligible telecommunication carrier
15 in the nonrural areas of AT&T and Verizon.

16 Item Number 10 addresses T-Mobile's
17 request for designation as an eligible
18 telecommunication carrier in the rural areas of
19 CenturyLink, Frontier, Indiantown, NEFCOM, TDS,
20 Smart City, and Windstream.

21 Based on staff's review, along with
22 T-Mobile's commitment to abide by both state and
23 federal rules and procedures, staff believes that
24 T-Mobile's petition to be designated as an ETC is in
25 the public interest and should be approved.

1 Mr. Floyd Self is here this morning to
2 answer any questions on behalf of T-Mobile, and
3 staff is prepared to answer any questions
4 Commissioners may have.

5 Thank you.

6 **MR. SELF:** Thank you, Madam Chairman.

7 Floyd Self with the Messer, Caparello, and
8 Self law firm. With me is Michele Thomas, who is
9 principal attorney from T-Mobile, and we are happy
10 to answer any questions that you have. Thank you.

11 **COMMISSIONER SKOP:** Thank you, Madam
12 Chair.

13 Just a quick question to staff. Again, I
14 think what is important for me and I think for the
15 Commission is making sure that we are being
16 consistent when granting ETC status for wireless
17 providers. And I know on Item 6 today that was
18 withdrawn, but for Virgin Mobile and its petition
19 for status it had not requested high-cost Universal
20 Service Funds, and specifically the Commission order
21 on Page 11 of the order had a requirement that if it
22 were to seek high-cost support that it would have to
23 seek additional Commission approval to show that it
24 was in the public interest.

25 In this petition in 9 and 10, T-Mobile has

1 sought high-cost support from the Universal Service
2 Fund, so I'm trying to distinguish as a wireless
3 carrier, you know, what is appropriate and why
4 specifically on 9 and 10 that it would be deemed in
5 the public interest, given the concerns the
6 Commission has had historically with the Universal
7 Service Fund and high-cost support.

8 **MR. CASEY:** First of all, Virgin Mobile
9 when they filed their petition, they requested only
10 Lifeline, only low-income support for Lifeline and
11 Link-Up. The reason that we put that phrase in
12 there, if they decided that they would seek high
13 cost at a future date, they would have to come back
14 to the Commission and show what the public interest
15 is in that. We went ahead, and -- I'm sorry, the
16 Commission went ahead and granted the ETC
17 designation to Virgin Mobile. The consummating
18 order was issued yesterday on that.

19 T-Mobile, on the other hand, has come in
20 and asked for ETC designation for low-income support
21 and also high-cost support. We don't have a problem
22 with that right now. It's up to the carrier to
23 decide whether they want low income and high cost or
24 just low income. If they are a facilities-based
25 provider they can get high-cost support.

1 Back in 2008 there was a cap put on the
2 competitive ETC high-cost support. In other words,
3 it was frozen. In March of 2008, what they did is
4 they took the amount of high-cost support for each
5 state, annualized it, and for Florida it was
6 approximately \$16 million, and we can't go above
7 that.

8 It would not effect the existing rural
9 ILECs because it is a separate pie. The pie is for
10 competitive ETCs in Florida that receive high-cost
11 support. So if the Commission grants another ETC
12 for high-cost support, what they would do is go into
13 that pie, the existing people in there that are
14 receiving support would get a little smaller piece.

15 **COMMISSIONER SKOP:** Okay. And so,
16 basically if I understood correctly that on Page 5
17 of the staff recommendation where it looks at the
18 2009 amounts that T-Mobile received in North
19 Carolina for high-cost support, that under the
20 established cap that the result on granting T-Mobile
21 ETC status in Florida, allowing it to have high-cost
22 support, that it would just merely tap some of the
23 existing money within the capped amounts and bring
24 it to Florida rather than it going elsewhere, is
25 that correct?

1 **MR. CASEY:** The pie is for Florida, okay.
2 It is by state. So is it a \$16 million pot,
3 approximately.

4 **COMMISSIONER SKOP:** Okay.

5 **MR. CASEY:** And if T-Mobile is granted ETC
6 designation for high cost, it would get a piece of
7 that pie. And they would have to share it with, I
8 believe, there is three other competitive ETCs that
9 are receiving high-cost money, which is is Alltel
10 Wireless, Sprint-Nextel, and Knology.

11 **COMMISSIONER SKOP:** Okay. And so, staff,
12 based on the analysis, looking at all things before
13 the Commission previously, has deemed that the
14 application for ETC status is in the public interest
15 on both Item 9 and 10 on today's agenda?

16 **MR. CASEY:** Yes, Commissioner.

17 **COMMISSIONER SKOP:** All right. Thank you.
18 Thank you, Madam Chair.

19 **CHAIRMAN ARGENZIANO:** Just a question on
20 the -- I guess we used to call it cherry picking,
21 cream-skimming in the rural areas. Could you just
22 give me a little bit more on that?

23 **MR. CASEY:** Cream-skimming is a term that
24 the FCC uses if a carrier goes into an area and just
25 picks certain areas to provide service in.

1 **CHAIRMAN ARGENZIANO:** How do we avoid
2 that?

3 **MR. CASEY:** How do you avoid that?

4 **CHAIRMAN ARGENZIANO:** Yes.

5 **MR. CASEY:** A lot of times carriers will
6 ask to split up a service area so that they can just
7 provide support to that. Now, if we went in and
8 determined that, yes, they are going to be
9 cream-skimming, then you could require them to do
10 the whole service area and not just the big city
11 where they are going to make a lot of money. But in
12 this case they are providing service in the whole
13 area, and we are not concerned with cream-skimming.

14 **CHAIRMAN ARGENZIANO:** Great. Thank you.
15 Commissioner Edgar.

16 **COMMISSIONER EDGAR:** Thank you.

17 I do believe we have one other interested
18 entity that would like to speak.

19 **CHAIRMAN ARGENZIANO:** Absolutely.

20 **MR. McCABE:** Good morning. Tom McCabe on
21 behalf of TDS Telecom.

22 With the national broadband plan that is
23 sitting out there today, we think perhaps maybe
24 deferring on this until all the issues of the
25 universal high-cost fund are resolved, that would be

1 a good thing to do.

2 Also, with respect to ETC status and
3 high-cost support, I mean, the revenues that we
4 receive, the high-cost support that we receive is
5 used to ensure that the facilities -- it goes to pay
6 for those facilities and to ensure that there is --
7 and that money was then used to establish a local
8 rate for us. That money was added into the rate
9 base, which is significantly different than what's
10 going on with competitive ETCs in which they simply
11 take the money and it goes from there.

12 If you go ahead and approve this, our
13 recommendation would be to ensure that the money
14 that is recovered from a particular high-cost area
15 is used in that high-cost area to support the
16 facilities that are in place in that high-cost area.
17 My understanding, you have some that are simply
18 resellers. It needs to -- it should be used to be
19 supporting those facilities. You should not be able
20 to take revenues that they receive from the Smart
21 City's customers for high-cost support and use those
22 up in our service area, and that would be a
23 suggestion we would make if you approved this.

24 Thank you.

25 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

1 **COMMISSIONER SKOP:** Thank you, Madam
2 Chair.

3 To the point that was just made, if staff
4 could respond to that, and if there is any
5 Commission precedent. My memory seems to recall
6 that at one point a similar argument was raised of
7 keep the money local. But, again, I'm getting a
8 little bit old, so I will look to staff to try to
9 bring some clarity.

10 **MR. CASEY:** For that I would like it defer
11 to Mr. Fogleman, who is our high-cost specialist.

12 **MR. FOGLEMAN:** Good morning,
13 Commissioners.

14 I believe you have discretion to
15 the extent you wish to require that new ETC T-Mobile
16 to use the high-cost support within the state, you
17 have that discretion as part of their designation
18 process.

19 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

20 **COMMISSIONER SKOP:** Any response, Mr.
21 Self, from T-Mobile's position as to inserting that
22 requirement?

23 **MR. SELF:** Thank you, Commissioners. In
24 our application, and I think in some of the data
25 request responses we did, in fact, indicate that we

1 were going to keep the money in Florida. I don't
2 know that you can trace dollar-for-dollar; you got a
3 dollar in the TDS area you have to use in TDS versus
4 two dollars that you got in Smart City and used
5 there.

6 Given the construction budget that the
7 company has, I think the bottom line is we are going
8 to use that money in Florida. The money we are
9 going to be spending and investing in infrastructure
10 in Florida, because T-Mobile is a facilities-based
11 carrier, is substantially in excess of what we are
12 going to be -- whatever we are going to be getting
13 out of that high cost support. So I think you are
14 more than adequately protected, given the kind of
15 investments that T-Mobile will be making in
16 infrastructure.

17 **MR. McCABE:** If I may respond.

18 **CHAIRMAN ARGENZIANO:** Yes.

19 **MR. McCABE:** When we file a cost study
20 with the FCC that identifies all the costs that are
21 associated with the service area. I think when they
22 go ahead -- and, I mean, this Commission on a going
23 forward basis will be approving the ongoing ETC
24 certification, and in that application they can
25 simply show where that money is being spent. And it

1 is pretty easy to determine, well, I've got -- I
2 recovered, you know, 2,500 customers in Gadsden
3 County, it generated this amount of support, and
4 this is how much money was spent in infrastructure
5 investment in this study area. I think that is
6 really pretty simple. Thank you.

7 **CHAIRMAN ARGENZIANO:** Any questions?

8 Commissioner Skop.

9 **COMMISSIONER SKOP:** Thank you, Madam
10 Chair.

11 Just to staff, in terms of incorporating
12 that into a motion within the staff recommendation,
13 does staff have some proposed language?

14 **MR. CASEY:** First, may I ask T-Mobile, is
15 it impossible to separate it by carrier in that
16 area? Could you identify those costs? That would
17 be the major thing. And one other thing I'd like to
18 bring up is if you are going to be receiving
19 high-cost support, they have to come into the
20 Commission on an annual basis. And when they do
21 come in on an annual basis, we could require them to
22 show us the money that you spent and show us where
23 you spent it. We could do it that way, too, as an
24 alternative.

25 **MR. SELF:** We don't believe that you can

1 provide it down to such a microscopic level. You
2 know, the infrastructure that might serve Gadsden
3 County, some of it is going to potentially be
4 located in Leon County, or it might be in Madison
5 County for all that matter. So we don't think you
6 can trace it quite that specifically.

7 You know, again, we have pledged that we
8 will be making the investment in Florida, and that
9 the investment in Florida is going to certainly be
10 greatly in excess of the support that is going to be
11 provided by the high-cost fund.

12 **CHAIRMAN ARGENZIANO:** Okay. Your
13 response?

14 **MR. McCABE:** It seems to me -- our
15 position doesn't change. I mean, and if it is for
16 some reason that they can demonstrate that
17 infrastructure investment in Leon County is ensuring
18 that folks out at the lake, at Lake Talquin have
19 adequate cell phone reception, that's fine. You
20 know, staff can come to those conclusions based on
21 that analysis. But I think there needs to be some
22 showing that these benefits are going to go into
23 those areas in which the high-cost support is
24 intended. That is what the requirements are, and to
25 me that is pretty simple.

1 **MR. FOGLEMAN:** Another alternative might
2 be that you look at -- you know, to the extent you
3 don't want to micromanage and you are not able to
4 find that level of detail, perhaps looking at the
5 nonrural study areas that you are seeking ETC
6 designation versus the nonrurals. Rurals versus the
7 nonrurals. Maybe, you know, that's large enough.
8 That's another alternative.

9 **MR. SELF:** I think what you said is what
10 we are talking about doing. Since we have two
11 separate applications, Item 9, the 090507 docket is
12 the low income only. So really this discussion that
13 we are having about the high cost only pertains to
14 the Docket 090510.

15 **MR. FOGLEMAN:** I thought the high cost,
16 there was still some high-cost support for the
17 nonrural for IAS support, so you could --

18 **MR. SELF:** I'm sorry, I misspoke. Strike
19 that.

20 **CHAIRMAN ARGENZIANO:** Commissioner Skop.

21 **COMMISSIONER SKOP:** Thank you, Madam
22 Chair.

23 At the appropriate time, if there are no
24 further questions, I'm willing to make a motion that
25 would embody the staff recommendation, but to add

1 the additional requirement that T-Mobile demonstrate
2 that the amount equal to the high-cost support would
3 be invested in infrastructure within the state of
4 Florida, and they would have to demonstrate that
5 annually to staff. But I'll make the motion at the
6 appropriate time.

7 **CHAIRMAN ARGENZIANO:** Any other questions
8 first? Any other discussion?

9 Okay. We're ready for a motion.

10 No. Here we go.

11 **MR. CASEY:** Might I just clarify one
12 thing?

13 **CHAIRMAN ARGENZIANO:** Yes.

14 **MR. CASEY:** Commissioner, did you want to
15 do that on the annual recertification, during the
16 annual recertification process?

17 **COMMISSIONER SKOP:** Yes, I think that
18 would be the appropriate mechanism, if staff would
19 agree that that would be.

20 **MR. CASEY:** That would be fine; yes, sir.

21 **CHAIRMAN ARGENZIANO:** Okay. We're ready
22 for a motion. Oh, sorry.

23 **MR. SELF:** And, Commissioner Skop, I think
24 that would work from our standpoint.

25 **COMMISSIONER SKOP:** Great. It's always

1 good to get agreement.

2 **CHAIRMAN ARGENZIANO:** All right. Here we
3 go.

4 **COMMISSIONER SKOP:** Okay. Thank you,
5 Madam Chair.

6 With respect to the disposition of Item 9
7 before the Commission, I would respectfully move the
8 staff recommendation for Issues 1 and 2 with the
9 amendment that during the annual certification of
10 ETC status that T-Mobile demonstrate that the amount
11 of high-cost support would be invested in
12 infrastructure within the state of Florida.

13 **COMMISSIONER EDGAR:** Second.

14 **CHAIRMAN ARGENZIANO:** All those in favor.
15 (Vote taken.)

16 **CHAIRMAN ARGENZIANO:** Opposed? The motion
17 passes. Let's move to -- I'm sorry.

18 **COMMISSIONER SKOP:** No.

19 **CHAIRMAN ARGENZIANO:** To Item 10.

20 **COMMISSIONER SKOP:** Yes. And I think that
21 the discussion embodied both of those, so at the
22 appropriate time, Madam Chair, I will make the same
23 motion. And that would be for the disposition of
24 Item 10 before the Commission to adopt the staff
25 recommendation for Issues 1 and 2 as modified to

1 require T-Mobile during the annual ETC certification
2 process to demonstrate that the amount of high-cost
3 support would be invested in infrastructure within
4 the state of Florida.

5 **COMMISSIONER EDGAR:** Second.

6 **CHAIRMAN ARGENZIANO:** All those in favor.

7 (Vote taken.)

8 **CHAIRMAN ARGENZIANO:** It's adopted. Thank
9 you very much.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 :
 : CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 16th day of July, 2010.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
(850) 413-6732