

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: June 23, 2005

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

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

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.

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.

Docket No. 040343-TP

Date: June 23, 2005

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.