

State of Florida



## Public Service Commission

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

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**DATE:** April 26, 2007

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Competitive Markets & Enforcement (Mann)  
Office of the General Counsel (Teitzman)

**RE:** Docket No. 060581-TP – Petition of Alltel Communications, Inc. for designation as eligible telecommunications carrier (ETC) in certain rural telephone company study areas located partially in Alltel's licensed area and for redefinition of those study areas.

**AGENDA:** 05/08/07 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Pending

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\060581.RCM.DOC

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### Case Background

On August 30, 2006, Alltel Communications, Inc. (Alltel) filed two Applications for Designation as an Eligible Telecommunications Carrier (ETC) in the State of Florida (Applications).<sup>1</sup> Docket No. 060581-TP was opened to address Alltel's application for designation as an ETC in certain rural telephone company study areas located partially in Alltel's licensed area and for redefinition of these study areas. Docket No. 060582-TP was opened to

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<sup>1</sup> On October 13, 2005, Alltel filed a petition with the FCC seeking designation as an ETC in the State of Florida. As of the filing of this recommendation, the FCC has yet to rule on Alltel's Petition (Docket No. 96-45).

Docket No. 060581-TP

Date: April 26, 2007

address the application requesting ETC designation in certain rural telephone company study areas that are located entirely within Alltel's licensed service area in the State of Florida.

On October 11, 2006, Embarq Florida, Inc. (Embarq) petitioned to intervene in both dockets. On January 8, 2007, Order No. PSC-07-0020-PCO-TP was issued granting intervention to Embarq in this proceeding. On December 12, 2006, Embarq filed a Notice of Withdrawal of Petition to Intervene in Docket No. 060582-TP.

By Order No. PSC-07-0288-PAA-TP, issued April 3, 2007, the Commission found that it did have authority to consider applications for ETC designation by CMRS providers and that Docket Nos. 060581-TP and 060582-TP should remain open to consider the merits of Alltel's Applications.

On April 17, 2007, Alltel filed its Notice of Withdrawal of Petition, without prejudice, in Docket No. 060581-TP. Alltel asserts it is withdrawing its Application in Docket No. 060581-TP to more efficiently focus its efforts to obtain approval as an ETC in Florida, and to minimize the costs of litigation.

Staff notes that Alltel's Application in Docket No. 060582-TP will remain a pending matter before this Commission.

**Discussion of Issues**

**ISSUE 1:** Should the Commission acknowledge Alltel's Notice of Withdrawal, without prejudice, of its Petition?

**RECOMMENDATION:** Yes. The Commission should acknowledge Alltel's Notice of Voluntary Withdrawal of its Petition, without prejudice. In addition, the Commission should find that the withdrawal renders any and all outstanding motions moot. (**Teitzman, Mann**)

**STAFF ANALYSIS:** The law is clear that the plaintiff's right to take a voluntary dismissal is absolute. Fears v. Lundsford, 314 So. 2d 578, 579 (Fla. 1975).

Therefore, staff recommends that the Commission acknowledge Alltel's Notice of Voluntary Withdrawal of its Petition, without prejudice, and find that the voluntary dismissal renders any and all outstanding motions moot.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. There is nothing further in the docket for this Commission to address, and the docket should be closed. (**Teitzman**)

**STAFF ANALYSIS:** There is nothing further in the docket for this Commission to address, and the docket should be closed.