

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 7, 2007

TO: Commission Clerk (Cole)

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

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.

AGENDA: 06/19/07 – Regular Agenda – Proposed Agency Action –Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\CMP\WP\060582.RCM.DOC

Case Background

On September 23, 2003, the Florida Public Service Commission (FPSC or Commission) issued Order No. PSC-03-1063-DS-TP (Declaratory Statement), in Docket Nos. 030346-TP and 030413-TP regarding its jurisdiction over commercial mobile radio service (CMRS) providers for purposes of determining eligibility as eligible telecommunications carriers (ETC). In the Declaratory Statement, the FPSC ruled that it did not have jurisdiction because the Florida Legislature expressly excluded commercial mobile radio services (CMRS) providers from the jurisdiction of the FPSC.

On August 30, 2006, Alltel Communications, Inc. (Alltel) filed two Petitions for Designation as an Eligible Telecommunications Carrier in the State of Florida (Petitions).¹ Docket No. 060581-TP addressed Alltel's petition requesting ETC designation in rural telephone company service areas² that are located partially within Alltel's licensed service area and for redefinition of the service area requirement in the rural telephone company areas. This docket has subsequently been withdrawn.³ Docket No. 060582-TP was opened to address the petition requesting ETC designation in rural telephone company service areas⁴ that are located entirely within Alltel's licensed service area in the state of Florida.

According to Alltel, it intends to obtain high-cost support in the rural telephone company areas to expand its coverage to include unserved or underserved areas, to increase the service quality and reliability of its network, and to speed the delivery of advanced wireless service to the citizens of Florida. Furthermore, if designated as an ETC, Alltel asserts that it will offer a basic universal service package to subscribers who are eligible for Lifeline support.⁵

Alltel maintains that it satisfies all of the statutory and regulatory prerequisites for designation as an ETC in Florida. Alltel asserts that 47 U.S.C. §214(e)(2) of the Telecommunications Act of 1996 (the Act) authorizes state commissions to designate ETCs for federal universal service purposes, including wireless ETCs. As further support, Alltel cites to the Federal Communications Commission's (FCC) March 17, 2005, Federal-State Joint Board on Universal Service Report and Order, which states that 47 U.S.C §214(e)(2) "provides state commissions with the primary responsibility for designating ETCs."

Alltel also contends that the FPSC has jurisdiction over CMRS providers in order to designate them as ETCs. In its petitions, Alltel acknowledges the FPSC's aforementioned Declaratory Statement, but notes that the Florida Legislature has since enacted Section 364.011, Florida Statutes, which, Alltel asserts, sets forth an exception. Alltel states that this exception allows the FPSC oversight to the extent "specifically authorized by federal law." Since §214(e)(2) authorizes state commissions to designate eligible telecommunications carrier status on both wireline and CMRS providers, Alltel contends that the recent change in Florida law, i.e. Section 364.011, now confers upon the FPSC the authority to grant Alltel's request for designation as an ETC.

¹ 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 (CC Docket No. 96-45). In Public Notice DA 05-3005, the FCC requested comment on the Alltel Communications petition seeking designation as an eligible telecommunications carrier in Georgia, Virginia, Alabama, North Carolina and Florida. Comments were due by December 19, 2005, and replies by January 9, 2006.

² Alltel Florida, Inc. (n/k/a Windstream Florida, Inc.) and Sprint-Florida, Inc. (n/k/a Embarq Florida, Inc.).

³ A Notice of Withdrawal of Petition was filed on April 17, 2007 for 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. By Order No. PSC 07-0458-FOF-TP, issued May 29, 2007, the Commission acknowledged Alltel's Notice of Voluntary Withdrawal of its Petition, without prejudice.

⁴ Frontier Communications of the South, GTC Inc., and Quincy Telephone Company d/b/a TDS Telecom.

⁵ Alltel had 31 Lifeline customers in Florida as of 9/30/2006. The Lifeline rate is \$16.70 per month for 300 anytime minutes. FPSC Data Request No. 24.

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 these proceedings. On December 12, 2006, Embarq filed a Notice of Withdrawal to Intervene in Docket No. 060582-TP.

On December 8, 2006, Quincy Telephone Company, d/b/a TDS Telecom (TDS) filed a Petition to Intervene in Docket No. 060582-TP. By Order No. PSC-07-0087-PCO-TP, issued January 30, 2007, the FPSC granted permission for TDS to intervene in Docket No. 060582-TP, noting that it appears that TDS's substantial interests may be affected because it provides incumbent local exchange service in areas of Florida where Alltel has requested designation as an ETC.

On March 13, 2007, the FPSC addressed the issue of whether or not the FPSC has jurisdiction to designate CMRS providers as ETCs. On April 3, 2006, the FPSC issued Order No. PSC-07-0288-PAA-TP, in Docket Nos. 060581-TP (since withdrawn) and 060582-TP, finding that with the enactment of Section 364.011, Florida Statutes, the Florida Legislature has granted the FPSC limited authority over CMRS providers to those matters specifically authorized by federal law. Therefore, pursuant to §214(e)(2), which authorizes states to designate ETC carriers, the FPSC is now asserting jurisdiction over CMRS providers for the purpose of considering ETC petitions. The following recommendation addresses the technical and policy issues associated with Alltel's petition for ETC status in Florida.

Discussion of Issues

Issue 1: Should Alltel be granted eligible telecommunications carrier status in certain rural telephone company study areas located entirely in Alltel's licensed area in the state of Florida?

Primary Recommendation: Yes, Staff recommends that Alltel be granted eligible telecommunications carrier status in certain rural telephone company study areas located entirely in Alltel's licensed area in the state of Florida as identified in Attachment A. (Mann)

Alternative Recommendation: No. Staff recommends that at this time Alltel should not be granted eligible telecommunications carrier status in certain rural telephone company study areas located entirely in Alltel's licensed area in the state of Florida as identified in Attachment A. (Dowds)

Primary Staff Analysis: Under FCC rules, the state commissions have the primary responsibility to designate providers as ETCs.⁶ Designation as an ETC is required in order for a provider to be eligible to receive monies from the federal universal service fund (USF). Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support.”⁷ According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout a designated service area.

ETC Certification Requirements

The Code of Federal Regulations addresses a state commission’s responsibilities related to ETC designation:⁸

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

To qualify as an ETC, a telecommunication carrier must provide nine services identified in 47 CFR 54.101(d)(1):

- (1) Voice grade access to the public switched network Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice

⁶ 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

⁷ 47 U.S.C. § 254(e)(2).

⁸ § 54.201(c)

communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call;⁹

- (2) Local Usage Local usage¹⁰ indicates the amount of minutes of use of exchange service, provided free of charge to end users;¹¹
- (3) Dual tone multi-frequency signaling or its functional equivalent Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time;¹²
- (4) Single-party service or its functional equivalent Single party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission;¹³
- (5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;¹⁴
- (6) Access to operator services Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call;¹⁵

⁹ "Alltel meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with LECs, each of Alltel's customers is able to make and receive calls on the public switched telephone network within the specified bandwidth." Alltel ETC Petition, p.4.

¹⁰ The specific amount of local usage has not been determined by the FCC. "As in past orders, however, we decline to adopt a specific local usage threshold." Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005), para. 32.

¹¹ "Alltel commits to provide rate plans that include a substantial local calling area with a corresponding level of included local usage that provides an outstanding consumer value." While the FCC has not set a minimum local usage requirement, Alltel certifies that it will comply with "any and all minimum local usage requirements adopted by the FCC and it intends to offer a number of local calling plans as part of its universal service offering." Alltel ETC Petition, p.4.

¹² "DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement. Alltel currently uses out-of-band digital signaling, and Alltel therefore meets this requirement." Alltel ETC Petition, p. 5.

¹³ "Single-party service means that only one party will be served by a subscriber loop or access line in contrast to a multi-party line. The FCC concluded that a wireless provider offers the equivalent of single-party service when it offers a dedicated message path for the length of a user's particular transmission. Alltel meets the requirement of single-party service in this manner." Alltel ETC Petition, p. 5.

¹⁴ "Alltel currently provides its customers with access to emergency services by dialing 911 in accord with this requirement throughout the geographic area where it is seeking ETC designation. Further, Alltel provides both automatic numbering information ("ANI") and automatic location information ("ALI") to public emergency service providers capable of both receiving and utilizing the data and has made arrangements with Alltel for the delivery of the data." Alltel ETC Petition, p. 5. To date, Alltel has deployed Phase II of E911 connectivity in 45 Florida counties. FPSC Data Request No. 27.

- (7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;¹⁶
- (8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings;¹⁷ and
- (9) Toll limitation for qualifying low-income consumers Toll limitation or blocking restricts all direct dial toll access.¹⁸

ETCs must also advertise the availability of these services, and the associated charges, using media of general distribution.¹⁹ Staff believes that Alltel has satisfied, or will as a result of this proceeding, the FCC requirement for the provision of the nine required services and functionalities that must be offered to qualify as an ETC.²⁰

Additional ETC Certification Requirements

In addition to providing the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC.²¹ In this Order, the FCC determined that an ETC applicant must also demonstrate:

¹⁵ "Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. Alltel meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities (e.g., LECs, IXCs, etc.)." Alltel ETC Petition, p. 6.

¹⁶ "A universal service provider must offer consumers access to interexchange service to make and receive toll or interexchange calls. Alltel presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements between the Company and several IXCs." Alltel ETC Petition, p. 6.

¹⁷ "The ability to place a call to directory assistance is a required service offering. Alltel meets this requirement by providing all of its customers with access to directory assistance by dialing either "411" or "Area Code + 555-1212." Alltel ETC Petition, p. 7.

¹⁸ "Once designated, as an ETC in the areas identified in this Application, Alltel will participate in Lifeline in these additional areas as required, and will provide toll blocking capability in satisfaction of the FCC's requirement. Alltel currently has the capability to provide toll blocking and will provide this service at no charge to its Lifeline customers." Alltel ETC Petition, p.7.

¹⁹ "Alltel will advertise the availability of the supported services and the corresponding charges in a manner that fully informs the general public within the designated service area of both the available services and the associated rates." "Further, Alltel commits to advertise the availability of Lifeline and Link-Up discounts throughout the ETC designated areas." Alltel ETC Petition, p.13.

²⁰ 47 CFR § 54.101(a) lists the nine supported services which must be provided by all ETCs.

²¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005) ("ETC Report and Order").

- 1) a commitment and ability to provide the supported services throughout the designated area;²²
- 2) the ability to remain functional in emergency situations;²³
- 3) that it will satisfy consumer protection and service quality standards;
- 4) that it offers local usage comparable to that offered by the incumbent LEC;²⁴ and
- 5) an understanding that it may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.²⁵

The FCC encouraged states to also adopt these criteria, and the FPSC has done so in Docket No. 010977-TL, PSC Order No. PSC-05-0824-TL, issued August 15, 2005.

Staff believes that Alltel meets all these requirements, including the mandate that it offer quality service to all requesting customers. It has stated such in its ETC Petition and has promised to verify its satisfaction of these requirements on an annual basis.²⁶ In its filed comments, TDS argues that Alltel may not provide service to all customers in the indicated exchanges and thus, the applicant will not meet the same standard that is applied to wireline providers.²⁷ Staff cannot

²² “Alltel certifies that: (1) it will provide service throughout the proposed ETC area using its standard customer equipment and service offerings where available; or (2) if a request within Alltel’s licensed service area, but outside its existing network coverage, is received from a potential customer, Alltel will follow the steps described in Section 54.202(a)(1)(a) of the FCC rules. If, after following the steps specified therein, Alltel still cannot provide service, it will notify the requesting party and report the unfulfilled request to the Commission within 30 days after making such a determination. Furthermore, consistent with the requirement in Section 54.209(a)(3) of the FCC rules, Alltel will annually report the number of requests from potential customers that were unfulfilled during the pervious year.” Alltel ETC Petition, p. 8.

²³ “Alltel is able to remain functional in emergency situations. Alltel’s network is designed to remain functional in emergency situations. Alltel has adequate amounts of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. In accordance with FCC rule Section 54.209(a)(6), Alltel will annually certify that it is able to function in emergency situations. Alltel will also fulfill the annual outage reporting requirement described in 54.209(a)(2) of the FCC rules which requires an ETC applicant to submit detailed information on any outage of at least 30 minutes in duration that could potentially affect at least ten percent of the end users served in a designated service area, or a 911 special facility.” Alltel ETC Petition, pp. 8, 10.

²⁴ “Alltel is committed to offering local usage plans comparable to those offered by the incumbent LEC in the service areas for which it seeks designation. Each of Alltel’s service plans described in the pleading are within the scope of “comparability” as defined by the FCC in its March 17, 2005 Report an Order.” Alltel ETC Petition, p. 12. “Further, Alltel will annually certify that it offers local usage plans that are comparable to those offered by the incumbent LEC in the relevant areas in accordance with Section 54.209(a)(7) of the FCC rules.” Alltel ETC Petition, p. 12.

²⁵ “In accordance with Section 54.202 (a)(5) of the FCC rules, Alltel acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the designated ETC area. Further, pursuant to Section 54.209(a)(8) of the FCC rules, Alltel will file an annual certification acknowledging the fact that it may be required by the FCC to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.” Alltel ETC Petition, p. 12.

²⁶ Alltel ETC Petition, p. 17.

²⁷ “For example, on page 8 of its Petition, Alltel certifies that it will provide service throughout the proposed ETC area using its standard customer equipment and offerings where available. This certification is inconsistent with the Statutory requirement of Section 214(e)(1), which explicitly provides that designated ETCs “shall” offer and advertise all supported services “throughout the service area for which the designation is received.” No where in Section 214(e) does it indicated this provision is limited to where service is available.” TDS Comments, p. 4.

verify this assertion, however staff believes appropriate safeguards are in place. In case it is true, staff relies on the assurance that if Alltel cannot provide service, it will notify the requesting party and report the unfulfilled request to the Commission within 30 days after making such a determination.²⁸ Furthermore, consistent with the requirement in § 54.209(a)(3) of the FCC rules, Alltel is required to report annually the number of requests from potential customers that were unfulfilled during the previous year. Once the Commission has this information, and not before, it will be in a position to find whether or not rural consumers are receiving the same choice of service that is available in urban areas of the state.

The purpose of universal service programs is to ensure that customers who might not otherwise be served at affordable rates by a competitive market will still receive service. As for wireline companies, access to high-cost assistance is often what helps ensure that service is provided in underserved areas. For Alltel, access to high-cost assistance will make expanding service to customers requesting service in the areas for which it is designated as an ETC commercially reasonable and economically feasible. Alltel wireless, like wireline ETCs, must make a best effort to fulfill this service mandate and access to high-cost funding will likely help to make this happen. After obtaining a reasonable request for service, a wireline company is required to find a way to offer service, either through extending its own facilities or other options. The same will be true for Alltel. Alltel must be given a reasonable opportunity to provide service to requesting customers, whether through expansion of its own facilities or some other method.

Last, Alltel has also stated in its petition that it will advertise the supported services as required under 47 U.S.C. § 214(e)(1)(B), including the availability of low-income programs.²⁹ Based on these assertions and a lack of record support to the contrary, staff believes Alltel has, or will as a result of this proceeding, satisfy these additional requirements.

Re-Certification

The FCC's annual ETC re-certification requirements, which were adopted by the FPSC in Order No. PSC-05-0824-FOF-TL, issued August 15, 2005, are:³⁰

- 1) Progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;
- 2) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten

²⁸ Alltel ETC Petition, p. 12.

²⁹ Alltel ETC Petition, p. 13.

³⁰ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005), para. 69.

- percent of the end users served in a designated service area, or that potentially affect a 911 special facility. An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;
- 3) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;
 - 4) The number of complaints per 1,000 handsets or lines;
 - 5) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;
 - 6) Certification that the ETC is able to function in emergency situations;
 - 7) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
 - 8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

Alltel has acknowledged that a "state commission must annually certify, to both the Universal Service Administrative Company (USAC) and the FCC, that eligible telecommunications carriers subject to its jurisdiction will utilize high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."³¹ Alltel has committed to meet the annual reporting requirements identified above and that by abiding by these reporting regulations it will further its obligation under Section 214(e) of the Act to provide supported services throughout its designated service areas.³²

Section 214 provides that, for areas served by a rural incumbent LEC, more than one ETC may be designated if doing so would serve the public interest.³³ According to the FCC,³⁴ "in instances where the Commission has jurisdiction over an ETC applicant, the Commission in this Report and Order adopts the fact-specific public interest analysis it has developed in prior orders."³⁵ First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of increased consumer choice, and the unique advantages

³¹ FPSC Data Request No. 18.

³² Alltel ETC Petition, p. 8.

³³ 47 U.S.C. §§ 214(e)(2), (6).

³⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005), para. 41 (notes omitted).

³⁵ Virginia Cellular ETC Designation Order, 19 FCC Rcd at 1574-81, paras. 26-39; Highland Cellular ETC Designation Order, 19 FCC Rcd at 6431-38, paras. 20-35.

and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission will also conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.³⁶ Since Alltel's decision to withdraw its petition for designation below the study area level of a rural telephone company,³⁷ conducting a creamskimming analysis is unnecessary.

Public Interest

Alltel outlines the reasons why its designation as an ETC in certain rural areas of Florida would be in the public interest by detailing Alltel's compliance with the requirements of Section 214(e). Additionally, in an affidavit attached to the filing, Alltel attests to its compliance with the requirements of the Telecommunications Act.³⁸

According to the petition, Alltel is seeking federal high-cost support in rural service areas located within its licensed service area in the state to expand its coverage to include unserved or underserved areas, to increase the service quality and reliability of its network and to speed the delivery of advanced wireless services to the citizens of rural Florida.³⁹

In order to grant Alltel's request in this docket, the Commission must determine that this ETC designation is in the public interest. In its Virginia Cellular ETC Designation Order, the FCC determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in Section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance.⁴⁰ The FCC considers the following standards in determining whether a given ETC designation is in the public interest:

- 1) Consumer Choice: The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the

³⁶ "In addition, as part of our public interest analysis, we will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. We also encourage states to apply the Commission's analysis in determining whether or not the public interest would be served by designating a carrier as an ETC." Federal-State Joint Board on Universal Service, CC Docket 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005), para. 4.

³⁷ Docket No. 060581-TP addressed Alltel's petition requesting ETC designation in rural telephone company service areas that are located partially within Alltel's licensed service area and for redefinition of the service area requirement in the rural telephone company areas. This petition was withdrawn by Alltel on April 17, 2007. The Commission acknowledged Alltel's Notice of Voluntary Withdrawal of its Petition, without prejudice, on May 8, 2007.

³⁸ Alltel ETC Petition, Attachment A, p. 1.

³⁹ Alltel ETC Petition, pp. 1-2.

⁴⁰ Virginia Cellular ETC Designation Order, 19 FCC Rcd at 1575, para. 27. See also Highland Cellular ETC Designation Order, 19 FCC Rcd at 6431-32, para. 21. Prior to these orders, the Wireline Competition Bureau had found designation of additional ETCs in areas served by non-rural telephone companies to be per se in the public interest based upon a demonstration that the requesting carrier complied with the statutory eligibility obligations of section 214(e)(1) of the Act.

public interest by providing a choice of service offerings in rural and high-cost areas. The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.

- 2) Advantages and Disadvantages of Particular Service Offering: The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission will also examine the disadvantages of such a service, such as dropped call rates and poor coverage areas.⁴¹

In regard to consumer choice, Alltel maintains that "the FCC has recognized that designation of wireless ETCs promotes competition and benefits consumers in rural, high-cost areas by increasing consumer choice, availability of innovative services and deployment of new technologies."⁴² Alltel asserts that its designation as an ETC in the requested rural areas will bring customers the benefits that are otherwise available mostly to urban customers.⁴³ In the Highland Cellular case, the FCC suggested that when deciding the public interest test for consumer choice, several factors should be considered, such as "the benefits of increased competitive choice, the impact of multiple designations on the USF, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame."⁴⁴

Alltel asserts that its "service offering will be competitive with those of the incumbent local exchange carriers."⁴⁵ When you consider the vast number of Alltel customers in the state, the comparable service offerings, and the fact that the record in this docket is devoid of any evidence to the contrary, staff believes it is reasonable to assume that Alltel's service offering will continue to be competitive with those of the incumbent local exchange carriers.

Staff agrees with Alltel's assertion that universal service funding will enable it to continue to "operate and maintain a higher number of cell sites in high-cost, low-density

⁴¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005), para. 44.

⁴² Alltel ETC Petition, p. 19.

⁴³ Id.

⁴⁴ Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket Number 96-45; FCC 04-37, para. 4.

⁴⁵ Alltel ETC Petition, p. 2.

areas,”⁴⁶ and that ETC designation will give qualifying customers a choice in their Lifeline/Link-Up provider.⁴⁷ In addition, by increasing the competitive choices available to consumers, Alltel contends it will “not only strengthen inter-modal wireless/wireline competition, but also increase the intra-modal wireless competition to the benefit of telecommunications customers throughout Florida.”⁴⁸ Staff agrees with Alltel that “increased competition in the rural areas provides incentives to incumbent service providers to achieve new operating efficiencies and to introduce additional choices, higher quality, and better value to their customers.”⁴⁹

While staff is cognizant that approval of Alltel’s ETC Petition will increase the size of the federal high-cost program, we do not believe that this docket is the proper forum to debate broader universal service issues, such as the overall size of the national fund. This issue, along with items such as sustained funding resources and eligible services, are best suited for resolution in the pending proceedings before the Federal-State Joint Board on Universal Service and the FCC, where a national perspective can be applied to national problems with national scope. By granting Alltel’s petition in Florida, staff does not believe that this would in any way prejudice the FCC’s consideration of universal service reform, nor would the impact of this Florida-specific case place a significant strain on the overall federal USF.⁵⁰

As to the specific advantages and disadvantages of Alltel’s service offering, the FCC has previously acknowledged the benefits of mobility for consumers in rural and high-cost areas “who often must drive significant distances to places of employment, stores, schools, and other locations,” and that wireless carriers have the ability to “provide access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”⁵¹ Staff agrees that there is value to the consumers to have the benefits of mobility and the ability to make calls within a larger calling area. A direct comparison with the wireline offering would need to incorporate the value of these wireless factors when determining the benefit to consumers.

Alltel commits to maintain and construct cell sites [in Florida] in order to improve coverage, service quality and capacity.⁵² Alltel has presented a five-year plan demonstrating how high-cost universal service support will be used to improve its network. This commitment, along with due diligence by the FCC and the FPSC, should help to improve two of the biggest disadvantages of a wireless network: dropped calls and poor coverage areas.⁵³

⁴⁶ Alltel ETC Petition, p. 19.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ In Order FCC 05-46, issued March 17, 2005, the FCC stated: “As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive. Indeed, given the size of the total high-cost fund — approximately \$3.8 billion a year — it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund.”

⁵¹ Federal-State Joint Board on Universal Service; Petition of North Carolina RSA 3 Cellular Telephone Company for Designation as an Eligible Telecommunications Carrier in the State of North Carolina, CC Docket No. 96-45, Order, 21 FCC Rcd 9151, 9156 n.48 (WCB 2006).

⁵² Alltel ETC Petition, p. 20.

⁵³ Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket Number 96-45.

Alltel has also made a number of additional commitments regarding the quality of its telephone service. These commitments include: to provide rate plans that include a substantial local calling area with a corresponding level of included local usage that provides an outstanding consumer value;⁵⁴ to provide service throughout its proposed ETC designated service area to all potential customers making a reasonable request for service;⁵⁵ to maintain and construct cell sites in order to improve coverage, service quality and capacity in accordance with a five-year plan;⁵⁶ to make substantially greater levels of financial commitment than Alltel would otherwise commit in the absence of high-cost support;⁵⁷ to provide the FPSC an annual progress report on the use of universal service funds to attain buildout consistent with §54.209(a)(1) of the FCC rules;⁵⁸ to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service;⁵⁹ to continue to afford its customers an automatic one-minute credit for all dropped calls on its network;⁶⁰ to offer its customers the ability to change rate plans at anytime without extending their current service contracts;⁶¹ to offer local usage plans comparable to those offered by the incumbent LEC in the service areas for which it seeks designation;⁶² to annually report the number of complaints per 1,000 handsets;⁶³ to advertise the availability of Lifeline and Link-Up discounts throughout the ETC designated areas;⁶⁴ and last, "to use available federal high-cost support for its intended purposes – the provision, maintenance and upgrading of facilities serving the areas for which support is intended."⁶⁵

Based on these assertions, and Alltel's commitment to follow federal and state guidelines, staff believes that designating Alltel as an additional ETC in the service areas outlined in Alltel's ETC Petition is in the public interest. Staff believes that Alltel has made a credible showing, supported by facts and commitments, of its capability and intent to provide and advertise an affordable quality offering, including the nine federally supported services, throughout its proposed service area.

In summary, staff's belief is buttressed by the assumption that the following factors will benefit the public interest of Florida telecommunications consumers:

- a) Promotion of telecommunications services in geographical areas with diverse income or racial populations.
- b) Promotion of universal service.
- c) Promotion of consumer choice.
- d) Impact on the quality of life for the public, including privacy considerations.
- e) Promotion and preservation of competition.

⁵⁴ Alltel ETC Petition, p. 4.

⁵⁵ Alltel ETC Petition, p. 8.

⁵⁶ Alltel ETC Petition, p. 20.

⁵⁷ Alltel ETC Petition, p. 9.

⁵⁸ Id.

⁵⁹ Alltel ETC Petition, p. 11.

⁶⁰ Id.

⁶¹ Id.

⁶² Alltel ETC Petition, p. 12.

⁶³ Alltel ETC Petition, p. 20.

⁶⁴ Alltel ETC Petition, p. 13.

⁶⁵ Alltel ETC Petition, p. 21.

- f) Promotion of economic development, including telecommunications infrastructure deployment.
- g) Promotion of efficiency and productivity.

Staff believes that designating Alltel as an ETC in areas served by rural companies will increase not only competition, but consumer choice in service offerings and Alltel's ability to provide expanded facility deployment to underserved areas. Furthermore, designation of another ETC could spur ILEC infrastructure deployment and encourage network efficiencies. Through this added deployment of facilities and investment in Florida, customers stand to gain from additional consumer choice, the provision of new technologies, a mobility option for communications needs, and the ability to access larger local calling areas. All these factors, along with a redundancy factor in times of natural disaster, will benefit Florida consumers.

Staff understands that promotion of competition cannot be the sole reason to support a finding of "public interest." Factors such as rates, ownership of facilities, and service offerings must also be considered, not only at the time of Petition, but on an ongoing basis. Annually, all the ETCs in Florida are judged, through recertification, on their ability to satisfy consumers, expand service offerings to those underserved, and to provide for rural ratepayers the services and rates offered in urban areas. The public interest test is not just given at the time of Petition, but is an ongoing review of the performance of every ETC on an annual basis.

Staff concludes that Alltel has satisfied the statutory eligibility requirements of Section 214(e)(1) and that its designation as an ETC will further the goals of universal service. Staff believes that the Telecommunications Act was intended to foster competition and that wireless service provides consumers with alternatives, quality of service, and a convenient method to take advantage of mobile communications that is not available from landlines. While ILECs may characterize ETC status for wireless carriers as a windfall and that it is unnecessary for the provision of wireless phone service, staff believes that as long as these carriers follow the rules for becoming an ETC, that their customers continue to support the federal universal service programs through payment of universal service charges, and that wireless carriers further the goals of universal service in Florida, then they are just as entitled to participate in the federal program as any other carrier.

In addition, while incumbent companies make the claim that granting Alltel ETC status will reduce the amount of USF funds available, staff believes that by increasing the number of carriers eligible for federal USF money may increase the amount of federal USF dollars brought into Florida. As Floridians are the largest net contributors to the federal universal service programs, it only seems equitable that a greater share of this support make its way to Florida.

Staff believes that Alltel will provide all of the services and functionalities enumerated in Section 54.101(a) of the FCC's rules. Alltel has certified that it has the capability to offer the nine services identified in Section 54.201(d)(1), that it will comply with the additional requirements outlined in the 2005 Report and Order on ETC designation, and that it will fulfill the re-certification requirements outlined by the FCC. On the state level, pursuant to Order No. PSC 98-0328-FOF-TP, issued February 24, 1998, all ETC's in Florida must contribute \$3.50 per

month per Lifeline customer.⁶⁶ In addition to the \$10.00 credit from the federal program, each Lifeline customer will be entitled to a total credit of \$13.50. Alltel has agreed to continue to comply with this Florida specific mandate.

Therefore, based on the preceding analysis, staff believes that Alltel has demonstrated its capability and commitment to provide the services of an ETC and that Alltel's designation is in the public interest.⁶⁷

Primary Conclusion

Staff recommends that Alltel be granted eligible telecommunications carrier status in certain rural telephone company study areas located entirely in Alltel's licensed area in the state of Florida as identified in Attachment A.

Alternative Staff Analysis:

On February 20, 2007, the Federal-State Joint Board on Universal Service (Joint Board) held an en banc meeting in Washington, D.C. to hear presentations on reforming the federal high-cost mechanisms. During his opening remarks, FCC chairman Kevin Martin aptly characterized some of the key problems with the high-cost funds for which near-term solutions are critical.

But today we have a problem. Currently we are subsidizing multiple competitors to provide voice services in rural areas. When I first arrived at the Commission in 2001, I dissented from the Commission's policy of using universal service support as a means of creating government-managed "competition" for phone service in high cost areas. I was hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. In fact at that time I warned that this policy would make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.

Today, I am sad to report that is exactly where we are. . . . (Martin February 20, 2007 remarks, p. 3)

The federal high-cost mechanism currently provides about \$4 billion dollars to incumbent ETCs and competitive ETCs (CETCs). Since 2003 growth in high-cost payments to incumbent ETCs has been essentially flat. However, since 2002 growth in CETC funding has grown in excess of 100% per year. In 2002 CETC funding was \$46.1 million, growing to \$129.6 million in 2003. Current estimates are that CETCs received approximately \$1 billion in 2006, and in 2007 will receive \$1.28 billion (assuming the FCC approves no new CETC applications) or \$1.56 billion (if the FCC approves CETC applications pending at the FCC). USAC and the FCC have estimated

⁶⁶ FPSC Data Request No. 3

⁶⁷ Alltel has been designated ETC status in a total of twenty-six states. In addition, Alltel has been designated ETC status in the areas served by rural telephone companies in 18 states.

that even assuming no new CETCs are designated in 2008 or 2009, CETC funding would grow to about \$2 billion in 2008 and \$2.5 billion in 2009.

In order to stem further growth in high-cost support, on May 1, 2007, the Joint Board issued a Recommended Decision in which they recommended that the FCC impose an interim, emergency cap on CETC funding and committed to issuing a recommended decision on fundamental high-cost reform within six months. The FCC recently released a public notice seeking comments on the Joint Board's recommendation; it is anticipated that the FCC will issue its order on these matters expeditiously.

When a CETC is designated as eligible to receive high-cost funding, the funding it receives is not based on its cost to serve. Rather, it receives the per-line dollar equivalent of whatever funding the incumbent ETC receives (typically an incumbent wireline LEC). This policy is usually referred to as the "identical support rule." Unlike Lifeline/LinkUp funding, which is limited to one line or connection per household, every ETC receives available funding for all of its lines or handsets served in a given area. For example, Alltel is requesting that it be designated as an ETC in certain wire centers in TDS Telecom's service area. Assume that a customer has one wireline phone with TDS located in the Greensboro wire center and three cell phones from Alltel. Based on data provided by Alltel, TDS would receive \$17.46 per month for the wireline phone and Alltel would receive \$52.38 (\$17.46 x 3) monthly for its three handsets. (It appears the per-line support that would be available to Alltel in GT Com's service area, where Alltel is also seeking ETC designation, would be almost \$23.00 per line per month.)

On August 25, 2004 the FCC granted ETC designation to Nextel in the service areas of GT Com, Frontier, Windstream, and TDS Telecom. However, it should be noted that this proceeding is the first time that this Commission has been asked to designate a CETC in the service area of a rural ILEC. In order to grant Alltel's request, the Commission must make an affirmative finding that doing so is in the public interest.

Florida has been and continues to be the largest net contributor to the various federal universal service programs. In 2004 Florida's total net contribution was \$249 million, of which \$150 million was related to high-cost programs. These amounts increased in 2005 to \$312 million and \$183 million, respectively. Not surprisingly, in filings with the FCC over the years this Commission has advocated policies designed to at least slow the growth in the federal programs.

Primary staff acknowledges that granting Alltel's ETC designation will increase the size of the federal fund but implies that it would nevertheless be beneficial to Florida because it would bring monies into Florida. Primary staff also opines that this docket is not the appropriate venue for this Commission to render a policy decision as to whether or not it is in the public interest to designate and fund multiple providers. Instead, as certain other states have done, we should ignore this question, designate multiple ETCs. Alternative staff respectfully disagrees.

Many of the benefits associated with granting Alltel's petition that are cited by primary staff pertain to aspects related to fostering competition (e.g., greater consumer choice). While alternative staff agrees in principle that competitive choice is beneficial, we disagree that this should be a primary reason to grant ETC designation. Alternative staff notes that in ex parte

comments filed with the FCC on November 20, 2006 in CC 96-45 and WC 05-337, this Commission stated:

The universal service program was not intended to be a vehicle within the Act to promote competition. Rather, it was intended to offset any potentially adverse effects of competition to ensure that consumers in rural and high-cost areas continue to have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas at reasonably comparable rates.

In its First Universal Service Order (Order FCC 97-157) the FCC adopted the principle of competitive neutrality as a factor to be considered in the context of universal service policymaking. As originally formulated this principle means that no provider should be unduly advantaged or disadvantaged due to the availability or (lack thereof) of universal service funding. Arising from this principle was the conclusion that universal service should be “portable,” or equally available to other qualified providers. The initial rules relating to portability referred to “the provider that wins the customer” as being the recipient of any high-cost universal service funding, implying that high-cost funding would be zero sum in nature. However, this provision was inexplicably deleted from the FCC’s rules around 1999. Since that time designation – and funding -- of multiple ETCs has become the norm, which has led to a ballooning high-cost fund.

As alluded to above, this Commission has taken positions with the FCC and members of Congress designed to remedy these problems. For example, prior commissioners (and the Joint Board) endorsed a primary line restriction, whereby only one connection per household (analogous to how Lifeline is handled) would be funded. This proposal is competitively neutral because the single funded connection could be wireless or wireline. Further, it has been recommended to eliminate the identical support rule, and instead base CETC funding on their own costs, a cost proxy model, or perhaps auctions.

Alternative staff believes that the Commission should make the affirmative finding that given the current FCC policies that automatically fund multiple providers, at this time it is not in the public interest to designate Alltel as an ETC in the rural areas that are the subject of this petition. Alternative staff believes that funding multiple providers imposes an excessive burden on Florida consumers and thus is not in the public interest. Accordingly, alternative staff recommends that Alltel’s petition be denied.

Alternative Conclusion

Staff recommends that at this time Alltel should not be granted eligible telecommunications carrier status in certain rural telephone company study areas located entirely in Alltel's licensed area in the state of Florida as identified in Attachment A.

Docket No. 060582-TP

Date: June 7, 2007

Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Teitzman)

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

Attachment A

**ALLTEL COMMUNICATIONS, INC.
RURAL STUDY AREAS SERVED IN THEIR ENTIRETY**

| LEC NAME | WIRE CENTER NAME | CLLI CODE |
|----------------------------------|-------------------------|------------------|
| FRONTIER COMMUNICATIONS OF THE S | MOLINO | MOLNFLXA |
| FRONTIER COMMUNICATIONS OF THE S | WALNUT HILL | WLHLFLXA |
| GTC INC. - FL | CHATTAHOOCHEE | CHTHFLXA |
| GTC INC. - FL | PERRY | PRRYFLXA |
| GTC INC. - FL | PRT ST JOE | PTSJFLXA |
| GTC INC. - FL | TYNDALL AIR FORCE BASE | TAFBFLXA |
| QUINCY TELEPHONE CO. | QUINCY | GNBOFLXA |
| QUINCY TELEPHONE CO. | GRETNA | GRETFLXA |
| QUINCY TELEPHONE CO. | QUINCY | QNCYFLXA |