

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: March 27, 2008

TO: Office of Commission Clerk (Cole)

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

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: 04/08/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: Argenziano, Skop, McMurrian

PREHEARING OFFICER: Argenziano

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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

Case Background

On August 30, 2006, Alltel Communications, Inc. (Alltel) filed two Petitions for Designation as an Eligible Telecommunications Carrier in the State of Florida (Petitions). Docket No. 060581-TP, which was withdrawn,¹ addressed Alltel's petition requesting ETC

¹ 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.

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designation in rural telephone company study areas² that are located partially within Alltel's licensed service area and for redefinition of the study area requirement in the rural telephone company areas. Docket No. 060582-TP was opened to address the petition requesting ETC designation in rural telephone company study areas³ that are located entirely within Alltel's licensed service area in the state of Florida.

Pursuant to Order No. PSC-07-0961-PCO-TP (Order Granting Continuance), issued December 3, 2007, Docket No. 060582-TP was continued pending notification from Alltel that it was prepared to proceed.

On March 14, 2008, Alltel filed its Notice of Withdrawal of Petition, without prejudice.

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

³ Frontier Communications of the South, GTC Inc., and Quincy Telephone Company d/b/a TDS Telecom.

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 Withdrawal of its Petition, without prejudice. In addition, the Commission should find that the withdrawal renders any and all outstanding motions moot. **(TEITZMAN, POBLETE)**

Staff Analysis: It is a well established legal principle that the plaintiff's right to take a voluntary dismissal is absolute.⁴ Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.⁵ Both of these legal principles have been recognized in administrative proceedings.⁶ Accordingly, Alltel can dismiss its petition as a matter of right, which is in accord with past Commission decisions.⁷

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

⁴ Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975).

⁵ Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena, etc., 360 So. 2d 68, 69 (Fla. 1978).

⁶ Orange County v. Debra, Inc., 451 So. 2d 868 (Fla. 1st DCA 1983); City of Bradenton v. Amerifirst Development Corporation, 582 So. 2d 166 (Fla. 2d DCA 1991); Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123 (Fla. 2d DCA 1993) aff'd, 645 So. 2d 374 (Fla. 1994).

⁷ See Order No. PSC-05-0724-FOF-TP, issued July 6, 2005, in Docket Nos. 040489-TP, In re: Emergency complaint seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by XO Florida, Inc. and Allegiance Telecom of Florida, Inc. (collectively, Joint CLECs) and 040520-TP, In re: Emergency petition seeking order requiring BellSouth Telecommunications, Inc. and Verizon Florida Inc. to continue to honor existing interconnection obligations, by the Florida Competitive Carriers Association, AT&T Communications of the Southern States, LLC, MCImetro Access Transmission Services, LLC, and MCI WorldCom Communications, Inc.; Order No. PSC-02-0857-FOF-TP, issued June 24, 2002, in Docket No. 011615-TP, In re: Complaint of KMC Telecom, Inc. for enforcement of interconnection agreement with Sprint-Florida, Incorporated; But see Order No. PSC-07-0297-FOF-SU, issued April 9, 2007, in Docket No. 020640-SU, In re: Application for certificate to provide wastewater service in Lee County by Gistro, Inc. and Order No. PSC-96-0992-FOF-WS, issued August 5, 1996, in Docket No. 950758-WS, In Re: Petition for approval of transfer of facilities of Harbor Utilities Company, Inc., to Bonita Springs Utilities and cancellation of Certificates Nos. 272-W and 215-S in Lee County (voluntary dismissal cannot be utilized to divest the Commission as an adjudicatory agency of its jurisdiction granted to it by the legislature).

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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, POBLETE, MANN**)

Staff Analysis: There is nothing further in the docket for this Commission to address, and the docket should be closed.