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BEFORE THE ARIZONA CORPORATION

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Arizona Corporation Commission

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DOCKET NO. T-03887A-03-0316

IN THE MATTER OF APPLICATION OF ALLTEL  
COMMUNICATIONS, INC. FOR DESIGNATION AS  
AN ELIGIBLE TELECOMMUNICATIONS CARRIER  
PURSUANT TO SECTION 214(e) (2) OF THE  
COMMUNICATIONS ACT OF 1934.

STAFF'S CLOSING BRIEF

**I. INTRODUCTION.**

Universal service is one of the "fundamental goal[s]" of telecommunications regulation. *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 614 (5<sup>th</sup> Cir. 2000). To accomplish this goal, the Communications Act provides for the Federal Universal Service Fund (FUSF). 47 U.S.C. § 254. The FUSF satisfies the federal goal of making subsidies "explicit". 47 U.S.C. § 254(e). Replacing old implicit subsidies with explicit subsidies promotes competition by allowing direct price comparisons, and by allowing the subsidy to be "portable". Federal law allows multiple providers to receive FUSF funds for any particular area. To receive FUSF funds, a carrier must be designated an "eligible telecommunications carrier" (ETC). 47 U.S.C. § 214(e) (1). State commissions have the authority to grant a carrier ETC status. 47 U.S.C. § 214(e) (2).

Federal law provides that a state commission ruling on an ETC application must make an additional finding that an ETC designation is "in the public interest" to grant ETC status to a carrier that is seeking designation for an area serviced by a rural telephone company. 47 U.S.C. § 214(e) (2). The Communications Act defines "rural telephone company" as a local exchange carrier that meets any one of four specific tests.<sup>1</sup> 47 U.S.C. § 153(37). Alltel's requested ETC area includes areas

<sup>1</sup> The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity-- (A) provides common carrier service to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof,

1 served by certain rural telephone companies. The intervenors in this case are rural telephone  
2 companies and their state association, ALECA.

3 This Commission has repeatedly granted ETC applications to wireless carriers. *See Smith*  
4 *Bagley, Inc.*, Decision 63269 (Dec. 15, 2000); Decision 63421 (Mar. 09, 2001); Decision 65054 (Jul.  
5 26, 2002); Decision 65566 (Nov. 18, 2003); *Sprint Spectrum L.P.*, Decision 66787 (Feb. 13, 2004).  
6 Consistent with these decisions, Staff recommends that Alltel's application be approved subject to  
7 certain conditions.

8 **II. THE COMMISSION SHOULD APPROVE ALLTEL'S APPLICATION FOR ETC**  
9 **STATUS.**

10 **A. Alltel provides the nine required services.**

11 The Communications Act requires that a carrier must provide certain supported services in  
12 order to be eligible to be designated an ETC. 47 U.S.C. §§ 214(e)(1)(A) and 254(c). The FCC has  
13 by rule designated nine supported services. 47 C.F.R. § 54.101. These nine services are:

- 14 (1) Voice grade access to the public switched network;
- 15 (2) Local usage;
- 16 (3) Dual tone multi-frequency signaling or its functional equivalent;
- 17 (4) Single party service or its functional equivalent;
- 18 (5) Access to emergency services;
- 19 (6) Access to operator services;
- 20 (7) Access to interexchange service;
- 21 (8) Access to directory assistance; and
- 22 (9) Toll limitation for qualifying low-income consumers.

23 *Id.* The Commission has previously found that wireless carriers provide the nine supported services.  
24 *See Smith Bagley, Inc.*, Decision 63269 (Dec. 15, 2000) at 16; *Sprint Spectrum L.P.*, Decision 66787  
25 (Feb. 13, 2004) at 7. Staff reviewed Alltel's service and concludes that Alltel offers the nine  
26 supported services. (Staff Report, Ex. S-1 at 3-5). Further, Alltel has been designated an ETC (and  
27 therefore found to provide the nine supported services) in Arkansas, Michigan, Wisconsin, West  
28 Virginia, and Mississippi. Tr. at 28.

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26 based on the most recently available population statistics of the Bureau of the Census; or (ii) any  
27 territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of  
28 the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange  
access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local  
exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of  
its access lines in communities of more than 50,000 on February 8, 1996. 47 U.S.C. § 153(37).

1           **B. Granting Alltel ETC status is in the public interest.**

2           Because some of Alltel's requested ETC area is served by rural telephone companies, Alltel  
3 must demonstrate that granting it ETC status will serve the public interest. 47 U.S.C. § 214(e)(2).

4 Granting ETC status to Alltel would provide a number of benefits:

- 5           (1) extending access in areas where wireline service is not available or affordable;  
6           (2) extending access to advanced services, such as internet service and text messaging;  
7           (3) extending access to tribal areas;  
8           (4) increasing consumers' "range of choices";  
9           (5) providing mobility rather than service at a fixed location;  
10           (6) furthering competition.

11 (Staff Report, Ex. S-1 at 9-13). Further, Alltel has committed to cooperating with the Commission's  
12 Consumer Services Section. Tr. at 126. ALECA points to the impact on the FUSF as a factor to  
13 consider. But granting ETC status to Alltel will have a minimal impact on the FUSF, and will not  
14 reduce the FUSF funds received by Arizona's rural telephone companies. Tr. at 241-44. On balance,  
15 Staff believes that a public interest finding is warranted. (Staff Report, Ex. S-1 at 9-13).

16           In its recent *Virginia Cellular* order, the FCC established a framework to apply to "all ETC  
17 designations for rural areas pending further action by" the FCC.<sup>2</sup> The FCC indicates that  
18 commissions should "weigh numerous factors, including the benefits of increased competitive choice,  
19 the impact of multiple designations on the universal service fund, the unique advantages and  
20 disadvantages of the competitor's service offering, any commitments made regarding quality of  
21 service provided by competing providers, and the competitive ETC's ability to provide the supported  
22 services throughout the designated service area within a reasonable time frame." *Virginia Cellular* at  
23 ¶ 4.

24           These factors support granting ETC status to Alltel. Tr. at 218-20, 261-70. For example, the  
25 FCC pointed out that *Virginia Cellular* would provide service to customers that do not have access to  
26 a wireline telephone. *Virginia Cellular* at ¶ 29. Alltel will likely provide service to customers in  
27 Arizona that do not currently have access to wireline telephones. Tr. at 218. The FCC also noted  
28 that mobility would provide numerous benefits. *Virginia Cellular* at ¶ 29. The FCC noted that rural

<sup>2</sup> *Virginia Cellular, LLC*, Memorandum Opinion and Order in CC Docket No. 96-45, 19 FCC Rcd 1563, FCC 03-338, rel. Jan. 22, 2004 at ¶ 4.

1 customers must often drive long distances to reach jobs, stores, and community services. *Id.* Further,  
2 mobile service provides “access to emergency services that can mitigate the unique risks of  
3 geographic isolation associated with living in rural areas.” *Id.* (citing this Commission’s *Smith*  
4 *Bagley* order, Decision 63269). Alltel will provide these same benefits to customers in Arizona. Tr.  
5 at 218-20.

6 Another factor cited by the FCC was that Virginia Cellular had a larger local calling area than  
7 the rural ILECs in its service area. *Virginia Cellular* at ¶ 29. Alltel also has a larger local calling  
8 area than the rural ILECs in its service area. Tr. at 219-20. This will result in customers paying for  
9 fewer toll calls. *Id.*

10 The FCC also pointed to Virginia Cellular’s agreement to provide additional quality of service  
11 information. *Virginia Cellular* at ¶ 30. Staff’s proposed condition requiring Alltel to provide any  
12 quality of service data requested by Staff serves the same purpose.

13 The FCC also discussed “cream-skimming” – the practice of seeking to serve “only the low-  
14 cost, high revenue customers in a rural telephone company’s study area.” *Virginia Cellular* at ¶ 32.  
15 There is no evidence that Alltel is selecting only the most lucrative areas to provide service. Indeed,  
16 Alltel seeks designation for all the areas that it was certified to provide wireless service at the time of  
17 its Application. Further, if any of the rural telephone companies are concerned about potential  
18 cream-skimming, they may disaggregate their study areas, which ensures that lower-cost areas  
19 receive lower levels of FUSF support. (Staff Report, Ex. S-1 at 11).

20 **III. THE COMMISSION SHOULD IMPOSE REASONABLE CONDITIONS ON**  
21 **ALLTEL.**

22 **A. Staff’s recommended conditions should be adopted.**

23 Staff recommends that the Commission impose 10 conditions on Alltel’s ETC designation.  
24 Staff’s recommendations are consistent with the conditions the Commission imposed on Sprint. *See*  
25 *Sprint Spectrum L.P.*, Decision 66787 (Feb. 13, 2004). These conditions will ensure that Alltel  
26 operates in an appropriate manner and uses the FUSF funds for the purposes they are intended. For  
27 example, Staff’s tenth recommendation requires Alltel to make a detailed filing showing how it is  
28 spending the FUSF funds it receives in Arizona. Knowing that its expenditures will be publicly

1 available and will be reviewed by Staff creates a strong incentive for Alltel to spend its FUSF funds  
2 in an appropriate manner. Tr. at 127-28, 270-72. This approach is far superior to imposing inflexible  
3 government mandates regarding the use of FUSF funds. Alltel's intent is to extend its network in  
4 rural areas. Tr. at 108. Alltel will know the best way to spend FUSF funds at any particular point in  
5 time. Staff's reporting recommendation will ensure that FUSF funds are used appropriately.

6 **B. The Commission has the power to impose reasonable conditions in ETC orders.**

7 The Commission imposed reasonable conditions in its *Smith Bagley* and *Sprint* orders. See  
8 *Smith Bagley, Inc.*, Decision 63269 (Dec. 15, 2000); *Sprint Spectrum L.P.*, Decision 66787 (Feb. 13,  
9 2004). The Commission has the power to do so in this case as well. As the FCC recently stated,  
10 "nothing in section 214(e) (2) of the Act prohibits states from imposing additional eligibility  
11 conditions on ETCs as part of their designation process." *Virginia Cellular* at footnote 141 (citing  
12 *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5<sup>th</sup> Cir. 1999)). States have  
13 broad authority to impose conditions on ETC applicants, even when the applicant is a wireless  
14 carrier. See *WWC Holding Co., Inc. v. Pub. Serv. Comm'n of Utah*, 44 P.3d 714, 722-724 (Ut. 2002).  
15 This broad authority even includes the authority to impose rate conditions on wireless ETCs. *Id.*  
16 Therefore, the Commission has ample authority to impose Staff's requested conditions.

17 **C. The Commission has the authority to revoke ETC status.**

18 Once a carrier is designated as an ETC, it is obligated to use the FUSF funds it receives "only  
19 for the provision, maintenance, and upgrading of facilities and services for which the support is  
20 intended." 47 U.S.C. § 254(e). As the FCC noted, a commission that grants ETC status may revoke  
21 the ETC designation for violation of this statute, violation of the FCC's rules, or violation of the  
22 terms of the order granting ETC status. *Virginia Cellular* at ¶ 46.

23 ...

24 ...

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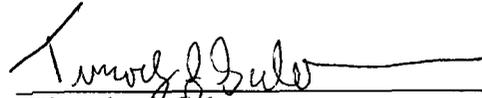
27 ...

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1 **IV. CONCLUSION.**

2 Arizona's rural residents deserve the increased service and choices that will be provided by  
3 Alltel if its application is granted. Therefore, Staff respectfully recommends that the Commission  
4 grant Alltel's application for designation as an ETC, subject to the conditions recommended by Staff.

5 **RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of March 2004.

6 

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13 The original and thirteen (13) copies of the foregoing  
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