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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
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JEFF HATCH-MILLER
MIKE GLEASON
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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION)
OF ALLTEL COMMUNICATIONS, INC.,)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER PUR-)
SUANT TO SECTION 214(e)(2) OF THE)
COMMUNICATIONS ACT OF 1934.)

DOCKET NO. T-03887A-03-0316

Arizona Corporation Commission
DOCKETED

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RESPONSE OF THE ARIZONA LOCAL EXCHANGE CARRIERS
ASSOCIATION TO THE CLOSING BRIEFS OF ALLTEL
COMMUNICATIONS AND UTILITIES DIVISION STAFF

APRIL 2, 2004

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1 **ARIZONA LOCAL EXCHANGE CARRIERS ASSOCIATION'S**
2 **RESPONSE TO THE CLOSING BRIEFS OF ALLTEL COMMUNICATIONS,**
3 **INC., AND UTILITIES DIVISION STAFF**

4 The Arizona Local Exchange Carriers Association ("ALECA")¹ submits its Response² to
5 the closing briefs of ALLTEL Communications, Inc., ("ALLTEL") and Utilities Division Staff
6 ("Staff") in the above-captioned proceeding. ALECA opposes the grant of ETC status to
7 ALLTEL because ALLTEL has not show an earnest commitment to invest in telephone
8 infrastructure for rural Arizona, and Staff's analysis of ALLTEL's application was not
9 sufficiently rigorous for this Commission to determine that the designation is in the public
10 interest. ALLTEL asks for the federal support first, and then the company will decide how to
11 deploy the publicly funded capital. This is backwards, and inconsistent with the showing that
12 has been required of Smith-Bagley in this State and other wireless carriers in other states.
13 ALLTEL's application should be denied.

14 **I. RESPONSE TO UTILITIES DIVISION STAFF.**

15 Staff asserts that this Commission has *repeatedly* granted ETC applications to wireless
16 carriers. *Staff Closing Brief* at 2, line 3 (emphasis added). In fact, this Commission has
17 previously approved ETC designations for *only two* wireless carriers. One of those carriers,
18 Sprint Spectrum, L.P., did not seek ETC status in areas served by rural telephone companies.
19 The other carrier, Smith-Bagley, focused its attention on providing telephone service to Native
20 American lands where wireline service can be very difficult to deploy. The implication of Staff's
21 assertion is that because this Commission has previously granted an ETC designation to a
22 wireless carrier, Staff and this Commission do not need to undertake in this case the type of

23 ¹ ALECA includes the following rural incumbent local exchange carriers: Arizona Telephone Company, CenturyTel, Copper Valley Telephone,
24 Fort Mojave Telephone Company, Frontier Communications, Gila River Telecommunications, Midvale Telephone Exchange, Navajo
25 Communications, San Carlos Apache Telecom Utility, South Central Communications, Southwestern Telephone Company, Table Top Telephone
26 Company, Tohono O'Odham Utility Authority and Valley Telephone Cooperative. Although Fort Mojave Telephone Company, Gila River
Telecommunications, San Carlos Apache Telecom Utility and the Tohono O'Odham Utility Authority are tribally-owned, and not subject to the
jurisdiction of the Commission, each supports ALECA's position in this case.

² Intervenor Arizona Telephone Company and Table Top Telephone Company join in ALECA's response.

1 rigorous public interest analysis required in the *Virginia Cellular Order*.³ However, each case
2 must be evaluated on its own merits.

3 Smith-Bagley presented a very different case for ETC designation. Unlike ALLTEL,
4 Smith-Bagley agreed "to expend the resources necessary to offer Basic Local Exchange
5 Telephone Service to *every potential subscriber* in its licensed service area." *Decision 63269*
6 (Docket No. T-02556A-99-0207) at 12, lines 9-11 (emphasis added). Unlike ALLTEL, Smith-
7 Bagley presented evidence that "for the Arizona Tribes within its service area, 81.6 percent of
8 the Navajo Nation, 49.3 percent of the Hopi, and 64.5 percent of the White Mountain Apache are
9 without a telephone in their home." *Id.* at 12, lines 1-3. Unlike ALLTEL, Smith-Bagley
10 committed to employ a higher quality external vehicle antenna in areas where signal is not
11 strong, to make available a higher power three-watt portable phone, and to install house-mounted
12 Yagi antennae in areas where signal strength is inadequate to provide customers with a hand-held
13 phone." *Id.* at 6, lines 4-11. Unlike ALLTEL, Smith-Bagley presented a tangible plan to extend
14 local telephone service to customers without wireline service in rural Native American lands.

15 Staff asserts that designation of ALLTEL will further competition. *Staff's Closing Brief*
16 at 3, lines 7-8. However, no one would dispute that healthy competition exists today, as
17 ALLTEL serves over 330,000 customers in Arizona, not to mention the multiplicity of other
18 wireless carriers operating in the State. This wireless competition developed—and continues to
19 develop—without federal subsidies. Staff and ALLTEL place exaggerated weight on increasing
20 competition. In its *Virginia Cellular Order*, the Federal Communications Commission ("FCC")
21 recently declared that "the value of increased competition, by itself, is not sufficient to satisfy the
22 public interest test in rural areas." *Virginia Cellular Order* at ¶ 4.

23 The other purported public interest benefits listed by Staff are no more compelling. Staff
24 asserts that ALLTEL's designation will extend access in areas where wireline service is not
25 available or affordable. *Staff's Closing Brief* at 3, lines 5-8. No such areas were identified in

26 ³ *In the Matter of Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*,
Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004).

1 ALLTEL's application or the record in this proceeding. Staff asserts that ALLTEL's designation
2 will extend access to advanced services such as Internet and text messaging. *Id.* However,
3 advanced services are not supported by the federal universal service fund. Staff asserts that
4 access will be extended in tribal areas. *Id.* Unlike Smith Bagley, ALLTEL presented no plans to
5 extend service to tribal areas. Staff asserts that ALLTEL's designation will increase the range of
6 consumer choices and will provide mobility. However, consumers in the areas served by
7 ALLTEL already have choice and mobility. Other than the non-specific assertion that ALLTEL
8 will expand its infrastructure in rural Arizona, there is little evidence to support a finding that
9 ALLTEL's designation as an ETC is in the public interest.

10 The FCC's *Virginia Cellular Order* sets forth a number of factors to be addressed in
11 evaluating ETC applications. One such factor is whether the ETC designation will result in
12 creamskimming in rural areas. Although Staff purportedly found no evidence that ALLTEL is
13 selecting only the most lucrative areas to provide service, the FCC requires that state
14 commissions go beyond the *intent* of the applicant and look at the *effect* of the designation, as set
15 forth in the *Virginia Cellular Order*:

16 [F]or reasons beyond a competitive carrier's control, the lowest cost portion of a
17 rural study area may be the only portion of the study area that a wireless carrier's
18 license covers. Under these circumstances, granting a carrier ETC designation for
19 only its licensed portion of the rural study area may have the same effect on the
20 ILEC as rural creamskimming.

21 *Virginia Cellular Order* at ¶ 33. Unlike the FCC, which analyzed the population density
22 of each of the affected wire centers in the *Virginia Cellular Order*, Staff did not analyze whether
23 the designation of ALLTEL will have the effect of creamskimming in the rural areas.

24 Another factor considered in the *Virginia Cellular Order* was the commitment of
25 *Virginia Cellular* to provide the number of customer complaints per 1,000 handsets on an annual
26 basis. *Virginia Cellular Order* at ¶ 30. While Staff has recommended that ALLTEL "provide
service quality data and other information as may be required by the Commission," Staff has not

1 specified what information should be submitted or even whether it will actually require the
2 submission of service quality data. *See Staff Report* at 13, and *Errata to Staff Report* dated
3 January 23, 2004, submitted as Staff Exhibit 2.

4 For the reasons set forth above, ALECA does not believe that the Staff's analysis of
5 ALLTEL's application has been sufficiently rigorous. ALECA also notes that when the New
6 Mexico Public Regulation Commission's hearing examiner recently vacated the post-hearing
7 briefing schedule regarding ALLTEL's petition for designation as an ETC in New Mexico (Case
8 No. 03-00283-UT) and scheduled a status conference to discuss the impact of the *Virginia*
9 *Cellular Order*, ALLTEL subsequently withdrew its petition. *See Motion for Leave to Withdraw*
10 *Petition of ALLTEL Communications* attached hereto as Exhibit "A."

11 **II. RESPONSE TO ALLTEL.**

12 Boiled down, the crux of ALLTEL's public interest showing is that its designation as an
13 ETC will increase competition and consumer choice. ALLTEL asserts that public benefit begins
14 with additional customer choice. *Post Hearing Brief of ALLTEL* at 11, line 2. However, Arizona
15 customers within ALLTEL's licensed service area *already have ALLTEL* as a choice, along with
16 a number of other wireless carriers, an incumbent local exchange carrier, and possibly a cable
17 provider and an Internet service provider. While ALLTEL has represented that it will expand its
18 infrastructure in rural areas, it has not provided a single construction plan, capital budget, target
19 area, population study or construction schedule. ALECA is not suggesting that Congress
20 intended for applicants such as ALLTEL to provide detailed construction plans and capital
21 budgets for every project to be constructed, but ALLTEL must certainly provide some kind of
22 plan beyond the mere words offered in this proceeding. The FCC supported this position in its
23 *Western Wireless Order*:⁴

24 We caution that a demonstration of the capability and commitment to provide
25 service must encompass something more than a vague assertion of intent on the

26 ⁴ *In the Matter of Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Commission*, Declaratory Ruling, CC Docket No. 96-45, FCC 00-248, 15 F.C.C.R. 15168 (rel. August 10, 2000) at 15,178, ¶ 24.

1 part of a carrier to provide service. The carrier must reasonably demonstrate to
2 the state commission its ability and willingness to provide service upon
designation.

3 An incumbent local exchange carrier is required to construct telecommunications
4 infrastructure before it is entitled to reimbursement from the federal high cost fund. Certainly, it
5 is appropriate and lawful for this Commission to require ALLTEL to provide tangible plans of
6 how it will deploy federal high cost support if designated. In responding to the Administrative
7 Law Judge's question "*Can the Arizona Corporation Commission limit where and how the FUSF*
8 *are spent?*", ALLTEL sidestepped the question by stating that it will spend rural FUSF in rural
9 areas. *Post Hearing Brief of ALLTEL* at 18, lines 19-24. To be clear, this Commission has the
10 authority to place limitations on where and how federal support monies are spent. *See Sections*
11 *253(b) and 254(f) of the Telecommunications Act of 1996; Virginia Cellular Order at ¶ 4.*

12 If the Commission grants ETC status to ALLTEL, the Commission should make certain
13 that federal high cost support received by ALLTEL from rural service areas in the State of
14 Arizona is used to construct telecommunications infrastructure in areas served by rural telephone
15 companies.

16 **III. CONCLUSION.**

17 The ALECA member companies do not fear competition, as ALLTEL alleges in its Post
18 Hearing Brief. These rural carriers of last resort already face robust competition from wireless
19 carriers (including ALLTEL), cable providers and Internet service providers. Each company has
20 made an important and tangible commitment to provide local exchange service in rural Arizona,
21 a commitment that is backed up by years of reliable service and many millions of dollars of
22 investment. ALECA opposes ALLTEL's application because ALLTEL failed to demonstrate the
23 requisite commitment to serve rural Arizona, and Staff failed to conduct a rigorous evaluation of
24 ALLTEL's application sufficient to enable the Commission to conclude that the ETC designation
25 is in the public interest. Accordingly, ALLTEL's application should be denied.

26

1 RESPECTFULLY submitted this 2nd day of April, 2004.

2 SNELL & WILMER

3 

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9 ORIGINAL AND THIRTEEN (13) copies filed
10 this 2nd day of April, 2004, with:

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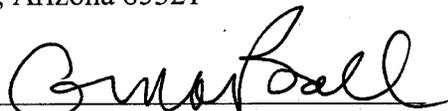
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EXHIBIT A

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF ALLTEL)	
COMMUNICATIONS, INC.'S PETITION)	
FOR DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER)	Case No. 03-00283-UT
PURSUANT TO SECTION 214(e)(2) OF)	
THE COMMUNICATIONS ACT OF 1934)	
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MOTION FOR LEAVE TO WITHDRAW PETITION

COMES NOW ALLTEL Communications, Inc. ("ALLTEL" or "Petitioner"), by and through its counsel of record, Jontz Dawe Gulley & Crown, P.C. (Jeffrey H. Albright), and in accordance with 17.1.2.10(D), hereby moves for leave to withdraw its Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934 ("Petition") and in support thereof states:

1. ALLTEL filed its Petition on May 19, 2003.
2. A hearing was held on November 19-20, 2003.
3. A status conference was held on March 16, 2004 to revise the procedural schedule.
4. ALLTEL has elected to withdraw its petition for ETC designation.
5. Counsel for Valor Telecommunications of Texas, LP, Staff and New Mexico Exchange Carriers Group were contacted regarding this Motion and have advised that they do not object to the withdrawal. Counsel for Mescalero Apache Telecom, Inc. was not available to respond.

WHEREFORE, ALLTEL respectfully requests that its Motion be granted and it be given leave to withdraw its Petition.

Respectfully submitted,

JONTZ DAWE GULLEY & CROWN, P.C.

By: _____

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF ALLTEL)
COMMUNICATIONS, INC.'S PETITION)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER) Case No. 03-00283-UT
PURSUANT TO SECTION 214(e)(2) OF)
THE COMMUNICATIONS ACT OF 1934)
_____)

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of *ALLTEL Communications, Inc.'s Motion for Leave to Withdraw Petition* were hand-delivered and/or mailed via U.S. mail and sent via electronic mail to the parties listed below on this 25th day of March 2004, together with a copy of this Certificate of Service.

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