

ORIGINAL

EXCEPTION



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

Docket No. T-03887A-03-0316

Arizona Corporation Commission

DOCKETED

AUG 25 2004

DOCKETED BY

EXCEPTIONS OF ALLTEL COMMUNICATIONS, INC.

ALLTEL Communications, Inc. ("ALLTEL") appreciates the Administrative Law Judge's recognition of ALLTEL's qualification as an Eligible Telecommunications Carrier ("ETC") and the benefits to Arizona consumers associated with such ETC designation. ALLTEL submits the following Exceptions to the Recommended Opinion and Order ("ROO") in this docket in order to ensure that those benefits to consumers are brought to fruition.

ALLTEL sought ETC status in Arizona so that it could obtain support from the federal Universal Service Fund ("FUSF") to improve and expand ALLTEL's facilities and services to consumers in Arizona, particularly consumers in rural Arizona. Currently, all Arizona wireless telecommunications consumers are paying into the FUSF, but there has been little return of those payments to Arizona for the benefit of Arizona wireless consumers. ALLTEL's Arizona wireless customers alone contribute over \$5 million annually to the FUSF. Granting ETC status to ALLTEL free of unacceptable conditions and in a manner which recognizes the competitive wireless markets in which ALLTEL operates will allow Arizona wireless consumers to realize benefits from those FUSF contributions in the form of improved and expanded wireless communications services.

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Significantly, the ROO recognizes that Arizona consumers will benefit if ALLTEL is granted ETC status and can receive FUSF support to improve ALLTEL's facilities and services in Arizona. However, the ROO would deny those benefits to consumers by inappropriately conditioning ALLTEL's ETC status in a manner that would place ALLTEL at a significant competitive disadvantage in a very competitive wireless marketplace. Specifically, the ROO sets forth ten conditions in Paragraph 72 with which ALLTEL must comply. Reasonable operational and monitoring requirements as a condition of obtaining ETC status are acceptable; however, to the extent that the burdens of any conditions outweigh the benefits that FUSF support would provide and place ALLTEL at a competitive disadvantage, ALLTEL would be unable to accept ETC designation. Some of the conditions specified in the ROO, as discussed in these Exceptions, would result in burdens on ETC service that would subject competitive wireless service to unnecessary regulation. Reasonable conditions placed on a carrier's ETC status should focus on two key obligations: (i) that the FUSF monies be expended in a manner that is consistent with FUSF requirements and (ii) that the carrier provide Lifeline and Link Up services in the areas where ETC status is granted. This focus would provide meaningful conditions that do not place ALLTEL at a competitive disadvantage compared to other wireless carriers, thereby hindering ALLTEL's ability to serve its customers.

ALLTEL remains willing to abide by Condition Nos. 1, 7, 8, 9 and 10 as set forth in Paragraph 72 of the ROO. Unfortunately, for ALLTEL to agree to the other conditions reflected in Paragraph 72 of the ROO would put ALLTEL at a significant competitive disadvantage to the detriment of its customers. With these Exceptions, ALLTEL is proposing to either modify or eliminate those conditions. As modified, the remaining conditions still provide this Commission adequate assurance that the FUSF monies will be properly utilized in Arizona by ALLTEL.

Condition No. 2

Condition No. 2 of the ROO provides as follows:

Alltel shall file an informational tariff with the Commission,

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setting forth the rates, terms and conditions for its general services (including, but not limited to, its Lifeline and Link Up service) and other services for which it receives FUSF support in the areas approved herein within thirty (30) days of this Decision. On an ongoing basis, Alltel shall comply with A.R.S. § 40-367 in amending its tariffs.

Condition No. 2 is unnecessary and unacceptable given the highly competitive market-driven wireless industry. This condition is unnecessary because ALLTEL's service offerings are already available on the Company's website, which is kept up-to-date, and customers are provided service terms and conditions at the point of sale. This information already informs the Commission and customers of present service plans.

The application of A.R.S. § 40-367 to competitive wireless service is of particular concern. Condition No. 2 would require ALLTEL to provide the Commission with at least 30-days notice before it changed any rate or service. This requirement is unworkable when one considers that the wireless industry is fully competitive with markets occupied by multiple carriers. The marketplace appropriately and effectively determines rates and response times required to be met by carriers that must meet customers' demands to retain their business. Very simply, ALLTEL cannot be competitive in a competitive market if it is forced to delay its competitive responses by 30 days. Such delay would be equally harmful to consumers by denying them a timely competitive response from ALLTEL. Moreover, ALLTEL's wireless rates and services are developed across competitive market areas that transcend state boundaries and are not Arizona-specific. Finally, the condition attempts to assert control over ALLTEL's wireless rates, which authority is preempted by federal law. *See*, §332 of the Telecommunications Act of 1996.

In short, A.R.S. §40-367 would have negative national impacts that ALLTEL cannot accept. Considering the above together with the evidence presented in this matter, Condition No. 2 should be eliminated.

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1 **Condition No. 3**

2 Condition No. 3 of the ROO provides as follows:

3 Alltel shall publicly file with its informational tariff accurate
4 coverage-area maps of the portions of its service areas for which
5 this Decision designates it an ETC within 30 days of this
6 Decision. Alltel shall submit to the Commission, by September 15
7 of each year, commencing with 2005, the most accurate coverage-
8 area maps available. Alltel shall also provide updated coverage-
9 area maps upon request by the Commission. On an ongoing basis,
10 prior to entering into any service contract with a potential
11 customer, Alltel shall provide that potential customer with copies
12 of the most accurate coverage-area maps available, in order to
13 enable the potential customer to ascertain where, within the ETC
14 designation areas, Alltel can actually provide service to that
15 customer.

16 If this condition is intended to address customers' needs, it is wholly unnecessary. ALLTEL
17 has committed to complying with the CTIA Consumer Code for Wireless Service ("CTIA
18 Consumer Code"), which provides in pertinent part the following:

19 [Wireless carriers] will make available at point of sale and on their
20 web sites maps depicting approximate voice service coverage
21 applicable to each of their rate plans currently offered to
22 consumers. To enable consumers to make comparisons among
23 carriers, these maps will be generated using generally accepted
24 methodologies and standards to depict the carrier's outdoor
25 coverage. All such maps will contain an appropriate legend
26 concerning limitations and/or variations in wireless coverage and
27 map usage, including any geographic limitations on the
availability of any services included in the rate plan. Wireless
carriers will periodically update such maps as necessary to keep
them reasonably current.

ALLTEL also provides customers a 14-day service trial to use ALLTEL's wireless service
that allows customers to confirm that the service is sufficient to meet their needs. If the customer is
not satisfied with ALLTEL's coverage in this 14-day service trial, the customer can cancel the
service with no penalty. Finally, ALLTEL maintains a coverage map on its website. Thus,

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1 Condition No. 3 is unnecessary as customers' needs are already being met through ALLTEL's
2 compliance with the CTIA Consumer Code, its 14-day service trial, and its website posting.

3 If Condition No. 3 is intended to require publication of radio frequency ("RF") maps, then
4 it is unacceptable for additional reasons. The RF map is a highly sensitive and proprietary
5 document that must remain confidential due not only to competitive concerns (as the maps would
6 provide ALLTEL's competitors unauthorized insight into ALLTEL's facilities) but also for reasons
7 of national security as it reveals cell tower and telecommunications infrastructure locations.
8 ALLTEL has previously agreed to provide the Staff updates of its detailed RF maps depicting
9 coverage of its network pursuant to the protective agreement between Staff and ALLTEL. In fact,
10 ALLTEL has already provided the current version of that RF map to Commission Staff pursuant to
11 the protective agreement.

12 In consideration of the above, Condition No. 3 should be amended as follows:

13 ALLTEL will make available at point of sale and on its website its
14 most current marketing coverage-area map depicting approximate
15 voice service coverage applicable to each of its rate plans
16 currently offered to consumers. Any such marketing coverage-area
17 map will contain an appropriate legend concerning limitations
18 and/or variations in wireless coverage and map usage, including
19 any geographic limitations on the availability of any services
20 included in the rate plan. Additionally, ALLTEL shall provide to
21 Commission Staff, on a confidential basis and pursuant to a
22 protective agreement, updated radio frequency coverage-area
23 maps of Arizona upon request by the Commission Staff.

24 **Condition No. 4**

25 Condition No. 4 of the ROO provides as follows:

26 Alltel shall provide service quality data and other information as
27 may be required by the Commission. Alltel shall provide such data
within the timeframe given in Staff's request to Alltel .

The requirement in Condition No. 4 that a wireless carrier provide service quality data to
the Commission is vague, open-ended, and inappropriate in the competitive wireless marketplace.
The highly competitive conditions in the wireless marketplace are ample and fully discipline
wireless carriers, making any other regulation unnecessary and detrimental to consumers. If the

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1 service quality of a wireless carrier is deficient, customers select other carriers. The CTIA
2 Consumer Code states that carriers must provide customers a toll-free telephone number to access
3 customer service support during normal business hours. Additionally, pursuant to the CTIA
4 Consumer Code, wireless carriers have committed to respond to the agency within 30 days of
5 being notified of a consumer complaint. These protections together with the fact that consumers
6 can simply choose another carrier's wireless service are adequate to assure that ALLTEL maintains
7 the quality of its service. Placing additional service quality restrictions and regulation on ALLTEL
8 is unnecessary and unacceptable. Accordingly, Condition No. 4 should be deleted.

9 **Condition No. 5**

10 Condition No. 5 of the ROO provides as follows:

11 Alltel shall submit any consumer complaints that may arise from
12 its ETC service offerings to the Commission's Consumer Service
13 Division, provide a regulatory contact, and comply with the
14 provisions of the Commission's customer service rules, including
15 establishment of service, minimum customer information
16 requirements, service connection and establishment, provision of
17 service, billing and collection, and termination of service. Alltel
18 shall include the Commission's Consumer Service Division's
19 telephone number on all bills issued to customers in its ETC
20 service area.

21 This condition is inappropriate as it subjects ALLTEL's wireless service in Arizona to
22 Commission rules that were developed for incumbent monopoly wireline providers. Virtually all
23 of ALLTEL's provisioning and operational procedures are developed across its competitive market
24 areas which transcend state boundaries. Subjecting certain services to a state-specific set of
25 procedures would be costly and inefficient and would deprive Arizona consumers of the potential
26 benefits of ALLTEL being designated as an ETC.

27 ALLTEL recognizes that Lifeline and Link Up services may merit special consideration.
As indicated in the hearing in this matter, ALLTEL is willing to work with Staff to develop a
complaint procedure for Lifeline and Link Up customers in Arizona and to identify customer
service rules that are appropriately and feasibly applied to wireless Lifeline and Link Up services.

1 Therefore, Condition No. 5 should be amended as follows:

2 ALLTEL shall work with Staff to develop a procedure to address
3 consumer complaints that may arise from its Lifeline and Link Up
4 service offerings in Arizona, provide a regulatory contact, and
5 identify appropriate customer service rules for Lifeline and Link
Up services. (Paragraph 72(5) of the ROO at page 23, line 11.)

6 **Condition No. 6**

7 Condition No. 6 of the ROO provides as follows:

8 Alltel shall submit its advertising plan for Lifeline and Link Up
9 services to Staff for review prior to commencing service.

10 ALLTEL understands that this condition is intended to insure that Commission Staff is
11 kept apprised of ALLTEL's advertising for Lifeline and Link Up service. ALLTEL is willing to
12 comply with that understanding of the condition; however, the word "review" suggests that
13 Commission Staff may have to formally approve any advertising. This is unnecessary and
14 inappropriate given the competitive wireless marketplace as well as particularly burdensome to
15 Commission Staff. Commission Staff has recognized that advertising approval would be a burden
16 on the Staff and has opposed such. *See*, A.A.C. R14-2-1913, R14-2-2011. Moreover, approval of
17 advertising is unnecessary as ALLTEL is already subject to laws against deceptive or fraudulent
18 advertising. Thus, Condition No. 6 should be amended as follows in order to clarify that ALLTEL
19 will inform the Commission of its Lifeline and Link Up advertising in Arizona:

20 ALLTEL shall provide Staff with a copy of its advertising for
21 Lifeline and Link Up service. (Paragraph 72(6) of the ROO at
page 2, line 16.)

22 **CONCLUSION**

23 Again, ALLTEL appreciates the recognition that it qualifies for ETC status in Arizona and
24 submits these Exceptions to ensure that no unacceptable conditions are placed on that ETC
25 designation which would position ALLTEL at a competitive disadvantage compared to other
26 wireless carriers, thereby resulting in ALLTEL being unable to accept ETC designation to the
27 detriment of Arizona wireless consumers. As an ETC, ALLTEL will be able to obtain for the

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1 benefit of Arizona consumers some of the FUSF dollars which they have been required to pay.
2 Condition Nos. 2 through 6 should be modified or eliminated consistent with these Exceptions in
3 order to protect the public interest without placing unnecessary and unacceptable burdens on
4 ALLTEL's ability to serve its customers in the competitive wireless marketplace.

5 RESPECTFULLY SUBMITTED August 25, 2004.

6
7 ALLTEL COMMUNICATIONS, INC.

8
9 By 

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