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May 12, 2006

Ms. Ralayne Wiest, Commission Counsel
South Dakota Public Utilities Commission
Capital Building, 1st Floor
Pierre, South Dakota 57501-5070

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**RE: In the Matter of the Adoption of Rules Regarding the Eligibility, Certification and Reporting Requirements for Eligible Telecommunication Carriers
DOCKET NO. RM-06-001**

Dear Ms. Wiest:

WWC Holding Co., Inc. hereby submits the original and three (3) copies of comments in the above-captioned proceeding.

If you have any questions or comments, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Rae Ann Kelsch".

Rae Ann Kelsch
Staff Manager, External Affairs

Cc: Suzie Rao

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE ADOPTION)
OF RULES REGARDING THE ELIGIBILITY,)
CERTIFICATION AND REPORTING)
REQUIREMENTS FOR ELIGIBLE)
TELECOMMUNICATIONS CARRIERS)

DOCKET NO. RM-06-001

COMMENTS OF ALLTEL COMMUNICATIONS, INC.

Comes now Alltel Communications, Inc. ("Alltel"), an entity providing wireless service in South Dakota, pursuant to the South Dakota Public Utilities Commission ("Commission") Notice of Public Hearing to Adopt Rules, and submits the following comments regarding general requirements for designation and certification of Eligible Telecommunications Carriers ("ETCs") in South Dakota. As a wireless ETC, Alltel has an interest in the resolution of these issues by the Commission and will show through these comments that the Commission should adopt the ETC guidelines established in the FCC's March 17, 2005 Order¹ ("FCC Order"), with the exception of a five-year build-out plan, which should be replaced with a two-year build-out plan. By doing so, the Commission will ensure the efficiency, uniformity and sufficiency of ETC requirements, while continuing to be a national leader in making available to South Dakota consumers access to basic and advanced telecommunications services.

General Comments

In the proposed rules, the Commission generally followed the model rules established in the FCC Order. Alltel supports the Commission's effort to adopt the FCC's rules for use in

designating and certifying ETCs in South Dakota, but is concerned about some of the specific language contained in the proposed rules.

The FCC Order is the result of an exhaustive investigation undertaken by the Joint Board wherein the Joint Board held public hearings and received significant input from service providers, consumer representatives, and state and federal regulators. This input was critical to develop a comprehensive recommendation regarding ETC matters for consideration by the FCC. Subsequent to the filing of the Joint Board's recommendation, the FCC received and considered additional comments from a broad range of parties.

The result of these extensive national efforts is a highly debated, thoroughly analyzed set of comprehensive rules adopted by the FCC for use in designating and certifying ETCs. The FCC encouraged states that exercise jurisdiction over ETC designations to adopt the requirements of the FCC Order.² The FCC emphasized that application of the requirements by the FCC and state commissions will provide a more predictable designation process and improve the sustainability of the universal service fund.³

Alltel agrees with the FCC's statements. While the FCC Order does not resolve all issues in the exact manner that Alltel would have preferred, the FCC Order provides a mechanism that, if applied uniformly to ETCs, will achieve the objectives of universal service envisioned by the Telecommunications Act of 1996 in a sufficient and sustainable manner. Alltel encourages the Commission to adopt the standards established in the FCC Order and to refrain from adopting state specific standards that may not be consistent with the national standards, or that result in significant costs without any real corresponding public benefits. Other states where Alltel serves

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, released March 17, 2005, FCC 05-26. (FCC Order)

² FCC Order at paragraph 2.

as an ETC have adopted the FCC rules (New Mexico, Minnesota, Michigan, Nebraska, West Virginia) or are presently considering adopting them (Mississippi, Louisiana, Texas, South Dakota, North Dakota, Wyoming, Wisconsin, Iowa, Kansas). Adopting the FCC rules will bring efficiency and predictability to the ETC process, thereby benefiting consumers.

These FCC standards have proven to be effective in establishing a challenging ETC designation process and protecting the on-going integrity of universal service funding. The Commission should therefore adopt the requirements contained in the FCC Order, except as explained herein.

Specific Comments

Proposed Rule 20:10:32:43.02 – This proposed rule would require that an applicant requesting ETC status submit a two-year plan that describes proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Alltel strongly supports the Commission's modification of the FCC's five-year service improvement plan requirement to a two-year plan.

The FCC specified the requirements for a five-year build out plan in paragraph 23 of the FCC Order. On June 24, 2005, the CTIA filed a Petition for Reconsideration with the FCC in CC Docket 96-45, asking that the FCC replace the five-year planning requirement with a twelve to eighteen month plan. In its petition the CTIA stated, "Wireless carriers face too many variables to accurately and predictably project or plan their network improvements for five years in the future. Moreover, the variables are often outside the control of the wireless carrier. Technological innovations and changing customer needs require carriers to constantly update

³ FCC Order at paragraphs 1 and 2.

their plans. Population patterns change, affecting where improvements in the network are needed.” Alltel agrees with CTIA. Five-year plans are not realistic for any American business and especially not for telecommunications providers because of the rapidly changing marketplace and the rapid evolution of new technologies. Any attempt to develop a network plan beyond an eighteen to twenty-four month window is extremely unreliable. Market conditions and technology are changing so rapidly that any plans beyond this window are certain to change greatly.

Alltel believes that the Commission will be better served, and that carriers will be able to provide more useful information, under the Commission’s proposed two-year service improvement plan requirement plan than under a five-year plan. The Commission’s proposal to require a two-year plan rather than a five-year plan will accomplish the same objective in a more efficient manner. The Commission will still receive build out information well in advance of the actual build out, but at a time when the provided information is more accurate. The last three years of data that would be provided under a five-year plan will be provided as part of subsequent two-year plans, when it is more reflective of actual expenditures. Alltel supports the Commission’s proposed two-year service improvement plan requirement.

Proposed Rule 20:10:32:43.04 – This proposed rule would require an applicant for ETC designation to demonstrate that it will comply with applicable consumer protection and service quality standards. The proposed rule provides that “A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service (“CTIA Consumer Code”) *may* satisfy this requirement.” (emphasis added). The word “may” in the proposed rule, adds a degree of uncertainty about whether or not the



Commission intends for compliance with the CTIA Consumer Code to satisfy the requirement for wireless carriers. In its March 17, 2005 order, the FCC concluded that “a commitment to comply with the CTIA Consumer Code *would* satisfy this requirement for wireless carriers seeking designation before this Commission.”⁴ (emphasis added) Following a thorough review and debate of all universal service designation and certification issues the FCC determined that compliance with the CTIA Consumer Code by wireless carriers is appropriate to ensure adequate consumer protection and service quality. Alltel requests that the Commission confirm that for wireless ETCs, compliance with the CTIA Consumer Code is adequate to ensure compliance with service quality and consumer protection standards in South Dakota. Many wireless carriers operate in multiple states. Alltel, for example, has wireless operations in 35 states. The application of unnecessary regulations would result in inefficiencies for providers and added costs for consumers by requiring providers to comply with different rules in every state. Adoption of the FCC language will clarify the Commission’s intention and still ensure that adequate and sufficient consumer protection and service quality is maintained consistent with the standards adopted by the FCC.

Proposed Rule 20:10:32:43.05 – Similar to the FCC’s requirements, this proposed rule requires ETCs to offer a local usage plan or plans that is similar to those offered by the ILEC in the service area for which the carrier is seeking ETC designation. Alltel supports the Commission’s adoption of the FCC’s requirement regarding the offering of local usage, but requests that the Commission clarify that comparable local usage does not mean requiring identical local usage or rates for incumbent LECs and wireless ETCs because many factors must

⁴ FCC Order at paragraph 28.

be considered in determining comparable value of local usage plans.

Local usage is a concept that is rapidly changing in today's world of telecommunications and is evolving into something quite different than in the days of monopoly wireline service. Then, local usage generally meant unlimited calling to a relatively small geographic area. Calls beyond a very limited geographic area resulted in additional toll charges often based on both time and distance. As competition entered the telecommunications marketplace, providers found that while some customers were satisfied with existing local calling scopes, others preferred a much broader geographic area for local calling without necessarily needing unlimited local usage. The competitive marketplace provides many different options for local calling from which consumers may choose. Different competitors offer different options to consumers and consumers are free to choose the option and carrier that best fits their individual preferences. The idea that one size fits all no longer appeals to today's consumers.

Consumers are the winners in a competitive market as each consumer can choose the services and service provider that meet his or her needs most effectively. Consumers consider many factors as they evaluate their choice of service. Some consumers prefer low monthly rates and may opt for a limited geographic calling area and limited minutes. Consumers who make most of their calls to a small local area may prefer a larger number of minutes or even unlimited minutes as opposed to a broader local calling area. Consumers who spend much of their workday outside of their home or office may place significant value on mobility and larger local calling areas rather than on a large number of local minutes. The value of various local-calling options varies greatly from consumer to consumer. Today's competitive marketplace gives consumers the opportunity to choose a plan or service provider that gives them the best value

based on their individual preferences.

The FCC was correct when it chose not to mandate a specific number of local minutes for ETC purposes. The FCC specifically noted that:

...an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area. We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers. Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.⁵

The reality of today's market is that if a provider does not provide value to a consumer, then the consumer will not purchase service from that provider. To the extent that consumers choose to purchase service from one provider over others, then that provider must be providing adequate local usage. Unlike wireline carriers, when a competitive ETC does not retain a customer, it also loses the federal support associated with that customer. Therefore, the customer determines not only what service to use and what rate plans meet expectations, but also whether the competitive ETC continues to receive federal universal service support. It would be foolhardy for a carrier to undergo the designation process and not provide competitive rate plans that are attractive in the marketplace.

Proposed Rule 20:10:32:43.06 – This proposed rule would require that each ETC applicant “certify that the applicant acknowledges the Commission may require it to provide

⁵ FCC Order at Paragraph 33.

equal access to long distance carriers if no other ETC is providing equal access in the service area.”

Alltel recognizes that, as an ETC, it may be required to provide equal access in the event that no other ETC is providing equal access in their service area. Alltel’s only concern with the proposed language is that the word “Commission” in this context refers to the South Dakota Public Utilities Commission. Federal law, however, reserves to the FCC the authority to require a wireless carrier to provide equal access⁶. Therefore, in order to comply with federal law, the proposed language for this rule should be modified to read: “certify that the applicant acknowledges that it may be required by the FCC to provide equal access to long distance carriers if no other eligible telecommunications carrier is providing equal access in the service area.”

This change will resolve the jurisdictional conflict while still maintaining the recognition that a wireless ETC may be required to provide equal access if, at some point in the future, it becomes the sole ETC serving a certain service area.⁷

Proposed Rule 20:10:32:54 (2) – The Commission proposes in this section that all ETCs annually provide detailed information on service outages. All carriers providing voice

⁶ see 47 U.S.C. § 332 (c)(8)

⁷ An additional alternative would be to delete the reference altogether. Because the language only contemplates an acknowledgment of existing federal law and FCC regulations, and the Commission has no delegated authority under those specific regulations, the language has no operative value. Its deletion would be of no consequence.

communications (including all designated ETCs) are now subject to federal outage reporting requirements.⁸

The FCC rules promulgated in the *Outage Order* (47 C.F.R. § 4.1 *et seq.*) impose detailed reporting requirements, which are specifically tailored to the technology used by each type of voice service provider. For example, wireless carriers have the following obligation:

Wireless. All wireless service providers shall submit electronically a Notification to the [FCC] within 120 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration: (1) of a Mobile Switching Center (MSC); (2) that potentially affects at least 900,000 user minutes of either telephony and associated data (2nd generation or lower) service or paging service; (3) that affects at least 1,350 DS3 minutes; (4) that potentially affects any special offices and facilities (in accordance with paragraphs (a) – (d) of section 4.5) other than airports; or (5) that potentially affects a 911 special facility (as defined in (e) of section 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 911 facility as the provider's contact person for communications outages at that facility, and they shall convey to that person all available information that may be useful to the management of the affected facility. (DS3 minutes and user minutes are defined in paragraphs (d) and (e) of section 4.7.) In determining the number of users potentially affected by a failure of a switch, a concentration ratio of 8 shall be applied. For providers of paging service solely, however, the following outage criteria shall apply instead of those in subparagraphs (1) – (3), above: Notification must be submitted if the failure of a switch for at least 30 minutes duration potentially affects at least 900,000 user-minutes. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the [FCC]. Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of section 4.11.⁹

Accordingly, the Commission should simply require designated ETCs to file with the Commission for informational purposes a copy of any FCC-mandated outage reports pursuant to

⁸ In the Matter of New Part 4 of the Commission's Rules Concerning Disruptions to Communications, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-188, 19 FCC Rcd. 16830 (rel. Aug. 19, 2004) ("Outage Order").

⁹ See 47 C.F.R. § 4.9(b)

47 C.F.R. § 4.1, *et seq.* Subject to appropriate safeguards to ensure confidentiality of such filings, copies of these reports could be annually filed with the Commission in lieu of the requirements set forth in Proposed Rule 39.5(6).

With respect to confidential treatment of the outage reports, the FCC has determined that such data is highly sensitive and protected from public dissemination under the Freedom of Information Act:

The overwhelming majority of the commenting parties, including the Department of Homeland Security (“DHS”), have demonstrated that the outage reports will contain sensitive data, which requires confidential treatment under the Freedom of Information Act (“FOIA”). This data, though useful for the analysis of past and current outages in order to increase the reliability and security of telecommunications networks in the future, could be used by hostile parties to attack those networks, which are part of our Nation’s critical information infrastructure. The disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity. We therefore will treat the information that will be provided as confidential. This information will be withheld from disclosure to the public in accordance with the Freedom of Information Act.¹⁰

Accordingly, any outage data to be submitted to the Commission must also be afforded strict confidential treatment.

Proposed Rule 20:10:32:54 (7) – This proposed rule addresses the annual certification requirements related to providing comparable local usage. Alltel provided comments regarding this issue above in response to proposed rule 20:10:32:43.05 and respectfully requests the Commission to take note of those comments as they apply to this proposed rule as well.

Proposed Rule 20:10:32:54 (8) – This proposed rule addresses the annual certification requirements related to the potential provisioning of equal access. Alltel provided comments

regarding this issue above in response to proposed rule 20:10:32:43.06 and respectfully requests the Commission to take note of those comments as they apply to this proposed rule as well.

Conclusion

Alltel appreciates the opportunity to provide comments to the Commission regarding these proposed rules. Following a national ETC model will serve to ensure consistency with the FCC designation process and with designation processes of many other states, provide for a more predictable and efficient process for ETCs, and ensure that consumers enjoy the benefits intended by the creation of the Federal Universal Service Fund. Alltel requests that the Commission adopt the limited modifications and clarifications to these proposed rules recommended by Alltel herein.

¹⁰ Outage Order. ¶3.