



January 12, 2004

Marlene H. Dortch,  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service, CC*  
Docket 96-45, **Comments on Petitions of ALLTEL Communications,  
Inc. for designation as an ETC in the States of Georgia and North  
Carolina**

Dear Ms. Dortch:

Pursuant to the notices published in the Federal Register on December 31, 2003, the National Association of State Utility Consumer Advocates (“NASUCA”),<sup>1</sup> submits these comments concerning the application for eligible telecommunications carrier (“ETC”) status in the States of Georgia and North Carolina filed by ALLTEL Communications, Inc. (“ALLTEL”) pursuant to 47 U.S.C. 214(e). The application filed by ALLTEL for Georgia is for areas currently served by BellSouth Telecomm Inc. Corporation, a non-rural incumbent local exchange carrier, and by a number of rural carriers.<sup>2</sup> The

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<sup>1</sup> NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See. e.g., Ohio Rev. Code Chapter 4911.

<sup>2</sup> Accucomm Telecommunications, Inc.; ALLTEL Georgia, Inc.; Alma Telephone Co., Inc.; Brantley Telephone Co., Inc.; Bulloch County Rural Telephone Co.; Camden Telephone & Telegraph Co.; Coastal Utilities, Inc.; Darien Telephone Co., Inc.; Frontier Communications of Georgia; Georgia ALLTEL Telecomm Inc.; Georgia Telephone Corp.; Glenwood Telephone Co.; Hawkinsville Telephone Co.; Pembroke Telephone Co., Inc.; Pineland Telephone Cooperative; Plant Telephone Co.; Planters Rural Telephone Cooperative; Progressive Rural Telephone Cooperative; and Quincy Telephone Co.

application filed by ALLTEL for North Carolina is for areas currently served by BellSouth Telecomm Inc.; Verizon South, Inc.-NC; Verizon South, Inc. (CONTEL), and North State Telephone Co., non-rural incumbent local exchange carriers, and by a number of rural carriers.<sup>3</sup>

As previously stated to the Commission, NASUCA's perspective is as a representative of the consumers who are intended to benefit from the universal service programs of the 1996 Act, but who also pay for those programs. In reviewing this applications and others,<sup>4</sup> the Commission should consider the following:

First, the Federal-State Joint Board on Universal Service ("Joint Board") is currently examining ETC issues referred by the Federal Communications Commission ("Commission").<sup>5</sup> Many of the comments filed -- including those from NASUCA<sup>6</sup> -- propose substantial changes to the Commission's rules that govern the ETC designation process. Given the pendency of this review, it should be clear that if this application is granted, in granting the application the Commission should explicitly state that the continuing eligibility of the applicant is contingent on any future changes to the rules, and that those rules will be binding on these applicants. No applicant -- particularly a relatively new ETC designee -- should be able to claim any estoppel or other variation of entitlement to the universal service support allowed ETCs under any current rule(s) subsequently superceded.

On a more substantive level, the Commission must note that the public interest is a key Congressionally-mandated factor in the designation of any ETC, and that the mere promotion of competition is not sufficient to meet the public interest test required by 47

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<sup>3</sup> ALLTEL Carolina, Inc.; Atlantic Telephone Membership, Central Telephone Co.; Concord Telephone Co.; Ellerbe Telephone Co. Inc.; Lexcom Telephone Company; Mebtel Inc.; Piedmont Telephone Membership; Pineville Telephone Co.; Randolph Telephone Co.; Randolph Telephone Membership; Service Telephone Co. Sprint Mid-Atlantic; Star Telephone Membership; Surry Telephone Membership; Tri-County Telephone Membership; and Yadkin Valley Telephone Membership.

<sup>4</sup> The Commission reviews applications for ETC status where, as here, state commissions lack or have declined jurisdiction to make the required findings under 47 U.S.C. 214(e).

<sup>5</sup> See Public Notice, FCC 03J-1 (rel. February 7, 2003).

<sup>6</sup> NASUCA Comments (May 4, 2003).

U.S.C. 214(e).<sup>7</sup> The public interest test should include a number of factors such as those outlined in previous NASUCA comments:

- As a minimum, a CETC should be required to offer a calling plan that provides unlimited local calling and a monthly price comparable to that charged by the ILEC.
- As a minimum, CETCs should be required to submit to the consumer protection rules, including disclosure, notice, billing and collection rules, that apply to ILECs.
- CETCs should be required to provide data to demonstrate their need for high-cost support.
- CETCs should be required to be able to provide service to all customers within the designated service area within a reasonable time.
- All ETCs should provide equal access.<sup>8</sup>

Further, with regard to ALLTEL's request to be designated as an ETC in the service area of rural incumbent local exchange carriers, the Commission should be guided in its public interest determination under 47 U.S.C. 214(e)(2) by reference to the total amount of monthly per-line federal universal service high-cost support received by the study area of the rural company.<sup>9</sup> In rural study areas receiving \$30 per line per month in support or more, it should be presumed that only one ETC should be designated.<sup>10</sup> In rural study

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<sup>7</sup> Some parties have argued that the mere promotion of competition is sufficient to meet the public interest test. If that were true, there would have been no need for Congress to have included the public interest test, for the designation of additional ETCs in a service territory inevitably increases competition. Yet Congress specifically required a separate public interest finding before the designation of an additional ETC in the territories of both rural and non-rural ILECs: "Upon request and consistent with the public interest, convenience and necessity, the ... commission may, in the case of an area served by a rural telephone company, and shall, for all other areas, designate more than one carrier as the eligible telecommunications carrier ...." 47 U.S.C. 214(e)(2). A finding of public interest based solely on competition reads the public interest test out of the statute. Likewise, a holding that designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest, also reads the test out of the statute. For ETCs in rural telephone companies' service areas, there is an additional requirement that the commission explicitly find the designation to be in the public interest.

<sup>8</sup> Equal access meets the requirements of Section 254(c)(1) and does not contravene Section 332(c)(8) of the Act. Equal access provides a direct, tangible consumer benefit by placing the customer in charge of deciding which long distance plan is more appropriate for that customer. Equal access is even more important to rural customers who have fewer choices of carriers than urban customers.

<sup>9</sup> This proposal was made by Billy Jack Gregg, Director of the Consumer Advocate Division for the State of West Virginia and member of the Federal-State Joint Board on Universal Service, at the en banc meeting of the Joint Board in Denver, Colorado on July 31, 2003. NASUCA supports the use of this proposal.

<sup>10</sup> A key detail of the proposal is that the Commission should be guided by the average amount of support received by the entire study area, rather than the per line support associated with individual wire centers. This will eliminate any incentive for the rural carriers to game the system through the disaggregation process.

areas receiving \$20 per line per month or more, but less than \$30 per line per month, it should be presumed that only one additional ETC should be designated. There should be no presumed limit on the number of ETCs in rural areas receiving less than \$20 per line per month in support.

These presumptive benchmarks are based on the average amount of support for all study areas (\$30.74 per line per month) and the median amount of support for all study areas (\$18.33). The presumptions outlined herein could be overcome based on particular evidence about particular companies or particular study areas. These presumptive benchmarks clearly identify high-cost areas where it is not in the public interest to subsidize an unlimited number of ETCs<sup>11</sup>, and should provide guidance to both the Commission and interested parties. Limitation on the number of ETCs in very high-cost areas will preserve access for customers in those areas, but prevent unbridled growth in the size of the fund.

For ALLTEL's proposal to be designated as an ETC in rural carriers' territories in Georgia, the numbers are shown on the attachment. They show that in Georgia, there are two rural carriers that receive more than \$30 per month per line, where it is doubtful whether the designation of an ETC other than the incumbent is in the public interest. Also in Georgia, there are six rural carriers that receive more between \$20 and \$30 per month per line, where it is doubtful whether the designation of more than one ETC in addition to the incumbent is in the public interest.<sup>12</sup>

For ALLTEL's proposal to be designated as an ETC in rural carriers' territories in North Carolina, the numbers are shown on the attachment. They show that in North Carolina, there is one rural carrier that receives more between \$20 and \$30 per month per line, where it is doubtful whether the designation of more than one ETC in addition to the incumbent is in the public interest.

Finally, it should be noted that in both states ALLTEL seeks designation as an ETC in the territories of affiliated local exchange carriers. It is not clear that the "competition" among affiliates should be supported by federal universal service support funds.

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<sup>11</sup> Based on 3<sup>rd</sup> quarter 2003 data published by USAC, study areas with support of \$20 per line per month or more represent only 1.7% of access lines in the United States, but receive 45% of total high-cost support. Commission data requests in pending ETC applications have attempted to get at some of the same high-cost issues by asking for information, such as customer density in application areas. Support per line data distills all cost-influencing factors - such as density, distance and topography - into readily available benchmarks.

<sup>12</sup> NASUCA was unable to locate USAC data for Hawkinsville Telephone Company in Georgia. For ease of administration, all ETC applicants should list the SAC number for each study area affected.

NASUCA appreciates the Commission's consideration of these positions as it concludes its deliberation on these applications.

Sincerely,

David C. Bergmann  
Assistant Consumers' Counsel  
Chair, NASUCA Telecommunications  
Committee  
[bergmann@occ.state.oh.us](mailto:bergmann@occ.state.oh.us)  
Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Tel: 614/466-8574  
Fax: 614/466-9475

NASUCA  
8300 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

**ALLTEL NC**

	<b>Monthly High-Cost Support Per Line</b>	
<b><u>Company</u></b>	<b><u>3Q2003</u></b>	<b><u>1Q 2004</u></b>
<b>Under \$20 per line</b>		
ALLTEL Carolina Inc	\$0.51	\$1.21
Atlantic Telephone Membership	\$3.10	\$4.99
Central Telephone Company	\$0.55	\$0.62
Concord Telephone Company	\$1.41	\$1.49
Ellerbe Telephone Co.	\$10.80	\$10.77
Mebtel	\$4.68	\$2.08
Piedmont Telephone Membership	\$8.83	\$9.81
Pineville Telephone Co.	\$12.82	\$13.26
Randolph Telephone Co.	\$8.23	\$8.45
Randolph Telephone Membership	\$6.20	\$7.76
Service Telephone Co.	\$15.04	\$16.62
Sprint Mid Atlantic	\$0.57	\$0.63
Star Telephone Membership	\$11.65	\$11.98
Surry Telephone Membership	\$5.19	\$5.59
Tri-County Telephone Membership	\$10.42	\$11.71
Yadkin Valley Telephone Membership	\$5.32	\$5.46
<b>Over \$20 per line</b>		
Lexcom Telephone Co.	\$22.90	\$23.89

**ALLTEL GA**

<b>Company</b>	<b>Access Lines</b>	<b>Monthly High-Cost Support Per Line</b>	
		<b>3Q 2003</b>	<b>1Q 2004</b>
<b>Under \$20 per line</b>			
<i>ALLTEL Companies</i>			
Alltel Georgia Communications Corp.	341,914	\$1.02	\$0.75
Alltel Georgia Inc.	75,542	\$10.35	\$9.32
Georgia Tel. Corp.	7,670	\$9.04	\$9.43
Georgia Alltel Telecom	98,109	\$3.94	\$3.01
<i>Other Companies</i>			
Progressive Telephone Co.	5,748	\$11.00	\$12.09
Pineland Telephone Cooperative	14,192	\$16.90	\$15.02
Hawkinsville Telephone Co.			
Frontier Comm. Of Georgia	28,082	\$3.34	\$3.26
Coastal Utilities Inc.	38,880	\$12.96	\$16.92
Camden Telephone	25,596	\$5.07	\$5.60
Bulloch County Rural Telephone	11,208	\$14.28	\$14.75
Alma Telephone Co.	7,583	\$19.57	\$18.19
Accucomm Telecommunications Inc.	4,838	\$10.95	\$12.08
<b>Over \$20 per line</b>			
Planters Rural Telephone Co.	9,868	\$20.71	\$22.58
Plant Telephone Co.	10,506	\$27.04	\$24.84
Glenwood Telephone Co.	1,023	\$18.25	\$26.39
Frontier Comm. Of Fairmont	2,800	\$38.33	\$29.89
Brantley Telephone Co. Inc.	6,311	\$30.74	\$28.32
Quincy Telephone Co.	800	\$30.68	\$25.06
<b>Over \$30 per line</b>			
Pembroke Telephone Co. Inc.	4,257	\$31.76	\$34.19
Darien Telephone Co.	7,155	\$42.10	\$41.85