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Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

Re: *Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997*, CC Docket No. 97-100

Dear Ms. Dortch:

Alltel Communications, Inc. respectfully requests that the Commission expeditiously grant the long-pending petitions in the proceeding referred to above. These petitions, filed in 1997, sought expedited action to address an Arkansas statutory provision that restricts entry by competitive eligible telecommunications carriers (“ETCs”) in the service areas of certain rural incumbent local exchange carriers (“ILECs”). To date, the Commission has not yet acted on the universal service issues raised in these petitions. ^{1/} At this point, the Commission should put this proceeding on a fast track, and should expeditiously grant the petitions.

At issue here is the public interest of rural consumers who are being denied the universal service benefits assured by the Telecommunications Act of 1996. Section 5(d)(1) of the Arkansas Telecommunications Regulatory Act of 1997 specifies that, “[f]or the entire area served by a rural telephone company, excluding tier one companies, for the purpose of the AUSF and the

^{1/} On Dec. 23, 1999, the Commission issued an order granting the petitions in part and preempting certain other provisions of the Arkansas Telecommunications Regulatory Act, but “deferred action” on the issues relating to universal service and ETC designation. *American Communications Servs., Inc. and MCI Telecomms. Corp. Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, CC Docket No. 97-100, FCC 99-386, 14 FCC Rcd 21579, ¶¶ 111-12 (1999). The Common Carrier Bureau subsequently issued a Public Notice asking parties to refresh the record on these universal service issues. Public Notice, *The Commission Seeks Comment Regarding Whether Universal Service Provisions Of Arkansas Act Comport With Federal Law*, CC Docket No. 97-100, DA 00-50, 15 FCC Rcd 699 (CCB, released Jan. 14, 2000). Alltel’s predecessor, Western Wireless, and several other parties filed comments on Feb. 18, 2000, and Western Wireless filed an ex parte on March 17, 2004. Since then there has been no activity in this docket.

federal Universal Service Fund, there shall be only one (1) eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company.” A.C.A. § 23-17-405(d)(1). Under this statute, non-“Tier 1” rural ILECs effectively have veto power over designation of competitive ETCs: only “[t]he rural telephone company may elect to waive its right to be the only eligible telecommunications carrier within the local exchange area by filing notice with the commission.” A.C.A. § 23-17.405(d)(2).

Alltel is headquartered in Arkansas, provides commercial mobile service throughout the state, and is one of the state’s leading ETCs, providing universal service to over 400,000 residential customers in the state. However, Section 5(d) of the Arkansas statute improperly prevents the company from extending universal service and investing the associated universal service support in network enhancements to the benefit of consumers who reside in 24 study areas served by non-“Tier 1” rural ILECs. The Arkansas Public Service Commission (“PSC”) on Dec. 31, 2003 granted Alltel’s ETC petition with respect to the service areas of Southwestern Bell (a non-rural ILEC) and CenturyTel (a “Tier 1” rural ILEC under Arkansas law). ^{2/} The PSC specifically found that designating Alltel as an ETC in CenturyTel’s rural ILEC study area was consistent with the public interest. ^{3/}

Although the Arkansas PSC has expressed its willingness to comply with Section 214(e)(2) of the Communications Act, the state statute precludes it from doing so in areas served by non-“Tier 1” rural ILECs and prevents Alltel from serving consumers in those areas as an ETC. This restriction blatantly violates the 2005 *ETC Designation Framework Order*, in which the Commission turned down “a proposal that limits the number of ETCs in each service area” and “reject[ed] the application of a rebuttable presumption that it is not in the public interest to have more than one ETC in each rural high-cost area. We believe that a more comprehensive public interest analysis, which considers the specific facts of the application, is a better approach and is consistent with congressional intent.” ^{4/} Similarly, federal courts have held that a state may not

^{2/} *Application of Alltel Communications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Telecommunications Act of 1996*, Docket No. 03-138-U, Order No. 5 (Ark. PSC, Dec. 31, 2003), available at http://www.apscservices.info/efilings/Docket_Search_Documents.asp?Docket=03%2D138%2DU&DocNumVal=17.

^{3/} *Id.* at 12 (“If ALLTEL is granted ETC status, customers, particularly Lifeline and Linkup customers, will have the benefits of a substantially increased local calling area. This could serve to reduce their toll bills and could make the service offered by an alternative ETC much more economically desirable. ALLTEL also asserts that its customers will have the benefit of mobility which the existing ETC does not currently provide. Granting ETC status to ALLTEL would also help open the telecommunications market to competition on fair and equal terms, consistent with the legislative intent of Act 77. The FCC has also stated that wireless carriers could potentially offer service at much lower cost than traditional wire line service, particularly in rural areas.”); *id.* at 13 (“Arkansas consumers would undoubtedly find it to be in the public interest for them to be allowed the benefits of a competitive ETC that seeks to provide service in areas of Arkansas.”). The PSC also rejected arguments to deny the petition on the basis that it could affect rural ILECs’ revenues, that pending federal proceedings might address universal service issues, or that Alltel should have to submit to PSC jurisdiction notwithstanding a state statute precluding such jurisdiction. *Id.* at 9-12.

^{4/} *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, ¶ 57 (2005) (“*ETC Designation Framework Order*”).

reject a competitive ETC's application based on no standards or individualized analysis at all, other than a general concern about designating more than one or two ETCs in a particular area. ^{5/}

The restrictive provision of the Arkansas statute makes it impossible for competitive carriers to obtain ETC status in some areas, and is subject to preemption because it "has the effect of prohibiting the ability of prospective entrants from providing telecommunications service" in those areas and "unfairly skews the universal service support mechanism in favor of the incumbent LEC." ^{6/} The FCC has preempted similar state "incumbent protection" laws that give rural ILECs a "veto" over competitive entry. ^{7/} Such a policy not only conflicts with the principle of "competitive neutrality in the collection and distribution of funds and determination of *eligibility* in universal service support mechanisms." ^{8/} It also interferes with the statutory mandate to "preserve and advance universal service by promoting access to telecommunications services in high-cost areas," and improperly denies the "benefits that may otherwise occur as a result of access to affordable telecommunications services ... to *consumers* in high-cost areas." ^{9/}

The Commission should act expeditiously to resolve the outstanding issues in this proceeding. Alltel looks forward to working with you on completing this important matter.

Respectfully submitted,

David L. Sieradzki
Counsel to Alltel Communications, Inc.

cc: ***Copy filed in CC Docket No. 96-45***

^{5/} *NPCR, Inc. v. Boyle*, Memorandum Opinion, Case 4:04-cv-03236-JFB-TDT (D. Neb., Dec. 5, 2006).

^{6/} *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 15168, ¶¶ 12, 21 (2000) ("South Dakota Preemption Order").

^{7/} *Silver Star Tel. Co., Inc. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639 (1997), *aff'd on recon.*, 13 FCC Rcd 16356 (1998).

^{8/} *South Dakota Preemption Order*, ¶ 31 (emphasis in original) (citing *Federal State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, 8801-02, ¶ 48 (1997)). See also *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 622 (5th Cir. 2000) (the competitive neutrality principle and portability are mandated by the Act).

^{9/} *South Dakota Preemption Order*, ¶ 23 (emphasis added).