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January 8, 2011

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, D.C. 20554

**Re: Petition of Allied Wireless Communications Corporation for Waiver of Various Sections of the Commission's Universal Service Fund Filing Deadlines WC Docket No. 09-197; CC Docket No. 96-45; WC Docket No. 08-71
Ex Parte Letter**

Dear Ms. Dortch:

Allied Wireless Communications Corporation (“Allied Wireless” or the “Company”), by its attorneys, hereby provides the Federal Communications Commission (“FCC” or “Commission”) with a copy of the Georgia Public Service Commission’s (“Georgia PSC”) Order Denying Public Service Telephone Company’s (“PSTC”) Request for Reconsideration of Order Denying Intervention, issued on December 22, 2010 (“Order”).¹

This Order brings finality to the Georgia PSC proceeding, Docket No. 31734, granting the application of Allied Wireless for designation as an Eligible Telecommunications Carrier (“ETC”) effective April 26, 2010. The Order rejects petitions seeking reconsideration from PSTC and affirms the Georgia PSC’s well-considered decision to designate Allied Wireless an ETC.

¹ See Order Denying Public Service Telephone Company’s Request for Reconsideration of Order Denying Intervention, Georgia Public Service Commission, Georgia PSC Docket No. 31734, December 22, 2010 (“*Georgia PSC Order*”) (Exhibit 1).

Citing the conclusions reached in the Georgia PSC Staff Recommendations as entirely dispositive of the questions at issue,² the PSC highlighted the unique circumstances faced by Allied Wireless stating:

The [Georgia] Commission's prior orders have fully addressed the issue by explaining how the unique circumstances surrounding Allied's request support the retroactive effective date. Alltel had been designated as an ETC carrier. Allied's parent company, Atlantic Tele-Network, acquired the divested assets from Alltel. Alltel had been receiving high cost support in connection with the facilities acquired by Allied's parent company. Interruption in the universal service support would diminish the investment that Allied will be able to make in the service area."³

The Georgia PSC gave significant deference to the Georgia PSC Staff Recommendations previously highlighted by Allied Wireless.⁴ In particular, the *Georgia PSC Order* relies on Staff's findings regarding the unique factors that warranted making the designation effective as of April 26, 2010. The *Georgia PSC Order* addresses not only the denial of PSTC's late-filed efforts to intervene, but also clearly and decisively addresses the merits of the PSC's decision to designate Allied Wireless as an ETC and make that designation effective as of April 26, 2010.⁵

A grant of Allied's petition for waiver is consistent with Section 214(e)(2) of the Act,⁶ which vests in the states authority to designate ETCs as eligible to receive high-cost support. It would be consistent with prior FCC statements on this matter⁷ and appropriately honor the Georgia PSC's designation order.

Should you have any questions or require any additional information, please contact undersigned counsel directly.

² See Staff Recommendation on Public Service Telephone Company's Petition for Rehearing, Reconsideration and Oral Argument of the Commission Order Granting Allied Wireless Communications Corporation ETC Status in the State of Georgia, Georgia PSC Docket No. 31734.

³ *Georgia PSC Order*, at 4.

⁴ See Allied Wireless Communications Corporation Reply to Comments on Petition for Waiver, WC Docket No. 09-197, CC Docket No. 96-45, WC Docket No. 08-71 (filed Dec. 16, 2010), at 7 & Exhibit 2.

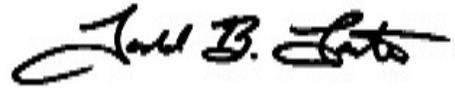
⁵ See *Georgia PSC Order*, at 3-4.

⁶ 47 U.S.C. § 214(e)(2).

⁷ See *Allied Wireless Communications Corporation, Petition for Eligible Telecommunications Carrier Designations in the State of North Carolina*, Order, 51 Communications Reg. (P&F) 338, n. 24 (WCB 2010) ("...our decision here should have no bearing on pending state proceedings regarding the appropriate effective date of any ETC designation.").

Marlene H. Dortch, Secretary
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Todd B. Lantor". The signature is fluid and cursive, with a large initial "T" and "L".

Todd B. Lantor
Katherine Patsas Nevitt

Counsel for Allied Wireless Communications Corporation

Enclosure

EXHIBIT 1

COMMISSIONERS:

LAUREN "BUBBA" McDONALD, JR., CHAIRMAN
STAN WISE
ROBERT B. BAKER, JR.
CHUCK EATON
H. DOUG EVERETT



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DEC 28 2010

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DOCKET# 31734
DOCUMENT# 133040

Docket No. 31734

In Re: Application of Allied Wireless Communication Corporation for Designation as an Eligible Telecommunications Carrier in the State of Georgia

ORDER DENYING PUBLIC SERVICE TELEPHONE COMPANY'S REQUEST FOR RECONSIDERATION OF ORDER DENYING INTERVENTION

On October 14, 2010, the Georgia Public Service Commission issued two separate orders in this docket. The Commission denied the Petition for Intervention Of Public Service Telephone Company ("PSTC"), and granted the Application of Allied Wireless Communication Corporation ("Allied") for Designation as an Eligible Telecommunications Carrier in the State of Georgia. On October 25, PSTC petitioned for reconsideration of both of these orders. As will be discussed below, the Commission denies PSTC's petition for reconsideration of the Order denying its intervention. As a result, PSTC's petition for reconsideration of the Order designating Allied as an ETC is moot because PSTC, as a non-party, does not have standing to petition for reconsideration of that Commission Order.

On April 15, 2010, Allied Wireless Communication Corporation ("Allied") filed an Application for Designation as an Eligible Telecommunications Carrier in Georgia. This application was included on the agenda for the Telecommunications Committee meeting held on September 16, 2010. The application was next placed on the agenda for the September 21, 2010 Administrative Session for consideration of approval.

On September 20, 2010, Public Service Telephone Company filed an application for intervention in the docket and filed its objections to Allied's application. PSTC served Allied with its intervention and objections via regular mail. As a result, the mailed copies of these filings would not be received by Allied until after the matter was scheduled to come before the Commission for consideration. On October 14, 2010, the Commission denied PSTC's request for intervention and granted Allied's application.

As stated above, on October 25, 2010, PSTC petitioned for rehearing, reconsideration and oral argument of the Commission Order Denying Intervention. PSTC argued that service on other parties by regular mail is standard practice; therefore, its method of service does not provide a basis for denial of its intervention petition. (Petition, p. 2). PSTC further claimed that

Allied was not disadvantaged by its choice to serve the petition by regular mail because the standard procedures for Administrative Session would not have allowed any party to speak to the petition. *Id.* PSTC argues further that there was no public notice of the proceeding. *Id.* at 3. Consequently, PSTC's intervention should not be found to be in violation of the statute and rule that interventions must be filed within thirty (30) days of published notice. *Id.*

PSTC contends that it should not be held accountable for the full amount of time that elapsed between the April 15 ETC application and its September 20 intervention petition. PSTC claims that it did not realize that it had an interest in the case until August 2010. *Id.* at 4. After the presentation of Staff's recommendation at the September 16, Telecommunications Committee, PSTC decided that it was necessary to intervene. *Id.*

PSTC argues that it is in the public interest for wireless ETCs to comply with federal law, and that it appears that Allied has not done so; therefore, the Commission should grant PSTC's intervention. *Id.* at 5-6.

PSTC also petitioned for rehearing, reconsideration and oral argument of the Commission Order Granting ETC Status. PSTC raised two grounds in its second petition. First, PSTC argued that Allied had not demonstrated that it would serve throughout its designated service area. PSTC Petition, p. 2. This argument is based on PSTC's position that Allied cannot rely upon a roaming agreement in order to serve those wire centers within Lizella for which it does not have a license. *Id.* at 3. Second, PSTC argued that it was arbitrary for the Commission to grant the application retroactive to April 26, 2010. *Id.* at 5. PSTC stated that the retroactive application was inconsistent with the Federal Communications Commission's rule that requires an applicant to file line counts within sixty days of ETC designation in order to receive USF support from the date of designation. *Id.*

On November 4, 2010, Allied filed its Opposition to PSTC's Petition for Reconsideration. Allied emphasizes that PSTC acknowledges that it made no effort to contact Allied regarding its filing of objections to the application. (Opposition, p. 2). Allied states that this was a calculated effort by PSTC to deprive Allied of the opportunity to respond. *Id.* at 3-4. Allied states further that PSTC had five months to intervene in response to its application. *Id.* at 2-3. Even allowing for PSTC's argument that its primary concern did not materialize until August, Allied points out that PSTC still waited six weeks to file for intervention. *Id.* at 3. Finally, Allied opposes PSTC's request for oral argument. *Id.* at 4.

On November 12, 2010, PSTC filed a Reply in further support of its petition for reconsideration of the denial of intervention. PSTC states that the Commission's order granting Allied's application does not mention that Allied is not licensed to provide service throughout the requested study area, and that Allied did not inform the Commission that it was relying upon a roaming agreement in its initial application. (Reply, p. 4). PSTC states that federal law requires that a provider offer services throughout the study area using its own facilities or a combination of its own facilities and resale of another carrier's services. *Id.* at 5, *citing to* 47 U.S.C. § 214(e)(1).

PSTC also argues that the Commission did not have adequate support for its decision to grant the application retroactively. (Reply, p. 6). PSTC renews its arguments that the retroactive effective date is inconsistent with FCC rules. *Id.*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission denies PSTC's Petition for Reconsideration of the denial of intervention. The Commission's previous Order Denying Intervention was lawful. Here, and as the Commission previously noted, PSTC does not have an unconditional right to intervene. Order Denying Intervention, p. 1. In evaluating a petition for intervention, the Commission is authorized to consider "whether the intervention will unduly delay the proceedings or prejudice the rights of other parties." O.C.G.A. § 46-2-59(e)(2). The relevant facts justify a finding that granting PSTC's intervention would have unduly delayed the proceedings and would have prejudiced the rights of Allied.

The Commission further finds that PSTC did not petition for intervention until the day before the Administrative Session in which the Commission was scheduled to vote. Not only did the timing of PSTC's filings make it impossible for Allied to respond, it also provided insufficient opportunity for the Staff or the Commission to review the arguments. Therefore, there is a basis for finding that the intervention would unduly delay the proceedings and prejudice Allied's rights. Moreover, PSTC's explanation for why it waited until the day before the Administrative Session to intervene is not persuasive. Although PSTC was present during the September 16, 2010 committee meeting, it did not object or comment. PSTC did not request information or inform Staff of its concerns until its September 20th filing, the day before the September 21st Administration Session.

The Commission further finds that it is not sound policy going forward to allow potential parties to wait until after they review the Staff's recommendation to intervene in a proceeding. It would inhibit the ability of opposing parties to respond to new arguments, hinder the Staff's efforts at presenting a comprehensive recommendation for the Commission, and provide potential parties with the inappropriate incentive to delay intervention pleadings for strategic purposes.

The Commission further finds that PSTC's November 12 Reply is not persuasive. Nothing in the Reply rebuts the conclusion that granting an intervention filed the day before a vote was scheduled on the ETC application would unduly delay the proceedings and prejudice the rights of Allied.

The merits of whether to grant Allied's ETC application are a separate question from whether to grant PSTC's petition for reconsideration. The conclusions reached in the discussion above regarding the timing of PSTC's intervention provide an independent basis for the Commission to deny PSTC's intervention. However, given that PSTC raised arguments on Allied's designation in the context of its petition to reconsider the Commission's ruling on its intervention, it is appropriate to deny PSTC's petition for reconsideration of the Order Denying Intervention for the reasons stated both in Staff's recommendation on PSTC's petition for reconsideration of the Commission order denying its

intervention and Staff's recommendation on PSTC's Petition for reconsideration of the Commission order granting Allied ETC designation. PSTC's arguments included its complaint that the Commission order states that Allied would provide the services using its own facilities, and that roaming agreements do not meet the statutory standard. (PSTC Reply, pp. 4-5). These arguments are without merit because Allied's use of a combination of its own facilities and resale or roaming is expressly permitted by the FCC.¹

In addition, PSTC claimed that the Commission should not approve the application with a retroactive effective date. (PSTC Petition, p. 5). The Commission's prior orders have fully addressed this issue by explaining how the unique circumstances surrounding Allied's request support the retroactive effective date. Alltel had been designated as an ETC carrier. Allied's parent company, Atlantic Tele-Network, acquired the divested assets from Alltel. (Corrected Order, p. 5). Alltel had been receiving high cost support in connection with the facilities acquired by Allied's parent company. Interruption in the universal service support would diminish the investment that Allied will be able to make in the service area. *Id.* Furthermore, the Commission cited to the FCC Order on Allied's North Carolina application² for ETC designation, in which the FCC stated that it would not address the merits of Allied's request for a retroactive designation, but that such decision should not impact pending state proceedings regarding the appropriate effective date of ETC designation. *Id.* at 5-6. Finally, the Commission may take any necessary action in response to the decision rendered by the FCC on Allied's request for a waiver of the 60 day rule on certification filings.

WHEREFORE, IT IS ORDERED, that PSTC's motion for reconsideration of the Commission Order denying its application to intervene is hereby denied.

¹ *Federal-State Joint Board on Universal Service, Advantage Cellular Systems, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 19 FCC Rcd 20985, 20990 (para. 13) (Wireline Comp. Bur. 2004) ("*Advantage Cellular*") (emphasis added). *Federal-State Board on Universal Service, Public Service Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the States of Georgia and Alabama*, CC Docket No. 96-45, Order, 20 FCC Rcd. 6854, 6857, 6860 (paras. 12, 20) (Wireline Comp. Bur. 2005) (finding that it was sufficient for the carrier to meet its obligations regarding the provision of supported services in small portions of a study area through the use of resale or roaming agreements). *Federal-State Joint Board on Universal Service, United States Cellular Corporation, Petition To Amend Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 25 FCC Rcd 4410, 4413 (para. 6) (Wireline Comp. Bur. 2010) *Federal-State Joint Board on Universal Service, Corr Wireless Communications, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama*, CC Docket No. 96-45, Order, 21 FCC Rcd 1217, 1222 (para. 15) (Wireline Comp. Bur. 2006)

² WC Docket No. 09-0197; CC Docket No. 96-45

ORDERED FURTHER, that denial of PSTC's petition to reconsider the Commission Order denying its intervention renders its petition to reconsider the Order designating Allied as an ETC carrier moot.

ORDERED FURTHER, a motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

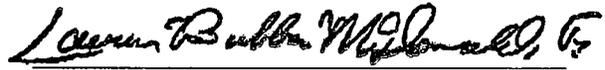
ORDERED FURTHER, jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders, as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 7th day of December 2010.



Reece McAlister
Executive Secretary

12-22-10
Date



Lauren "Bubba" McDonald, Jr.
Chairman

12-22-10
Date