

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application for the)
Approval of the Transfer of Control of)
Alltel Missouri, Inc., and the Transfer of)
Alltel Communications, Inc.,)
Interexchange Service Customer Base.)

Case No. TM-2006-0272

RESPONSE TO ORDER DIRECTING FILING AND STATUS REPORT

COMES NOW Staff of the Missouri Public Service Commission and responds to the Commission's *Order Directing Filing* in this matter as follows:

On December 28, 2005, the Commission issued an *Order Directing Filing* requesting its Staff to address certain issues raised in the *Application* in this matter. Specifically, the Commission requested that Staff address (1) the Commission's jurisdiction over the components of the transaction in this matter; and (2) the applicants' request for waiver of the application 4 CSR 240-3.535(1)(A), a portion of the Commission's rule governing the authority to acquire stock of a public utility. The applicants have also filed a supplement to their *Application*, requesting consent and authority to create a lien against assets of Alltel Missouri, Inc. The Commission further directed its Staff to provide a recommendation regarding the transfer of control requested by the Applicants.

Subsequently, the Commission issued an order establishing an intervention date and prehearing. Accordingly, Staff proposes to provide its recommendation regarding the transfer of control and any other issues raised in the *Application* and *First Supplement to Application* after the prehearing in this matter, now set for February 8, 2006, and on a date to be established as a result of that prehearing.

Staff has reviewed the *Application* and provides the following discussion to the Commission for its consideration:

I. Jurisdiction

Alltel Missouri, Inc.,¹ Alltel Communications, Inc.,² Alltel Holding Corp., Alltel Holding Corporate Services, Inc.,³ and Valor Communications Group have jointly filed an application with the Commission seeking authority to transfer control of Alltel Missouri, Inc., from Alltel Corporation to Alltel Holding Corp. The applicants also have requested authority to transfer the interexchange service customer base of Alltel Communications, Inc., from Alltel Communications, Inc., to Alltel Holding Corporate Services, Inc. These two transfers are components of the overall transaction outlined in the *Application*. Currently, Alltel Missouri, Inc., Alltel Communications, Inc., Alltel Holding Corp. and Alltel Holding Corporate Services, Inc. are all subsidiaries of Alltel Corporation. Alltel Missouri, Inc., is a Missouri corporation; all of the other applicants are Delaware corporations.

The overall transaction involves a series of finite transactions, including:

1. Transfer of stock of Alltel Missouri, Inc. from Alltel Corporation to Alltel Holding Corp.;
2. Transfer of customers (assets) of Alltel Communications, Inc. to Alltel Holding Corporate Services, Inc.;
3. Transfer of ownership of Alltel Holding Corp. from Alltel Corporation to Alltel Corporation's shareholders;
4. Merger between Alltel Holding Corp. and Valor Communications Group; and
5. Execution by all Alltel Corporation affiliates of guarantees of the senior secured debt financing of the transactions described above, to be secured by "perfected

¹ This entity, an incumbent local exchange carrier, holds a certificate under Case No. TA-88-44.

² This entity is authorized to provide interexchange telecommunications services under Case No. TA-97-41 and to provide additional interexchange telecommunications services under Case No. TA-99-53.

³ This entity has applied for a certificate of service authority to provide interexchange telecommunications services in Case No. XA-2006-0271.

first-priority liens on the assets of the respective guarantors, including Alltel Missouri, Inc.”

Staff will address each in turn.

1. Transfer of stock of Alltel Missouri, Inc. to Alltel Holding Corp.

The Commission’s jurisdiction to review the transfer of stock of Alltel Missouri, Inc. from Alltel Corporation to Alltel Holding Corp. is founded upon Section 392.300.2 RSMo. (2000)⁴ and 4 CSR 240-3.535. The pertinent portion of Section 392.300.2 provides that:

2. ... no stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any telecommunications company may, without the consent of the commission, acquire and hold the remainder of the capital stock of such telecommunications company, or any portion thereof. ...

Alltel Missouri, Inc. is a Missouri corporation, so this statute applies to the transfer of stock.

Applicable case law provides that the Commission’s standard of review when considering transfer of stock is that the Commission shall approve such transfers unless the transfer would be detrimental to the public interest. See *State ex rel. City of St. Louis v. Public Serv. Comm’n*, 73 S.W.2d 393, 400 (Mo.banc 1934). This standard has been incorporated into the Commission’s rule at 4 CSR 240-3.535(1)(C), which requires “reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest” to accompany applications for such authority.

2. Transfer of customers (assets) of Alltel Communications, Inc. to Alltel Holding Corporate Services, Inc.

⁴ All statutory citations are to RSMo. (2000) unless otherwise specified.

The Commission's jurisdiction over the transfer of assets, including the transfer of customers from one company to another, is governed by Section 392.300.1. The pertinent portion of the statutes states:

1. No telecommunications company shall hereafter sell, assign, lease, transfer ... the whole or any part of its franchise, facilities or system ... without having first secured from the commission an order authorizing it to do so.

In the past, the Commission has found that this requirement encompasses the transfer of customers.⁵ In its regulation at 4 CSR 240-3.520, the Commission has incorporated this requirement and created a structure governing notification to customers who are being transferred at paragraph (2)(G). The Commission also cross-references these principles at 4 CSR 240-33.150(4), where it permits carriers to submit or execute changes in providers with reduced regulatory compliance if the changes are "a result of merger or consolidation or the sale, assignment, lease or transfer of assets approved by the commission."

Thus, in this case, the Commission has jurisdiction over the transfer of Alltel Communications, Inc.'s interexchange customer service base to Alltel Holding Corporate Services, Inc.

3. Transfer of ownership of Alltel Holding Corp. from Alltel Corporation to Alltel Corporation's shareholders.

Section 392.300.2 governs transactions involving capital stock. As discussed above, the Commission has jurisdiction over transfers of stock, but only when the stock is "issued by any telecommunications company". In this case, Alltel Holding Corp. is not a certificated Missouri telecommunications company. In *In the Matter of the Merger of SBC Communications, Inc. and*

⁵ See, e.g., Order Approving Transfer of Assets, *In the Matter of the Joint Application of Payroll Advance, Inc. and The Phone Connection, Inc. d/b/a Affordable Phone Company for Approval of a Transaction Whereby The Phone Connection, Inc. d/b/a Affordable Phone Company Will Acquire the Customers of Payroll Advance, Inc.*, Case No. TM-2002-368, 2002 Mo. PSC LEXIS 928 (July 2, 2002), where the Commission refers to the customers as "customer assets."

Ameritech Corporation, Case No. TM-99-76, 7 Mo.P.S.C.3d 529, 532 (Oct. 8, 1998), the Commission determined “that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies.” Likewise, the Commission would have no jurisdiction over stock transfers involving non-regulated parent corporations. The statute has not changed since the Commission reached this determination, and the holding appears proper. Accordingly, the Commission has no jurisdiction over stock transfers involving these entities.

4. Merger between Alltel Holding Corp. and Valor Communications Group.

Again, the Commission’s jurisdiction over mergers is limited to mergers between Missouri-regulated telecommunications companies. *Id.* Neither Alltel Holding Corp. nor Valor Communications Group hold certificates of service authority from the Commission, and in keeping with the statutory scheme, the Commission does not have jurisdiction over such transactions.

5. Execution by all Alltel Corporation affiliates of guarantees of the senior secured debt financing of the transactions described above, to be secured by “perfected first-priority liens on the assets of the respective guarantors, including Alltel Missouri, Inc.”

The Commission has jurisdiction over evidence of indebtedness and liens by virtue of Section 392.290.1, which states:

1. The power of telecommunications companies to issue stocks, bonds, notes and other evidence of indebtedness and to create liens upon their property situated in this state is a special privilege, the right of supervision, regulation, restriction and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe.

To provide further structure for its exercise of authority, the Commission has promulgated 4 CSR 240-3.530. The Commission customarily waives the provisions of Section 392.290 for

competitively classified companies, but Alltel Missouri, Inc., is an incumbent local exchange carrier and is not competitively classified, and these provisions have not otherwise been waived. Therefore, the Commission has the jurisdiction to consider the propriety of the lien proposed in the *First Supplement to Application* filed by the applicants.

In conclusion, Staff recommends that the Commission find it has jurisdiction over:

1. the transfer of stock of Alltel Missouri, Inc. to Alltel Holding Corp.;
2. the transfer of customers (assets) of Alltel Communications, Inc. to Alltel Holding Corporate Services, Inc.; and
3. Execution by all Alltel Corporation affiliates of guarantees of the senior secured debt financing of the transactions described above, to be secured by “perfected first-priority liens on the assets of the respective guarantors, including Alltel Missouri, Inc.

Further, Staff recommends that the Commission find it does not have jurisdiction over:

1. the transfer of ownership of Alltel Holding Corp. from Alltel Corporation to Alltel Corporation’s shareholders; and
2. the merger between Alltel Holding Corp. and Valor Communications Group.

II. Waiver of 4 CSR 240-3.535(1)(A)

The applicants have requested that the Commission waive the application of 4 CSR 240-3.535(1)(A) for good cause pursuant to 4 CSR 240-2.015. This rule requires an application for authority to acquire the stock of a public utility to include a statement of the offer to purchase the stock of the public utility or a copy of any agreement entered with shareholders to purchase stock. Because the transfer of ownership of Alltel Missouri, Inc. from Alltel Corporation to Alltel Holding Corp. will occur by an inter-company transfer, there will be no “purchase” of

stock as contemplated in Rule 3.535(A). Instead, the transfer of stock will occur pursuant to the terms of a Distribution Agreement. Alltel Corporation will be filing or has filed with the SEC, a summary of the Distribution Agreement or, if available at the time of the filing, a draft of the Distribution Agreement. Staff recommends that the parties be directed to provide the Missouri Public Service Commission with a copy of the Distribution Agreement summary and/or a draft of the Distribution Agreement within three business days after filing it with the SEC, or if already filed, within ten days; and further, file in the case file of this case a copy of the finalized and signed Distribution Agreement within three business days after its execution.

WHEREFORE, Staff submits its response addressing the Commission's jurisdiction in this matter; its discussion and recommendation regarding waiver of 4 CSR 240-3.535(1)(A); and further requests that it be permitted to file its recommendation regarding the transfer of control and any other issues raised in the *Application* and *First Supplement to Application* after the prehearing in this matter, now set for February 8, 2006, and on a date to be established as a result of that prehearing.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 27th day of January 2005.

/s/ David A. Meyer
