

Public Service Commission
Of West Virginia

201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323



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September 30, 2011

12:54 PM SEP 30 2011 PSC EXEC SEC DIV

Sandra Squire
Executive Secretary
Public Service Commission
P. O. Box 812
Charleston, WV 25323

Re: CASE NO. 11-0818-T-GI
General Investigation regarding
Certification of Federal Universal
Service Funding for Eligible
Telecommunications Carriers in West
Virginia

Dear Ms. Squire:

Enclosed is an original and twelve (12) copies of the "Staff's Response to Motion for Reconsideration of Alltel Communications, LLC" by the Staff of the Public Service Commission of West Virginia in the above-referenced proceeding.

A copy has been served upon all parties of record in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Howard", written over a large, light-colored scribble.

CHRISTOPHER L. HOWARD
WV State Bar I.D. No. 8688

CLH/cls

Enclosures

H:\choward\wpdocs\11-0818-T-GI (GI regarding certification of USF for eligible ETC in WV)\Staff's response to Alltel Motion for Reconsideration.wpd

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

**CASE NO. 11-0818-T-GI
GENERAL INVESTIGATION REGARDING CERTIFICATION OF
FEDERAL UNIVERSAL SERVICE FUNDING FOR ELIGIBLE
TELECOMMUNICATIONS CARRIERS IN WEST VIRGINIA**

**STAFF'S RESPONSE TO THE MOTION FOR
RECONSIDERATION OF ALLTEL COMMUNICATIONS, LLC**

NOW COMES, the Staff of the West Virginia Public Service Commission (Commission Staff) and respectfully requests the Commission deny the Motion for Reconsideration filed by Alltel Communications, LLC (Alltel) dated September 29, 2011. Alltel's previous request for confidential treatment was denied by Commission Order dated September 19, 2011. Alltel now again contends the information is entitled to protection under West Virginia Code §29B-1-4(1) as a "trade secret." Alltel contends the outage information is not generally known or available publicly, and disclosure would create a national security issue and is based on Federal Communications Commission (FCC) Docket No. 04-35. Additionally, Alltel contends the West Virginia Freedom of Information Act West Virginia Code §29B-1-1, et.seq.

This Motion raises no new arguments, which would be persuasive in reversing the Commission's ruling in the September 19, 2011 Order. The test for showing that

protective treatment is set forth in AT&T v. Public Service Commission, 188 W. Va. 250, 423 S.E.2d 859 (1992): the person/entity seeking protective treatment must meet the standards set forth in Rule 26 of the West Virginia Rules of Civil Procedure. Staff contends Alltel has failed to demonstrate good cause exists for protective treatment under the six-prong analysis used in State ex. rel. Johnson v. Tsapis, 187 W. Va. 337, 419 S.E.2d 1 (1992) to determine good cause pursuant to Rule 26(c)(7). The Commission has addressed this issue in an Order dated October 14, 2010 for Commission Case Nos. 09-0819-T-CN and 10-1267-T-PC. Therein the Commission denied a Motion for confidential treatment, when the Motion was not supported by an affidavit containing the relevant statement of facts and legal arguments to establish the information contained in the filing constitutes a "trade secret." Alltel bears the burden to persuade the Commission that the information should be protected as a trade secret. The current filings of Alltel are insufficient for the Commission to find the information is a trade secret. Therefore, Legal Staff recommends Alltel's Motion for reconsideration be denied.

The Commission addressed this issue in the September 19, 2011, Order as it noted the information contained in the attachment was readily known outside the carrier, and should not be considered trade secrets under West Virginia Code §29B-1-4. The FCC argument if adopted by the Commission would open a flood gate of positions put forth by telecommunications carriers that each and every report they filed was a matter of national security. It is well known that outages occur and this matter has resulted in issues with the

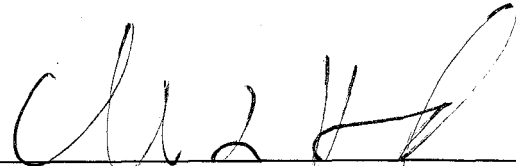
provisioning of E911 services and other cases filed before the Commission over quality of service.

Commission Staff recommends, based on the Commission's rules and regulations, the Commission enter an Order denying the Complainant's Motion for Reconsideration and reaffirm the September 19, 2011, Commission Order.

Respectfully submitted this 30th day of September 2011.

**STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA**

By Counsel,

A handwritten signature in black ink, appearing to read "Chris L. Howard", written over a horizontal line.

CHRIS L. HOWARD, Staff Attorney
West Virginia State Bar I.D. 8688

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

**CASE NO. 11-0818-T-GI
GENERAL INVESTIGATION REGARDING CERTIFICATION OF
FEDERAL UNIVERSAL SERVICE FUNDING FOR ELIGIBLE
TELECOMMUNICATIONS CARRIERS IN WEST VIRGINIA**

CERTIFICATE OF SERVICE

I, Christopher L. Howard, Counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Staff's Response to the Motion for Reconsideration of Alltel Communications, LLC" by the Staff of the Public Service Commission of West Virginia has been served upon the following parties of record by First Class, United States Mail, postage prepaid this 30th day of September 2011.

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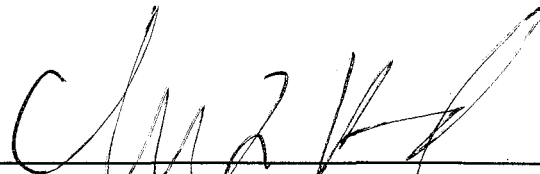
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A handwritten signature in black ink, appearing to read 'CL Howard', written over a horizontal line.

CHRISTOPHER L. HOWARD
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