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October 4, 2002

WT 02-325

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FEDERAL COMMUNICATIONS COMMISSION
BUREAU OF THE DIRECTOR

Federal Communications Commission
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, PA 17325

Re: Petition for Waiver -- Expedited Action Requested

Dear Sir or Madam:

Enclosed herewith is the original and four copies of the Petition of CenturyTel, Inc. and CenturyTel Wireless, Inc. (together, the "Parties") for Waiver of the Cellular Cross-Interest Rule. Because this Petition **seeks** a waiver in the Cellular Radiotelephone Service (Part 22), there is no application fee associated with this request in accordance with section 1.1102 of the Commission's rules, 47 CFR § 1.1102(17).

The instant waiver request is not an application type for which the Commission's rules require use of any of Forms 601 through 605. *See* 47 CFR § 1.913(a). Therefore electronic filing of this petition is not required. *See* 47 CFR § 1.913(b). Indeed, the Universal Licensing System ("ULS") appears unable to accommodate electronic filing of this Petition because it does not accompany any of the standard ULS application types. To the extent necessary, however, the Parties request **a** waiver of the electronic filing requirements with respect to this Petition.

Please feel free to contact me should you have any questions.

Very truly yours,



William S. Carnell
of LATHAM & WATKINS

Enclosures

OCT 07 2002

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED
OCT 16 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

CenturyTel Wireless, Inc.
Petition for Partial Waiver of
Cellular Cross-Interest Rule

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WT Docket No

325

CENTURYTEL WIRELESS INC. AND CENTURYTEL INC.
PETITION FOR WAIVER OF
CELLULAR CROSS-INTEREST RULE

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October 4, 2002

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

**CenturyTel Wireless, Inc.
Petition for Partial Waiver of
Cellular Cross-Interest Rule**

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WT Docket No _____

**CENTURYTEL WIRELESS AND CENTURYTEL, INC.
PETITION FOR WAIVER OF
CELLULAR CROSS-INTEREST RULE**

I. INTRODUCTION AND SUMMARY

CenturyTel Wireless, Inc., (“ALLTEL-C’Tel”) a wholly-owned subsidiary of ALLTEL Communications, Inc. (“ALLTEL”), together with CenturyTel, Inc. (the “Parties”) hereby seek limited waiver of the Cellular Cross-Interest rule, 47 C.F.R. § 22.942. CenturyTel Inc. seeks to transfer a non-controlling minority limited partnership interest¹ to ALLTEL-C’Tel in an entity holding the B-side license for portions of the Louisiana-6 Rural Service Area (“RSA”). However, ALLTEL, through its subsidiary Radiofone, Inc., currently holds the A-side license for an overlapping portion of the same RSA. The Cellular Cross-Interest rule would preclude ALLTEL-C’Tel from acquiring an attributable interest in that overlapping area, which

¹ The precise terms of the interest to be transferred are dictated by the Partnership Agreement (as defined below), which is attached as an exhibit hereto. Any characterization of the interest is descriptive only, and does not constitute a limitation or modification of the terms of the agreement or of any interests provided by the partnership Agreement, nor does any party by use of that adjective waive or otherwise limit any rights or claims it may have under the terms of the Partnership Agreement.

encompasses a portion of Iberville Parish just outside Baton Rouge, Louisiana with a population of fewer than 30,000.

Waiver under these circumstances is appropriate because the acquisition by ALLTEL-C'Tel of this non-controlling minority interest would not, and indeed could not, lead to any anticompetitive harm. Although the Parties seek this waiver for a RSA, the Commission has recognized that the Cross-Interest rule is “no longer necessary in urban markets,” because the cellular carriers in those markets face stiff competition from, and possess no significant advantage over, other carriers.’ The small RSA overlap area in question here is disciplined by the same competitive forces that discipline the adjacent Baton Rouge market. **Six** carriers serve portions of Iberville Parish including all or part of the overlap area, producing a level of market competition similar to that which the Commission determined was sufficient to justify elimination of the Cross-Interest rule. Moreover, carrier pricing in the overlap area is directly dictated by pricing in the even more competitive Baton Rouge Metropolitan Service Area (“MSA”): as a practical matter no carrier would or could sustain a separate pricing scheme for the three cell site area within Iberville Parish in which the overlap occurs. Application of the Cross-Interest rule under these circumstances is unnecessary, and waiver is appropriate.

II. BACKGROUND

In March, 2002 CenturyTel, Inc. and ALLTEL signed a contract to sell substantially all of CenturyTel’s cellular interests (held primarily by CenturyTel Inc.’s wholly-owned subsidiary CenturyTel Wireless, Inc.) to ALLTEL. Commission approval for that

² 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, *Report and Order*, 2001 FCC LEXIS 6768 (rel. Dec. 18, 2001) (“2000 Review”) ¶ 84.

transaction was sought and obtained; and the parties consummated the deal on August 1, 2002, whereupon ALLTEL became the sole owner of CenturyTel Wireless, Inc.

In March, however, before the Parties filed their application for Commission approval of the transfer, they found that the transaction as originally contemplated would have led to a small cellular overlap. CenturyTel Wireless held a 49 percent non-controlling limited partnership interest in Lafayette MSA LP (the “LP Interest”), a cellular B-side licensee that held, among other things, the license KNKN500, the “BY license covering a geographically partitioned portion of the Louisiana-6 RSA. That partnership is controlled by affiliates of BellSouth, and operates under management as an affiliate of the Cingular network. ALLTEL, through its subsidiary Radiofone, Inc., holds a 100 percent interest in the “A2” license also covering a geographically partitioned portion of the Louisiana-6 RSA.

Although the A2 and B2 license areas within the LA-6 RSA are not coterminous, they do overlap to some extent. The maps attached hereto as Exhibit B depict the respective license areas as well as the area in which the license areas overlap (the “Overlap Area”). As the maps show, these two licenses overlap in an area within Iberville Parish, adjacent to West Baton Rouge Parish, which is within the Baton Rouge MSA. The Overlap Area covers approximately 396 square miles – compared with 652 square miles in Iberville Parish, or 753 square miles in the Baton Rouge MSA. It is home to fewer than 30,000 residents. Yet despite its small size, acquisition by ALLTEL of that Overlap Area was and remains prohibited by the terms of the Cellular Cross-Interest rule.

Because the overlap area was so small in the overall scope of the \$1.65 billion transaction between CenturyTel and ALLTEL, the parties elected simply to carve out the

³ See *Wireless Telecommunications Bureau Grants Consent for Transfer of Control of Licenses from CenturyTel, Inc. to ALLTEL Communications, Inc.*, WT Dkt. No. 02-85 (rel. June 12, 2002) (the “Grant Public Notice”).

Lafayette MSA partnership from the transaction, rather than delay closing by seeking a waiver of the Cross-Interest rule. The parties therefore applied for and received FCC approval of the transfer of control from CenturyTel to ALLTEL of all but the LP Interest that would have created the impermissible overlap, noting in an exhibit to the lead application that the LP Interest would be disposed of prior to consummation.⁴ The parties closed and consummated the transaction on August 1, 2002.

Now, CenturyTel Wireless, Inc. (“ALLTEL-C’Tel”) – wholly-owned by ALLTEL – and CenturyTel Inc. seek a waiver of the Commission’s Cellular Cross-Interest rule so as to allow CenturyTel Wireless to acquire the LP Interest, including the Overlap Area.

III. WAIVER OF THE CROSS-INTEREST RULE IS APPROPRIATE WHERE THERE IS NOT A SIGNIFICANT LIKELIHOOD OF COMPETITIVE HARM.

The Cellular Cross-Interest rule has always existed with the backdrop of a cellular duopoly, where “significant cross-interests” among the only two wireless providers “generally would create a significant incentive for the two not to compete with one another as vigorously as otherwise.”⁵ The rule was established in 1991, before PCS or interconnected SMR offered any competition to cellular licensees for the carriage of mobile voice communications. The FCC found that to “guarantee the competitive nature of the cellular industry,” it was necessary *to* adopt a rule that “where only two cellular carriers are licensed per market, the licensee on one frequency block in a market should not own *an* interest in the other frequency block licensee in the same market.”⁶

⁴ See *id.*

⁵ 2000 Review ¶ 91 .

⁶ Amendment of Part 22 of the Commission’s Rules to Provide for Filing and Processing; Applications for Unserved Areas in the Cellular Service, *First Report and Order and Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 6185 (1991) (“*Cellular First Report and Order*”) at ¶¶ 103-104.

As the basic premise of the rule – cellular duopoly – gave way to competition from PCS and SMR, the Commission revised the Cross-Interest rule on several occasions. First, in the wake of its PCS auctions and in light of emerging competition from PCS and interconnected SMR services the FCC in its 1998 Biennial Review relaxed its attribution standards to allow licensees to hold greater cross-interests than had previously been permitted? Then in 2001, in connection with the 2000 Biennial Review, the FCC eliminated the Cross-Interest Rule in MSAs. Noting that MSAs are generally served by “four or more facilities-based CMRS providers,” and that “cellular providers’ share of mobile telephony nationwide had declined to seventy percent,” the Commission therefore concluded that “cellular carriers no longer possess market power in MSAs.”⁸ In places where cellular carriers no longer possess market power, then, the FCC could find “no reason to view the combination of cellular licensees in these markets less favorably **than** combinations of other CMRS licensees.”

The Commission did not eliminate the Cross-Interest rule in RSAs, however. At the time of the 2000 Biennial Review more than half of **RSAs** had two or fewer CMRS providers, and seventy six percent of RSA counties were served by three or fewer providers.” The FCC found that cellular providers continued to “dominate the marketplace” in many RSAs and therefore retained the Cross-Interest rule there.”

Yet even as it generally affirmed the Cross Interest rule in RSAs based on the general levels of competition and market power, the FCC recognized that in some cases such generalized treatment would not suffice: while many RSAs had few providers, some RSAs had

⁷ 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, *Report and Order*, WT Dkt No. 98-205 (rel. Sept. 22 1999) (“1998 *Review*”) at ¶ 70-76.

⁸ 2000 *Review* ¶ 86.

⁹ *Id.*

¹⁰ 2000 *Review* ¶ 89

¹¹ *Id.*

many. Therefore, in addition to recognizing the need to “reassess” the need for the restriction in connection with the 2002 biennial review, the FCC announced that it would “entertain requests for waiver in appropriate circumstances.”¹² The Commission announced a specific standard for waivers of the Cross-Interest Rule – a standard that takes into account the particular rationale for the rule.¹³ Because the rule depended for its basic premise on a generalized determination that cross-interests might tend to reduce competition, the Commission determined to “address[] through waiver” situations where “an RSA exhibits market conditions” that rendered that basic premise untrue. The Cross-Interest rule therefore was made “subject to waiver” where an applicant shows that “the proposed cross-interest would not create a significant likelihood of substantial competitive harm.”¹⁴

IV. ACQUISITION OF A NON-CONTROLLING MINORITY INTEREST IN THE OVERLAP AREA BY ALLTEL-C’TEL CREATES NO SIGNIFICANT LIKELIHOOD OF COMPETITIVE HARM.

The acquisition by ALLTEL-C’Tel of a non-controlling minority interest in the Lafayette MSA Limited Partnership would not create a “significant likelihood of substantial competitive harm,” even though ALLTEL, ALLTEL-C’Tel’s corporate parent, holds a license to serve part of the Louisiana-6 RSA. First, ALLTEL-C’Tel’s non-controlling interest would not allow it to control or influence any of the day-to-day decisions made by that partnership concerning the operation of its cellular markets. The partnership agreement places sole control over pricing **and** other competitive decisions in the hands of the general partner. Second **an** examination **of** competitive conditions in the overlap area – and also in the larger economic area of which it is **part** – shows that no party could exercise market power in that area.

¹² 2000 Review ¶ 9 I.

¹³ *Cf., e.g.,* Cingular Wireless, LLC Request for Waiver of the CMRS Spectrum Aggregation Limits, Order, FCC 01-271 (rel. Sept. 25, 2001) at ¶¶ 8-9 (discussing spectrum cap - specific standard that “provided another avenue for waiver” in addition to general waiver standard under Section 1.925).

¹⁴ 2000 Review ¶ 8 8.

A. CenturyTel Lacks Control Over the B-Side Interest.

The Agreement Establishing Lafayette MSA Limited Partnership (the “Partnership Agreement”), which is attached hereto as Exhibit A, places full operational control over the partnership’s affairs in the hands of the general partner. The limited partnership interest which ALLTEL-C’Tel seeks to acquire would not allow that entity, or its parent ALLTEL, to control pricing or other competitive decisions – or, indeed, to exercise any operational control over the partnership whatsoever.

ALLTEL-C’Tel proposes to acquire the **49** percent limited partnership interest that was previously held by Century Telephone Enterprises, Inc.,¹⁵ and is now held by CenturyTel, Inc. That interest will entitle ALLTEL-C’Tel to a pro rata share of partnership profits in accordance with its **49** percent interest.¹⁶ Yet it will entitle ALLTEL-C’Tel to virtually no control over the partnership’s affairs, which remain firmly within the control of the General Partner. Under the Partnership Agreement Limited Partners retain only certain limited rights to:

- inspect and copy the Partnership’s books and records, perform an audit, or demand certain other information;”
- inspect and copy the General Partner’s books and records that relate to its operation of the Partnership;¹⁸
- meet periodically with the other partners;” and
- dissolve and wind **up** the Partnership where permitted in accordance with a court order.²⁰

In addition, the transferred interest will carry certain negative controls commonly afforded passive investors, including the ability to approve or reject:

¹⁵ See Partnership Agreement § 5.1(C).

¹⁶ See *id.* § 6.3.

¹⁷ See *id.* §§ 7.3(a) – (c).

¹⁸ *Id.* § 7.3(f).

¹⁹ *Id.* § 7.3(e).

²⁰ *Id.* § 7.3(d).

- the annual budget;²¹
- significant changes in the partnership’s indebtedness;²²
- certain large-scale capital expenditures;²³ and
- certain fundamental changes to the Partnership’s business.²⁴

The Partnership Agreement specifies that outside these constrained and specifically delineated rights, *the Limited Partner “shall not. . . take part in, or interfere in any manner with, the conduct or control of the Partnership business.”*²⁵

In contrast to these extremely limited powers, the General Partner retains full operational control over the Partnership and its cellular operations. The General Partner is *solely* responsible for “operating and maintaining the Cellular Service system, and for marketing Cellular Service.”²⁶ The General Partner may do “any and all acts reasonably deemed by the General Partner to be necessary or appropriate,” in order to “[m]anage, supervise and conduct the affairs of the Partnership,” including hiring managers, pricing and marketing services, and making all operational decisions.²⁷ Under the plain terms of the Partnership Agreement the Limited Partner could not cause the Partnership to alter its pricing policies or service plans. ALLTEL-C’Tel will not be able to control the competitive decisions made by *the* Partnership.

B. No Party Could Exercise Market Power in the Overlap Area.

Plainly, because the LP Interest conveys no right to “take part in, or interfere in any manner with, the conduct or control of the Partnership business,” the proposed transfer could not alter competitive decisions made by the partnership. But the FCC’s determination of

²¹ *Id.* §§ 4.2(a)(1); 4.2(b)(5); 4.2(c). Note, however, that the General Partner may exceed **the** budget in order to “accommodate customer demand.”

²² *Id.* §§ 4.2(b)(2)-(3).

²³ *Id.* § 4.2(b)(6).

²⁴ *Id.* §§ 4.2(1), (7).

²⁵ *Id.* § 10.1 (emphasis added).

²⁶ *Id.* § 4.1.

²⁷ *Id.* §§ 7.1; 7.2(a).

whether the proposed transaction would create a “substantial likelihood of competitive harm” cannot end there. The FCC must also determine the possible impact of transaction on the ability and incentive of the acquiring party to exercise market power with respect to the license over which it does exercise control. That is, because ALLTEL controls the A-side cellular license, the FCC should also analyze whether ALLTEL could wield its control over that license to exercise market power in the Overlap Area. However, the Overlap Area and the surrounding market is vigorously competitive, and no party could profitably exercise market power.

1. The Cross-Interest Rule is Necessary Only Where Cellular Carriers Possess Market Power.

The Commission has stated a concern that where one cellular carrier owns a “significant interest” in the other, the one might be induced by its indirect interest other “not to compete with” the other carrier “as vigorously as otherwise.”²⁸ That is, the Commission posits that a profit-maximizing duopolist might fail to lower prices in the face of supra-competitive pricing by a competitor if it stands to gain a significant portion of the profit not only from its own supra-competitive pricing, but also from the competitor’s supra-competitive pricing. A combination of interests, then, might provide the incentive to act in an anticompetitive manner.

However, this concern only applies where the cellular carriers possess market power, and thus may have the ability (in addition to the *incentive*) to act in an anticompetitive manner. A true duopoly might allow two operators to maintain prices above competitive levels, where one is incentivized not to compete vigorously with the other. But the presence of additional competitors prevents such behavior. Thus the Commission has always measured the need for the Cross-Interest rule against the yardstick of existing competition.²⁹ And it

²⁸ 2000 Review ¶ 91.

²⁹ See, e.g., 1998 Review ¶¶ 70-72.

recognized when it abolished the Cross-Interest rule that the potential dangers of overlapping ownership do not survive in the face of competition

The Commission found the Cross Interest rule to be necessary where cellular carriers hold “the vast majority of subscribers” and face little competition from PCS.³⁰ But the Commission’s repeal of the rule in MSAs was based on the premise that the rule should be eliminated in competitive markets. Specifically, Commission concluded that the presence of four facilities-based carriers in a county (and in some cases fewer than four) means that “cellular carriers no longer possess market power in such counties,” and that the Cross-Interest rule may therefore be eliminated.”

2. With Five or Six Carriers, the Overlap Area is Sufficiently Competitive to Justify Elimination of the Rule.

By any definition, the geographic market is sufficiently competitive. As discussed, the actual overlap area consists of a portion of Iberville Parish.³² With fewer than 30,000 pops that area could scarcely be considered large enough to be a relevant geographic market – yet even that small area is strongly competitive. The FCC’s 2002 Competition Report finds that Iberville Parish receives service from “five operators.”³³ In fact it appears that one additional carrier now provides service to the market, for a total of **six** competing carriers.³⁴ Moreover, each of these is a major national carrier with the wherewithal to market and advertise their services in local, regional and national media – and each is robustly competitive with one another.

³⁰ 2000 Review ¶ 85.

³¹ 2000 Review ¶ 86.

³² See Exhibit B.

³³ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Seventh Report* (rel. July 3, 2002) (“7th Report”) at Appendix B-2.

³⁴ The parties could not verify whether any of the four PCS and SMR carriers is facilities-based, or whether any is simply a resale provider. However, given the incompatible technologies used by the various carriers – CDMA, TDMA, GSM and iDEN – logic dictates that it is unlikely that these are mere resellers of each others’ services.

An Internet search for service plans available within the overlap area demonstrates that in fact, six carriers offer service in at least part of the overlap area. In addition to ALLTEL and Cingular, AT&T, Sprint, Verizon and Nextel provide service in at least part of the overlap area. Significantly, each of those carriers provides service to Plaquemine (Zip Code 70765), the Parish Seat of Iberville and the largest town in the Overlap Area – and indeed in the Parish.³⁵

The level of competition in these areas is further demonstrated by a relative parity of pricing. The chart attached hereto as Exhibit C compares the basic plans offered by each of the six carriers providing service in Plaquemine and in certain other areas, and shows that each offers a relatively comparable basic plan. They charge from \$25 to **\$39.99** for buckets of 100 to 400 anytime minutes, plus various combinations of off-peak, mobile-to-mobile and other minutes. They all charge \$.35 to \$.40 for additional minutes, and provide comparable roaming rates. Significantly, the two cellular providers whose cross-interest is at issue here charge slightly less than the average per-anytime-minute rate of the six carriers in the market: the average rate for basic plan anytime minutes in the overlap area is \$0.14, while ALLTEL and Cingular charge \$0.10 and \$0.12 respectively. Their below-average prices are inconsistent with the notion that those carriers possess market power.

³⁵ *AT&T Wireless Home* (visited August 29, 2002) <<http://www.attwireless-welcome.com/cpCities.asp>>, *Welcome to Cingular* (visited August 29, 2002) <http://onlinestore.cingular.com/webapp/wcs/stores/servlet/BS_PROD_RATE?storeAlias=brcbmi&storeId=13801&catalogId=13801&langId=-1&svcAreaId=PMC&ratePlanType=Local>, *Nextel – Phones and Services* (visited August 29, 2002) <<http://nextelonline.nextel.com/NASApp/onlinestore/Action/StoreLanding>>, *SPRINT PCS* (visited August 29, 2002) <http://www1.sprintpcs.com/explore/servicePlansOptionsV2/PlansFilter.jsp?CURRENT_USER%3C%3EATR_SCID=ECOMM&CURRENT_USER%3C%3EATR_PCode=None&CURRENT_USER%3C%3EATR_cartState=group&bmUID=1030637671100>, *Verizon Wireless – Customize Your Service* (visited August 29, 2002) <http://www.verizonwireless.codics/plsq/customize.intro?p_section=PLANS_PRICING>. The parties were unable to determine the precise coverage area for any of the service providers except for the cellular providers.

Further evidence of the fact that the market is sufficiently competitive is the fact that each carrier prices service in the Overlap Area at the same level as in nearby urban areas such as Baton Rouge and New Orleans³⁶ – MSAs in which the Commission has recognized the Cross-Interest rule is unnecessary.³⁷

Plainly, the overlap area is competitive. With six large and well-financed providers competing within that area there is no reasonable prospect that a single carrier or pair of carriers could exercise market power. The Commission has recognized that “cellular carriers no longer possess market power,” where there are more than “four or more facilities-based CMRS providers.”³⁸ Because the market at issue here has more than four CMRS providers – in fact it has six – the Cross-Interest rule should therefore be **eliminated**.³⁹

3. The Overlap Area is Part of the Broader Baton Rouge Market, With Many Competitive Providers.

Treating the overlap area as a discrete market demonstrates that even at its most narrowly-defined, the market is sufficiently competitive to justify waiver of the Cross-Interest rule. But in fact, competition in the overlap area is even stronger, because the overlap area is disciplined by competition from carriers in the Baton Rouge market. As a practical matter, the overlap area is not an insular market within which carriers can charge rates different from the competitive rates offered in Baton Rouge.

The overlap area is within the Baton Rouge Basic Trading Area, and carriers do not distinguish or differentiate rates among locations within that area. No provider offers a plan that includes only the overlap area, or only Iberville and Assumption Parishes. In fact, no

³⁶ In the interests of full disclosure, ALLTEL notes that through wholly-owned subsidiaries it holds the A-side cellular licenses for both the Baton Rouge and New Orleans MSAs.

³⁷ 2000 Review ¶¶ 84-87.

³⁸ 2000 Review ¶ 86.

³⁹ See *Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

provider offers a plan that includes anything less than the entire Baton Rouge – New Orleans corridor, and the local calling area for most CMRS carriers is far broader. The smallest coverage area offered by AT&T spans the Gulf Coast from Beaumont, Texas to Montgomery, Alabama; with Baton Rouge, Lafayette, New Orleans and other cities in between; Nextel’s local calling area stretches from Beaumont to Mobile; Sprint PCS and Cingular offer a local area stretching from Lake Charles to New Orleans; Verizon’s local area runs from Lafayette to New Orleans; ALLTEL’s runs from Baton Rouge along the Gulf Coast to Tallahassee, including New Orleans, Mobile and Pensacola.⁴⁰ Significantly, these carriers do not charge different prices depending on where the subscriber resides. Pricing within these local calling areas appears to be identical regardless of whether one enters a home address from the overlap area, or from downtown Baton Rouge!

There is no reason to believe that a “hypothetical monopolist” in the overlap area (but not in Baton Rouge) could profitably impose a significant price increase in the overlap area.

⁴⁰ *Verizon Wireless – Your Price Plan Map* (visited August 29, 2002) <http://www.verizonwireless.com/images/maps/south/south_gulf_coast_loc.gif>, *Cingular Home Calling Area – Louisiana* (visited August 29, 2002) <http://onlinestore.cingular.com/images/GulfStates/brcbmi/Maps/map_home_la_08_22_02.gif>, *Nextel Baton Rouge/New Orleans Area Coverage Map* (visited August 29, 2002) <<http://www.nextel.com/cgi-bin/localMarketMap.cgi?zip=70765>>, *SprintPCS Explore – Service Area: Baton Rouge, LA* (visited August 29, 2002) <http://www1.sprintpcs.com/explore/coverage/ServiceAreaDetail.jsp?FOLDER%3C%3Efolder_id=429455&CURRENT_USER%3C%3EATR_SCID=ECOMM&CURRENT_USER%3C%3EATR_PCode=None&CURRENT_USE R%3C%3EATR_cartState=group&bmUID=1030638434420>, *AT&T Wireless Home Coverage Area* (visited August 29, 2002) <http://www.attwireless-welcome.com/images/CoverageMaps/ATLocal/Louisiana_Local.jpg>, *ALLTEL* (visited August 29, 2002) <http://estore.ALLTEL.com/Dispatch.jsp?CurrentState=WirelessServicePlanList&__FFCSessionID=0AFA007A002000EFAD87B9C543080000&.NewState=WirelessSpecificServicePlanList&campaign=&viewSpecificPlan=local>

⁴¹ *AT&T Wireless Home – Cities Calling Plan* (visited August 29, 2002) <<http://www.attwireless-welcome.com/cpCities.asp>>, *Welcome to Cingular – Cingular Home Plans* (visited August 29, 2002) <http://onlinestore.cingular.com/webapp/wcs/stores/servlet/ES_PROD_RATE?storeAlias=brcbmi&storeId=13801&catalogId=13801&langId=-1&svcAreaId=PMC&ratePlanType=Local>, *Nextel Rate Plans* (visited August 29, 2002) <<http://nextelonline.nextel.com/NASApp/onlinestore/Action/RatePlanLanding?initstate=true&redirect=false>>, *Sprint PCS – Service Plans and Options* (visited August 29, 2002) <<http://nextelonline.nextel.com/NASApp/onlinestore/Action/RatePlanLanding?initstate=true&redirect=false>>, *Verizon Wireless – Plans and Pricing: Local DigitalChoice (R)* (visited August 29, 2002) <<http://nextelonline.nextel.com/NASApp/onlinestore/Action/RatePlanLanding?initstate=true&redirect=false>>.

The monopolized product by itself – a cellular plan encompassing only parts of two counties – is not sold by any carrier, and it likely would be worthless to consumers. The product that is offered for sale and that consumers apparently want consists of a cellular plan encompassing greater Baton Rouge at least, and generally also broader regional coverage. The similarity of pricing among competitors in Baton Rouge demonstrates that the mild variations in coverage area among those competitors are, overall, viewed by consumers as relatively insignificant, similar to the availability of different options among slightly differentiated services. While a particular consumer may choose carriers based partly or even solely on the availability of a particular service option – or the quality of coverage in a particular area – the different service plans are sufficiently substitutable that the aggregation of those consumers' choices does not lead to a material price difference among those carriers.

Moreover, there is no evidence that carriers could profitably practice price discrimination between the overlap area and Baton Rouge.⁴² And in fact the evidence demonstrates that they do not: across the board, carriers charge the same for services in the overlap area as they do in Baton Rouge. That broader geographic market is disciplined by the presence of six major competitors.⁴³

These facts demonstrate that those portions of Iberville and Assumption Parishes that are within the LA-6 B2 and A2 RSAs – and particularly those that are within the overlap area, are fully competitive. Five providers compete for customers within the overlap area, and the market in that area is further disciplined by heavy competition in the Baton Rouge MSA.

⁴² See generally, Horizontal Merger Guidelines Issued by the U.S. Department of Justice and the Federal Trade Commission, 57 Fed. Reg. 41,552, §1.2 (dated Apr. 2, 1992, as revised, Apr. 8, 1997).

⁴³ 7th Report Appendix B2.

V. CONCLUSION

Competition within the overlap area created by the proposed acquisition by ALLTEL-C'Tel of CenturyTel Inc.'s interest would prevent the exercise of market power. The Commission itself has determined that "five operators" provide service to the overlap area, and indeed it appears six providers now offer service there. The overlap area is by either count at least as competitive as the MSAs, which generally received service from four providers but were deemed by the Commission to be sufficiently competitive to obviate the need for the Cross-Interest rule. Because there is not a "significant likelihood of substantial competitive harm," waiver in this case is therefore appropriate.

Respectfully Submitted,

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October 4, 2002

RECEIVED
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FEDERAL COMMUNICATIONS COMMISSION

AGREEMENT ESTABLISHING

LAFAYETTE MSA LIMITED PARTNERSHIP

among

LAFAYETTE CGSA, INC.

and

CENTURY TELEPHONE ENTERPRISES, INC.

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"W I T N E S S E T H"

WHEREAS, LCGSA is a wholly-owned subsidiary of BellSouth Mobility Inc, which is a wholly-owned subsidiary of BellSouth Corporation, and is engaged in planning for the provision of Cellular Service (as such term is defined in Article II hereof); and

WHEREAS, BMI's affiliate, South Central Bell Telephone Company, presently provides wireline telephone service in an area located within that certain Metropolitan Statistical Area which is defined as *the "MSA"* in Article II hereof, and

WHEREAS, BMI desires to provide Cellular Service; and

WHEREAS, Century Telephone Enterprises, Inc. desires to participate in providing such Cellular Service; and

WHEREAS, the Federal Communications Commission ("FCC") in its cellular orders set forth in Cellular Communication Systems, (CC Docket No. 79-318), 86 F.C.C.2d 469 (1981) on reconsideration, 89 F.C.C.2d 58 (1982) on further reconsideration, 90 F.C.C.2d 571 (1982) collectively referred to herein as the "cellular Radio Decisions", stated that (a) a pressing need exists for expeditious implementation of cellular service, (b) one of the two frequency allocations for providing cellular service within designated metropolitan areas **would** be assigned to **a** wireline carrier having an exchange presence in that metropolitan area, (c) it expected that the wireline carriers would **commence** providing cellular service promptly, and (d) it strongly urged wireline carriers eligible and desiring to provide cellular service in any such designated metropolitan **area to** reach mutually acceptable arrangements to provide such service; and

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WHEREAS, the Partners **desire** to further the objectives of the FCC set forth in the Cellular Radio Decisions in expeditiously providing cellular service to the public and believe that this Agreement, as so encouraged by the FCC, is consistent with the **FCC's** cellular communications policy and is lawful and in the public interest:

WHEREAS, the areas with respect to which the Partners hereto or their affiliates presently provide wireline telephone service are contiguous, a community of interests exists therein, such areas can most economically and efficiently be served by a unified cellular system, and the Partners accordingly desire to form a limited partnership to arrange for the funding, establishment and provision of Cellular Service:

NOW, THEREFORE, it is mutually agreed that:

ARTICLE I

FORMATION OF **LIMITED PARTNERSHIP**

1.1 Formation. The partners mutually covenant and agree and hereby **do form** a limited partnership pursuant to the provisions of the Delaware Limited Partnership Act, in accordance with the further terms and provisions hereof.

1.2 Name and office. The name of the partnership is Lafayette **MSA** Limited Partnership and its business shall be carried on in this name with **such** variations and changes as the General Partner deems necessary to **comply** with requirements of the jurisdictions in which operations are conducted **or as** the General Partner deems necessary to change for any reasonable **business** purpose.

The principal office and place of business of the Partnership shall be maintained at 5600 Glenridge Drive, Suite 600, Atlanta, Georgia 30342 or at such other location as the General Partner may from time to time select, upon prior written notice to the Limited Partners.

1.3 Business Purpose. The purpose of the Partnership shall be to fund, establish and provide Cellular Service. It is understood and agreed that Cellular Service provided by the Partnership shall initially be limited to that certain Cellular Geographic service Area which is defined as the "CGSA" in Article II hereof and which is generally located within the boundaries of the MSA, but may, subject to the provisions of this Agreement, be expanded to include other areas.

1.4 Effectiveness of the Agreement. Therefore, to the extent necessary to obtain approval of this Agreement and any other **necessary** governmental approval for potential Partnership activity, this Agreement shall become effective upon the FCC having dismissed or authorized the dismissal or authorized the withdrawal of any individual application **by** the Limited Partners to provide Cellular service. Upon signing of this Agreement the General Partner shall file a Certificate of Limited Partnership with the appropriate state authorities. The Partners agree to take no action inconsistent with the provisions of this Agreement during the period of time before this Agreement is approved by appropriate **governmental** authority and shall reasonably support the Partnership's **interests** in obtaining approval of this Agreement from such governmental authority.

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ARTICLE II

DEFINITIONS

2.1 Affiliate. A person, association, co-partnership, partnership, corporation or joint-stock company or trust (hereinafter "person") that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another person. Control shall be defined as (i) ownership of a majority of the voting power of all classes of voting stock or (ii) ownership of a majority of the beneficial interests in income and capital of an entity other than a corporation.

2.2 Agreed Value. The credit the General Partner receives in its capital account upon its initial Capital Contributions for contributed equipment and real property (including buildings) valued as set forth in Section 5.3.

2.3 Capital Contribution. Funds paid or property contributed to the Partnership for the purchase of the Partnership Interests issued pursuant to Article V, in the amount and manner as **set** forth for the General Partner and the Limited Partners in Appendix A to this Agreement and **as** supplemented from time to time pursuant to Sections 5.2 and 5.3 hereof.

2.4 Cellular Service. Any and all service authorized by the FCC under Part 22 of its cellular rules as promulgated under the Cellular Radio Decisions and provided pursuant to the terms of this Agreement.

2.5 CGSA. The Cellular Geographic Service Area designated in the attached Appendix B, which is generally contained within the boundaries of the MSA and which constitutes the geographical limits of the area in which Cellular Service will initially be provided hereunder.

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2.6 General Partner's Interest. The Partnership Interest of the General Partner.

2.7 Income and Losses. The income and losses of the Partnership as of the close of the Partnership's fiscal year or any other fiscal period, determined in accordance with generally accepted accounting principles. provided however that Income and Losses will be determined as though equipment and real property (including buildings) contributed to the Partnership had been purchased by the Partnership at its Agreed Value.

2.8 Initial Capital Account Amount. The respective amounts initially credited to the capital account established for the General Partner and the Limited Partners pursuant to section 5.1, which amounts shall equal the **sum** of the amount of cash and the Agreed Value contributed **as** provided in Section 5.1.

2.9 Limited Partner's Interest. The Partnership Interest of a Limited Partner.

2.10 Partnership Interest. The entire ownership interest of the General Partner or **a** Limited Partner in the Partnership at any particular time determined by **the** ratio which the General Partner's or **any** such Limited Partner's Capital Contribution bears to the aggregate Capital Contributions of the General Partner and the Limited Partners. Such interest includes, without limitation, the interest of the General Partner or any such Limited Partner in the Partnership's **Income** and Losses and any and all benefits **to** which the General Partner or any such Limited Partner may be entitled as

provided in this Agreement and in the Delaware Limited Partnership Act, together with the obligations of the General Partner or any such Limited Partner to comply with all the terms and provisions of this Agreement and the Delaware Limited Partnership Act.

2.11 MSA The Metropolitan Statistical Area designated in the attached Appendix C.

ARTICLE III

REGULATORY MATTERS

3.1 Contingency. The permits or licenses to be issued by regulatory authorities in connection with the provision of Cellular Service may be Contingent during the pendency of litigation or regulatory action concerning the present wireline allocation; however, the pendency of such litigation or regulatory action shall not affect the Partners' obligations under this Agreement.

3.2 Cooperation. The Partners pledge their best efforts and mutual cooperation to permit the Partnership to (i) implement expeditiously Cellular Service and to provide Cellular Service and (ii) obtain all necessary approvals to provide Cellular Service.

3.3 Operational Date. The Partners recognize that the date when Cellular Service can first be offered to the public depends upon the time required to obtain wireline cellular licenses for providing **such Cellular Service** and other federal, state and local approvals, and the time required **to** construct and test the cellular system taking into account the General

Partner's construction schedule and the cellular system manufacturer's schedule.

ARTICLE IV

PARTNERSHIP OPERATIONS

4.1 Management and Operating Services. The General Partner on behalf of the Partnership shall be responsible for obtaining interconnection with the landline network, for operating and maintaining the Cellular Service system, and for marketing Cellular Service. In carrying out the Partnership's responsibility to provide Cellular Service, the partners hereto agree that the General Partner shall perform all activities and/or functions as the General Partner may deem necessary or appropriate to market, sell, establish, operate, maintain and manage the Cellular Service system. In accordance with Section 3.2, the Limited Partners agree to aid the General Partner in the performance of such activities and functions.

The General Partner shall provide management and accounting services to the Partnership consisting of, but not limited to, maintaining books of record, opening bank accounts, preparing accounting reports (in accordance with generally accepted accounting principles, as varied by appropriate regulatory authorities), and other records or reports necessary to meet regulatory and legal filings, as the General Partner may deem necessary or appropriate.

4.2 Limitation on Powers of the General Partner. (a) Notwithstanding any provisions contained in this Agreement to the contrary, without the prior notice and review of the Partners, the General Partner shall have no authority, subsequent to the date of execution of this Agreement, to:

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(1) expend any funds during any fiscal year for any expense or expenditures in excess of the amount budgeted therefor for the Partnership operations in its annual budget **as** described in Section 4.2(c). However, in the event emergency expenditures are necessary to preserve the business of the Partnership as well as to keep the equipment of the Partnership operational, such expenditures may be made by the General Partner without prior notice and review by the partners;

(2) make any and all elections under the United States Internal Revenue Laws (including elections of depreciation methods and **useful** lives, Louisiana's revenue laws and any and all parish or municipal revenue laws;

(3) submit applications to the Federal Communications Commission, the Louisiana Public Service Commission and **any** other governmental agency or body for all licenses, permits, certificates of authority, certificates of convenience, construction permits and all other approvals.

(b) Notwithstanding any provisions contained in the Agreement to the contrary, without the prior approval of at least one Limited Partner who is **not also** the General partner, the General Partner shall have **no** authority to:

(1) expand the **CGSA** of the Partnership;

(2) borrow funds on a secured basis and grant mortgages, security interest, pledges or other security devices encumbering **any** of the **assets** of the Partnership either to secure indebtedness of the Partnership or for any other purpose;

(3) **prepay** any of the indebtedness of the Partnership in advance of the **due** date thereof;

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- (4) confess a judgement against the Partnership;
- (5) adopt an annual construction budget on or before October 1st of each fiscal year for the following fiscal year. Said budget may be increased (based upon the cost of each item shown on the original budget) without prior approval to the extent reasonably necessary to accommodate customer demand in excess of that anticipated at adoption of the original budget (as reflected in the assumptions attached to said budget); or
- (6) expend funds on construction in excess of 120% of the annual construction budget (as it may be amended by such approval or otherwise pursuant to section 4.2 (b)(5)).
- (7) embark in any speculative transaction in services or goods dealt in by the partnership, nor make any investment in anticipation of said speculative transaction.

In the event **said** approval to item (b)(5) is not obtained within 45 days after it has been submitted to the Limited Partners, the construction budget for the immediately preceding year shall be deemed the construction budget for the said year.

(c) On or before October 1st of each fiscal year, the General Partner shall submit to the partners a proposed budget for the following fiscal Year. This budget shall contain projections of revenues, operating expenses detailed by appropriate categories to the reasonable satisfaction of the Partners, interest expenses, and proposed capital acquisitions detailed by category of equipment to the reasonable Satisfaction of the Partners.

4.3 Operating and Management Expenses. The General Partner shall be reimbursed by the Partnership monthly for any reasonable and necessary expenses incurred by the General Partner on behalf of the Partnership in

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providing Cellular Service plus reasonable and necessary administrative and general overhead expenses, including, but not limited to, marketing, maintenance, message charges, facilities, engineering, customary legal, accounting and audit fees, development and implementation of billing procedures, expenses of preparing tax returns and reports, taxes, travel, office rent, telephone, salaries (including social security, relief, pensions and other benefits), and other incidental business expenses incurred by the General Partner on behalf of the Partnership in **connection** with the provision of Cellular service. The General Partner shall not be entitled to any profit in rendering such services to the Partnership, as described in this paragraph, it being understood that the General Partner will be entitled to its proportionate allocated share of Income and **Losses** as provided in Article VI. The Limited Partners (other than the Limited Partner which is also the General Partner) shall reimburse the General Partner for all expenses incurred after January 1, 1987 in accordance with the Limited Partners' pro-rata share as stated in Section 5.1 herein.

4.4 Ownership of Properties. In addition to the properties contributed to the Partnership by the General Partner pursuant to Section **5.3**, the Partnership shall acquire and hold in its name, directly or through license, all real and personal property, equipment, software and other assets required to provide Cellular Service.

4.5 Licenses. The General Partner shall, on behalf of the Partnership and consistent with section 14.1, (a) cause to be transferred to the Partnership's name all licenses, permits or other regulatory approvals necessary to provide Cellular Service, (b) if other local, state or federal

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licenses, permits, certificates of convenience, franchises, or other approvals or authorities are necessary to provide Cellular Service, make application to the appropriate authority, subject to notification of the Partners as provided in Section 4.2(a).

ARTICLE V

CAPITALIZATION OF PARTNERSHIP

5.1 Initial Capital Contributions. Initial Capital Contributions shall be as set forth in Appendix A hereto, **as** such Capital contributions may be modified pursuant to Section 5.3. Such initial Capital Contributions shall result in the following respective Partnership Interests for the Partners:

- (A) 30% for Lafayette CGSA, Inc. **as** General Partner,
- (B) 21% for Lafayette CGSA, Inc. as Limited Partner,
- (C) 49% for Century Telephone Enterprises, Inc.
as Limited Partner

Initial Capital Contributions shall be made within **60** days of receipt of written requests by the General Partner; provided, however, that no initial Capital Contributions shall be made prior to issuance **by the FCC** of a construction permit to the Partnership. Capital Contributions **may** only **be** requested by the General Partner as they are needed to meet the financial obligations of the Partnership and operating and management expenses **as** set forth in Section 4.3. The Limited Partners shall notify the General Partner within 10 days after receipt of such requests, each notice stating whether

or not the Limited Partner intends to make the requested initial Capital Contribution. The Partners understand that the contribution schedule under this Article V is intended for the purpose of this Agreement only and that the schedule may not reflect the full level of expenditures (or Capital Contributions) appropriate for regulatory purposes.

5.2 Additional Capital Contributions. From time to time additional capital may be required to be invested by the Partnership to fund expansion or operation of Cellular Service. In the event the General Partner determines that additional capital is so needed, each Partner shall be entitled to provide all (but not part of) its share of additional Capital **in** proportion to its then current Partnership Interest. This additional funding is due and payable on the date set forth in a written notice requesting an additional Capital Contribution given by the General Partner to a Partner, which date shall not be less than sixty days from the date of the notice. Should any Partner decline to make such additional Capital Contribution, or fail to pay its contribution when due, the other Partners may contribute pro rata, according to their then current respective Partnership Interests, an aggregate amount equal to the additional Capital Contribution declined by the non-participating Partner(s), thereby increasing in such proportion the other Partners' Partnership Interests (it being understood that the General Partner may make such additional Capital Contribution **as** a Limited Partner, if it desires). In such event, the Partnership Interest of a non-participating Partner shall be diluted accordingly and such Partner shall be limited in its right to provide future additional capital in proportion to its Partnership Interest as so revised.

5.3 Capital Contributions In Cash. Funding of both initial and **additional** Capital Contributions to the Partnership shall be in cash and not **real** or personal property, provided, however, that with respect to its

initial Capital Contribution the General Partner for its Partnership Interest as General Partner and **as a** Limited Partner may contribute, in lieu of or in addition to cash, real property (including buildings) and equipment acquired after January 1, 1987 in anticipation of and for use by the Partnership in the provision of Cellular Service. The approximate or actual cost associated with and directly related to the acquisition of such real property (including buildings) and equipment is set forth in Appendix A. The value of such contributed real property (including buildings) and equipment is to be determined on the **basis** of acquisition cost plus 12% interest compounded annually from the date of acquisition to the date by which all initial Capital Contributions have been received.

The Partners recognize the General Partner has acquired and will continue to acquire real property (including buildings) and equipment in anticipation of and for use by the Partnership in the provision of Cellular Service. Additional real property (including buildings) and equipment may be purchased between execution of this Agreement and the date when the initial Capital Contribution is made, therefore, Appendix A may not list **all** such real property (including buildings) and equipment the General Partner would contribute to the Partnership. In the event such further property or equipment is contributed **(i)** it shall be valued as set forth in this section 5.3, and **(ii)** its value shall be deducted from the cash portion of the General Partner's initial Capital Contribution as set forth in Appendix A.

5.4 Additional Limited Partners. In providing Cellular Service within the **MSA**, the General Partner may invite one or more wireline carriers to become additional limited partners hereunder subject to approval by all Limited Partners. In providing Cellular Service in areas adjoining the **MSA**, the General Partner shall **have** the right to invite one or ~~more~~ wireline carriers not affiliated with the General Partner to become additional

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limited partners hereunder subject to approval by all Limited Partners. **The** Limited Partners hereby consent to amend the Agreement to reflect any such inclusion. In the event of any such addition (i) the new Limited Partner shall participate in the Partnership on the same terms and conditions as described herein (or as hereafter amended), and (ii) the Partnership Interests of the other partners shall be adjusted according to their then current respective Partnership Interests.

ARTICLE VI

ALLOCATIONS AND DISTRIBUTIONS

6.1 Capital Accounts. A capital account shall be established for each Partner in such Partner's Initial Capital Account Amount. Such capital account shall be increased to reflect allocable shares of Income, as defined **in** Section 2.7, and additional Capital Contributions pursuant to Sections 5.2 and 5.4, and decreased to reflect allocable shares of Losses, as defined **in** Section 2.7, and cash distributions made by the Partnership. **For** purposes of this section 6.1, Income and Losses shall be apportioned ratably to each day of the fiscal period and each day's share shall be allocated **pursuant** to the Partnership Interests on such date. In the case of distributions in kind pursuant to section 14.3, capital accounts shall be adjusted in accordance with Section 14.3.

6.2 Tax Allocations Among Partners. All items of income, gain, loss, deduction and credit (including items of **tax** preference) of the Partnership **for** Federal income tax purposes shall be apportioned ratably to each **day** of the Partnership's taxable year and each day's share of such **items** shall be allocated **to** the Limited Partners and to the General Partner in **proportion** **to their** respective Partnership Interests on such days, provided however, depreciation and gain or loss recognized **for** Federal income tax purposes

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with respect to property contributed to the Partnership shall be allocated to the Limited Partners (other than the Limited Partner who is **also** the **General** Partner) as though such property had been purchased by the Partnership at its Agreed Value. The remainder of any depreciation and **gain** or loss recognized for Federal income tax purposes with respect to such contributed property shall be allocated to the General Partner in respect of its General Partner's Interest and Limited Partner's Interest proportionately.

6.3 Distributions. Funds of the Partnership from all sources, **less** appropriate reserve⁶ as are determined by the General Partner to be reasonably necessary for future administrative and operating expenses, loan payments and other costs and expenses and contingencies, shall be distributed on a fiscal quarterly basis as promptly as practicable after the end of each quarter. Each distribution pursuant to this Section 6.3 shall be made to the Partners in proportion to the daily weighted average of their respective Partnership Interests as in effect from time to time during **the** relevant quarterly period.

ARTICLE VII

RIGHTS **AND** POWERS OF PARTNERSHIPS, GENERAL PARTNER **AND** LIMITED PARTNERS

7.1 Partnership Powers. In furtherance of the business purpose specified in Section 1.3, but subject to the provisions of Section 4.2, the Partnership, and the General Partner on behalf of the Partnership, shall be empowered to do or cause to be done any **and** all acts reasonably **deemed** by the General Partner to be necessary or appropriate in furtherance of the ~~purposes~~ of the Partnership or forebear from doing any act if the General Partner reasonably deems such forbearance necessary or appropriate in

furtherance of the purposes of the Partnership, including without limitation, the power and authority:

(a) To enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishment of the Partnership's purposes, including, without limitation, contracts and agreements with the General Partner and Affiliates of the General Partner, provided the amount charged therefor is not in excess of the amount charged by said affiliates to others for similar contracts or agreements and to take or omit such other or further action in connection with the Partnership's business as may be necessary or desirable in the opinion of the General Partner to further the purposes of the Partnership provided, however, that any transaction between the Partnership and Partners or their Affiliates shall be documented and shall become part of the records of the Partnership;

(b) To borrow from banks and other lenders on such terms and conditions as shall be approved by the General Partner subject to the provisions of Section 4.2 and to secure any such borrowings by mortgaging, pledging or assigning assets and revenues of the Partnership to the extent deemed necessary or desirable by the General Partner;

(c) To invest such funds as are temporarily not required for Partnership purposes in short-term debt obligations selected by the General Partner including government securities, certificates of deposit of commercial banks (domestic or foreign), commercial paper, bankers' acceptances and other money market instruments; excluding, however, investments in debt instruments having a maturity of more than 90 days or equity interest of any of its affiliates, and

(d) To carry on any other activities necessary to, in connection with or incidental to any of the foregoing.

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1.2 Powers of the General Partner. In addition to those powers vested pursuant to Section 7.1, but subject to all of the provisions of this Agreement including those contained in Section 4.2, the General Partner hereby is vested with the power to:

- (a) Manage, supervise and conduct the affairs of the Partnership;
- (b) Make all elections, investigations, evaluations and decisions, binding the Partnership thereby, that may be necessary or appropriate in connection with the business purposes of the Partnership;
- (c) Incur obligations or make payments on behalf of the Partnership in its own name or in the name of the Partnership;
- (d) Execute all instruments of any kind or character which the General Partner in its discretion shall deem necessary or appropriate in connection with the business purposes of the Partnership;
- (e) From time to time increase the coverage area of Cellular Service within the **CGSA** or to apply for regulatory approval to expand the geographic area of the **CGSA**; and
- (f) Subject to the provisions of Sections 5.2 and 5.4 herein, apply to the FCC on behalf of the Partnership for permits and licenses to provide Cellular Service in areas adjoining the **MSA** where such adjoining areas and the **MSA** have a community of interest and where such expansion appears to be economically justifiable and would result in Cellular Service being provided by the Partnership in a unified **area** which includes the **MSA** and adjoining areas, (provided the approval of one of the Limited Partners who is not also the General Partner is obtained) negotiate on behalf of the Partnership to reach mutually acceptable arrangements with other wireline carriers desiring to provide service in such areas and decide and conduct **all matters** Pertaining to such applications and to the Cellular Service that may result from such applications.

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7.3 Rights of Limited Partners. Each Limited Partner shall have the right to:

(a) Inspect and copy, upon three business days notice to the General Partner, any of the Partnership **books** of record, accounting records, financial statements or other records or reports;

(b) Have on demand true and full information of all things affecting the Partnership, and a formal account of Partnership affairs whenever circumstances render it just and reasonable:

(c) Audit, at its own expense and once every calendar year, the Partnership books of record, accounting records, and financial statements of the Partnership;

(d) Have dissolution and winding up by decree of court, when permitted;

(e) Meet with representatives of the General Partner on a quarterly basis at a time and place designated by the General Partner to consult with or advise the General partner as to the operation of the Partnership to review budgets including reviews required in section 4.2(a) and 4.2(c) and approval required in Section 4.2(b) and to review other matters as may be required in this agreement (such meeting may be waived upon a unanimous vote of the Limited Partners), and

(f) Inspect and copy, upon three business days notice to the General Partner, the **books** of record, accounting records, financial statements or other records or reports of the General Partner relating to its operations of the Partnership.

7.4 Ownership or Conduct of other Businesses. Subject to the Provisions of Sections 0.8 and 10.4, the Partners may, independent of the Partnership, engage in or possess an interest in other business ventures of **every** kind and description. Neither the Partnership nor any Partner shall have any rights by virtue of this Agreement in such independent business Ventures or to the income or profits therefrom.

ARTICLE VIII

OBLIGATIONS OF GENERAL PARTNER

8.1 Duty of the General Partner. The General Partner will at all times act in the best interests of the Partnership.

8.2 Conduct of Business. The General Partner shall manage and provide administrative services to the Partnership, and subject to the provisions of this Agreement, including specifically the provisions of Section 4.2 and 7.1 shall execute all contracts, agreements and instruments as the General Partner reasonably may deem necessary or desirable to carry on the Purpose of the Partnership.

8.3 Filings. The General Partner shall file all certificates, notices, statements or other instruments required by law for the formation, operation and termination of the Partnership and its business in **all** appropriate jurisdictions and shall prepare and file all necessary Partnership tax returns. The General Partner shall advise the Limited Partners of any elections under applicable **tax** laws that may affect Partnership Income or Losses.

8.4 Maintain Accounts. Pursuant to the provisions of this Agreement, the General Partner shall maintain or cause to be maintained capital **accounts** on the books and records of the Partnership in respect of each Partnership Interest.

8.5 Financial Reports. The General Partner shall furnish **annual** audited Partnership financial statements examined by a recognized **firm** of independent certified public accountants and quarterly unaudited Partnership financial statements to the Limited Partners. Quarterly unaudited financial

statements will be furnished to the Limited Partners within 15 business days after the close of each quarter and be certified by an officer of the General Partner. Year-end audited financial statements will be made available to the Limited Partners within 30 business days after the close of the fiscal year.

8.6 Performance of Partnership Obligations. The General Partner shall use its best efforts to cause the Partnership to observe and perform each and every obligation under all agreements and undertakings made by the Partnership or imposed on the Partnership by law or regulatory authority.

8.7 Resale of Cellular Service. Nothing herein shall preclude the General Partner or an Affiliate thereof from reselling Cellular Service Or selling or leasing terminal equipment used in connection with Cellular Service independently from the Partnership whether within or outside the MSA. Neither the General Partner nor any Affiliates thereof shall be funded or staffed by the Partnership for such provision of Cellular Service or resale activity and any transactions between the General Partner or any such Affiliate and the Partnership shall be on an arms-length basis and on prices, terms and conditions equivalent to the prices, terms and conditions of any agreements between the Partnership and other resellers of Cellular Service.

8.8 Cellular Service in other Areas. Nothing herein shall preclude the General Partner or an Affiliate thereof from providing Cellular Service independently from the Partnership in areas other than the MSA and adjoining areas. Applications by the General Partner or an Affiliate thereof to Provide Cellular Service in areas adjoining the MSA shall be deemed to be made on behalf of the Partnership pursuant to the terms of Section 7.2 (f).

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ARTICLE IX

BANKING, ACCOUNTING, BOOKS AND RECORDS

9.1 Banking. All funds of the Partnership shall be deposited in a separate bank account or accounts as shall be established and designated by the General Partner. Withdrawals from any such bank account **shall** be made upon such signature or signatures as the General Partner may designate.

9.2 Maintenance of Books and Accounting Method. The General Partner shall keep or cause to be kept full and accurate accounts of the transactions of the Partnership in proper books of account in accordance with generally accepted accounting principles, as varied by appropriate regulatory authorities. Such books and records shall be maintained or available on notice at the principle place of business of the General Partner and be made available for reasonable inspection, examination and copying by the Limited Partners or their respective duly authorized agents or representatives upon three business days' notice to the General Partner.

9.3 Fiscal Year; Partnership Tax Returns. The fiscal year of the Partnership shall begin on the first day of January in each year and end on the 31st day of December in each year. The General Partner **shall** cause to be filed the Federal income tax partnership return and all other tax returns required to be filed for the Partnership for all applicable tax years. **and** shall furnish as promptly as practicable a statement of each Limited Partner's allocated share of ~~income~~, gains, losses, deductions and credits **for such** taxable year.

14.4 Time for Liquidation. A reasonable amount of time shall be allowed for the orderly liquidation of the assets of the Partnership and the discharge of liabilities to creditors so as to enable the General Partner to minimize any losses which otherwise might be incurred.

14.5 Termination. Upon compliance with the foregoing distribution plan the Partnership shall cease to be such, and the General Partner shall execute, acknowledge and cause to be filed a certificate of cancellation of the partnership pursuant to the power of attorney contained in Article XV.

14.6 General Partner Not Liable for Return of Distribution. The General Partner shall not be liable for any distribution required pursuant to Sections 14.2 (b), (c) and (d) and such distribution shall be made solely from available Partnership assets, if any; provided, however, that the General Partner shall be required to eliminate the deficit in its capital account balance on termination of the Partnership.

14.7 Partnership's Right to Continue Providing Cellular Service. Each Limited Partner hereby agrees that, In the event that such Limited Partner withdraws pursuant to Article XII or the Partnership is dissolved pursuant to Articles XIII or XIV, the Partnership shall **have** the right to provide Cellular service subject to any necessary regulatory **approval.**

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ARTICLE XV**POWER OF ATTORNEY**

15.1 Grant of Power of Attorney. Each Limited Partner hereby irrevocably constitutes and appoints the General Partner as its true and lawful attorney and agent, in its name, place and stead to make, execute, acknowledge and, if necessary, file and record:

(a) Any certificates or other instruments or amendments thereof which the Partnership may be required to file under the laws of each state governing this Agreement or pursuant to the requirements of any governmental authority having jurisdiction over the Partnership or which the General partner shall deem it advisable to file, including, without limitation, this Agreement, any amended Agreement and a certificate of cancellation as provided in Section 14.5.

(b) Any certificates or other instruments (including counterparts of this agreement with such changes as may be required by the law of other jurisdictions) and all amendments thereto which the General Partner deems appropriate or necessary to qualify, or continue the qualification of, the Partnership as a limited partnership (or a partnership in which the Limited Partner has limited liability) and to preserve the limited liability status of the Partnership in the jurisdictions in which the Partnership may own properties, conduct business and acquire investment interests.

(c) Any certificates or other instruments which may be required to admit additional or substitute Limited Partners pursuant to the terms of this Agreement, to reflect the withdrawal of any Limited Partner, to reflect changes in capital contributions or changes in respective Partnership Interest of the Partners or to effectuate the dissolution and termination of the partnership, pursuant to Article XIV.

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(d) Any amendments to any certificate necessary to reflect any other changes made pursuant to the exercise of the powers of attorney contained in this Article XV.

15.2 Irrevocable and Coupled With an Interest; Copies to be Transmitted. The powers of attorney granted under Section 15.1 shall be deemed irrevocable and to be coupled with an interest. A copy of each document executed by the General Partner pursuant to the Powers of attorney granted in Section 15.1 shall be transmitted to each Limited Partner promptly after the date of the execution of any such document.

15.3 Survival of Power of Attorney. The powers of attorney granted in Section 15.1 shall survive delivery of an assignment by a Limited Partner of the whole or any portion of its Limited Partner's Interest, except that if such assignment was of all of its Limited Partner's Interest and the substitution of the assignee as a Limited Partner has been consented to by the General Partner, the foregoing powers of attorney shall survive the delivery of such assignment for the purpose of enabling the General Partner to execute, acknowledge and file any and all certificates and other instruments necessary to effectuate the substitution of the assignee as a Limited Partner. Such powers of attorney shall survive the dissolution or termination of a Limited Partner and shall extend to such Limited Partner's **successors and assigns.**

15.4 Limitation on Power of Attorney. Except as set forth in this Article XV, the General Partner may not modify the terms of this power of attorney or this Agreement without the written consent of all the Limited Partners. The powers of attorney granted under

17.2 Execution of Amended Agreements. Each Limited Partner agrees to execute or **cause** to be executed promptly any amendments to this Agreement and certificates of the Partnership reasonably requested by the General Partner **and** authorized under Section 17.1.

ARTICLE XVIII

TECHNOLOGY AND INFORMATION

18.1 Technology License. The General Partner shall, on behalf of the Partnership, obtain the right to use hardware and software technology associated with Cellular Service. The General Partner is hereby authorized, on behalf of the Partnership, to engage in negotiations and to enter into contracts for licenses to use cellular hardware, software or related processes. In general, such contracts shall be merely right to use contracts and will not vest any title in any Partner to this Agreement.

18.2 Proprietary Information. All information including **but not limited** to specifications, microfilm, photocopies, keypunch cards, magnetic tapes, drawings, sketches, models, samples, tools, **technical** information, **data**, employee records, maps, customer information, financial reports, and market data marked or identified in writing as Proprietary (all hereinafter designated as "Proprietary Information") furnished to or obtained by a Partner from any other Partner, whether **written** or **oral** or in other form, shall remain the disclosing Partner's property. All copies of such information whether written, graphic or other tangible form shall be returned to the disclosing Partner upon the disclosing Partner's request except that one copy may be retained for archival purposes. Unless otherwise agreed, no

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obligation hereunder shall extend beyond five years from the date of receipt of such information and the obligation does not apply to **such** Proprietary Information as was previously known to the receiving Partner free of any obligation to keep it confidential or has been or is subsequently made public by the disclosing Partner or a third party. Such Proprietary Information shall be kept confidential by the receiving Partner and shall be used only for performing the covenants contained in this Agreement and may be used for such other purposes only upon such terms **as** may be agreed upon between the disclosing Partner and receiving Partner in writing.

ARTICLE XIX

MISCELLANEOUS PROVISIONS

19.1 Warranties. Each Partner Warrants as follows:

- (A) It has the legal capacity to enter into and execute this Agreement, and
- (B) This Agreement does not breach any of its existing agreements with other parties.

19.2 Table of Contents and Headings. The table of contents and the headings of the sections of this Agreement are inserted for convenience only and shall **not** be deemed to constitute a part hereof.

19.3 Successors and Assigns. This Agreement shall inure to **the** benefit of and be binding upon the Partners and any additional or substitute Limited Partner or General Partner and to their respective

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successors and assigns except that nothing contained in this section shall be construed to permit any attempted assignment or other transfer which **would** be unauthorized by or void pursuant to any other provision of this Agreement.

19.4 Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, **such** illegality or invalidity shall not affect the validity of the remainder of the Agreement; provided, however, that the general intent of this Agreement shall not be voided thereby.

19.5 Non-Waiver. No provision of this Agreement shall be deemed to have been waived unless such waiver is contained in a written notice given to the partner claiming such waiver and no such waiver shall be deemed to be a waiver of any other or further obligation or liability of the Partner or Partners in whose favor the waiver was given.

19.6 Applicable Law. This Agreement and the rights and obligations of the Partners shall be interpreted in accordance with **the laws** of the State of Delaware. The Partnership will be bound **by and** fully comply with **any** applicable provisions of the equal employment opportunity laws, including any executive orders issued thereunder.

19.7 Entire Agreement. This Agreement constitutes the entire Limited partnership Agreement between the Partners and (a) **shall** supersede all previous negotiations, commitments, representations and writings, and (b) to the extent inconsistent with any **provision**

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ARTICLE X
LIMITED PARTNERS

10.1 Limited Partners Not to Take Part in Business. The Limited Partners, acting in their capacity as a Limited Partner, shall not, except as otherwise provided in this agreement, take part in, or interfere **in** any manner with, the conduct or control of the Partnership business, nor shall the Limited Partners have any right or authority to act for or bind the Partnership.

10.2 Limitation on Liability of Limited Partners. The liability of each Limited Partner to provide funds or any other property to the Partnership shall be limited to the amount of Capital Contributions which the Limited Partner makes or otherwise agrees to make pursuant to the provisions of Article V. The obligation of any Limited Partner to return any distributions previously made shall be as set forth in the statute governing this Agreement. Subject to the provisions of the Delaware Limited Partnership Act, the Limited Partner shall have no further liability to contribute money to the Partnership for, or in respect of, the liabilities **or** obligations of the Partnership and shall not be personally liable for **any** obligations of the Partnership.

10.3 Resale of Cellular Service. Nothing herein shall preclude any Limited Partner **or** an Affiliate thereof from reselling Cellular Service or selling or leasing terminal equipment used in connection **with Cellular Service** independently from the Partnership, whether within or outside the **MSA**. Neither the Limited partners nor any Affiliates thereof shall be **funded** or **staffed** by the partnership for such provision of Cellular Service **or** resale activities and any transactions between any such Limited Partner

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or Affiliate and the Partnership shall be on an arms-length basis and on prices, terms and conditions equivalent to the prices, terms and conditions of any agreements between the Partnership and other resellers of Cellular Service.

10.4 Cellular Service in Other Areas. Nothing herein shall preclude any Limited Partner **or** an Affiliate thereof from providing Cellular Service **in** areas other than the MSA. Any such Limited Partner or Affiliate **shall** however withdraw from the Partnership pursuant to Article XII prior **to** seeking any regulatory approval to provide Cellular Service within the MSA.

ARTICLE XI

TRANSFER OF LIMITED PARTNER'S INTEREST

11.1 Limitation on Transfer; Right of First Refusal. Any Limited Partner may transfer its Partnership Interest to an Affiliate thereof at any time without any consent or restriction from the General Partner or any other Limited Partner. Otherwise, there shall be no sale, exchange or other transfer or assignment of the whole **or** any portion of any Limited partner's Interest without the prior written consent of the General Partner, which consent shall not be unreasonably withheld. **In** addition, before any Limited Partner **sells** any part of its Partnership Interest to a non-Affiliate of such Limited Partner, it shall offer, by giving written notice to the General Partner, that Interest to all of the other partners for the Price at which and the **terms** under which such non-Affiliate **has** offered in writing to pay for such interest. The General Partner. **in**