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Federal Communications Commission
Office of the Secretary

March 29, 2005

*VIA HAND DELIVERY*

Erin McGrath
Assistant Chief
Mobility Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth St., SW
Washington, DC 20554

**Re: REDACTED – FOR PUBLIC INSPECTION**
**WT DOCKET NO. 05-50**

**RESPONSE TO INFORMATION REQUEST**
**EX PARTE PRESENTATION**

Dear Ms. McGrath:

Submitted herewith on behalf of ALLTEL Corporation ("ALLTEL") and Western Wireless Corporation ("WWC," collectively "Applicants") is the response to Question 17 from the March 1, 2005 General Information Request ("Information Request")[1] issued by the Federal Communication Commission's Spectrum and Competition Policy Division. Question 17 requests an analysis of competitive conditions in select Component Economic Areas ("CEAs") and Cellular Market Areas ("CMAs"). The Applicants were granted a two-week extension, until March 29, 2005, to respond to this question because the Commission has previously indicated that it will be relying on Numbering Resource Utilization and Forecast ("NRUF") reports as part

[1] *See* Letter to Doane F. Kiechel, Counsel for Western Wireless Corporation, and Kathryn A. Zachem, Counsel for ALLTEL Corporation from William W. Kunze, Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, in WT Docket No. 05-50 (Mar. 1, 2005).

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of its threshold competitive analysis[2] and these reports were unavailable to the Applicants prior to the initial filing deadline established for responding.[3]

Question 17 seeks additional information regarding the state of competition in 19 CMAs and 8 CEAs. What follows is an overview of competition in these areas. In addition, two attachments are provided in response to Question 17. Attachment 1 contains an analysis of competition in each of the identified CMAs and CEAs; Attachment 2 is a Declaration prepared by Robert Willig, Jonathan Orszag, and Yair Eilat, Economists with Competition Policy Associates, Inc., that discusses the potential impact of the merger on competition generally.

As noted in Attachment 1, with the exception of 2 CMAs – Missouri 9 and Nebraska 2 – data obtained by ALLTEL indicates there would be at least 4 operating, facilities-based competitors in each of the identified CMAs and CEAs post-merger.[4] The merger will reduce the number of competitors from 4 to 3 in Missouri 9 and from 3 to 2 in Nebraska 2, but there is compelling evidence that these reductions will not have a significant adverse impact on competition in these areas. ALLTEL (and the Commission) can confidently predict this outcome based not on speculation, but on concrete facts.

ALLTEL currently provides service in a significant number of geographic areas in which there are 3 or fewer active competitors, yet the company charges the same rates in every CMA in which it operates and has done so for years.[5] The facts demonstrate that neither market share nor the number of competitors in a CMA has any bearing on the rates ALLTEL charges. Accordingly, the addition of a relatively small number of new areas in which ALLTEL would face 3 or fewer competitors provides neither a basis nor an incentive for the company to deviate from its current pricing policy.

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[2] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations,* WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 F.C.C.R. 21522, ¶¶ 102, 106-08 (2004) ("*Cingular Order*"); *Western Wireless Corporation and ALLTEL Corporation Applications for Transfer of Control of Licenses and Authorizations,* WT Docket No. 05-50, *Public Notice*, DA 05-516 (rel. Mar. 1, 2005).

[3] *See* Letter to Erin McGrath, Assistant Division Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission from Kenneth D. Patrich, Counsel for ALLTEL Corporation, in WT Docket No. 05-50 (Mar. 14, 2005).

[4] ALLTEL's determination that the merger would reduce the number of facilities-based competitors to three or fewer in two CMAs is based on data obtained from American Roamer Company, Inc. According to information assembled by WWC executives, the merger would reduce the number of facilities-based competitors to three or fewer in seven CMAs (Arkansas 11, Nebraska 2, Nebraska 3, Nebraska 4, Nebraska 8, Nebraska 9, and Nebraska 10). WWC executives compiled information on the number of facilities-based competitors that they see in each CMA. Such estimates may understate the true number of facilities-based competitors, since there may be additional competitors of whom WWC personnel are unaware. The American Roamer data are compiled by a third party and often do not correlate to WWC's view of the marketplace.

[5] ALLTEL does conduct, however, pilot pricing programs in limited areas. If these programs prove successful, they are extended throughout ALLTEL's service territory.

There are numerous reasons why ALLTEL maintains uniform rate plan pricing, even in areas where it has 3 or fewer competitors. First, structured rate plans with common price points across all CMAs are driven by the need to promote operational efficiency. Simply put, if ALLTEL were to vary its pricing on a CMA basis, ALLTEL would incur a great deal of additional administrative burden and expense across a wide swath of its operating units. Having common pricing allows ALLTEL to use common platforms and information for all of its call centers. It allows for more effective sales training on common products and services. It greatly reduces the complication of administering the billing system and related processes. It allows for common advertising across areas. These operational efficiencies are such that individual rate plans for particular CMAs or CEAs would be very difficult and costly to implement.

Second, it is extremely difficult to justify disparate rate plans in the current environment. ALLTEL's policy of charging uniform rates throughout its service area is compelled by competition brought to bear by the nationwide carriers. In addition, uniform pricing is necessary because, in addition to competitors in the areas ALLTEL serves, the company faces competition from providers serving adjacent CMAs and CEAs. The nationwide carriers and other providers in these adjacent areas exert competitive pressure in three ways: (i) by providing service to consumers who live outside their service territory; (ii) by advertising beyond their actual service territory; and (iii) by constituting a likely new entrant should ALLTEL attempt to increase prices.

Consumers do not limit their wireless service options to providers selling service to CMAs and CEAs in which they live. If firms attempt to raise prices, customers can easily acquire services from providers located in adjacent CMAs or CEAs, especially if these geographic regions constitute areas in which the customers ordinarily commute for work, shopping, or entertainment. (Wireless providers who do not have facilities-based services or spectrum in a particular area can still provide services to such customers through roaming agreements.)

Advertising by carriers in adjacent CMAs and CEAs also exerts competitive pressure because it is distributed more broadly than the areas the carriers actually serve. These advertising spillovers are common. Consumers receive advertising, or can obtain pricing information via the Internet. Many rural and suburban areas also receive TV and radio programming broadcast from larger adjacent areas, as well as newspapers published in urban areas. These media outlets provide extensive information about wireless pricing and service options. Similarly, nationwide carriers generally conduct nationwide advertising and sponsor sporting events which result in their rate plan information being disseminated in areas where they do not actually provide service. As a result, customers are well aware of competitive options available in adjacent service areas, which constrains the ability of local carriers to raise prices or reduce service quality.

Wireless carriers in adjacent service areas also represent potential entrants. This entry may take many forms: through secondary markets via disaggregation or spectrum leasing arrangements; expansion of existing service areas; resale; partitioning; and roaming. Relatively low barriers to facilities-based or roaming-based entry, especially by licensed carriers and carriers operating in adjacent areas, translate into a powerful competitive constraint on ALLTEL today and will continue to do so upon the merged firm.

The merger will have no impact on these competitive influences. As shown above, there is no basis for concluding that the transaction will adversely impact competition, even in areas where, post-merger, there would be three or fewer competitors, or where ALLTEL would possess a high market share.[6] ALLTEL already competes in numerous CMAs and CEAs with three or fewer competitors and does not offer distinct rate plans in any of these areas. Moreover, ALLTEL's rate plans are uniformly priced throughout all the CMAs and CEAs in which it provides service. The operational efficiencies derived from such nationwide pricing are such that individual rate plans for particular CMAs or CEAs would be very difficult and costly to implement. Indeed, the very fact that ALLTEL sets its service prices on a nationwide basis today suggests that the costs of setting prices on a local basis exceed any putative benefits to ALLTEL of such geographical pricing. The evidence compels the conclusion that the merger will not change this paradigm.

Moreover, the degree of competition in any particular CMA or CEA is a relatively insignificant factor for ALLTEL in determining which CMAs and CEAs will receive additional investment. ALLTEL makes its investment decisions, such as adding cell sites, based primarily on a business model. The number of competitors or the degree of competition is not a direct factor in the model; rather, key factors include: population; traffic; percentage of dropped calls; percentage of blocked calls, and other geographic information.

As discussed above, there are two attachments in response to Question 17. The analysis contained in Attachment 1 is based on information that is both commercially and financially sensitive and concerns proprietary information that ALLTEL and WWC would not reveal in the normal course of business to their competitors or to the public.[7] Accordingly, this attachment is being submitted on a confidential basis pursuant to the Protective Order in WT Docket No. 05-

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[6] In the *Cingular Order*, the Commission determined that the reduction of competitors to 3 or less presented "a significant likelihood of successful unilateral effects and/or coordinated interaction." *Cingular Order* at ¶¶ 191, 193. This conclusion was based, at least in part, on evidence demonstrating that Cingular had "significant variations" "in terms of plan choice and price" across CMAs. *Id.* at ¶ 88. Here, as discussed above and in the attachment, there is (i) no variation in ALLTEL's plan choices and prices on an individual CMA basis, and (ii) no likelihood of successful unilateral effects or coordinated interaction.

[7] The document production consists of some documents that will be tendered to the United States Department of Justice ("DoJ") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended), which grants blanket confidentiality protection. *See* 15 U.S.C. § 18a(h). If additional documents relevant to the FCC's Information Request are discovered in responding to requests for information issued by the DoJ on February 23, 2005, they will be supplied via a supplemental filing.

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**FOR PUBLIC INSPECTION**
**WT DOCKET NO. 05-50**

50.[8] A public, redacted version of the entire filing is being filed separately. Applicants expect prompt notification of any "Acknowledgment of Confidentiality" seeking access to the documents attached hereto, consistent with the Protective Order.

RESPECTFULLY SUBMITTED,

Doane F. Kiechel / DMT

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Date: March 29, 2005

Attachments

[8] *See Applications for the Transfer of Control of Licenses and Authorizations from Western Wireless Corporation and Its Subsidiaries to ALLTEL Corporation, Order Adopting Protective Order*, WT Docket No. 05-50, *Order*, DA 05-373 (WTB rel. Feb. 11, 2005); *see also* 47 C.F.R. § 0.457(d)(1).

# ATTACHMENT 1

# ALLTEL CORPORATION AND WESTERN WIRELESS CORPORATION

# INFORMATION REQUEST IN WT DOCKET NO. 05-50 – RESPONSE TO QUESTION 17

REDACTED

# ATTACHMENT 2

# ALLTEL CORPORATION AND WESTERN WIRELESS CORPORATION

# INFORMATION REQUEST IN WT DOCKET NO. 05-50 – RESPONSE TO QUESTION 17

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

| | |
|---|---|
| *In the Matter Of*<br><br>*Applications for the Transfer of Control of Licenses and Authorizations From Western Wireless Corporation to ALLTEL Corporation* | WT Docket No. 05-50 |

# DECLARATION OF ROBERT D. WILLIG, JONATHAN M. ORSZAG, AND YAIR EILAT

**March 29, 2005**

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# I. Qualifications

A. Robert Willig

1. Robert Willig is Professor of Economics and Public Affairs at the Woodrow Wilson School and the Economics Department of Princeton University, a position he has held since 1978. Before that, he was Supervisor in the Economics Research Department of Bell Laboratories. His teaching and research have specialized in the fields of industrial organization, government-business relations, and welfare theory.

2. He served as Deputy Assistant Attorney General for Economics in the Antitrust Division of the Department of Justice ("DOJ") during the Administration of President George H.W. Bush (1989 to 1991). He also served on the Defense Science Board task force on the antitrust aspects of defense industry consolidation and on the Governor of New Jersey's task force on the market pricing of electricity. He is also the author of numerous articles, as well as the co-editor of *The Handbook of Industrial Organization*.

3. He has been active in both theoretical and applied analysis of issues affecting the telecommunications industry, including the wireless sector. Since leaving Bell Laboratories, he has been a consultant to a number of major telecommunications and wireless providers. He has testified before the U.S. Congress, the Federal Communications Commission, and the public utility commissions of about a dozen states regarding telecommunications issues. He has also been on government and privately supported missions involving telecommunications throughout South America, Canada,

Europe, and Asia. On other matters, he has worked as a consultant with the Federal Trade Commission, the Organization for Economic Cooperation and Development, the Inter-American Development Bank, the World Bank, and various private clients. He also serves as a Director of Competition Policy Associates, Inc., ("COMPASS") an economic consulting firm based in Washington, D.C.

B. Jonathan Orszag

4. Jonathan Orszag is a Managing Director of COMPASS. His services have been retained by a variety of public-sector entities and private-sector firms ranging from small businesses to Fortune 500 companies. He has been a consultant to a number of major telecommunications and wireless providers, as well as the wireless industry association. He has testified before administrative agencies and Congress on a range of issues, including competition policy, industry structure, and fiscal policy. In 2004, he was named by the *Global Competition Review* as one of "the world's 40 brightest young antitrust lawyers and economists" in its "40 under 40" survey.

5. Previously, he served as the Assistant to the U.S. Secretary of Commerce and Director of the Office of Policy and Strategic Planning, as an Economic Policy Advisor on President Clinton's National Economic Council, and an economic aide to the Secretary of Labor. For his work at the White House, he was presented the Corporation for Enterprise Development's 1999 leadership award for "forging innovative public policies to expand economic opportunity in America."

6. He has also served as an adjunct faculty member of the University of Southern California's School of Policy, Planning, and Development. He received a M.Sc. from Oxford University, which he attended as a Marshall Scholar. He graduated *summa cum laude* in economics from Princeton University, was elected to Phi Beta Kappa, and was named a *USA Today* Academic All-American.

C. Yair Eilat

7. Yair Eilat is a Senior Economist with COMPASS. Dr. Eilat received his Ph.D. at Harvard University and specializes in the economics of industrial organization and antitrust. He has experience in evaluating the economic effects of mergers in the telecommunications and airlines industry, and has analyzed the strategic behavior of firms and consumers in various industries, ranging from high-tech to tourism. He has authored policy reports and published in academic journals in the fields of industrial organization and economic development.

8. Prior to joining COMPASS, Dr. Eilat worked as a senior economist at AES Consulting and a researcher at the Kennedy School of Government at Harvard University. He also worked as an economic advisor for the Economics Committee and State Audit Committee of the Israeli parliament.

## II. Introduction

9. We have been asked by counsel for ALLTEL Corporation ("ALLTEL") and Western Wireless Corporation ("Western") to assess the potential competitive effects

of the proposed merger between ALLTEL and Western.[1] In particular, we have been asked to focus our analysis on the potential competitive effects of the proposed merger on the consumer retail market in the 19 Cellular Market Areas ("CMAs") and nine Component Economic Areas ("CEAs") identified in the March 1, 2005 Information Request issued by the Federal Communication Commission to the parties.[2]

10. We do not review the specific competitive issues in each CMA and CEA, since those issues are addressed in detail in the parties' response to Question 17 of the FCC's Information Request.[3] Rather, we provide a general analysis of the competitive pressures influencing ALLTEL's overall pricing decisions,[4] and assess the "likelihood of anticompetitive harms, such as unilateral effects and coordinated interaction."[5] Our analysis of the available evidence – including the information provided by the parties in response to Question 17 – shows that the proposed merger between ALLTEL and Western is unlikely to harm competition or the public interest in any CMA or CEA through unilateral effects or coordinated interactions.

11. Indeed, we conclude that the proposed merger of ALLTEL and Western will not significantly alter the competitive forces driving ALLTEL's pricing decisions today. As shown below, there is no basis for concluding that the transaction will

[1] We do not analyze the potential efficiencies from the proposed merger.
[2] *See* Letter to Doane F. Kiechel, Counsel for Western Wireless Corporation, and Kathryn A. Zachem, Counsel for ALLTEL Corporation from William W. Kunze, Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, in WT Docket No. 05-50 (Mar. 1, 2005) ("FCC Information Request").
[3] In addition to the information provided in response to Question 17, we have had access to ALLTEL and Western personnel and business documents.
[4] We focus on the pricing behavior of ALLTEL since ALLTEL is the acquiring firm.
[5] *See* FCC Information Request.

adversely impact competition, even in areas where, post-merger, there would be three or fewer competitors, or where ALLTEL would possess a high market share.

12. ALLTEL already competes in numerous markets with three or fewer competitors and does not offer distinct rate plans in any of these markets. In light of the current ALLTEL practice of nationwide pricing, the cost of implementing differential pricing across geographic areas, and the lack of clear geographic boundaries to competition, there is no reason to believe that the post-merger firm will adopt differential pricing by CMA or CEA. Instead, the post-merger firm will continue to be constrained in raising prices over its entire network by the competition it faces from wireless competitors across the country, not just those competitors in a particular CMA or CEA.

13. While national pricing is a powerful mechanism that transmits competition in one part of ALLTEL's networks to all areas in which ALLTEL operates, it is not the only transmission mechanism of competition across markets. A carrier does not need to be currently present in a CMA/CEA in order to discipline competition in that CMA/CEA because consumers everywhere are increasingly aware of the terms offered by carriers (especially national carriers) serving large metropolitan areas and especially adjacent CMAs/CEAs. These market terms are increasingly uniform across the nation – including in rural America – and serve as "focal points," dictating terms of competition everywhere.

were either a CMA or a CEA, an examination of the competitive landscape in which ALLTEL is operating shows that the proposed merger would be unlikely to lead to significantly higher prices or a significant diminution of quality.

17. As a starting point, the proposed merger of ALLTEL and Western would reduce the number of facilities-based competitors to three or fewer in two CMAs (Missouri 9 and Nebraska 2), according to the American Roamer data, and in seven CMAs (Arkansas 11, Nebraska 2, Nebraska 3, Nebraska 4, Nebraska 8, Nebraska 9, and Nebraska 10), according to information assembled by Western executives.[7] But there are a number of reasons why the proposed merger will not have a significant adverse impact on competition in these CMAs (or in the other CMAs discussed in response to Question 17). That is, the likelihood of anticompetitive unilateral effects occurring in any particular CMA or CEA as a result of the proposed transaction is limited by significant competitive forces that would remain unchanged post-merger.

A. <u>ALLTEL's Use of Nationwide Pricing</u>

18. The first reason why the proposed merger is unlikely to harm competition in any particular CMA or CEA is that ALLTEL sets its service prices on a nationwide basis. Indeed, ALLTEL's current pricing practices evidence that competitive forces at

[7] *See* Western Presentation to DOJ, February 9, 2005. Western executives compiled information on the number of facilities-based competitors that they see in each CMA. Such estimates may understate the true number of facilities-based competitors, since there may be additional competitors of whom Western personnel are unaware. The American Roamer data are compiled by a third party and often do not correlate to Western's view of the marketplace. These discrepancies highlight the difficulty in identifying precisely the number of facilities-based competitors in each CMA and CEA are one reason why geographic price discrimination strategies may not be successful and why coordinated interactions are unlikely to occur as a result of this transaction (see discussion below).

14. In addition, nationwide pricing by carriers, the complex dimensions of competition, the avenues available for selling services, and the uncertain relative positions of the firms make it unlikely that the firms could agree on the terms of coordination, detect deviations from those terms, and punish deviations in any particular CMA or CEA. Therefore, we conclude that it is unlikely that anticompetitive coordinated effects would arise from the proposed merger between ALLTEL and Western.

## III. Potential Unilateral Effects of Proposed ALLTEL-Western Merger

15. The response to Question 17 of the Information Request provides detailed information on the current competitive situation in 19 CMAs and nine CEAs, including information on (a) spectrum allocations among wireless firms (including ALLTEL and Western); (b) currently overlapping suppliers; (c) competitors in adjacent CMAs; and (d) other potential competitors.

16. If the relevant geographic market were the United States, the proposed merger of ALLTEL and Western would not likely harm competition, according to any standard evaluation criteria. On a national basis, both ALLTEL and Western represent a small share – roughly only six percent combined – of the Commercial Mobile Radio Services ("CMRS") sector.[6] Even if we were to assume, for the sake of argument, that a relevant geographic market for assessing the competitive effects of the proposed merger

[6] The combined entity would have roughly 10 million wireless subscribers. As of 2004, there were more than 180 million wireless subscribers in the United States.

the level of any particular CMA or CEA do not dictate service prices. ALLTEL's rate plans are uniformly priced throughout all the CMAs and CEAs in which it provides service. Thus, a consumer in Lincoln, Nebraska will pay the same price for any of ALLTEL's rate plans (*i.e.*, Greater Freedom, National Freedom, and Total Freedom) as a consumer in Manhattan, Kansas, Orlando, Florida, Phoenix, Arizona, or anywhere else in the country that ALLTEL provides service.[8]

19. ALLTEL sets its service prices on a national basis because of the significant efficiencies associated with having structured rate plans with common price points across its entire service area. We understand from our interviews with ALLTEL executives that such national pricing allows ALLTEL to use common platforms and information for all its call centers. It allows more effective sales training on common products and services. It reduces the complication of ALLTEL's billing system administration. It allows common advertising across areas. These operational efficiencies are such that individual rate plans for particular CMAs or CEAs would be very difficult and costly to implement – and thus not justified economically.

20. The very fact that ALLTEL sets its service prices on a nationwide basis today suggests that the costs of setting prices on a local basis exceed the benefits of such narrow geographical pricing. Moreover, it is highly informative that ALLTEL previously set prices on a local basis, but moved to nationwide pricing for its service plans a number of years ago. According to ALLTEL executives, ALLTEL switched to nationwide pricing in order to meet competition from other wireless providers – especially national

[8] *See* http://www.alltel.com

carriers – and because of the operational efficiencies associated with a simplified pricing structure.

21. The precise cost savings associated with nationwide pricing are difficult to quantify. For example, it is challenging to assess accurately the impact of nationwide pricing on the efficacy of advertising. Similarly, estimating the number of subscribers gained due to the implementation of a simplified pricing structure is also challenging. Nonetheless, ALLTEL's actions reveal that geographic price discrimination is not a profitable strategy. If price discrimination based on the number of competitors in a geographic area were profitable, one would expect ALLTEL to charge higher prices in areas where ALLTEL provides service and faces few other active, facilities-based competitors today. But ALLTEL does not engage in such geographic price discrimination.

22. ALLTEL currently provides service in a significant number of geographic areas in which there are three or fewer facilities-based competitors, yet the company charges the same service rates in these areas as it does in other geographic areas where ALLTEL faces five or more active competitors – and has done so for years. This fact suggests that the number of competitors in a geographic area does not have a bearing on the service rates that ALLTEL charges. Accordingly, the addition of a relatively modest number of new areas in which ALLTEL will face three or fewer competitors is unlikely to provide a basis for ALLTEL to deviate from its current pricing policy.[9] That is, the

[9] It is important to note that the additional number of geographic areas with three or fewer facilities-based competitors is generated from two sources: (1) a small number of CMAs in which the merger will reduce

proposed merger would not so significantly increase the benefits of localized pricing (or so significantly reduce the costs) that ALLTEL would drop the nationwide pricing strategy that it has utilized for a number of years and adopt a fundamentally different pricing structure. ALLTEL presently views localized pricing as less profitable than national pricing and ALLTEL business executives state that the proposed acquisition of Western would not change this calculus.

23. There are three other ways in which a policy of price discrimination against CMAs or CEAs with fewer competitors *could* be implemented.[10] First, ALLTEL could theoretically use localized promotions on service plans to price discriminate against CMAs or CEAs with fewer competitors. However, ALLTEL executives note that they have not utilized such localized promotions on service plans because they believe that the costs of localized service plan promotions significantly outweigh the benefits of such promotions.

24. Second, ALLTEL could set handset prices at a higher level in areas with fewer competitors. The available evidence suggests that this is not the case. ALLTEL offers special discounts on selected handsets in five cities with NFL teams (Charlotte, Cleveland, New Orleans, Phoenix, and Tampa Bay).[11] These are large population centers in which ALLTEL is attempting to increase its presence and consumer recognition. But

the number of facilities-based competitors to three or fewer, and (2) a modest number of CMAs in which ALLTEL does not operate, but there are three or fewer facilities-based competitors (including Western).

[10] ALLTEL also uses limited pilot pricing programs, which are tested in certain geographic areas.

[11] ALLTEL executives note that it is significantly easier to implement a localized handset promotion than it is to implement a localized service plan promotion. But, as noted in the text, the fact that ALLTEL has not implemented localized handset promotions beyond the five NFL cities suggests that there are no net benefits created by such promotions in other areas, regardless of market structure.

the fact that ALLTEL sets handset prices identically across all other CMAs – including those with few facilities-based carriers and those with many facilities-based carriers – suggests that the number of competitors does not strongly influence ALLTEL's handset prices. Such a finding is consistent with a conclusion that the proposed merger – and the loss of one competitor in 19 CMAs and nine CEAs – is unlikely to result in significantly higher handset prices.

25. Third, ALLTEL could provide lower-quality service in areas with fewer competitors.[12] Again, the available evidence suggests that this is not the case. According to ALLTEL business executives, the degree of competition in any particular CMA or CEA is not a significant factor in determining where to improve service quality.[13]

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[12] There is one other way in which ALLTEL could conceivably implement a discriminatory strategy. It could set the scope of the coverage area for its wireless plans based on the number of competitors in the area. There are three reasons why the proposed merger is unlikely to affect the scope of the coverage area for any of the wireless plans offered by ALLTEL: First, for a large fraction of ALLTEL's subscribers, the Greater Freedom coverage areas are essentially set statewide (*e.g.*, the coverage area for Greater Freedom subscribers in Nebraska is essentially all of Nebraska, the coverage area for Greater Freedom subscribers in Florida is essentially all of Florida, and the coverage area for Greater Freedom subscribers in Arkansas is essentially all of Arkansas, etc.). Second, ALLTEL's National Freedom and Total Freedom plans are nationwide plans, so it is not possible for ALLTEL to implement a discrimination strategy with regard to subscribers of these plans. Third, it is not clear how the degree of competition in any particular CMA or CEA will affect a decision about the scope of geographic coverage for ALLTEL's Greater Freedom plans, unless ALLTEL were to offer a different Greater Freedom plan in each CMA or CEA which would involve many of the same costs associated with localized pricing identified above.

[13] For example, ALLTEL makes its decisions regarding where new cell sites will be constructed based on a business model. The number of competitors or the degree of competition is <u>not</u> a direct factor in the model; rather, key factors include population, traffic, the number of dropped calls, the number of blocked calls, and other geographic characteristics. The only channel through which the degree of competition in a particular CMA could theoretically influence the model results is through a "local prioritization" variable determined by regional executives. However, when ALLTEL used the model last year to make decisions about new cell sites, ALLTEL assigned the "local prioritization" variable a zero weight, so it had no influence on the model results. Even in the past when a small weight was given to this variable, which areas were assigned a higher priority level by regional executives was often due to factors beyond competition (*e.g.*, requests by local politicians, which in fact could be more frequent where ALLTEL faces few other facilities-based carriers). After the model rank orders possible cell site investments, ALLTEL executives use some additional discretion to develop the final list of new cell sites. Our interviews of ALLTEL executives confirmed that the degree of local competition is not a significant factor in the determination in which

26. Since the CMAs in which there would be few active, facilities-based competitors post-merger are quite limited and since ALLTEL's prices are set on a national basis, the diminution of competition on a nationwide basis resulting from the proposed merger would be exceedingly small. For this reason alone, it is unlikely that the proposed merger will result in significantly higher prices in any particular CMA.

B. Competitive Constraints from Currently Overlapping Suppliers

27. The merged ALLTEL-Western will face competition from facilities-based cellular, PCS, and SMR licensees offering service in the relevant CMAs and CEAs (*see* response to Question 17 for more detailed information on a CMA-by-CMA basis).

28. Unilateral effects are unlikely where there are other firms with sufficient market shares or with sufficient unutilized efficient capacity that are selling products that consumers regard as close substitutes for the products sold by the combining firms.[14] The FCC has recognized that there is a high degree of substitutability among all wireless providers.[15] In the vast majority of CMAs, there would be five or more active, facilities-based competitors post-merger. In these CMAs, any attempt by ALLTEL to elevate price and suppress output would be unprofitable (since customers could easily switch – or port

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CMAs to construct new cell sites.

[14] *See, e.g.*, U.S. Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines at Section 2.2.

[15] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 F.C.C.R. 21522, ¶ 132 (2004) ("*Cingular Order*").

– to another carrier), and therefore, any such price increase would be transitory or never attempted in the first place.

29. In addition, the merged firm will face competition from Mobile Virtual Network Operators ("MVNOs") and other resellers.[16] As a result of their national advertising and consumer recognition, these resellers often provide significant competition at a local level despite their lack of a local physical presence.

30. Along with the competition provided by facilities-based regional providers, in any particular CMA, the merged firm will face competition from nationwide providers serving CMAs with their own facilities or through roaming agreements. Importantly, nationwide there are five service providers that are far larger than ALLTEL and Western Wireless, both in terms of subscribers and in terms of network population coverage. These service providers are: Cingular, Verizon, Sprint, Nextel, and T-Mobile. Each of these national providers offers service in significant portions of the areas currently served by ALLTEL and Western. As such, both ALLTEL and Western currently compete against each of these national providers in an effort to provide service to subscribers.[17]

31. Even in service areas in which ALLTEL does not overlap with a national

[16] The merged firm also will face competition from other CMRS service providers authorized to provide voice and data services, such as 2 GHz MSS providers.

[17] Our review of ALLTEL strategic documents revealed that ALLTEL tracks the prices and plan details of national carriers and uses them as a benchmark for determining its price and plan details. Among the documents we reviewed, we did not see *any* mention of Western in any of the documents discussing ALLTEL's pricing strategies.

carrier, competitive forces require it to match the plans and services offered by the national carrier. For example, in response to the introduction of family share plans by the nationwide carriers in 2004, ALLTEL was impelled to offer its own family share plan. In February 2004, AT&T Wireless and T-Mobile offered variations of family share plans. Sprint and Cingular then followed with their own versions of family share plans. When it became clear that these new offerings would "stick," ALLTEL introduced a plan to provide consumers up to four lines at $10 each, as long as the consumer had a plan of $59.95 or more per month. This plan was offered by ALLTEL throughout its footprint, in CMAs where Cingular, Verizon, Sprint, Nextel, and T-Mobile operate, and also in the few CMAs served by ALLTEL where none of these national companies operate. ALLTEL executives state that they were also impelled to introduce free long distance and free in-network calling in response to product offerings introduced by nationwide carriers.

32. There are three ways in which the carriers serving adjacent CMAs would exert competitive pressure on the combined ALLTEL-Western. (Examples of the competitive pressures applied *today* by carriers serving adjacent CMAs are discussed in more detail in response to Question 17.)

33. First, the nationwide carriers provide service to consumers who live outside their service territory. Consumers do not limit their wireless service options to providers selling facilities-based service to the areas in which they live. If firms were to attempt to raise prices in a particular geographic area, customers could easily acquire

services from adjacent areas, especially if these are geographic regions to which they ordinarily travel for work, shopping, or entertainment. (Wireless providers who do not have facilities-based services in a particular area can still provide services to customers through roaming agreements.)

34. Second, advertising by carriers in adjacent areas also exerts competitive pressure because it is distributed more broadly than the areas such carriers actually serve. These advertising spillovers are common. Consumers receive advertising – including pricing information – through direct mail and via the Internet. Many rural and suburban areas also receive TV and radio programming broadcast from larger population centers, as well as newspapers published in urban areas. These media outlets provide extensive information about wireless pricing and service options. Similarly, nationwide carriers generally conduct nationwide advertising and sponsor sporting events which result in their rate plan information being disseminated in markets where they do not actually provide service. As a result, customers are well aware of competitive options available in adjacent (or national) areas, which can constrain the ability of the combined ALLTEL-Western to raise prices or reduce service quality in any particular CMA.[18] According to ALLTEL executives, if ALLTEL tried to raise its prices in a particular CMA, it would face consumer resistance (in part due to the fact that its subscribers know about prices in

[18] The response to Question 17 provides more detailed examples of rural CMAs sharing commercial interest with – and being affected by advertising spillovers from – larger adjacent areas that have more facilities-based competitors. Some examples from the response to Question 17 include: Arkansas 11 – Hempstead (where Texarkana serves as an adjacent commercial center); Kansas 8 – Ellsworth (where Wichita serves as an adjacent commercial center); Kansas 10 – Franklin (where Kansas City serves as an adjacent commercial center); Kansas 14 – Reno (where Wichita serves as an adjacent commercial center); Missouri 9 – Bates (where Kansas City serves as an adjacent commercial center); Nebraska 3 – Knox (where Sioux City serves as an adjacent commercial center); Nebraska 10 – Cass (where Lincoln serves as an adjacent commercial center); and Texas 7 – Fannin (where Dallas serves as an adjacent commercial center).

adjacent areas and the prices being offered nationally by national carriers). ALLTEL believes that such consumer resistance would lower customer satisfaction and increase customer churn as subscribers choose competitive options from adjacent areas.

35. Finally, the nationwide carriers often own spectrum in the CMA or an adjacent CMA and, thus, serve as a likely new entrant should ALLTEL attempt to increase prices (*see* next subsection).

C. Competitive Constraints from Potential Competitors

36. Licensed wireless carriers that are not providing facilities-based services in a particular CMA are potential entrants. The entry may be in the form described above (*i.e.*, via roaming agreements) or it may be through the construction of facilities. In particular, licensed wireless providers serving adjacent CMAs have a proven infrastructure to serve nearby customers. They could rapidly extend that infrastructure to serve an adjacent CMA. The relatively low barriers to facilities-based or roaming-based entry, especially by licensed carriers and carriers operating in adjacent areas, translate into an important competitive constraint on the merged firm.[19]

37. ALLTEL believes that a licensed carrier could enter a particular CMA and

[19] A few examples provided in response to Question 17 include: Cingular and Verizon do not currently have retail distribution in Kansas 10 – Franklin. They do, however, own spectrum in this CMA and operate in adjacent Kansas City. They could expand to Kansas 10 in response to any price increase in this CMA. Other examples include CMAs that have major highways (*e.g.*, I-80 passes through Nebraska 7 – Hall and Nebraska 9 – Adams). Coverage along major highways is very important to large carriers, and they could expand to nearby population centers if a price increase creates the incentive to do so.

provide significant facilities-based competition within seven months. Assuming that zoning restrictions are minimal, ALLTEL estimates that a licensed carrier would need to take 30 days to plan its entry, 150 days to implement its entry plan, and 30 days to test and "groom" its new facilities.

38. The experience of Viaero Wireless is consistent with such rapid build out. Viaero served the northeast corner of Colorado. In 2003, it acquired Nebraska Wireless, which operated a CDMA network. In 2004, Viaero expanded and converted Nebraska Wireless' CDMA network into a GSM network. In that year, the firm built out or converted over 60 cell sites serving portions of eight CMAs in Nebraska.[20] Viaero recently noted that it has "73 new towers targeted for Nebraska."[21] Viaero has focused on building out in the southwest part of Nebraska in large part because it is adjacent to Viaero's traditional base in northeastern Colorado; a Viaero executive stated, "We certainly have southwest Nebraska targeted for our growth plans this year. Predominately we want to build in the west, for our roots are in eastern Colorado."[22]

39. Viaero's business model would impose another important constraint on ALLTEL-Western. Viaero has indicated that it will build out to communities that express significant interest in its service. In early March 2005, it held community

[20] While ALLTEL executives note that it was somewhat easier for Viaero to convert legacy CDMA cell sites than build out new GSM sites, ALLTEL believes that Viaero's build out in 2004 would have still been very rapid (regardless of its legacy infrastructure).
[21] *See* Emily Hoffman, "Viaero Wireless To Make Presence Known in Southwest Nebraska," *The Imperial Republican*, available at http://www.imperialrepublican.com/Archivec3866.html (downloaded on March 28, 2005).
[22] *Id.*

meetings in four towns in southwest Nebraska.[23] Viaero apparently uses these community meetings to "pre-sell tower construction" and gauge "how much community interest there is behind the project."[24] Moreover, Viaero has promised Nebraska communities that, if 200 local customers pre-subscribed to its service, it would build a cell tower in the community within 180 days.[25] If ALLTEL-Western attempted to raise prices significantly in one of the CMAs in which Viaero were a licensed carrier, community interest in Viaero's entry would likely increase, which could induce Viaero's facilities-based entry into the CMA. This is a paragon of how a licensed wireless carrier could be incented to offer timely entry and sufficient to discipline any attempted price increase by ALLTEL post-merger.

## D. Inability to Target Price Increases

40. In light of the characteristics of the wireless industry and the absence of rigid geographic boundaries to markets, it is also likely that the post-merger firm would not be able to identify customers in more concentrated areas with enough accuracy to make differential pricing across markets profitable.[26] In particular, it would be necessary for the post-merger firm to be wrong only in a relatively small number of cases to make it unprofitable to charge higher prices to customers in a few areas with fewer competitors.[27]

[23] *Id.*
[24] *Id.*
[25] George Ledbetter, "Cell Phone Company Seeks Local Customers," *The Chadron Record*, available at http://www.southernblackhillsweeklygroup.com/articles/2005/03/17/chadron/brief/news72.txt (downloaded on March 28, 2005).
[26] As noted above, in light of the infirmities in the data about the number of competitors in each CMA, it may even be difficult for the combined company to identify areas with fewer competitors.
[27] Jerry Hausman, Gregory Leonard and Christopher Vellturo, "Market Definition Under Price Discrimination," *Antitrust Law Journal*, Volume 64, 1996, pages 367-386.

41. Let us suppose that, post-merger, ALLTEL-Western attempted to charge five percent more to consumers in what it thought was a less competitive area. If it cannot precisely identify these areas (because, for example, consumers could shop in an adjacent CMA or buy a cell phone over the Internet), some percentage of the people who are targeted for this price increase in the "less competitive" area would, in fact, have another competitive wireless provider as an option – and a segment of these customers would be inclined to switch to the other provider in response to the price increase by ALLTEL-Western Wireless.[28] The inability of ALLTEL to target precisely any attempt to implement a price discrimination strategy and the concomitant costs of using a "blunt instrument" together constitute yet another reason why the proposed merger is unlikely to result in an anticompetitive increase in prices or a diminution of service quality.

## E. Summary

[28] To analyze the profitability of the price increase, ALLTEL would compare its profit before the price increase to that after it. The profit earned before the price increase would be equal to $(P-C)N$, where P is the price, C is the marginal cost of producing the service, and N is the number of consumers in the targeted area. The profit after the price increase would be $(1.05P-C)XN$, where X is the percentage of customers who do not switch to the competitive option (so that 1-X is the percentage of targeted customers who do switch to the competitive wireless provider). The breakeven value for X is equal to:

$$\frac{\frac{P}{C}-1}{1.05\frac{P}{C}-1}$$

That is, the percentage of people who do not switch needs to be greater than this ratio for the price discrimination attempt to be profitable. For example, if the ratio of price to marginal cost is about 1.67, only 11 percent of the subscribers targeted with the price increase would have to switch away from ALLTEL-Western Wireless in order for it to be unprofitable to attempt to price discriminate against customers in rural areas. If this ratio is 2, only nine percent of the subscribers targeted with the price increase would have to switch away to defeat a price increase, and if the ratio is 1.5, only 13 percent of customers would need to switch away.

42. As shown throughout this section, there is no basis for concluding that the transaction will adversely impact competition, even in areas where, post-merger, there would be three or fewer competitors, or where ALLTEL would possess a high market share. These areas would continue to be protected by ALLTEL's incentives to set prices on a nationwide basis, which the available evidence suggests will be unchanged post-merger; competitors in each CMA and competitors in adjacent CMAs, which serve as important competitive constraints on ALLTEL today – and in the future; and licensed competitors who can serve as potential entrants and thus act as another important constraint on ALLTEL's ability to harm competition in any relevant market post-merger.

## IV. Potential Coordinated Effects of Proposed ALLTEL-Western Merger

43. The lack of geographic price discrimination by ALLTEL today makes it unlikely that coordinated effects would occur in any subset of the CMAs and CEAs in which ALLTEL and Western operate. Moreover, the evidence clearly indicates that the industry is not conducive to tacit coordination now, and will not be so after the transaction. For example, the FCC has found that the wireless sector is subject to "intense competitive pressure, rather than coordinated interaction."[29] Because of this competitive pressure, the FCC has stated that carriers "use information obtained about their rivals to improve their own ability to compete in attracting and retaining customers," rather than coordinate their actions.[30]

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[29] *Cingular Order* at ¶ 155.
[30] *Cingular Order* at ¶ 155.

44. In order for there to be any valid concerns that the proposed merger of ALLTEL and Western would give rise to coordinated interactions, it must be shown that the proposed merger would make coordination profitable to the firms involved and that the merger would create an "ability to detect and punish deviations that would undermine the coordinated interaction."[31]

45. The available evidence suggests that the competitors in each CMA identified in response to Question 17 will still compete vigorously on a variety of dimensions including price, network coverage, handset promotions, plan features, service quality, customer service, and the introduction of new services. Therefore, the proposed transaction would not change the competitive dynamics enough to make coordination profitable for the firms involved. Moreover, competition along a variety of different dimensions – from promotions on handsets to service quality – makes it more difficult for firms involved to reach terms of coordination. There is no evidence available to us suggesting that the proposed transaction would alter this fact.

46. Competitors that possess excess capacity could readily increase their provision of wireless services if demand were to present itself (as would happen if providers were tacitly elevating prices). Therefore, each competitor would have strong incentives to deviate from putative coordination – the profits from cheating on the cartel would simply be too great for the cartel to be sustained.

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[31] *See* U.S. Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines at Section 2.1.

47. Part of the reason that profits from cheating would be large is that cheating would be easy to accomplish and difficult to detect – and therefore hard to punish. For example, facilities-based competitors can cheat on a collusive pricing or market division-type agreement by selling cheaply to a reseller, or by signing roaming agreements. Such behavior would be difficult to monitor and punish, which makes the possibility of coordinated behavior unlikely as a result of the proposed merger.

48. Another factor that makes coordinated interactions in the wireless industry more difficult is the uncertainty of future demand. In the wireless industry, in which there is rapid technological change and rollout of new services, there is likely to be uncertainty about future levels of demand. According to the Merger Guidelines, coordination may be more difficult in a market with relatively frequent demand or cost fluctuations among firms.[32] Coordination may be more difficult in these types of markets because the market driven fluctuations may be difficult for firms to distinguish from cheating on a coordinated agreement. Thus, the fluctuations make it less likely that the coordinated interactions will occur in the first place. Similarly, uncertainty about the future of demand creates difficulties for a putative cartel to sustain its collusive state – it would find it hard to distinguish between low demand due to deviations from the cartel arrangement and low demand due to lack of public interest in a new product or service relative to what was expected.

## V. Conclusions

[32] U.S. Department of Justice and the Federal Trade Commission Horizontal Merger Guidelines at Section 2.12.

49. The nature of market competition in the wireless sector makes it unlikely that a merger of ALLTEL and Western would result in higher prices and lower output through either coordinated behavior among the participants in the CMRS market or unilateral behavior by the merged firm. Based on our analysis of the available information, including the response of ALLTEL and Western to Question 17, we conclude that the proposed merger will not significantly harm competition in any relevant market and is therefore in the public interest.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 29, 2005

Robert Willig

Robert D. Willig

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 29, 2005

Jonathan M. Orszag

I declare under penalty of perjury that the foregoing is true and correct.
Executed on March 29, 2005

Yair Eilat