ALLTEL CORPORATION
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, DC 20004
202-783-3970
202-783-3982 fax

ALLTEL

CONFIDENTIAL

RECEIVED
SEP 30 2005
Federal Communications Commission
Office of Secretary

September 30, 2005

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW TW-A320
Washington, DC 20554

Re: CC Docket No. 94-102
Alltel Corporation Petition for Limited Waiver
Request for Confidential Treatment

Dear Ms. Dortch:

Alltel Corporation, on behalf of its wireless subsidiaries ("Alltel"), hereby requests that the enclosed unredacted version of its Petition for Limited Waiver be withheld from public inspection pursuant to Section 0.459 of the Commission's Rules.[1] The materials include highly-confidential commercial information that has not been nor would ordinarily be publicly disclosed, and thus falls within Exemption 4 of the Freedom of Information Act ("FOIA") as "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[2] An original and two copies of the unredacted version, together with three copies of the redacted version, are attached. A redacted version of the request for waiver is being submitted contemporaneously in the docket.

The following information supports the request for confidentiality under Section 0.459(b) of the Commission's Rules:

(1) The information for which confidential treatment is requested includes granular subscribership data throughout the main pleading.

(2) This information is being submitted to the Commission voluntarily in the context of a request for waiver of Section 20.19(g)(1)(v) of the Commission's rules.

No. of Copies rec'd 0+2
List A B C D E

[1] 47 C.F.R. § 0.459.
[2] 5 U.S.C. § 552(b)(4). As such, the material should automatically be exempt from disclosure under the Commission's Rules. 47 C.F.R. §§ 0.457(d) and 0.459(a). Nonetheless, out of an abundance of caution, Alltel is furnishing the information requested in Section 0.459 of the Commission's Rules.

(3) This information is highly confidential granular data concerning the service and handset offerings provided to Alltel's subscribers. As such, it is very sensitive commercial information.

(4) The mobile wireless service market in which Alltel provides service is highly competitive, as the Commission has recently acknowledged.[3]

(5) Disclosure of the subscribership information would cause significant competitive harm to Alltel by disclosing sensitive and highly granular information concerning the preferences of Alltel subscribers and the status of their service arrangements with Alltel, thereby enabling competitors to use this comprehensive data to Alltel's competitive disadvantage.

(6) Alltel treats this information as highly confidential, and does not publicly disclose this information.

(7) This information is not available to the public, and has not previously been disclosed to third parties.

(8) Alltel believes this information should be permanently withheld from public disclosure, given the highly sensitive nature of the information.

(9) Confidential treatment of such information is consistent with Commission precedent.[4]

---

[3] *See Applications of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138 (rel. July 19, 2005); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 04-111, Ninth Report, 19 FCC Rcd 20597 (2004).

[4] *See News Corporation, General Motors Corporation, and Hughes Electronics Corporation*, Order, DA 03-2376, ¶¶ 2-3 (rel. July 22, 2003) (finding "granular customer data (e.g. subscriber information by designated market area ('DMA') or zip code), including churn data, as well as certain materials related to its programming contracts, and business and marketing plans" subject to confidential treatment); *EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation*, Order, 17 FCC Rcd 7415 (2002) (same).

Please contact the undersigned at (202) 783-3976 if you have questions concerning this request.

Respectfully submitted,

ALLTEL CORPORATION

Glenn S. Rabin

*** REDACTED VERSION – FOR PUBLIC INSPECTION ***

RECEIVED

SEP 30 2005

Federal Communications Commission
Office of Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Alltel Corporation Petition for Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules	)	
	)	

DOCKET FILE COPY ORIGINAL

To: The Commission

ALLTEL CORPORATION
PETITION FOR LIMITED WAIVER

ALLTEL CORPORATION
Glenn S. Rabin
Vice President, Federal Regulatory Affairs
601 Pennsylvania Ave., N.W., Suite 720
Washington, DC 20004
(202) 783-3976

Its Attorney

September 30, 2005

SUMMARY

Alltel Corporation ("Alltel") requests herein a waiver of the Commission's rule which requires that CMRS providers employing handset-based enhanced 911 ("E911") Phase II technology ensure that 95 percent of their subscribers have automatic location information ("ALI")-capable handsets by December 31, 2005. Despite Alltel's compliance with all the interim handset benchmarks and its marketing and communications campaigns to promote upgrades to ALI-capable handsets, Alltel projects it will reach a penetration level of 84-85 percent by year's end. Alltel will achieve the 95 percent benchmark but requires an additional 18 months, until June 30, 2007, to do so.

In contrast to previous E911 benchmark obligations, which involved proactive efforts largely within a carriers' control to acquire and deploy Phase I and Phase II solutions and obtain and distribute ALI-capable handsets, the 95 percent handset penetration requirement is contingent upon consumers' willingness to part with their existing handsets in exchange for a new model. The waiver requested herein will avoid the collision of the Commission's public safety objectives and the preferences of Alltel's customers who, for their own reasons, have been unwilling to upgrade their handsets thus far. Alltel has examined its customer base and has discovered a direct correlation between customers with low usage and their possession of non-ALI-capable handsets. Alltel believes that many of these customers may carry a wireless phone for purely safety reasons and perhaps do not want the inconvenience of having to learn the features and functions of a new phone. Still others are located in remote areas where a non-compliant analog handset that can complete a 911 call may be better than a compliant location-capable, digital handset with a diminished ability to obtain a signal to make any emergency call in the first place. Apparent consumer resistance dictates that additional time is required to satisfy the benchmark.

Alltel's waiver request is specific, focused and limited in scope. It is not an open-ended, indefinite waiver of the 95 percent penetration requirement. Rather, Alltel seeks a time-limited request of 18 months based on current projections that rely on marketing and communications campaigns and the rate of handset upgrades by existing subscribers.

Alltel has an exemplary record on E911 deployment. The Company has taken a number of concrete steps in its efforts to comply with the December 31, 2005 deadline and is on a path to full compliance. Alltel began deploying ALI-capable handsets 11 months earlier than required and met or exceeded all of the interim handset deployment benchmarks. Alltel no longer faces issues of technology feasibility, and neither the price of ALI-capable handsets (as low as 99 cents) nor Alltel's inventory (100 percent ALI-capable) precludes any customer from obtaining one. Alltel has a number of ongoing marketing and communications campaigns to encourage customers to upgrade their handsets. These initiatives include, among others:

- In February 2005, Alltel (pre-Western merger) eliminated any fees associated with upgrading handsets. Alltel also offers existing customers the same lower prices for new handsets as are offered to new customers. Western also offered handset promotions.

- Alltel offers a wide variety of A-GPS handsets at all price points. Alltel also makes available certified, refurbished A-GPS handsets that all customers, including low-volume customers, may obtain without entering a new contract in its directly owned retail outlets.

- Alltel features and has featured ALI-capable handsets and new handset models in its advertising.

- Beginning in November 2004, Alltel initiated a contract renewal program aimed specifically at customers with non-compliant handsets, highlighting Alltel's ALI-capable handset selection. Efforts are ongoing and similar efforts are planned in 2006.

- In August of this year, Alltel included a bill message, directed specifically to customers with non-compliant handsets, addressing the E911 benefits of A-GPS handsets and informing customers that they need an A-GPS handset to benefit from Phase II E911 service. Another bill communication, in the form of an insert, will be sent in October reinforcing this message. Alltel has posted similar information on its website and in its retail stores.

- Further, where Alltel has recently acquired markets deploying TDMA and/or GSM systems, the company has expeditiously overlaid CDMA networks and initiated 100 percent sales of ALI-capable handsets, and has aggressively sought to switch existing subscribers to CDMA and ALI-capable handsets.

By virtue of these persistent and continuing efforts, Alltel is on a path to full compliance. Based on historic data trends and the profile of Alltel's customer base, the Company has developed projections for A-GPS handset penetration going forward. The data indicate that Alltel's handset upgrades increasingly involve the exchange of one A-GPS handset for another, and subscriber churn is more likely to involve a customer with an A-GPS handset, slowing overall improvement in the penetration rate in recent months. The total percentage of Alltel subscribers with ALI-capable handsets continues to *increase*, albeit at a slower rate than in previous years. Over the previous year, Alltel saw ALI-capable handset penetration increasing at an average of 2.4 percent month over month, while today it is closer to 1.5 percent. It is anticipated that the penetration rate will slow further still during the remainder of 2005 and 2006 despite Alltel's diligent efforts. With its continuing handset upgrade initiatives, however, Alltel expects to reach 95 percent A-GPS handset penetration by June 30, 2007.

Over the past five years, the marketplace has rendered the Commission's early projections overly optimistic and instead has proven its concerns regarding customers' desire to hold onto their phones. Given the uncertain nature of the Commission's predictive judgments, and Alltel's good faith, substantial efforts to upgrade non-compliant handsets, the Commission should grant Alltel's waiver to extend the 95 percent penetration rate requirement until June 30, 2007.

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*** REDACTED VERSION – FOR PUBLIC INSPECTION ***

Before the
Federal Communications Commission
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In the Matter of	)	
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Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Alltel Corporation Petition for Limited Waiver of Section 20.18(g)(1)(v) of the Commission's Rules	)	

To: The Commission

ALLTEL CORPORATION
PETITION FOR LIMITED WAIVER

Pursuant to Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, Alltel Corporation ("Alltel"), on behalf of its subsidiaries offering commercial mobile radio services ("CMRS"), hereby requests a limited waiver of Section 20.18(c)(1)(v) of the Commission's rules, which requires that CMRS providers employing handset-based enhanced 911 ("E911") Phase II technology ensure that 95 percent of their subscribers have automatic location information ("ALI")-capable handsets by December 31, 2005.[1]

Notwithstanding Alltel's compliance with all the interim handset benchmarks and its continuing efforts to encourage customers to upgrade to ALI-capable handsets, a waiver is necessary because a sizable group of Alltel customers resist replacing their non-compliant handsets. Alltel's request for waiver is specific, focused, and limited in scope to bridge the gap

[1] 47 C.F.R. § 20.18(g)(1)(v). Alternatively, for reasons of administrative efficiency, the Commission might consider granting a stay of the December 31, 2005 deadline, as it has done with other E911 Phase II rules.

between the 84-85 percent ALI-capable handset penetration rate expected to be achieved by December 31, 2005 and the 95 percent penetration rate that Alltel projects will be met by June 30, 2007. For the reasons discussed below, this waiver request provides a realistic path to full compliance based upon Alltel's continuing initiatives to augment ALI-capable handset deployment, current trends in handset turnover, and customer preferences. Grant of the requested waiver would be consistent with the public interest.

I. INTRODUCTION

Alltel is a "Tier II" CMRS provider deploying CDMA technology and an assisted GPS ("A-GPS") handset-based E911 Phase II solution.[2] Alltel historically has provided service principally to rural areas and has grown, largely through acquisition of existing systems serving rural areas. On August 1, 2005, Alltel consummated its merger with Western Wireless Corporation ("Western Wireless"), also a Tier II carrier employing an A-GPS handset-based E911 Phase II solution. Western Wireless has a well-established history of serving rural areas in the western United States, and through this union, Alltel continues to serve some of the nation's most sparsely populated regions. Although Alltel's network covers approximately 55 percent of the geographic area of the continental United States, it serves only approximately 25 percent of the U.S. population.

In contrast to previous E911 benchmark obligations, which involved proactive efforts largely within a carrier's control to acquire and deploy Phase I and Phase II solutions and obtain and distribute A-GPS handsets, the 95 percent handset penetration requirement is contingent

[2] As a Tier II carrier, Alltel is subject to the Commission's *Stay Order*, which governs non-nationwide wireless carriers' Phase II obligations. The *Stay Order* reaffirmed carriers' December 31, 2005 deadline. *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC
(continued on next page)

upon consumers' willingness to part with their existing handsets in exchange for a new model. The waiver requested herein will avoid the collision of the Commission's public safety objectives and the preferences of Alltel's customers who, for their own reasons, have been unwilling to upgrade their handsets to date. To achieve the 95 percent benchmark, Alltel could opt to terminate service to its customers without ALI-capable handsets in a manner akin to that which the Commission initially required of interconnected VoIP providers.[3] Many of the customers without ALI-capable handsets are also the very low usage customers who may carry a wireless phone for purely safety reasons. In remote areas, a non-compliant analog handset that can complete a 911 call may be a better choice than a compliant location-capable handset that may be unable to obtain signal to make any emergency call in the first place. Furthermore, mobility, in and of itself, provides a significant safety service, even for the subscriber who is unwilling to obtain an A-GPS phone. Thus, Alltel believes that continuing to serve those customers is still preferable to terminating service. Alltel's handset deployment strategy *will* achieve the 95 percent penetration rate, but consumer resistance dictates that additional time is required to satisfy the benchmark.

Rcd 14841, ¶ 27 (2002) ("*Stay Order*"), *aff'd on recon.* 18 FCC Rcd. 21838 (2003) ("*Non-Nationwide Recon Order*"). Alltel has not previously requested a waiver of the December 31, 2005 deadline.

[3] *See* Public Notice, *Enforcement Bureau Provides Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning the July 29, 2005 Subscriber Notification Deadlines*, WC Docket Nos. 04-36, 05-196, DA 05-2085, at 2 (rel. July 26, 2005). Alltel could presumably notify its customers with non-A-GPS handsets that they will no longer be permitted to operate on Alltel's network after a date certain. In fact, the Commission could simply bar the operation of non-A-GPS capable handsets on a going forward basis should it choose to do so. Absent an explicit Commission requirement or order to the contrary, Alltel will not presume that the Commission intends that wireless carriers take these kinds of anti-consumer measures to meet the December 31, 2005 deadline. Indeed, the Commission's recent action forbearing from requiring service termination where the VoIP provider "received acknowledgments from at least 90% of its subscribers" is instructive here, given VoIP providers' dependence on customers' affirmative actions in that context. *See* Public Notice, *Enforcement Bureau Provides Further Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning Enforcement of Subscriber Acknowledgement Requirement*, WC Docket Nos. 04-36, 05-196, DA 05-2530, at 1 (rel. Sept. 27, 2005).

A. Alltel's Exemplary E911 Record

In November 2000, Alltel selected an A-GPS handset-based E911 Phase II solution in large part because it was a preferable ALI solution, as it promised to provide greater accuracy in rural markets.[4] Alltel has since diligently and successfully complied with the deadlines imposed in the *Stay Order*. Alltel first began to offer an ALI-capable handset 11 months before the March 1, 2003 deadline and has been in substantial compliance with the 100 percent new digital handset activations benchmark since November 2003 – six months ahead of the 100 percent benchmark deadline.[5]

Alltel also has an exemplary record of responding to PSAP requests and providing timely deployment of Phase I and Phase II solutions.[6] In the course of these efforts, Alltel has established very strong working relationships with PSAPs – as the extensive PSAP and State and Local government support for the Alltel-Western Wireless merger will attest.[7] Finally, as noted above, Alltel has acquired a number of systems using TDMA and/or GSM technology. Alltel has established timetables with Commission staff to facilitate Phase II deployment by

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[4] *See* Alltel Communications Inc., Report in CC Docket No. 94-102, filed November 9, 2000. While Western Wireless initially selected a network-based solution, it ultimately reached a similar conclusion and opted for a handset-based solution. *See* Western Wireless Corporation, Petition for Waiver of Section 20.18(g), CC Docket No. 94-102, filed Aug. 31, 2001, at 2-4, n.3.

[5] *See, e.g.*, Alltel Communications, Inc. Report in CC Docket No. 94-102, filed August 1, 2005, at 1-3 ("Alltel August 1, 2005 Report"). Western Wireless began selling and activating A-GPS handsets in 2002 – again, well in advance of the March 1, 2003 deadline imposed in the *Stay Order*. *See also* Quarterly Report of Alltel WW Subsidiaries, CC Docket No. 94-102, filed Aug. 1, 2005, at 2.

[6] As of its most recent quarterly report submitted August 1, 2005, Alltel had deployed and launched Phase I service to nearly 1000 PSAPs, with an additional 39 PSAP requests in progress, and has deployed and launched Phase II service to nearly 500 PSAPs, with an additional 86 PSAP requests in progress. *See* Alltel August 1, 2005 Report at 5, Attachment. For both Phase I and Phase II E911 service, in all cases Alltel has launched service either within the 6-month period of the rules or in accordance with deployment schedules negotiated with the relevant PSAP.

[7] *See Applications of Western Wireless Corporation and ALLTEL Corporation*, WT Docket No. 05-50, Memorandum Opinion and Order, FCC 05-138, at ¶ 155, nn. 407-409 (rel. July 19, 2005) ("E911 coordinators in many states as well as police departments support the merger, stating that ALLTEL

(continued on next page)

constructing CDMA overlays in these markets and implementing Alltel's A-GPS handset-based solution.[8] Further, Alltel has aggressively converted existing TDMA/GSM customers to ALI-capable CDMA handsets.

Through these efforts, customers in areas where PSAPs have deployed their own Phase II capabilities are now enjoying the benefits of E911.[9] Alltel's record on E911 demonstrates its strong commitment to ensuring compliance with the Commission's rules and enabling customer access to emergency responders.

B. Alltel's Campaign to Meet the 95 Percent Benchmark

As discussed in more detail below,[10] Alltel has taken numerous measures to encourage its customers to upgrade their handsets to ALI-capable handsets. For example, Alltel eliminated fees or charges to upgrade handsets in February 2005 and has made A-GPS handsets readily available at affordable prices – as low as 99 cents. Alltel has also undertaken a number of E911-specific campaigns specifically targeting customers with non-compliant handsets. Among other things, Alltel has used bill messages and made website postings highlighting the E911 benefits of A-GPS handsets and informing customers how to determine if they have an A-GPS phone. Another bill insert is planned for October 2005. Alltel has engaged in a monthly contract renewal program aimed at out-of-contract customers with non-compliant handsets.

Despite these efforts, Alltel will be unable to achieve the 95 percent penetration level by the end of 2005. Alltel's most recent customer data reflect a significant percentage of low

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continues to work diligently towards meeting its obligations" and "commend[ing] ALLTEL's diligent and consistent implementation efforts for wireless E911 services.").

[8] *See* Alltel August 1, 2005 Report at 2.

[9] As discussed *infra* in Section III.C., approximately 25 percent of the PSAPs within Alltel's coverage area have requested Phase II service.

[10] *See infra* Section III.B.2. and the Exhibits attached thereto.

volume customers who have no interest in (and in fact resist) upgrading their handsets to A-GPS-capable models irrespective of the various incentives and other efforts by Alltel. This is supported by the fact that, among other things, Alltel's research indicates that approximately [redacted] percent of Alltel subscribers still carry handsets that the company stopped selling 3 years ago or longer, even though customers have been exposed to advertising and new handset availability. Moreover, Alltel's rural markets, expanded further by the Western Wireless acquisition, continue to serve customers who have a preference for – or who in fact need – analog handsets.

Nonetheless, as a result of Alltel's efforts, nearly 79 percent of Alltel's subscribers had A-GPS handsets as of the end of August 2005. Alltel projects that this percentage will increase to 84-85 percent by December 31, 2005 – more than 8 million of Alltel's 10 million customers – a substantial penetration rate given the nature of Alltel's markets and the profile of Alltel's customer base.

C. Request for Relief

Alltel notified the Commission of these developments in the context of the Alltel-Western Wireless merger and committed to filing this waiver request by September 30, 2005.[11] In accordance with that commitment, Alltel requests a waiver of Section 20.18(g)(1)(v) of the rules through June 30, 2007, the date by which Alltel expects, based on current trends and Alltel's continuing efforts described herein, that 95 percent of its subscribers will have A-GPS handsets.[12]

[11] *See* Alltel Corporation *Ex Parte* Letter in WT Docket No. 05-50, dated July 11, 2005; Alltel Corporation *Ex Parte* Letter in WT Docket No. 05-50, dated July 8, 2005.

[12] With respect to the June 30, 2007 target date, Alltel cautions that factors affecting Alltel's ability to meet the 95 percent level, such as existing customers' willingness to upgrade their handsets, churn, and economic factors, are to a large extent outside of Alltel's control. Alltel will keep the Commission apprised of any significant developments that affect the projected date.

II. CONSUMERS' DECISIONS TO RETAIN EXISTING HANDSETS ARE HINDERING ALLTEL'S EFFORTS TO REACH 95 PERCENT.

A. Customer and Handset Churn Has Not Adequately Translated Into Increased Penetration of ALI-Capable Handsets.

In imposing the December 31, 2005 deadline, the Commission anticipated that carriers' compliance with the interim handset benchmarks, combined with factors such as subscriber churn, would facilitate carriers' ability to meet the 95 percent penetration requirement.[13] As noted above, Alltel has met or exceeded each of the interim handset benchmarks to date and has undertaken several campaigns to encourage handset upgrades. These actions have resulted in significant A-GPS handset penetration. Even as Alltel's ALI-capable handset penetration has increased, however, the growth rate of further penetration has slowed significantly and is anticipated to slow even more.

Alltel observes initially that subscriber churn is an inadequate proxy for ALI-capable handset penetration. Because many of Alltel's existing customers appear to be resistant to upgrading their handsets, the simple addition of new subscribers and the loss of existing customers in itself is an insufficient indicator of ALI-capable handset penetration improvement. With a greater number of ALI-capable handsets throughout the customer base, Alltel's handset upgrades increasingly involve the exchange of one A-GPS handset for another, and subscriber churn is thus more likely to involve a customer with an A-GPS handset. The result is a slower rate of improvement month over month. For example, while the A-GPS handset penetration rate improved by 2.7 percent in July 2004 from the previous month, it dropped to 1.7 percent in July 2005 and was down to 1.5 percent in August 2005. Based on Alltel's projections, this rate is expected to slow further as its customer base becomes increasingly weighted toward subscribers

[13] *See Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17388, ¶ 51 (1999) ("*Third Report and Order*").

with A-GPS handsets, and those remaining customers with non-compliant handsets continue to resist upgrades.

B. Low-Volume and Rural Subscribers Are Reluctant to Upgrade Their Handsets.

Alltel has made preliminary findings concerning the types of customers who choose not to upgrade their older, antiquated, non-ALI-capable handsets. A significant percentage of those customers are low-volume customers who have retained their non-ALI-capable handsets in spite of Alltel's substantial efforts and outreach to encourage upgrades.[14] Despite the advanced features provided even in today's low-end handsets, many consumers presumably still keep a wireless phone exclusively for safety purposes or basic voice services. Anecdotal evidence suggests that these subscribers do not want to be inconvenienced by unnecessarily exchanging handsets and having to learn the features and functions of a new phone. Further, in many remote rural areas, consumers require analog, three-watt phones with higher power to reach base stations. Digital phones may not be able to capture any signal and would have a very limited battery life when in these areas.[15] These factors have significantly impeded Alltel's ability to reach the 95 percent benchmark by year's end because the vast majority of its subscribers are

[14] Although these data relate to Alltel's pre-merger markets, their findings are mirrored in the former Western Wireless markets acquired on August 1, 2005 and, consequently, have compounded Alltel's challenge in meeting the 95 percent A-GPS handset deployment threshold.

[15] Indeed, for this very reason, NARUC has urged the Commission to "suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets until the 2008 termination of the requirement to provide analog services." *See* Resolution TC-5, adopted by the NARUC Board of Directors July 27, 2005. Individual state regulatory commissioners representing rural states in the former Western Wireless markets have expressed similar concerns. *See, e.g., Residents Fight to Keep Analog Cell Phones,* Associated Press, July 26, 2005, available at www.msnbc.msn.com/id/8709730/ (quoting South Dakota Public Utilities Commissioner Bob Sahr as saying, "If we phase those people out, they may be in a situation where they have this brand new, state-of-the-art digital phone with all sorts of bells and whistles, but they're not going to be able to complete the call in the first place").

outside urban and suburban areas, and approximately [redacted] percent of Alltel's total subscribers have analog handsets.

Alltel's data also confirm that low volume consumers typically hold on to old phones. Of Alltel's pre-merger customers, only [redacted] percent of subscribers with A-GPS handsets use their handsets 10 minutes or less per month. In contrast, [redacted] percent of subscribers with non-compliant digital handsets use their handsets 10 minutes or less per month and [redacted] percent of Alltel's analog subscribers use their handsets 10 minutes or less per month. Just [redacted] percent of Alltel subscribers with A-GPS handsets use their handsets 50 minutes or less per month, while [redacted] percent of customers with non-compliant digital handsets, and [redacted] percent of analog customers, use their handsets 50 minutes or less per month.

Finally, despite Alltel's marketing efforts and information campaigns touting E911 and the need for an A-GPS handset, Alltel's resistant customers continue to be more interested in retaining their existing handsets than obtaining E911 service. Indeed, even if they are aware of such benefits, some consumers may actually prefer a non-ALI-capable handset because of personal privacy concerns. In any event, Alltel's findings concerning its resistant customers underscore the challenges Alltel faces as it strives to meet the 95 percent penetration level.

III. REQUEST FOR WAIVER

A. Waiver Standard

The Commission requires that waivers of the E-911 rules "be specific, focused and limited in scope, and with a clear path to full compliance."[16] The Commission also requires carriers to "undertake concrete steps necessary to come as close as possible to full compliance"

[16] *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, ¶¶ 44-45 (2000) ("*Fourth MO&O*").

and expects carriers to "work aggressively with technology vendors and equipment suppliers to implement Phase II, and to achieve full compliance as soon as possible."[17] In the *Stay Order*, the Commission reaffirmed its position, stating that it "would not entertain requests for additional relief that seek changes in the requirements, schedules, and benchmarks imposed herein absent extraordinary circumstances."[18]

The Commission subsequently clarified that Tier II carriers such as Alltel "may present different factual circumstances that may warrant some differences in their treatment."[19] The Commission observed further that:

> [T]he schedules for those carriers were not specifically tailored for them or embodied in individual compliance plans. We expect to take these factors into account in assessing any waiver requests or enforcement actions concerning smaller carriers. If a Tier II or Tier III carrier believes that it cannot meet its Phase II deadline, it may seek a waiver . . . .[20]

Alltel now faces extraordinary circumstances warranting a limited waiver of the December 31, 2005 deadline. As discussed above, Alltel's subscriber base includes many low-volume and rural customers who simply do not want to exchange their current phones for new handsets, regardless of Alltel's continuing marketing and communications campaigns.

B. Alltel's Requested Relief Is Consistent with the Commission's Waiver Standard.

1. *Alltel's request is specific, focused and limited in scope.*

By this filing, Alltel requests a waiver of the 95 percent handset deployment benchmark of Section 20.18(g) until June 30, 2007. Alltel does not propose an open-ended, indefinite

[17] *Id.*
[18] *Stay Order* ¶ 36.
[19] *Non-Nationwide Recon Order* ¶ 15.
[20] *Id.*

waiver of the 95 percent penetration requirement. Rather, Alltel seeks a time-limited request of 18 months based on marketing and communications initiatives and current projections of the rate of handset upgrades by existing subscribers. This requested relief is consistent with the Commission's ongoing approach to handset deployment, as the Commission has modified the "reasonable period" for the phase-in of ALI-capable handsets into a carrier's subscriber base where market conditions do not evolve as projected.[21] While the total percentage of Alltel subscribers with A-GPS handsets continues to increase, the rate of increase is now significantly slower than in previous months. Alltel will continue its initiatives to encourage existing subscribers to upgrade their handsets. Alltel therefore requests a waiver to extend the 95 percent benchmark deadline until June 30, 2007.

2. *Alltel has taken concrete steps necessary to come as close to compliance as possible and is on a path to full compliance.*

Alltel has taken a number of concrete steps in its efforts to comply with the December 31, 2005 deadline and will continue to pursue the initiatives identified below to meet the June 30, 2007 date requested in this waiver.

Alltel met or exceeded all of the interim handset deployment benchmarks imposed in the *Stay Order* – evidencing the company's commitment to work with handset vendors, to aggressively market A-GPS handsets, and to move non-ALI-capable handsets out of its inventories.[22] Alltel no longer faces issues of technology feasibility, and neither the price of

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[21] *See, e.g.*, *Fourth MO&O* ¶¶ 43-44; *Stay Order* ¶¶ 12-18.
[22] *See* Alltel August 1, 2005 Report at 1-3.

ALI-capable handsets (as low as 99 cents) nor Alltel's inventory (100 percent ALI-capable) precludes any customer from obtaining one.

As noted above, Alltel has initiated a number of marketing and communications campaigns to encourage customers to upgrade their handsets. Alltel has also engaged in E911-specific handset upgrade initiatives. A list of initiatives, which Alltel will continue, is identified below:

- In February 2005, Alltel eliminated any fees associated with upgrading handsets.
- In many instances Alltel has provided significant discounts for new handsets, enabling customers to obtain new phones for as little as 99 cents.[23]
- Alltel features and has featured ALI-capable phones in its advertising.
- Alltel heritage markets offer existing customers the same lower prices for new handsets as are offered to new customers.[24]
- Beginning in November 2004, Alltel undertook a contract renewal program aimed specifically at customers with non-compliant handsets. [redacted] percent of customers with non-compliant handsets are out-of-contract. The campaign highlights Alltel's selection of ALI-capable phones. Specifically, in November 2004, February 2005, March 2005, April 2005, June 2005 and July 2005, Alltel targeted subscribers with non-ALI-capable handsets through direct mail.[25] Some of these were followed by text message, inviting customers to update and upgrade their service. Efforts are ongoing and similar efforts are planned monthly through the second quarter of 2006, at which point Alltel will assess whether this marketing scheme is having an impact on resistant customers.
- In August of this year, Alltel included a bill message, directed specifically to customers with non-compliant handsets, addressing the E911 benefits of A-GPS handsets and informing customers that they need an A-GPS handset to benefit from Phase II E911 service. In October, a bill insert will urge customers to "[f]ind out if your phone is approved for E9-1-1 service," explaining that "when Enhanced 9-1-1 (E9-1-1) is available in your area, your current wireless phone may not be able to utilize all of its advanced features." The insert explains further that "[t]o fully utilize E9-1-1 service

[23] *See* Exhibits A and B (Advertisement titled "change your plan *without* changing your contract" and mailing titled "Bring in your wireless phone for a free checkup today!" noting that new phones start at 99 cents).

[24] *See* Exhibit C ("1000 FamilyToFamily Minutes" advertisement noting that promotional rate plan offers are available to both new and existing customers).

[25] *See* Exhibit B (mailing titled "Bring in your wireless phone for a free checkup today!").

when it becomes available in your area, you'll need a phone with navigation technology called GPS."[26] Both bill communications explain how customers can determine whether their phones are GPS-capable.

- In July of this year, Alltel posted similar information on its website to inform customers about the E911 benefits of A-GPS handsets. Alltel's website explains that "[o]n Alltel's network, callers must have a GPS-capable phone in order for 9-1-1 operators to locate them" and explains how customers can determine whether their phones are GPS-capable. Alltel also directs customers where to look to find out more information on whether public safety entities in their areas are Phase II-capable.[27]

- Alltel has also provided information at the point of sale in its own retail stores and at agents' locations informing customers that in order to benefit from Phase II service, a 911 caller "must have adequate signal and battery strength, as well as a GPS-equipped phone."[28]

- Alltel also offers a wide variety of A-GPS handsets at all price points.[29] Alltel presently offers A-GPS-capable phones ranging from $0.99 and $9.99 up to $299.99.

- Alltel offers certified, refurbished A-GPS handsets that all customers, including low-volume customers, may obtain without entering a new contract in its directly owned retail outlets.

- Further, where Alltel has recently acquired markets deploying TDMA and/or GSM systems, the company has expeditiously overlaid CDMA networks and initiated 100 percent sales of ALI-capable handsets, and has aggressively sought to switch existing subscribers to CDMA and ALI-capable handsets.[30]

- Alltel's policy and procedures regarding ALI-capable phones have been the subject of operations calls and store meetings throughout the past year, stressing the importance of E-911 and ALI-capable phone activations. This message has been reinforced on Alltel's internal website for employees, along with a handset matrix and overviews of ALI-capable phones for easy reference. As a related matter, Alltel has undertaken quality control measures designed to further minimize the possibility that personnel do not activate non-ALI-capable handsets.

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[26] *See* Exhibits D and E (bill inserts titled "Are you prepared for an emergency" and "Can you be found?").

[27] *See* <http://www.alltel.com/corporate/e911.html>; Exhibit F (providing website text of E911 information).

[28] *See* Exhibit G (providing copy of point-of-sale collateral titled "E911 Service").

[29] *See* <http://www.alltel.com/phones/.html>; Exhibit H (content of Alltel's website information describing currently available handsets).

[30] *See* Alltel August 1, 2005 Report at 2.

- Before completing its merger with Alltel effective August 1, 2005, Western Wireless also maintained a number of programs including direct mail promotions, incentive pricing of A-GPS phones for new and existing subscribers, and the development of informational materials and website information. Western also conducted employee awareness programs, instituted policies prohibiting the activation of non-A-GPS activated phones, and developed a computer tool to easily identify those phones that were AGPS capable.[31]

By virtue of these efforts, Alltel is currently on a path to full compliance. Based on historic data trends and Alltel's keen understanding of its customer base, the Company has developed projections for A-GPS handset penetration rate improvement. With its continuing handset upgrade initiatives, Alltel expects to reach 95 percent A-GPS handset penetration by June 30, 2007.[32] As noted previously, Alltel's handset upgrades increasingly involve the exchange of one A-GPS handset for another and subscriber churn is more likely to involve a customer with an A-GPS handset. While [redacted] percent of all customers upgrading their handsets in February 2005 were replacing non-compliant phones, that figure fell to [redacted] percent by August 2005. Likewise, while [redacted] percent of customers disconnecting in February 2005 had been using non-compliant handsets, that figure dropped to [redacted] percent as of August 2005. As a result, the penetration improvement rate has slowed considerably.

Despite Alltel's substantial efforts, the penetration rate will slow further still during the remainder of 2005 and 2006 as the customer base becomes more heavily weighted towards subscribers with A-GPS handsets and those remaining customers with non-compliant handsets appear to be very resistant to marketing efforts encouraging them to replace their phones with A-GPS handsets. Based on projections for handset upgrades and subscriber disconnects, Alltel believes the penetration rate will likely slow to 1.1 percent in December 2005 and continue on a

[31] *See* Exhibit I (Mailings/inserts titled "A better network and a FREE phone for a valued customer" and "Your service just keeps getting better"; mailing titled "Because you're such a great customer, we're giving you the cool, new LG 5550 phone for FREE.").

[32] *See* Exhibit J (chart demonstrating the slowing trajectory of ALI-capable handset penetration level).

downward slope. Nonetheless, ALI-capable handset penetration as a percent of the customer base will continue to increase and, with Alltel's continuing handset upgrade campaigns, it should meet the 95 percent benchmark by June 30, 2007.[33]

Alltel notes further that this request is consistent with the approach recommended in CTIA/RCA's pending waiver request.[34] As noted, Alltel met the interim benchmarks and has an outstanding record of deploying Phase II service to PSAPs, and meets a number of the criteria set forth in CTIA/RCA's petition. Notably, Alltel has experienced substantially lower churn in the period since the *Stay Order*; has nearly met the 85 percent penetration level suggested in CTIA/RCA's petition; has significant numbers of analog customers in very rural markets and significant resistance to handset upgrades from low-volume subscribers; and has acquired a number of TDMA/GSM markets.[35] CTIA/RCA's petition offers a useful framework for Commission consideration of Phase II waiver requests and further underscores the merits of Alltel's request for relief.

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[33] In this regard, the Commission has found that "a clear path to full compliance" does not require that a carrier demonstrate 100 percent, fail-safe assurance that a benchmark will be met by a future date – nor would such an unattainable standard be appropriate, given the myriad of factors outside of Alltel's control that could hinder its efforts. In granting Sprint an extension of the 100 percent new digital handset activation benchmark, the Commission found that Sprint had "presented a clear path to full compliance" notwithstanding its acknowledgement "that its distributors will not have sold out their inventory by the end of the extension period." *Revision of the Commission's Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems, Request for a Limited and Temporary Rule Waiver by Sprint Corporation*, Order, 18 FCC Rcd 12543, ¶ 17, n.68 (2003). The Commission instead "view[ed] Sprint's six month extension request as reflecting a commitment to achieve the 100% activation rate goal in that time, and grant[ed] the request on that basis." *Id.* Alltel is similarly committed to achieving the 95 percent handset penetration level within the period requested.

[34] *See* CTIA – The Wireless Association™ and Rural Cellular Association, Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC Docket No. 94-102, filed June 30, 2005.

[35] *See id.* at 8-15.

3. *Fundamental principles of administrative law favor relief.*

As discussed below, handset turnover has not been as expeditious as carriers and the Commission had hoped and as the Commission had expected when it imposed the December 31, 2005 date back in September 2000. It is well-established that where the Commission's predictive judgments prove inaccurate, the Commission must revisit its deadlines accordingly.[36] The Commission must also afford carriers recourse to meaningful waiver procedures in such circumstances.[37]

The Commission has consistently acknowledged that carriers' ability to meet handset penetration requirements is dependent in part on consumer demand.[38] The Commission in the *Third Report and Order* relied in part on a projected monthly churn rate of two percent in determining that market forces, combined with the interim handset benchmarks, would facilitate compliance.[39] The Commission also acknowledged at that time, however, that for a variety of reasons "the actual pace of ALI-capable handset deployment could lag and may take several years" as "[s]ome customers will undoubtedly elect to economize by keeping their handsets for much longer than average, despite the advantages of ALI-capable handsets."[40] Indeed, the

[36] *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 445 (D.C. Cir. 1991); *Telocator Network of America v. FCC*, 691 F.2d 525, 550 n.191 (D.C. Cir. 1982); *see Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992); *P&R Temmer v. FCC*, 743 F.2d 918, 929 (D.C. Cir. 1984).

[37] *See ALLTEL Corp. v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988) (citing dissenting opinion in *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1200 (D.C. Cir. 1983)); *WAIT Radio*, 418 F.2d at 1158; *see also United States v. Allegheny-Ludlum Steel Corp.*, 406 U.S. 742, 755 (1972) (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 784-86 (1968)).

[37] *See Third Report and Order* ¶¶ 51-53; *Fourth MO&O* ¶ 37.

[38] *See Third Report and Order* ¶¶ 51-53; *Fourth MO&O* ¶ 37.

[39] *See Third Report and Order* ¶ 51.

[40] *See id.*

Commission has implored customers of carriers employing handset-based solutions, including Alltel, to "find out whether your phone has E911 location capabilities."[41]

Over the past five years, the marketplace has rendered the Commission's early projections overly optimistic and instead has proven its concerns regarding customers' desire to hold onto their phones. Alltel's early compliance with the interim benchmarks and targeted marketing efforts have not achieved full compliance. Despite Alltel's efforts, it has found that the number of its customers keeping their handsets for much longer than anticipated will amount to approximately 15 percent of its subscriber base at year's end.

C. Grant of Alltel's Waiver Request Will Not Undermine the Commission's E911 Phase II Objectives.

For a number of reasons, granting Alltel's waiver request will not undermine the public safety objectives of the Commission's E911 Phase II requirements. First, the Commission's objective in imposing the handset penetration requirement is "to ensure that Phase II extends to all wireless callers as quickly as is reasonably possible."[42] Alltel has worked in good faith to meet the benchmark. Given that well over 8 million of its approximately 10 million subscribers will have ALI-capable handsets by year's end, and that *all* customers have had A-GPS equipped handsets available to them since May 2004, Alltel has substantially complied with the Commission's rules and has facilitated this Commission objective.

Moreover, facilitating Alltel's handset-based solution has significant public safety benefits. An A-GPS handset solution is far more accurate in Alltel's substantially rural markets than a network-based solution, which would have severe technical limitations in many areas due

[41] *See* FCC Consumer Advisory, "What You Need to Know About Calling 911 From Your Wireless Phone," posted at http://www.fcc.gov/cgb/consumerfacts/e911.html.
[42] *See Third Report and Order* ¶ 52.

to low cell site density.[43] In addition, an A-GPS solution provides customers using compliant handsets with E911 coverage throughout a capable PSAP's geographic area; in contrast, a carrier employing a compliant network-based solution may not yet be fully deployed throughout the PSAP's area.[44]

Finally, the extent of PSAP Phase II readiness further mitigates the impact of the waiver on subscribers' access to E911 Phase II service. Alltel has launched Phase II service in numerous markets, but fewer than 25 percent of the PSAPs in Alltel's coverage area will be Phase II-capable by December 31, 2005. Strictly enforcing the December 31, 2005 deadline would effectively force Alltel to compel many customers to surrender their existing handsets or have their service disconnected, even though in many cases those customers' local PSAPs do not have Phase II capability in the first instance. Such an outcome is contrary to the public interest and further supports granting this waiver request.

[43] *See id.* ¶¶ 23-24 (Commission acknowledging advantages of handset-based solutions in rural areas).
[44] Alltel's proposal to meet full compliance by June 30, 2007 will not result in any meaningful delay with respect to any prospective deployment of a network-based solution. Implementation of a "compliant" network-based solution would provide a carrier 18 months following a PSAP request to reach 100 percent coverage in a PSAP's market. *See* 47 C.F.R. § 20.18(f).