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Before the
Federal Communications Commission
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Federal Communication 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)
)
Alltel Communications, Inc. Petition for)
Limited Waiver of Non-Nationwide Carriers)
Stay Order)
)

CC Docket No. 94-102

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Federal Communications Commission
Office of the Secretary

To: Chief, Wireless Telecommunications Bureau

**ALLTEL COMMUNICATIONS, INC.
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 Communications, Inc. ("Alltel") hereby requests a limited, focused and short-term waiver of certain Enhanced 911 ("E-911") obligations in four markets – the McAllen and Brownsville MSAs (jointly the Rio Grande Valley market, "RGV") and California RSA #7 and Arizona RSA #4 (jointly "Yuma") – Alltel acquired from Western Wireless Corporation ("Western"). The relief requested herein is necessary to permit the orderly conversion of these markets from TDMA technology to Alltel's CDMA network, while allowing Alltel to satisfy new requests for service and compete in the marketplace. For the RGV market, Alltel seeks an interim waiver until March 10, 2006 of its obligation to meet the 100 percent benchmark for new location-capable digital handset activations.¹ For the Yuma market, Alltel seeks an interim waiver

¹ *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 Rcd 14841, ¶ 27 (2002) ("Stay Order") (requiring that "Tier II" (continued on next page)*

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through March 31, 2006. Alltel notes that it has a request for waiver of the 95 percent location-capable handset penetration rule pending before the Commission.² In that waiver request, Alltel accounted for the entire RGV and Yuma subscriber base, currently using TDMA handsets, as non-compliant with the 95 percent rule; Alltel's actions described herein to overlay a CDMA network and market and sell only location-capable handsets will further its location-capable handset penetration level.

For the reasons discussed below, grant of the requested waiver would be consistent with the public interest.

I. BACKGROUND

With respect to the Commission's E-911 rules, Alltel is a CDMA-based "Tier II" carrier deploying the handset-based SnapTrack A-GPS Phase II solution.³ As a Tier II carrier, Alltel is subject to the handset sale and activation benchmarks of paragraph 27 of the *Stay Order*⁴ and has demonstrated a strong and ongoing commitment to E-911 compliance.⁵ Alltel, for example, initiated its sales of ALI-capable handsets well in advance of the initial benchmark set forth under the *Stay Order* and has substantially met all of the handset deployment benchmarks for Tier II carriers, including the 100 percent benchmark for new digital handset activations. In addition, as of its most recent quarterly report, Alltel has deployed E-911 Phase II service to more than 600 of the 777 PSAPs from whom it has received Phase II requests, and is either

carriers "[e]nsure that 100 percent of all new digital handsets activated are location-capable no later than May 31, 2004" (the "100 percent benchmark")), *aff'd on recon.* 18 FCC Rcd. 21838 (2003).

² Alltel Corporation Petition for Waiver in CC Docket No. 94-102, filed Sept. 30, 2005 ("September 30th Waiver").

³ *See Stay Order* ¶ 23.

⁴ *Id.* ¶ 27.

proceeding with deployment or has reached alternative deployment dates with the PSAPs in the remaining markets.⁶

On August 1, 2005, Alltel completed its merger with Western.⁷ As a result of the deal, Alltel added approximately 1.3 million wireless customers in 19 states and now has more than 10 million customers in 34 states. The wireless properties acquired from Western are primarily CDMA-based, but the Yuma and RGV markets are served by TDMA/Analog systems. There are no widely available E-911 Phase II handset-based solutions for TDMA-based systems, nor will there be in the future, as TDMA is an antiquated technology platform generally being phased-out industry wide. As a result, sales of ALI-capable handsets have not been initiated in these markets inasmuch as the pre-merger Western continued to consider deployment of a network-based solution for these markets should a valid PSAP request for Phase II service be received.⁸

At the time the Alltel/Western merger was consummated, no Phase II request in any of the markets at issue here had been received and Phase II service had not yet been deployed. Since then, Alltel has received valid Phase II requests from four PSAPs in Imperial County, California, which is located in California RSA #7: the Brawley, California police department; the El Centro police department; the Imperial County sheriff department; and the Holtville police

⁵ For a full discussion of Alltel's ongoing commitment to E-911 compliance, see September 30th Waiver.

⁶ See Alltel Communications, Inc., Thirteenth Quarterly Report, CC Docket No. 94-102, at 5 (filed November 1, 2005).

⁷ 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).

⁸ Although pre-merger Western was also a CDMA-based carrier that selected the A-GPS based handset solution for E-911, the Commission's rules permit carriers to maintain the flexibility to implement network-based technology in select markets where the existing digital platform may preclude the use of A-GPS technology.

department. Alltel has negotiated an alternative deployment date of June 1, 2006 with the four PSAPs.

Alltel has evaluated the Phase II requests and its plans for going forward with Phase II deployment in the markets in the wake of these requests. It has concluded that, due to simple engineering realities, and in particular, the geographic deployment of cell sites in the markets, a network based solution would not supply the requisite level of accuracy and would be overly expensive to construct and maintain. Alltel has chosen to convert the markets expeditiously to CDMA technology and implement an A-GPS handset solution for E-911 Phase II service. Developing the compliance plan underlying the instant request for waiver, however, has been complicated by the fact that, in order to develop a deployment schedule for the Yuma market, Alltel has been required to negotiate the right to access its antennas located on towers owned by Adelphia Cable. Obtaining the right to access these sites proved to be unexpectedly and exceedingly difficult due to the circumstances surrounding Adelphia's pending bankruptcy and its transactions with Time Warner and Comcast. Further, Alltel concluded it required additional backhaul transport capacity for the CDMA network in each market, thereby requiring acquisition of microwave licenses and appropriate antenna sites.

As the Commission is well aware, however, the transition from TDMA to CDMA cannot occur immediately. In the RGV market, Alltel will complete the CDMA overlay and the accompanying network portion of the A-GPS Phase II solution and will commence CDMA service by March 10, 2006, and in the Yuma market, Alltel will complete the CDMA overlay and commence CDMA service by March 31, 2006. Alltel will continue to provide existing service to ensure that affected customers continue to receive their service. In the California RSA #7 portion of the Yuma market, Alltel has engaged with the four PSAPs that have requested

Phase II service and has explained that the company is deploying a new CDMA overlay network that incorporates an A-GPS Phase II handset-based solution. As noted above, each of the PSAPs has agreed to an alternative deployment date of June 1, 2006.

As described in its recently filed request for waiver of the December 31, 2005 95 percent handset penetration deadline, Alltel is already engaged in an aggressive campaign to accelerate and promote deployment of ALI-capable handsets. Each of the TDMA markets will be incorporated into that campaign upon the initiation of CDMA service. Alltel will respond to any future PSAP Phase II requests via a handset-based solution.

The CDMA network overlay will be completed by March 10, 2006 in the RGV market and by March 31, 2006 in the Yuma market. Sales of all new TDMA handsets will cease at those respective dates and all new handset sales and activations will be of CDMA ALI-capable handsets. Alltel will continue to provide TDMA service for the remaining customers with TDMA handsets even though sales of TDMA handsets will cease upon completion of the CDMA network overlay. Alltel will promote transition of all remaining TDMA customers over to the CDMA network with CDMA ALI-capable handsets.

During the period prior to launch of CDMA service, new digital subscribers will need to receive TDMA handsets in order to receive digital service until the CDMA overlay is complete. Under the terms of the *Stay Order*, Alltel's 100 percent benchmark passed on May 31, 2004, yet there are no commercially-available ALI-capable TDMA handsets currently. For this reason, Alltel is seeking limited, interim relief until *March 10, 2006* in the RGV market and until *March 31, 2006* in the Yuma market.

II. WAIVER OF THE 100 PERCENT NEW DIGITAL HANDSET ACTIVATION BENCHMARK SERVES THE PUBLIC INTEREST

A. Request for Relief

Alltel requests a waiver of the 100 percent new digital handset activation benchmark of paragraph 27 of the *Stay Order* to allow Alltel to activate new TDMA non-ALI-capable digital handsets until March 10, 2006 in RGV and March 31, 2006 in Yuma.⁹

In accordance with the Commission's *Fourth Memorandum Opinion and Order*, Alltel's request is "specific, focused, and limited in scope, with a clear path to full compliance" with the 100 percent benchmark, and Alltel outlines below the "concrete steps necessary to come as close as possible to full compliance" with the 100 percent benchmark.¹⁰ Moreover, the current transition described herein raises the very "extraordinary circumstances" warranting additional relief, as the proposed deviation from "the requirements, schedules, and benchmarks" adopted in the *Stay Order* is limited in scope and temporary.¹¹

B. Interim Waiver of the 100 Percent Benchmark is Consistent with the Public Interest

1. *Alltel's Plan for Full Compliance with the 100 Percent Benchmark*

Alltel will complete the CDMA overlay in each of the markets by the aforementioned March 10, 2006 and March 31, 2006 dates. Alltel's CDMA network will fully support ALI-

⁹ As noted earlier, the FCC's rules allow carriers to use a handset-based solution in some markets and a network-based solution in others. Once Alltel concluded that it would overlay the TDMA markets with a CDMA network, however, the company concluded that the most prudent course would be to seek the instant waiver of the 100 percent new digital handset activation requirement for the interim period prior to commencement of CDMA operations, during which TDMA handsets would continue to be sold.

¹⁰ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58 (2000) ("*Fourth Memorandum Opinion and Order*").

capable handsets, as has been demonstrated in the numerous Alltel markets in which Phase II service to PSAPs has been initiated. Once the CDMA overlay is complete, all sales of TDMA handsets will cease. Alltel, which maintains well-established handset vendor relationships, will have stocked all of its newly-acquired retail outlets in the service areas with all-CDMA, all-ALI-capable handsets. Alltel will thus comply with the 100 percent benchmark once the CDMA overlay in each market is complete, beginning no later than the aforementioned March 10, 2006 and March 31, 2006 dates.

During the interim period, new customers will receive TDMA handsets in the relevant markets. Beginning November 1, 2005, however, in all four markets Alltel notified all new customers at the point of sale that they can receive an effectively free CDMA phone after CDMA network conversion through a voucher program. Customers are not required to sign an additional contract for receiving the replacement CDMA handset. Moreover, in the California-7 market, where the PSAP requests have been received, Alltel will make vouchers available to *all* subscribers, including legacy subscribers. Finally, all markets will be incorporated into Alltel's ongoing campaign to accelerate and promote deployment of ALI-capable handsets and augment handset penetration.¹²

¹¹ See *Stay Order* ¶ 36.

¹² These efforts include the availability of a wide variety of A-GPS handsets at all price points; the availability of certified, refurbished A-GPS handsets that all customers, including low-volume customers, may obtain without entering a new contract in the company's directly owned locations; advertising efforts; a contract renewal program aimed specifically at customers with non-compliant handsets, highlighting Alltel's ALI-capable handset selection (such efforts are ongoing and similar efforts are planned in 2006); bill inserts and messages; and the posting of information on its website and in retail stores. See September 30th Waiver (describing Alltel's handset-related efforts in detail).

2. *Alltel's Request is Consistent with the Public Interest, Convenience and Necessity*

Grant of the instant waiver request is warranted in these circumstances, as strict application of the 100 percent benchmark would be contrary to the public interest.¹³ The need for relief is dictated by technical and operational realities, as Alltel's ability to serve new customers via the CDMA overlay will require upgrading cell sites and the network, as well as updating billing systems, customer database conversion, and training of sales and customer service personnel.

As the Commission recently noted, although Phase II solutions using handsets "generally take more time to deploy than network based solutions because most customers must be supplied with new handsets," in the long run a handset-based A-GPS solution "can be more robust than either the network or handset solutions alone" given A-GPS technology.¹⁴ In addition, the transition is necessitated by the conversion from reliance on the existing TDMA technology to Alltel's CDMA technology – and in other E-911 contexts the Commission has previously acknowledged the need for flexibility "in order to accommodate [a carrier's] transition from one air interface to another."¹⁵

However, in order to continue offering digital phones and services to new customers while deployment of the CDMA overlay is ongoing, Alltel must continue to offer TDMA phones

¹³ See 47 C.F.R. §§ 1.3 (waiver appropriate "for good cause shown,") and 1.925(b)(3)(ii) (waiver appropriate where unique or unusual factual circumstances render application of the rule "inequitable, unduly burdensome or contrary to the public interest"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate when "particular facts would make strict compliance inconsistent with the public interest").

¹⁴ FCC Report to Congress on the Deployment of E-911 Phase II Services by Tier III Service Providers, at 9 (Mar. 23, 2005).

¹⁵ *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, 18 FCC Rcd. 20987, ¶ 27 (2003) ("Tier III Stay Order").

and service in these markets. Otherwise, new customers initiating service during that period will only have analog service available to them – without the features available only through digital service such as voice mail notification, caller ID, and messaging services, and with more limited battery life and service quality.¹⁶

Requiring new customers to endure a period of lesser service quality would compromise Alltel's ability to compete with the well-heeled carriers in these markets, thereby undermining the Commission's stated objective of ensuring that the E-911 Phase II framework is imposed in a competitively neutral manner.¹⁷ The limited, interim waiver requested herein thus mitigates the anticompetitive impact that would result from strict enforcement of the 100 percent benchmark.

Finally, the limited, interim waiver of the 100 percent benchmark proposed herein clearly meets the criteria of the *Fourth Memorandum Opinion and Order*. The requested relief is limited in geographic scope to discrete service areas and is limited in duration until March 10, 2006 for the RGV market and March 31, 2006 for the Yuma market. In all cases, relief is limited to one benchmark of the *Stay Order*; as such it is clearly "specific, focused, and limited in scope." Moreover, Alltel has set forth a plan, at considerable cost to itself, to expeditiously overlay the affected markets with a CDMA network, to terminate all sales of TDMA handsets upon completion of the overlay, and, significantly, to enable the subscribers affected by this interim period to be "made whole" by upgrading their handsets – thus mitigating the extent of additional non-ALI-capable handsets in Alltel's subscriber base and effectively erasing any impact of the transition period on customers. In the California-7 market, moreover, Alltel will

¹⁶ While Alltel could conceivably sell dual-mode CDMA-analog handsets to new subscribers, such handsets would only work in analog mode during the relevant period – severely limiting their appeal.

¹⁷ See *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report and Order, 14 FCC Rcd 17388, ¶ 34 (1999).

provide vouchers to all subscribers, including legacy subscribers. Alltel has clearly provided a clear path to full compliance with the 100 percent benchmark. Further, the Commission has acknowledged that waiver of the Phase II rules may be justified “in order to accommodate [a carrier’s] transition from one air interface to another,”¹⁸ and the transition described herein presents the very circumstances in which such a waiver is warranted.

III. CONCLUSION

For the foregoing reasons, grant of the requested waiver of the 100 percent benchmark of paragraph 27 of the *Stay Order* is consistent with the public interest, convenience and necessity.

Respectfully submitted,

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¹⁸ See Tier III Stay Order ¶ 27; see also *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, Order, CC Docket No. 94-102, FCC 05-79 (rel. Apr. 1, 2005) (granting waivers to accommodate air interface protocol changes).