

September 14, 2006

Writer's Direct Contact
202.887.1510
CTritt@mofocom

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Amendment of ALLTEL Communications, Inc. and Midwest Wireless Holdings, L.L.C.
WT Docket No. 05-339, DA No. 05-3169
ULS File No. 0002391997 (Lead Application)

Dear Ms. Dortch:

Pursuant to Section 1.65(a) of the Commission's rules,¹ ALLTEL Corporation, on behalf of its wholly-owned subsidiary ALLTEL Communications, Inc. (together, "ALLTEL"), and Midwest Wireless Holdings, L.L.C. ("Midwest Wireless"), amend their pending applications to transfer control of four Midwest Wireless subsidiaries to ALLTEL (the "ALLTEL/Midwest Transaction") to inform the Commission of further developments that bear on this transaction. ALLTEL and Midwest Wireless previously notified the Commission that they were in discussions with the U.S. Department of Justice (on behalf of the United States government) regarding ALLTEL's intent to divest certain spectrum and related assets in southern Minnesota in order to address competitive concerns raised in the ALLTEL/Midwest Transaction.² As set forth below, the parties have reached a settlement arrangement to address these concerns.

I. DESCRIPTION OF PROPOSED DIVESTITURES

ALLTEL, Midwest Wireless, the United States government, and the State of Minnesota filed on September 7, 2006 a Preservation of Assets Stipulation ("Preservation Stipulation") and

¹ 47 C.F.R. § 1.65(a).

² See Letter from Cheryl A. Tritt, counsel to ALLTEL, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 05-339, DA No. 05-3169, ULS File No. 0002391997 (Aug. 15, 2006).

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Preservation of Assets Order (“Preservation Order”) with the United States District Court for the District of Minnesota (“District Court”), and the parties jointly filed a proposed Final Judgment with the District Court.³ The documents collectively set forth the terms of a settlement designed to address competitive concerns raised in the ALLTEL/Midwest Transaction. On September 8, 2006, the District Court approved the Preservation Order, including the appointment of a management trustee (the “Trustee”).⁴

Specifically, under the settlement arrangement ALLTEL has agreed to transfer control of certain cellular licenses and related operational and network assets, including certain employees, retail sites and subscribers (the “Divestiture Assets”) in four southern Minnesota markets to the Trustee, who will manage the assets for a specified period during which ALLTEL will seek a buyer for the assets. ALLTEL has agreed to sell the Divestiture Assets to a third party purchaser within 120 days of consummation of the ALLTEL/Midwest Transaction, with the option of seeking an extension of up to 60 days (together, the “Interim Period”). The divestiture mechanism in this transaction is similar to that approved for ALLTEL’s prior acquisition of Western Wireless Corporation.⁵ Under the settlement arrangement, the United States government, State of Minnesota and Trustee also will permit ALLTEL (which will remain the *de jure* holder of the spectrum) the right to use 2.5 MHz of cellular spectrum in the markets identified for divestiture in order to transition its GSM operations to spectrum that will not be divested, for a period of up to 30 days after consummation of the ALLTEL/Midwest Transaction.

The United States government and the State of Minnesota concluded that the ALLTEL/Midwest Transaction raised competitive issues regarding the companies’ overlapping retail wireless telecommunications business in only the four cellular market areas (“CMAs”) identified below. Accordingly, ALLTEL was not required to divest any other cellular spectrum (including cellular spectrum in Minnesota Rural Service Area (“RSA”) 11 – Goodhue (CMA 492)) or personal communications service (“PCS”) spectrum holdings as part of the settlement arrangement. The cellular licenses to be divested to and managed by the Trustee are:

³ See *United States v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C.*, U.S. District Court for the District of Minnesota, Case No. 0:06-cv-03631-RHK-AJB, Preservation of Assets Stipulation (entered Sept. 7, 2006), Preservation of Assets Order (entered Sept. 7, 2006) (“Preservation Order”), Final Judgment (entered Sept. 7, 2006).

⁴ See Preservation Order at 6.

⁵ See *Applications of Western Wireless Corporation and Alltel Corporation*, 20 FCC Rcd 13053, 13113-15 (2005).

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Call Sign	Rural Service Area	Cellular Market Area
KNKQ432	Minnesota 7 – Chippewa	CMA 488
KNKN450	Minnesota 8 – Lac qui Parle	CMA 489
KNKN282	Minnesota 9 – Pipestone	CMA 490
KNKN572	Minnesota 10 – Le Sueur	CMA 491

ALLTEL and David S. Turetsky, in his capacity as the court-approved Trustee, also will file jointly as soon as practicable an application seeking Commission approval of: (1) the appointment of Mr. Turetsky as Trustee; (2) the Management Trustee Agreement pursuant to which the Trustee will manage the Divestiture Assets during the Interim Period; and (3) the transfer pursuant to a lease agreement (“Lease Agreement”) of *de facto* control of the Divestiture Assets to the Trustee (the “Lease Application”). The Lease Application will describe Mr. Turetsky’s qualifications to manage the Divestiture Assets and explain why *de facto* transfer of the Divestiture Assets to the Trustee serves the public interest. Copies of the Preservation Stipulation, Preservation Order, proposed Final Judgment, Management Trustee Agreement and Lease Agreement will be attached to the Lease Application. In addition, ALLTEL will file with the Commission a request for Special Temporary Authority (“STA”) seeking authority to use 2.5 MHz of the total 25 MHz of spectrum for each of the cellular licenses listed above for up to 30 days to transition ALLTEL’s GSM operations. The STA would commence on the date of consummation of the ALLTEL/Midwest Transaction.

Although not required by the approved settlement arrangement with the United States government and the State of Minnesota, ALLTEL also commits to reduce its commercial mobile radio service (“CMRS”) spectrum holdings in the sole market where the service area overlap of ALLTEL and Midwest Wireless would produce spectrum holdings post-transaction in excess of 80 MHz. Upon consummation of the ALLTEL/Midwest Transaction and the transfer of *de facto* control of the Divestiture Assets to the Trustee, ALLTEL would hold more than 80 MHz of spectrum in only one county in southern Minnesota – Lac qui Parle – in which it would hold 85 MHz of CMRS spectrum. Accordingly, ALLTEL commits to sell 10 MHz of PCS spectrum in Lac qui Parle within 120 days of consummation of the ALLTEL/Midwest Transaction, subject to one or more extensions not to exceed 60 days, thereby reducing its CMRS spectrum holdings in that county to 75 MHz.⁶ As a result of transferring *de facto* control of the Divestiture Assets to the Trustee and ALLTEL’s commitment to sell 10 MHz of CMRS spectrum in Lac qui Parle, ALLTEL ultimately would

⁶ ALLTEL will accept as a condition to the Commission’s grant of the ALLTEL/Midwest Transaction the requirement that ALLTEL sell 10 MHz of PCS spectrum in Lac qui Parle within 120 days of consummation of the ALLTEL/Midwest Transaction, subject to one or more extensions not to exceed 60 days.

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hold between 20 and 80 MHz of CMRS spectrum in each of the four southern Minnesota markets in which ALLTEL and Midwest Wireless have overlapping spectrum holdings.

The proposed transfer of *de facto* control of the Divestiture Assets and ALLTEL's sale of the Lac qui Parle spectrum would affect the competitive analyses that were previously set forth in this proceeding. ALLTEL accordingly supplements its prior competitive analyses with additional information that demonstrates that the ALLTEL/Midwest Transaction would not cause competitive harm.

II. SUPPLEMENTAL COMPETITIVE ANALYSIS

The Commission's merger analysis generally focuses on two competitive concerns: (1) market concentration, *i.e.*, whether the proposed transaction reduces the availability of substitute choices to the point that the merged company would have significant incentive and ability to engage in anti-competitive actions; and (2) post-merger spectrum holdings, *i.e.*, whether competitors have access to sufficient CMRS spectrum to effectively compete.⁷

Regarding the first competitive concern, the Commission has determined that "[t]ransactions that do not significantly increase concentration or do not result in a concentrated market ordinarily require no further competitive analysis" regarding market concentration.⁸ In this case, ALLTEL has agreed to transfer *de facto* control of the Divestiture Assets in Minnesota RSAs 7 through 10, which includes ALLTEL's retail customers, to the Trustee and to divest those assets. Accordingly, ALLTEL's acquisition of Midwest will cause no change in the number of independent competitors, market structure or concentration in these markets. ALLTEL's operations subject to the divestiture requirement will continue as stand-alone, viable business enterprises that will be acquired by a third party purchaser that is approved by the U.S. Department of Justice ("DOJ"). Further, the ALLTEL/Midwest Transaction will cause no reduction in the number of facilities-based rival carriers in Minnesota RSAs 7 through 10. Because the post-merger level of market concentration of these markets will be no more concentrated than the current market structure, the ALLTEL/Midwest Transaction would not reduce the availability of substitute choices to the point that ALLTEL would have significant incentive and ability to engage in anti-competitive actions.

As noted above, the United States government and the State of Minnesota concluded that ALLTEL's proposed spectrum holdings in Minnesota RSA 11 do not warrant divestiture of cellular (or PCS) spectrum in that market. In addition, ALLTEL's acquisition of Midwest will not materially affect the market conditions in RSA 11 or result in a significant increase in

⁷ *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21552, 21557 (2004) ("*Cingular/AWS Order*").

⁸ *Id.* at 21556.

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market concentration.⁹ Although Midwest Wireless has a substantial market share in Minnesota RSA 11, ALLTEL is not a meaningful retail competitor in RSA 11 and its market share is de minimis. Thus, the transaction would not add to the merged company's market power or cause a post-transaction reduction in competition.

In reviewing post transaction spectrum holdings, the Commission typically reviews the proposed spectrum holdings of both the merged company and other wireless carriers to ensure competitors have access to sufficient CMRS spectrum to remain competitive. Although the Commission eliminated spectrum cap requirements, it since has determined that spectrum overlaps do not raise competitive issues unless the transaction would increase the applicant's spectrum holdings in a relevant geographic market to 70 MHz or more.¹⁰ The Commission merely uses the 70 MHz threshold as a preliminary screen to determine whether it should review the spectrum holdings in a particular market for possible competitive issues. The Commission has concluded that spectrum holding in excess of 70 MHz merit additional review, but this does not constitute a *per se* finding of competitive harm.¹¹

ALLTEL would hold post-transaction 70 MHz or more in certain counties in four southern Minnesota markets – Minnesota RSAs 7, 8, 9 and 11.¹² The Spectrum Chart attached as Exhibit A lists ALLTEL's post-consummation spectrum holdings in those markets.¹³ As shown in the Spectrum Chart, ALLTEL would hold between 70 and 80 MHz of CMRS spectrum only in certain counties within these CMAs. ALLTEL's spectrum holdings in the remaining CMAs are generally significantly less than 70 MHz.

⁹ The HHI in this case was analyzed using Resource Utilization and Forecast ("NRUF") reports.

¹⁰ See *Applications of Western Wireless Corporation and Alltel Corporation*, 20 FCC Rcd 13053, 13073 (2005) ("ALLTEL/WWC Order"); *Cingular/AWS Order*, 19 FCC Rcd at 21568-69.

¹¹ *Cingular/AWS Order*, 19 FCC Rcd at 21568-69.

¹² ALLTEL previously informed the Commission that it currently holds a non-controlling interest in Great Western Cellular Holdings, L.L.C. ("Great Western"), which holds the A Block cellular license in Minnesota RSA 11. An application is pending to transfer full control of Great Western to ALLTEL. See ULS File No. 0002532959. Once the transfer of Great Western to ALLTEL is approved, it will be consummated irrespective of the outcome of the ALLTEL/Midwest Transaction. Accordingly, for purposes of this analysis, ALLTEL assumes that its spectrum holdings include those of Great Western.

¹³ For purposes of analyzing competition in the mobile telephony product market, the Commission has found that the relevant geographic market is neither national nor county-specific. Accordingly, consistent with prior Commission decisions, the following market analysis is based on CMAs. See *ALLTEL/WWC Order*, 20 FCC Rcd at 13069-70, 13072-73; *Cingular/AWS Order*, 19 FCC Rcd at 21563, 21567.

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A. ALLTEL's Post-Transaction Spectrum Holdings Would Be Consistent With Commission Precedent

ALLTEL's post-transaction spectrum holdings in Minnesota RSAs 7, 8, 9 and 11 are consistent with levels that the Commission has approved in prior transactions. For example, when ALLTEL merged with Western Wireless Corporation, the Commission approved spectrum aggregations of 70 MHz in several markets.¹⁴ Similarly, when Cingular Wireless Corporation ("Cingular") acquired AT&T Wireless Services, Inc. ("AT&T Wireless"), the Commission approved spectrum aggregations post transaction of up to 80 MHz in multiple markets.¹⁵ The Commission in effect approved the acquisition of close to one-half of the 180 MHz of CMRS spectrum that was then available, concluding that sufficient facilities-based competition could exist even when a single carrier held 80 MHz of spectrum.¹⁶ Similar to the southern Minnesota markets involved in this case, the markets in which the Commission permitted Cingular to retain more than 70 MHz of spectrum generally were less urban markets with low population density in which multiple carriers provided competitive wireless services. As further discussed below, ALLTEL also notes that the ongoing Advanced Wireless Service ("AWS") auction will introduce an additional 90 MHz of spectrum nationwide, increasing the amount of CMRS spectrum post-auction to 270 MHz.

B. ALLTEL Will Face Significant Post-Transaction Competition

ALLTEL and Midwest previously demonstrated that at least five national and regional wireless carriers hold licenses in each of Minnesota RSAs 7, 8, 9 and 11, and those carriers will continue to subject the merged company to significant competitive pressures in those markets.¹⁷ The transaction will not alter the competitive balance in any of the affected markets, as the Trustee (and, ultimately, a DOJ-approved buyer) will acquire *de facto* control over ALLTEL's business subject to divestiture and use it to compete against the combined ALLTEL/Midwest. If ALLTEL attempted to raise prices in these southern Minnesota markets, other carriers would have sufficient capacity to absorb dissatisfied customers.¹⁸ Given the rural nature of Minnesota RSAs 7, 8, 9 and 11, it is likely that the cost of attempting to raise prices in those markets would outweigh any benefits gained from the

¹⁴ See *ALLTEL/WWC Order*, 20 FCC Rcd at 13072-74.

¹⁵ See *Cingular/AWS Order*, 19 FCC Rcd at 21620-22.

¹⁶ See *id.* at 21568-69.

¹⁷ Form 603, Transfer of Control Application, ALLTEL Communications, Inc. and Midwest Wireless Holdings, L.L.C., ULS File No. 0002391997 (filed Dec. 2, 2005, amended Feb. 16, 2006) (Lead Application); Amended Joint Opposition of ALLTEL Communications, Inc. and Midwest Wireless Holdings, L.L.C., WT Docket No. 05-339, (filed Feb. 17, 2006).

¹⁸ See *Cingular/AWS Order*, 19 FCC Rcd at 21596 n.473, 21620-01.

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higher prices.¹⁹ Thus, the existence of multiple facilities-based carriers in Minnesota RSAs 7, 8, 9 and 11 provides sufficient competitive pressure to constrain anticompetitive conduct by ALLTEL that could affect pricing and other service terms and conditions.

C. ALLTEL's Post-Transaction Spectrum Holdings Will Not Be Sufficient To Create A Competitive Imbalance

Finally, the ALLTEL/Midwest Transaction would not reduce the spectrum holdings of any competing carrier or preclude any competing carrier from gaining access to sufficient spectrum to offer a viable, competitive service. The only speculative spectrum-related harm, if any, that could result from the transaction would be the potential imbalance in the availability of spectrum which could cause other carriers to be more spectrum constrained, e.g., in the deployment of next-generation services.²⁰ As noted above, however, there are ample number of facilities-based competitors in Minnesota RSAs 7, 8, 9 and 11. Moreover, it is extremely unlikely that any facilities-based competitor faces realistic spectrum constraints in Minnesota RSAs 7, 8, 9 and 11, given the rural nature of those markets, the sparse population and relatively low overall penetration rates. In fact, each of those competitors currently has sufficient spectrum to provide competitive wireless services and to offer next-generation services as desired.

In addition, the ongoing AWS auction will provide an additional 90 MHz of spectrum nationwide and 1122 licenses to existing and new competitors, including 90 MHz for the four southern Minnesota markets. Based upon the unofficial and publicly available results of the AWS auction to date, all 90 MHz of AWS spectrum that was available in Minnesota RSAs 7, 8, 9 and 11 will be acquired by carriers that do or will compete against ALLTEL.²¹ Thus, the amount of CMRS spectrum ALLTEL will hold in southern Minnesota will, at most, represent less than one-third of the CMRS spectrum available after the AWS licenses are granted. This percentage of spectrum is far less than the percentage of spectrum that Cingular retained when it acquired AT&T Wireless and is well within the bounds of Commission precedent.²² Moreover, the upcoming 700 MHz auction, which is statutorily required to begin no later than January 28, 2008, will make available even more spectrum that is well-suited for next-generation services.²³ The AWS auction and upcoming 700 MHz auction will ensure that

¹⁹ See *id.* at 21596 n.473.

²⁰ See *id.* at 21577.

²¹ See FCC Integrated Spectrum Auction System, Auction No. 66 Results, Round 141 (visited Sept. 14, 2006).

²² See *Cingular/AWS Order*, 19 FCC Rcd at 21568-69 (noting that one-third of the total bandwidth available for mobile telephony is an appropriate threshold for competitive analysis).

²³ See Digital Television and Public Safety Act of 2005, §3003.

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existing competitors and other new entrants continue to have access to sufficient spectrum in southern Minnesota.²⁴

III. CONCLUSION

As demonstrated above, the proposed transfer of *de facto* control of the Divestiture Assets to the Trustee and ALLTEL's commitment to reduce its CMRS spectrum holdings to no more than 80 MHz in the markets where ALLTEL's and Midwest Wireless' service areas overlap ensures that the ALLTEL/Midwest Transaction raises no competitive issues or concerns. Accordingly, the Commission should expeditiously consent to the proposed transaction.

If you have any questions regarding this amendment, please contact the undersigned.

Very truly yours,

/s/ Cheryl A. Tritt

Cheryl A. Tritt
Counsel to ALLTEL Corporation

Attachment

²⁴ See *Cingular/AWS Order*, 19 FCC Rcd at 21577.

Exhibit A

Overlapping Spectrum In Minnesota RSAs 7 Through 11

CMA	CMA Name	County	State	ALLTEL	Midwest Wireless	ALLTEL/ Midwest Combined	Post Divestiture
CMA488	Minnesota 7 - Chippewa	Chippewa	MN	45	55	100	75
CMA488	Minnesota 7 - Chippewa	Kandiyohi	MN	45	55	100	75
CMA488	Minnesota 7 - Chippewa	McLeod	MN	35	25	60	35
CMA488	Minnesota 7 - Chippewa	Meeker	MN	35	25	60	35
CMA488	Minnesota 7 - Chippewa	Nicollet	MN	35	35	70	45
CMA488	Minnesota 7 - Chippewa	Renville	MN	45	55	100	75
CMA488	Minnesota 7 - Chippewa	Sibley	MN	45	35	80	55
CMA489	Minnesota 8 - Lac qui Parle	Lac qui Parle	MN	55	55	110	75
CMA489	Minnesota 8 - Lac qui Parle	Lincoln	MN	45	55	100	75
CMA489	Minnesota 8 - Lac qui Parle	Lyon	MN	45	55	100	75
CMA489	Minnesota 8 - Lac qui Parle	Redwood	MN	45	35	80	55
CMA489	Minnesota 8 - Lac qui Parle	Yellow Medicine	MN	45	55	100	75
CMA490	Minnesota 9 - Pipestone	Brown	MN	45	35	80	55
CMA490	Minnesota 9 - Pipestone	Cottonwood	MN	55	50	105	80
CMA490	Minnesota 9 - Pipestone	Jackson	MN	35	50	85	60
CMA490	Minnesota 9 - Pipestone	Martin	MN	35	35	70	45
CMA490	Minnesota 9 - Pipestone	Murray	MN	55	50	105	80
CMA490	Minnesota 9 - Pipestone	Nobles	MN	45	50	95	70
CMA490	Minnesota 9 - Pipestone	Pipestone	MN	55	50	105	80
CMA490	Minnesota 9 - Pipestone	Rock	MN	45	50	95	70
CMA490	Minnesota 9 - Pipestone	Watonwan	MN	35	35	70	45
CMA491	Minnesota 10 - Le Sueur	Blue Earth	MN	35	35	70	45
CMA491	Minnesota 10 - Le Sueur	Faribault	MN	35	35	70	45
CMA491	Minnesota 10 - Le Sueur	Freeborn	MN	35	40	75	50
CMA491	Minnesota 10 - Le Sueur	Le Sueur	MN	35	35	70	45
CMA491	Minnesota 10 - Le Sueur	Rice	MN	25	25	50	25
CMA491	Minnesota 10 - Le Sueur	Steele	MN	25	25	50	25
CMA491	Minnesota 10 - Le Sueur	Waseca	MN	35	35	70	45
CMA492	Minnesota 11 - Goodhue	Dodge	MN	35	40	75	75
CMA492	Minnesota 11 - Goodhue	Fillmore	MN	35	40	75	75
CMA492	Minnesota 11 - Goodhue	Goodhue	MN	25	25	50	50
CMA492	Minnesota 11 - Goodhue	Houston	MN	25	25	50	50
CMA492	Minnesota 11 - Goodhue	Mower	MN	35	40	75	75
CMA492	Minnesota 11 - Goodhue	Wabasha	MN	35	40	75	75
CMA492	Minnesota 11 - Goodhue	Winona	MN	25	25	50	50