

the U.S. Fish and Wildlife Service as Okefenokee National Wildlife Refuge. Collecting information on outside threats would continue but few partnerships would be pursued. The refuge would rely on interest groups to carry the refuge's concerns forward to the appropriate level. The restoration of native communities and the health of resident wildlife species would be emphasized on refuge lands. Monitoring of environmental parameters, flora, and fauna would demonstrate long-term trends, environmental changes, or the results of management practices on refuge lands. Research, management, protection, education, and public use would be conducted to maximize benefits to Okefenokee Refuge specifically. Land acquisition on high-priority areas, rather than partnership formation, would be emphasized. This alternative requires an increase in staff similar to that of Alternative 2 because of the additional time and manpower needed to conduct surveys, trail maintenance, and other management functions within the wilderness area. The additional staff identified in Alternative 2 for developing and maintaining partnerships and outreach are not included in Alternative 4 due to Alternative 4's emphasis on refuge lands only. Eighty-four additional staff members are necessary to fully implement this alternative.

The Okefenokee Refuge is situated in the southeastern Georgia counties of Ware, Charlton, and Clinch, and in northeastern Florida's Baker County, roughly between latitudes 30°33' and 31°05' North and longitudes 82°07' and 82°33' West. In 1937, with Executive Order 7593 (later amended by Executive Order 7994), President Franklin Delano Roosevelt established the refuge, designating it as "a refuge and breeding ground for migratory birds and other wildlife." It protects the ecological system of the 438,000-acre Okefenokee Swamp. The refuge consists presently of 395,080 acres. The refuge's approved acquisition boundary includes 519,480 acres, 123,480 acres beyond the current refuge acres. Approximately 371,000 acres of the Okefenokee Swamp wetlands are incorporated into the refuge; and 353,981 acres within the swamp were designated as wilderness by the Okefenokee Wilderness Act of 1974, making it the third largest National Wilderness Area east of the Mississippi River. In 1986, the Okefenokee Refuge was designated by the Wetlands Convention as a Wetland of International Importance.

Okefenokee's natural beauty was first threatened in the 1890s, when attempts were made to drain the swamp to

facilitate logging operations. The Suwannee Canal was dug 11.5 miles into the swamp from Camp Cornelia. After the failure of this project, other interests acquired the swamp and began removing timber in 1909, using a network of tram roads extending deep into the major timbered areas. When logging operations were halted in 1927, more than 423 million board feet of timber, mostly cypress, had been removed from the swamp.

The establishment of Okefenokee Refuge in 1937 marked the culmination of a movement that had been initiated at least 25 years earlier by a group of scientists from Cornell University who recognized the educational, scientific, and recreational values of this unique area. The Okefenokee Preservation Society, formed in 1918, promoted nationwide interest in the swamp. With the support of State and local interests and numerous conservation and scientific organizations, the Federal Government acquired most of the swamp for refuge purposes in 1936.

Okefenokee Refuge preserves the unique qualities of the Okefenokee Swamp for future generations to enjoy. The swamp is considered the headwaters of the Suwannee and St. Marys Rivers. Habitats provide for threatened and endangered species, such as red-cockaded woodpeckers, wood storks, indigo snakes, and a wide variety of other wildlife species. It is world renowned for its amphibian populations that are bio-indicators of global health. More than 600 plant species have been identified on refuge lands.

Combining Okefenokee National Wildlife Refuge with Osceola National Forest, private timberlands, and State-owned forests, more than 1 million contiguous acres provide wildlife habitat and recreational opportunities. Researchers and students study the resources.

The Georgia communities of Waycross (12 miles north), Folston (7 miles east), St. George (8 miles southeast), Fargo (5 miles west), and Homerville (20 miles northwest) surround the refuge, and Jacksonville, Florida is 40 miles to the southeast. Nearly 300,000 people visit the refuge each year, making it the 16th most visited refuge in the National Wildlife Refuge System. In 1999, the economic impact of tourists in Charlton, Ware, and Clinch Counties in Georgia exceeded \$67 million.

The Okefenokee swamp has shaped the culture of southeast Georgia. Most residents of Charlton, Clinch, and Ware Counties have ancestors who once lived or worked in the swamp and view the swamp as a part of their heritage.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: May 13, 2005.

Cynthia K. Dohner,

Acting Regional Director.

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. ALLTEL Corporation and Western Wireless Corporation; Competitive Impact Statement, Proposed Final Judgment, Complaint, Preservation of Assets Stipulation and Order

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a Complaint, proposed Final Judgment, Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States v. ALLTEL Corporation and Western Wireless Corporation*, Civil Case No. 1:05CV01345. On July 6, 2005, the United States filed a complaint alleging that the proposed acquisition of Western Wireless Corporation ("Western Wireless") by ALLTEL Corporation ("ALLTEL"), would violate section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of mobile wireless telecommunications services. The proposed Final Judgment, filed at the same time as the Complaint, Competitive Impact Statement, and Preservation of Assets Stipulation and Order, requires ALLTEL to divest assets in three states—Arkansas, Kansas, and Nebraska—in order to proceed with ALLTEL's \$6 billion stock-and-cash acquisition of Western Wireless. The Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Preservation of Assets Stipulation and Order, the Competitive Impact Statement, and all further papers filed with the Court in connection with this Complaint will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20530 (202-514-2481), and the Office of the Clerk of the

U.S. District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments in writing regarding the proposed consent decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202-514-5621). At the conclusion of the sixty (60) day comment period, the U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations.

United States of America, Plaintiff, v. Alltel Corporation and Western Wireless Corporation, Defendants.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into an Agreement and Plan of Merger dated January 9, 2005, pursuant to which ALLTEL Corporation ("ALLTEL") will acquire Western Wireless Corporation ("Western"). Plaintiff filed a civil antitrust Complaint on July 6, 2005 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in sixteen (16) geographic areas in the states of Arkansas, Kansas, and Nebraska in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in consumers facing higher prices and lower quality or quantity of mobile wireless telecommunications services.

At the same time the Complaint was filed, plaintiff also filed a Preservation of Assets Stipulation and Order and proposed Final Judgment, which are designed to eliminate the

anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest Western Wireless' mobile wireless telecommunications services businesses and related assets in sixteen (16) markets ("Wireless Business Divestiture Assets") and Western Wireless' Cellular One Group Assets which includes the Cellular One service mark and related assets ("Cellular One Group Assets") (collectively the "Divestiture Assets"). Under the terms of the Preservation of Assets Stipulation and Order, defendants will take certain steps to ensure (a) that these assets are preserved and that the Divestiture Assets are operated as competitively independent, economically viable and ongoing businesses; (b) that they will remain independent and uninfluenced by defendants or the consummation of the transaction; and (c) that competition is maintained during the pendency of the ordered divestiture.

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the preservation of Assets Stipulation and Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation and Order, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Preservation of Assets Stipulation and Order until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ALLTEL, with headquarters in Little Rock, Arkansas, is a corporation organized and existing under the laws of the state of Delaware. ALLTEL is the sixth-largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 8.8 million customers. It provides mobile wireless telecommunications services in one hundred fifty-one (151) rural service

areas and in ninety-two (92) metropolitan statistical areas located within twenty-four (24) states and roaming services in these areas to other mobile wireless providers who use the CDMA platform. ALLTEL provides local wireline telephone service to 3 million customers primarily located in rural areas in fifteen (15) states. In 2004, ALLTEL earned revenues of approximately \$8.2 billion.

Western Wireless, with headquarters in Bellevue, Washington, is a corporation organized and existing under the laws of the state of Washington. Western is the ninth-largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 1.4 million customers. It operates in eighty-eight (88) rural service areas and nineteen (19) metropolitan statistical areas located within nineteen (19) western states under the Cellular One service mark, except in one (1) license area in Texas where it operates as Western Wireless. Western Wireless also provides in its service areas roaming services to other providers who use CDMA, TDMA, and GSM technology. Through its subsidiary, Western Wireless International, it provides communications services in seven (7) countries outside of the United States. Western Wireless owns the Cellular One Group, a general partnership that owns the Cellular One service mark and licenses use of the mark to other mobile wireless providers. In 2004, Western Wireless earned approximately \$1.9 billion in revenues.

Pursuant to an Agreement and Plan of Merger dated January 9, 2005, ALLTEL will acquire Western Wireless in a stock-and-cash transaction valued at approximately \$6 billion. If this transaction is consummated, ALLTEL and Western Wireless combined would have approximately 10 million subscribers, with \$10.1 billion in revenues and operations in thirty-three (33) states.

The proposed transaction, as initially agreed to by defendants, would lessen competition substantially for mobile wireless telecommunications services in sixteen (16) markets. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiffs.

B. Mobile Wireless Telecommunications Services Industry

Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area

during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. This mobility is highly prized by customers, as demonstrated by the more than 180 million people in the United States who own mobile wireless telephones. In 2004, revenues for the sale of mobile wireless telecommunications services in the United States were over \$100 billion. To provide these services, mobile wireless telecommunications services providers must acquire adequate and appropriate spectrum, deploy an extensive network of switches, radio transmitters, and receivers, and interconnect this network with those of local and long-distance wireline telecommunications providers and other mobile wireless telecommunications services providers.

The first wireless voice system were based on analog technology, now referred to as first-generation or "1G" technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area ("MSA"), and Rural Service Area ("RSA") (collectively "Cellular Marketing Areas" or "CMAs"), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent. Cellular licenses must support analog service until February 2008.

In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services ("PCS"), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1.8 GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas ("MTAs"), and C, D, E and F-block licenses are issued by Basic Trading Areas ("BTAs"), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity,

shrinking handsets, and extending battery life. In 1996, one provider, a specialized mobile radio ("SMR" or "dispatch") spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or "push-to-talk," service.

Today, more than 90 percent of the all mobile wireless telecommunications services customers have digital service, and nearly all mobile wireless voice service has migrated to second-generation or "2G" digital technologies: TDMA (time division multiple access), GSM (global standard for mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless telecommunications services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA having been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies ("3G") have begun to be deployed for voice and data. In all of the geographic areas alleged in the complaint, ALLTEL and Western Wireless own 25 MHz cellular licenses. Western also owns some additional PCS licenses. Cellular spectrum because of its propagation characteristics is more efficient to use in serving rural areas.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services

ALLTEL's proposed acquisition of Western Wireless will substantially lessen competition in mobile wireless telecommunications services in the sixteen (16) relevant geographic areas. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires, such as when traveling. Fixed wireless services and other wireless services that have a limited range (*e.g.*, Wi-Fi) do not offer a viable alternative to mobile wireless telecommunications services primarily because customers using these services cannot maintain a call or data session while moving from one location to another.

Most customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing

mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they are located and travel on a regular basis: Home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless telecommunications services providers varies from geographic area to geographic area, along with the quality of their services and the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the actual price for customers by geographic area.

The relevant geographic markets for mobile wireless telecommunications services are, therefore, local in nature. The FCC has licensed a limited number of mobile wireless telecommunications services providers in these and other geographic areas based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless telecommunications services. Although not all FCC spectrum licensing areas are relevant geographic areas for the purpose of analyzing the antitrust impact of this transaction, the FCC spectrum licensing areas that encompass the sixteen (16) geographic areas of concern in this transaction are where consumers in these communities principally use their mobile wireless telecommunications services. As described in the Complaint, the relevant geographic markets where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas which are all Rural Service Areas ("RSAs"): Arkansas RSA-11 (CMA 334), Kansas RSA-3 (CMA 430), Kansas RSA-4 (CMA 431), Kansas RSA-8 (CMA 435), Kansas RSA-9 (CMA 436), Kansas RSA-10 (CMA 437), Kansas RSA-14 (CMA 441), Nebraska RSA-2 (CMA 534), Nebraska RSA-3 (CMA 535), Nebraska RSA-4 (CMA 536), Nebraska RSA-5 (CMA 537), Nebraska RSA-6 (CMA 538), Nebraska RSA-7 (CMA 539), Nebraska RSA-8 (CMA 540), Nebraska RSA-9 (CMA 541), and Nebraska RSA-10 (CMA 542).

The sixteen (16) geographic markets of concern for mobile wireless telecommunications services were identified by a fact-specific, market-by-

market analysis that included consideration of, but was not limited to, the following factors: The number of mobile wireless telecommunications service providers and their competitive strength and weaknesses; ALLTEL's and Western Wireless' market shares along with those of the other providers; whether additional spectrum is or is likely to be available; whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers; the concentration of the market, and the breadth and depth of coverage by different providers in each market; and the likelihood that any provider would expand its existing coverage.

ALLTEL and Western Wireless both own businesses that offer mobile wireless telecommunications services in the sixteen (16) relevant geographic areas. The companies' combined market shares for mobile wireless telecommunications services in the relevant markets as measured in terms of subscribers range from over 50 to nearly 100 percent. In each relevant geographic market, ALLTEL has the largest market share, and, in all but four RSAs, Western Wireless is the second-largest mobile wireless telecommunications services provider. In all of the relevant geographic markets, ALLTEL and Western Wireless own the only 800 MHz band cellular spectrum licenses which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, ALLTEL's and Western Wireless' networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in the relevant geographic markets, and thus are more attractive to consumers.

In addition, mobile wireless telecommunications services providers with partial coverage in a geographic area do not aggressively market their services in this location because potential customers would use their wireless telephones primarily in places where these providers have no network. In theory, these less built-out providers could service residents of these rural areas through roaming agreements, but as a practical matter when service is provided on another carrier's network, the providers would have to pay roaming charges to, and rely on, that carrier to maintain the quality of the network. Because of these constraints, the other providers who own partially built-out networks in the sixteen (16) geographic areas are reluctant to market their services to rural residents of these

areas. Therefore, ALLTEL and Western Wireless are likely closer substitutes for each other than the other mobile wireless telecommunications services providers in the relevant geographic markets. Additionally, post-merger in these markets, there will be insufficient remaining competitors, with the type of coverage desired by customers, and the ability to compete effectively to defeat a small, but significant price increase by the merged firm.

The relevant geographic markets for mobile wireless telecommunications services are highly concentrated. As measured by the Herfindahl-Hirschman Index ("HHI"), which is commonly employed in merger analysis and is defined and explained in Appendix A to the Complaint, concentration in these markets ranges from over 2100 to more than 8500, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After ALLTEL's proposed acquisition of Western Wireless is consummated, the HHIs in the relevant geographic markets will range from over 3400 to almost 9700, with increases in the HHI as a result of the merger ranging from over 1100 to over 4600.

Competition between ALLTEL and Western Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than would otherwise have existed in these geographic markets. If ALLTEL's proposed acquisition of Western Wireless is consummated, the competition between ALLTEL and Western Wireless in mobile wireless telecommunications service will be eliminated in these markets and the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between ALLTEL and Western Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Expansion by providers who hold spectrum in these areas and are only partially built-out is also unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz spectrum. Due to propagation

characteristics of 800 MHz cellular spectrum and 1900 MHz PCS spectrum, the 800 MHz signals can cover a substantially broader area than the 1900 MHz signals. The estimated coverage advantage of the 800 MHz spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCS networks than for cellular networks. The high costs of constructing PCS networks in rural markets combined with the relatively low population density makes it less likely that carriers that own PCS spectrum would build out in the relevant geographic markets. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm that would result from ALLTEL's proposed acquisition of Western Wireless.

For these reasons, plaintiff concluded that ALLTEL's proposed acquisition of Western Wireless will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition of mobile wireless telecommunications services in the sixteen (16) geographic markets of concern. The proposed Final Judgment requires defendants, within one hundred twenty (120) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Wireless Business Divestiture Assets and the Cellular One Group Assets. The Wireless Business Divestiture Assets are essentially Western's entire mobile wireless telecommunications services business in the sixteen (16) markets where ALLTEL and Western Wireless are each other's closest competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff in its sole discretion that they will be operated by the purchaser as a viable, ongoing, business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

With respect to the Wireless Business Divestiture Assets, in some markets the merged firm may retain Western's PCS wireless spectrum. Western's PCS spectrum is used primarily to provide roaming services to other providers who use GSM technology. ALLTEL does not currently provide GSM roaming and therefore the proposed acquisition will not lessen competition in providing these services. In requiring divestitures, plaintiff seeks to make certain that the potential buyer acquires all the assets it may need to be a viable competitor and replace the competition lost by the merger. The 25 MHz of cellular spectrum that must be divested will support the operation and expansion of the mobile wireless telecommunications services businesses being divested, allowing the buyer to be a viable competitor to the merged entity.

The Final Judgment requires that the Wireless Business Divestiture Assets in the Nebraska RSAs be divested to a single acquirer who, as a result, will be able to supply service to customers that require wireless telecommunications service throughout eastern and central rural Nebraska in the same way that Western Wireless is currently able to provide that service. This provision resolves concerns about the loss of competition for customers that demand coverage over a combination of Nebraska FCC licensing areas, in addition to the concerns due to eliminating competition within each licensing area.

The Cellular One Group Assets consist of all right, title and interest in trademarks, trade names, service marks, service names, and designs for the Cellular One mark. Western Wireless owns the Cellular One Group Assets and under the terms of the Cellular One licensing agreements it has entered with other mobile wireless telecommunications services providers, it is required to promote and maintain the value of the mark. Western Wireless markets its mobile wireless telecommunications services under the Cellular One mark in the sixteen (16) geographic markets of concern in the Complaint. As a result of the proposed transaction, ALLTEL would have acquired the Cellular One Group Assets. ALLTEL has no need to use the Cellular One mark in the United States as it has its own established name. The buyer of the Wireless Business Divestiture Assets, on the other hand, may need to use the Cellular One Group name, short term or long term, in order to provide continuity for existing customers or attract new business.

When agreeing to divestitures to remedy the loss of competition as a

result of a merger, the plaintiff seeks to make certain that the potential buyer acquires or has access to all assets that it may need to be a viable and substantial competitor. Having an established name is an important asset that can impact the ability of the buyer to quickly come into a market and attract customers. In order to ensure that the buyer has unimpaired access to the Cellular One mark and that the mark is in the hands of an owner who will aggressively act to promote and preserve it, the proposed Final Judgment requires ALLTEL to divest the Cellular One Group Assets. Under the terms of the proposed Final Judgment, defendants will sell these assets to an appropriate purchaser who has the intent and capability to maintain the value of the Cellular One service mark.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which plaintiff seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in Section IV.A, divestiture of the Divestiture Assets, within one hundred twenty (120) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff in its sole discretion may extend the date for divestiture of the Divestiture Assets by up to sixty (60) days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispositive before the end of the required divestiture period, the period for divestiture of those assets shall be extended until five (5) days after the FCC has acted. This extension is to be applied only to the individual Divestitures Assets affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Divestiture Assets for which license transfer approval has been granted.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration

of the period of common ownership and the detailed requirements of the Preservation of Assets Stipulation and Order.

B. Use of a Management Trustee

The Preservation of Assets Stipulation and Order, filed simultaneously with this Competitive Impact Statement, ensures that, prior to divestiture, the Divestiture Assets are maintained, the Wireless Business Divestiture Assets remain an ongoing business concern, and the Cellular One Group Divestiture Assets remain economically viable. The Divestiture Assets will remain preserved, independent and uninfluenced by defendants, so that competition is maintained during the pendency of the ordered divestiture.

The Preservation Assets Stipulation and Order appoints a management trustee selected by plaintiff to oversee the Divestiture Assets in the relevant geographic markets. The appointment of a management trustee in this unique situation is required because the Wireless Business Divestiture Assets are not independent facilities that can be held separate and operated as standalone units by the merged firm. Rather, the Wireless Business Divestiture Assets are an integral part of a larger network, and to maintain their competitive viability and economic value, they should remain part of that network during the divestiture period. To insure that these assets are preserved and supported by defendants during this period, yet run independently, a management trustee is necessary to oversee the continuing relationship between defendants and these assets. The management trustee will also preserve and ensure the viability of the Cellular One Group Assets. The management trustee will have the power to operate the Divestiture Assets in the ordinary course of business, so that they will remain preserved, independent, and uninfluenced by defendants, and so that the Wireless Business Divestiture Assets remain an ongoing and economically viable competitor to defendants and to other mobile wireless telecommunications services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; insure defendants' compliance with the Preservation of Assets Stipulation and Order and the proposed Final Judgment; and maximize the value of the Divestiture Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Preservation of Assets Stipulation and Order provides that defendants will

pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his or her appointment becomes effective, the management trustee will file monthly reports with plaintiffs setting forth the efforts to accomplish the goals of the Preservation of Assets Stipulation and Order and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the management trustee may become the divestiture trustee, pursuant to the provisions of Section V of the proposal Final Judgment.

C. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff to effect the divestitures. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will own and control of Divestiture Assets until they are sold a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplished divestitures at the earliest possible time and "at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee." In addition, to insure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, plaintiff, in its sole discretion, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the

Divestiture Assets, but will also be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation, or management of the Divestiture Assets following consummation of the transaction, as provided by Section V, other than the right to receive the proceeds of the sale, and certain obligations to provide support to the Divestiture Assets, and cooperate with the divestiture trustee in order to complete the divestiture, as indicated in Section V.L and in the Preservation of Assets Stipulation and Order.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.G of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiff setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six (6) months after the assets are transferred to the divestiture trustee. At the end of six (6) months, if all divestitures have not been accomplished, the trustee and plaintiff will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services. The divestitures of the Divestiture Assets will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover

three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff could have continued the litigation and sought preliminary and permanent injunctions against ALLTEL's acquisition of Western Wireless. Plaintiff is satisfied, however,

that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services in the relevant markets identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16 (e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. See *United States v. Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

"Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).¹ Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft*, 56 F.3d at 1460–62. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).²

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it

court's duty to settle; rather, the court must only answer "whether the settlement achieved [was] within the reaches of the public interest"). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538–39.

² Cf. *BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"); see generally *Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States v. AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), aff'd sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983); see also *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: July 6, 2005.

Respectfully submitted,

Deborah A. Roy (D.C. Bar #452573),
Laura R. Starling,
Hillary B. Burchuk (D.C. Bar #366755),
Matthew C. Hammond,

Attorneys, Telecommunications & Media Enforcement Section, Antitrust Division.

U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514–5621, Facsimile: (202) 514–6381.

United States of America, Plaintiff, v.
ALLTEL Corporation and Western Wireless Corporation, Defendants.

Final Judgment

Whereas, plaintiff, United States of America, filed its Complaint on July 6, 2005, plaintiff and defendants, ALLTEL Corporation ("ALLTEL") and Western Wireless Corporation ("Western Wireless"), by their respective attorneys, have consented to the entry of this Final

¹ See *United States v. Gillette Co.*, 204 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the

Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And whereas, plaintiff requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, adjudged and decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest the Divestiture Assets.

B. "ALLTEL" means defendant ALLTEL Corporation, a Delaware corporation with headquarters in Little Rock, Arkansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Cellular One Group" means the Delaware general partnership, with headquarters in Bellevue, Washington, engaged in the business of licensing and promoting the Cellular One service mark and certain related trademarks, service marks, and designs.

D. "Cellular One Group Assets" means all legal and economic interests Western Wireless holds in the Cellular One Group. Cellular One Group Assets shall include all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One

mark, technical information, computer software and related documentation, and all records relating to the divestiture assets. If the acquirer of the Cellular One Group Assets is not the acquirer of the Wireless Business Divestiture Assets, defendants will grant the acquirer of the wireless business assets a license to use the Cellular One service marks on terms generally available at the time the merger agreement was entered and make the transfer of the Cellular One Group Assets subject to continuation of these licenses.

E. "CMA" means cellular market area which is used by the Federal Communications Commission ("FCC") to define cellular license areas and which consists of Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs").

F. "Divestiture Assets" means the Wireless Business Divestiture Assets and the Cellular One Group Assets.

G. "GSM" means global system for mobile communications which is one of the standards used for the infrastructure of digital cellular service.

H. "Multi-line Business Customer" means a corporate or business customer that contracts with Western Wireless for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with the corporate or business customer.

I. "Transaction" means the Agreement and Plan of Merger between ALLTEL and Western Wireless, dated January 9, 2005.

J. "Western Wireless" means defendant Western Wireless Corporation, incorporated in the state of Washington with headquarters in Bellevue, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

K. "Wireless Business Divestiture Assets" means, for each mobile wireless telecommunications services business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless telecommunications services businesses to be divested. "Wireless Business Divestiture Assets" shall be construed broadly to accomplish the complete divestitures of the entire business of Western Wireless in each of the following RSA license areas as required by the Final Judgment and to ensure that the divested mobile wireless telecommunications services businesses remain viable, ongoing businesses:

- (a) Arkansas RSA-11 (CMA 334);
- (b) Kansas RSA-3 (CMA 430);
- (c) Kansas RSA-4 (CMA 431);
- (d) Kansas RSA-8 (CMA 435);
- (e) Kansas RSA-9 (CMA 436);
- (f) Kansas RSA-10 (CMA 437);
- (g) Kansas RSA-14 (CMA 441);
- (h) Nebraska RSA-2 (CMA 534);
- (i) Nebraska RSA-3 (CMA 535);
- (j) Nebraska RSA-4 (CMA 536);
- (k) Nebraska RSA-5 (CMA 537);
- (l) Nebraska RSA-6 (CMA 538);
- (m) Nebraska RSA-7 (CMA 539);
- (n) Nebraska RSA-8 (CMA 540);
- (o) Nebraska RSA-9 (CMA 541); and
- (p) Nebraska RSA-10 (CMA 542);

provided that ALLTEL may retain all of the PCS spectrum currently held by Western Wireless in each of these RSAs and provided that ALLTEL need not divest the assets used solely to operate Western Wireless' GSM roaming business, including GSM roaming contracts and equipment.

Wireless Business Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless business being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from Western Wireless, for assets described in (2) below; provided that defendants shall only be required to divert Multi-line Business Customer contracts, if the primary business address for that customer is located within any of the sixteen (16) license areas described herein, and further, any

subscribers who obtain mobile wireless telecommunications services through any such contract retained by defendants and who are located within the sixteen (16) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within forty-five (45) days after the closing of the Transaction of the option to terminate.

These divestitures of the Wireless Business Divestiture Assets shall be accomplished by:

(1) Transferring to the Acquirers the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of Western Wireless' overall wireless telecommunications services business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested wireless telecommunications services businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to approval of plaintiff, shall not be divided); and

(2) Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff, at the election of an Acquirer to use any of Western Wireless's retained assets under paragraph (1) above, used in the operation of the wireless telecommunications services business being divested, so as to enable the Acquirer to continue to operate the divested wireless telecommunications services business without impairment. Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third-party licenses that are used by the wireless telecommunications services businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be contained for each asset.

III. Applicability

A. This Final Judgment applies to defendants ALLTEL and Western

Wireless, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided that defendants need not obtain such an agreement from the Acquirer(s).

IV. Divestitures

A. Defendants are ordered and directed, within one hundred twenty (120) days after consummation of the Transaction, or five (5) days after notice of entry of this Final Judgment, whichever is later, to divest the Divestiture Assets to an acquirer or Acquirers acceptable to plaintiff in its sole discretion, and, if applicable, to a Divestiture Trustee designated pursuant to Section V of this Final Judgment. Plaintiff, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) days in total, and shall notify the court in such circumstances. With respect to divestiture of the Wireless Business Divestiture Assets by defendants or the Divestiture Trustee, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Wireless Business Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which FCC approval has not been issued until five (5) days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants shall promptly make known, if they have not already done so, by usual and customary means, the availability of the Divestiture Assets.

Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work product privileges. Defendants shall make available such information to plaintiff at the same time that such information is made available to any other person.

C. Defendants shall provide to the Acquirer(s) and plaintiff information relating to the personnel involved in the operation, development, and sale or license of the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the operation, development, or sale or license of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to all Acquirer(s) that (1) the Wireless Business Divestiture Assets will be operational on the date of sale; (2) every wireless spectrum license is in full force and effect on the date of sale; and (3) the Cellular One Group Assets will be unencumbered and not judged invalid or unenforceable by any court or similar authority on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, licensing, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no defects in the environmental, zoning, licensing or other permits pertaining to the operation of each asset that will have a material adverse effect on the operator of the mobile wireless telecommunications services business in which the asset is primarily used, and that following the sale of the Divested Assets, defendant will not undertake, directly or indirectly, any

challenges to the environmental, zoning, licensing or other permits relating to the operation of the Divestiture Assets.

H. Unless plaintiff otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and with respect to the Wireless Business Divestiture Assets, shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that these assets can and will be used by the acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services. With the exception of the Wireless Business Divestiture assets in the Nebraska RSAs, all of which must be divested to a single Acquirer, the divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of plaintiff that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer (or Acquirers) that, in plaintiff's sole judgment,

(a) With respect to the Wireless Business Divestiture Assets, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services; and

(b) With respect to the Cellular One Group Assets, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of maintaining and promoting the intellectual property including trademarks and service marks.

(2) Shall be accomplished so as to satisfy plaintiff in its sole discretion, that none of the terms of any agreement between the Acquirer (Or Acquirers) and any defendant shall give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise interfere with the ability of the Acquirer to compete effectively.

I. At the option of the Acquirer(s) of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services or intellectual property licensing sufficient to meet all or part of the needs of the

Acquirer for a period of up to one year. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

J. To the extent that the Divestiture Assets use intellectual property, as required to be identified by Section II.K.(2), that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV. A, defendants shall notify plaintiff of that fact in writing specifically identifying the Divestiture Assets that have not been divested. Then, upon application of plaintiff, the Court shall appoint a Divestiture Trustee selected by plaintiff and approved by the Court to effect the divestiture of the Divestiture Assets. The Divestiture Trustee, will have all the rights and responsibilities of the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and will be responsible for:

(1) Accomplishing divestiture of all Divestiture Assets transferred to the Divestiture Trustee from defendants in accordance with the terms of this Final Judgment, to an Acquirer or Acquirers approved by plaintiff, under Section IV.A of this Final Judgment;

(2) Exercising the responsibilities of the licensee of any transferred Wireless Business Divestiture Assets and controlling and operating any transferred Wireless Business Divestiture Assets, to ensure that the business remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the sixteen (16) license areas specified in the Wireless Business Divestiture Assets, until they are divested to an Acquirer or Acquirers, and the Divestiture Trustee shall agree to be bound by this Final Judgment; and

(3) Exercising the responsibilities of the licensee of any transferred Cellular One Group Assets and controlling and operating any transferred Cellular One Group Assets, to ensure that the business remains ongoing and that the obligations of the Cellular One Group under the Cellular One license agreements are fulfilled, and they are divested to an Acquirer or Acquirers, and the Divestiture Trustee shall agree to be bound by this Final Judgment.

B. Defendants shall submit a proposed trust agreement ("Trust Agreement") to plaintiff, which must be consistent with

the terms of this Final Judgment and which must receive approval by plaintiff in its sole discretion, who shall communicate to defendants within ten (10) business days its approval or disapproval of the proposed Trust Agreement, and which must be executed by the defendants and the Divestiture Trustee within five (5) business days after approval by plaintiff.

C. After obtaining any necessary approvals from the FCC for the assignment of the licenses of the remaining Divestiture Assets to the Divestiture Trustee, defendants shall irrevocably divest the remaining Divestiture Assets to the Divestiture Trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to Acquirer(s)) and control such assets, subject to the terms of the approved Trust Agreement.

D. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to plaintiff, in its sole judgment, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and any investment bankers, attorneys or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

E. In addition, notwithstanding any provision to the contrary, plaintiff, in its sole discretion, may require defendants to include additional assets, or allow, with the written approval of plaintiff, defendants to substitute substantially similar assets, which substantially relate to the Wireless Business Divestiture Assets to be divested by the Divestiture Trustee to facilitate prompt divestiture to an acceptable Acquirer.

F. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objectives by defendants must be conveyed in writing to plaintiff and the Divestiture Trustee within ten (10) calendar days after the Divestiture

Trustee has provided the notice required under Section VI.

G. The Divestiture Trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff approves, and shall account for all monies derived from the sale of the assets sold and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures including their best efforts to effect all necessary regulatory approvals and will provide any necessary representations or warranties as appropriate related to sale of the Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to the assets to be divested as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

I. After its appointment, the Divestiture Trustee shall file monthly reports with plaintiff and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about

acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

J. If the Divestiture Trustee has not accomplished such divestitures within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the plaintiff, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by plaintiff.

K. After defendants transfer the Divestiture Assets to the Divestiture Trustee, and until those Divestiture Assets have been divested to an Acquirer or Acquirers approved by plaintiff pursuant to Sections IV.A and IV.H, the Divestiture Trustee shall have sole and complete authority to manage and operate the Divestiture Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Divestiture Assets transferred to the Divestiture Trustee, apart from the right to receive the proceeds of the sale or other disposition of the Divestiture Assets.

L. The Divestiture Trustee shall operate the Divestiture Assets consistent with the Preservation of Assets Stipulation and Order and this Final Judgment, with control over operations, marketing, sales and Cellular One licensing. Defendants shall not attempt to influence the business decisions of the Divestiture Trustee concerning the operation and management of the Divestiture Assets, and shall not communicate with the Divestiture Trustee concerning divestiture of the Divestiture Assets or take any action to influence, interfere with, or impede the Divestiture Trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may

communicate with the Divestiture Trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the Divestiture Trustee, if requested to do so, with whatever resources or cooperation may be required to complete divestiture of the Divestiture Assets and to carry out the requirements of the Preservation of Assets Stipulation and Order and this Final Judgment. Except as provided in this Final Judgment and the Preservation of Assets Stipulation and Order, in no event shall defendants provide to, or receive from, the Divestiture Trustee, the mobile wireless telecommunications services business, or the Cellular One business under the Divestiture Trustee's control any non-public or competitively sensitive marketing, sales, pricing or other information relating to their respective mobile wireless telecommunications services businesses.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify plaintiff in writing of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the Divestiture Trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the Divestiture Trustee, whichever is later, plaintiff shall provide written notice to defendants

and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under section V.F of this Final Judgment. Absent written notice that plaintiff does not object to the proposed Acquirer or upon objection by plaintiff, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.F, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by plaintiff, to information provided by defendants, including limitation on information, shall be made

within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits provided pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted.

(1) Access during defendants' office hours to inspect and copy, or at plaintiff's option, to require defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters, contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff to any person other than an authorized

representative of the executive branch of the United States or, pursuant to a customary protective order or waiver of confidentiality by defendants, the FCC, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then plaintiff shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire or least any part of the Divestiture Assets during the term of this Final Judgment provided however that (1) defendants shall not be precluded from entering commercially reasonable agreements, for a period not to exceed two (2) years from the date of the closing of the Transaction, with the purchaser(s) of the Wireless Business Divestiture Assets to obtain the right to use equipment that defendant Western Wireless used to support both in GSM roaming business and the provision of wireless services using other technological formats and (2) defendants shall not be precluded from entering into agreements with the purchaser of the Cellular One Group Assets to license those assets for use (a) outside the United States, and (b) for a period not to exceed one (1) year from the date of the closing of the Transaction, within the United States.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, Plaintiff, v. ALLTEL Corporation, One Allied Drive, Little Rock, Arkansas 72202 and Western Wireless Corporation, 3650 131st Avenue SE, Suite 400, Bellevue, Washington 98006, Defendants;

Case Number 1:05CV01345
Judge: Royce C. Lamberth,
Deck Type: Antitrust,
Date Stamp: 07/06/2005.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the merger of two mobile wireless telecommunications service providers, ALLTEL Corporation ("ALLTEL") and Western Wireless Corporation ("Western Wireless"), and to obtain other relief as appropriate. Plaintiff alleges as follows:

1. On January 9, 2005, ALLTEL entered into an agreement to acquire Western Wireless under which the two companies would combine their mobile wireless telecommunications service businesses. Plaintiff seeks to enjoin this transaction because it will substantially lessen competition for mobile wireless telecommunications services in several geographic markets where ALLTEL and Western Wireless are each other's most significant competitor.

2. ALLTEL provides mobile wireless telecommunications services in twenty-four (24) states serving approximately 8.8 million subscribers. Western Wireless provides mobile wireless telecommunications services in nineteen (19) states under the Cellular One service mark and in one (1) license area in Texas under the Western Wireless service mark; it has approximately 1.4 million subscribers. The combination of ALLTEL and Western Wireless will substantially lessen competition for mobile wireless telecommunications services in sixteen (16) geographic areas in three (3) states, Arkansas, Kansas and Nebraska, where currently both ALLTEL and Western Wireless operate. As a result of the proposed acquisition, residents of these mostly rural areas will face the likelihood of increased prices, diminished quality or quantity of services provided, and less investment in network improvements for these services.

1. Jurisdiction and Venue

3. This Complaint is filed by the United States under Section 15 of the

Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. ALLTEL and Western Wireless are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26 and 28 U.S.C. 1331, 1337.

5. The defendants have consented to personal jurisdiction and venue in this judicial district.

II. The Defendants and the Transaction

6. ALLTEL, with headquarters in Little Rock, Arkansas, is a corporation organized and existing under the laws of the state of Delaware. ALLTEL is the sixth largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 8.8 million customers. It provides mobile wireless telecommunications services in one hundred fifty-one (151) rural service areas and in ninety-two (92) metropolitan statistical areas located within twenty-four (24) states and roaming services to other mobile wireless providers who use the CDMA platform in these areas. ALLTEL provides local wireline telephone service to 3 million customers primarily located in rural areas in fifteen (15) states. In 2004, ALLTEL earned revenues of approximately \$8.2 billion.

7. Western Wireless, with headquarters in Bellevue, Washington, is a corporation organized and existing under the laws of the state of Washington. Western Wireless is the ninth largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 1.4 million customers. It operates in eighty-eight (88) rural service areas and nineteen (19) metropolitan statistical areas located within nineteen (19) western states. Western Wireless also provides in its service areas roaming services to other providers who use CDMA, TDMA and GSM technology. Through its subsidiary, Western Wireless International, it provides communications services in seven (7) countries outside of the United States. Western Wireless owns the Cellular One Group, a general partnership that owns the Cellular One service mark and licenses use of the mark to other mobile wireless providers. In 2004, Western Wireless earned approximately \$1.9 billion in revenues.

8. Pursuant to an agreement and Plan of Merger dated January 9, 2005,

ALLTEL will acquire Western Wireless in a stock-and-cash transaction valued at approximately \$6 billion. If this transaction is consummated, ALLTEL and Western Wireless combined would have approximately 10 million subscribers in the United States, with \$10.1 billion in revenues and operations in thirty-three (33) states.

III. Trade and Commerce

A. Nature of Trade and Commerce

9. Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly prized by customers, as demonstrated by the more than 180 million people in the United States who own mobile wireless telephones. In 2004, revenues from the sale of mobile wireless services in the United States were over \$100 billion. To meet this desire for mobility, mobile wireless telecommunications providers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of wireline carriers and with other wireless providers.

10. The first wireless voice systems were based on analog technology, now referred to as first-generation or "1G" technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area ("MSA") and Rural Service Area ("RSA") (collectively, "Cellular Marketing Areas" or "CMAs"), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent. In the relevant geographic markets, ALLTEL and Western Wireless each own one of the cellular licenses.

11. In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services ("PCS"), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1.8

GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consists of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (“MTAs”), and C, D, E, and F-block licenses are issued by Basic Trading Areas (“BTAs”), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. In 1996, one provider, a specialized mobile radio (“SMR” or “dispatch”) spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or “push-to-talk,” service. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum have found it less attractive to build out in rural areas.

12. Today, more than 90 percent of all mobile wireless telecommunications services customers have digital service, and nearly all mobile wireless voice service has migrated to second-generation or “2G” digital technologies: TDMA (time division multiple access), GSM (global standard for mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless telecommunications services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA have been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (“2.5G” and “3G”) have begun to be deployed for voice and data.

B. Relevant Product Market

13. Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allows customers to maintain their

telephone calls or data sessions without wires, such as when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Fixed wireless services are not mobile, and other wireless services have a limited range (e.g., Wi-Fi); neither offers a viable alternative to mobile wireless telecommunications service. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services is a relevant product market under section 7 of the Clayton Act, 15 U.S.C. 18.

C. Relevant Geographic Markets

14. The large majority of customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they are located and travel on a regular basis: home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, along with the quality of their service and the breadth of their geographic coverage, all of which are significant factors in customers’ purchasing decisions. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the price for customers by geographic area.

15. The United States comprises numerous local geographic markets for mobile wireless telecommunications services. The FCC has licensed a limited number of mobile wireless telecommunications services providers in each local area based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless telecommunications services. The relevant geographic markets in which this transaction will substantially lessen competition in mobile wireless telecommunications services are effectively represent, but not defined, by FCC spectrum licensing areas.

16. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction will substantially lessen competition for

mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas which are all Rural Service Areas: Arkansas RSA–11 (CMA 334), Kansas RSA–3 (CMA 430), Kansas RSA–4 (CMA 431), Kansas RSA–8 (CMA 435), Kansas RSA–9 (CMA 436), Kansas RSA–10 (CMA 437), Kansas RSA–14 (CMA 441), Nebraska RSA–2 (CMA 534), Nebraska RSA–3 (CMA 535), Nebraska RSA–4 (CMA 536), Nebraska RSA–5 (CMA 537), Nebraska RSA–6 (CMA 538), Nebraska RSA–7 (CMA 539), Nebraska RSA–8 (CMA 540), Nebraska RSA–9 (CMA 541), Nebraska RSA–10 (CMA 542). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers in a different geographic market to make a small but significant price increase in the relevant geographic markets unprofitable for mobile wireless telecommunications services.

D. Anticompetitive Effects

1. Mobile Wireless Telecommunications Services

17. The companies’ combined market shares for mobile wireless telecommunications services in the relevant markets described above, as measured in terms of subscribers, range from over 50 to nearly 100 percent. In each relevant geographic market, ALLTEL has the largest market share and, in all but four (4) RSAs, Western Wireless is the second-largest mobile wireless telecommunications services provider. In all of the relevant geographic markets, ALLTEL and Western Wireless own the only 800 MHz band cellular spectrum licenses, which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, ALLTEL’s and Western Wireless’ networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in the relevant geographic markets, and thus are more attractive to consumers.

In addition, mobile wireless telecommunications services providers with partial coverage in a geographic area do not aggressively market their services in these markets because potential customers would use their wireless telephones primarily in areas where these providers have no network. In theory, these less-built-out providers could serve residents of the rural areas through roaming agreements, but as a practical matter when service is

provided on another carrier's network, the providers have to pay roaming charges to, and rely on, that provider to maintain the quality of the network. Because of these constraints, carriers with limited network coverage in an area are reluctant to market their services to residents of that area. Therefore, ALLTEL and Western Wireless are likely closer substitutes for each other than the other mobile wireless services providers who own only PCS spectrum in the relevant geographic markets.

18. The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index ("HHI"), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these markets ranges from over 2100 to more than 8500, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After ALLTEL's proposed acquisition of Western wireless is consummated, the HHIs in the relevant geographic markets will range from over 3400 to almost 9700, with increases in the HHI as a result of the merger ranging from over 1100 to over 4600, significantly beyond the thresholds at which the Department considers a transaction likely to cause competitive harm.

19. Competition between ALLTEL and Western Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services, than would otherwise have existed in these geographic markets. In these areas, consumers consider ALLTEL and Western Wireless to be the most attractive competitors because other providers' networks lack coverage or provide lower quality service. If ALLTEL's proposed acquisition of Western Wireless is consummated, the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated, and the competition between ALLTEL and Western Wireless in mobile wireless telecommunications service will be eliminated in these markets. As a result, the loss of competition between ALLTEL and Western Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements. Therefore, ALLTEL's proposed acquisition of Western Wireless will likely result in substantially less

competition in mobile wireless telecommunications services in the relevant geographic markets.

2. Entry

20. Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Expansion by providers who hold spectrum in these areas is also unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz cellular spectrum. Due to propagation characteristics of 800 MHz cellular spectrum and 1900 MHz PCS spectrum, the 800 MHz signals can cover a substantially broader area than the 1900 MHz signals. The estimated coverage advantage of the 800 MHz cellular spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCS networks than for cellular networks. The high costs of constructing PCS networks in rural markets combined with the relatively low population density makes it less likely that carriers that own PCS spectrum would build out in the relevant geographic markets. Therefore, new entry in response to a small but significant price increase for mobile wireless services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from ALLTEL's proposed acquisition of Western Wireless, if it were to be consummated.

IV. Violation Alleged

21. The effect of ALLTEL's proposed acquisition of Western Wireless, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile wireless telecommunications services, in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

22. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services in the relevant geographic markets, among others:

- a. Actual and potential competition between ALLTEL and Western Wireless will be eliminated;
- b. Competition in general will be lessened substantially;
- c. Prices are likely to increase;
- d. The quality and quantity of services are likely to decrease; and

e. incentives to improve wireless networks will be reduced.

V. Requested Relief

23. That ALLTEL's proposed acquisition of Western Wireless be adjudged to violate section 7 of the Clayton Act, 15 U.S.C. 18;

24. That defendants be permanently enjoined from and restrained from carrying out the Agreement and Plan of Merger, dated January 9, 2005, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless services businesses of ALLTEL and Western Wireless under common ownership or control;

25. That plaintiffs be awarded their costs of this action; and

26. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: July 6, 2005.

Respectfully Submitted,

For Plaintiff United States of America:

Thomas O. Barnett,

Acting Assistant Attorney General, Antitrust Division.

J. Bruce McDonald,

Deputy Assistant Attorney General, Antitrust Division.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

Nancy Goodman (D.C. # 251694),

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Deborah A. Roy (D.C. Bar # 452573),

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Matthew C. Hammond.

Attorneys, Telecommunications & Media, Enforcement Section, Antitrust Division.

U.S. Department of Justice, City Center Building, 1401 H Street, NW., Suite 8000, Washington, DC 20530, (202) 514-5621, Facsimile: (202)514-6381.

Appendix A—Herfindahl-Hirschman Index

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (**Note:** Throughout the Complaint, market share percentage have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in

a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. See Horizontal Merger Guidelines ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. See *id.*

United States of America, Plaintiff, v. ALLTEL Corporation and Western Wireless Corporation, Defendants.

Preservation of Assets Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Preservation of Assets Stipulation and Order:

A. "Acquirer" or "Acquirers" means the entity or entities to whom defendants divest the Divestiture Assets.

B. "ALLTEL" means defendant ALLTEL Corporation, a Delaware corporation with headquarters in Little Rock, Arkansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Cellular One Group" means the Delaware general partnership, with headquarters in Bellevue, Washington, engaged in the business of licensing and promoting the Cellular One service mark and certain related trademarks, service marks, and designs.

D. "Cellular One Group Assets" means all legal and economic interests Western Wireless holds in the Cellular One Group. Cellular One Group Assets shall include all right, title and interest in trademarks, trade names, service marks, service names, designs, and intellectual property, all license agreements for use of the Cellular One mark, technical information, computer software and related documentation, and all records relating to the divestiture assets.

E. "CMA" means cellular market area which is used by the Federal Communications Commission ("FCC") to define cellular license areas and which consists of Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs").

F. "Divestiture Assets" means the Wireless Business Divestiture Assets and the Cellular One Group Assets.

G. "GSM" means global system for mobile communications which is one of the standards used for the infrastructure of digital cellular service.

H. "Multi-line Business Customer" means a corporate or business customer that contracts with Western Wireless for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with the corporate or business customer.

I. "Transaction" means the Agreement and Plan of Merger between ALLTEL and Western Wireless, dated January 9, 2005.

J. "Western Wireless" means defendant Western Wireless Corporation, incorporated in the state of Washington with headquarters in Bellevue, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

K. "Wireless Business Divestiture Assets" means, for each mobile wireless telecommunications business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless telecommunications businesses to be divested. "Wireless Business Divestiture Assets" shall be construed broadly to accomplish the complete divestitures of the entire business of Western Wireless in each of the following RSA license areas as required by the Final Judgment and to ensure that the divested mobile wireless telecommunications businesses remain viable, ongoing businesses:

- (a) Arkansas RSA-11 (CMA 334);
- (b) Kansas RSA-3 (CMA 430);
- (c) Kansas RSA-4 (CMA 431);
- (d) Kansas RSA-8 (CMA 435);
- (e) Kansas RSA-9 (CMA 436);
- (f) Kansas RSA-10 (CMA 437);
- (g) Kansas RSA-14 (CMA 441);
- (h) Nebraska RSA-2 (CMA 534);
- (i) Nebraska RSA-3 (CMA 535);
- (j) Nebraska RSA-4 (CMA 536);
- (k) Nebraska RSA-5 (CMA 537);
- (l) Nebraska RSA-6 (CMA 538);
- (m) Nebraska RSA-7 (CMA 539);
- (n) Nebraska RSA-8 (CMA 540);
- (o) Nebraska RSA-9 (CMA 541); and
- (p) Nebraska RSA-10 (CMA 542);

provided that ALLTEL may retain all of the PCS spectrum currently held by Western Wireless in each of these RSAs and provided that ALLTEL need not divest the assets used solely to operate Western Wireless' GSM roaming business, including GSM roaming contracts and equipment.

Wireless Business Divestiture Assets shall include, without limitation, all

types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless business being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from Western Wireless, for assets described in (2) below; provided that defendants shall only be required to divest Multi-line Business Customer contracts, if the primary business address for that customer is located within any of the sixteen (16) license areas described herein, and further, any subscribers who obtain mobile wireless telecommunications services through any such contract retained by defendants and who are located within the sixteen (16) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within forty-five (45) days after the closing of the Transaction of the option to terminate.

These divestitures of the Wireless Business Divestiture Assets shall be accomplished by:

(1) Transferring to the Acquirers the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of Western Wireless' overall wireless telecommunications services business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are

not capable of being divided between the divested wireless businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to approval of plaintiff, shall not be divided); and

(2) Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff, at the election of an Acquirer to use any of Western Wireless' retained assets under paragraph (1) above, used in the operation of the wireless telecommunications services business being divested, so as to enable the Acquirer to continue to operate the divested mobile wireless telecommunications services business without impairment. Defendants shall identify in a schedule submitted to plaintiff and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, and intellectual property rights under third-party licenses that are used by the mobile wireless telecommunications services businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Divestiture Assets for the purpose of preserving viable competitors in the provision of mobile wireless telecommunications services in order to remedy the effects that plaintiff alleges would otherwise result from ALLTEL's acquisition of Western Wireless. This Preservation of Assets Stipulation and Order ensures, prior to such divestitures, that competition is maintained during the pendency of the ordered divestitures, and that the Divestiture Assets remain ongoing business concerns and the Divestiture Assets remain economically viable. The Divestiture Assets will remain, as provided herein, preserved, independent and uninfluenced by defendants.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The Complaint states a claim

upon which relief may be granted against defendants under section 7 of the Clayton Act, 15 U.S.C. 18.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Preservation of Assets Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) plaintiff has withdrawn its consent, as provided in Section IV.A above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the

Court to modify any of the provisions contained therein.

V. Management Trainee

A. Plaintiff nominates David S. Turetsky as Management Trustee in this case, and defendants have no objection to his immediate appointment by this Court. Accordingly, this Court appoints David S. Turetsky as Management Trustee to serve as manager of the Divestiture Assets until the Divestiture Assets are sold or transferred to a Divestiture Trustee pursuant to Section V of the proposed Final Judgment. Nothing in this Stipulation shall be interpreted to prevent the Management Trustee from becoming the Divestiture Trustee pursuant to Section V of the proposed Final Judgment.

B. Prior to the closing of the Transaction, defendants shall enter into a trust agreement with David S. Turetsky, subject to the approval of plaintiff in its sole discretion, that will grant the rights, powers, and authorities necessary to permit him to perform the duties and responsibilities of the Management Trustee pursuant to this Stipulation. The trust agreement shall enable him to assume all rights, powers, and authorities necessary to perform his duties and responsibilities, pursuant to this Stipulation and proposed Final Judgment and consistent with their purposes. David S. Turetsky or any other subsequently appointed Management Trustee shall serve as the cost and expense of defendants, on such terms and conditions as plaintiff approves, with a fee arrangement that is reasonable in light of the person's experience and responsibilities.

C. The Management Trustee will have the following powers and responsibilities with respect to the Divestiture Assets:

(1) The Management Trustee will have the power to manage the Divestiture Assets in the ordinary course of business consistent with this Stipulation. Only with the prior written approval of plaintiff, may the Management Trustee make any decision, take any action, or enter any transaction that is outside the ordinary course of business;

(2) The Management Trustee shall have a duty, consistent with the terms of this Stipulation and the proposed Final Judgment, to monitor the organization of the Divestiture Assets; manage the Divestiture Assets in order to maximize their value so as to permit expeditious divestitures in a manner consistent with the proposed Final Judgment; maintain the independence of the Divestiture Assets from defendants, control and operate the

Wireless Business Divestiture Assets to ensure that the Wireless Business Divestiture Assets remain an independent, ongoing, economically viable competitor to the other mobile wireless telecommunications services providers; manage the Cellular One Group Assets in a manner so as to maintain the business and value of the intellectual property including trademarks and service marks; and assure defendants' compliance with their obligations pursuant to this Stipulation and the proposed Final Judgment;

(3) The Management Trustee shall have the authority to retain, the cost and expense of defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Management Trustee's duties and responsibilities;

(4) The Management Trustee and any consultants, accountants, attorneys, and any other person retained by the Management Trustee, shall have full and complete access to all personnel, books, records, documents, and facilities of the Divestiture Assets or to any other relevant information as the Management Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Divestiture Assets. Defendants shall develop such financial or other information as the Management Trustee may request and shall cooperate with the Management Trustee. Defendants shall take no action to interfere with or impede the Management Trustee's ability to monitor defendants' compliance with this Stipulation and the proposed Final Judgment or otherwise to perform his duties and responsibilities consistent with the terms of this Stipulation and the proposed Final Judgment;

(5) The Management Trustee will ensure that the Divestiture Sets shall be staffed with sufficient employees to maintain their viability and competitiveness. To the extent that any employee whose principal responsibilities relate to the Divestiture Assets leaves or has left the Divestiture Assets prior to divestiture of the Divestiture Assets, the Management Trustee may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees; and

(6) Thirty (30) days after the Management Trustee has been appointed by the Court, and every thirty (30) days thereafter until the Divestiture Assets are either transferred to an

Acquirer or to the Divestiture Trustee, the Management Trustee shall report in writing to the plaintiff concerning the efforts to accomplish the purposes of this Stipulation and the proposed Final Judgment. Included within that report shall be the Management Trustee's assessment of the extent to which the Divestiture Assets are meeting (or exceeding) their projected goals as are reflected in existing or revised operating plans, budgets, projections or any other regularly prepared financial statements and the extent to which defendants are fulfilling their responsibilities under this Stipulation and the proposed Final Judgment.

D. The following limitations shall apply to the Management Trustee:

(1) The Management Trustee shall not be involved, in any way, in the operations of other businesses of defendants;

(2) The Management Trustee shall have no financial interests affected by defendants' revenues, profits or profit margins, except that the Management Trustee's compensation for managing the Divestiture Assets may include economic incentives dependent on the financial performance of the Divestiture Assets provided that those incentives are consistent with the objectives of this Stipulation and the proposed Final Judgment and are approved by plaintiff; and

(3) The Management Trustee shall be prohibited from performing any further work for defendants for two (2) years after the close of the divestiture transactions.

E. Defendants and the Management Trustee will take all reasonable efforts to preserve the confidentiality of information that is material to the operation of either the Divestiture Assets or defendants' businesses. Defendants' personnel supplying services to the Divestiture Assets pursuant to this Stipulation must retain and maintain the confidentiality of any and all confidential information material to the Divestiture Assets. Except as permitted by this Stipulation and the proposed Final Judgment, such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing the confidential information of the Divestiture Assets to or with any person employment involves any of defendants' businesses, except as necessary to fulfill the purposes of this Stipulation and the proposed Final Judgment.

F. If in the judgment of the Management Trustee, defendants fail to provide the services listed in Section VI of this Stipulation to the satisfaction of the Management Trustee, upon

notification to defendants and approval by plaintiff, the Management Trustee may engage third parties unaffiliated with the defendants to provide those services for the Divestiture Assets, at the cost and expense of defendants, provided that defendants may have reasonable access to information to satisfy themselves that after the services have been provided, the Divestiture Assets are in compliance with all applicable laws, rules and regulations.

G. At the option of the Management Trustee, defendants may also provide other products and services, on an arms-length basis provided that Management Trustee is not obligated to obtain any other product or service from defendants and may acquire any such products or services from third parties unaffiliated with defendants.

H. If the Management Trustee ceases to act or fails to act diligently and consistently with the purposes of this Stipulation and the proposed Final Judgment, if the Management Trustee proposed by plaintiff is not approved by this Court or resigns, or if for any other reason the Management Trustee ceases to serve in his or her capacity as Management Trustee, the United States may select a substitute Management Trustee. In this event, plaintiff will identify to defendants the individual or entity it proposes to select as Management Trustee. Defendants must make any such objection to this selection within five (5) business days after plaintiff notifies defendants of the Management Trustee's selection. Upon application of the United States, the Court shall approve and appoint a substitute Management Trustee. Within five (5) business days of such appointment, defendants shall enter into a trust agreement with the Management Trustee subject to the approval of plaintiff in its sole discretion as described in Section V.B of this Stipulation.

VI. Preservation of Assets

Until the divestitures required by the proposed Final Judgment have been accomplished, except as otherwise approved in advance in writing by plaintiff:

A. Defendants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets, take all steps necessary to manage the Divestiture Assets in order to maximize their revenue, profitability and viability and permit expeditious divestitures in a manner consistent with this Stipulation and the proposed Final Judgment.

B. The Wireless Business Divestiture Assets shall be operated by the

Management Trustee as part of an independent, ongoing, economically viable competitive business to other mobile wireless telecommunications services providers operating in the same license area. The Cellular One Group Assets shall be managed by the Management Trustee so that the value of the Cellular One brand is maintained, and all obligations under existing licensing agreements are fulfilled, and these assets are maintained or increased in value. Defendants and the Management Trustee shall take all steps necessary to ensure that:

(1) The management, sales, and operations of the Divestiture Assets are independent from defendants' other operations; provided however, that at the request of the Divestiture Assets, defendants shall include the marketing, pricing and sales of the mobile wireless telecommunications services generated by the Wireless Business Divestiture Assets in the license areas served by the Wireless Business Divestiture Assets within its marketing, promotional, and service offerings, in the ordinary course of business, in any national, regional, and local marketing programs. The defendants shall not display advertising announcing or describing benefits of the Transaction in the sixteen (16) divestiture markets. Nothing in this Section shall prohibit the Divestiture Assets from developing his own reasonable marketing, sales, pricing or promotion offers, which shall be funded and supported by defendants;

(2) The Wireless Business Divestiture Assets are maintained by adhering to normal and planned repair, capital improvement, upgrade and maintenance schedules;

(3) The management of the Divestiture Assets will not be influenced by defendants;

(4) The books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning marketing, pricing or sales of mobile wireless telecommunications services or the Cellular One mark generated by the Divestiture Assets will be kept separate and apart from the defendants' other operations; and

(5) The management of the Divestiture Assets acts to maintain and increase the sales and revenues of the Divestiture Assets, and maintain, at a minimum, at previously approved levels for 2005 and 2006, whichever are higher, all promotional, advertising, sales, marketing, and technical support for the Divestiture Assets.

C. Defendants shall provide sufficient working capital and lines and sources of credit as deemed necessary by the Management Trustee to continue to

maintain the Divestiture Assets consistent with this Stipulation.

D. Defendants shall resolve all outstanding obligations related to the Divestiture Assets including agent and employee compensation within thirty (30) days of closing the Transaction.

E. Except (1) as recommended by the Management Trustee and approved by plaintiff, or (2) as part of a divestiture approved by plaintiff in accordance with the terms of the proposed Final Judgment, defendants shall not remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets outside the ordinary course of business.

F. The Management Trustee, with defendants' cooperation consistent with this Stipulation and the proposed Final Judgment, shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets. As part of the defendants' cooperation, at least five (5) days prior to the closing of the Transaction, defendants will provide to the Management Trustee and plaintiff three (3) separate financial reports for the divestiture markets in each of Arkansas, Kansas, and Nebraska, and separately for each of the sixteen (16) divested RSAs, detailed management reports describing existing and future plans for human resources, marketing, network upgrades and capital expenditures. Defendants will produce these reports in a form and with content that is acceptable to the Management Trustee and plaintiff.

G. As part of the defendants' cooperation, at least five (5) days prior to the closing of the Transaction, defendants will provide all reports regularly prepared by defendant Western Wireless that measure sales activity in each of the sixteen (16) divestiture markets, including but not limited to the Daily Activity Report and the Activating Revenue Report, that are in a form and with content acceptable to the Management Trustee and plaintiff. If these reports cannot be produced for each of the sixteen (16) divestiture markets, these reports should cover the smallest geographic area that includes the divestiture markets as is technically feasible. If the Transaction has not closed within seven (7) days after the filing of the Complaint, on that day defendants will submit to plaintiff and the Management Trustee current copies of these reports.

H. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets nor shall defendants take any action that would interfere with the ability of any Divestiture Trustee appointed pursuant to the proposed Final Judgment to operate and manage the Divestiture Assets or to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer(s) acceptable to plaintiff.

I. Within seven (7) days of the filing of the Complaint or prior to the closing of the Transaction, whichever is sooner, defendants shall appoint (and notify plaintiff and the Management Trustee of their names and titles) sufficient employees for each of the Wireless Business Divestiture Assets and the Cellular One Group Assets, who are familiar with and have had responsibility for the management, operation, marketing, and sales of the Divestiture Assets, to assist the Management Trustee with his duties and responsibilities hereunder.

J. Except for employees (1) whose primary employment responsibilities relate to the Divestiture Assets, or (2) who are involved in providing support services to the Divestiture Assets pursuant to Sections V and VI of this Stipulation and Section V of the proposed Final Judgment, defendants shall not permit any other of their employees, officers, or directors to be involved in the operations of the Divestiture Assets.

K. Except as required by law in the course of (1) complying with this Stipulation and the proposed Final Judgment; (2) overseeing compliance with policies and standards concerning the safety, health, and environmental aspects of the operations of the Divestiture Assets and the integrity of their financial controls; (3) defending legal claims, investigations or enforcement actions threatened or brought against the Divestiture Assets; or (4) obtaining legal advice, defendants' employees (excluding employees (a) whose primary employment responsibilities relate to the Divestiture Assets, or (b) who are involved in providing support services to the Divestiture Assets pursuant to Sections V and VI of this Stipulation and Section V of the proposed Final Judgment) shall not receive, or have access to, or use any material confidential information, not in the public domain, of the Divestiture Assets. Defendants may receive aggregate financial information relating to the Divestiture Assets to the extent necessary to allow defendants to prepare the defendants' consolidated financial reports, tax returns, reports

required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

L. Defendants may offer a bonus or severance to employees whose primary employment responsibilities relate to the Divestiture Assets, that continue their employment until divestiture (in addition to any other bonus or severance to which the employees would otherwise be entitled).

M. Until the Divestiture Assets are divested to an Acquirer(s) acceptable to plaintiff, defendants shall provide to the Divestiture Assets, at no cost, support services needed to maintain the Divestiture Assets in the ordinary course of business, including but not limited to:

(1) Federal and state regulatory policy development and compliance;

(2) Human resources administrative services;

(3) Environmental, health and safety services, and developing corporate policies and insuring compliance with federal and state regulations and corporate policies;

(4) Preparation of tax returns;

(5) Financial accounting and reporting services;

(6) Audit services;

(7) Legal services;

(8) Routine network maintenance, repair, improvements, and upgrades;

(9) Switching, call completion, and other services necessary to allow subscribers to use mobile wireless services and complete calls;

(10) Billing, customer care and customer service related functions necessary to maintain the subscriber account and relationship;

(11) For each retail and indirect sales outlet, a sixty (60) day supply of inventory, including both handsets and accessories, branded as directed by the Management Trustee, based on each outlet's average sales for the prior two (2) months, and if the Management Trustee requests, ALLTEL shall make available in sufficient quantities, branded as directed by the Management Trustee, handsets and accessories, introduced by ALLTEL in similar markets that are compatible with the network in the sixteen (16) Divestiture Markets;

(12) The individual financial reports described in section VI.F shall be provided on a monthly basis; and

(13) The sales reports described in Section VI.G shall be provided on a daily basis.

N. Prior to the closing of the Transaction, defendants will notify

plaintiff in writing of the steps defendants have taken to comply with this Section. If the Transaction has not closed within seven (7) days after the filing of the Complaint, on that day defendants will submit to plaintiff and the Management Trustee a detailed statement of how defendants will comply with Section VI.A prior to the closing of the Transaction, including but not limited to: (1) Marketing plans for the sale of mobile wireless telecommunications services by the mobile wireless business to be divested, including customer retention plans and promotions; (2) the designation of a management team who will have responsibility for and manage the Divestiture Assets prior to the closing of the Transaction, identifying any changes from pre-filing staffing; (3) plans for retention of employees and payment of retention bonuses to employees whose primary duties related to the mobile wireless business to be divested; and (4) plans for network maintenance, repair improvements, and upgrades of the Wireless Divestiture Assets.

O. This Preservation of Assets Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: July 6, 2005.

Respectively submitted.

For Plaintiff United States

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Order

It is so ordered by the Court, this __ day of __, 2005.

United States District Judge.

[FR Doc. 05-15020 Filed 5-8-05; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; *United States v. Federation of Physicians and Dentists, et al.*

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Southern District of Ohio in *United States v. Federation of Physicians and Dentists, et al.*, Civil Case No. 1:05-cv-431. The proposed Final Judgment is subject to approval by the Court after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), including expiration of the statutory 60-day public comment period.

On June 24, 2005, the United States filed a Complaint alleging that the Federation of Physicians and Dentists ("Federation"), Dr. Michael Karram, Dr. Warren Metherd, and Dr. James Wendel conspired with other OB-GYN members, to increase fees paid by commercial insurers to Federation members in violation of Sherman Act section 1.

To help restore competition, the proposed Final Judgment filed with the Complaint will enjoin Dr. Karram, Dr. Metherd, and Dr. Wendel ("the Settling Physicians") from encouraging, facilitating, or participating in any agreement among competing physicians pertaining to any contract term, negotiations with any health care payer, or the provision of consulting, financial, legal, or negotiating services concerning any payer contract. The Settling Physicians are also not permitted to use the Federation for contracting and negotiation services, such as messenger services. The proposed Final Judgment also prohibits certain communications between any Settling Physician and any competing physician.

A Competitive Impact Statement, filed by the United States, describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215 North, 325 Seventh Street, NW. 20530 (telephone: 202/514-2692), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S.