IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA and STATE OF MINNESOTA, *Plaintiffs,* v. ALLTEL CORPORATION and MIDWEST WIRELESS HOLDINGS L.L.C., *Defendants.*	**MEMORANDUM IN SUPPORT OF JOINT MOTION TO ENTER MODIFIED PRESERVATION OF ASSETS ORDER** **Case No. 06-3631 (RHK/AJB)**

Plaintiffs United States and Minnesota and defendants Alltel Corporation ("Alltel") and Midwest Wireless Holdings L.L.C. ("Midwest Wireless"),[1] have jointly moved this Court to enter a proposed Modified Preservation of Assets Order transmitted electronically to this Court. This memorandum summarizes the proposed modifications to the Final Judgment, lodged on this day with the Court and explains the reasons why the Preservation of Assets Order should be entered forthwith.

Alltel and Midwest Wireless entered into a Transaction Agreement dated November 17, 2005, pursuant to which Alltel sought to acquire Midwest Wireless. Plaintiffs filed a civil antitrust Complaint on September 6, 2006, seeking to enjoin the

[1] The Final Judgment was entered after the United States challenged, under the antitrust laws, the acquisition of Midwest Wireless Holdings L.L.C. by ALLTEL Corporation. ALLTEL Corporation was acquired by Atlantis Holdings LLC in November 2007 and its name was changed to Alltel Corporation.

proposed acquisition because the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in four Cellular Market Areas ("CMAs") in Minnesota in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneous with the filing of the Complaint, a proposed Final Judgment was lodged with this Court, which contains the terms of a settlement designed to eliminate the anticompetitive effects of the acquisition, by requiring defendants to divest defendant Alltel's mobile wireless telecommunications services business and related assets in the four CMAs in Minnesota. On January 8, 2007, this Court entered the Final Judgment.

Also when the Complaint was filed, the parties sought immediate entry of a Preservation of Assets Order, which was designed to ensure that the Divestiture Assets – the wireless businesses in the four CMAs in Minnesota – were preserved during the interim period until they were divested, and ordered that the Divestiture Assets be operated by a Management Trustee. This Court entered a Preservation of Assets Order on September 8, 2006, which appointed a Management Trustee who operated the Divestiture Assets until they were divested to Rural Cellular Corporation in April 2007. Rural Cellular Corporation was acquired by Verizon Communications Inc. ("Verizon") in August 2008. On June 5, 2008, Verizon announced it had agreed to acquire defendant Alltel. Because the Final Judgment prohibits defendants from owning overlapping wireless assets in the four license areas during the term of the Final Judgment, Verizon, the current owner of the Divestiture Assets, would violate the Final Judgment if it

acquired the assets in the four license areas that Alltel retained. The parties have jointly moved to modify this Final Judgment to allow defendants and Verizon to temporarily combine the mobile wireless businesses that the Final Judgment sought to keep under separate ownership so that Verizon can consummate its proposed acquisition of Alltel. Plaintiffs consent to the modifications of the Final Judgment, subject to the conditions contained in the proposed Modified Final Judgment and Modified Preservation of Assets Order.

At the same time the Joint Motion to Modify Final Judgment was filed, the parties filed a Modified Preservation of Assets Stipulation and plaintiff United States also lodged a proposed Modified Final Judgment, which embodies the parties' and Verizon's agreement to redivest the Divestiture Assets. To ensure that the Divestiture Assets are preserved during the interim period until they are redivested, as they were preserved prior to divestiture when the case was filed in 2006, the parties request that this Court enter the Modified Preservation of Assets Order. The Modified Preservation of Assets Order incorporates the agreed terms of the Modified Preservation of Assets Stipulation, attached hereto as Exhibit A, and ensures that prior to the agreed-upon redivestiture, the Divestiture Assets will remain an ongoing business concern and economically viable. The assets will remain preserved, independent, and uninfluenced by defendants and Verizon, ensuring that competition is maintained during the pendency of the ordered redivestiture. In addition, the Preservation of Assets Order appoints W. Stephen Cannon as Management Trustee of the divestiture assets to further ensure their preservation.

Plaintiff United States has filed a separate statement describing Mr. Cannon's qualifications and supporting his appointment as Management Trustee.

WHEREFORE, for the foregoing reasons, the parties respectfully request that the Preservation of Assets Order be entered forthwith.

Dated: October 30, 2008

Respectfully submitted,

FOR PLAINTIFF UNITED STATES
FRANK J. MAGILL, JR.
United States Attorney

Greg Brooker
Assistant U.S. Attorney
Attorney I.D. No. 166066
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600
Facsimile: (612) 664-5788

s/ Hillary B. Burchuk
Hillary B. Burchuk
Lawrence M. Frankel
Jared A. Hughes
Attorneys, Telecommunications & Media Enforcement Section
Antitrust Division, U.S. Dept. of Justice
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530
(202) 514-5621
Facsimile: (202) 514-6381

FOR DEFENDANT ALLTEL CORPORATION AND MIDWEST WIRELESS HOLDINGS L.L.C.

William L. Killion (No. 55700)
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 766-7671
Facsimile: (612) 766-1600

s/ Jeffrey A. Jaeckel
Jeffrey A. Jaeckel
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
(202) 887-1500
Facsimile: (202) 887-0763

FOR PLAINTIFF STATE OF MINNESOTA
LORI SWANSON
Attorney General
State of Minnesota

s/ Kristen M. Olsen
KRISTEN M. OLSEN
Assistant Attorney General
Atty. Reg. No. 30489X

445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101-2130
(651) 296-2921
Facsimile: (651) 282-5437