

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

In the Matter of)	
)	
CenturyTel Wireless, Inc. and CenturyTel, Inc.)	WT Docket No. 02-325
)	
Request for a Waiver of Cellular Cross- Interest)	
Rule, Section 22.942 of the Commission's Rules)	
)	
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MEMORANDUM OPINION AND ORDER

Adopted: January 31, 2003

Released: January 31, 2003

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On October 4, 2002, CenturyTel Wireless, Inc. ("CenturyTel Wireless"), a wholly-owned subsidiary of ALLTEL Communications, Inc. ("ALLTEL"), and CenturyTel, Inc. (collectively, the "Petitioners") filed a petition ("Petition") seeking a waiver of section 22.942 of the Commission's rules ("Cellular Cross-Interest Rule") to allow CenturyTel Wireless to acquire a limited partnership interest in Lafayette MSA LP ("Lafayette") from CenturyTel, Inc.¹ The Petitioners allege, *inter alia*, that waiver of the Cellular Cross-Interest Rule is appropriate, because the acquisition of the interest in Lafayette by CenturyTel Wireless would not lead to competitive harm.² For the reasons discussed herein, we grant the Petition.

II. BACKGROUND

2. On March 28, 2002, CenturyTel, Inc. and ALLTEL filed applications to assign substantially all of CenturyTel, Inc.'s cellular interests to ALLTEL.³ This transaction, which was approved by the Commission on June 12, 2002,⁴ did not include CenturyTel, Inc.'s 49-percent non-controlling limited

¹ 47 C.F.R. § 22.942.

² See CenturyTel Wireless Inc. and CenturyTel Inc. Petition for Waiver of the Cellular Cross-Interest Rule, WT Docket No. 325, at 2, 6 (filed Oct. 4, 2002) ("Petition"). The Petition is available on the Commission's Electronic Comment Filing System ("ECFS").

³ See ALLTEL Communications, Inc. and CenturyTel, Inc. Seek FCC Consent to Transfer Control of Licenses, WT Docket No. 02-85, DA 02-932 (rel. Apr. 23, 2002).

⁴ See Wireless Telecommunications Bureau Grants Consent For the Transfer of Control of Licenses from CenturyTel, Inc. to ALLTEL Communications, Inc., WT Docket No. 02-85, DA 02-1366 (rel. June 12, 2002). The transaction was consummated by the Petitioners on August 1, 2002. See, e.g., Application No. 0001012659, filed by ALLTEL Communications, Inc. (Aug. 29, 2002).

partnership interest (“Interest”) in Lafayette, because ALLTEL’s acquisition of the Interest in Lafayette is prohibited by the Cellular Cross-Interest Rule.⁵ The Petitioners elected to exempt the Lafayette Interest from the transaction, so that the closing of the transaction would not be delayed by the filing and Commission’s consideration of a waiver request of the Cellular Cross-Interest Rule.⁶

3. The Cellular Cross-Interest Rule states that a party that has a controlling interest in “a licensee for one channel block in a [cellular geographic service area (“CGSA”)] may have a direct or indirect ownership interest of 5 percent or less in the licensee . . . for the other channel block in an overlapping CGSA.”⁷ ALLTEL is precluded from acquiring CenturyTel Inc.’s Interest in Lafayette without a waiver of the Cellular Cross-Interest Rule, because ALLTEL’s wholly-owned subsidiary, Radiofone Inc. (“Radiofone”), holds a 100-percent interest in the A-side cellular license for a portion of the Louisiana-6 Rural Service Area (“RSA”), and Lafayette holds the B-block cellular licenses for an overlapping portion of the same RSA.⁸ The licensed geographic overlap area between Lafayette and Radiofone is limited to a geographically partitioned portion of the Louisiana-6 RSA, which includes Iberville Parish, Louisiana (“Overlap Area”).⁹ The Overlap Area within Iberville Parish is adjacent to West Baton Rouge Parish, which is within the Baton Rouge Metropolitan Statistical Areas (“MSA”).¹⁰ The Overlap Area covers approximately 396 square miles and has a population of fewer than 30,000 residents.¹¹

4. ALLTEL provides wireline telephony service including local telephone service, long distance, internet access (DSL), and commercial mobile radio service (“CMRS”) telephony services, including interconnected mobile voice and paging. ALLTEL offers interconnected mobile voice services in the southeast and portions of the midwest and southwest.¹² As of September 30, 2002, ALLTEL served approximately 7.5 million mobile telephony customers.¹³ After the transaction, ALLTEL would continue to have a 100-percent indirect ownership interest in Radiofone, and will acquire the 49-percent limited partnership interest in the other cellular licensee, Lafayette. Lafayette is a limited partnership comprised of two partners. CenturyTel Inc. holds a 49-percent noncontrolling limited partnership interest in Lafayette, and Cingular Wireless, LLC, the general partner, holds the remaining 51-percent interest.¹⁴ As the general partner, Cingular has full control over Lafayette’s day-to-day operation and management.¹⁵ Additionally, Cingular markets the facilities-based interconnected mobile voice service offered using the

⁵ See Petition at 3-4.

⁶ See *id.*

⁷ 47 C.F.R. § 22.942.

⁸ See Petition at 2.

⁹ See *id.* at 11. This portion includes the city of Plaquemine, the county seat of Iberville Parish. See *id.*

¹⁰ See *id.* at 3.

¹¹ See *id.*

¹² See http://www.alltel.com/news_information/maps/maps.html (last visited Dec. 26, 2002).

¹³ See ALLTEL Corporation, Form 10Q, at 18 (filed Nov. 13, 2002) available at <http://www.sec.gov/edgar/searchedgar/webusers.htm> (filing with the United States Securities and Exchange Commission for the quarterly period ending September 30, 2002).

¹⁴ See Petition at 7.

¹⁵ See *id.* at 6, 7.

Lafayette spectrum under its own brandname.¹⁶

5. On October 17, 2002, the Wireless Telecommunications Bureau (“Bureau”) issued a Public Notice to establish a pleading cycle to enable interested parties to comment on the Petition.¹⁷ In response to this Public Notice, three comments were filed supporting the waiver and one comment was filed requesting that we deny the Petition.¹⁸ The Petitioners filed an opposition to the filed comments, dated December 2, 2002,¹⁹ and no replies were filed in response to the Petitioners’ opposition.

III. DISCUSSION

6. As discussed below, we find that the waiver of the Cellular Cross-Interest Rule as requested in the Petition is in the public interest and does not pose an undue risk of harm to competition in the overlap portion of Iberville Parish, Louisiana.

A. Standard for Waiver of the Cellular Cross-Interest Rule

7. In the 2000 Biennial Review Spectrum Aggregation Limits proceeding,²⁰ the Commission eliminated the Cellular Cross-Interest Rule in MSAs.²¹ The Commission concluded that cellular carriers no longer have significant first-mover advantages or possess market power in MSAs,²² and that the presence of numerous competitive choices for consumers in urban markets made the Cellular Cross-Interest Rule unnecessary to protect competition in more urban areas.²³ The Commission also found that the services offered by cellular and broadband PCS providers in MSAs are indistinguishable to consumers in those markets.²⁴ Ultimately, the Commission held that there was no reason to view the combination of

¹⁶ See <http://www.cingular.com> (reporting coverage by Cingular for zip codes associated with the Overlap Area in Iberville Parish).

¹⁷ See Comment Sought on CenturyTel Wireless, Inc. and CenturyTel Inc., Petition for Waiver of Cellular Cross Interest Rule, *Public Notice*, DA 02-2723 (rel. Oct. 17, 2002).

¹⁸ CenturyTel Wireless, Inc. and CenturyTel, Inc. Petition for Waiver of the Cellular Cross-Ownership Rule, *Comments*, filed by Dobson Communications Corporation, Western Wireless Corporation and Rural Cellular Corporation (Nov. 18, 2002) (“Dobson, Western Wireless, and RCC Comments”) (supporting the waiver of the Cellular Cross-Interest Rule); CenturyTel Wireless, Inc. Petition for Partial Waiver of the Cellular Cross-Interest Rule, *Comments of AT&T Wireless Services, Inc. in Support of CenturyTel Wireless, Inc. and CenturyTel, Inc. Petition for Waiver of Cellular Cross-Interest Rule* (Nov. 18, 2002) (“AWS Comments”) (same); Daniel R. Newcomb, *Comment* (Oct. 22, 2002) (“Newcomb Comment”) (same); Daniel Welter, *Comment* (Oct. 28, 2002) (“Welter Comment”) (opposing waiver of the Cellular Cross-Interest Rule). These Comments are available on ECFS.

¹⁹ CenturyTel Wireless, Inc. Petition for Partial Waiver of the Cellular Cross-Interest Rule, *Opposition and Further Comments of CenturyTel Wireless and CenturyTel, Inc.*, (Dec. 2, 2002).

²⁰ 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, *Report and Order*, WT Docket No. 01-14, 16 FCC Rcd. 22, 668 (2001).

²¹ See *id.* at 22,669, 22,671, ¶¶ 2, 7.

²² See *id.* at 22,669, 22,671, 22,707, ¶¶ 2, 7, 86.

²³ See *id.* at 22,707, ¶ 84. At that time, “[i]n MSAs, eighty-six percent of counties have four or more facilities-based CMRS providers that are offering service in some part of the county. Forty of the fifty most populous MSAs have six nationwide carriers, counting Nextel, with the remaining ten MSAs having five nationwide carriers.” *Id.* at 22,707-08, ¶ 86.

²⁴ See *id.* at 22,707-08, ¶ 86.

cellular licenses in MSAs less favorably than other combinations of CMRS licensees.²⁵

8. The Commission, however, retained the Cellular Cross-Interest Rule in RSAs, because it concluded that cellular incumbents continued to dominate the rural marketplace.²⁶ Thus, a combination of interests in cellular licensees would be more likely to result in a significant reduction in competition.²⁷ The Commission stated, however, that it would “entertain and be inclined to grant waivers of the [Cellular Cross-Interest Rule] for those RSAs that exhibit market conditions under which cellular cross-interests may be permissible without significant likelihood of substantial competitive harm.”²⁸

B. Competitive Analysis

9. In determining whether the waiver of the Cellular Cross-Interest Rule for the applicable portion of Iberville Parish, Louisiana would create a “significant likelihood of substantial competitive harm,”²⁹ and therefore, whether it is in the public interest,³⁰ we must consider the competitive effects of the transaction.

1. Geographic and Product Market Definitions

10. The relevant product market for this transaction is interconnected mobile voice. We define the interconnected mobile voice product market as consisting of all commercially available two-way, mobile voice services, providing access to the public switched telephone network via terrestrial systems.³¹ These services are currently provided by cellular, broadband personal communications services (“PCS”), and Specialized Mobile Radio licensees.³²

11. The Petitioners and a commenter argue that the appropriate geographic market is broader than the Overlap Area, and therefore that the competitive implications of the waiver request should be analyzed using the Baton Rouge Basic Trading Area (“BTA”).³³ No party argues for a narrower geographic market. We agree with all those who addressed the question of geographic market that the

²⁵ See *id.* at 22,708, ¶ 87.

²⁶ See *id.* at 22,669, 22,707-08, ¶¶ 2, 88, 89.

²⁷ See *id.* at 22,671, 22,708, ¶ 7, 89. In seventy-six percent of RSA counties, no more than one broadband PCS provider is competing with the cellular incumbents in any part of the county. Fifty-six percent of RSA counties have two or fewer facilities-based providers of mobile telephony offering service, presumably in most instances the two cellular licensees. See *id.* at 22,708, ¶ 89.

²⁸ *Id.* at 22,669, ¶ 2. See also *id.* at 22,671, 22,708, 22,709, ¶¶ 7, 88, 90.

²⁹ *Id.* at 22,669, ¶ 2.

³⁰ See 47 C.F.R. § 1.925.

³¹ See Applications of Chadmoore Wireless Groups, Inc. and Various Subsidiaries of Nextel Communications, Inc. WT Docket No. 01-193, *Memorandum Opinion and Order*, 16 FCC Rcd. 21,105, at 21,110, ¶ 14 (“Chadmoore Order”); Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Seventh Report*, FCC 02-179, at 9 (rel. July 3, 2002) (“*Seventh Annual CMRS Competition Report*”).

³² See *Seventh Annual CMRS Competition Report* at 9; Chadmoore Order, 16 FCC Rcd. at 21,110, ¶ 14.

³³ See Petition at 12-14; AWS Comments at 3-5. BTAs are Material Copyright © 1992 Rand McNally and Company. Rights granted pursuant to a license from Rand McNally and Company through an arrangement with the Commission. BTAs are geographic areas drawn based on the counties in which residents of a BTA make the bulk of their shopping goods purchases.

relevant market is broader than the Overlap Area. Rather than employing the Baton Rouge BTA as the relevant local market, however, in this case we use a Broader Baton Rouge Area geographic market that encompasses all the parishes adjacent to the Iberville Parish, including the City of Baton Rouge, that have similar market conditions.³⁴ Specifically, throughout this area the same six interconnected mobile voice operators provide service: ALLTEL, Cingular, AWS, Nextel Communications, Sprint PCS, and Verizon Wireless.³⁵ Additionally, it appears no operator engages in geographic differential pricing within this area. Consumers face the same set of price/service options regardless of where they live in this region.³⁶

12. While we use Broader Baton Rouge Area geographic market in the analysis below, we note that we would not have reached a different result if the Baton Rouge BTA—or any other region of similar or larger size—had been found to be the relevant geographic market.

2. Nature and Implications of Transaction

13. Under the terms of the Limited Partnership Agreement,³⁷ the general partner, Cingular, retains operational control of Lafayette, which will continue to offer service under the Cingular brand name.³⁸ ALLTEL will merely be replacing CenturyTel, Inc. as the minority partner without control. Therefore, post-transaction there will not be a change in the control of the Lafayette partnership. Nor will the transaction result in the loss of an independent service provider to customers in this area. The subscriber-based market shares of firms that offers service in the Broader Baton Rouge Area (or in the Overlap Area itself) will not change. And since market shares remain unchanged post-transaction, concentration—as measured, for example, by the Herfindahl-Hirschman Index (“HHI”)—will not change.³⁹ In sum, this transaction is not in the nature of a horizontal consolidation. The number of competitors is not reduced, and concentration not increased, in any market.⁴⁰

³⁴ The Broader Baton Rouge Area is a collection of parishes adjacent to Iberville Parish with the same carriers offering facilities-based interconnected mobile telephony services in at least part of the county. The Broader Baton Rouge Area includes Ascension Parish, Assumption Parish, East Baton Rouge Parish, Iberville Parish, Livingston Parish, St. James Parish, and West Baton Rouge Parish.

³⁵ See Petition at 11; see also Dobson, Western Wireless, and RCC Comments at 3-4; AWS Comments at 3.

³⁶ See Petition at 12-14; see also AWS Comments at 3-4.

³⁷ Agreement Establishing Lafayette MSA Limited Partnership among Lafayette CGSA, Inc. and Century Telephone Enterprises, Inc. (Mar. 8, 1990) (“Limited Partnership Agreement”). The Limited Partnership Agreement is attached to the Petition as an exhibit.

³⁸ See *id.* §§ 4.1, 7.2; see also Petition at 7-8. The Limited Partnership Agreement does provide the limited partner with passive investor protections. See Limited Partnership Agreement, at § 4.2. These provisions, however, would not confer control of Lafayette to ALLTEL.

³⁹ The HHI is $\sum_{i=1}^n x_i^2$ where x_i is usually the output-based market share of carrier i , and n is the number of carriers in the market. The HHI can range from nearly zero in the case of an atomistic market of 10,000 in the case of pure monopoly. Because the HHI is based on the squares of the market shares of the carriers, it gives proportionately greater weight to carriers with large market shares. A change in concentration resulting from a transaction is measured by the difference between the post- and pre-transaction HHIs. Department of Justice and Federal Trade Commission, 1992 Horizontal Merger Guidelines, 57 Fed. Reg. 41552, 41557-58.

⁴⁰ Further, after this transaction, ALLTEL will be attributed with each of the 25 MHz cellular blocks, for a total of 50 MHz in the Overlap Area. This total falls below the previous spectrum cap threshold of 55 MHz. See 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, *Report and*

14. The one commenter opposing this waiver request argues that ALLTEL should not be able to control both cellular licenses in Louisiana-6.⁴¹ As the discussion above makes clear, however, granting the waiver would not have this result.

15. The possible competitive concerns with this transaction, rather, are that transferring the 49-percent non-controlling interest to the other cellular licensee in this area could harm competition by either (1) giving the Lafayette partners, Cingular and ALLTEL, a greater incentive to behave in a collusive manner, or (2) giving ALLTEL a unilateral incentive to compete less aggressively against Cingular because it earns a share of Cingular's profits through its ownership in Lafayette.

16. We conclude that this transaction is unlikely to have either of these effects. The size of the Overlap Area is so small relative to the Broader Baton Rouge Area that it is implausible that either ALLTEL's or Cingular's incentives will be altered in a material way. The Overlap Area covers approximately 396 square miles and has a population of roughly 30,000 residents.⁴² This is about 14 percent of the square miles of the Broader Baton Rouge Area, and less than 5 percent of the approximately 680,800 residents.⁴³ The Lafayette partnership operates a total of six towers, only three of which are in the Overlap Area.⁴⁴

17. Consistent with this analysis, the petitioners, and a commenter, argue that the Overlap Area is small relative to the Baton Rouge market and that it would be unlikely that ALLTEL would be able to charge discriminatory prices in the Overlap Area.⁴⁵ Additionally, one commenter supports this assertion by describing the Overlap Area as being small, very rural, and mostly swamp.⁴⁶

18. To further support their argument that the Overlap Area is competitive, the Petitioners, and one commenter, present pricing information for Iberville Parish.⁴⁷ The Petitioners argue that there is pricing parity among the six competitors and that the two cellular carriers, ALLTEL and Cingular, charge less than the average per-anytime-minute rate of the other carriers in the market.⁴⁸ The Petitioners, and a Commenter, also argue that carriers set rates based on a much broader geographic market.⁴⁹ We agree with the Commenters that there is little price differentiation between providers and that interconnected mobile telephony rates are set over a much broader area than Iberville Parish or the Broader Baton Rouge Area.

Order, WT Docket No. 98-205, 15 FCC Rcd. 9219, 9222, 9223, 9249, ¶¶ 2, 6, 66 (1999) (raising the Spectrum Cap limit to 55 MHz in RSAs).

⁴¹ Welter Comment.

⁴² See Petition at 3.

⁴³ For population and area statistics for the Overlap Area, see Petition at 3, 10. For population and area statistics for the Broader Baton Rouge area, see U.S. Census Bureau, Census 2000, Population, Housing Units, Area, and Density 2000, available at www.census.gov/census2000/states/la.html.

⁴⁴ See Petition at LA-06 Overlap Area Map.

⁴⁵ See Petition at 10-14; see also AWS at 3.

⁴⁶ See Newcomb Comment.

⁴⁷ See Petition at 11; see also AWS Comments at 3-4.

⁴⁸ See Petition at 11.

⁴⁹ See Petition at 12-14; see also AWS Comments at 3-4.

Finally, even if this transaction creates an incentive (1) for the two cellular licensees to behave in an anticompetitive manner, attempting collusive or parallel behavior, or (2) for ALLTEL to unilaterally compete less aggressively, it is not clear that harm to consumers would result. Any attempt to increase prices or reduce service quantity or quality could likely be rendered ineffective by competition from the other four providers in the Broader Baton Rouge Area.

C. Conclusion

19. We agree with the Petitioners and Commenters that the market is in general competitive with six providers offering service at similar prices. We find that, as the Overlap Area is extremely small in terms of area and population to the Broader Baton Rouge Area, it is unlikely that Cingular and ALLTEL would have the ability or incentive successfully to charge discriminatory prices in either the Overlap Area or in the Broader Baton Rouge Area. Thus, we find that the proposed transaction does not involve a substantial likelihood of significant competitive harm, and that waiver of the rule is appropriate in these circumstances.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that pursuant to sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the request for waiver of section 22.942 of the Commission's rules, 47 C.F.R. § 22.942, filed by CenturyTel Wireless, Inc. and CenturyTel, Inc. is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue
Chief, Wireless Telecommunications Bureau