

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

In the Matter of	)	
	)	
Alltel Corporation	)	File No. EB-06-TC-058
	)	
Notice of Apparent	)	NAL/Acct. No. 2000632170002
Liability for Forfeiture	)	FRN: 0012757787
	)	
	)	
	)	

**ORDER**

**Adopted: August 17, 2006**

**Released: August 18, 2006**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Alltel Corporation (“Alltel”). The Consent Decree terminates a Notice of Apparent Liability for Forfeiture (“NAL”) against Alltel for its apparent violation of section 222 of the Act, and section 64.2009(e) of the Commission’s rules.<sup>1</sup>

2. The Enforcement Bureau and Alltel have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the NAL.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and the authority delegated by section 0.111 and 0.311 of the Commission’s rules,<sup>3</sup> that the attached Consent Decree **IS ADOPTED**.

<sup>1</sup> 47 U.S.C. § 222; 47 C.F.R. § 64.2009(e).

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. § 0.111; 47 C.F.R. § 311.

5. **IT IS FURTHER ORDERED** that the above-captioned NAL is terminated.

FEDERAL COMMUNICATIONS COMMISSION

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Kris A. Monteith  
Chief, Enforcement Bureau

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In the Matter of )

Alltel Corporation )

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File No. EB-06-TC-058

NAL/Acct. No. 2000632170002

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**CONSENT DECREE**

**I. INTRODUCTION**

1. The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and Alltel Corporation (“Alltel”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into possible noncompliance by Alltel with the requirements of section 222 of the Communications Act of 1934, as amended (the “Act”),<sup>1</sup> and section 64.2009(e) of the Commission’s rules.<sup>2</sup>

2. The Commission has issued rules implementing section 222 of the Act.<sup>3</sup> The Commission requires carriers to establish and maintain a system designed to ensure that carriers

<sup>1</sup> Section 222 of the Communications Act, 47 U.S.C § 222, provides that: “Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.”

<sup>2</sup> 47 U.S.C. § 222; 47 C.F.R. §64.2009(e).

<sup>3</sup> In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket Nos. 96-115 and 96-149, FCC 98-27, *Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061 (1998) (“CPNI Order”). *See also*, In the Matter of Implementation of the Telecommunications Act of 1996 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 99-223, *Order on Reconsideration and Petitions for Forbearance* 14 FCC Rcd 14409 (1999), released September 3, 1999; *see also* In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, CC Docket

adequately protect their subscribers' CPNI. Section 64.2009(e) is one such requirement. Pursuant to section 64.2009(e):

A telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart.

## II. BACKGROUND

3. Alltel, headquartered in Little Rock, Arkansas, is a provider of wireless services and, until recently, wireline services. Alltel holds numerous authorizations to provide telecommunications services from the FCC.

4. The Bureau has been investigating the adequacy of procedures implemented by telecommunications carriers to ensure confidentiality of their subscribers' CPNI, based on concerns regarding the apparent availability to third parties of sensitive, personal subscriber information.<sup>4</sup> As part of this inquiry to ascertain the adequacy of procedures implemented by telecommunications carriers to ensure the confidentiality of their subscribers' CPNI, the Bureau directed several carriers, including Alltel, to submit their most recent certification prepared in compliance with section 64.2009(e) of the Commission's rules.

5. On January 27, 2006, Alltel provided a two-page document executed by in-house counsel for Alltel that described generally how Alltel uses CPNI. The document, however, did not indicate "that the officer has personal knowledge that [Alltel] has established operating procedures that are adequate to ensure compliance with the [CPNI] rules. . . ."

6. The Bureau alleged that Alltel's submission, on its face, did not comply with section 64.2009(e) of the Commission's rules. Accordingly, on January 30, 2006, the Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") proposing a forfeiture of \$100,000 for Alltel's apparent violation of section 64.2009(e) of the Commission's rules by failing to have an officer with personal knowledge execute an annual certificate stating that the company has established operating procedures adequate to ensure compliance with the Commission's rules governing protection and use of CPNI.

7. Following the issuance of the NAL, Alltel filed with the Commission an annual certificate executed by a Senior Vice President – Marketing Strategies and Pricing stating that the Company had established operating procedures adequate to ensure compliance with the Commission's rules governing protection and use of CPNI. Alltel also provided information regarding the Company's security measures that are in place to protect consumer information.

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No. 00-257, FCC 02-214, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 17 FCC Rcd 14860 (2002).

<sup>4</sup> Some companies, known as "data brokers," have advertised the availability of wireless and wireline subscriber information. See, e.g. <http://www.epic.org/privacy/iei/>.

### III. DEFINITIONS

8. For purposes of this Consent Decree, the following definitions shall apply:
- a. "Act" means the Communications Act of 1934, as amended.
  - b. "Alltel" means Alltel Corporation and any of its affiliates, and/or its successors.<sup>5</sup>
  - c. "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
  - d. "Commission" means the Federal Communications Commission.
  - e. "CPNI" means customer proprietary network information as defined in 47 U.S.C. § 222.
  - f. "Effective date" means the date on which the Bureau releases the Adopting Order.
  - g. "Investigation" means the investigation that resulted in the Bureau's issuance of the NAL on January 30, 2006. The investigation does not encompass other matters that were not the subject of the Bureau's proposed forfeiture in the NAL.
  - h. "Order" or "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
  - i. "Parties" means Alltel and the Bureau.

### IV. AGREEMENT

9. Alltel agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

10. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation between Alltel and the Bureau. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate the Investigation. In consideration for the termination of this Investigation and in accordance with the terms of this Consent Decree, Alltel agrees to the terms, conditions and procedures contained herein.

11. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Alltel with the requirements of the Act or the Commission's rules or orders. The Parties agree that this

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<sup>5</sup> On July 17, 2006, Alltel completed its spin-off of its wireline businesses which was merged into VALOR Communications Group, Inc., creating Windstream Corporation ("Windstream"). Neither Alltel nor any of its affiliates have an ownership interest in Windstream, and thus, the Bureau agrees that the terms and conditions of this Consent Decree are limited to Alltel and do not apply to Windstream in any way.

Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Alltel does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

12. Alltel agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of \$ 100,000.00 within thirty (30) calendar days after the Effective Date of the Adopting Order. This voluntary payment does not constitute a fine or penalty for, or admission of, a violation of any law. The payment must be made by check or money order and mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Include your NAL/Acct. No. with your wire transfer remittance.

13. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, Alltel commits to full compliance with Section 64.2009(e) of the Commission's rules. Further, Alltel agrees to submit to the Chief, Telecommunications Consumers Division, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, a copy of its most recent 64.2009(e) certification each year for the next two years no later than the anniversary of the Effective Date of this consent decree.

14. The Bureau agrees that it will not use the facts developed in this Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Alltel, including any other enforcement action, nor will the Bureau seek any administrative or other penalties from Alltel concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in the Investigation through the Effective Date or the existence of this Consent Decree to initiate, on its own motion, any proceeding, formal or informal, or take any action on its own motion against Alltel with respect to Alltel's basic qualifications to be a Commission licensee or authorized common carrier. Consistent with the foregoing, nothing in this Consent Decree limits the Commission's authority to consider and adjudicate any complaint that may be filed pursuant to section 208 of the Act,<sup>6</sup> and to take any action in response to such complaint. The Commission's adjudication of any such complaint will be based solely on the record established in that proceeding.

15. Alltel's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition or modification.

16. Provided the Bureau issues an Order adopting the Consent Decree without change, addition or modification, Alltel waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree.

17. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Alltel nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Alltel and the Commission will waive any statutory right

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<sup>6</sup> 47 U.S.C. § 208.

to a trial de novo with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

18. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. By this Consent Decree, Alltel neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

20. Alltel agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

21. The Parties agree that if any provision of this Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Alltel does not consent), that provision will be superceded by such Commission rule or order.

22. The Parties agree that the requirements of this Consent Decree shall expire twenty-four (24) months from the Effective Date.

23. This Consent Decree may be signed in counterparts.

For: Alltel Corporation

\_\_\_\_\_  
Date

For: Enforcement Bureau  
Federal Communications Commission

\_\_\_\_\_  
Date

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Kris A. Monteith  
Chief, Enforcement Bureau