

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

In the Matter of)	
)	
Applications of WWC Holding Co., Inc. and RCC)	File No. 0002849067
Minnesota, Inc.)	
)	
For Consent to Assignment of Licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: March 30, 2007

Released: March 30, 2007

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us an application filed by WWC Holding Co., Inc. (“WWC”), a wholly-owned indirect subsidiary of ALLTEL Corporation (“ALLTEL”), and RCC Minnesota, Inc. (“RCCM”), a wholly-owned subsidiary of Rural Cellular Corporation (“RCC”) (collectively, the “Applicants”), seeking Commission consent to the assignment of four cellular licenses, one broadband Personal Communications Services (“PCS”) license, 26 fixed point-to-point microwave licenses and two microwave industrial/business pool licenses (the “Application”).¹ As discussed fully below, pursuant to our review under section 310(d) of the Communications Act of 1934, as amended (the “Communications Act”),² we conclude that approval of the Application will serve the public interest, convenience, and necessity and we deny the Petition To Condition Approval or To Deny filed by Hickory Tech Corporation (“Hickory Tech”).³

II. BACKGROUND

A. Description of Applicants

2. ALLTEL is a publicly-traded Delaware corporation, headquartered in Little Rock, Arkansas.⁴ It provides wireless telecommunications services through its licensee subsidiaries, including ALLTEL Communications, Inc. (“ACI”) and WWC.⁵ ALLTEL provides wireless communications

¹ Universal Licensing System (“ULS”) File No. 0002849067. The application was filed on December 20, 2006.

² 47 U.S.C. § 310(d).

³ Petition to Condition Approval or To Deny, filed by Hickory Tech Corporation (Jan. 31, 2007) (“Petition”).

⁴ ALLTEL Corporation, Form 10-K, at 1 (Feb. 20, 2007) (“ALLTEL Form 10-K”) (reporting on the year ending December 31, 2006).

⁵ ALLTEL acquired Western Wireless Corporation (“Western Wireless”) on August 1, 2005. See Applications of Western Wireless Corporation and ALLTEL Corporation, WT Docket No. 05-50, *Memorandum Opinion and Order*, 20 FCC Rcd 13053 (2005) (“*ALLTEL-Western Wireless Order*”); Notification of Consummation, File No. 0002273314, filed Aug. 11, 2005 (notifying the Commission that the ALLTEL-Western Wireless transaction closed on August 1, 2005); ALLTEL Corporation, Annual Review 2005, at 2 (Jan. 31, 2006) (“ALLTEL Annual

services to approximately 12 million wireless customers in 36 states.⁶ ALLTEL also sells messaging packages that allow customers to send and receive any combination of text, picture, or video messages for a flat-rate monthly price.⁷ ALLTEL uses Code Division Multiple Access (“CDMA”) technology, including 1XRTT and EV-DO, to serve its customers.⁸ ALLTEL has entered into roaming agreements with other wireless carriers that allow ALLTEL to provide its customers a nationwide wireless services footprint.⁹

3. RCC is a publicly-traded Minnesota corporation, headquartered in Alexandria, Minnesota.¹⁰ It provides mobile telephony services in portions of five states in the Northeast, three states in the Northwest, four states in the Midwest, three states in the South, and the western half of Kansas under the Unice[®] brand name.¹¹ RCC’s networks cover a population of approximately 6.6 million and RCC provides service to approximately 706,000 voice customers.¹² RCC uses CDMA and 1XRTT technology in its Midwest territory and Global System for Mobile Communications, General Packet Radio Services, and Enhanced Data Rates for Global Evolution technologies in its Kansas, Northeast, Northwest, and Southern territories.¹³

B. Description of Transaction

4. On December 2, 2005, ALLTEL and Midwest Wireless Holdings, L.L.C. (“Midwest Wireless”) filed four applications seeking consent to the transfer of control of licenses held by subsidiaries of Midwest Wireless to ACI, a wholly-owned subsidiary of ALLTEL.¹⁴ The Antitrust Division of the U.S. Department of Justice (“DOJ”) reviewed the proposed merger between ALLTEL and Midwest Wireless,

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Report”), available at <http://library.corporate-ir.net/library/74/741/74159/items/189112/05alltelannual.pdf> (last visited Mar. 7, 2007).

⁶ ALLTEL Form 10-K at 2.

⁷ ALLTEL Annual Report at 5.

⁸ ALLTEL Form 10-K at 2.

⁹ *Id.* at 5; see also ALLTEL signs 10-year nationwide roaming agreement with Sprint, News Release (May 9, 2006), available at <http://www.alltel.com/corporate/media/news/06/may/n411may0906a.html> (last visited Mar. 7, 2007).

¹⁰ Rural Cellular Corp, Form 10-K, at 1 (Mar. 5, 2007) (“RCC Form 10-K”) (reporting on the year ending December 31, 2006).

¹¹ *Id.* at 4, 10.

¹² *Id.* at 4.

¹³ *Id.* at 4, 8, 10.

¹⁴ See Application to Transfer Control of Licenses Held by Midwest Wireless Communications L.L.C. to ALLTEL Communications, Inc., File No. 0002391997 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Midwest Wireless Iowa L.L.C. to ALLTEL Communications, Inc., File No. 0002395311 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Midwest Wireless Wisconsin L.L.C. to ALLTEL Communications, Inc., File No. 0002395362 (filed Dec. 2, 2005); Application to Transfer Control of Licenses Held by Switch 2000 L.L.C. to ALLTEL Communications, Inc., File No. 0002395398 (filed Dec. 2, 2005). ACI is also the parent of WWC.

and concluded that the proposed merger was likely to result in competitive harm in certain markets.¹⁵ The DOJ and the State of Minnesota filed a Preservation of Assets Stipulation and a Preservation of Assets Order with the United States District Court for the District of Minnesota (“District Court”) on September 7, 2006,¹⁶ and the parties jointly filed a proposed Final Judgment with the District Court.¹⁷ On October 2, 2006, the Commission found that the ALLTEL-Midwest Wireless transaction was generally in the public interest, except that in four geographic markets the proposed transaction would be likely to cause significant competitive harm.¹⁸ The Commission, the DOJ, and the State of Minnesota conditioned their approval of the ALLTEL-Midwest Wireless transaction on the divestiture of business units in four markets.¹⁹ The Commission also conditioned its approval of the transaction on the divestiture of 10 MHz of PCS spectrum in Lac qui Parle County (“10 MHz PCS Divestiture”).²⁰

5. On December 13, 2006, ACI and RCC entered into a Purchase Agreement pursuant to which RCC will acquire all of the Divestiture Assets.²¹ Pursuant to the Purchase Agreement, WWC will establish a limited liability company (“Newco”), to which it will contribute its right, title, and interest in the Divestiture Assets, excluding the wireless spectrum licenses, shortly before closing.²² At closing, RCC will

¹⁵ See generally *United States and State of Minnesota v. ALLTEL Corporation and Midwest Wireless Holdings LLC*, Competitive Impact Statement, Case No. 06-cv-03631-RHK-AJB, at 3 (filed Sept. 7, 2006) (“DOJ Competitive Impact Statement”). All DOJ filings regarding this matter are available at <http://www.usdoj.gov/atr/cases/alltel2.htm>.

¹⁶ *United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC*, Preservation of Assets Stipulation and Order, Case No. 06-cv-03631-RHK-AJB (entered Sept. 8, 2006) (“DOJ Stipulation”); *United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC*, Preservation of Assets Order, Case No. 06-cv-03631-RHK-AJB (entered Sept. 8, 2006) (“DOJ Preservation Order”).

¹⁷ *United States v. ALLTEL Corporation and Midwest Wireless Holdings LLC*, Proposed Final Judgment, Case No. 06-cv-03631-RHK-AJB (filed Sept. 7, 2006) (“DOJ Proposed Final Judgment”).

¹⁸ Applications of Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc., WT Docket No. 05-339, *Memorandum Opinion and Order*, 21 FCC Rcd 11526, 11560, 11569-70 ¶¶ 92-93, 122 (2006) (“*ALLTEL-Midwest Wireless Order*”).

¹⁹ The four markets are Cellular Market Area (“CMA”) 488 Minnesota 7-Chippewa, CMA489 Minnesota 8-Lac qui Parle, CMA490 Minnesota 9-Pipestone, and CMA491 Minnesota 10-Le Sueur (“Minnesota Markets”). *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11569-70 ¶ 122; DOJ Proposed Final Judgment at 3-6; see also DOJ Competitive Impact Statement at 13-19.

²⁰ *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11569-70 ¶ 122. To accomplish the divestiture, a Management Trustee was appointed to serve as manager of the Minnesota Markets and the 10 MHz PCS Divestiture (the “Divestiture Assets”) until these assets are sold to third party purchasers or transferred to a Divestiture Trustee (who may be the same person as the Management Trustee). *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11570 ¶ 123. During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, ALLTEL retains *de jure* control and has the sole power to market and dispose of the Divestiture Assets to third-party buyers, subject to the Commission’s regulatory powers and process with respect to license transfers and assignments and the terms of the agreements contained in the DOJ Stipulation, DOJ Preservation Order, and DOJ Final Judgment. *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11570 ¶ 123; DOJ Stipulation at 8-13, 16-17; DOJ Preservation Order at 9-13; DOJ Proposed Final Judgment at 1-2, 7-8.

²¹ Application, Exhibit 1 at 2.

²² *Id.*

purchase WWC's right, title, and interest in Newco and then merge Newco into RCC.²³ Also at closing, WWC will separately assign to RCCM the wireless spectrum licenses set forth in the Application.²⁴

C. Application Review Process

6. The Application appeared on public notice, which announced a fourteen-day comment period, on January 17, 2007.²⁵ Hickory Tech filed its Petition To Condition Approval or To Deny the Application on January 31, 2007.²⁶ On February 13, 2007, ALLTEL filed an Opposition and Motion to Strike,²⁷ and RCC and RCM jointly filed an Opposition to the Petition.²⁸ Hickory Tech filed a Reply on February 27, 2007.²⁹

III. STANDARD OF REVIEW AND PUBLIC INTEREST DETERMINATION

7. Pursuant to section 310(d) of the Communications Act, the Commission must determine whether the Applicants involved have demonstrated that the proposed assignment of licenses would serve the public interest, convenience, and necessity.³⁰ In applying our public interest test, we must assess whether the proposed transaction complies with the specific provisions of the Communications Act,³¹ the

²³ *Id.*

²⁴ *Id.*

²⁵ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of License Applications, and *De Facto* Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing, *Public Notice*, Report No. 2850, at 8 (rel. Jan. 17, 2007). Pleadings and comments are available on the Commission's ULS by searching the Application file number.

²⁶ *See supra* note 3.

²⁷ Opposition and Motion To Strike the Petition To Condition Approval or To Deny of Hickory Tech Corporation, filed by ALLTEL Corporation (Feb. 13, 2007) ("ALLTEL Opposition").

²⁸ Opposition to Petition To Condition Approval or To Deny, filed by RCC Minnesota, Inc. and Rural Cellular Corporation (Feb. 13, 2007) ("RCC Opposition").

²⁹ Reply to Oppositions, filed by Hickory Tech Corporation (Feb. 27, 2007) ("Reply").

³⁰ 47 U.S.C. § 310(d).

³¹ Section 310(d), 47 U.S.C. § 310(d), requires that we consider the applications as if the proposed transferee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, Applications for the Assignment of License from Denali PCS, L.L.C. to Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska DigiTel, L.L.C. to General Communication, Inc., WT Docket No. 06-114, *Memorandum Opinion and Order*, 21 FCC Rcd 14863, 14871 ¶ 15 (2006) ("*Alaska DigiTel Order*"); Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., WT Docket No. 06-96, *Memorandum Opinion and Order*, 21 FCC Rcd 13580, 13588 ¶ 13 (2006) ("*DoCoMo-Guam Cellular Order*"); *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; Applications of Nextel Partners, Inc., Transferor, and Nextel WIP Corp. and Sprint Nextel Corporation, Transferees, *Memorandum Opinion and Order*, 21 FCC Rcd 7358, 7360 ¶ 7 (2006) ("*Sprint Nextel-Nextel Partners Order*"); SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*"); Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control, WC Docket No. 05-75, *Memorandum Opinion and Order*, 20 FCC Rcd 18433, 18442 ¶ 16 (2005) ("*Verizon-MCI Order*"); Applications of Nextel Communications, Inc. and Sprint Corporation, WT Docket No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 13976 ¶ 20 (2005) ("*Sprint-Nextel Order*"); *ALLTEL-Western Wireless Order*, 20 FCC Rcd 13062 ¶ 17; Applications of AT&T Wireless Services,

(continued....)

Commission's rules, and federal communications policy.³² The Commission then employs a balancing test weighing any potential public interest harms of a proposed transaction against any potential public interest benefits to ensure that, on balance, the proposed transaction would serve the public interest.³³ The applicants involved with each transaction bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.³⁴

8. In its public interest review, the Commission must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Communications Act and the Commission's rules.³⁵ In this proceeding, no issues have been raised with respect to the basic qualifications of ALLTEL, ACI, WWC, RCCM, or RCC. We find that, at this time, there is no reason to evaluate the qualifications of these entities, other than to conclude that the record demonstrates that RCCM and RCC have the requisite qualifications to acquire control of the licenses at issue here.

9. In determining the competitive effects of the proposed transaction, our analysis is informed by, but not limited to, traditional antitrust principles.³⁶ Because the Commission is charged with

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Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) ("*Cingular-AT&T Wireless Order*").

³² See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13588-89 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18442-43 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21542-43 ¶ 40.

³³ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14871 ¶ 15; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13062-63 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

³⁴ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14871-72 ¶ 15; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13589 ¶ 13; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11535 ¶ 16; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7360 ¶ 7; *SBC-AT&T Order*, 20 FCC Rcd at 18300 ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443 ¶ 16; *Sprint-Nextel Order*, 20 FCC Rcd at 13976-77 ¶ 20; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 17; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21543 ¶ 40.

³⁵ See 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; see also *Alaska DigiTel Order*, 21 FCC Rcd at 14872 ¶ 16; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13589-90 ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536 ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379 ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526 ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063 ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd 21546 ¶ 44.

³⁶ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13977-78 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42. The Commission and DOJ each have independent authority to examine telecommunications mergers, but the standards governing the Commission's review differ from those of DOJ. See, e.g., *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 42.

determining whether the transfer and assignment of licenses serves the broader public interest,³⁷ we take into account factors beyond those considered under a traditional antitrust analysis. In the communications industry, competition is shaped not only by antitrust rules, but also by the regulatory policies that govern the interactions of industry players.³⁸

10. Our public interest authority enables us to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.³⁹ Section 303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁴⁰ Our public interest authority enables us to impose and enforce conditions to ensure that the transaction would, overall, serve the public interest.⁴¹ Despite broad authority, the Commission has held that it will impose conditions only to remedy harms that arise from the transaction (*i.e.*, transaction-specific harms) and that are related to the

³⁷ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

³⁸ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 18; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591-92 ¶ 16; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537-38 ¶ 19; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444 ¶ 18; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 22; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 20; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 42.

³⁹ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13065 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43 (conditioning approval on the divestiture of operating units in select markets).

⁴⁰ 47 U.S.C. § 303(r). See also *Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13592 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18302-03 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13978-79 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

⁴¹ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13592-93 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11538-39 ¶ 20; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545 ¶ 43.

Commission's responsibilities under the Communications Act and related statutes.⁴² Thus, we will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.⁴³

11. When evaluating the likely competitive effects and public interest benefits of a proposed transaction, the Commission performs a case-by-case review of the transaction in order to fulfill the Commission's statutory mandate to promote and enhance competition in the relevant market, ensure diversity of license holdings, accelerate private sector deployment of advanced services, and manage the spectrum in the public interest.⁴⁴ In this case, we analyze the effects of the transaction on the mobile telephony services product market.⁴⁵ These services are currently provided by cellular, broadband PCS, and Specialized Mobile Radio ("SMR") licensees.⁴⁶ RCC does not hold any overlapping cellular, PCS, or SMR licenses in the Minnesota Markets,⁴⁷ and therefore this transaction would not have an adverse competitive impact in any of these markets.

12. Hickory Tech contends that without conditions, grant of this application is not in the public interest. Hickory Tech requests that the Commission require the interconnection agreement between Mankato Citizens Telephone Company ("MCTC"), a wholly-owned Hickory Tech subsidiary, and Minnesota Southern Wireless Company ("MSWC"), the original cellular licensee for station KNKN572 CMA491 Minnesota 10-Le Sueur ("MSWC ICA"), be assumed by subsequent licensees of this station,

⁴² See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14874 ¶ 19; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 21; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁴³ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14874-75 ¶ 19; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13593 ¶ 17; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11539 ¶ 20; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7361 ¶ 9; *SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445 ¶ 19; *Sprint-Nextel Order*, 20 FCC Rcd at 13979 ¶ 23; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13066 ¶ 22; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546 ¶ 43.

⁴⁴ See *Alaska DigiTel Order*, 21 FCC Rcd at 14873 ¶ 17; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13591 ¶ 15; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11537 ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18301 ¶ 17; *Verizon-MCI Order*, 20 FCC Rcd at 18443-44 ¶ 17; *Sprint-Nextel Order*, 20 FCC Rcd at 13977 ¶ 21; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13064 ¶ 19; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21544 ¶ 41.

⁴⁵ In previous merger orders, the Commission found that there are separate relevant product markets for interconnected mobile voice services and mobile data services, and also for residential services and enterprise services; however, the Commission analyzed all of these product markets under the combined market for mobile telephony service since it provided a reasonable assessment of any potential competitive harm resulting from the transactions under review. See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14876 ¶ 25; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13594 ¶ 19; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11541 ¶ 26; *Sprint-Nextel Order*, 20 FCC Rcd at 13983 ¶ 38; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13068 ¶ 29; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21557 ¶ 74.

⁴⁶ See *Alaska DigiTel Order*, 21 FCC Rcd at 14879 ¶ 31; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13595 ¶ 22; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11544 ¶¶ 32-33; *Sprint-Nextel Order*, 20 FCC Rcd at 13991 ¶ 58; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13070-71 ¶ 38; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

⁴⁷ Application, Exhibit 1 at 4.

including WWC and RCC.⁴⁸ Hickory Tech claims that in December 2003, WWC acquired MSWC and continued to utilize the MSWC point of interconnection and to pay charges subject to the MSWC ICA.⁴⁹ According to the Petitioner, WWC also paid interconnection charges under a separate interconnection agreement with MCTC (“WWC ICA”), and this agreement included specific provisions for the termination of the agreement whereas the MSWC ICA did not.⁵⁰ Hickory Tech states that the WWC ICA terminated in September 2005 in accordance with its terms.⁵¹ Further, Hickory Tech claims that since ALLTEL acquired WWC in August 2005, it has refused to pay the invoices for termination charges under the MSWC ICA.⁵² Hickory Tech alleges that ALLTEL has provided various reasons for its failure to pay the invoices, including: disputed billing amounts; lack of good faith negotiations on the part of MCTC; and the MSWC ICA is no longer in effect because MSWC no longer provides local service in the MCTC exchange area.⁵³ Finally, Hickory Tech argues that ALLTEL is in violation of the obligations set forth in Part 51 of the Commission’s rules and section 251(c)(1) of the Communications Act to “negotiate in good faith” regarding interconnection arrangements.⁵⁴

13. RCC argues that the Commission should dismiss the Petition, and require Hickory Tech to resume negotiations for an interconnection agreement between RCC and the Hickory Tech subsidiaries.⁵⁵ RCC further asserts that there is no legal justification to support Hickory Tech’s position that RCC is required to accept the terms of an interconnection agreement to which RCC was never a party, simply because RCC is seeking assignment of a license that was once held by a company that negotiated those terms with Hickory Tech.⁵⁶

14. ALLTEL requests that the Commission strike or summarily dismiss the Petition.⁵⁷ ALLTEL argues that Hickory Tech’s allegations do not dispute either RCC’s qualifications to hold the licenses or that the transaction is in the public interest.⁵⁸ ALLTEL asserts that Hickory Tech lacks standing under the Communications Act or the Commission’s rules to file a petition to deny the proposed transaction.⁵⁹ In addition, ALLTEL asserts that, because the Petition has raised only a private contractual dispute unrelated to the Application or the qualifications of RCC, it should be deemed frivolous.⁶⁰ In support of this assertion, ALLTEL argues that “[i]t has long been established that the Commission is not

⁴⁸ Petition at 12, Exhibit 1, Exhibit 2; Reply at 2.

⁴⁹ Petition at 5-6.

⁵⁰ *Id.* at 4-5, Exhibit 1 ¶ 9, Exhibit 2 ¶ 9.

⁵¹ *Id.* at 6, Exhibit 3, Exhibit 4; Reply at 5.

⁵² Petition at 6-7.

⁵³ *Id.* at 6-9, Exhibit 5, Exhibit 6; Reply at 4-5.

⁵⁴ Petition at 1, 11; Reply at 2.

⁵⁵ RCC Opposition at 2-3, Exhibit 2, Exhibit 3.

⁵⁶ RCC Opposition at 3.

⁵⁷ ALLTEL Opposition at 1, 6, 10.

⁵⁸ *Id.* at 2, 9-10.

⁵⁹ *Id.* at 4-6; *see also* 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

⁶⁰ ALLTEL Opposition at 6-9.

the proper forum to litigate private contractual disputes and that it will not delay acting on an assignment or transfer application until the dispute is resolved.”⁶¹ ALLTEL further claims that the MSWC ICA has provisions for resolution of disputes by either party through referring the matter to either an appropriate regulatory agency or to arbitration.⁶² ALLTEL alleges that the appropriate regulatory agency to resolve the issues raised by Hickory Tech in its Petition is the Minnesota Public Utilities Commission (“Minnesota PUC”), and Hickory Tech has not raised these issues with the Minnesota PUC.⁶³ Finally, ALLTEL argues that the terms and conditions of the MSCW ICA are subject to state contract laws and Hickory Tech has not sought recourse under state law.⁶⁴

15. In reply, Hickory Tech argues that it is a party in interest and therefore has standing to file the Petition.⁶⁵ In particular, Hickory Tech states that “[t]he injury to Hickory Tech in this case is Alltel’s existing breach and RCC’s stated intention to disregard altogether the existing interconnection agreements with the operating subsidiaries of Hickory Tech, and the consequent debt to Hickory Tech in excess of \$200,000 for Alltel’s unlawful failure to pay charges for traffic exchanged with the Hickory Tech subsidiaries pursuant to those agreements.”⁶⁶ Hickory Tech asserts that its claims do not involve a “private contractual dispute,” since resolution of interconnection agreement disputes is part of the Commission’s regulatory responsibility under sections 251 and 252 of the Communications Act and Part 51 of the Commission’s rules.⁶⁷ Hickory Tech suggests that the Commission has in the past considered contractual disputes where they involve public interest concerns under the Communications Act or a violation of the Commission’s rules or federal statute.⁶⁸ Further, Hickory Tech argues that only the Commission can determine the effect of an assignment on the parties to an agreement and that the Minnesota PUC would require a ruling from the Commission on this issue in order to resolve the dispute.⁶⁹

16. We find that Hickory Tech’s petition fails to present any grounds that would warrant denying the Application or imposing conditions on its grant.⁷⁰ All of the arguments raised by Hickory Tech revolve around disputes of payment under an interconnection agreement. These issues lie outside the Commission’s jurisdiction.⁷¹ The Commission has repeatedly held that private disputes and contractual

⁶¹ *Id.* at 7 (citations omitted).

⁶² *Id.* at 8.

⁶³ *Id.*

⁶⁴ *Id.* at 8-9.

⁶⁵ Reply at i.

⁶⁶ *Id.* at i, 3-4.

⁶⁷ *Id.* at 6-7; *see also* 47 U.S.C. §§ 251, 252; 47 C.F.R. Part 51.

⁶⁸ Reply at 8.

⁶⁹ *Id.* at 11.

⁷⁰ In light of our resolution of the substantive issues raised in the Petition, we do not find it necessary to address Hickory Tech’s standing to file the Petition.

⁷¹ *See, e.g.,* Applications of Nextel Communications, Inc. and Sprint Corporation, WT Dkt. No. 05-63, *Memorandum Opinion and Order*, 20 FCC Rcd 13967, 14033-34 ¶ 181 & n. 428 (2005); Application of Margaret Jackson (Transferor) and Ray Webb, *et al.*, For Consent to the Transfer of Control of Sunbelt Television, Inc., Licensees of KHIZ (TV), Barstow, California, *Memorandum Opinion and Order*, 18 FCC Rcd

(continued....)

matters should be resolved by a tribunal of competent jurisdiction.⁷² Further, absent a final court or other tribunal judgment raising issues within the Commission's jurisdiction, we would not ordinarily act on matters stemming from private contracts,⁷³ and, absent a prior court injunction, we would not ordinarily withhold consent to an otherwise acceptable application.⁷⁴ Notwithstanding Hickory Tech's claims to the contrary, we conclude that the claims raised in the Petition do not implicate any matters within the Commission's jurisdiction. Moreover, as Hickory Tech's own statements disclose, a significant portion of the harm that it alleges pre-dates the filing of the Application and cannot be considered to be related to the proposed transaction now before us. For these reasons, we deny the Petition.

17. In addition to assessing any potential harms associated with a proposed transaction, the Commission also considers whether there would be verifiable transaction-specific public interest benefits.⁷⁵ The Applicants state that the transaction will serve the public interest in two ways. First, RCC will be able to expand its facilities-based mobile telephony service in Minnesota enhancing coverage and service throughout the state.⁷⁶ Further, this transaction will serve the public interest by allowing ALLTEL to comply with the divestiture conditions imposed by the Commission with regard to the ALLTEL-Midwest transaction.⁷⁷ We find that it is likely that the proposed transaction would result in the transaction-specific public interest benefits alleged by the Applicants.

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26403, 26404 ¶ 6 (2003) ("*Sunbelt*"); Applications of Pueblo MSA Limited Partnership Station KNKN519 (MSA #241B), *Order*, 13 FCC Rcd 131, 133 ¶ 5 (Comm. Wireless Div. 1997) ("*Pueblo*").

⁷² See, e.g., Applications of Northwest Broadcasting, Inc., Assignor and Western Pacific, Inc., Assignee, *Memorandum Opinion and Order*, 12 FCC Rcd 3289, 3293 ¶ 10 (1997) ("*Northwest Broadcasting*"); Applications of Arecibo Radio Corporation (Assignor), Hato Abajo Development Corp. (Assignee), *Memorandum Opinion and Order*, 101 F.C.C.2d 545, 548 ¶ 8 (1985); Applications of Verestar, Inc. (Debtor-in-Possession) For Consent to Assignment of Licenses to SES Americom, Inc., IB Docket No. 04-174, *Memorandum Opinion, Order and Authorization*, 19 FCC Rcd 22750, 22756 ¶ 16 (Int'l Bureau, Wireless Telecomm. Bureau 2004) ("*Verestar*"); Applications of Caribbean SMR, Inc., *Order*, 16 FCC Rcd 15663, 15664 ¶¶ 4, 5 (Comm. Wireless Div. 2003) ("*Caribbean SMR*"); Assignment of Call Sign WPF961, From Elaine Hough, Assignor, To Chadmoore Wireless Group, Inc., Assignee, *Order*, 18 FCC Rcd 1875, 1877 ¶ 7 (Comm. Wireless Div. 2003) ("*Hough*"); *Pueblo*, 13 FCC Rcd. at 133 ¶ 5; see also *Listeners' Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987).

⁷³ See, e.g., *Northwest Broadcasting*, 12 FCC Rcd at 3293 ¶ 10; *Caribbean SMR*, 16 FCC Rcd at 15665 ¶ 5; *Hough*, 18 FCC Rcd at 1877 ¶ 7; *Sunbelt*, 18 FCC Rcd at 26404 ¶ 6.

⁷⁴ See, e.g., *Northwest Broadcasting*, 12 FCC Rcd at 3293 ¶ 10; *Verestar*, 19 FCC Rcd at 22756 ¶ 16; *Hough*, 18 FCC Rcd at 1877 ¶ 7. This decision does not foreclose any relief to which Hickory Tech ultimately may be entitled based on the outcome of any subsequent litigation or proceeding, if applicable. See, e.g., *Hough*, 18 FCC Rcd at 1877 ¶ 7; *Pueblo*, 13 FCC Rcd at 134 ¶ 6.

⁷⁵ See, e.g., *Alaska DigiTel Order*, 21 FCC Rcd at 14908 ¶ 109; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13603 ¶ 39; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11564 ¶ 105; *SBC-AT&T Order*, 20 FCC Rcd at 18384 ¶ 182; *Verizon-MCI Order*, 20 FCC Rcd at 18530 ¶ 193; *Sprint-Nextel Order*, 20 FCC Rcd at 14013 ¶ 129; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13100 ¶ 132; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21599 ¶ 201.

⁷⁶ Application, Exhibit 1 at 4.

⁷⁷ Application, Exhibit 1 at 4; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11569-70, 11573 ¶¶ 122, 135.

IV. CONCLUSION

18. Pursuant to our review under section 310(d) of the Communications Act, we find that approval of the Application will serve the public interest, convenience, and necessity.⁷⁸ Further, we deny Hickory Tech's Petition To Condition Approval or To Deny.

V. ORDERING CLAUSES

19. Accordingly, having reviewed the application, the petition, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for the assignment of licenses from WWC Holding Co., Inc. to RCC Minnesota, Inc. is GRANTED.

20. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petition To Condition or To Deny the assignment of licenses from WWC Holding Co., Inc. to RCC Minnesota, Inc., filed by Hickory Tech Corporation is DENIED for the reasons stated herein.

21. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

22. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

⁷⁸ 47 U.S.C. § 310(d).