

Before the  
Federal Communications Commission  
Washington, DC 20554

In re	)	
	)	
Application for	)	
for the Transfer of Control	)	
of Licenses and	)	WT Docket 05-50;
Authorizations from	)	DA 05-332;
Western Wireless Corporation	)	File No. 0002016468
and its subsidiaries to	)	
ALLTEL Corporation	)	

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of Comments of United States Cellular Corporation

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Summary

The FCC should take this opportunity to establish a policy which will require large wireless carriers to agree to voice and data roaming agreements with small, mid-sized, and regional carriers.

Consolidation within the wireless industry is giving rise to fewer and larger carriers. The continued existence of small, mid-sized and regional carriers will be crucial to the preservation of competition within the industry and the availability of voice and data roaming will be crucial to such carriers' survival. Thus, the FCC should state that the public interest requires reasonable voice and data roaming agreements among wireless carriers.

Moreover, the lead application asserts as both a public interest and competitive justification for the merger, the continued availability of roaming on the merged system for the customers of smaller carriers, which makes it appropriate for the FCC to provide the requested statement of principle in ruling on these applications. Also, the current development of data roaming technology makes it appropriate for the FCC to act now.

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COMMENTS

United States Cellular Corporation ("USCC") hereby files its Comments on the above-captioned transfer applications.<sup>1</sup> USCC requests that the FCC take this opportunity to require that "national" wireless carriers, such as ALLTEL-Western Wireless, must continue to make their facilities available to the customers of regional, small and mid-sized carriers for voice and data roaming.

USCC, a majority owned subsidiary of Telephone and Data Systems, Inc. ("TDS"), is a mid-sized wireless carrier providing cellular and PCS service to approximately 4.9 million customers in 146 markets. USCC's markets are predominantly rural in character and are increasingly concentrated in a few regional "clusters."

USCC's main regional concentration is in the Midwest, in the states of Illinois, Iowa, Wisconsin and Missouri. It has other regional "clusters," in upper New England, in Oklahoma, in the mid-Atlantic states, in Tennessee and North

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<sup>1</sup> See Public Notice, "Western Wireless Corporation and ALLTEL Corporation Seek FCC Consent To Transfer Control of Licenses and Authorizations," DA 05-332, released February 7, 2005.

Carolina, and in portions of Washington, Oregon and northern California. However, USCC is not a national carrier and its systems do not cover the whole country. Its customers' continuing ability to "roam" on the systems of other carriers, particularly the "national" carriers, is and will be vital to its ability to provide a competitive service to customers in a wireless environment marked by ever increasing consolidation.

I. The Commission Should Consider the Roaming Issue Now.

As the Commission has repeatedly recognized, six influential "national" wireless carriers came into existence in recent years, namely AT&T Wireless, Sprint PCS, Nextel, Cingular, Verizon Wireless and T-Mobile.<sup>2</sup> That number has been reduced to five with AT&T Wireless being absorbed by Cingular. Recently, applications have been filed to merge Sprint with Nextel, which would reduce the number of national carriers to four.<sup>3</sup>

If the above captioned applications are granted, the merger will create another national carrier, and the number of mid-sized carriers will also be reduced by one. Moreover, the larger telecommunications landscape is being reshaped on what seems to be a daily basis, as previously "unthinkable" mergers involving AT&T and MCI and three of the four remaining regional Bell Operating Companies (SBC, Verizon, and Qwest) are now also being proposed. The rise of huge consolidated telecom companies, with all of the market power that their scale and

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<sup>2</sup> See, e.g. Seventh Competition Report, 17 FCC Rcd 12985 (2002).

<sup>3</sup> See, Public Notice, "Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent To Transfer Control of Licenses and Authorizations," WT Docket 05-63, DA 05-502, released February 21, 2005.

scope has generated, is a qualitative change in the marketplace from the structure of a decade ago. Congress and other institutions of government are struggling to understand the full implications of what is occurring.<sup>4</sup> However, what all stakeholders agree upon is that if mergers among large telecom companies are to be approved, they must enhance competition and thus promote consumer welfare.

As will be discussed below, the survival of small and mid-sized wireless carriers, such as USCC, is crucial to the preservation of competition in the wireless industry. And crucial to their ability to survive will be continuing availability of roaming, both for existing voice service and present and future data services.

USCC's concern, previously raised in the context of the Cingular/AT&T Wireless merger, as well as in Commission's "automatic roaming" and "rural services" proceedings,<sup>5</sup> is that the "national" carriers could at some time in the future refuse to sign roaming agreements with regional, mid-sized and rural carriers on reasonable terms, which would effectively preclude customers of those carriers from roaming in the markets of the national carriers. This in turn might have the effect of driving customers away from such regional/rural carriers, thus forcing those carriers out of business, reducing competition and customer welfare.

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<sup>4</sup> See, e.g., "Lawmakers Express Concerns Over Telecom Consolidation," Telecommunications Report, March 2, 2005.

<sup>5</sup> See, In re Application for the Transfer of Control of Licenses and Authorizations from AT&T Wireless Services, Inc. and its subsidiaries to Cingular Wireless Corporation, WT Docket No. 04-70, File No. 0001656065; USCC Comments filed May 4, 2004; In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 00-193, FCC 00-361, 15 FCC Rcd 21628 (2000); USCC Comments filed January 5, 2001; In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities For Rural Telephone Companies to Provide Spectrum Based Services, Notice of Inquiry, WT Docket 02-381, 17 FCC Rcd 2554 (2002), USCC Comments filed February 3, 2002, pp. 16-18. The FCC took no action in response to USCC's requests.

While USCC expressed its opposition in 2001 to the FCC's adoption of any "automatic roaming" requirement, we also asked that the FCC maintain "a careful and vigilant watch" over the national roaming issue and "revisit" it in the future if small, mid-sized or rural carriers were prevented from obtaining acceptable roaming contracts by the national carriers. We suggested that the FCC's yearly reports on the state of competition in the wireless industry might be an appropriate vehicle by which the FCC could review roaming practices and that the FCC could act if roaming trends ceased to serve the public interest. In that connection, we applaud the FCC's recent action in its 2005 CMRS competition review, which seeks detailed information on the status of wireless competition, including the submission of actual coverage maps and information regarding the availability of voice and data roaming.<sup>6</sup> We believe that much valuable information will be elicited as a result of the recent public notice. However, we submit that the filing of the first application seeking a merger between two of the largest "CDMA" wireless carriers may also provide a legitimate platform for a strong pro-competition statement from the FCC regarding the continuing need for roaming availability, particularly in light of the cellular monopoly the merged entity would have in certain rural areas.

USCC acknowledges that its previous negotiations with ALLTEL and Western Wireless have not reflected any such anti-competitive practices, particularly with respect to voice services.<sup>7</sup> If in the future, however, ALLTEL-

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<sup>6</sup> See, Public Notice, "WTB Seeks Comment on CMRS Market Competition," WT Docket No. 05-71, DA 05-487, released February 24, 2005.

<sup>7</sup> USCC has also engaged in preliminary negotiation with ALLTEL with respect to data roaming. USCC anticipates being able to offer this service to its customers by the end of this year, and is now

Western Wireless or any of the other national carriers did seek to exploit their national "reach" by withholding roaming agreements or by exacting prohibitive charges for such agreements, the Commission, we believe, would need to exercise its authority to preserve competitive equality and the rights of customers of regional and rural carriers to a choice of wireless service by enforcing fairness in the roaming marketplace.

Vigorous use of the anti-discrimination provisions of Sections 201 and 202 of the Communications Act in response to formal complaints, perhaps coupled with a limited requirement to conduct good faith roaming negotiations, and a prior declaration of Commission policy as outlined herein, may be the best means of meeting such a threat to competition, should it arise.

II. An FCC Endorsement of Data Roaming Will Further The Competitive Aims Described in the ALLTEL-Western Wireless Application.

Exhibit 1 to the ALLTEL-Western Wireless "lead" transfer application argues that the merger will serve the public interest by creating economies of scale and scope for ALLTEL, thus allowing it to be a stronger competitor, and thus better able to deploy "advanced services including EV-DO in rural areas more rapidly than either [ALLTEL or Western Wireless] could on a stand alone basis.<sup>8</sup> As an additional public interest justification, the applicants state that the merger:

"will provide a business base broad enough for ALLTEL to consider the deployment of additional technologies (e.g. GSM)

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"trialing" its data roaming capabilities in selected markets. USCC and ALLTEL did not reach an agreement, but USCC hopes to do so later this year.

<sup>8</sup> Exhibit 1, p. 4.

that will expand the availability of automatic roaming agreements in rural areas in the United States."<sup>9</sup>

The application also argues that by enlarging its footprint ALLTEL will become a "more attractive roaming partner" for other carriers and promises that ALLTEL will "explore steps" to increase roaming opportunities "for other carriers," including a possible GSM overlay for the benefit of roamers.<sup>10</sup> The applicants conclude this section of the exhibit by advising the FCC that:

"[t]he transaction, therefore, has the potential to benefit not only ALLTEL and WWC's existing subscribers, but also wireless customers of other carriers as well since they would benefit from expanded roaming agreements and from ALLTEL as a more effective wireless competitor."<sup>11</sup>

Thus, according to the applicants, a primary public interest justification for allowing the merger is the facilitation of roaming on the merged system by the customers of other carriers, which suggests that it might be appropriate for the FCC to take a strong position in favor of voice and data roaming in ruling on these applications, as the applicants have essentially invited the FCC to do so by their main argument.

The lead application also argues that the merger will have no anti-competitive effects, even in counties where ALLTEL will hold 70 MHz of wireless spectrum and in the 23 cellular market areas (CMAs) where it will hold both cellular licenses.<sup>12</sup> The reason for this, according to the applicants, is that ALLTEL will still "face competition from at least six facilities-based operations in each

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<sup>9</sup> Ibid., pp. 4,7

<sup>10</sup> Exhibit 1, p. 7.

<sup>11</sup> Exhibit 1, p. 8.

<sup>12</sup> Exhibit 1, pp. 10-14.

CMA."<sup>13</sup> The applicants also argue that they will have to deal with "competitive pressure" from other nationwide carriers, "whether or not those carriers provide service in the smaller markets."<sup>14</sup>

However, the primary competitive justification for the merger is the "in market" competition from other cellular, PCS and ESMR service providers.<sup>15</sup> That argument is supported by a detailed discussion of competition in the "70 MHz" markets and by two charts, the first listing the amount of spectrum held by ALLTEL and Western Wireless in all counties, and the second showing all the spectrum held by ALLTEL, Western Wireless and their competitors in the CMAs in which ALLTEL's and Western Wireless's spectrum overlaps.

Some of those asserted competitors are quite small. Attachment 3 lists the prospective competitors, which include affiliates of the national carriers, as well as mid-sized, regional and rural carriers such as Dobson Communications Corp, Rural Cellular Corporation, and USCC. However, also included are such small carriers as CT Cube, Lewis & Clark, Cricket, and High Plains.<sup>16</sup> However, the strength of the competition that would remain "in market" after the merger will be particularly important in the markets in which ALLTEL proposes to hold both cellular licenses, particularly in rural areas, such as in parts of Kansas and Nebraska. The FCC should examine carefully the effect of the merger in such markets and pursue any remedial measures that may be appropriate.

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<sup>13</sup> Exhibit 1, p. 11

<sup>14</sup> *Ibid.*

<sup>15</sup> Exhibit 1, pp. 10-14, Attachments 2 and 3.

<sup>16</sup> Exhibit 1, Attachment 3.

Apart from any other relief that the FCC pursues, however, it will still be important to ensure that regional and local wireless providers will be able to fulfill the competitive functions extolled in the applications. This will only be possible if their customers are able to roam on the networks of the national carriers. If regional and rural carriers cannot obtain roaming agreements on reasonable terms and conditions, then the service such carriers provide will become an inferior service and the number of competitors will inevitably be substantially reduced.

As noted above, the application does state that ALLTEL plans to continue to provide roaming services to other carriers. USCC, however, would submit that this is an expression of current intent, which may change, and makes no reference to data roaming. Thus, it is insufficient to safeguard the public interest without further action by the FCC.

What is needed is a separate FCC statement of policy that the national carriers must enter into automatic roaming agreements with small, mid-sized and regional carriers on reasonable terms and conditions and that a general refusal to do so on the part of a national carrier would be treated as an unjust and unreasonable practice under Sections 201 and 202 of the Communications Act [47 U.S.C. Sections 201 and 202].

USCC does not ask the FCC to supervise or micromanage negotiations or roaming agreements between carriers or that it act on this issue in connection with the above-captioned applications. What we ask is a statement of principle by the FCC, if it approves these applications, to the effect that the availability of roaming

for small, mid-sized and rural wireless carriers on the systems of the national carriers will be crucial to the maintenance of wireless competition in the future.

USCC made a similar request in the context of the AT&T Wireless/Cingular merger, and other commenters challenged the likely effect of that merger on roaming rates and other roaming practices.<sup>17</sup> The Commission, in approving the merger, found that owing to competitive factors "the merger would not adversely affect the availability of roaming services or raise roaming rates passed through to customers."<sup>18</sup> Thus, it did not provide the requested statement of principle or impose any restrictions on Cingular, other than requiring Cingular not to block its own customers' attempts to roam on the systems of other carriers.<sup>19</sup> The FCC did not refer to data roaming in that discussion.

We would submit that the FCC should consider this issue now, for two additional reasons. First, the pace of mergers is accelerating across the wireless industry. Mergers such as this one further reduce the number of competitors in the market and may become anti-competitive. The FCC ought to act to preserve the existence of small, mid-sized, and rural carriers and arm them to provide as much price and service discipline for the larger carriers as is possible. Such carriers cannot survive without roaming access to the national carriers, and as they develop data services, such services ought to be part of roaming agreements, as the necessary technology develops to accommodate data roaming.

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<sup>17</sup> See, AT&T Wireless Services, Inc. and Cingular Wireless Corporation Memorandum Opinion and Order, 19 FCC Rcd 21522, 21586-21592 (2004) ("Cingular/AWS Order").

<sup>18</sup> Ibid., at 21588.

<sup>19</sup> Cingular/AWS Order, at 21592.

In the Cingular/AWS Order, the Commission, in its roaming discussion, noted that its

"concern is with the effect of this merger on consumers of mobile telephony services, not on particular mobile telephony carriers per se."<sup>20</sup>

We submit that this formulation sets up a false opposition. Consumers benefit from competition but there can be no real competition without effective competitors.

Second, the pace of data service development makes it appropriate for the FCC to focus on this issue now. USCC, for example, offers many wireless data products, through its EasyEdge<sup>SM</sup> technology. USCC customers with specially equipped phones, wireless modems and PDAs, can download multiple applications, including games, news, sports information, ring tones and stock quotations. Other carriers are developing similar technologies. They represent a sizable part of wireless usage and revenues of the future. And it is urgently necessary that appropriate technologies be developed to facilitate the use of such applications while roaming. The Commission should make it clear that it believes carriers must work to develop appropriate interfaces to ensure that data roaming can take place alongside voice roaming. As noted above, USCC is now seeking to negotiate data roaming agreements with larger carriers including ALLTEL, and similarly situated regional and mid-sized carriers are certainly doing likewise. Thus, we submit that the time for FCC action to assist them and thus preserve competition is now.

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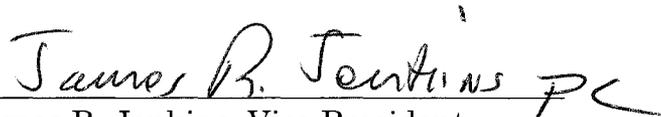
<sup>20</sup> Cingular/AWS Order, at 21591.

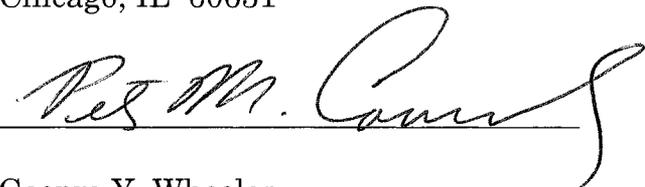
Conclusion

For the foregoing reasons, we ask that the FCC, in considering these applications, adopt a policy in support of voice and data roaming by small, mid-sized and rural wireless carriers on the systems of national carriers, including ALLTEL-Western Wireless.

Respectfully submitted,

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