

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Applications of)
)
Western Wireless Corporation,)
Transferor, and ALLTEL Corporation,) WT Docket No. 05-50
Transferee,)
) File Nos.: 0002016468, 0002016892,
) 0002016459, 002016476, 0002016889 and
) 0002018539
Applications for Transfer of Control)
Of Licenses and Authorizations)
)
To: The Commission

REPLY TO JOINT OPPOSITION TO PETITIONS TO DENY AND COMMENTS

Lamar County Cellular, Inc. (“Lamar”), by its attorneys, hereby replies to the Joint Opposition to Petitions to Deny and Comments (“Opposition”) filed by Western Wireless Corporation (“WWC”) and ALLTEL Corporation (“ALLTEL”) (collectively, “Applicants”) to Lamar’s March 9 Petition to Deny.

I. LAMAR HAS STANDING TO CHALLENGE THE PROPOSED TRANSACTION

The Applicants fail to demonstrate that Lamar lacks standing to challenge the proposed transaction. Pursuant to Section 309(d) of the Communications Act of 1934, as amended, Lamar has demonstrated specific allegations of fact sufficient to show that it is a party in interest and that the proposed transaction would be inconsistent with the public interest.¹ Specifically, Lamar demonstrated that it is a direct competitor of the Applicants in Lamar County, Texas and it, and its subscribers, will suffer real harm if the proposed transaction were to be completed as proposed. The Applicants cite to a series of cases that involved speculative damages concerning roaming rates where there was no direct link between the alleged harm caused to the

¹ See 47 U.S.C. § 309(d)(1).

petitioner and the transfer of control at issue.² In contrast, Lamar primarily raises concerns regarding market concentration occurring in Lamar's own market which would directly harm Lamar and which the Commission has already stated causes it concern and requires more in-depth analysis.³ Accordingly, the cases cited by the Applicant provide no support for their argument that Lamar lacks standing.

II. WIRELESS MARKET CONCENTRATION POST-TRANSFER WILL RESULT IN HARM TO LAMAR AND WIRELESS CONSUMERS.

The Applicants claim that no harm to consumers in Texas 7 – Fannin will result from the market concentration created by the proposed transfer of control.⁴ However, post-merger, ALLTEL would hold 70 MHz of spectrum in Texas 7 – Fannin. This level of market concentration, more than 41 percent of the market's spectrum, is further exacerbated when factored in with the decrease in market competitors, which could be further impacted by an approval of the Sprint/Nextel merger.⁵ Eliminating a competitor in small and rural markets will reduce pricing pressures to the detriment of consumers.

In the *Cingular/AWS Order* the Commission expressed concern that excessive market concentration could cause harm to consumers and carriers alike.⁶ Admittedly, Lamar is a small time player in a world of nationwide carriers like T-Mobile, Cingular, Verizon, Nextel and, if the transaction is completed, ALLTEL. However, to subscribers in Lamar County, where Lamar will shortly have the best coverage of any wireless provider,⁷ Lamar's provision of service is

² Opposition at 17, n. 51.

³ *In re Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, ¶ 181, WT Docket No. 04-70, et. al., FCC 04-255 (October 22, 2004) (“*Cingular/AWS Order*”).

⁴ Opposition at 11 n. 27.

⁵ Approval of the Sprint/Nextel merger would result in one less competitor in the market.

⁶ *Cingular/AWS Order* at ¶ 181.

⁷ Lamar has started the process of adding additional cellular sites in Lamar County. Specifically, Lamar has started site acquisition and filed notice with the Federal Aviation

paramount. In fact, without Lamar in the market, wireless coverage in Lamar County would be substantially diminished. Moreover, Lamar is committed to continuing to grow its operations to serve subscribers throughout Lamar County and other parts of Texas, rather than limiting its focus, like many of the larger carriers, to those areas, specifically highways, that will return the highest profit margin.

Lamar believes that the market concentration and market power that ALLTEL will possess in Texas 7 - Fannin as a result of the proposed transaction will result in real harm to Lamar and wireless consumers in the market. Specifically, the loss of a competitor in the market and the consolidation of ALLTEL and Western's spectrum in the market will allow ALLTEL to engage in anti-competitive pricing to price Lamar, and other market competitors, out of the market. Lamar, like most small carriers, has limited resources and since Lamar's goal is to build out all of the market, not just those areas that are most profitable, a further reduction in thin profit margins would cause a hardship for Lamar that would ultimately result in Lamar ceasing operations and rural consumers going without service. Therefore real harm, in the form of reduced coverage in Lamar County, will occur to wireless consumers in Texas 7-Fannin if Lamar is forced out of the market due to reduced pricing pressures.

The Commission's public interest authority enables it to impose and enforce narrowly tailored, transaction-specific conditions, such as divestiture, to ensure that the public interest is served by the transaction.⁸ For example, in the *Cingular/AWS Order*, the Commission required that Cingular divest itself of spectrum to overcome issues of market concentration. Likewise, ALLTEL should be required to divest itself of spectrum to resolve the instant issues of market concentration in the Texas 7 – Fannin market. Although the Commission required Cingular to

Administration. When completed, Lamar will have five cellular sites to cover Lamar County and will thereby offer the best coverage of the area of any wireless carrier.

⁸ See *Cingular/AWS Order* at ¶ 43.

divest spectrum in those markets where it would hold in excess of 80 MHz of spectrum, it is important to note that the Commission did not make the determination on the spectrum threshold through a finding of competitive harm, but rather the Commission arrived at the 80 MHz threshold based on Cingular's committing itself in its application to making those divestitures.⁹ Therefore, the Commission should not view the *Cingular/AWS Order's* 80 MHz threshold as controlling when conducting an analysis of the competitive market harm that would result from the proposed transaction. Moreover, post-merger of Cingular/AT&T, the Commission needs to factor in the impact of further market consolidation.

Lamar suggests that ALLTEL divest itself of 10 MHz of spectrum in the Texas 7 – Fannin market. This divestiture would serve the public interest and prevent harm to Lamar by making spectrum available to strengthen an incumbent competitor or to allow a new entrant into the market to replace the competitor that is being eliminated through consolidation of ALLTEL and Western.

III. THE COMMISSION SHOULD CONSIDER AUTOMATIC ROAMING IN THIS PROCEEDING.

The Applicants argue that Lamar improperly attempts to use this proceeding to address roaming issues which the Applicants believe are better resolved in a rulemaking.¹⁰ There is nothing improper about Lamar or other petitioners/commenters raising this issue in this proceeding. As United States Cellular Corporation correctly states, this proceeding could afford the Commission a platform for a strong pro-competition statement regarding the continuing need for roaming availability.¹¹ Further, the automatic roaming proceeding is well over four years old and significant industry changes have occurred since its release, especially with respect to recent

⁹ *Id.* at ¶ 199.

¹⁰ Opposition at 7.

¹¹ Comments of United States Cellular Corporation at 4.

market consolidations and mergers, including the instant proceeding.¹² It is time to act now. Rural and small carriers, who need to enter into roaming agreements to survive, can not continue to be held hostage at the whim of larger carriers with respect to whether such carriers will or will not enter into a roaming agreement and on what terms. Moreover, if ALLTEL, as it argues in its Opposition,¹³ has no incentive to impose unreasonably high rates or exclude other carriers from roaming arrangements, then ALLTEL should have no problem with the Commission imposing, as a condition to the transaction, language that requires ALLTEL to enter into automatic reciprocal roaming arrangements with small carriers.

¹² See Cingular/AWS Order; Qwest Wireless, LLC and Cellco Partnership d/b/a Verizon Wireless Seek Commission Consent for the Assignment of Sixty-Two Broadband Personal Communications Services Licenses, WT Docket No. 04-264, DA 04-2254, Public Notice (July 22, 2004); Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 05-63, DA 05-502, Public Notice (February 28, 2005).

¹³ Opposition at 12.

DECLARATION OF CLINT DORRIES

I, Clint Dorries, do hereby attest and state as follows:

1. I am Vice President of Lamar County Cellular, Inc.
2. I have read the foregoing Reply To Joint Opposition To Petitions To Deny And Comments and I have personal knowledge of the facts stated therein concerning the competitive impact of the Western Wireless/ALLTEL merger.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Clint Dorries

Subscribed and sworn to me this 28 day of March, 2005.



A notary public of Texas

My commission expires: 12-8-2005

