

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Application for) WT Docket No. 05-50
Transfer of Control)
Licenses and Authorizations)
from Western Wireless Corporation)
to ALLTEL Corporation)

REPLY

United States Cellular Corporation ("USCC") hereby replies to the "Joint Opposition to Petitions to Deny and Comments," filed by ALLTEL Corporation ("ALLTEL") and Western Wireless Corporation ("Western Wireless") ("Opposition"), in the above-captioned docket.

I. The FCC Should Enunciate A Policy In Favor
of Voice and Data Roaming In This Proceeding

In our comments on the captioned applications, USCC asked that the FCC use the opportunity their consideration provides to declare a policy in favor of national carriers, including ALLTEL-Western Wireless, continuing to make their facilities available to regional, small and mid-sized carriers for voice and data roaming. As we suggested, this should be done in the FCC's ruling on these applications.

In response ALLTEL-Western Wireless offer various arguments. First, consideration of roaming issues is improper in the context of evaluating a transfer application and should rather be the subject of a rulemaking.¹ Second, USCC's contentions and those of other petitioners constitute an impermissible collateral attack on Section 20.12 of the FCC's Rules, which

¹ Opposition, pp. 7-9.

mandates only "manual" roaming.² Third, ALLTEL and Western Wireless maintain that USCC's arguments are speculative and unsupported by the facts, and the transaction will in fact improve the roaming market for smaller carriers.³ In support of that point, the applicants cite prior FCC findings to the effect that shrinking the number of national GSM carriers to two (in the Cingular-AWS merger) would not adversely affect roaming.⁴ Thus, increasing the number of national CDMA carriers from two to three in this transaction cannot harm roaming. Thus, they claim USCC's argument is "dispose[d] of."⁵

However, USCC's arguments are not quite so easily disposed of. First, it is entirely appropriate for the FCC to enunciate important policies in ruling on a transfer application, and not merely in rulemaking proceedings. We would note that the FCC, in evaluating the Cingular-AWS merger, established criteria for evaluating wireless mergers,⁶ which all merger candidates, including ALLTEL and Western Wireless, now purport to meet.⁷

Indeed, ALLTEL and Western Wireless not only state that they meet the criteria, but also refer to the criteria approvingly and rely on them in demonstrating that their transaction is not anti-competitive.⁸

We also submit that the statement of policy we request does not require the gathering of additional data in a rulemaking proceeding. ALLTEL and Western Wireless themselves have declared the preservation and enhancement of roaming by other carriers as crucial to the public interest reasons for approving this application.⁹ The applicants state that the merged entity's

² Opposition, pp. 8-9.

³ Opposition, pp. 9-12.

⁴ Opposition, p. 11.

⁵ Ibid.

⁶ AT&T Wireless Services, Inc. and Cingular Wireless Corporation Memorandum Opinion and Order, 19 FCC Red 21522 (2004) ("Cingular-AWS Order").

⁷ ALLTEL-Western Wireless Transfer Application, Exhibit 1, pp. 4, 8-12, 17.

⁸ ALLTEL-Western Wireless Transfer Application, Exhibit 1, pp. 8-12.

⁹ ALLTEL-Western Wireless Transfer Application, Exhibit 1, pp. 4,7, and 8.

enhanced ability to be a roaming partner for other carriers is an important reason justifying the merger.¹⁰ It is difficult to comprehend why they would object to the FCC agreeing with them by adopting a policy in favor of ensuring the availability of voice and data roaming, the necessary pre-condition for future wireless competition, since they themselves have made the roaming issue a subject of FCC review.

Second, USCC does not seek reconsideration of Section 20.12 or the imposition of any "automatic" roaming requirements. As noted in our comments, we believe that the FCC's existing statutory tools, particularly Sections 201 and 202 of the Communications Act, are sufficient to enforce an anti-discriminatory roaming policy, provided the FCC makes clear what it expects of the national carriers.

Third and finally, we welcome the applicants' representations in their Opposition that they will continue to be good roaming partners. However, we would note that the Opposition makes no specific reference to data as well as voice roaming. Data roaming is increasingly integral to the survival of small, mid-sized and regional carriers, and thus to serving the Communications Act's pro-competitive purposes, and the FCC should act to assure that it will continue to exist. Moreover, the FCC should not merely accept the contentions of merging parties that their merger will be pro-competitive. All parties say that. The FCC has to make a predictive judgment, based on the facts before it as to whether that is the case, and if there is any doubt, condition the grant of the application on certain criteria being satisfied to ensure that the transaction will in fact be pro-competitive. We submit that without a policy that requires that voice and data roaming will continue to be available to small carriers, the competitive justification for this merger collapses. USCC's argument is not "speculative." It goes to the heart of this application's justification.

¹⁰ Ibid. p. 8.

Conclusion

For the foregoing reasons and those given previously, we ask that either the FCC adopt a policy in support of voice and data roaming by small, mid-sized and rural wireless carriers on the systems of the national carriers on reasonable terms in evaluating the above-captioned applications, or condition their grant to that effect.

Respectfully submitted,

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