

Before the
Federal Communications Commission
Washington, DC 20554

In re)	
Applications for)	
for the Transfer of Control)	
of Licenses and)	WT Docket 05-63;
Authorizations from)	DA 05-502;
Nextel Communications, Inc.)	File No. 0002031766
to Sprint 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. USCC also requests that the FCC require national carriers to allow interoperability of their "push to talk" technologies with those of 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.

The lead application asserts as a public interest justification for the merger, the continuing existence of regional wireless carriers as future competitors of Sprint Nextel. However, the availability of voice and data roaming for such carriers on the networks of larger systems and of future "push to talk" interoperability will be essential to the existence of such carriers. Also, the current development of data roaming and "push to talk" technology makes it appropriate for the FCC to act now.

It is not necessary for the FCC to wait for a rule making proceeding to take this action, which is essential for the preservation of competition in the wireless industry.

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COMMENTS

United States Cellular Corporation ("USCC") hereby files its Comments on the above-captioned transfer applications.¹ USCC requests that the FCC take this opportunity to require that "national" wireless carriers, such as Sprint Nextel, continue to make their networks available to the customers of regional, small and mid-sized carriers for voice and data roaming. USCC also requests that the FCC require national carriers to allow "interoperability" of their "push to talk" technologies with those of regional carriers as part of that voice and data roaming policy. USCC does not oppose this merger, but believes that the FCC must establish the necessary conditions for competition to flourish in a wireless industry in which there will be fewer competitors.

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

¹ See Public Notice, "Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations," WT Docket No. 05-63, DA 05-502, released February 28, 2005 ("Nextel Sprint Application").

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 Carolina, and in portions of Washington, Oregon and northern California.

However, USCC is not a national carrier and its network does not cover the whole country. Its customers' continuing ability to "roam" on the networks 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.² That number has been reduced to five with AT&T Wireless being absorbed by Cingular. Recently, the above-captioned application has been filed to merge Sprint with Nextel, which would reduce the number of national carriers to four, as well as applications to merge Western Wireless into ALLTEL.³

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

³ 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.

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 telecommunications companies, with all of the market power that their scale and 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.⁴ However, what all stakeholders agree upon is that if mergers among large telecommunications 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, as well as for "push to talk" services.

USCC's concern, previously raised in the context of the Cingular/AT&T Wireless merger, and in comments on the proposed Western Wireless-ALLTEL merger, as well as in Commission's "automatic roaming" and "rural services" proceedings,⁵ is that the "national" carriers could at some time in the future refuse

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

⁵ 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,

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.

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.⁶ We believe that much valuable information will be elicited as a result of the recent public notice. However, we submit that the filing of these applications,

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.

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

which seek to create the third largest wireless carrier in the United States,⁷ also provides another legitimate platform for a strong pro-competition statement from the FCC regarding the continuing need for roaming availability.

USCC acknowledges that its previous negotiations with Sprint have not reflected any such anti-competitive practices, particularly with respect to voice services.⁸ If in the future, however, Sprint Nextel or any of the other national carriers did seek to exploit their national "reach" by withholding roaming agreements on reasonable terms, 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 Sprint Nextel Application.

Exhibit 1 to the Sprint Nextel "lead" transfer application is 90 pages long and accompanied by eleven attachments. In considerable detail, the exhibit makes the

⁷ Nextel Sprint Application, Exhibit 1, p. 22.

⁸ USCC has also engaged in preliminary discussions with Sprint 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 "trialing" its data roaming capabilities in selected markets. USCC and Sprint did not reach an agreement, but USCC hopes to do so later this year.

case that the merger of Sprint and Nextel will strengthen the merged entity as a competitor, enhance intermodal competition, improve the service quality of the new entity, allow for efficient deployment of broadband infrastructure, and promote effective use by Sprint Nextel of previously underutilized authorizations in the 2.5 GHz band.⁹

The application maintains that the merged company will create an enhanced platform for resellers and will promote public safety communications by improving its own network and implementing Nextel's frequency "swap" from the 700 and 800 MHz bands into the 1.9 GHz band.¹⁰

The application also argues that the merger will not harm competition. The applicants maintain that wireless competition remains robust, as indicated by reductions in wireless prices to consumers¹¹ and argues that competition will be protected by future auctions of new spectrum as well as such FCC policies as partitioning, disaggregation, and "secondary markets."¹²

Most importantly, from a competitive standpoint, there

"will continue to be four national carriers, as well as a substantial number of MVNOs and regional and local providers from which consumers will be able to take their wireless service."¹³

The continuing existence of those competitors is obviously crucial to the application's analyses of the "relevant product market" and "relevant geographic market," which use technical antitrust tools such as the Herfindahl-Hirschman Index to conclude that the merger will pose no threat to competition.¹⁴ Similarly, the application's demonstration of the absence of any adverse "unilateral" or "coordinated" effects from the merger is dependent on the assumption that there will be a sufficient number of competitors, including "regional competitors" to

⁹ Exhibit 1, pp. 4-53.

¹⁰ Exhibit 1, pp. 53-63.

¹¹ Exhibit 1, p. 65.

¹² Ibid.

¹³ Exhibit 1, p. 66

¹⁴ Exhibit 1, p. 70-75.

"absorb" hypothetical Sprint Nextel customers seeking to escape possible future price increases or to function as "mavericks" if Sprint Nextel were to collude with other carriers to raise prices.¹⁵

Also, Sprint Nextel's charts demonstrating that the merged company will not hold under excessive spectrum in any BTA¹⁶ are of course dependent for their future validity on the continuing health of their local competitors in each of the listed markets.

Given that the existence of competitors is fundamental to the application's showing, it is striking that the application does not say a word about the continuing availability of voice, let alone data, roaming for other carriers on the proposed Sprint Nextel network.

This is in marked contrast to the recent ALLTEL-Western Wireless transfer application, in which the applicants stated that the merger would:

"provide a business base broad enough for ALLTEL to consider the deployment of additional technologies (e.g. GSM) that will expand the availability of automatic roaming throughout the United States."¹⁷

That application also argued that by enlarging its footprint ALLTEL would become a "more attractive roaming partner" for other carriers and promised that ALLTEL would "explore steps" to increase roaming opportunities "for other carriers," including a possible GSM overlay for the benefit of roamers.¹⁸ The applicants concluded 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

¹⁵ Exhibit 1, p. 73-86, especially pp. 82-83.

¹⁶ See Attachments G, H, and I to Exhibit 1.

¹⁷ ALLTEL -Western Wireless Application, Exhibit 1, p. 4.

¹⁸ ALLTEL-Western Wireless Exhibit 1, p. 7.

expanded roaming agreements and from ALLTEL as a more effective wireless competitor."¹⁹

Thus, according to the applicants, a primary public interest justification for allowing the ALLTEL-Western Wireless merger was the facilitation of roaming on the merged system by the customers of other carriers.

Sprint and Nextel offer no similar public interest justification. Indeed, while not in the roaming context specifically, one of the justifications offered for the merger is greater network self-sufficiency, that is, Nextel's ability to "move traffic [from other carriers] to Sprint Nextel's own facilities."²⁰ While we understand that that statement and similar statements do not constitute hostility to roaming per se, we nonetheless submit that it is not acceptable for the FCC to approve this and similar mergers without a clearly enunciated policy that voice and data roaming by small, mid-sized and regional carriers on the networks of larger carriers will be essential to the preservation of competition in the wireless industry.

Only if such a policy is in place will regional and local wireless providers be able to fulfill the competitive functions referred to in the application. If regional and rural carriers cannot obtain roaming agreements on reasonable terms, then the service such carriers provide will become an inferior service and the number of competitors will inevitably be substantially reduced. The Commission should require that the national carriers enter into automatic roaming agreements with small, mid-sized and regional carriers on reasonable terms and that a general refusal to do so on the part of a national carrier would be treated as an unjust and

¹⁹ ALLTEL-Western Wireless Exhibit 1, p. 8.

²⁰ Exhibit 1, p. 27.

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. What we ask is a statement of policy by the FCC, if it approves this and similar 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.

We also submit that such a statement of policy does not require a rule making proceeding. If the preservation and enhancement of competition is crucial to the public interest justification for approving this application, then a statement in favor of preserving the necessary pre-conditions for such competition is most appropriate and necessary.

USCC made a similar request in the context of the AT&T Wireless/Cingular merger last year, and other commenters challenged the likely effect of that merger on roaming rates and other roaming practices.²¹ The Commission, in approving that 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."²² Thus, it did not provide the requested statement of policy or impose any restrictions on Cingular, other than requiring Cingular not to block

²¹ See, AT&T Wireless Services, Inc. and Cingular Wireless Corporation Memorandum Opinion and Order, 19 FCC Rcd 21522, 21586-21592 (2004) ("Cingular/AWS Order").

²² Ibid., at 21588.

its own customers' attempts to roam on the systems of other carriers.²³ The FCC did not refer to data roaming in that discussion.

We submit that the FCC should consider this issue now, as well as in the ALLTEL-Western Wireless merger, for three additional reasons. First, as noted above, the pace of mergers is accelerating across the wireless industry. Mergers such as this one, whatever their other effects, reduce the number of competitors in the market and thus reduce competition, particularly when two large carriers such as Sprint and Nextel combine. 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.

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."²⁴

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

²³ Cingular/AWS Order, at 21592.

²⁴ Cingular/AWS Order, at 21591.

products, through its EasyEdgeSM 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. As noted above, USCC is now seeking to negotiate data roaming agreements with larger CDMA carriers, 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.²⁵

Third and finally, the Commission should make it clear that it believes carriers and equipment vendors must work to allow interoperability for all data based features, including push to talk, photo and video delivery and SMS delivery. For example, "push to talk" is now emerging as a crucial issue in the wireless industry. The transfer application is replete with references to Sprint Nextel's "high performance push to talk features."²⁶ USCC is also developing a push to talk capability, with commercial rollout anticipated later this year. USCC's technology (Motorola Winphoria) is not now interoperable with either Nextel's iDEN system or Sprint's push to talk technology (Motorola DynamicSoft). USCC has not yet sought interoperability agreements with other carriers, but anticipates doing so soon. In any case, the FCC can and should utilize the pending wireless mergers to state a

²⁵ In this connection, we would note that the application also emphasizes the merger's positive impact on development of Sprint Nextel's own mobile data offerings. Exhibit 1, pp. 25-28.

²⁶ See, e.g., Exhibit 1, pp. 1, 23, and 24.

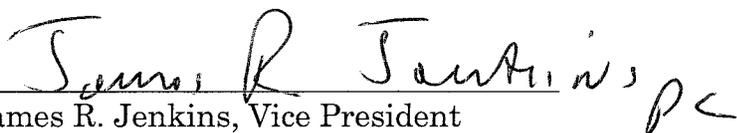
policy which also requires interoperability for all data based features, including push to talk, photo and video delivery and SMS delivery, as a means of preserving competition in a wireless world dominated by ever larger national carriers.

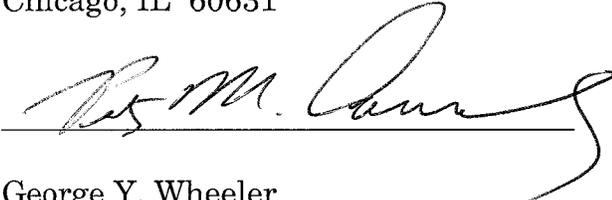
Conclusion

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 networks of national carriers, including Sprint Nextel, as well as interoperability between the networks of national and regional carriers for all data based features.

Respectfully submitted,

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