

LUKAS, NACE, GUTIERREZ & SACHS

CHARTERED

1650 TYSONS BOULEVARD

SUITE 1500

McLEAN, VIRGINIA 22102

DAVID L. NACE
ADMITTED IN D.C. ONLY
(703) 584-8661

April 5, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

**Re: *Ex Parte* Communication,
WT Docket No. 05-50
DA 05-332
File No. 0002016468**

**In re Application for the Transfer of Control of Licenses
and Authorizations from Western Wireless Corporation
and its subsidiaries to ALLTEL Corporation**

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. Section 1.1206, and on behalf of Rural Cellular Association ("RCA"),¹ we hereby submit an *ex parte* presentation in connection with the above-captioned proceeding.

The proposed consolidation of national wireless carriers will affect the state of competition in the Commercial Mobile Radio Services. RCA urges the Commission to consider the impact on the rural wireless industry and upon consumers' access to quality signal levels from a wide choice of providers throughout the United States.

**A. The FCC Should Ensure the Availability of Automatic Roaming for both
Voice and Data Traffic in a Consolidating Industry**

¹ RCA was formed in 1993 to address the distinctive issues facing wireless service providers. RCA represents the interests of approximately 100 small and rural wireless licensees providing commercial services. Member companies offer service in more than 135 rural and small metropolitan markets where more than 14.6 million people reside in the United States.

The impending consolidation of the wireless telecommunications industry to five national carriers (AT&T/Cingular, Sprint/Nextel, Alltel/Western Wireless, Verizon Wireless and T-Mobile), if effectuated, will concentrate upon national carriers an extraordinary market power. The best means by which the FCC can counter this effect and maintain a sharply competitive marketplace for wireless services is to express policies to strengthen the viability of small and mid-sized carriers.

RCA encourages the Commission to adopt measures that will maintain the availability of automatic roaming for consumers using wireless devices for voice, data and other applications. The FCC should issue a clear directive to large carriers of their responsibility to maintain and advance opportunities for roaming by entering into agreements with small carriers. Without such action by the Commission, rural areas will be vulnerable to the monopolistic effects of the creation of super-sized carriers who are able to isolate rural or non-profitable areas into vacuums where no service is available, even though the local carrier is propagating signal useful to the wireless user. Whether by design or neglect, national carriers can deprive rural customers of service by failing to reach automatic roaming agreements with rural carriers.

The regulatory options available to the Commission to enforce and protect a competitive roaming marketplace include:

- (1) Issue a policy statement in connection with any decision granting the proposed Western Wireless/ALLTEL merger. Encouraging Western Wireless/ALLTEL and other large carriers to actively negotiate with smaller carriers, in a fair and nondiscriminatory manner, to effectuate terms for roaming that will be attractive to rural customers who roam into the service area of large carriers.
- (2) Issue and publicize decisions on complaints presented on the subject of refused or onerous roaming agreements being pushed by larger carriers onto smaller carriers.
- (3) Issue forfeitures or other penalties for violation of the anti-discrimination provisions of Sections 201 and 202 of the Communications Act.²
- (4) Adopt rules prohibiting the imposition by national carriers of unilateral roaming terms and conditions upon small and mid-sized carriers.

The Commission has a duty to assess the overall effect of mergers on the marketplace, including the market for services to roamers. Receiving signal in roamer markets enhances both competition and the experience of users of wireless services. Failure among carriers to exchange provisions for automatic roaming detracts from the success of the wireless marketplace and diminishes consumer enthusiasm for the service. Promotion of good roaming policy by the

2 47 U.S.C. Sections 201 and 202.

Ms. Marlene H. Dortch

April 5, 2005

Page 3

Commission will benefit rural and non-rural consumers as they face the effect of carrier consolidation.

The Commission must attenuate the anti-competitive effects of mergers by preserving the viability of small carriers across America. People will become more dependent upon the mobility and reliability of their communications devices. Roaming access is critical to the health of a nation whose people are increasing their use of wireless devices. Customers of small and rural carriers must be able to roam seamlessly onto the network of larger carriers, and customers of large and urban carriers must be able to trust that their wireless service will not end at the edge of a metropolitan area. Roaming is essential to the circulation and safety of the American population.

B. The FCC Should Promote a Roaming Infrastructure that Will Accommodate Future Wireless Services and Technologies

As the wireless industry matures, the Commission should ensure that developing technologies will work outside the customer's home market. Wireless modems, PDAs and other devices will become more substantial users of spectrum, and thus a greater factor in the business of wireless services. The availability of roaming for new types of applications will be as important as it has been to date for voice communications. The Commission should support the development of new roamer technologies, and should encourage or demand the cooperation of large carriers with small carriers to advance the use of new wireless services throughout the nation.

Conclusion

Small and mid-sized rural carriers such as the members of RCA ask the Commission to preserve and promote automatic roaming agreements between large carriers and their smaller co-carriers. As it considers the competitive effects of the Western Wireless/ALLTEL transaction, and in other contexts, the Commission should engage the more powerful entities in the industry to responsibly and reasonably negotiate fair automatic roaming agreements with carriers who serve rural areas of the United States. In so doing the Commission will promote competition in rural areas and will preserve the mobility of wireless services, in keeping with the expectations of American consumers.

Sincerely,

Filed Electronically

David L. Nace

Counsel for Rural Cellular Association

cc: Best Copy and Printing, Inc. (by email)