

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of)	WT Docket No. 05-339
Midwest Wireless Holdings, L.L.C.)	
And ALLTEL Communications, Inc.)	
)	
For Consent for Transfer)	
Of Control of Licenses)	
And Authorizations)	
)	
File No. 0002391997)	

PETITION TO DENY OF UNITED STATES CELLULAR CORPORATION

Lawrence R. Fullerton
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

Peter M. Connolly
Holland & Knight LLP
2099 Pennsylvania Avenue, NW
Washington, DC 20006
202-862-5989

January 30, 2006

Table of Contents

INTRODUCTION AND SUMMARY	2
STANDING	3
DISCUSSION	5
1. FCC Merger Review Standards	5
2. Recent Intervention in ALLTEL-Western Wireless Merger	7
3. ALLTEL's Purported Justifications for Acquisition of Midwest	10
a. The FCC Should Review ALLTEL's Identification of Markets Worthy of Competitive Effects Analysis	10
b. The FCC Should Investigate Thoroughly the Prospects for Horizontal Anticompetitive Effects	12
c. The FCC Should Investigate Thoroughly the Prospects for Vertical Anticompetitive Effects	16
4. Divestiture of Midwest Wireless Communications	18
CONCLUSION	21

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of)	WT Docket No. 05-339
Midwest Wireless Holdings, L.L.C.)	
And ALLTEL Communications, Inc.)	
)	
For Consent for Transfer)	
Of Control of Licenses)	
And Authorizations)	
)	
File No. 0002391997)	

PETITION TO DENY

United States Cellular Corporation ("USCC") petitions the Federal Communications Commission to deny the above-captioned applications, in accordance with the Commission's December 30, 2005 public notice,¹ and Section 309(d) of the Communications Act of 1934, as amended.²

Contrary to the assertions of the applicants, the proposed acquisition by ALLTEL Corporation, Inc. ("ALLTEL") of Midwest Wireless Holdings, L.L.C. ("Midwest") would be profoundly anticompetitive. In southern Minnesota, the proposed transaction would combine substantial, competing wireless operations that utilize both the A-side and B-side cellular licenses and substantial amounts of PCS spectrum. In doing so, this transaction would produce market concentration and spectrum aggregation that far exceed the levels that prompted the Commission, as well as the Department of Justice, to intervene in the earlier ALLTEL-Western

¹ See *Public Notice*, Midwest Wireless Holdings, L.L.C. and ALLTEL Communications, Inc. Seek FCC Consent to Transfer Control of Licenses and Authorizations, DA 05-3169, released December 30, 2005.

² 47 U.S.C. § 309(d) (2006).

Wireless transaction.³ In addition, the proposed transaction would reduce by one (and in some areas, reduce to only one) the number of potential roaming partners for USCC and other CDMA carriers in southern Minnesota. The Commission should investigate this transaction thoroughly, and either deny the subject applications or approve them with divestitures that would protect competition and consumers.⁴

INTRODUCTION AND SUMMARY

In its recent evaluations of mergers and similar transactions involving wireless carriers, the Commission's chief public interest concern has been possible harm to competition from the excessive concentration of subscribers and cellular and PCS spectrum in relevant wireless markets. In order to remedy prospective harms to competition in the recent ALLTEL-Western Wireless merger, for example, the Commission required the divestiture of Western Wireless's operations in 16 Cellular Market Areas ("CMAs") in Nebraska, Kansas, and Arkansas.

The Commission's focus in evaluating wireless transactions is on whether they threaten to create, enhance, or facilitate the exercise of market power, which is defined to be the power to raise prices above competitive levels. To determine which CMAs warrant scrutiny, the Commission applies three tests, or "screens," which measure the extent to which the transaction would (1) increase market concentration to a potentially significant level; (2) increase market concentration by a significant amount; and (3) increase the spectrum holdings of the combined entity to 70 MHz or more. The Commission then evaluates the likely competitive effects of the

³ Application of ALLTEL Corp. and Western Wireless Corp., *Memorandum Opinion and Order*, 20 FCC Rcd. 13053 (2005) ("ALLTEL-Western Wireless Order").

⁴ On January 12, 2006 USCC filed an action against Midwest Wireless Holdings, L.L.C. to enforce its contractual right of first refusal to purchase Midwest Wireless Holdings' majority interest in Midwest Wireless Communications, L.L.C. and to restrain Midwest Wireless Holdings from selling that interest to ALLTEL. See Complaint, *Minnesota Invco of RSA #7, Inc. v. Midwest Wireless Holdings*, C.A. No. 1887-N (Del. Ch., filed Jan. 12, 2006).

transaction in relevant markets in each of these CMAs, focusing on the number and size of remaining competitors, their ability to expand or reposition in response to any attempt to exercise market power, ease of entry, and other relevant factors.

Merely by applying the 70 MHz screen, it is clear that the proposed transaction requires extensive scrutiny in at least five CMAs: Minnesota RSAs 7, 8, 9, 10, and 11.⁵ Indeed, the combined spectrum holdings of ALLTEL and Midwest would reach as high as 100 MHz or more in a number of counties in southern Minnesota. In their public interest analysis, the applicants have failed to demonstrate that the anticompetitive effects in these RSAs would be outweighed by any public interest benefits. The transaction may threaten anticompetitive harms in other geographic areas as well. The Commission should not approve this transaction without, at a minimum, requiring the combined company to divest Midwest Wireless Communications, L.L.C., the business unit of Midwest Wireless Holdings, L.L.C. that operates in the southern Minnesota markets.

STANDING

To establish their standing to challenge an application such as this, the Commission requires petitioners to allege sufficient facts to demonstrate that the grant of the application would cause the petitioner a direct injury.⁶ A petitioner must establish a "causal link" between the claimed injury and the proposed Commission action by showing that (a) the injury can fairly be traced to the challenged action; and (b) the injury could be prevented or redressed by the relief requested.⁷ USCC can make that showing.

⁵ USCC will refer to "CMAs" below by their appropriate FCC cellular market classifications "Rural Service Areas ("RSAs") or Metropolitan Statistical Areas ("MSAs").

⁶ *Friends of the Earth, Inc. and Forest Conservation Council*, 17 FCC Rcd. 201, ¶6 (CWD 2002); *AmericaTel Corp.*, 9 FCC Rcd. 3993, ¶¶8-10 (1994).

⁷ *Los Angeles Cellular Tel. Co.*, 13 FCC Rcd. 4601, 4604 (CWD 1998).

USCC provides cellular and PCS service to over 5.2 million customers nationwide. Its main regional concentration is in the Midwest, in the states of Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, and Wisconsin. USCC has other regional "clusters," but it 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 is vital to USCC's ability to provide competitive services to its customers.

Of particular concern in this transaction is its anticompetitive effects in Minnesota RSAs 7, 8, 9, 10 and 11, which are adjacent or very close to USCC owned and/or operated Iowa RSAs 12, 13, 14, and 16; Wisconsin RSAs 5, 6, and 8; and the Rochester and La Crosse MSAs. As demonstrated below, this transaction would threaten higher prices by increasing market concentration substantially in markets that are already highly concentrated, and aggregating substantial amounts of cellular and PCS spectrum. In addition, since USCC, ALLTEL and Midwest are all CDMA carriers, the proposed transaction would reduce by one (and in some areas, reduce to only one) the number of roaming partners available to USCC and other CDMA carriers in southern Minnesota.

USCC's status as a party in interest in this proceeding thus derives from both its status as a regional carrier seeking to preserve a competitive wireless industry, and as a roaming partner with both ALLTEL and Midwest, which would no longer compete with one another to provide roaming services following this transaction. The Commission and courts have held in the past that economic interests such as these are sufficient to confer standing to participate in various types of Commission proceedings.⁸ Those cases are properly applicable here.⁹

⁸ See *Orange Park Florida T.V., Inc. v. Federal Communications Commission*, 811 F.2d 664, 670-74 (DC Cir. 1987) and cases cited therein.

DISCUSSION

Contrary to ALLTEL's assertions, its acquisition of Midwest would have profoundly anticompetitive effects. From ALLTEL's own filing and other readily available information, it is clear that the proposed transaction would inevitably harm competition in relevant markets for mobile telephony services in southern Minnesota, and possibly elsewhere.

1. FCC Merger Review Standards

In its recent reviews of mergers and similar transactions involving wireless carriers, the Commission has applied a public interest test to proposed transactions, using a precise methodology for evaluating possible anticompetitive effects, as a prominent part of its approval process.

The Commission evaluates proposed transactions pursuant to sections 214(a) and 310(d) of the Communications Act of 1934, as amended,¹⁰ under which the Commission must determine whether the transaction would serve the public interest, convenience, and necessity. The public interest standards of sections 214(a) and 310(d) involve a balancing process that weighs the potential public interest harms of the proposed transaction against the potential public interest benefits. Significantly, the parties to the transaction bear the burden of proving, by a preponderance of the evidence, that the proposed transaction serves the public interest.

The Commission's public interest evaluation is guided by a "deeply rooted preference for preserving and enhancing competition in relevant markets."¹¹ The Commission's review of the

⁹ Whether or not the Commission finds standing, it should nevertheless consider USCC's claims, as it did in the ALLTEL-Western Wireless and Sprint-Nextel proceedings. See *ALLTEL-Western Wireless Order*, at ¶ 104 n. 269; Application of Sprint Corp. and Nextel Communications Inc., *Memorandum Opinion and Order*, 20 FCC Red. 13967, ¶ 150 n. 335 (2005) ("*Sprint-Nextel Order*").

¹⁰ 47 U.S.C. §§ 214(a), 310(d) (2006).

¹¹ *ALLTEL-Western Wireless Order*, at ¶ 19.

competitive effects of the transaction is informed by the *Horizontal Merger Guidelines* issued by the antitrust enforcement agencies.¹² The Commission is not limited to applying the principles articulated in these *Guidelines*, however, or by other traditional antitrust principles.¹³ The Commission's public interest authority enables it to impose and enforce transaction-specific conditions that will ensure that the public interest may be served by transactions it chooses to approve.¹⁴

In its evaluation of the competitive effects of a proposed transaction, the Commission considers horizontal issues primarily (i.e., the prospects for harm from increased concentration within a market), but also vertical issues. The principle guiding the Commission's review is that a transaction is unlikely to serve the public interest if it creates, enhances, or facilitates the use of significant market power, absent significant offsetting efficiencies or other public interest benefits.¹⁵

Mirroring the approach of the *Horizontal Merger Guidelines*, the Commission defines relevant product and geographic markets, identifies participants in the market, estimates market shares and pre-merger and post-merger concentration levels, and evaluates the ease of new entry, expansion and repositioning by rivals, and other factors that are relevant to a thorough competitive effects analysis. One of the Commission's central concerns is with the combined spectrum holdings of the merged company. The Commission evaluates competitive effects in markets within CMAs that are identified through the application of a three-part screen that

¹² Horizontal Merger Guidelines, issued by the U.S. Department of Justice and the Federal Trade Commission (Apr. 2, 1992, revised Apr. 8, 1997) ("*Horizontal Merger Guidelines*").

¹³ *ALLTEL-Western Wireless Order*, at ¶ 20.

¹⁴ *Id.* at ¶ 21.

¹⁵ *Id.* at ¶ 22.

includes a screen for excessive spectrum aggregation.¹⁶ In the markets that are selected for review, the Commission evaluates the prospects that the transaction will enable the combined entity to exercise market power unilaterally, or through “coordinated interaction” with rivals.¹⁷

2. Recent Intervention in ALLTEL-Western Wireless Merger

Applying these principles recently to the proposed ALLTEL-Western Wireless merger, the Commission joined the Department of Justice in requiring substantial divestitures in 16 RSAs in Nebraska, Kansas and Arkansas that were very similar to the relevant RSAs in southern Minnesota, rejecting a number of the same arguments that ALLTEL advances in the current proceeding.

In the relevant RSAs in Nebraska, Kansas and Arkansas, as here, ALLTEL proposed to combine the A-side and B-side cellular licensees in rural markets in which PCS competitors had built out their networks to only a limited degree. The transaction increased market concentration substantially, but ALLTEL argued that adverse unilateral effects were unlikely, primarily because (1) PCS competitors offered a substitutable service; (2) PCS competitors could easily expand their networks or reposition in response to any attempt by the combined company to increase prices; (3) relevant market participants included resellers, satellite providers, mobile virtual network operators (“MVNOs”), and wireless Voice Over Internet Protocol (“VOIP”) providers; and (4) new entry by competitors in all of these categories was easy.¹⁸

¹⁶ The three thresholds that trigger additional review are: (1) the post-merger Herfindahl-Hirschman Index (“HHI”) would be greater than 2800 and the change in HHI would be 100 or greater; (2) the change in HHI would be 250 or greater regardless of the level of the post-merger HHI; or (3) post-transaction, the combined entity would hold 70 MHz or more of spectrum. *Id.* at ¶ 46.

¹⁷ *Id.* at ¶¶ 23-24, 93.

¹⁸ *Id.* at ¶¶ 37, 55-56, 67-71, 80.

But the Commission and the Justice Department rejected these arguments, holding that the merger was anticompetitive. The Commission approved the transaction only when ALLTEL agreed to divest Western Wireless's existing retail wireless businesses (including Western Wireless's cellular licenses) in each of the 16 affected RSAs, and the Justice Department permitted the transaction to close only subject to a formal divestiture consent decree.¹⁹

The Commission held that “this transaction *is* likely to result in adverse unilateral effects in many of the ... markets identified by the initial screen,”²⁰ finding that: (1) in the markets where ALLTEL and Western Wireless overlapped, “other providers generally are unable to match the price/service options offered by the applicants”; (2) “other licensees in these markets have limited ability to reposition in response to any attempted exercise of market power by the merged firm”; and (3) “entry by firms not currently in the market cannot be counted on to prevent possible exercise of market power.”²¹ The Commission also rejected the argument that resellers, satellite providers, MVNOs and wireless VOIP providers could be counted upon to restrain anticompetitive conduct in these markets.²²

The Complaint filed by the Department of Justice to challenge the ALLTEL-Western Wireless merger was similarly explicit in rejecting the arguments that PCS carriers offer a ready substitute for the services offered by cellular carriers and that PCS carriers can expand their networks to constrain price increases by a company that holds both the A-side and B-side licenses. The Department's reasoning started with a recognition that differences in the

¹⁹ *Id.* at ¶ 162. [Proposed] Final Judgment at 4-5, *United States v. ALLTEL*, Case No. 1:05CV01345 (D.D.C. 2005) (“ALLTEL-Western Wireless Final Judgment”); Competitive Impact Statement at 8, 11-14, *id.*

²⁰ *ALLTEL-Western Wireless Order*, at ¶ 84 (emphasis in original).

²¹ *Id.*

²² *Id.* at ¶ 72.

propagation characteristics of cellular and PCS signals make it far more costly to build out PCS networks, as compared with cellular networks.²³ For this reason, and because ALLTEL and Western Wireless, as the holders of the two cellular licenses in the market, were early entrants into these markets, “ALLTEL’s and Western Wireless’ networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum.”²⁴ As a result, (1) “ALLTEL and Western Wireless are likely closer substitutes for each other than the other mobile wireless services providers who own only PCS spectrum”; and (2) “[e]xpansion by [PCS] providers who hold spectrum in these areas is ... unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz cellular spectrum.”²⁵ Finally, the higher build-out costs, combined with relatively low population density makes new entry in response to a small but significant price increase untimely, unlikely, and insufficient to thwart the competitive harm from the proposed merger.²⁶

Notwithstanding this recent guidance in a highly analogous situation, ALLTEL relies upon these same arguments to justify its current, even more anticompetitive transaction.²⁷ The Commission should not accept this disregard for its precedents; rather, it should investigate

²³ See Complaint at 11, *United States v. ALLTEL*, Case No. 1:05CV01345 (D.D.C. 2005) (“DOJ Complaint”) (“The estimated coverage advantage of the 800 MHz cellular spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCS networks than for cellular networks.”).

²⁴ *Id.* at 9.

²⁵ *Id.* at 9, 10-11.

²⁶ *Id.* at 11.

²⁷ See Application of ALLTEL Corp. and Midwest Wireless Holdings, L.L.C., *Application for Consent to Transfer Control, Exhibit 1, Description of Transaction and Public Interest Statement*, FCC 05-339, at 10, 13-14 (“ALLTEL-Midwest Application”) (claiming that in markets with overlapping licenses, the combined entity would face “competitive pressure from at least five nationwide and other carriers, whether or not those carriers provide facilities-based service in the overlapping markets”).

ALLTEL's current transaction, as it did the earlier one, and reject these arguments in the current context.

3. ALLTEL's Purported Justifications for Acquisition of Midwest

A preliminary analysis of ALLTEL's purported justifications for its acquisition of Midwest shows that it has fallen far short of its obligation to demonstrate net public interest benefits by a preponderance of the evidence. Indeed, this transaction is so profoundly anticompetitive in southern Minnesota that meeting such a burden would be inconceivable.

a. The FCC Should Review ALLTEL's Identification of Markets Worthy of Competitive Effects Analysis

The Commission should investigate to determine whether a competitive effects analysis is warranted in CMAs beyond the ones ALLTEL has identified for review. As noted above, the Commission starts its analysis with a definition of relevant markets. The Commission has found that the relevant product market is a "combined market for mobile telephony services," defined to include mobile voice and data services for residential and enterprise users provided over cellular, PCS, and specialized mobile radio (SMR) frequencies.²⁸ ALLTEL appears to adopt this accepted product market definition.²⁹

The Commission has found that the relevant geographic market is "local," consisting of "multiple counties."³⁰ While the Commission used data for CMAs and Component Economic Areas ("CEAs") in its review of the ALLTEL-Western Wireless merger,³¹ it is clear that in its substantive analysis the Commission considered smaller, more localized markets where

²⁸ *ALLTEL-Western Wireless Order*, at ¶¶ 29-30.

²⁹ *ALLTEL-Midwest Application*, Exhibit 1, at 7.

³⁰ *ALLTEL-Western Wireless Order*, at ¶¶ 34-35.

³¹ *Id.* at ¶¶ 44-45.

appropriate.³² In its purported justification for the present transaction, however, ALLTEL asserts that the relevant geographic markets are CEAs and CMAs.³³ As it did in its investigation of the ALLTEL-Western Wireless merger, the Commission should consider whether smaller geographic markets exist and whether the proposed transaction is anticompetitive in any such market.

In addition, because of data limitations, ALLTEL has only applied one of the three screens used by the Commission to identify CMAs for further analysis (the screen for areas in which the post-merger entity would have 70 MHz of spectrum). In doing so, ALLTEL has identified only five geographic areas for further review: Minnesota RSAs 7, 8, 9, 10, and 11.³⁴ The Commission should investigate further, and using additional data, apply the remaining two market concentration screens to see if additional geographic areas warrant attention. The market share data available to USCC³⁵ demonstrates that the proposed transaction would increase concentration dramatically in these five RSAs. Application of the Commission's concentration-related screens may indicate that further scrutiny is warranted in additional RSAs or MSAs.

Finally, the Commission should give weight in its analysis to ALLTEL's current and possible future use of the A-side cellular license and other assets now held by Great Western Cellular Holdings, L.L.C. ("Great Western") in Minnesota RSA 11. ALLTEL acknowledges that it currently holds a 49-percent ownership interest in Great Western, with an option to later acquire the remaining interest, and a spectrum manager lease, which allows it to use Great

³² *Id.* at ¶ 45.

³³ ALLTEL-Midwest Application, Exhibit 1, at 8-9.

³⁴ *See id.*, Exhibit 1, at 9-12.

³⁵ See discussion *infra*, at 14.

Western's spectrum and facilities in that market.³⁶ In its application, ALLTEL itself analyzes the competitive impact of the proposed transaction under the assumption that it will exercise this option.³⁷ For purposes of its competitive analysis, the Commission should treat ALLTEL as having control of Great Western and operating a substantial retail wireless business in Minnesota RSA 11.

It is noteworthy that ALLTEL proposes to aggregate far more spectrum in this transaction than it proposed to do in the ALLTEL-Western Wireless transaction. Indeed, as much as 100 MHz in Minnesota RSA 7, 110 MHz in Minnesota RSA 8, and 105 MHz in Minnesota RSA 9 would be concentrated in ALLTEL's hands.³⁸ This is because the proposed transaction would combine not only the A-side and B-side cellular licenses in these markets, but also a substantial amount of PCS spectrum.³⁹ For this reason, the Commission should be even more diligent in identifying additional CMAs worthy of further examination and even more diligent in evaluating potential anticompetitive effects.

b. The FCC Should Investigate Thoroughly the Prospects for Horizontal Anticompetitive Effects

Once CMAs worthy of further review are identified, the Commission evaluates the effects of the merger in relevant markets within those CMAs, looking at the prospects for both horizontal and vertical effects. To analyze horizontal effects, the Commission considers both unilateral effects and coordinated interaction.

³⁶ See ALLTEL-Midwest Application, Exhibit 1, at 12.

³⁷ *Id.*

³⁸ See *id.*, Exhibit 1, Schedule B.

³⁹ See *id.*, Exhibit C.

In asserting that this transaction would not threaten adverse unilateral effects, ALLTEL makes the same arguments that the Commission rejected earlier in its review of the similar ALLTEL-Western Wireless merger. ALLTEL's defense for this transaction again relies on current competition from PCS carriers, the prospect that PCS carriers can easily expand or reposition, ease of entry, and competition from resellers, satellite providers, MVNOs and wireless VOIP providers.⁴⁰ ALLTEL's bottom line is that "the level of competition . . . that will remain in each of the Relevant Overlap Markets post-transaction makes it unlikely that any anticompetitive unilateral effects would be profitable."⁴¹

In fact, at least in southern Minnesota, there are few PCS competitors. ALLTEL claims that all four nationwide carriers (Verizon, Cingular, T-Mobile and Sprint/Nextel) operate in each of these RSAs.⁴² That is simply not true. According to network coverage maps generated using data and analytic software provided by Empower Geographics,⁴³ (1) Verizon has no network coverage at all in Minnesota RSAs 7, 8, 9, 10, and 11; (2) Cingular has no network coverage in RSAs 7, 8, and 9 and only minimal coverage in RSAs 10 and 11; and (3) T-Mobile has no network coverage in RSAs 8 and 9, minimal coverage in RSA 11 and only partial coverage in RSAs 7 and 10. While Sprint/Nextel has some network coverage in these markets, it is limited, and centered on the major highway arteries. ALLTEL lists several local and regional "competitors" that operate in one or more of these markets: Redwood Wireless, Swiftel, Nsighttel Wireless, Skagit Wireless, Cricket, and USCC. However, based on publicly available data, USCC believes that Redwood Wireless is not operating, Nsighttel Wireless operates only in

⁴⁰ *Id.*, Exhibit 1, at 13-14.

⁴¹ *Id.*, Exhibit 1, at 13.

⁴² See ALLTEL-Midwest Application, Exhibit 1, at 10-12.

⁴³ See Attachment 1 to this Petition to Deny.

Wisconsin, and none of Cricket, Skagit or Swiftel has service in Minnesota. USCC itself has only minimal network coverage in Minnesota RSAs 10 and 11. Further, as noted above, it is unlikely that any of these PCS carriers will expand their networks, because of the significantly greater cost to build out PCS networks, as compared with cellular networks, in rural areas such as southern Minnesota.⁴⁴

In addition, subscriber market share data from an independent source⁴⁵ can be used to show that at least in Minnesota RSAs 7, 8, 9, 10, and 11, ALLTEL’s proposed acquisition of Midwest would increase market concentration dramatically, to even more dramatic post-transaction levels. This data can be used to show that ALLTEL’s acquisition of Midwest would produce the following post-transaction market shares, post-transaction HHIs, and changes in HHI:

<u>RSA</u>	<u>Post-Merger Share</u>	<u>Post-Merger HHI</u>	<u>Change in HHI</u>
Minn. RSA 7	73.8%	5781	1593
Minn. RSA 8	92.1%	8517	3563
Minn. RSA 9	91.8%	8489	2649
Minn. RSA 10	71.0%	5378	1222
Minn. RSA 11	78.6%	6487	20 ⁴⁶

⁴⁴ See discussion *supra*, at footnote 23.

⁴⁵ USCC obtained its market share estimates from an independent, widely-recognized industry source for such statistics. USCC is submitting these estimates to the Commission separately, with a request for confidential treatment pursuant to Section 0.459 of the Commission’s Rules, under which the estimates could be made available to ALLTEL, Midwest and other parties to the proceeding under a protective order.

⁴⁶ As reflected in the chart, using these data, the change in HHI in Minnesota RSA 11 is only 20. The Commission should disregard this figure, however, and assume for purposes of its prospective competitive effects analysis that the change in HHI in this RSA is far greater. As noted above, ALLTEL has an option to purchase a majority interest in Great Western, the A-side cellular licensee in Minnesota RSA 11. For purposes of analysis, the Commission should assume that ALLTEL has exercised this option, and assume as well that ALLTEL is operating a substantial retail wireless business in this RSA. In this scenario, the transaction would combine substantial retail businesses in Minnesota RSA 11, and thus produce a significant change in HHI.

These post-transaction market share and concentration levels exceed the levels that prompted the Commission, as well as the Department of Justice, to intervene in the earlier ALLTEL-Western Wireless transaction.⁴⁷ Indeed, this transaction would produce virtually a “merger to monopoly” in some RSAs. Even where it would not, the transaction would result in post-transaction HHIs that are two or three times the level that triggers enhanced scrutiny under the Commission’s HHI screen (a post-merger HHI of 2800 with a 100 increase). Further, except in Minnesota RSA 11, the transaction would result in an increase in the HHI that is four or five times the increase that triggers enhanced scrutiny under the Commission’s alternative concentration-related screen (an increase of 250 or more in the HHI, regardless of the post-merger level). These market concentration statistics are dramatic indeed, and strongly support the need for a thorough investigation and Commission intervention.

ALLTEL asserts that because consumers are now knowledgeable about nationwide and other calling plans, they could shift to another carrier if they are not satisfied with their local or regional options.⁴⁸ However, while some nationwide carriers may have roaming arrangements that enable them to provide service in markets in southern Minnesota markets where they have limited or no network coverage, the Commission has made it clear that entry through roaming agreements is not extensive enough at the present time to mitigate the anticompetitive effects that may be associated with a proposed merger transaction.⁴⁹ As the Department of Justice observed in the ALLTEL-Western Wireless transaction, where wireless carriers rely on roaming

⁴⁷ *ALLTEL-Western Wireless Order*, at ¶ 46.

⁴⁸ See *ALLTEL-Midwest Application*, at 10.

⁴⁹ *ALLTEL-Western Wireless Order*, at ¶ 72.

agreements with other providers, they “have to pay roaming charges to, and rely on, that provider to maintain the quality of the network.”⁵⁰ Such carriers cannot control the service being provided to their customers, and ensure the quality of their customers’ experience. As a result, such carriers do not aggressively market their services in these markets.⁵¹ For these reasons, it seems unlikely that either new entry by non-facilities based carriers or current competition from such carriers would constrain ALLTEL’s anticompetitive behavior.

The Commission has already rejected the justifications offered by ALLTEL for such dramatic increases in concentration in the Commission’s review of the ALLTEL-Western Wireless merger, finding that adverse unilateral effects were likely. The Commission should also scrutinize competitive conditions in the relevant southern Minnesota markets carefully, not only under the unilateral effects theory, but also under the theory of coordinated interaction,⁵² and require divestitures or otherwise intervene as needed to protect competition and consumers.

c. The FCC Should Investigate Thoroughly the Prospects for Vertical Anticompetitive Effects

In its application, ALLTEL has completely omitted any mention of the possibility of vertical effects. In its consideration of the ALLTEL-Western Wireless transaction, the Commission considered at length the possible impact of the proposed transaction on the upstream market for roaming services⁵³ and imposed conditions on the merged firm to protect

⁵⁰ DOJ Complaint at 9.

⁵¹ *Id.*

⁵² *ALLTEL-Western Wireless Order*, at ¶ 93 (“as a precaution we take the possibility of coordinated interaction into account in our analysis of specific markets”).

⁵³ *Id.* at ¶ 99 et seq.

competition and consumers.⁵⁴ The Commission should again investigate and intervene with appropriate conditions, in order to avoid adverse vertical effects.

ALLTEL recognizes that consumers “have come to expect and demand nationwide calling plans,” which are often made possible only through roaming arrangements. As ALLTEL notes, roaming enables “wireless carriers of all sizes” to effectively participate in the retail mobile telephony market.⁵⁵ Vigorous competition among potential roaming partners is essential if other carriers have any hope of competing in the retail market. But this transaction would combine the A-side and B-side cellular carriers in areas in which PCS carriers are built out to only a limited degree. By necessity, this means that in some areas, the proposed transaction would reduce from two to one the number of roaming partners that are available to other carriers, raising the prospects for increased prices for roaming services and other potential anticompetitive effects.

This problem is specific to the proposed transaction and should be remedied in the context of the current proceeding. It is not sufficient to leave this issue to a broader rulemaking proceeding on automatic roaming requirements, since merely mandating access to a monopoly provider of roaming services would not constrain anticompetitive price increases by that monopoly or prevent other potentially anticompetitive behavior. Because the proposed transaction would likely have anticompetitive effects in the market for roaming services in southern Minnesota, the Commission should review those effects carefully, and intervene now to protect competition and consumers.

⁵⁴ *See id.* at ¶ 108.

⁵⁵ ALLTEL-Midwest Application, Exhibit 1, at 10.

4. Divestiture of Midwest Wireless Communications

Readily available facts show that the proposed transaction would have profoundly anticompetitive effects in a number of product and geographic markets, particularly in southern Minnesota. The Commission should investigate it thoroughly, and either deny the applications or require appropriate divestitures.

Under the facts of this case, the Commission should require the combined company to divest at least Midwest's entire Midwest Wireless Communications, L.L.C. subsidiary ("Midwest Minnesota"), which holds all of Midwest's assets and conducts Midwest's retail wireless business in southern Minnesota, including Minnesota RSAs 7, 8, 9, 10, 11 and the Rochester MSA. As noted above, the proposed transaction would combine the A-side and B-side cellular carriers throughout Minnesota RSAs 7, 8, 9, 10, and 11, and would be profoundly anticompetitive in those areas. Midwest Minnesota has operated these RSAs, as well as the Rochester MSA, as a separate, integrated business unit for many years. Because it has operated successfully as a business unit, Midwest Minnesota could be divested cleanly as a unit, and operated successfully by a divestiture buyer, ensuring that there would be adequate competition with ALLTEL's A-side cellular business in southern Minnesota going forward.

By contrast, were the Commission to order the combined company to divest only a subset of Midwest's assets in southern Minnesota, or only a subset or even all of the assets that ALLTEL uses in its A-side cellular business in those markets, there is no assurance that the divestiture would be successful in preserving competition. There is no assurance, in other words, that some subset of assets could be cobbled together and operated successfully as a vibrant, competitive business.

In earlier proceedings, the Commission and the Department of Justice have sought the divestitures of complete businesses, rather than partial divestitures that could compromise the ability of the divestiture buyer to compete with the combined company. In the ALLTEL-Western Wireless, Cingular-AT&T, SBC-BellSouth and Bell Atlantic-GTE merger proceedings, for example, the Commission conditioned its merger approvals on divestitures that were also required by Department of Justice consent decrees.⁵⁶ In each case, the consent decree provided that the “Wireless System Assets” that should be divested should be “construed broadly to accomplish the complete divestitures of the entire business . . . in each of the Overlapping Wireless Markets . . . and to ensure that the divested wireless businesses remain viable, ongoing businesses.”⁵⁷

But there is an even more important reason why the Commission should not allow ALLTEL to acquire Midwest’s cellular business in southern Minnesota and then divest ALLTEL’s own businesses or selected assets there. Through what was formerly Western Wireless, ALLTEL has conducted its own business operations in southern Minnesota for years. It knows all of the strengths and weaknesses of its own business, including all of the relevant details about relationships with other carriers, vendors and customers. ALLTEL would retain this knowledge even if it divested its A-side cellular business or selected assets in southern

⁵⁶ *ALLTEL-Western Wireless Order*, at ¶ 21 n. 97; Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp., *Memorandum Opinion and Order*, 19 FCC Rcd. 21522, ¶¶ 141, 254-264 (2004); Applications of SBC Commc’ns Inc. and BellSouth Corp., *Memorandum Opinion and Order*, 15 FCC Rcd. 25459, ¶¶ 10, 26 (2000); Application of Bell Atlantic Corp. and GTE Corp., *Memorandum Opinion and Order*, 15 FCC Rcd. 14032, ¶ 5 (2000). See also Application of WorldCom, Inc. and MCI Commc’s Corp., *Memorandum Opinion and Order*, 13 FCC Rcd. 18025, ¶¶ 151-152 (1998); Applications of Deutsche Telekom and VoiceStream Wireless Corp., *Memorandum Opinion and Order*, 16 FCC Rcd. 9779, ¶ 146 (2001).

⁵⁷ Final Judgment at 8, *United States v. Bell Atlantic Corp.*, No.: 1:99CV01119 (LFO) (D.D.C. 1999); Modified Final Judgment at II.C, *United States v. SBC Commc’ns Inc.*, No. 1:00CV02073, (D.D.C. 2000). See also *ALLTEL-Western Wireless Final Judgment*, at 4, *SBC Commc’ns-BellSouth Corp.*, 15 FCC Rcd. 25459, ¶ 10 (2000); [Proposed] Final Judgment, *United States v. Cingular Wireless Corp.*, No.: 1:04CV01850 (RBW) (D.D.C. filed October 25, 2004).

Minnesota, and ALLTEL would use this knowledge to compete with whomever purchased the former ALLTEL assets. In the unique circumstances of this case, it is doubtful that the competition that has benefited consumers in this area historically could be preserved by either a divestiture of ALLTEL's existing business operations in southern Minnesota, or the divestiture of selected assets there.

Partly for reasons such as these, it is common for the Commission to order the divestiture of the acquired assets in the markets in which a transaction is found to be anticompetitive. Indeed, this was the Commission's approach in the ALLTEL-Western Wireless merger, when it required divestiture of the former Western Wireless operations.⁵⁸ The Commission's remedial authority is clearly broad enough to require such divestitures—broader indeed than the comparable authority of antitrust enforcement agencies.⁵⁹

The proposed transaction would be anticompetitive virtually throughout the area served by Midwest Minnesota, which is an existing and successful business unit that has served that area for many years. It is therefore appropriate to order the divestiture of at least this entire subsidiary, if the Commission decides to permit this transaction to proceed, to protect competition and the interests of consumers.

⁵⁸ *ALLTEL-Western Wireless Order*, at ¶ 162.

⁵⁹ *ALLTEL-Western Wireless Order*, at ¶ 21 (“[U]nlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement expertise to impose and enforce conditions to ensure that the merger will yield overall public interest benefits.”).

CONCLUSION

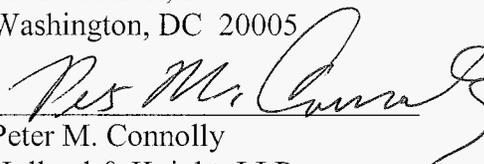
For the foregoing reasons, these above-captioned applications should be denied unless appropriate divestitures are required.

Respectfully Submitted,

UNITED STATES CELLULAR CORPORATION

By: 

Lawrence R. Fullerton
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005

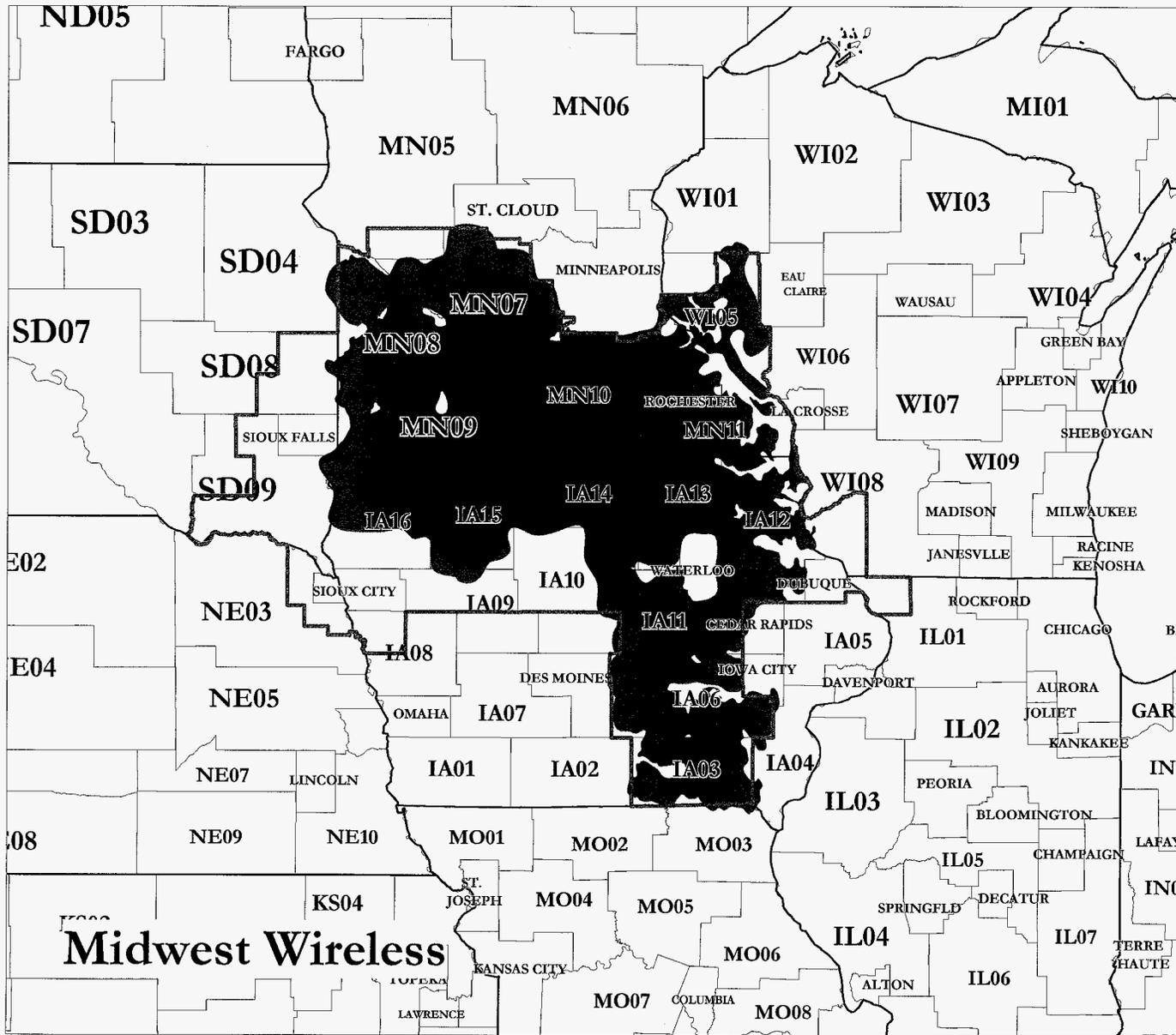

Peter M. Connolly
Holland & Knight, LLP
2099 Pennsylvania Ave., NW
Washington, DC 20006

January 30, 2006

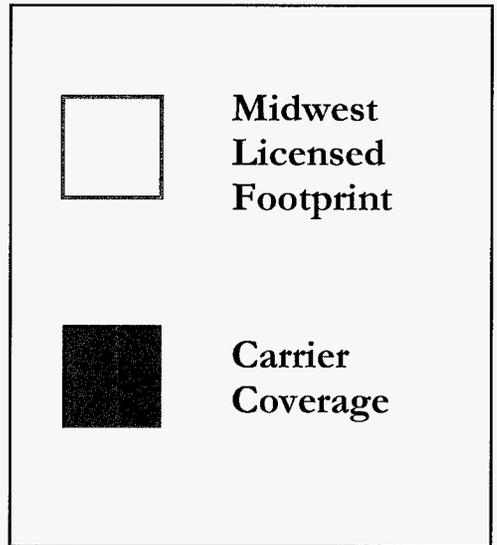
System Coverage Maps

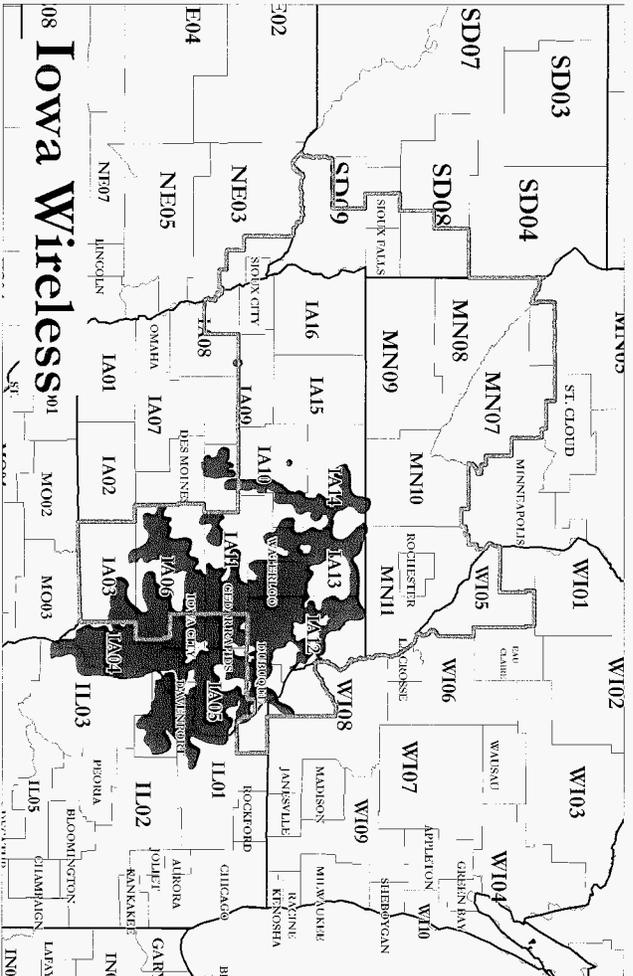
Source:

Empower Graphics
Des Plaines, IL



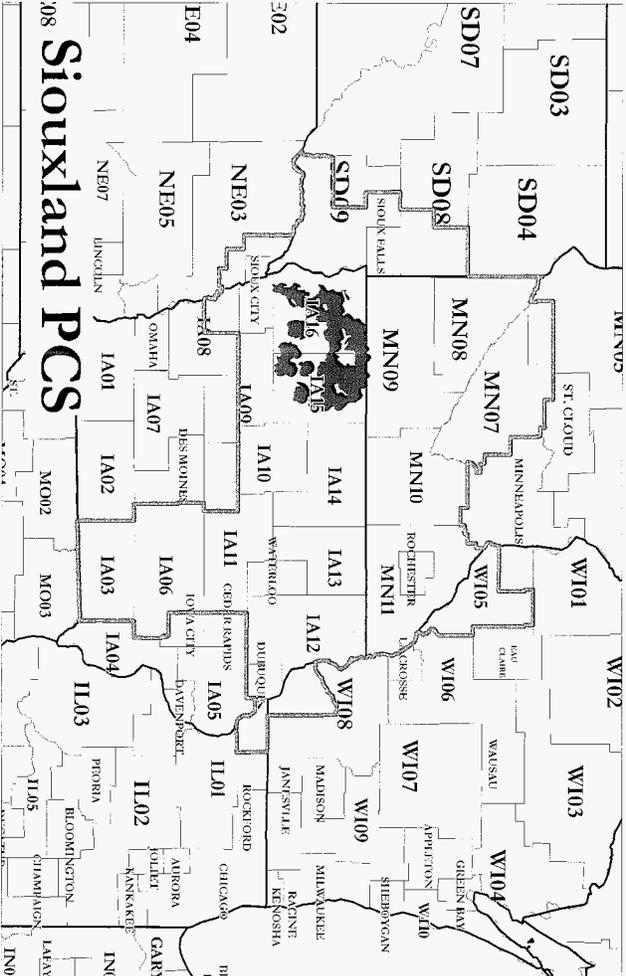
Legend for all maps





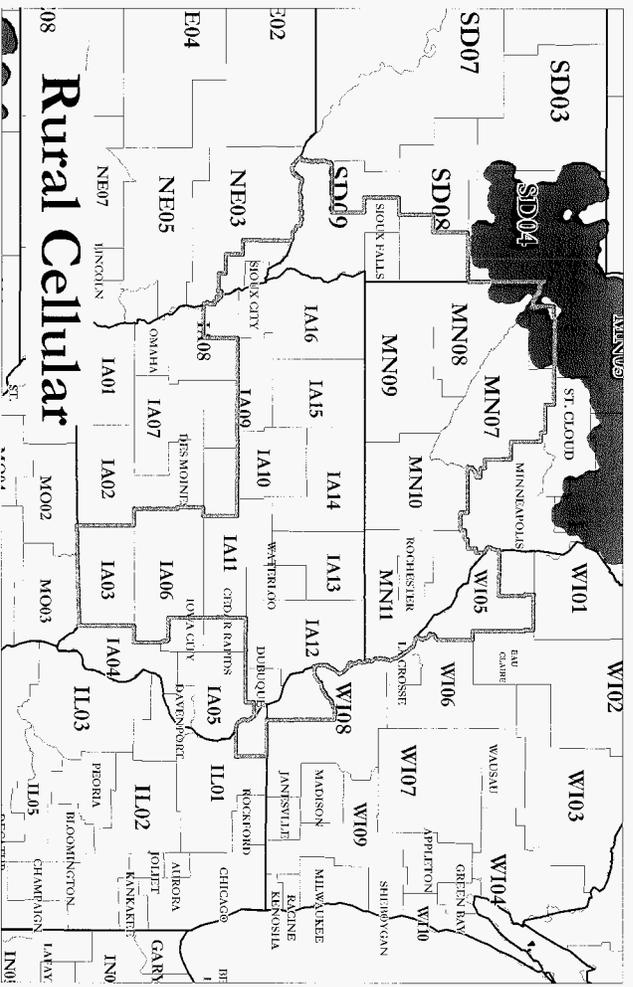
Iowa Wireless

01



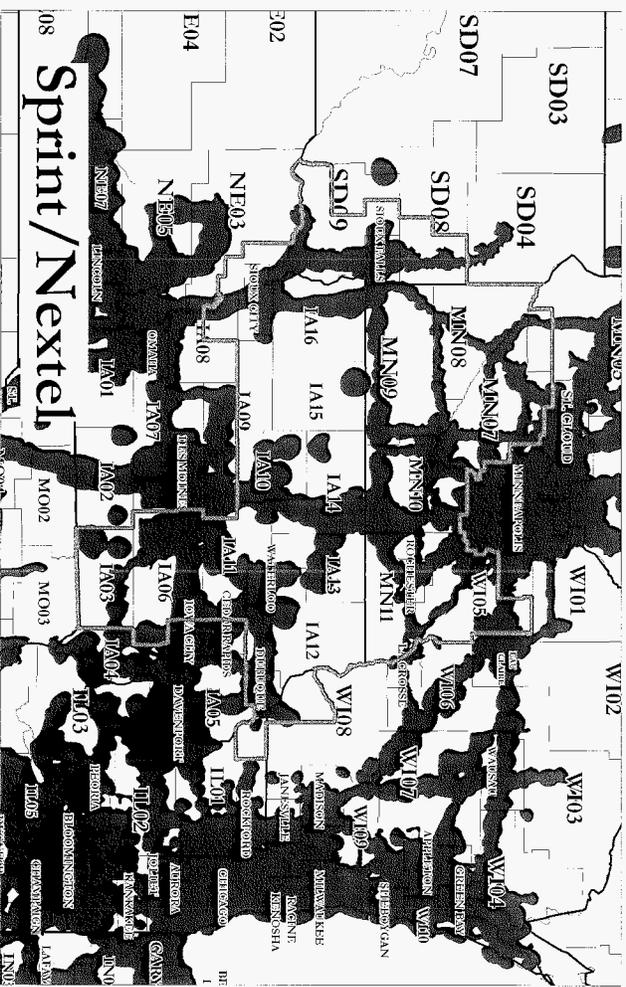
Siouxland PCS

08



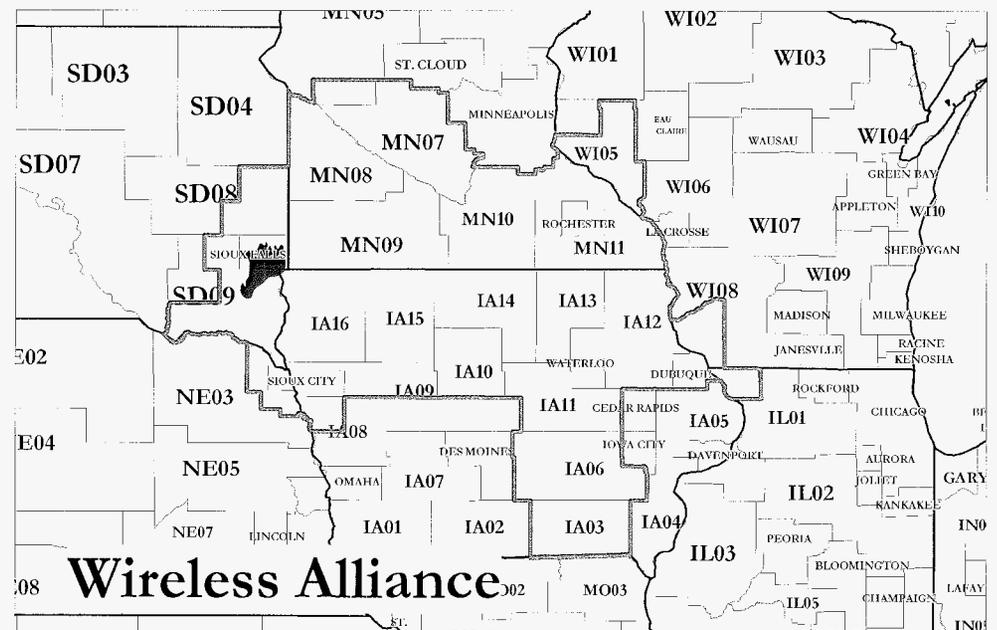
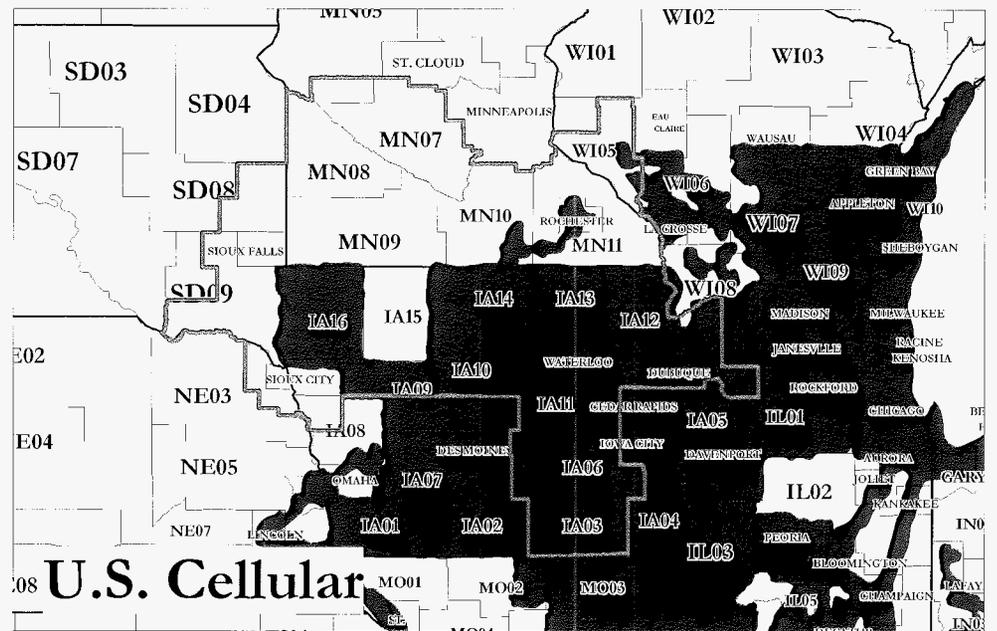
Rural Cellular

08



Sprint/Nextel

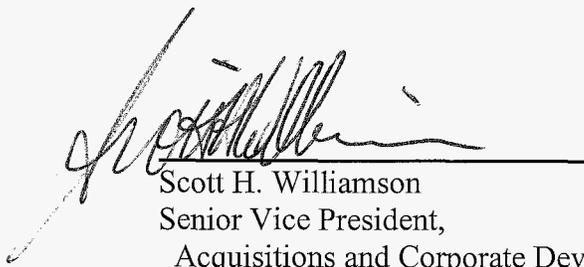
08



DECLARATION

I, Scott H. Williamson, hereby state, under penalty of perjury, that I am familiar with the matters set forth in the foregoing Petition to Deny, and that except for facts of which the Commission may take official notice, I believe those facts to be true, complete and correct to the best of my knowledge.

January 30, 2006

A handwritten signature in black ink, appearing to read 'Scott H. Williamson', is written over a solid horizontal line.

Scott H. Williamson
Senior Vice President,
Acquisitions and Corporate Development
Telephone and Data Systems, Inc.
30 N. LaSalle Street, Suite 4000
Chicago, IL 60602

Certificate of Service

I, Marianne C. Trana, hereby certify that true copies of the foregoing Petition To Deny were sent to the following by First Class United States, mail, postage prepaid this 30th day of January, 2006.

David L. Nace
Lukas, Nace, Gutierrez & Sachs, Chtd.
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102

Cheryl Tritt
Morison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006


Marianne C. Trana