

company decided to divest. Giving the combined company a choice makes no sense in a duopoly market, however, especially in a case such as this, where the acquired business is so much stronger. In the circumstances of this case, a divestiture remedy that is based on the concept of allowing ALLTEL to choose which business it wants to keep is doomed to failure. The Commission is not required to accept this outcome.⁵⁰

Finally, the divestiture of Midwest Minnesota would permit a single entity to continue to operate Midwest's cellular businesses in both the Rochester MSA and Minnesota RSA 11, where residents share a strong "community of interest." The Rochester MSA consists of Rochester and the surrounding Olmstead County. Rochester and Olmstead County are in turn an "island" completely surrounded by Minnesota RSA 11, which includes the counties of Goodhue, Wabasha, Dodge, Winona, Mower, Fillmore, and Houston.

The community of interest between Rochester and Olmstead County on the one hand, and the surrounding counties making up Minnesota RSA 11 on the other, can be demonstrated in several ways. First, the Census Bureau's definition of the Rochester MSA ("Census MSA") has changed since the cellular A and B licenses were allocated. At the time, the Census MSA for Rochester consisted solely of Olmstead County. Now the Census MSA for Rochester consists of Olmsted, Dodge, and Wabasha Counties. As noted above, Dodge and Wabasha are in Minnesota RSA 11. This shows a clear economic connection between Rochester and Minnesota RSA 11.

Second, the community of interest may be demonstrated by the portions of the 2004 Minnesota Trunk Highway Volume Map that are presented in the Exhibit to this Reply. The numbers on this map indicate the average numbers of vehicles that passed the indicated section

⁵⁰ See *supra*, at 18 & n. 46.

of roadway each day during the course of a year. The higher number indicates the average daily total traffic, while the smaller number indicates only heavy commercial traffic. This Exhibit demonstrates that large numbers of vehicles travel on the roadways in all directions to and from Rochester—between Rochester and Cannon Falls (in Goodhue County), Rochester and Lake City (in Wabasha County), Rochester and Winona (in Winona County), Rochester and Preston (in Fillmore County), Rochester and Austin (in Mower County), and Rochester and Dodge Center (in Dodge County). To illustrate with but one example, the Exhibit shows that between 15,500 and 32,000 vehicles can be found each day on the stretch of Route 52 between Rochester and Cannon Falls.

This is not surprising. Rochester is home to significant facilities for IBM and the Mayo Clinic. Many residents who live outside of Olmsted County travel to Rochester in significant numbers. According to Census statistics, for example, 46.7% of the residents of Dodge County work in Rochester, and 32 % of the residents of Wabasha County work in Rochester.⁵¹ The phone book for Rochester includes not only the residents of Olmstead County but also the residents of Dodge, Wabasha and Fillmore Counties. Finally, various “Rochester area” designations include areas outside of Rochester and Olmstead County. The Rochester-Austin-Albert Lea MN Basic Trading Area includes not only Olmstead, but also Freeborn, Dodge, Mower, Fillmore and Wabasha Counties. And the Rochester DMA, which is the primary viewing area for broadcast television stations in the Rochester area, includes not only Olmsted but also Fillmore, Mower, Freeborn and Dodge Counties, as well as neighboring portions of Iowa.⁵²

⁵¹ US Census Bureau, LED Origin-Destination Data Base (2nd Quarter 2002 and 2003).

⁵² DMAs are defined by Nielsen Media Research. See *Broadcasting & Cable Yearbook 2006*.


As noted above, when USCC operated the A-side cellular business in the Rochester MSA as an “island” within Minnesota RSA 11, USCC found that it could not be operated profitably and sold it to Midwest. Any divestiture of assets designed to remedy the anticompetitive effects of this proposed transaction should ensure that the Midwest businesses in the Rochester MSA and Minnesota RSA 11 continue to be operated together.

b. Doubts That Such a Divestiture Would be Sufficient

The prospect that a divestiture of Midwest Minnesota alone would be sufficient to maintain competition in this market is severely undercut by the arguments by ALLTEL and Midwest that Midwest Minnesota “holds no assets other than the spectrum and tower sites used in connection with its Minnesota operations.” According to ALLTEL and Midwest,

Many of the other assets used to provide service in the Overlap RSAs are held by the Midwest parent, including the switching equipment, cell site equipment, interconnection facilities and related agreements, the wireless customers, customer premises equipment, billing systems and other network platforms, roaming agreements, etc.⁵³

ALLTEL and Midwest make these assertions to support their argument that the

. To the extent these assertions are true, however, they prove only that a divestiture of far more than this one subsidiary would be required, if indeed the Commission can remedy the problems associated with the transaction at all. As noted above,⁵⁴ the antitrust agencies have made clear in their respective policy statements on merger remedies that the divestiture of assets beyond an on-going business unit may be required in some cases. If necessary, the divestiture package may contain assets used to produce products outside the relevant product and geographic markets.

⁵³ Joint Opposition at 24. USCC has never been informed that these assets were transferred from Midwest Minnesota to Midwest, nor has USCC consented to any such transfer.

⁵⁴ See *supra*, at 16-19.

And if no package of assets can be identified that can both be divested successfully and position the buyer to compete immediately and successfully in the market, approval for the transaction must simply be denied.

The Commission must clearly engage in extensive fact finding to determine whether there exists a package of assets that meets these criteria, and what assets those might be. The answer is not to allow the transaction to close with remedy that would not “preserve and enhance competition” and protect consumers.

6. The Commission Should Not Allow Itself To Be Diverted by Arguments that USCC is Self-Interested.

As USCC disclosed in Petition to Deny,⁵⁵ on January 12, 2006, USCC filed an action against Midwest in the Court of Chancery in the State of Delaware to enforce USCC’s long standing (for almost 11 years) contractual right of first refusal to purchase Midwest’s majority interest in Midwest Wireless Communications, L.L.C., and to restrain Midwest from selling that interest to ALLTEL. USCC is properly pursuing its contractual remedies in the Delaware forum.

USCC is not attempting, as ALLTEL and Midwest assert, to “use the Commission’s regulatory process ... to redress USCC’s failed efforts to persuade Midwest to sell Midwest Wireless to USCC.”⁵⁶ Rather, USCC is actively pursuing a vindication of its contractual rights in the Delaware courts, which it of course has every right to do. ALLTEL and Midwest’s assertions are designed merely to divert the Commission’s attention from the real issues in this proceeding. As is frequently the case, the fact that ALLTEL and Midwest resort to such arguments only indicates that they are aware of the weakness in their arguments and position.

⁵⁵ Petition to Deny at 2, n. 4.

⁵⁶ Joint Opposition at 2.

**CONFIDENTIAL INFORMATION
SUBJECT TO FCC PROTECTIVE ORDER
WT DOCKET NO. 05-339**

CONCLUSION

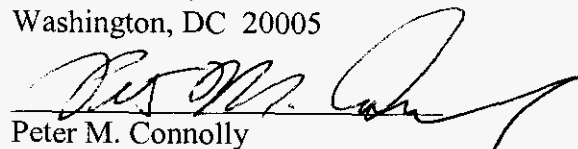
For the foregoing reasons, the above-captioned applications should be denied unless the Commission can determine, through appropriate additional fact-finding, that divestitures will remedy the harms associated with this transaction.

Respectfully Submitted,

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March 1, 2006






REDACTED FOR PUBLIC INSPECTION

EXHIBIT

**STATE OF MINNESOTA
2004 TRUNK HIGHWAY TRAFFIC VOLUME MAP**

PREPARED BY THE
MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF TRANSPORTATION DATA & ANALYSIS
IN COOPERATION WITH
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

LEGEND

- INTERSTATE TRUNK HIGHWAY 
- U.S. NUMBERED TRUNK HIGHWAY 
- STATE NUMBERED TRUNK HIGHWAY 
- COUNTY SEAT 
- OTHER CITIES AND TOWNS 

NUMBER OF VEHICLES

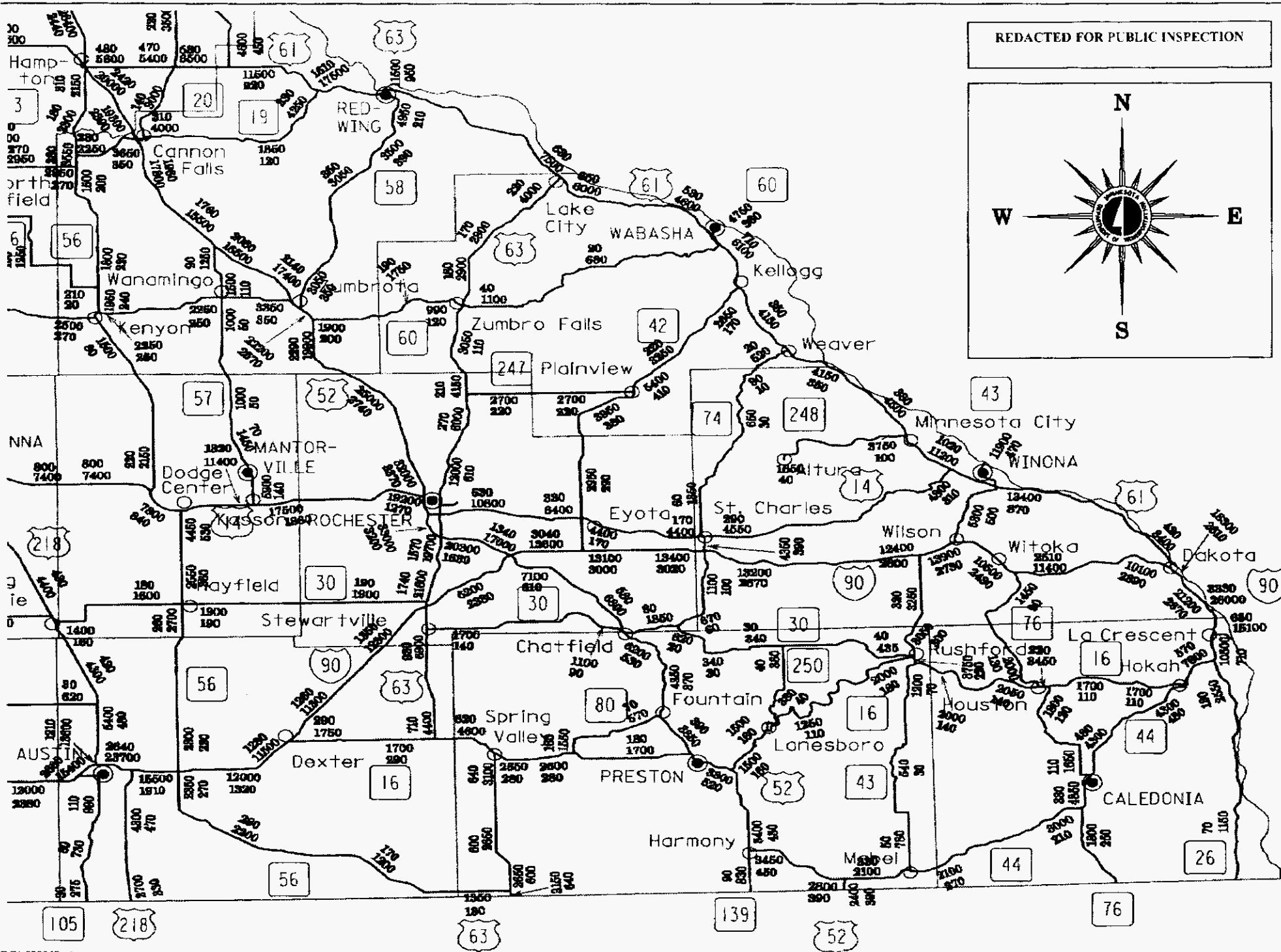
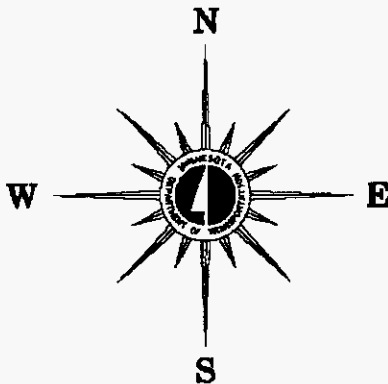
- A.A.D.T. 10000
[AVERAGE ANNUAL DAILY TRAFFIC]
- H.C.A.D.T. 750
[HEAVY COMMERCIAL A.A.D.T.]

EXPLANATORY NOTES

VOLUMES NEAR CITIES ARE AT CITIES LIMITS.
THE LARGER OF THE PAIRED VALUES ARE
A.A.D.T. THE SMALLER VALUES ARE H.C.A.D.T.

THIS MAP PROVIDES AN OVERVIEW OF TRUNK
HIGHWAY VOLUMES, NOT ALL VOLUMES ARE SHOWN.
FOR COMPLETE INFORMATION GO TO THE
COUNTY AND CITY MAPS ON OUR WEBSITE
WWW.DOT.STATE.MN.US/TDA/MAPS/TRAFFICVOL.HTML

REDACTED FOR PUBLIC INSPECTION



DECLARATION

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

February 28, 2006

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

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Certificate of Service

I, Marianne C. Trana, a secretary in the law firm of Holland & Knight LLP, do hereby certify that true copies of the foregoing "Reply" were sent to the following by first-class United States mail this 1st day of March, 2006.

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