

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Applications of Midwest Holdings, L.L.C. and)	WT Docket No. 05-339
ALLTEL Communications, Inc. For Consent for)	DA 05-3169
Transfer of Control of Licenses and)	
Authorizations)	

JOINT OPPOSITION TO PETITION TO DENY

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Dated: February 17, 2006

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JOINT OPPOSITION TO PETITION TO DENY

ALLTEL Communications, Inc. (“ALLTEL”) and Midwest Wireless Holdings, L.L.C. (“Midwest”) (together, “the Applicants”), jointly oppose the United States Cellular Corporation (“USCC”) petition to deny the above-captioned applications (“Transfer Applications”).¹ The acquisition by ALLTEL of Midwest’s four wireless subsidiaries (“Midwest Subsidiaries”) will enhance wireless service competition and advance the public interest.

The sole focus of USCC’s Petition to Deny (“USCC Petition”)² is the allegedly anticompetitive effects of the proposed acquisition in five Minnesota Rural Service Areas (“RSAs”) that are served by both ALLTEL and one of the Midwest Subsidiaries, Midwest Wireless Communications, L.L.C. (“Midwest Wireless”). Prior to the filing of the USCC Petition, however, [REDACTED]

[REDACTED]

¹ ALLTEL Communications, Inc. and Midwest Wireless Holdings, L.L.C., WT Dkt. No. 05-339 (Dec. 2, 2005) (“Transfer Applications”).

² See United States Cellular Corporation Petition to Deny, *Applications of Midwest Holdings, L.L.C. and ALLTEL Communications, Inc. For Consent for Transfer of Control of Licenses and Authorizations*, WT Dkt. No. 05-339 (Jan. 30, 2006) (“USCC Petition”).

[REDACTED]

[REDACTED] These developments and the opportunities for competitive growth offered by the low penetration rates in those RSAs, [REDACTED] and the Commission's planned AWS auction all will ensure even more vigorous competition in the five Overlap RSAs following the proposed acquisition of the Midwest Subsidiaries than now exists in those RSAs. USCC's claims of possible anticompetitive effects resulting from the proposed acquisition thus must be rejected.

Nor is there any credence to USCC's claim that only the divestiture of Midwest Wireless [REDACTED] can ensure the preservation of a post-acquisition competitive market in the Overlap RSAs. Given the enhancement of competition that will be provided by [REDACTED] to ensure competitive vitality. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Neither USCC's desire to purchase Midwest Wireless nor its concern about strengthened competition in the five Overlap RSAs resulting from [REDACTED] should be allowed to override the public interest in the proposed acquisition.

II. THE PROPOSED TRANSACTION WILL ENHANCE WIRELESS COMPETITION BY STRENGTHENING ALLTEL AS A REGIONAL CARRIER.

USCC makes no attempt to rebut Applicants' showing in their Transfer Applications that the proposed transfer of control will promote the public interest by strengthening ALLTEL as a regional competitor against nationwide and other wireless carriers. Because ALLTEL serves

more rural areas than any other wireless carrier, the proposed transaction will be particularly beneficial to rural consumers, especially in light of the recent wave of consolidation of nationwide carriers.⁴ The Midwest Subsidiaries' service areas are generally contiguous to, rather than overlapping, ALLTEL's existing operations and cover a population of approximately 1.9 million people.⁵ Out of a total combined 360 CMAs served by ALLTEL's and the Midwest Subsidiaries' wireless operations, their licensed service areas overlap in only 19 CMAs. The transaction thus will expand significantly ALLTEL's wireless footprint into Iowa and Wisconsin and supplement ALLTEL's existing footprint in Minnesota and certain portions of Nebraska, South Dakota, and Illinois.

The proposed transaction also will create significant economies of scale and scope that will improve ALLTEL's ability to reduce its network equipment and other costs and achieve other substantial synergies, as it has through previous acquisitions. For example, greater scale economies will allow better pricing and more choice of user handsets and a greater ability to offer unique handsets. ALLTEL also will be able to roll out advanced wireless network services in rural areas more quickly than it could pre-transaction.

The Commission has determined that the public interest is served by transactions that expand a wireless carrier's facilities-based footprint because of "the wider area in which the carrier's full handset functionality is operative and the carrier's lessened reliance on roaming

⁴ Transfer Applications, Exhibit 1, Description of Transaction and Public Interest Statement at 6 ("Transfer Applications Exh. 1").

⁵ *Id.* at 4 & n.10.

agreements to fill out its coverage.”⁶ Upon consummation of the proposed transaction, ALLTEL’s wireless footprint will cover rural areas and mid-sized cities in 36 states. This expansion will result in fewer dropped calls and improved sound quality⁷ and will increase the number of consumers that will be able to make free “in-network” calls and reduce ALLTEL’s -- and its customers’ -- roaming costs. The expansion of ALLTEL’s facilities-based footprint also will enable ALLTEL to become a more attractive roaming partner to other wireless carriers, making it a more effective competitor.

III. USCC FAILS TO DEMONSTRATE SIGNIFICANT COMPETITIVE HARM RESULTING FROM THE PROPOSED TRANSACTION.

A. USCC Is Incorrect As To The Extent Of Competition.

USCC’s challenge to the proposed acquisition is based on erroneous claims as to the state of competition in the five Overlap RSAs, derived from its misunderstanding of the number of competitors and other carriers’ service coverage areas in those RSAs. USCC’s Petition addresses just five CMAs that are involved in the proposed acquisition: CMA 488 (Minn. RSA 7); CMA 489 (Minn. RSA 8); CMA 490 (Minn. RSA 9); CMA 491 (Minn. RSA 10); and CMA 492 (Minn. RSA 11).⁸

⁶ *AT&T Wireless Services, Inc. and Cingular Wireless Corp.*, 19 FCC Rcd 21522, 21604 (2004) (“*Cingular/AWS Order*”).

⁷ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Tenth Report, 20 FCC Rcd 15908, 15958 (2005) (“*Tenth CMRS Competition Report*”) (“Carriers can increase capacity and thereby improve service quality... by acquiring additional spectrum.”).

⁸ USCC also requests that the Commission apply the two market concentration competitive impact “screens” used to review proposed acquisitions (*see, e.g., Cingular/AWS Order*, 19 FCC Rcd at 21568-69) to 14 other CMAs and 12 Component Economic Areas (“CEAs”) where ALLTEL and the Midwest Subsidiaries overlap. USCC Petition at 11. As the
(Footnote continues on next page.)

USCC's speculation as to potential horizontal and vertical anticompetitive effects in those five Overlap RSAs is based in large part on its assertion that ALLTEL's claim that "all four nationwide carriers ... operate in each of these RSAs ... is simply not true."⁹ USCC appears to be arguing that, irrespective of other carriers' licensed service areas in those RSAs, they do not currently serve their entire licensed areas. USCC does not seem to dispute ALLTEL's representation as to the RSAs that the identified wireless carriers are *licensed to serve*. Verizon, Cingular, T-Mobile and Sprint/Nextel, as well as all of the smaller carriers listed in Schedule C to Exhibit 1 of the Transfer Applications as having licensed service areas in Minnesota RSAs 7-11, are in fact licensed to serve the areas indicated.¹⁰

Moreover, a recent review of the licensed service areas in Minnesota RSAs 7-11 indicates that Schedule C should be updated and corrected to show additional PCS licenses in Basic Trading Areas ("BTAs") covering parts of RSAs 7-11 that were granted, largely as a result of Auction No. 58, near the time of -- or shortly after -- the filing of the Transfer Applications or that should have been reflected in Schedule C as filed. Thus, there are now more licensed wireless competitors, not fewer, than Applicants originally represented in the five Overlap RSAs.

(Footnote continued from previous page.)

petitioner, USCC has the burden of making a prima facie case that competition would be harmed in those additional areas. 47 C.F.R. § 1.939(d). Because USCC raises no specific issues as to those additional areas, the Applicants do not address that aspect of the USCC Petition at this time, other than to point out that the spectrum aggregation resulting from the proposed acquisition will not exceed 60 MHz in any of the other 14 overlapping CMAs and 12 overlapping CEAs, and in most cases, considerably less than 60 MHz. *See* Transfer Applications Exh. 1, Schedule B.

⁹ USCC Petition at 13.

¹⁰ Transfer Applications Exh. 1, Schedule C, Competitive Analysis of Overlapping Markets.

Appended to this Joint Opposition as Attachment 1 is a chart showing the licensed service area, by county, of each of the PCS licenses for BTAs in RSAs 7-11. Except in the few limited cases identified in Attachment 1, each of those PCS licensees has filed, and the Commission has approved, the build-out notifications for each of their licenses. Appended as Attachment 2 are copies, downloaded from the Commission's Universal Licensing System ("ULS"), of the PCS licenses listed in Attachment 1 (excluding those licenses held by ALLTEL), indicating the area covered by each license, by county, and build-out notification dates.¹¹ The Applicants are filing simultaneously with this Joint Opposition their amendment to the Transfer Applications to update and correct Schedule C to reflect this information.

Attachments 1 and 2 demonstrate that, in addition to the carrier that acquires the ALLTEL cellular spectrum and related assets, three or four national wireless carriers and one or more smaller carriers will be licensed to provide facilities-based competition with the post-acquisition ALLTEL in every county in Minnesota RSAs 7-11 after the proposed transaction. Attachment 2 also shows that, except for one license, carriers have timely met all past build-out notification deadlines for each of the PCS licenses listed, including, where required, all past second build-out notification deadlines.¹² Thus, in assessing potential competition going forward, the Commission must take into account the substantial number of competitors poised to

¹¹ In the case of two of the licenses granted in Auction No. 58 (WQDU930 and WQEE478), ULS has not been updated to reflect them. Accordingly, the Commission public notices granting those licenses are included in Attachment 2.

¹² Attachments 1 and 2 indicate that the Commission has not acted on one carrier's build-out notification, and several licenses were awarded in Auction No. 58 that have future build-out notification deadlines

take advantage of any attempt by the post-transaction ALLTEL to raise rates or otherwise exercise market power.

Moreover, USCC is also incorrect as to the *actual coverage areas* of Sprint/Nextel and the three national PCS carriers in the five Overlap RSAs. Appended as Attachment 3 are coverage maps developed using American Roamer data for Verizon Wireless, Cingular, T-Mobile USA, Inc. and Sprint/Nextel in southern Minnesota.¹³ [REDACTED]

[REDACTED]
[REDACTED]¹⁴ In fact, based upon periodic drive tests and other available market information that has come to the attention of Midwest, Midwest understands that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹³ Wireless Network Coverage Maps of Verizon Wireless, Cingular Wireless, Sprint/Nextel, and T-Mobile in Southwest Minnesota, prepared using American Roamer data for ALLTEL Communications (Dec. 22, 2005), appended as Attachment 3.

¹⁴ USCC Petition at 13.

¹⁵ See Form 603, Application for Assignment of Authorization from Qwest Wireless LLC to Cellco Partnership, WT Dkt. No. 04-264, FCC File No. 0001789538 (filed Aug. 8, 2004, consummated March 4, 2005) (application to assign 62 broadband licenses to Verizon Wireless, including five Minnesota BTAs), and Declaration of Sean R. Simpson at ¶ 3, appended as Attachment 4 (“Simpson Decl.”).

¹⁶ USCC Petition at 13.

[REDACTED]

Moreover, periodic drive tests and other available market information indicate to Midwest that [REDACTED]

[REDACTED]

[REDACTED]¹⁹ In sum, the current multiple facilities-based wireless competitors operating in these RSAs undermines USCC's argument that the proposed transaction will create anticompetitive effects.

Even more significantly, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁷ *Id.*

¹⁸ *Id.* at 14.

¹⁹ Simpson Decl. at ¶ 3 (appended as Attachment 4).

²⁰ USCC Petition at 9 n.23, 14.

B. USCC Fails To Demonstrate Horizontal Anticompetitive Effects.

1. In These Circumstances, Other Factors Override The Competitive Impact Of Customer Share.

Based on its faulty analysis of the number of wireless carriers serving each of the five Minnesota RSAs, USCC argues that the market share served by the post-transaction entity and increased concentration in each RSA threaten adverse competitive consequences. In the circumstances presented by this transaction, however, customer share data is not dispositive. As the Commission has pointed out, in many cases where there is a high customer share and increased concentration,

there is in fact little likelihood of harm. We find that the presence and capacity of other firms matter more for future competitive conditions than do current subscriber-based market shares.²¹

The Commission has identified a number of factors that, taken together, can override customer share as indicia of competitive conditions, including the number of competitors,²² the availability of investment capital and competitors' sunk advertising costs,²³ low penetration rates²⁴ and access to additional spectrum.²⁵

The number of well-financed national carriers remaining in the five Overlap RSAs following the proposed acquisition, all of which are larger than ALLTEL, and smaller carriers

²¹ *Cingular/AWS Order*, 19 FCC Rcd at 21579.

²² *Id.*; *Western Wireless Corp. and ALLTEL Corp.*, 20 FCC Rcd 13053, 13096 (2005) (“*ALLTEL/Western Wireless Order*”).

²³ *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13080.

²⁴ *Id.* at 13083.

²⁵ *Cingular/AWS Order*, 19 FCC Rcd at 21594-95; *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13095.

licensed to serve every county of each of the five RSAs, the number of carriers operating in those RSAs [REDACTED] ensure the continued viability of competition. The remaining carriers [REDACTED] can be expected to compete to replace ALLTEL as the [REDACTED] ranking wireless provider in those RSAs. Moreover, based on past experience, ALLTEL and the Midwest Subsidiaries can be expected to lose some customers during the integration of their operations, and the other carriers [REDACTED] [REDACTED] will compete aggressively for those customers.

2. Greater Competitive Network Coverage In More Densely Populated Areas And Lower Entry Barriers Will Help Preserve Competition.

A comparative review of the four network coverage maps in Attachment 3 with the population density map appended as Attachment 5 also shows that those areas within the five Overlap RSAs that have less network coverage from the national carriers, particularly in [REDACTED] [REDACTED], are more rural and more sparsely populated than the areas that have greater coverage.²⁶ The Commission has acknowledged that where “potential [competitive] harms ... [are] present primarily in ... more sparsely populated parts of the market,” it is typically “unlikely that the benefit ... of attempting to impose and enforce higher prices or lesser plan characteristics in such areas would outweigh the cost of attempting to do so...”²⁷ The lesser competitive coverage in

²⁶ Compare Attachment 3 with Attachment 5, which is a portion of a Datanet population density map for southern Minnesota counties, with RSA boundaries superimposed. Datanet’s source is the Minnesota Department of Administration, Census 2000, available at <http://www.lmic.state.mn.us/datanetweb/> (last visited Feb. 15, 2006). The RSA boundaries are based on the list of Minnesota counties in each RSA, appended as page 2 of Attachment 5.

²⁷ *Cingular/AWS Order*, 19 FCC Rcd at 21596 n.473.

the more rural, less densely populated areas in the five RSAs thus is not indicative of potential anticompetitive effects.

The other competitive carriers in the five Overlap RSAs, particularly the national carriers, also compete in contiguous areas and thus would be able to expand in the five RSAs relatively quickly in the event that the post-transaction entity attempts to raise prices or reduce service quality. Expansion by the other carriers is aided by the significant brand awareness provided by the national carriers' Rochester and Minneapolis-based advertising, which "bleeds" into the five RSAs, and Sprint/Nextel's strong retail presence through Radio Shack in each of the RSAs. These advertising sunk costs, as well as the national carriers' access to adequate investment capital, tend to reduce barriers to expansion in the five Overlap RSAs by these carriers.²⁸

3. The Low Penetration Rates In The Five RSAs Tend To Curb Any Potential Exercise Of Market Power.

The penetration rate in a given service area is another factor that must be taken into account in assessing potential competitive harm from a merger. As the Commission pointed out in the *ALLTEL/Western Wireless Order*, a relatively low penetration rate tends to minimize the potentially harmful effects of increased concentration because most of the potential customer base remains available to competitors, curbing any potential exercise of market power by the merged firm.

In local markets where mobile telephony penetration is lower than the U.S. average, these effects should be particularly strong. In addition, relatively under-penetrated markets may be the most attractive markets for new entrants, all other factors being equal.²⁹

²⁸ See *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13080.

²⁹ *Id.* at 13083.

Adding the ALLTEL and Midwest penetration rates in the five Overlap RSAs yields total rates ranging from slightly over [REDACTED], according to internal ALLTEL reports.³⁰ Given the apparently [REDACTED] in those RSAs, the total penetration rates for all wireless service providers combined is likely to be [REDACTED] than the national average wireless penetration rate, which was 62 percent in 2004 and is likely considerably higher today.³¹ With a [REDACTED] of the potential customer base in the five Overlap RSAs not claimed by any wireless provider, the other competitors, [REDACTED] have the opportunity to attract a significant share of the available customers, and industry history demonstrates that national carriers are able to take customers and build share quickly. The post-transaction ALLTEL thus will not be in a position to exercise market power.

4. Other Carriers' Ready Access To Substantial Spectrum Will Enable Them To Compete More Vigorously.

Furthermore, other competitors would be in an especially strong position to exploit the opportunity presented because they will have favorable access to bandwidth. Based on

³⁰ See Attachment 6, Penetration Rates as of June 30, 2005 (for Midwest) and December 18, 2005 (for ALLTEL). According to the confidential report referenced in the USCC Petition, penetration rates in [REDACTED] are significantly [REDACTED]. Those differences, however, are driven largely by the estimates in the USCC confidential report of the number of customers using ALLTEL's and Midwest's services in [REDACTED], which are [REDACTED]. Because ALLTEL's and Midwest's information about their own customer bases in their Attachment 6 is more reliable than any data that an independent analyst would have, the penetration estimates for [REDACTED] in the USCC confidential report cannot be given any weight.

³¹ *Tenth CMRS Competition Report*, 20 FCC Rcd at 15912, 15968. To illustrate, a firm with [REDACTED] subscribers out of a total market population of [REDACTED] and a market share of [REDACTED] percent will have a penetration rate of [REDACTED] percent. The remaining [REDACTED] percent market share will add [REDACTED] percent to the penetration rate, for a total penetration rate of [REDACTED] percent.

ALLTEL's experience, other carriers in the five Overlap RSAs hold underutilized spectrum in each RSA that can be used to expand coverage and serve new subscribers.³² Moreover, the

[REDACTED] in the five Overlap RSAs will make [REDACTED]

[REDACTED]. As Attachment 7 shows, [REDACTED] is substantially built out in the five Overlap RSAs.³³ [REDACTED]

[REDACTED]

Finally, the Commission has announced that Auction No. 66, through which 90 MHz of AWS spectrum will be made available, will commence on June 29, 2006.³⁴ This auction will increase existing CMRS spectrum by one-half from approximately 200 MHz to almost 300 MHz of spectrum. The AWS auction will include more than 1100 geographic-based licenses representing an additional six blocks of spectrum, ranging from 10 to 20 MHz, throughout the entire United States, including Minnesota RSAs 7-11. Thus, the auction could result in as many

³² ALLTEL's and its competitors' two-way voice services in the Overlap RSAs use a relatively small portion of the available bandwidth. Because those areas are so sparsely populated, the wireless two-way voice service providers have more than enough spectrum to serve the entire population.

³³ See ALLTEL dBu contour coverage map for Southwest Minnesota, appended as Attachment 7.

³⁴ See FCC Public Notice, *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006*, AU Docket No. 06-30, DA No. 06-238 (rel. Jan. 31, 2006). With so much new broadband spectrum coming on line in the near term, the Commission may choose to revise the 70 MHz screen upon which USCC relies so heavily. No revision will be necessary, however, to approve the Transfer Applications.

as six new competitors in each RSA, or provide existing competitors in Minnesota an opportunity to increase their spectrum holdings in these areas.

The Commission has acknowledged that the availability of additional spectrum near term diminishes any potential negative competitive effect resulting from a merger or transaction that combines substantial amounts of overlapping spectrum:

The response of rivals to a price increase or reduction in quality by the merged entity may also depend on their ability to obtain access to additional spectrum suitable for the provision of mobile telephony services in the relevant market in a reasonably short period of time. Access to additional spectrum may also deter adverse unilateral effects in specific markets by making possible the entry of new carriers.³⁵

Given the imminent AWS auction, the Commission should take into consideration this additional 90 MHz of spectrum when determining the competitiveness of wireless services in the five Overlap RSAs. Considered together, [REDACTED] [REDACTED] in the five RSAs, and [REDACTED] [REDACTED]. In addition, competitors in the Overlap RSAs will have access to even more spectrum when the 700 MHz that is being reclaimed from broadcast services becomes available.³⁶

5. An Assessment Of Competitive Impact Must Consider Wireless Carriers That Are Partially Built Out In The Five RSAs.

Just as the Commission must consider the availability of additional spectrum, it should also consider the capability of partially built-out facilities-based carriers in the five overlap RSAs

³⁵ *Cingular/AWS Order*, 19 FCC Rcd at 21594-95. See also *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13095.

³⁶ See *Tenth CMRS Competition Report*, 20 FCC Rcd at 15939.

to respond competitively to the post-acquisition ALLTEL's attempted exercise of market power. USCC cites the finding in the *ALLTEL/Western Wireless Order* that, in the circumstances of that case, "[t]here is no evidence in the record that indicates that non-facilities-based service enabled through roaming agreements is cost effective."³⁷ That does not necessarily mean, however, that the Commission should not consider the current and potential competitive constraint offered by a carrier that uses a combination of facilities-based and roaming coverage to provide comprehensive services to customers across its licensed service area. In the *ALLTEL/Western Wireless Order*, the Commission noted that:

we examine whether competitive responses by rivals to the merged entity -- such as through repositioning by existing licensees or entry by a new licensee -- would sufficiently counter the merged entity's exercise of market power. Should a merged entity attempt to raise prices or engage in other exercise of market power, other firms may have the incentive or ability to reposition their offerings.³⁸

The Commission clarified that "repositioning" can include adding to a carrier's "operating footprint[]" through the "addition of cell sites."³⁹ In that case, the Commission found that, in certain markets, it was unlikely that rival carriers could reposition themselves sufficiently to counter anticompetitive practices, but the Commission did not suggest that repositioning, whether through build-out or otherwise, can never be considered in assessing rivals' competitive response capabilities. Rather, the Commission acknowledged that, "in some instances ...

³⁷ *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13081.

³⁸ *Id.* at 13079.

³⁹ *Id.*

providers [other than facilities-based providers using wireless licenses] may provide additional constraints against anticompetitive behavior.”⁴⁰

Thus, contrary to USCC’s selective reading of the *ALLTEL/Western Wireless Order*, the ability of the national and smaller wireless carriers partially built-out in the five RSAs to compete effectively today, and to respond to the potential exercise of market power by the post-acquisition ALLTEL, must be taken into account in assessing the possibility of adverse competitive effects. In addition to expanding its build-out in its licensed service area, a partially built-out carrier also can compete in areas where it is not built out through a combination of effective advertising, roaming coverage and retail outlets in adjacent geographic areas where the carrier has already built out its network. If a carrier’s service plans are sufficiently attractive, consumers living in areas not covered by its network will sign up for its service at locations outside their own local calling areas or even outside their own states.⁴¹ Those consumers will still be able to use the service in areas where the carrier has not yet built out its own facilities-based service through the carrier’s roaming agreements.⁴² Indeed, the national carriers and at least one regional carrier are capable of competing across the five Overlap RSAs using roaming service to augment their partial facilities-based networks. In addition, roaming service also can provide a bridge to facilitate rapid new entry by other carriers who operate in adjacent areas but do not yet offer facilities-based service in the Overlap RSAs.

⁴⁰ *Id.* at 13081.

⁴¹ *See id.* at 13070 & n.120.

⁴² *Id.* at 13070 n.121.

Moreover, since the release of the *ALLTEL/Western Wireless Order*, USCC stated in the *Roaming Obligations* proceeding⁴³ that “Tier 1 wireless carriers have, for the most part, treated smaller, mid-sized and regional carriers such as USCC fairly in roaming negotiations,” and USCC opposed the regulation of roaming rates.⁴⁴ It is also noteworthy that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]⁴⁵ Nor has USCC withdrawn its earlier concession that “its previous negotiations with ALLTEL ... have not reflected any ... anti-competitive practices, particularly with respect to voice services.”⁴⁶ In light of these concessions and marketplace practices, roaming should be considered, at least in the circumstances presented in this proceeding, another source of competition against the post-transaction ALLTEL, particularly in RSAs already partially covered by facilities-based competitive networks.

6. USCC Ignores The Commission’s Conclusion In The *ALLTEL/Western Wireless Order*.

In light of the number of viable competitors with underutilized spectrum in the five Overlap RSAs, the additional spectrum that will be made available in the coming months,

⁴³ Memorandum Opinion and Order and Notice of Proposed Rulemaking, *Re-examination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 20 FCC Rcd 15047 (2005) (“*Roaming Obligations*”).

⁴⁴ Comments of United States Cellular Corporation at 2, 11-12, *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, WT Dkt. No. 05-265 (Nov. 28, 2005) (“USCC Roaming Comments”).

⁴⁵ See Simpson Decl. at ¶ 3; Declaration of Kerry L. Brooks at ¶ 3, appended as Attachment 8.

⁴⁶ Comments of the United States Cellular Corporation at 4, *Applications for the Transfer of Control of Licenses and Authorizations From Western Wireless Corporation To ALLTEL Corporation*, WT Dkt. No. 05-50 (Mar. 9, 2005).

[REDACTED] the absence of high barriers to entry, the [REDACTED] potential customer base not currently tied to any provider currently and the greater degree of current network coverage of the more densely populated areas within the five RSAs, the Commission should reject USCC's arguments that ALLTEL's acquisition of the Midwest Subsidiaries would have potential horizontal anticompetitive effects. USCC relies on the *ALLTEL/Western Wireless Order* to support a number of its assertions, but it neglects to cite the Commission's ultimate conclusion in that case as to specific markets:

[T]here is a significant likelihood of unilateral effects or coordinated interaction as a result of this transaction *except for those markets in which, post-transaction, there would still be four or more genuine competitors in the market, each with a sufficiently built-out network and sufficient bandwidth to be able to attract customers away from ALLTEL should it attempt to increase price or reduce service.* In these ... markets, we conclude that even a relatively high post-merger market share for ALLTEL does not indicate likely competitive harm.⁴⁷

That is the situation presented by this proposed transaction. It must be concluded that there is little likelihood of horizontal anticompetitive effects.

C. USCC Fails To Demonstrate Potential Vertical Anticompetitive Effects.

[REDACTED] USCC's assertion that the proposed transaction will [REDACTED]

[REDACTED]

⁴⁷ *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13096 (emphasis added).

⁴⁸ USCC Petition at 17.

[REDACTED] which will help keep roaming costs in check and reduce any other potential vertical anticompetitive effects.

Moreover, the Commission noted in the *ALLTEL/Western Wireless Order* that parties may always file complaints under Section 208 of the Communications Act against carriers charging allegedly unreasonable roaming rates.⁴⁹ The Commission also noted that it intended to initiate a rulemaking on the adequacy of its roaming requirements and that such concerns should be raised there.⁵⁰

As promised, the Commission subsequently initiated the *Roaming Obligations* rulemaking to address those issues. USCC argued in that proceeding that roaming rates should not be regulated.⁵¹ Thus, to the extent that the Commission might address the reasonableness of roaming rates in the *Roaming Obligations* rulemaking, USCC effectively urged the Commission to take no regulatory action. USCC's argument here that its concerns about roaming costs should not be left to the rulemaking proceeding accordingly lacks credibility. As also noted above, USCC has not raised any issues as to the [REDACTED] [REDACTED] in the five Overlap RSAs. [REDACTED] [REDACTED] USCC will have more than sufficient roaming options in those areas.

Even after the proposed transaction, ALLTEL will remain a regional wireless carrier, facing many of the same roaming challenges as other regional and smaller carriers. It will need

⁴⁹ *ALLTEL/Western Wireless Order*, 20 FCC Rcd at 13093.

⁵⁰ *Id.*

⁵¹ USCC Roaming Comments at 11-12.

to enter into reciprocal roaming arrangements with many other carriers and will continue to seek low roaming rates. ALLTEL would have no incentive to impose unreasonably high roaming rates, even if [REDACTED]. In the circumstances of this transaction, however, where a number of competitors [REDACTED] will remain in each CMA, and USCC has introduced no evidence of any anticompetitive roaming practices on the part of ALLTEL, USCC has failed to show any vertical anticompetitive effects that could result from the proposed acquisition.

IV. USCC HAS FAILED TO JUSTIFY A REQUIRED DIVESTITURE OF MIDWEST ASSETS.

The Commission should reject out of hand USCC's self-interested argument that only a divestiture of Midwest Wireless, the Midwest subsidiary that USCC covets, can protect competition and consumers. USCC's argument is predicated upon the incorrect factual premise that Midwest Wireless could be neatly separated from Midwest to create a complete, integrated business entity and is without any reasonable basis in law or precedent.

As an initial matter, USCC's requested remedy should be rejected because USCC has failed to demonstrate either potential horizontal or vertical anticompetitive effects that would require a remedy of any sort. In addition, the divestiture sought by USCC is [REDACTED]
[REDACTED]
[REDACTED]. Finally, Commission precedent supports a remedy in these circumstances that focuses primarily on divestiture of spectrum, rather than on an entire operating business.

A. USCC’s “Separate, Integrated Business” Rationale For A Divestiture Of Midwest Wireless Is Unsupported By Commission Precedent And Reflects USCC’s Misunderstanding Of Midwest’s Corporate Organization.

USCC opposes, as an insufficient remedy, any divestiture of “selected assets,” including all of ALLTEL’s wireless operations in the five Minnesota RSAs or any “subset” of ALLTEL’s assets used in those operations.⁵² USCC argues that, in order to ensure adequate competition against the post-transaction ALLTEL, it is necessary to divest assets constituting a “complete business[]” that can remain viable on its own or in the hands of a purchaser and that only Midwest Wireless, the subsidiary that operates Midwest’s wireless business in Minnesota, is such a complete business.⁵³

None of the Commission precedent that USCC cites for its argument that an entire business operation should be divested suggests that divestiture of an entire operation is the only possible remedy to ensure viable competition in any overlapping service area after a merger or acquisition, irrespective of the circumstances. To the contrary, the Commission has endorsed a spectrum-only divestiture in particular markets where such a remedy was sufficient to facilitate effective competition by allowing competitors an opportunity to acquire additional spectrum to compete effectively against a combined entity.⁵⁴ For those markets, the Commission’s concern was “not that there will be too few remaining carriers ... but instead that ... not all the remaining carriers have sufficient bandwidth for us to be confident that they can increase output and

⁵² USCC Petition at 18-19.

⁵³ *Id.* at 19.

⁵⁴ *See, e.g., Cingular/AWS Order*, 19 FCC Rcd at 21621.

compete effectively....”⁵⁵ The Commission has endorsed spectrum-only divestitures in other cases as well when that type of remedy was sufficient to ensure compliance with competition policies.⁵⁶ Given the number of competitors remaining in each of the five Overlap RSAs, the

[REDACTED]

[REDACTED] will be more than adequate to ensure the viability of competition.

Moreover, USCC’s claim that divestiture of Midwest Wireless would accomplish the creation of a “separate, integrated business unit” reflects a misunderstanding of Midwest’s corporate structure.⁵⁷ Midwest Wireless holds no assets other than the spectrum and tower sites used in connection with its Minnesota operations. 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. Divestiture of Midwest Wireless thus would [REDACTED]

[REDACTED]

[REDACTED].

⁵⁵ *Id.* at 21597.

⁵⁶ See, e.g., *SBC Communications Inc. and BellSouth Corp.*, 15 FCC Rcd 25459, 25468, 25481 (WTB/IB 2000) (“*SBC/BellSouth Order*”) (parties ordered to divest assets sufficient to comply with the cellular cross-ownership rule and CMRS spectrum aggregation limit); Public Notice, *Wireless Telecommunications Bureau and International Bureau Grant Consent for Transfer of Control or Assignment of Licenses from TeleCorp PCS, Inc. to AT&T Wireless Services, Inc.*, 17 FCC Rcd 2383 (WTB/IB 2002) (approving divestiture of spectrum to comply with CMRS spectrum aggregation limit); *VoiceStream Wireless Corp.*, 15 FCC Rcd 3341 (2000) (requiring divestiture of spectrum to comply with CMRS spectrum aggregation limit); *Aerial Communications, Inc. and VoiceStream Wireless Holding Corp.*, 15 FCC Rcd 10089 (WTB/IB 2000) (requiring divestiture of spectrum to comply with CMRS spectrum aggregation limit).

⁵⁷ USCC Petition at 18.

B. USCC’s “Market Knowledge” Rationale Against Any Divestiture Of [REDACTED] Is Unsupported By Commission Precedent [REDACTED].

USCC also argues that it would not be sufficient to divest ALLTEL’s operations in the five Minnesota RSAs because ALLTEL is too knowledgeable about its own operations to enable a viable competitor to emerge from divestiture of its operations. This argument fails for many reasons. First, if this were a correct statement of the law, then there would be a general rule in merger cases that parties must divest newly acquired, as compared to long-held, assets. There is no such rule. DOJ guidelines make clear that, in fashioning a merger remedy, the DOJ “generally would be indifferent as to which firm’s assets are divested, despite possible qualitative differences between the firms’ assets, so long as the divestiture restores competition to the premerger level.”⁵⁸

Second, the USCC argument ignores the fact that [REDACTED]
[REDACTED]
[REDACTED]. Thus, the suggestion that ALLTEL possesses too much unique knowledge about these operations to permit another carrier to succeed as a competitor is simply not true. Third, since Midwest’s key operating personnel will be staying with the merged company, the reality is that there is no practical difference -- in terms of the institutional knowledge of the merged entity about the divested assets -- between a divestiture of Midwest Wireless as compared to ALLTEL assets. In fact, the management of the Midwest Subsidiaries is far more knowledgeable about the state of wireless competition in southern Minnesota than ALLTEL’s management. Under USCC’s

⁵⁸ Antitrust Division, U.S. Department of Justice, *Antitrust Division Policy Guide to Merger Remedies*, at 10 n.15 (Oct. 2004).

“market knowledge” rationale, a divestiture of Midwest assets to create a viable competitor would be doomed to failure.

Fourth, USCC cites the *ALLTEL/Western Wireless Order* for the proposition that the Commission commonly orders divestiture of the acquired firm’s assets in the overlap areas for that reason, but the order suggests no such rationale for requiring divestiture of the Western Wireless assets. In fact, in the *SBC/BellSouth Order*, the Commission allowed the parties to the proposed joint venture to decide which party’s assets should be divested to ensure regulatory compliance, rather than mandating the divestiture of a specific party’s assets.⁵⁹

The absence of any precedent for USCC’s theory that the acquired firm’s assets must always be divested supports [REDACTED] instead of divesting Midwest Wireless assets. [REDACTED] would accomplish the same public interest purpose of ensuring robust competition. [REDACTED]

[REDACTED] in each of the five Overlap RSAs. The Commission’s competition goals will be met by the sale of either [REDACTED] and the Commission should allow the parties to determine which assets to divest.

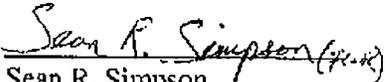
V. CONCLUSION

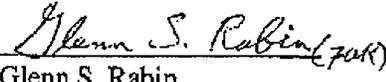
USCC has failed to demonstrate that approval of the Transfer Applications is not in the public interest or that the Commission should condition its approval on any divestiture remedy other than [REDACTED]. [REDACTED]

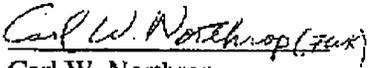
⁵⁹ *SBC/BellSouth Order*, 15 FCC Rcd at 25481.

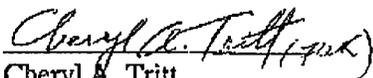
██████████ in the Minnesota Overlap RSAs and that no anticompetitive effects will result from the transaction. In addition, at least five licensed competitors will remain in each county in the five southern Minnesota RSAs, and with the relatively low penetration rates in those RSAs, those competitors, as well as new entrants, have ample opportunity to build their customer share, particularly with the additional spectrum that will become available. The Commission should reject USCC's novel theory that only the divestiture of a pre-existing business unit of the acquired company can ensure that a proposed acquisition will not harm competition.

Respectfully submitted,


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Dated: February 17, 2006

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that I am on this 17th day of February, 2006, delivering copies of the foregoing public, redacted version of the **JOINT OPPOSITION TO PETITION TO DENY** to the following via First Class Mail or electronic mail as indicated:

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dc-441835

¹ Pursuant to the Protective Order in WT Docket No. 05-339, two confidential, non-redacted copies of the foregoing Joint Opposition to Petition to Deny also will be hand-delivered to Erin McGrath or Susan Singer.