

Before the  
Federal Communications Commission  
Washington, DC 20554

In re	)	
	)	
Application for	)	
for the Transfer of Control	)	
of Licenses and	)	WT Docket 04-70;
Authorizations from	)	DA 04-932;
AT&T Wireless Services, Inc.	)	File No. 0001656065
and its subsidiaries to	)	
Cingular Wireless Corporation	)	

COMMENTS

United States Cellular Corporation ("USCC") hereby files its Comments on the above-captioned transfer applications.<sup>1</sup> USCC wishes to state at the outset that it does not oppose grant of the above-captioned applications. Indeed, it believes that the proposed Cingular-AT&T Wireless merger will serve the public interest, for the reasons given in Exhibit 1, the descriptive exhibit to the "lead application" (File No. 000165065). USCC comments separately to note once again its previously expressed concern that "national" wireless carriers, such as Cingular, must continue to make their facilities available to the customers of small and mid-sized carriers for voice and data roaming.

USCC, a majority owned subsidiary of Telephone and Data Systems, Inc. ("TDS"), is a mid-sized wireless carrier providing cellular and PCS service to approximately 4.4 million customers in 147 markets. USCC's markets are

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<sup>1</sup> See Public Notice, "AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent To Transfer Control of Licenses and Authorization," DA 04-932, released April 2, 2004.

predominantly rural in character and are increasingly concentrated in a few regional "clusters."

USCC's regional concentration is in the Midwest, in the states of Illinois, Iowa, Wisconsin and Missouri. It has other regional "clusters" in upper New England, in Oklahoma, in the mid-Atlantic states, in Tennessee and North Carolina, and in portions of Washington, Oregon and northern California. However, USCC is not a national carrier and its systems do not cover the whole country. Its customers' continuing ability to "roam" on the systems of other carriers, particularly the "national" carriers, is and will be vital to its ability to survive and prosper in the ever more competitive wireless environment.

I. The Commission Should Consider the Roaming Issue in The Near Future.

As the Commission has repeatedly recognized, six influential "national" wireless carriers have come into existence in recent years, namely AT&T Wireless, Sprint PCS, Nextel, Cingular, Verizon Wireless and T-Mobile.<sup>2</sup> The emergence of these national carriers, with all of the market power that their scale and scope has generated, is a qualitative change in the wireless marketplace from the fragmented systems of a decade ago. The FCC is now considering a merger between two of those carriers, Cingular Wireless and AT&T Wireless.

All CMRS carriers, including national carriers, plan to provide high speed data services, as well as continually striving to improve their voice services. The national carriers will, of course, naturally focus on the urban and suburban markets

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

where most of their subscribers reside and concentrate their system improvement efforts there. The mid-sized and small carriers will be dependent on roaming relationships to enable their customers to receive service outside their regional or local coverage areas.

USCC's concern, previously raised in the Commission's "automatic roaming" and "rural services" proceedings,<sup>3</sup> is that some of the larger "national" carriers could at some time in the future refuse to sign roaming agreements with regional and rural carriers on reasonable terms, which would effectively preclude customers of those carriers from roaming in the markets of the national carriers. This in turn might have the effect of driving customers away from regional/rural carriers.

While USCC expressed its opposition in 2001 to the FCC's adoption of any "automatic roaming" requirement, we also asked that the FCC maintain "a careful and vigilant watch" over the national roaming issue and "revisit" it in the future if small, mid-sized or rural carriers were prevented from obtaining acceptable roaming contracts by the national carriers. We suggested that the FCC's yearly reports on the state of competition in the wireless industry might be an appropriate vehicle by which the FCC could review roaming practices and that the FCC could act if roaming trends ceased to serve the public interest. The filing of the first

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<sup>3</sup> See *In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, WT Docket No. 00-193, FCC 00-361, 15 FCC Rcd 21628 (2000); USCC Comments filed January 5, 2001; *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities For Rural Telephone Companies to Provide Spectrum Based Services*, Notice of Inquiry, WT Docket 02-381, 17 FCC Rcd 2554 (2002), USCC Comments filed February 3, 2002, pp. 16-18. The FCC took no action in response to USCC's requests.

application seeking a merger between two national wireless carriers ought to refocus the FCC's attention on this issue.

USCC acknowledges that its previous negotiations with larger carriers have not reflected any such anti-competitive practices, particularly with respect to voice services. If in the future, however, the larger carriers did seek to exploit their national "reach" by withholding roaming agreements or by exacting prohibitive charges for such agreements, the Commission, we believe, would have to step in to preserve competitive equality and the rights of regional/rural carriers by enforcing fairness in the roaming marketplace.

Vigorous use of the anti-discrimination provisions of Sections 201 and 202 of the Communications Act in response to formal complaints, perhaps coupled with a limited requirement to conduct good faith roaming negotiations, and a prior declaration of Commission policy as outlined herein, may be the best means of meeting such a threat to competition, should it arise.

II. An FCC Endorsement of Data Roaming Will Further The Competitive Aims Described in the Cingular - AT&T Wireless Application.

Exhibit 1 to the Cingular - AT&T Wireless "lead" transfer application repeatedly argues that the merger will facilitate the provision of advanced services by Cingular.<sup>4</sup> The exhibit refers to Cingular's and AT&T Wireless's existing TDMA service as well as to their GSM/GPRS/EDGE services and to the need for "up to 80 MHz of spectrum" to provide existing voice services and to meet "the anticipated

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<sup>4</sup> See, e.g. Exhibit 1, pp. 10-11, 15-19, 22-25.

demand for data services."<sup>5</sup> Once the merger takes place, Cingular plans a "logical transition from EDGE" to the Universal Mobile Telecommunications System ("UMTS"). UMTS, in turn

will initially permit data transmissions and speeds of up to about 2 Mbps and eventually when upgraded with high speed downlink packet access ("HSDPA") at speeds of up to 10 Mbps.

Exhibit 1, p. 18.

Completion of the merger and the development of these advanced capabilities will clearly make Cingular a more formidable competitor, while eliminating AT&T Wireless as a national competitor. However, the applicants argue forcefully that the merger will not be anti-competitive, largely because wireless telephone markets overall are "and will remain robustly competitive."<sup>6</sup>

The applicants note that in addition to the national wireless carriers, national wireless competition is facilitated by:

"a number of large regional players, including ALLTEL Corporation, Western Wireless Corp., United States Cellular Corp., and Dobson Communications Corp. ... There are also numerous smaller competitors who play important roles in the competitive environment ... .

In an industry in which customers can and do switch carriers frequently and easily and, in which new entrants have experienced little difficulty in rapidly expanding, there is no question that vigorous competition will continue after this merger."<sup>7</sup>

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<sup>5</sup> Exhibit 1, p. 18.

<sup>6</sup> Exhibit 1, p. 25.

<sup>7</sup> Exhibit 1, p. 27.

The presence of "strong regional and local players" is also crucial to the application's technical competition analysis, as "Regional Carriers" as a group are included in its "Herfindahl-Hirschman Index," which demonstrates that "neither unilateral anti-competitive conduct nor coordinated effects are likely after merger."<sup>8</sup>

USCC does not disagree with the applicants' analysis or their conclusion, but would add one vital caveat. Regional and local wireless providers will be able to fulfill the competitive functions extolled in the application only if their customers are able to obtain roaming agreements with the national carriers which will enable such carriers to stay in business in the coming period. If they cannot obtain such agreements, then the service such carriers provide will become an inferior service and the present system will collapse. At that point, any other mergers involving the national carriers might well become a serious threat to competition.

The relevant exhibit says little about this issue. The only reference to it is in a footnote to a paragraph describing how the merged company will have less need for the roaming services of other carriers. It states:

"The merger should have little impact on the availability of roaming agreements with other carriers. Permitting the customers of other carriers to roam on the Cingular network produces valuable revenue for Cingular. Thus, with the exception of home roaming - which discourages competitors from building and expanding networks - Cingular will continue to enter into roaming agreements with other carriers."<sup>9</sup>

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<sup>8</sup> Exhibit 1, p. 37.

<sup>9</sup> Exhibit 1, p. 21 n. 96.

USCC would submit that this expression of current intent, which is based on self-interest, which may change, and makes no reference to data roaming, is insufficient to safeguard the public interest.

What is needed is a separate FCC statement of policy that the national carriers must enter into automatic roaming agreements with small, mid-sized and regional carriers on reasonable terms and conditions and that a general refusal to do so on the part of a national carrier would be treated as an unjust and unreasonable practice under Sections 201 and 202 of the Communications Act [47 U.S.C. Sections 201 and 202].

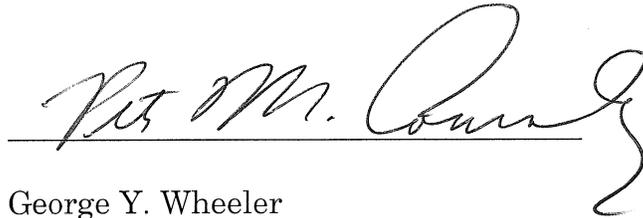
USCC does not ask the FCC to supervise or micromanage negotiations or roaming agreements between carriers or that it act on this issue in connection with those applications. What we ask is a statement of principle by the FCC, following its presumed action approving these applications, stating that the availability of roaming for small, mid-sized and rural wireless carriers on the systems of the national carriers will be crucial to the maintenance of wireless competition in the future.

Conclusion

For the foregoing reasons, we ask that the FCC adopt a policy in support of roaming by small, mid-sized and rural wireless carriers on the systems of national carriers.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

A handwritten signature in cursive script, reading "Peter M. Connolly", is written over a horizontal line.

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