

In regards to proceeding #04-70

I have reviewed the application for transfer of cellular and broadband PCS licenses from ATTWS to Cingular. With certain reservations, I believe that the transfers are not generally contrary to the public interest and may actually provide some benefit to the public.

The reservations are:

1. Cingular proposes to retain spectrum in certain urban areas in amounts far in excess of any rational need. These markets include Dallas, with 80 Mhz; Indianapolis and San Francisco with, 75; New Orleans and Miami, with 70 MHz and Chicago, Los Angeles, Philadelphia, Sacramento, St. Louis, Seattle and Washington DC, with 65 Mhz. 80 MHz. represents over 47% of the total spectrum available for cellular and broadband PCS. Cingular is so bold as to contend that they actually need up to 80 MHz. to serve their customers. If this were actually true, then the total cellular and PCS spectrum would only be sufficient to support two carriers. Clearly this contention is both absurd and anti-competitive. To claim that you need 80 MHz. to serve your customers is to assert either that your engineering department is too incompetent to properly configure a wireless system or that you made a fundamental error in the selection of wireless technology. If the truth be known, the only real reason to desire to retain 80 MHz. of spectrum in any market is to prevent your competitors (and their customers) from having access to it. I urge the Commission to require that Cingular divest enough spectrum to bring their total holdings to no more than 60 Mhz in each **urban** market .
2. Cingular requests that the Commission waive the RSA cellular cross-ownership rule in eleven markets. To support this claim, Cingular frequently cites the "CenturyTel" case. The "CenturyTel" case involved a cellular license overlap of a few square miles, mostly in the Atchafalya swamp, an area populated primarily by nutria and alligators. The facts at hand in this proposed transfer are completely different. The transfer of these RSA licenses effect hundreds of thousands of potential customers. The Commission should view such a request with great suspicion and assure that all customers in these markets will, in fact, have access to native, facilities based, coverage of at least two carriers before granting such a request. Failing such proof, I recommend that the Commission reject the request to waive the RSA cellular cross-ownership rule.
3. I feel that Cingular's application does not adequately address the effect on the competitiveness of regional and PCS carriers when a single carrier controls both cellular licenses in a single market. Such a cellular monopoly is in a position to force other carriers to enter roaming agreements at whatever rate the monopolist chooses to levy. Cingular itself says that the rate competition is national in nature. Regional carriers are forced to compete on a price with national carriers and provide similar nationwide rate plans while absorbing the roaming fees. Unless the broadband PCS licenses are so well developed as to provide near 100% coverage, control of both cellular licenses in a given

market grants a monopoly on roaming. Therefore, I recommend that the Commission require that the applicant prove that cross-ownership of any cellular license will not create a significant "coverage monopoly" (vice a license monopoly) before granting such cross-ownership transfers.

4. In at least one rural market, Cingular's post transfer license holdings would total 120 Mhz. This not only exceeds all reason, it even exceeds Cingular's own self-proclaimed 'needs' by 40 Mhz. However, there are many markets where Cingular will still hold no licenses at all. The Commission might be wise to permit the proposed license transfers but require timely divestiture of excessive spectrum. This will permit Cingular an adequate opportunity to merge AT&T's infrastructure with their own and then swap their valuable surplus licenses for the licenses they need to complete their desired national footprint. While 'timely' may have various definitions, I would suggest that 24 months would be a reasonable limit.