

Small Business Survival Committee
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May 20, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Re: AT&T Wireless Services, Inc. and Cingular Merger; WT Docket No. 04-70

Dear Ms. Dortch:

The Small Business Survival Committee (“SBSC”) requests that the Commission approve the merger of AT&T Wireless Services, Inc. (“AWS”) into Cingular Wireless (“Cingular”).

SBSC is a national, nonprofit small business advocacy organization that works to foster sound public policy that takes into account the concerns of small business owners (both as entrepreneurs, and consumers in the marketplace). SBSC’s involvement in telecommunications policy is longstanding – from our work to secure passage of the 1996 Telecommunications Act to create a more competitive environment in the telecommunications sector, to our ongoing commitment and activism in monitoring the Act to ensure its goals are being met, as well as a host of other issues touching on taxation and regulation. The competitiveness and vitality of this sector is important to our nation’s small business owners.

I. Introduction

We believe very strongly in reducing and modernizing federal regulatory policy to allow American business to compete in the free market. Government intervention and regulation is sometimes justified, as when there are monopolies and/or if government regulation allows companies to obtain strong market power. This rationale for government intervention certainly does not apply when a market is highly competitive. Regulators should then have a very light hand. There are two reasons for this: abuse of the regulatory process by competitors, and the impact of delay on companies in competitive markets.

The Commission does not need us to tell it that within communications and information technology markets where innovation is rapid, competitors can seize the regulatory opportunity to handicap their rival by slowing down a decision. Companies hire skilled, well-connected lawyers and lobbyists to work behind the scenes raising arguments. We

know you are required to respond to all serious arguments – so the more paper is filed, the longer a decision will take.

It is hard to think of a regulatory decision that improves with delay. In the fast moving worlds of computers and communications a year can be an entire product cycle.

Government can skew markets merely by inaction. As our colleague Grover Norquist recently said, "Governments routinely hurt business by delaying regulatory proceedings, stretching them out to the point where the business environment changes and the affected companies can't keep up. Such dilatory tactics hurt firms, of course, but they also hurt workers and shareholders."

Companies that prefer to compete with lawyers and lobbyists rather than in the market know this, and take advantage of it in a system developed at a different time for different markets that operated on a different, much slower clock.

Who cares? Consumers care – and a very big part of “consumers” are the small businesses SBSC represents. They get hurt by these tactics and delays through higher charges, delayed services, less competition and less certainty. There was a time when communications and information technology was less of a priority for small firms – they are now central to the success of most small businesses.

II. SBSC’s Free Market Regulatory Principles

We believe there are some fundamental principles that should guide regulators who believe in free market competition, and which can be applied to this proceeding.

Trust the markets. If there is no monopoly/government-driven strong market power, don’t regulate.

Keep the issue list short. When markets are competitive, it is not the job of regulators to think of all the things that might go wrong, and how to fix them in advance. This opens the door to government staff defining markets. When and if real problems emerge (as defined above), regulators can intervene.

Big is not bad, it’s simply big. SBSC is founded on a belief in the innovative power of small business. After all, most big businesses started small. But where there are economies of scale and/or scope, the economy and consumers will benefit from having large companies. We should let the markets decide whether and how much those economies exist. It is not for government officials to speculate about.

Old market definitions may no longer apply. Sometimes we see quaint notions of “local markets” expressed in regulatory debates. In looking at economic power, there are some markets or categories of markets (e.g. local wireline telephone service), where the local market is clearly the right category to measure competition. But most technology and communications markets are at least national in scope.

III. Application of Principles to the Proposed Merger

In the highly competitive wireless market, the second largest carrier is buying the third largest carrier. Even then, it will only have around 30% of the national market. Needing to compete with industry leader Verizon, Cingular is folding together these two highly compatible networks. Cingular asserts that it will gain major efficiencies, more coverage, and faster deployment of new services like broadband wireless. SBSC hopes that turns out to be true. Our members will certainly benefit from vigorous wireless competition. But it is not our job, nor we respectfully suggest should it be the Commission's, to judge whether this will be a "good" merger or not. It is not for SBSC or Washington regulators to second guess the value of this transaction.

SBSC recognizes that some have opposed the merger, perhaps because it is indeed large. However, we are very pleased to see that, as yet, competitors are not intervening to use the regulatory process to slow down the government's decisions.

SBSC sees no justification to believe this transaction falls into the category where government needs to spend a lot of time, and for two reasons:

First, this is a national market. Service may be offered locally, but the technologies, the pricing and service plans, the new products, and just about everything else in the market are national.

Second, wireless is a very competitive market. Going from six large national carriers to five is not likely to change that. Indeed, it may make the market more competitive by removing an ailing participant, and consolidating its network and other assets into that of a successful competitor.

IV. Economic Impact

This is a very large transaction, a \$41 billion all cash offer. Beyond its wireless communications benefits -- which may be substantial -- it is certainly going to provide a positive jolt to the economy, pumping billions of dollars into individual consumers' hands. That benefit will come this year if the government will make the necessary decisions. As the recent experience with the President's tax cut showed, much of the money will be spent quickly by consumers (or, as in the case of small businesses, invested in their firms), and recycled rapidly in the classic multiplier effect. That will also benefit our small business members.

The economic recovery is underway. It will be a travesty if it is slowed down by unnecessary delays in the regulatory process.

Sincerely,
Karen Kerrigan
Chairman