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September 9, 2004

Via Electronic Delivery

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: Notice of Ex Parte Presentation:
WT Docket No. 04-70

Dear Ms. Dortch:

On September 8, 2004, Mr. Don E. Bond, President of Public Service Communications (“PSC”), Mr. Evan Blum, as President of Public Service Cellular, Inc., Mr. Michael K. Kurtis of Bennet & Bennet, PLLC, counsel for PSC, Mr. Richard Schadelbauer of the National Telecommunications Cooperative Association (“NTCA”) and Mr. Jeffrey Smith of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), met with Commissioner Kathleen Q. Abernathy and Mr. Matthew A. Brill, Commissioner Abernathy’s Senior Legal Advisor. The meeting participants discussed the issues set forth in the “Talking Points” paper appended hereto. A copy of that paper was provided to all meeting participants.

Pursuant to Section 1.1206(b) of the Commission’s Rules, this letter is being filed electronically. Please refer any question regarding this matter to counsel for PSC.

Very truly yours,

/s/ Michael K. Kurtis

Michael K. Kurtis

cc: Commissioner Kathleen Q. Abernathy
Matthew A. Brill, Esquire

Talking Points

Public Service Communications
Meeting with Commissioner Kathleen Q. Abernathy
September 8, 2004
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Re: Impact of Large Company Mergers on Rural Wireless Carriers
WT Docket No. 04-70

The Commission needs to consider the impact of allowing major market consolidation by large wireless carriers on small, rural providers.

- Unlike the large “nationwide” carriers that have built out their networks providing service to the major population centers and connecting traffic arteries, the rural CMRS carriers have invested significant monies extending CMRS to the most rural parts of the country. This degree of service is only possible due to roaming revenues from the large roaming partners.
- Rural carriers have migrated their analog networks to digital based upon the technology selected by their major roaming partners. Those that moved to TDMA (in support of AT&T Wireless and Cingular) have also had to expend monies to overbuild entirely new networks to move to GSM.
- With the proposed merger of AT&T Wireless and Cingular, those two competitors have already begun to shift traffic to one another’s networks to the preclusion of the rural wireless carriers they used to roam with. This sudden loss of revenue is devastating to the small carriers.
- The shift of roaming traffic has taken the form of not only “preferring” the networks of their former competitors but, in many instances, actually “blocking” their subscribers’ ability to even access the rural CMRS carriers’ networks.
- With the incompatibility of digital technologies, the small rural carriers that had built-out their networks to be compatible with AT&T and Cingular have no other source of roaming revenues. T-Mobile, the only other GSM carrier of any size, also appears to be preferring the combined AT&T Wireless and Cingular networks. In many cases, T-Mobile has been unwilling to even enter into roaming agreements with rural wireless carriers.
- Rural wireless carriers are also seeing the large carriers beginning to require that rural carriers pay roaming “premiums” to enable their subscribers to roam in major markets on their networks. Loss of access to major markets at affordable prices is also devastating to the rural carriers. Originally, the Commission had “set aside” CMRS spectrum for use by “designated entities” (PCS C-Block) which would have provided an alternative service provider in every market. With the Nextwave bankruptcy and the relaxation of the set aside, that has not materialized and the only service providers in virtually every major market are the large nationwide carriers.
- In other cases where changes being considered would have a material adverse effect on a class of existing carrier, the Commission has recognized a need for a “phase in” period to avoid the catastrophic effects of a sudden loss of revenue. (see, e.g., ISP reciprocal compensation, intercarrier compensation, etc.) Here, the FCC has placed the AT&T Wireless/Cingular merger on a “fast track” schedule.

Prior to granting the proposed merger, the Commission should fully consider the impact on the rural carriers, that are often the only source for wireless service in the truly rural parts of the nation. While there is a substantial question as to whether mergers of the major competitive service providers for any single technology would be in the public interest, at a minimum the Commission should condition such mergers on:

- 1) Requiring the merged entity to allow roaming access to the merged network **by all carriers** at rates no less favorable than they have been charging one another since the merger was announced.
- 2) Banning the practice of barring their subscribers from accessing any network. (Section 20.12(c) of the Commission's Rules **requires** that carriers provide roaming service to any cellular customer in good standing, including roamers, that is located within the carrier's service area, where the customer has a compatible handset. Blocking subscriber roaming access to a carrier's network precludes the serving carrier from meeting its obligations to allow service to roamers under this rule).
- 3) Establish an interim phase-in requirement for an orderly shift of traffic from the rural CMRS carriers to the merged network.
- 4) Preclude the merged entity and T-Mobile from preferring each other's networks where there are alternative service providers available.