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September 27, 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 24, 2004, Mr. Don E. Bond, President of Public Service Communications (“PSC”), Mr. Michael K. Kurtis of Bennet & Bennet, PLLC, counsel for PSC, Ms. Jessica Bridges, CEO of the Rural Telecommunications Group (“RTG”) and Mr. Richard Schadelbauer of the National Telecommunications Cooperative Association (“NTCA”) met with Mr. Bryan Tramont, Chairman Michael K. Powell’s Chef of Staff. The meeting participants discussed the issues set forth in the “Talking Points” paper appended hereto. A copy of that paper was provided to Mr. Tramont and Mr. Steve Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”),

RTG advised that it was in attendance because a significant number of its members had advised, after having seen the press coverage relating to Cingular’s responses to the Ex Parte meetings PSC had had with the offices of Commissions Abernathy, Adelstein, Copps and Martin on September 7 and 8, that they too had experienced similar issues.

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

Very truly yours,

/s/ Michael K. Kurtis

Michael K. Kurtis

cc: Mr. Bryan Tramont

Talking Points

Public Service Communications, OPASTCO, NTCA and RTG
Meeting with the Office of Chairman Michael K. Powell
September 24, 2004
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Re: Impact of Large Company Mergers on Rural Wireless Carriers
WT Docket No. 04-70

- AT&T Wireless and Cingular are asking the Commission to redefine the relevant market for broadband wireless service as a national (as compared to local) market. One necessary corollary of any such redefinition is that the Commission must redouble its efforts to protect the ability of local and regional carriers to enter into and maintain reasonable nationwide roaming arrangements that permit them to compete in the relevant market.
- For purposes of analyzing the effect of the merger on competition and on nationwide roaming, the Commission must recognize that the broadband PCS market has become segmented. Careful consideration must be given to, and distinctions must be drawn between (a) analog versus digital systems; (b) 850 MHz versus 1900 MHz systems; and, (3) incompatible digital technologies (CDMA versus GSM).
 - One core concern about the acquisition of AT&T Wireless and Cingular is that one of the two competing national providers of digital GSM service with substantial 850 MHz spectrum (Cingular) is acquiring the other provider (AT&T Wireless). T-Mobile, the other national GSM carrier, is almost exclusively a 1900 MHz service provider. So, T-Mobile does not provide a meaningful competitive alternative as a roaming partner to many cellular carriers and subscribers.
 - Local and regional carriers already are at a disadvantage in their efforts to negotiate reasonable reciprocal roaming agreements because of the disparity in the market size they deliver to the nationwide incumbent. The disparity, and potential for an anticompetitive use of market power, will increase if Cingular buys out AT&T Wireless and has a *de facto* monopoly on 850 MHz GSM nationwide roaming services.
 - If small or regional carriers have only one company to go to get GSM roaming services for cellular customers, and if securing those roaming services on reasonable terms is essential for the survival of the small or regional carrier, then the merged entity will control what is in effect a "bottleneck."
- Cingular, after its acquisition of AT&T Wireless, could exercise its increased market power by doing any of a number of things that would disadvantage the local or regional competitor:
 - Canceling or refusing to extend roaming agreements.
 - Imposing non-reciprocal rates, or premium rates for roaming in specified markets.
 - Taking steps to "block" their subscribers from roaming on particular systems or in particular areas (e.g. LAC restrictions).
 - Terminating their IS-136 service offering in the major market. (With AT&T Wireless and Cingular having been the only major-market carriers to implement IS-136, rural IS-136 carriers can be faced with a loss of major-market access for their rural subscribers.)

- The Commission should place conditions on the Cingular / AT&T Wireless approval to protect the legitimate roaming interests of small and regional carriers:
 - Prohibit the merged entity from terminating any existing roaming agreement without the consent of the roaming partner for a transition period of four (4) years.
 - Allow roaming partners of both AT&T Wireless and Cingular to pick and choose the particular existing roaming arrangement(s) to be maintained subsequent to the merger. This would mean that a carrier who had a more favorable roaming agreement with AT&T than with Cingular, or more favorable rates, would be able to maintain the agreement and the rates after the merger for the transition period.
 - Require the merged entity to allow local and regional carriers to have roaming access to the merged network on terms no less favorable than AT&T Wireless and Cingular have been charging one another for access since the merger was announced.
 - Require the merged entity to provide comparable roaming arrangements on its next generation technology system (e.g. UMTS) so that it cannot avoid its roaming obligations through an accelerated technology change.
 - Require the merged entity to make publicly available copies of all of its active roaming agreements so that small and regional carriers can identify instances of discrimination or preferences.
 - Ban the merged entity from implementing, or requiring roaming partners to implement, call blocking or LAC restrictions, with the result that GSM service for the transition period would be provided by the carrier providing the best signal coverage to the end-user.
 - Require that the merged entity seek Commission approval prior to terminating IS-136 operations in any market, with the opportunity for public comment on any such filing.
 - After the transition period, require the merged entity to notify the Commission in advance whenever it is proposing to cancel or materially modify a roaming agreement.
 - Require the merged entity to deal with T-Mobile as a “true competitor” as opposed to entering into agreements that include preferential treatment.
- The relief requested is consistent with Section 20.12(c) of the Commission's rules that *requires* carriers to provide roaming service to any cellular customer in good standing, including a roamer, that is located within the carrier's service area and is utilizing a compatible handset.
- Commission has the authority to address these important issues by placing appropriate conditions on its approval of the Cingular acquisition. If the applicants prefer to have these roaming issues be addressed on an industry-wide basis in a rulemaking proceeding, then processing of the application should await the outcome of that rulemaking.