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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 Ms. Erin McGrath, Assistant Chief of the Mobility Division of the Wireless Telecommunications Bureau, Mr. James R. Bird, Senior Counsel to the Office of the General Counsel, Mr. Louis Peraertz, Special Counsel to the Spectrum and Competition Policy Division of the Wireless Telecommunications Bureau, Mr. Rodger Woock, Chief of the Industry Analysis and Technology Division, Ms. Sarah C. Dill and Ms. Patricia Chow of the Wireless Telecommunications Bureau. The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), was unable to have a representative at the meeting due to a scheduling conflict but the Commission representatives were advised that OPASTCO joined in the matters presented. The meeting participants discussed the issues set forth in the “Talking Points” paper appended hereto, a copy of which was provided to all attendees.

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, NTCA and OPASTCO had had with the offices of Commissions Abernathy, Adelstein, Copps and Martin on September 7 and 8, that they too had experienced similar issues.

Mr. Peraertz asked if the parties had abandoned the positions set forth in their Ex Parte filing memorializing the above-mentioned Commissioner meetings and the Parties advised that they had not. Issues set forth in the “Talking Points” paper from those previous meetings were then discussed although no copies of those papers had been brought to the meeting by PSC, NTCA, OPASTCO or RTG. A copy of the “Talking Points” paper from one of those previous meetings is appended hereto not as a copy of an additional handout from the instant meeting but

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to memorialize the additional issues which were discussed. In addition to those items, there was also discussion relating to frequency coordination issues PSC had had with Cingular relating to areas where the two service providers' 850 MHz networks abut.

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: Ms. Erin McGrath
Mr. James R. Bird
Mr. Louis Peraertz
Mr. Rodger Woock
Ms. Sarah C. Dill
Ms. Patricia Chow

Talking Points

Public Service Communications, OPASTCO, NTCA and RTG
Meeting with the Wireless Telecommunications Bureau
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.

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.