

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
AT&T Wireless Services, Inc. and) WT Docket No. 04-70
Cingular Wireless Corporation)
Seek FCC Consent to Transfer)
Control of Licenses and Authorizations)

To: The Wireless Telecommunications Bureau

**MOTION TO WITHDRAW INFORMAL OBJECTION AND REQUEST FOR
COMMISSION ACTION**

Kaplan Telephone Company d/b/a PACE Communications (“Kaplan”), by its attorneys, and pursuant to Sections 1.41 and 1.935(a) of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby requests Commission approval to withdraw its Informal Objection and Request for Commission Action filed on September 27, 2004 in the above-captioned proceeding. Kaplan and Cingular Wireless have executed an addendum to the parties’ existing Switching Services Agreement that is intended to resolve the dispute between them. A copy of that addendum and the certification required by section 1.935(a) of the Commission’s rules are attached hereto.

Respectfully Submitted

**KAPLAN TELEPHONE
COMPANY**

_____/s/_____

Gregory W. Whiteaker
Howard S. Shapiro
Bennet & Bennet, PLLC
10 G Street, NE, Seventh Floor
Washington, DC 20002
202/371-1500

Its Attorneys

October 6, 2004

CERTIFICATION OF TONEY TURNLEY

I, Toney Turnley, do hereby certify under penalty of perjury the following:

1. I am the President of Kaplan Telephone Company d/b/a PACE Communications ("Kaplan").
2. Neither Kaplan nor any of its principals has received or will receive any money or other consideration in exchange for the withdrawal or dismissal of Kaplan's Informal Objection filed on September 27, 2004 in WT Docket No. 04-70. The decision to withdraw the Informal Objection was based solely on the execution of an Addendum to the parties' existing Switching Services Agreement, a copy of which is attached to Kaplan's Motion to Withdraw the Informal Objection.



Toney Turnley

October 6, 2004

Date

ADDENDUM TO SWITCHING SERVICES AGREEMENT

This ADDENDUM TO SWITCHING SERVICES AGREEMENT (“Addendum”), dated as of October 5, 2004, is made by and between Kaplan Telephone Company d/b/a PACE Communications, (“Company”) and Cingular Wireless LLC, (“Cingular”). Company and Cingular are each referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties entered into a SWITCHING SERVICES AGREEMENT dated as of September 19, 2003 (the “Agreement”), and

WHEREAS, the Parties wish to amend the Agreement to add this Addendum;

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement and this Addendum, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. System Enhancements

Notwithstanding any other provision of the Agreement to the contrary, and without limitation of any rights, duties, responsibilities, and/or obligations (collectively “Obligations”) there under, Cingular shall make all modifications, upgrades, alterations and/or enhancements (“Enhancements”) to its Cingular Equipment and Facilities, network, systems, platforms, protocols, parameters, software, databases, and functions (including without limitation, the MSC, HLR, SMS platform, information technology (“IT”) systems, billing systems, and activation systems) (collectively “Cingular Systems”) reasonably necessary to allow Company to activate, deactivate, provision and administer subscribers to Company’s GSM and GSM-related services, including without limitation, GSM Service, GPRS, SMS, Voice Mail, and Long Distance Service (collectively “Retail GSM Services”), or to make modifications to such subscriber activation/deactivation/provisioning and to administer such subscriber services. Provided further that Cingular shall make such Enhancements to the Cingular Systems as are otherwise reasonably necessary to allow Company to receive the Services pursuant to the Agreement or for Company to be able to provide competitive Retail GSM Services to its own subscribers and roamers in the applicable Market(s) of the same type, quality and character of services that Cingular provides its own subscribers in the Lafayette, Louisiana MSA Cingular System, taking into account, if appropriate, the differences, if any, in the material technical characteristics of the Cingular Systems and the Company Systems. Cingular will work with Company to provide GPRS data transport services to the content provider of Company’s choice. Company will exercise commercially reasonable efforts to work with Cingular as necessary to modify or enhance the Company Systems as needed to provide the above-referenced Retail GSM Services.

2. Performance Deadline: Credits

Cingular shall diligently work to complete the Enhancements as soon as commercially reasonable and shall complete all Enhancements no later than December 13, 2004 to allow Company to provide the Retail GSM Services and to receive the Services in the applicable Markets, except that Cingular may complete the Enhancements necessary for Company to provide GPRS (“GPRS Enhancements”) on the following schedule. Cingular shall complete the necessary GPRS Enhancements by December 13, 2004 to make the GPRS data transport network available for testing with limited access to the Internet. Cingular shall complete the necessary GPRS Enhancements to provide GPRS Service no later than the later of: (i) forty-five (45) days following the date on which connectivity is made available to Cingular by Company’s content provider or (ii) January 27, 2005, (i.e., forty-five days after December 13, 2004) provided further that Cingular shall use commercially reasonable efforts to complete the GPRS Enhancements to deliver the GPRS Services sooner than forty-five (45) days after December 13, 2004, or the date on which connectivity is made available to Cingular by Company’s content provider. If Cingular should fail to complete the Enhancements by December 13, 2004, excluding GPRS Enhancements, unless such failure is the proximate result of Company’s failure to perform its Obligations, Cingular shall credit Company fifty percent (50%) of the amount of any GSM switching fees, specifically BSC Ater Interface Port, TRX, and GPRS charges, otherwise due Cingular under the Agreement. The credit for fees based on a monthly charge (e.g., BSC Ater Interface Port) shall be calculated on a pro rata basis for each day that Cingular fails to complete the Enhancements. If Cingular should fail to complete the required Enhancements by December 13, 2004, or GPRS Enhancements by the deadlines specified above, unless such failure is the proximate result of Company’s failure to perform its Obligations, then at Company’s direction, Cingular immediately shall de-activate GPRS in Company’s System such that Company’s System no longer supports or carries GPRS traffic for Cingular subscribers, and Company shall be relieved of any duty or obligation to support or provide GPRS service to Cingular subscribers pursuant to the Intercarrier Multi-Standard Roaming Agreement dated October 16, 2003 between Company and Cingular (“Roaming Agreement”), without altering any other rights or obligations there under, until Cingular completes such required Enhancements. Credits and/or GPRS de-activation pursuant to this Section shall be in addition to and not exclusive of any other remedies in law or equity to which Company may be entitled.

3. Cost of Enhancements

Cingular will bill Company and Company shall pay Cingular to make and implement the Enhancements pursuant to Section 1, an amount not to exceed the lesser of \$62,000 or the actual cost of making and implementing the Enhancements.

4. Electronic Access to Billing Systems

Cingular shall provide Company with direct electronic access to Cingular’s billing systems, platforms, and parameters reasonably necessary to allow Company to activate, modify, and deactivate Company’s subscribers consistent with the activation/deactivation/modification systems, methods, procedures, and protocols

employed by Cingular for the performance of similar functions or services in connection with the operation of its own Systems or its provision of similar services to unaffiliated third parties, taking into account, if appropriate, the material differences, if any, in the technical characteristics of the Cingular Systems and the Company CMRS GSM Systems.

5. Subscriber Provisioning, Activation and Administration

In the absence of direct electronic access to all Cingular Systems necessary for Company to activate, deactivate, provision, and administer Company's subscribers, Cingular shall perform such subscriber activation, deactivation, provisioning and/or administration on behalf of Company. Cingular shall perform such Services in a manner consistent with the activation/deactivation/provisioning/administration systems, methods, procedures, and protocols employed by Cingular for the performance of similar functions or services in connection with the operation of its own Cingular Systems or its provision of similar services to unaffiliated third parties, taking into account, if appropriate, the material differences, if any, in the technical characteristics of the Cingular Systems and the Company Systems. Provided further that in the ordinary course of business, Cingular shall use commercially reasonable efforts to perform such Services within two hours of receipt of the information from Company reasonably necessary for Cingular to perform such activation, deactivation, provisioning and/or administration of Company's subscribers. The Parties shall mutually develop the communications methods by which Company shall provide Cingular such information, provided further that such methods shall be no less expedient than the current methods used for activation of Company TDMA subscribers.

6. Records

Cingular shall provide Company with call record and billing information in electronic format and consistent with Section 9.3 of the Agreement to allow Company to bill both roamers on Company's CMRS or data systems and subscribers to Company's Retail GSM Services.

7. Mobile Network Code: Cut-Over

- 7.1 Subject to Section 7.3, below, Company shall broadcast its Mobile Country Code ("MCC")-Mobile Network Code ("MNC") of 310-870 upon completion of the Enhancements, testing, and completion of any necessary enhancements or modifications to Company's Systems and those of its third-party vendors. Company shall determine the date on which it shall begin broadcasting its MCC-MNC, provided that Company shall provide Cingular at least ten (10) days written notice prior to broadcasting Company's MCC-MNC. Cingular shall use commercially reasonable efforts to meet the cut-over date.

- 7.2 By December 13, 2004, Cingular shall use commercially reasonable efforts to update its network and/or handsets, as necessary, to ensure that Cingular customers continue to recognize Company as Cingular's Secondary Preferred Roaming Provider, only behind Cingular's Preferred Roaming Provider, AT&T Wireless, consistent with the Roaming Agreement.
- 7.3 Within thirty-six (36) hours of the cut-over, Cingular shall provide Company with busy-hour traffic data, as currently provided, for the twenty-four (24) hour period following the cut-over. If, within the first seventy-two (72) hour period following the cut-over Company experiences a decline in traffic over its cell sites from the previous seventy-two (72) hour period, not resulting from disruptions to Company cell sites, Company shall have the right to again broadcast the Cingular MCC-MNC that Company had previously broadcast only for the period of time necessary to resolve the technical issues causing such traffic decline. Cingular and Company agree to use commercially reasonable efforts to resolve such issues as quickly as possible. Company agrees to immediately begin broadcasting its own MNC once such technical issues have been resolved.

8. Testing

Company shall complete full IREG and TADIG testing via a "Toy Cell Site" to be provisioned by Cingular at Cingular's Lafayette MSC. Cingular shall make such Toy Cell Site available to Company at Company's reasonable request upon the completion of sufficient Enhancements to allow Company to conduct such testing and in no event later than December 14, 2004. Cingular shall cooperate with Company in conducting and completing the IREG and TADIG testing. No later than December 13, 2004, Cingular shall provide Company with sufficient PCI cards to allow Company to perform testing of the GPRS data transport network, however the number of PCI cards provided to Company by Cingular shall not exceed six (6). Each Party shall bear its own expenses in connection with such testing. The Parties will set mutually agreed upon service levels to govern testing under this Section.

9. SIM Cards

- 9.1 Cingular shall provide Company with sufficient SIM cards based on a profile provided by Cingular and with Company's MCC-MNC ("SIM Profile") no later than December 14, 2004 to allow Company to complete testing pursuant to Section 8.
- 9.2 Company shall adopt the SIM Profile provided by Cingular. Company may not modify the SIM Profile without Cingular's written approval. Company will provide Cingular with all requested information necessary to complete and implement the SIM Profile. Cingular will modify the SIM Profile so that Company subscribers prefer and use Company's system, and not those of another GSM system, in Company's Licensed Area and to allow Company subscribers to utilize other GSM systems, consistent with Company roaming arrangements, outside of Company's Licensed Area, until such time as Company and Cingular agree it is beneficial for Company to adopt and use its own profile.
- 9.3 Company will purchase SIM cards through Cingular and the SIM cards will be procured from one of Cingular's approved SIM suppliers. Company will provide Cingular with purchase orders for the SIM cards. Such purchase orders shall contain all relevant ordering information, including but not limited to, SKU and quantity information. Upon receipt of the Company purchase order, Cingular will order the SIM cards on Company's behalf and send all relevant information to the SIM supplier. The SIM cards will be provided to Company at commercially reasonable, industry standard rates, and on delivery schedules not less favorable than Cingular receives or provides itself in the Associated Cingular System or any unaffiliated third parties served from the Associated Cingular System.

10. TAP Files

Company, or a third-party contracted by Company, shall have the ability to create TAP files from detailed call records (including roamer information) electronically provided by Cingular via FTP at least on the same frequency and schedule on which TDMA files are delivered currently. Company, or a third-party contracted by Company, shall have or establish a relationship with a third-party contractor that can process the GSM TAP files. Cingular shall provide information (including without limitation switch make and manufacturer, software release, and call record format) as soon as possible to

Company and/or its third party contractors to enable and facilitate Company's, or its contractor's, set-up and processing of TAP files.

11. Roaming

Company shall clear roaming records and settlements under Company's public land mobile network identification ("PLMN") of USAKT. Both parties agree to follow the industry accepted procedures in order to provide information to facilitate all roamer processes and roaming payments.

12. Effective Date

This Addendum shall be effective as of October 5, 2004, upon the execution of both Parties.

13. Agreement in Full Force and Effect

Except as modified by this Addendum, all terms and conditions of the Agreement shall remain in full force and effect, and the Parties agree to satisfy and perform all Obligations under the Agreement. In the event that the terms of this Addendum conflict with the terms of the Agreement, the terms of this Addendum shall control. Any capitalized terms used and not defined in this Addendum shall have the meanings assigned to them in the Agreement.

14. Construction and Interpretation

This Addendum is the result, in part, of a negotiated resolution of a dispute between the Parties regarding the Parties' Obligations with respect to Cingular's provision of services to support Company's offering and provision of the retail GSM services to Company subscribers. Neither this Addendum nor the Obligations of the Parties under this Addendum shall be construed as evidence of the existence or absence of such Obligations or substantially similar Obligations under the Agreement as of its Effective Date, September 19, 2003.

15. Additional Services

It is the intent of the Parties that Cingular shall make such Enhancements and provide such Services as will allow Company to offer competitive Retail GSM Services to roamers and subscribers in the applicable Market(s).

16. No Netting

Cingular shall not net payments due under the Agreement against payments due under the Roaming Agreement. All amounts currently due under the Roaming Agreement shall be paid to Company within twenty (20) days of the Effective Date of this Addendum.

17. SMS Services

This Addendum clarifies the understanding of the Parties that the per message SMS Services fee in Article VI and Schedule B of the Agreement applies only to SMS messages originated by Company subscribers.

18. Counterparts

This Addendum may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute the same agreement.

19. Execution and Delivery

This Addendum has been duly executed and delivered by each of Cingular and the Company and constitutes its valid and binding obligation, enforceable against it in accordance with the terms of the Agreement, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and may be subject to general principles of equity.

[signatures follow on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Addendum as of the date and year first written above.

KAPLAN TELEPHONE COMPANY

Approved

By: 
Name: TONY N. TURNERY
Title: PRESIDENT

CINGULAR WIRELESS LLC

Concurred

By: _____
Name: _____
Title: _____

Approved

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Addendum as of the date and year first written above.

KAPLAN TELEPHONE COMPANY

Approved

By: _____
Name: _____
Title: _____

CINGULAR WIRELESS LLC

Concurred

By: *[Signature]*
Name: *Joe Larussa*
Title: *V.P. C.M. Larussa*

Approved

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Addendum as of the date and year first written above.

KAPLAN TELEPHONE COMPANY

Approved

By: _____
Name: _____
Title: _____

CINGULAR WIRELESS LLC

Concurred

By: _____
Name: _____
Title: _____

Approved

By: Michael F. VanWeelden *eg*
Name: Michael F. VanWeelden
Title: Director - SEM - Network