Kinney, TX	CMA669	CEA7200
Maverick, TX	CMA669	CEA7240
Val Verde, TX	CMA669	CEA7200
Zavala, TX	CMA669	CEA7240
Brooks, TX	CMA670	CEA1880
Duval, TX	CMA670	CEA1880
Jim Wells, TX	CMA670	CEA1880
Kenedy, TX	CMA670	CEA1880
Kleberg, TX	CMA670	CEA1880
Live Oak, TX	CMA670	CEA1880
Aransas, TX	CMA671	CEA1880
Bee, TX	CMA671	CEA1880
Edwards, TX	CMA671	CEA7200
Refugio, TX	CMA671	CEA1880

257. We decline to require further limitation-based spectrum divestitures, as some commenters proposed,[593] because we believe such limitations too closely resemble our former cap on spectrum aggregation. In the analysis represented in this Order, we have fully taken account of the likely competitive effect of the aggregation of spectrum resulting from this transaction, and we have imposed remedies consistent with that analysis.

3. Operation of Divestitures

258. Divestiture of operating units including associated spectrum, as well as bare spectrum (the "Divestiture Assets") as set forth above, will be accomplished in the following way. A management trustee ("Management Trustee") shall be appointed to serve as manager of the Divestiture Assets until such assets are sold to third party purchasers or transferred to a divestiture trustee (who may be the same person as the Management Trustee). During the period in which the Management Trustee is in day-to-day control of the Divestiture Assets, the Applicants shall retain *de jure* control and shall have the sole power to market and dispose of the Divestiture Assets to third party buyers, subject to the Commission's regulatory powers and process with respect to license transfers and assignments.

259. Accordingly, we require that, within three calendar days from the date of release of this Order, the Applicants file an appropriate application with the Wireless Telecommunications Bureau to transfer the Divestiture Assets into the trust with the Management Trustee, which application shall also include a request to approve the identity of the Management Trustee and the terms of the trust agreement. We further require that the Divestiture Assets shall be transferred to the trust pursuant to this Order no later than 12 calendar days from that date on which the Applicants file their application. The trust agreement shall include all reasonable and necessary rights, powers, and authorities to permit the Management Trustee to perform his duties of day-to-day management of the Divestiture Assets, in the ordinary course of business, in order to permit expeditious divestiture.[594] The Management Trustee will

[593] *See, e.g.,* Comments of Donald Newcomb at 1 (arguing for 60 MHz cap in urban markets); Comments of Craig Paul at 1 (advocating reauction of spectrum that is not "actually required for service"); CFA/CU Petition to Deny at 9 (suggesting condition that Applicants return spectrum in excess of 40 MHz in each market).

[594] The duties and responsibilities of the Management Trustee and the terms relating to how the Divestiture Assets are to be preserved during the term of the trust are more fully set forth in that certain Preservation of Assets Stipulation and Order ("Stipulation"), and Final Judgment ("Final Judgment") signed by the Applicants on October 25, 2004 and entered by the District Court for the District of Columbia. Except to the extent that any provisions (continued....)

serve at the cost and expense of the Applicants.

260. From the date of release of this Order, and until the divestitures ordered herein have been consummated, both the Applicants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets and shall take all steps to manage them in a way as to permit prompt divestiture. We require that the Applicants and the Management Trustee abide by the same provisions relating to the duties of the Management Trustee and the preservation of the Divestiture Assets as those contained in the Stipulation that the Applicants have entered into with the DOJ. We also require that, to the extent the Stipulation requires that the Applicants or the Management Trustee provide the DOJ with any reports or requires that the Applicants seek any approvals from the DOJ, the Applicants will also provide such reports to, and seek such approvals from, the Commission.

261. The Applicants will be allowed 120 days from the date of entry of the Final Judgment to divest the Divestiture Assets prior to the second stage of the divestiture procedures becoming operative. Upon application by the Applicants to the Bureau, the Bureau may grant one extension of no more than 60 days to allow the Applicants further time to dispose of the Divestiture Assets.[595]

262. Upon expiration of the 120-day period, together with any approved extension, any Divestiture Assets that remain owned by the Applicants shall be irrevocably transferred to a divestiture trustee (the "Divestiture Trustee") who shall be solely responsible for accomplishing disposal of the Divestiture Assets. The Applicants will submit to the Wireless Telecommunications Bureau (the "Bureau"), for approval, both the name of the proposed Divestiture Trustee and a draft of the trust agreement[596] to be entered into with said trustee together with an appropriate application to effect such transfer no later than 30 days prior to the expiration of the Management Trustee period set forth in paragraph 260 above.[597] The Divestiture Trustee will serve at the cost and expense of the Applicants and shall file monthly reports with the Bureau setting forth his efforts to divest the Divestiture Assets.

263. The Divestiture Trustee shall use its best efforts to sell the Divestiture Assets within six months of his appointment, subject to the Commission's regulatory powers and process with respect to license transfers and assignments. The expeditious disposal of the Divestiture Assets during this period is of greater importance than the price that might otherwise be obtained for such assets. If a sale of any of the Divestiture Assets that consist of operating units and associated spectrum has not been effectuated within such period, the Divestiture Trustee shall file a report with the Bureau explaining the Divestiture Trustee's efforts to sell the Divestiture Assets, the reasons why the Divestiture Assets have not been sold, and the Divestiture Trustee's recommendations. The Commission will consider such report and will issue such further orders as it considers appropriate.

(...continued from previous page)
herein conflict, we require that the Applicants and the Management Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

[595] If the Applicants have filed an application with the Commission seeking consent to the sale of any of the Divestiture Assets to a third party within the time periods set forth above but the Commission has not acted by the end of such period, such period will be extended and shall expire five days after the Commission's action with respect to such Divestiture Assets.

[596] The Bureau will consult with the Office of General Counsel on matters relating to the name of the proposed divestiture trustee and the terms of the divestiture trust.

[597] Except to the extent that any provisions herein conflict, the duties and responsibilities of the Divestiture Trustee are more fully set forth in the Final Judgment and we require that the Applicants and the Divestiture Trustee fully comply with such provisions as if they were set forth herein *in extenso*.

264. To the extent that any of the Divestiture Assets are included within the Stipulation and Final Judgment, we are willing to allow the Applicants to proceed to divest such assets in accordance with the terms of the agreements that are contained in those documents. To the extent that this Order requires divestitures in any market that are more extensive than those required by the DOJ, we require that the Applicants comply with this Order and completely dispose of the Divestiture Assets included in such markets. To the extent that we are requiring divestitures in additional markets to those of the DOJ, we will require the Applicants, prior to closing their transaction, to provide the Commission with documentation substantially similar to that provided to the DOJ with respect to the additional divestitures that we require herein.

B. Treatment of Partial Interests

265. Our market-specific analysis also indicated that certain partial, non-passive interests retained by the Applicants in competing mobile telephony carriers could cause competitive harm.[598] Our analysis indicated that, if we attributed these partial interests to the Applicants, and granted the transfer of control without a condition, the combined entity would have a very high market share, as well as a high level of spectrum aggregation. We also found that there were fewer competing carriers in certain of these markets. Therefore, in the following markets, we require the combined entity to convert its partial non-passive interests held into partial passive interests:

Market	Market Name
CMA100	Shreveport, LA
CMA213	Pittsfield, MA
CMA275	St. Joseph, MO
CMA454	Louisiana 1-Claiborne

266. Specifically, with respect to CMAs 100 and 454, such interests are held by Cingular through a limited partnership called ALLTEL Communications of North Louisiana Cellular Limited Partnership. The interest in CMA 213 is held by AT&T Wireless through Pittsfield Cellular Telephone Co., and in CMA 275 by AT&T Wireless through CellTel Co. Such interests may be made passive to satisfy the requirements of this Order in one of two ways. The Applicants may treat such assets as part of the Divestiture Assets and dispose of them in the same way as any of the other Divestiture Assets herein. As an alternative, the Applicants may elect to retain such interests, provided that they demonstrate to the Wireless Telecommunications Bureau, after such bureau has consulted with the Office of General Counsel, that the retained minority interest will become irrevocably and entirely passive and will not significantly diminish competition. If the Applicants elect to retain their interests, the Applicants must demonstrate that the interests have been made irrevocably and entirely passive within three calendar days from the date of release of this Order.

C. Other Remedies

267. We condition our grant of this transaction on the consummation of two related transactions: (1) the Joint Venture Unwind agreement between Cingular and T-Mobile, as described in Section II.B.2., above, and discussed in Section V.A.3.d., above; and (2) AT&T Wireless's agreement with Triton, as described in Section II.B.3., above, and discussed in Section V.A.3.d., above. In addition, the Applicants committed to a restriction on Cingular's participation in our upcoming Auction 58. We condition our grant of this transaction on Cingular being so restricted, as described in Section V.A.3.d.,

[598] *See* discussion *supra* Section V.A.3.d.(ii).

above. Finally, we condition our grant of this transaction on the imposition of a condition regarding manual roaming, as described in Section V.A.3.c.(ii)., above.

VII. REQUESTS FOR WAIVER OF THE CELLULAR CROSS-INTEREST RULE

268. As part of the Application, the Applicants are seeking a waiver of section 22.942 of the Commission's rules ("Cellular Cross-Interest Rule")[599] to allow Cingular to acquire from subsidiaries of AT&T Wireless cellular licenses in eleven rural service areas ("RSAs").[600] Under this rule, which is still technically in effect but which the Commission has recently decided to eliminate, Cingular is prohibited from acquiring the cellular A-block licenses currently held by AT&T Wireless subsidiaries,[601] because Cingular subsidiaries hold the cellular B-block licenses in parts of these eleven RSAs.[602] In the *Rural Report and Order*, the Commission decided to eliminate the Cellular Cross-Interest Rule in favor of the case-by-case analysis used in reviewing the competitive effects of all assignment and transfer of control applications, pursuant to section 310(d) of the Communications Act.[603] The Commission found that reliance on case-by-case review for aggregations of spectrum and cellular cross interests is a better approach than utilizing a prophylactic rule,[604] because "the public interest is better served by the benefits of case-by-case review with its greater degree of flexibility to reach the appropriate decision in each case, reduced likelihood of prohibiting beneficial transactions or levels of investment both in urban and rural areas, and ability to account for the particular attributes of a transaction or market."[605] We have performed such review of these markets in the context of our general case-by-case analysis of this transaction, and have made individual judgments regarding any potential harms and the need for any remedies in these markets. Given that the Commission has decided to eliminate the rule and it remains in force only due to a procedural consideration,[606] we hereby waive the rule wherever necessary to effect the

[599] 47 C.F.R. § 22.942. The Cellular Cross-Interest Rule states that an entity "that actually controls a licensee for one channel block in a [cellular geographic service area ("CGSA")] may not have a direct or indirect ownership interest of more than 5 percent in the licensee, ... or entity that actually controls a licensee for the other channel block in an overlapping CGSA." 47 C.F.R. § 22.942. The Commission, however, has stated that it will entertain and grant waivers of this rule if there is no "significant likelihood of substantial competitive harm." 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, WT Docket No. 01-14, *Report and Order*, 16 FCC Rcd. 22,668, 22,669 2 (2001).

[600] *See* Application, Exhibit 1, at 43.

[601] The licenses for which a waiver of section 22.942 is requested are: KNKN833 (CMA357, Connecticut 1 – Litchfield); KNKN555 (CMA360, Florida 1 – Collier), KNKQ386 and KNKQ421 (CMA361, Florida 2 – Glades); KNKN738 (CMA363, Florida 4 – Citrus); KNKN550 and KNKQ422 (CMA364, Florida 5 – Putnam); KNKN627 (CMA598, Oklahoma 3 – Grant); KNKN472 (CMA657, Texas 6 – Jack); KNKN428 (CMA662, Texas 11 – Cherokee); KNKN456 (CMA669, Texas 18 – Edwards); KNKN525 (CMA670, Texas 19 – Atascosa); and KNKN452 (CMA671, Texas20 – Wilson).

[602] Application, Exhibit 1, at 43. The cellular A- and B-block overlaps occur in 53 counties which are contained in parts of these eleven RSAs. *See* Application, Exhibit 1, at 49.

[603] Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-166, at 36, 39 ¶¶ 63-64, 68 (rel. Sept. 27, 2004) ("*Rural Report and Order*") ("We believe that no cross interest or transaction should be presumptively prohibited in RSAs and that we should consider such proposals under an approach that is consistent with the same case-by-case analysis that is employed in all other CMRS contexts").

[604] *Id.* at 36 ¶ 63.

[605] *Id.* at 38 ¶ 67.

[606] The Cellular Cross-Interest Rule will be eliminated on 60 days after the *Rural Report and Order* is published in the Federal Register. *Id.* at 88 ¶ 180.

market-specific judgments we have made above.

VIII. CONCLUSION

269. As discussed above, we find that competitive harm is unlikely in most mobile telephony markets as a result of this transaction, primarily because of the presence of multiple other carriers who have the ability to act as effective competitive constraints on the behavior of the merged entity. Therefore, while the structure of these markets will change as a result of the transaction, we find that carrier conduct will remain sufficiently competitive to ensure that market performance will not be impaired, and, given the expected benefits, the public interest will be enhanced on balance. However, with regard to local mobile telephony markets, our case-by-case analysis shows that likely competitive harms exceed likely benefits of the transaction, and we therefore require remedies to ameliorate the expected harm and thereby ensure that carrier conduct in these markets will likewise remain effectively competitive and that market performance will not be impaired

270. We emphasize that our judgment in this matter does not mean that our analysis would be the same if additional consolidation in this sector were to be proposed in the future. Clearly, there is a point beyond which further consolidation would not be in the public interest. As we have here, when reviewing any future applications of this nature we will look closely at the competitive circumstances pertaining at that time in the affected markets and will make a considered judgment based on careful weighing of all the relevant circumstances.

IX. ORDERING CLAUSES

271. Accordingly, having reviewed the applications, the petitions, and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the transfer of control of licenses from AT&T Wireless to Cingular ARE GRANTED, to the extent specified in this order and subject to the conditions specified below.

272. IT IS FURTHER ORDERED that, pursuant to sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and sections 0.331 and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.925, the Request for Waiver of the Commission's Cellular Cross-Interest Rule, 47 C.F.R. § 22.942, IS GRANTED.

273. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the *pro forma* transfer of control of minority interests held by AT&T Wireless to Cingular ARE GRANTED, to the extent specified in this order and subject to the conditions specified below.

274. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the *pro forma* assignment and transfer of control of licenses to effectuate the reorganization of Cingular ARE GRANTED.

275. IT IS FURTHER ORDERED that the above grant shall include authority for Cingular to acquire control of: (a) any license or authorization issued to AT&T Wireless and its subsidiaries during the Commission's consideration of the transfer of control applications or the period required for consummation of the transaction following approval; (b) construction permits held by such licensees that mature into licensees after closing; and (c) applications filed by such licensees and that are pending at the time of consummation of the proposed transfer of control.

276. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of

1934, as amended, 47 U.S.C. § 214, and section 63.18 of the Commission's rules, 47, C.F.R. § 63.18, the application to transfer control of AT&T Wireless's international Section 214 authorization to provide global resale service and limited global facilities-based service, excluding the U.S.-South Africa route, to Cingular Wireless Corporation is GRANTED subject to the conditions applicable to international section 214 authorizations.

277. IT IS FURTHER ORDERED that, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 63.10 of the Commission's rules, 47, C.F.R. § 63.10, AT&T Wireless Services, Inc. SHALL BE CLASSIFIED as a dominant international carrier in the provision of service on the U.S.-South Africa route.

278. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the applications for the assignment of licenses from Cingular to T-Mobile ARE GRANTED.

279. IT IS FURTHER ORDERED that, pursuant to sections 1.9005 and 1.9030 of the Commission's rules, 47 C.F.R. §§ 1.9005, 1.9030, the applications filed by T-Mobile and Cingular to implement long-term *de facto* spectrum leasing arrangements ARE GRANTED.

280. IT IS FURTHER ORDERED that the licenses to be acquired and the leases to be entered into by T-Mobile are subject to compliance with the provisions of the Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, and VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice and the Federal Bureau of Investigation on the other, dated January 12, 2001, which Agreement is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the Commission's implementing regulations.

281. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the application for the assignment of a license from Lafayette to Triton and the applications for the exchange of licenses between Triton and AT&T Wireless ARE GRANTED.

282. IT IS FURTHER ORDERED that the grant of the transfer of control of licenses from AT&T Wireless to Cingular is conditioned upon consummation of the T-Mobile Cingular Joint Venture Unwind and AT&T Wireless's agreement with Triton.

283. IT IS FURTHER ORDERED that the Commission's grant of the transfer of control of licenses from AT&T Wireless to Cingular is conditioned upon the completion of the divestitures described in Section VI.

284. IT IS FURTHER ORDERED that the grant of the transfer of control of licenses from AT&T Wireless to Cingular is conditioned upon Cingular's commitment not to apply to bid in Auction 58 for any license in any BTA in which Cingular controls or has a 10 percent or greater interest in 70 MHz or more of cellular and/or PCS spectrum.

285. IT IS FURTHER ORDERED that, with respect to roaming, Cingular may not prevent its customers from completing calls in the manner contemplated in 47 C.F.R. § 20.12(c), unless specifically requested to do so by a subscriber.

286. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 309, 310(d), the Petitions to Deny the transfer of control of licenses and authorizations from AT&T Wireless to Cingular filed by AW

Acquisition Corp., Pace Communications Services Corporation, Edward Garcia dba Comm One Systex of Ohio and Conn One Wireless of Chicago, Ed Wicks dba Mercedes Wireless, Inc., Kempner Mobile Electronics, Inc., and Airborne Beepers and Video, Inc.; William Burnley; Cellular Emergency Alert Service Association; Consumer Federation of America and Consumers Union; Richard Giandomenica; Andrew Shepherd; and Thrifty Call, Inc. are DENIED for the reasons stated herein.

287. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
LIST OF COMMENTERS

Petitions to Deny Filed by:

1. AW Acquisition Corp., Pace Communications Services Corporation, Edward Garcia dba Comm One Systex of Ohio and Conn One Wireless of Chicago, Ed Wicks dba Mercedes Wireless, Inc., Kempner Mobile Electronics, Inc., and Airborne Beepers and Video, Inc.*
2. William Burnley*
3. Cellular Emergency Alert Service Association*
4. Consumer Federation of America and Consumers Union*
5. Richard Giandomenico*
6. Andrew Shepherd*
7. Thrifty Call, Inc.*

Comments Filed by:

1. Alabama National Emergency Number Association
2. American Farm Bureau Federation
3. Marsha Biancota
4. City of Tulsa Oklahoma, Telecommunications and Information Services Department, Public Safety Communications Division
5. ComCARE Alliance
6. Communications Workers of America*
7. CompTel/ASCENT
8. Connecticut Police Chiefs Association
9. Office of the Washington State Attorney General, Consumer Protection Division *
10. Etowah County Communications District
11. First Cellular of Southern Illinois
12. Representative Tre Hargett, Republican Leader, Tennessee House of Representatives
13. Highland Cellular, LLC*
14. Lee County Communications Center
15. Lexington Fayette Urban County Government
16. Massachusetts High Technology Council
17. Mississippi Farm Bureau Federation
18. Chris Nascimento
19. National Emergency Number Association

20. National Emergency Number Association, Pennsylvania State Chapter
21. National Spinal Cord Injury Association
22. Donald R. Newcomb*
23. Richard O'Krepki
24. Representative David W. Palsrok, Michigan House of Representatives
25. Craig Paul*
26. Wayne Perry, Edge Wireless
27. Public Service Communications, Rural Telecommunications Group, National Telecommunications Cooperative Association, and Organization for the Promotion and Advancement of Small Telecommunications Companies
28. Representative Roger Roy, Chairman, Telecommunications, Internet and Technology Committee, Delaware House of Representatives
29. Rural Enterprises of Oklahoma Incorporated
30. B.J. Sanchez
31. Self Help for Hard of Hearing People (SHHH)*
32. Small Business Survival Committee*
33. South Carolina Farm Bureau Federation
34. State of Connecticut, Department of Public Safety, Division of Fire, Emergency and Building Services, Office of Statewide Emergency Telecommunications
35. Bill Stoval, Speaker of the House Designate, Arkansas House of Representatives
36. Representative Brad Street, Michigan House of Representatives
37. Richard N. Taylor, ENP
38. Tennessee Emergency Number Association
39. Marlin Todd*
40. Town of Manchester
41. United States Cellular Corporation (USCC)*

Joint Opposition to Petitions to Deny and Comments Filed by:

1. Cingular and AT&T Wireless

Reply Comments Filed by:

1. Alliance for Public Technology*

2. AW Acquisition Corp., Pace Communications Services Corporation, Edward Garcia dba Comm One Systex of Ohio and Conn One Wireless of Chicago, Ed Wicks dba Mercedes Wireless, Inc., Kempner Mobile Electronics, Inc., and Airborne Beepers and Video, Inc.
3. Cellular Emergency Alert Systems Association
4. Cingular and AT&T Wireless
5. CompTel/ASCENT Alliance
6. Consumer Federation of America and Consumers Union
7. Dobson Communications Corporation*
8. Kempner Mobile Electronics, Inc.
9. Lucent Technologies, Inc.*
10. Rural Cellular Corporation (RCC)*
11. Thrifty Call, Inc.
12. T-Mobile USA, Inc.

* Pleadings filed during comment period.

APPENDIX B
LIST OF RESPONSES

Responses from AT&T Wireless:

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 15, 2004) (providing data and narrative responses to the Commission's June 30, 2004 Information Request).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 15, 2004) (providing the documents responsive to the Commission's June 30, 2004 Information Request on compact discs).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 16, 2004) (providing a portion of the boxes containing the documents responsive to the Commission's June 30, 2004 Information Request).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 22, 2004) (providing additional documents on compact discs responsive to the Commission's June 30, 2004 Information Request).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 22, 2004) (replacing hard drives containing responses to the Commission's June 30, 2004 Information Request with new hard drives).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 26, 2004) (providing a portion of the boxes containing the documents responsive to the Commission's June 30, 2004 Information Request).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 6, 2004) (providing the remaining boxes containing the documents responsive to the Commission's June 30, 2004 Information Request).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 17, 2004) (providing reformatted compact disks responsive to the Commission's June 30, 2004 Information Request).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 23, 2004) (replacing incorrect August 17, 2004 compact disks with corrected and reformatted versions).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 31, 2004) (responding to inquiries concerning intermodal competition).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 7, 2004) (responding to inquiries regarding business plans from the Wireline Competition Bureau).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 10, 2004) (providing revised data files requested by Martin Perry).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 20, 2004) (providing revised data files requested by Martin Perry).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 23, 2004) (submitting copies of agreements).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, and Brian F. Fontes, Vice President-Federal Relations, to Erin McGrath, Assistant Division Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 5, 2004) (providing information regarding license, network, and service coverage areas)

Responses from Cingular:

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Mar. 22, 2004) (providing data and written responses to the Commission's June 30, 2004 Information Request).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (July 14, 2004) (submitting boxes, on behalf of Cingular, containing a portion of the documents and document production summary responsive to the Commission's June 30, 2004 Information Request).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 15, 2004) (providing data and written responses to the Commission's June 30, 2004 Information Request).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (July 15, 2004) (submitting boxes, on behalf of Cingular and SBC, containing a portion of the documents and document production summary responsive to the Commission's June 30, 2004 Information Request).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (July 15, 2004) (submitting boxes, on behalf of Cingular and BellSouth, containing a portion of the documents and document production summary responsive to the Commission's June 30, 2004 Information Request).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (July 15, 2004) (submitting copies of documents, on behalf of Cingular, SBC, and BellSouth, on compact discs responsive to the Commission's June 30, 2004 Information Request).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 16, 2004) (submitting compact disks of materials supplementing July 15, 2004 response).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 19, 2004) (supplementing and replacing certain exhibits on compact discs associated with Cingular's July 15, 2004 response).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 3, 2004) (supplementing Cingular's July 15, 2004 response with price plan data and more granular data on compact disks).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 9, 2004) (supplementing Cingular's July 15, 2004 response with additional price plan information on compact discs).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 19, 2004) (supplementing Cingular's July 15, 2004 response with additional information on compact discs).

Letter from David G. Richards, Cingular Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 19, 2004) (responding to questions posed by the Wireless Telecommunications Burea regarding unilateral effects).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 23, 2004) (providing color copies of select pages of Cingular's July 15, 2004 response).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 23, 2004) (supplementing Cingular's July 15, 2004 response).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 27, 2004) (responding to questions posed by the Wireline Competition Bureau).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 30, 2004) (submitting corrected August 19, 2004 information supplementing and correcting minor errors in data in Cingular's July 15, 2004 response).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 30, 2004) (supplementing Cingular's July 15, 2004 response with information regarding handset availability and measurements of capacity).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 30, 2004) (supplementing Cingular's July 15, 2004 response).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 2, 2004) (supplementing Cingular's July 15, 2004 response).

Letter from David G. Richards, Cingular Wireless, to Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 2, 2004) (responding to inquiries from the Wireline Competition Bureau).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 22, 2004) (submitting copies of partnership agreements).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 23, 2004) (submitting additional materials relating to the partnership agreements submitted on September 22, 2004).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 29, 2004) (informing the Commission of a swap of minority partnership interests).

Letter from Douglas I. Brandon, Vice President – External Affairs & Law, AT&T Wireless, and Brian F. Fontes, Vice President-Federal Relations, to Erin McGrath, Assistant Division Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 5, 2004) (providing information regarding license, network, and service coverage areas)

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Erin McGrath, Assistant Division Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 12, 2004) (responding to questions regarding NRUF data).

Letter from L. Andrew Tollin, counsel to Cingular Wireless Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 13, 2004) (providing confidential material to the Commission).

Letter from Brian F. Fontes, Vice President-Federal Relations, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 18, 2004) (providing written responses to questions posed by Commission Staff regarding Cingular's subscriber data).

Response from ALLTEL:

Letter from Glenn S. Rabin, Vice President, Federal Communications Counsel, ALLTEL Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 2, 2004) (providing ALLTEL's response to July 16, 2004 Information Request).

Responses from Nextel:

Letter from To-Quyen T. Truong, counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 12, 2004) (submitting Nextel's first response to the July 16, 2004 Information Request).

Letter from To-Quyen T. Truong, counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 27, 2004) (submitting Nextel's second response to the July 16, 2004 Information Request).

Letter from To-Quyen T. Truong, counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 10, 2004) (submitting Nextel's third response to the July 16, 2004 Information Request).

Letter from To-Quyen T. Truong, counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 14, 2004) (submitting Nextel's fourth response to the July 16, 2004 Information Request).

Letter from To-Quyen T. Truong, counsel to Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 15, 2004) (submitting Nextel's fifth response to the July 16, 2004 Information Request).

Letter from To-Quyen T. Truong, counsel to Nextel Communications, Inc., to Susan Singer Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 24, 2004) (submitting Nextel's sixth response to the July 16, 2004 Information Request).

Responses from T-Mobile:

Letter from Cheryl A. Tritt, counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (July 2 4, 2004) (reporting a call seeking clarification of July 16, 2004 letter and requesting an extension of reply date).

Letter from Cheryl A. Tritt, counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 4, 2004) (submitting copies of documents and information responsive to the July 16, 2004 letter).

Letter from Cheryl A. Tritt, counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 8, 2004) (submitting supplemental materials responsive to the July 16, 2004 letter).

Responses from Sprint:

Letter from Roger C. Sherman, Senior Attorney, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 27, 2004) (reporting a call seeking clarification of July 16, 2004 letter and requesting an extension of reply date).

Letter from Roger C. Sherman, Senior Attorney, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 19, 2004) (submitting information responsive to the July 16, 2004 letter).

Responses from USCC:

Letter from Mark D. Schneider, counsel to United States Cellular Corporation, to Susan Singer, Wireless Telecommunications Bureau, Federal Communications Commission (July 30, 2004) (submitting a portion of the information responsive to the July 16, 2004 letter and requesting additional time to provide the remaining information).

Letter from Mark D. Schneider, counsel to United States Cellular Corporation, to Susan Singer, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 6, 2004) (supplementing July 30, 2004 response).

Letter from Mark D. Schneider, counsel to United States Cellular Corporation, to Susan Singer, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 24, 2004) (delivering the remaining information requested in the July 16, 2004 letter) .

Responses from Verizon Wireless:

Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 6, 2004).

Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 13, 2004).

Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 23, 2004).

Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 2, 2004) (providing a portion of the information requested in the Commission's July 16, 2004 Information Request).

Letter from John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless, to Erin McGrath, Assistant Chief, Mobility Division, Wireless Telecommunications Bureau, Federal Communications Commission (Sept. 24, 2004) (providing a portion of the information requested in the Commission's July 16, 2004 Information Request).

APPENDIX C
LIST OF MARKETS IDENTIFIED FOR FURTHER ANALYSIS BY INITIAL SCREEN

CEAs:

CEA	Name
CEA0120	Albany, GA
CEA0220	Alexandria, LA
CEA0240	Allentown-Bethlehem-Easton, PA
CEA0440	Ann Arbor, MI
CEA0450	Anniston, AL
CEA0480	Ashville, NC
CEA0500	Athens, GA
CEA0520	Atlanta, GA-AL-NC
CEA0600	Augusta-Aiken, GA-SC
CEA0640	Austin-San Marcos, TX
CEA0680	Bakersfield, CA
CEA0720	Baltimore, MD
CEA0743	Barnstable-Yarmouth, MA
CEA0760	Baton Rouge, LA-MS
CEA0840	Beaumont-Port Arthur, TX
CEA0860	Bellingham, WA
CEA0920	Biloxi-Gulfport-Pascagoula, MS
CEA1000	Birmingham, AL
CEA1020	Bloomington, IN
CEA1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH-RI
CEA1145	Brazoria, TX
CEA1150	Bremerton, WA
CEA1240	Brownsville-Harlingen-San Benito, TX
CEA1260	Bryan-College Station, TX
CEA1350	Casper, WY-ID-UT
CEA1440	Charleston-North Charleston, SC
CEA1520	Charlotte-Gastonia-Rock Hill, NC-SC
CEA1560	Chattanooga, TN-GA
CEA1600	Chicago, IL
CEA1620	Chico-Paradise, CA
CEA1640	Cincinnati, OH-KY-IN
CEA1660	Clarksville-Hopkinsville, TN-KY
CEA1740	Columbia, MO
CEA1760	Columbia, SC
CEA1880	Corpus Christi, TX
CEA1920	Dallas, TX-OK
CEA2000	Dayton-Springfield, OH
CEA2020	Daytona Beach, FL
CEA2030	Decatur, AL

CEA	Name
CEA2160	Detroit, MI
CEA2190	Dover, DE
CEA2320	El Paso, TX
CEA2440	Evansville-Henderson, IN-KY-IL
CEA2560	Fayetteville, NC
CEA2580	Fayetteville-Springdale-Rogers, AR-MO-OK
CEA2650	Florence, AL
CEA2655	Florence, SC
CEA2680	Fort Lauderdale, FL
CEA2710	Fort Pierce-Port St. Lucie, FL
CEA2720	Fort Smith, AR-OK
CEA2750	Fort Walton Beach, FL
CEA2800	Fort Worth-Arlington, TX
CEA2840	Fresno, CA
CEA2880	Gadsden, AL
CEA2900	Gainesville, FL
CEA2960	Gary, IN
CEA2975	Glens Falls, NY
CEA2980	Goldsboro, NC
CEA3120	Greensboro-Winston-Salem-Hight Point, NC-VA
CEA3160	Greenville-Spartanburg-Anderson, SC-NC
CEA3200	Hamilton-Middletown, OH
CEA3240	Harrisburg-Lebanon-Carlisle, PA
CEA3283	Hartford-New Britain-Middletown-Bristol, CT
CEA3350	Houma, LA
CEA3360	Houston, TX
CEA3440	Huntsville, AL-TN
CEA3480	Indianapolis, IN
CEA3560	Jackson, MS-LA
CEA3580	Jackson, TN
CEA3600	Jacksonville, FL-GA
CEA3605	Jacksonville, NC
CEA3620	Janesville-Beloit, WI
CEA3660	Johnson City-Kingsport-Bristol, TN-VA
CEA3710	Joplin, MO-KS-OK
CEA3800	Kenosha, WI
CEA3810	Killeen-Temple, TX
CEA3840	Knoxville, TN
CEA3880	Lafayette, LA
CEA3920	Lafayette, IN
CEA3960	Lake Charles, LA
CEA4000	Lancaster, PA
CEA4080	Laredo, TX
CEA4120	Las Vegas, NV-AZ-UT

CEA	Name
CEA4280	Lexington, KY-TN-VA-WV
CEA4400	Little Rock-North Little Rock, AR
CEA4420	Longview-Marshall, TX
CEA4480	Los Angeles-Long Beach, CA
CEA4520	Louisville, KY-IN
CEA4680	Macon, GA
CEA4720	Madison, WI
CEA4880	McAllen-Edinburg-Mission, TX
CEA4900	Melbourne-Titusville-Palm Bay, FL
CEA4920	Memphis, TN-AR-MS-KY
CEA4940	Merced, CA
CEA5000	Miami, FL
CEA5015	Middlesex-Somerset-Hunterdon, NJ
CEA5080	Milwaukee-Waukesha, WI
CEA5160	Mobile, AL
CEA5170	Modesto, CA
CEA5200	Monroe, LA
CEA5280	Muncie, IN
CEA5330	Myrtle Beach, SC
CEA5345	Naples, FL
CEA5360	Nashville, TN-KY
CEA5483	New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT
CEA5523	New London-Norwich, CT
CEA5560	New Orleans, LA-MS
CEA5640	Newark, NJ-PA
CEA5775	Oakland, CA
CEA5790	Ocala, FL
CEA5880	Oklahoma City, OK
CEA5910	Olympia, WA
CEA5945	Orange County, CA
CEA5960	Orlando, FL
CEA5990	Owensboro, KY
CEA6080	Pensacola, FL
CEA6120	Peoria-Pekin, IL
CEA6160	Philadelphia, PA-NJ
CEA6240	Pine Bluff, AR
CEA6323	Pittsfield, MA-VT
CEA6483	Providence-Warwick-Pawtucket, RI
CEA6580	Punta Gorda, FL
CEA6680	Reading, PA
CEA6720	Reno, NV-CA
CEA6740	Richland-Kennewick-Pasco, WA
CEA6780	Riverside-San Bernardino, CA-AZ

CEA	Name
CEA6920	Sacramento, CA
CEA7000	St. Joseph, MO-KS
CEA7040	St. Louis, MO-IL
CEA7120	Salinas, CA
CEA7160	Salt Lake City-Ogden, UT-ID
CEA7200	San Angelo, TX
CEA7240	San Antonio, TX
CEA7320	San Diego, CA
CEA7360	San Francisco, CA
CEA7400	San Jose, CA
CEA7480	Santa Barbara-Santa Maria-Lompoc, CA
CEA7485	Santa Cruz-Watsonville, CA
CEA7500	Santa Rosa, CA
CEA7510	Sarasota-Bradenton, FL
CEA7520	Savannah, GA-SC
CEA7600	Seattle-Bellevue-Everett, WA
CEA7640	Sherman-Denison, TX-OK
CEA7680	Shreveport-Bossier City, LA-AR
CEA7920	Springfield, MO
CEA8003	Springfield, MA
CEA8120	Stockton-Lodi, CA
CEA8140	Sumter, SC
CEA8320	Terre Haute, IN-IL
CEA8360	Texarkana, TX-Texarkana, AR-AR-OK
CEA8440	Topeka, KS
CEA8480	Trenton, NJ
CEA8560	Tulsa, OK-KS
CEA8600	Tuscaloosa, AL
CEA8640	Tyler, TX
CEA8680	Utica-Rome, NY
CEA8720	Vallejo-Fairfield-Napa, CA
CEA8735	Ventura, CA
CEA8750	Victoria, TX
CEA8780	Visalia-Tulare-Porterville, CA
CEA8800	Waco, TX
CEA8840	Washington, DC-MD-VA-WV
CEA8960	West Palm Beach-Boca Raton, FL
CEA9160	Wilmington-Newark, DE-MD
CEA9200	Wilmington, NC
CEA9260	Yakima, WA
CEA9270	Yolo, CA
CEA9280	York, PA
CEA9340	Yuba City, CA
CEA9504	Jonesboro, AR-MO

CEA	Name
CEA9515	Paducah, KY-IL
CEA9516	Bowling Green, KY
CEA9518	Salisbury, MD-DE-VA
CEA9524	Hattiesburg, MS
CEA9526	Meridian, MS-AL
CEA9527	Tupelo, MS-AL-TN
CEA9528	Greenville, MS
CEA9528	Greenville, MS
CEA9559	Lufkin, TX
CEA9566	Bluefield, WV-VA

CMAs:

CMA	Name
CMA002	Los Angeles-Long Beach/Anaheim
CMA003	Chicago, IL
CMA004	Philadelphia, PA
CMA005	Detroit/Ann Arbor, MI
CMA006	Boston-Lowell-Brockton-Lawrence-Haverhill, MA-NH
CMA007	San Francisco-Oakland, CA
CMA008	Washington, DC-MD-VA
CMA009	Dallas-Fort Worth, TX
CMA010	Houston, TX
CMA011	St. Louis, MO-IL
CMA012	Miami-Fort Lauderdale-Hollywood, FL
CMA014	Baltimore, MD
CMA017	Atlanta, GA
CMA018	San Diego, CA
CMA020	Seattle-Everett, WA
CMA021	Milwaukee, WI
CMA023	Cincinnati, OH-KY-IN
CMA027	San Jose, CA
CMA028	Indianapolis, IN
CMA029	New Orleans, LA
CMA032	Hartford-New Britain-Bristol, CT
CMA033	San Antonio, TX
CMA035	Sacramento, CA
CMA036	Memphis, TN-AR-MS
CMA037	Louisville, KY-IN
CMA038	Providence-Warwick-Pawtucket, RI
CMA039	Salt Lake City-Ogden, UT
CMA040	Dayton, OH

CMA	Name
CMA041	Birmingham, AL
CMA045	Oklahoma City, OK
CMA046	Nashville-Davidson, TN
CMA048	Toledo, OH-MI
CMA049	New Haven-West Haven-Waterbury-Meriden, CT
CMA051	Jacksonville, FL
CMA054	Gary-Hammond-East Chicago, IN
CMA055	Worchester-Fitchburg-Leominster, MA
CMA057	Tulsa, OK
CMA058	Allentown-Bethlehem-Easton, PA
CMA060	Orlando, FL
CMA061	Charlotte-Gastonia, NC
CMA062	New Brunswick-Perth Amboy-Sayreville, NJ
CMA067	Greenville-Spartanburg, SC
CMA069	Wilmington, DE-NJ-MD
CMA071	Raleigh-Durham, NC
CMA072	West Palm Beach-Boca Raton, FL
CMA073	Oxnard-Simi Valley-Ventura, CA
CMA074	Fresno, CA
CMA075	Austin, TX
CMA076	New Bedford-Fall River, MA
CMA079	Knoxville, TN
CMA080	Baton Rouge, LA
CMA083	Mobile, AL
CMA084	Harrisburg, PA
CMA085	Johnson City-Kingsport-Bristol, TN
CMA087	Canton, OH
CMA088	Chattanooga, TN-GA
CMA090	Charleston-North Charleston, SC
CMA091	San Juan-Caguas, PR
CMA092	Little Rock-North Little Rock, AR
CMA093	Las Vegas, NV
CMA095	Columbia, SC
CMA097	Bakersfield, CA
CMA099	York, PA
CMA100	Shreveport, Louisiana
CMA101	Beaumont-Port Arthur, TX
CMA105	Lancaster, PA
CMA106	Jackson, MS
CMA107	Stockton, CA
CMA108	Augusta GA/SC
CMA111	Vallejo-Fairfield-Napa, CA
CMA112	Corpus Christi, TX
CMA113	Madison, WI

CMA	Name
CMA115	Utica-Rome, NY
CMA116	Lexington-Fayette, KY
CMA118	Reading, PA
CMA119	Evansville, IN/KY
CMA120	Huntsville, AL
CMA121	Trenton, NJ
CMA123	Santa Rosa-Petaluma, CA
CMA124	Santa Barbara-Santa Maria-Lompoc, CA
CMA126	Salinas-Seaside-Monterey, CA
CMA127	Pensacola, FL
CMA128	McAllen-Edinburg-Mission, TX
CMA136	Lorain-Elyria, OH
CMA137	Melbourne-Titusville-Palm Bay, FL
CMA142	Modesto, CA
CMA145	Hamilton-Middletown, OH
CMA146	Daytona Beach, FL
CMA147	Ponce, PR
CMA149	Fayettesville, NC
CMA150	Visalia-Tulare-Porterville, CA
CMA154	New London-Norwich, CT
CMA155	Savannah, GA
CMA160	Killeen-Temple, TX
CMA163	Springfield, MO
CMA165	Fort Smith AR-OK
CMA167	Sarasota, FL
CMA169	Mayaguez, PR
CMA171	Reno, NV
CMA174	Lafayette, LA
CMA175	Santa Cruz, CA
CMA179	Topeka, KS
CMA180	Springfield, OH
CMA182	Fayetteville-Springdale, AR
CMA183	Ashville, NC
CMA184	Houma-Thibodaux, LA
CMA185	Terre Haute, IN
CMA191	Yakima, WA
CMA194	Waco, TX
CMA197	Lake Charles, LA
CMA202	Arecibo, PR
CMA204	Aguadilla, PR
CMA205	Alexandria, LA
CMA206	Longview-Marshall, TX
CMA208	Fort Pierce, FL
CMA209	Clarksville-Hopkinsville, TN/KY

CMA	Name
CMA211	Bradenton, FL
CMA212	Bremerton, WA
CMA213	Pittsfield, MA
CMA214	Richland-Kennewick-Pasco, WA
CMA215	Chico, CA
CMA216	Janesville-Beloit, WI
CMA217	Anderson, IN
CMA218	Wilmington, NC
CMA219	Monroe, LA
CMA222	Tuscaloosa, AL
CMA226	Florence, AL
CMA227	Anderson, SC
CMA234	Athens, GA
CMA236	Muncie, IN
CMA237	Tyler, TX
CMA239	Joplin, MO
CMA242	Olympia, WA
CMA244	Kenosha, WI
CMA245	Ocala, FL
CMA247	Lafayette, IN
CMA249	Anniston, AL
CMA252	Pascagoula, MI
CMA254	Redding, CA
CMA258	Jacksonville, NC
CMA264	Florence, SC
CMA265	Fort Walton Beach, FL
CMA266	Glens Falls, NY
CMA270	Bellingham, WA
CMA271	Kokomo, IN
CMA272	Gadsden, AL
CMA274	Yuba City, CA
CMA275	St. Joseph, MO
CMA277	Sheboygan, WI
CMA278	Columbia, MO
CMA280	Burlington, NC
CMA281	Laredo, TX
CMA282	Bloomington, IN
CMA287	Bryan-College Station, TX
CMA291	Pine Bluff, AR
CMA292	Sherman-Denison, TX
CMA293	Owensboro, KY
CMA300	Victoria, TX
CMA303	Aurora-Elgin, IL
CMA304	Joliet, IL

CMA	Name
CMA307	Alabama 1 - Franklin
CMA326	Arkansas 3 - Sharp
CMA327	Arkansas 4 - Clay
CMA328	Arkansas 5 - Cross
CMA329	Arkansas 6 - Cleburne
CMA330	Arkansas 7 - Pope
CMA331	Arkansas 8 - Franklin
CMA333	Arkansas 10 - Garland
CMA334	Arkansas 11 - Hempstead
CMA335	Arkansas 12 - Ouachita
CMA339	California 4 - Madera
CMA343	California 8 - Tehama
CMA345	California 10 - Sierra
CMA346	California 11 - El Dorado
CMA347	California 12 - Kings
CMA357	Connecticut 1 - Litchfield
CMA359	Delaware 1 - Kent
CMA360	Florida 1 - Collier
CMA361	Florida 2 - Glades
CMA362	Florida 3 - Hardee
CMA363	Florida 4 - Citrus
CMA364	Florida 5 - Putnam
CMA371	Georgia 1 - Whitfield
CMA373	Georgia 3 - Chattooga
CMA374	Georgia 4-Jasper
CMA378	Georgia 8-Warren
CMA381	Georgia 11 - Toombs
CMA384	Georgia 14 - Worth
CMA396	Illinois 3 - Mercer
CMA399	Illinois 6 - Montgomery
CMA407	Indiana 5 - Warren
CMA409	Indiana 7 - Owen
CMA410	Indiana 8 - Brown
CMA443	Kentucky 1 - Fulton
CMA444	Kentucky 2 - Union
CMA445	Kentucky 3 - Meade
CMA448	Kentucky 6 - Madison
CMA449	Kentucky 7 - Trimble
CMA450	Kentucky 8 - Mason
CMA452	Kentucky 10-Powell
CMA453	Kentucky 11 - Clay
CMA454	Louisiana 1 - Claiborne
CMA456	Louisiana 3 - De Soto
CMA457	Louisiana 4 - Caldwell

CMA	Name
CMA458	Louisiana 5 - Beauregard
CMA459	Louisiana 6 - Iberville
CMA460	Louisiana 7 - West Feliciana
CMA461	Louisiana 8 - St. James
CMA471	Massachusetts 2 - Barnstable
CMA493	Mississippi 1 - Tunica
CMA494	Mississippi 2 - Benton
CMA495	Mississippi 3 - Bolivar
CMA496	Mississippi 4 - Yalobusha
CMA497	Mississippi 5 - Washington
CMA498	Mississippi 6 - Montgomery
CMA499	Mississippi 7 - Leake
CMA500	Mississippi 8 - Claiborne
CMA511	Missouri 8 - Callaway
CMA514	Missouri 11 - Moniteau
CMA517	Missouri 14 - Barton
CMA521	Missouri 18 - Perry
CMA522	Missouri 19 - Stoddard
CMA545	Nevada 3 - Storey
CMA546	Nevada 4 - Mineral
CMA568	North Carolina 4-Henderson
CMA570	North Carolina 6-Chatham
CMA575	North Carolina 11-Hoke
CMA577	North Carolina 13- Greene
CMA594	Ohio 10 - Perry
CMA598	Oklahoma 3 - Grant
CMA623	Pennsylvania 12 - Lebanon
CMA625	South Carolina 1-Oconee
CMA626	South Carolina 2-Laurens
CMA627	South Carolina 3-Cherokee
CMA628	South Carolina 4-Chesterfield
CMA629	South Carolina 5-Georgetown
CMA630	South Carolina 6-Clarendon
CMA631	South Carolina 7-Calhoun
CMA632	South Carolina 8-Hampton
CMA643	Tennessee 1 - Lake
CMA646	Tennessee 4 - Hamblen
CMA647	Tennessee 5 - Fayette
CMA648	Tennessee 6 - Giles
CMA649	Tennessee 7 - Bledsoe
CMA650	Tennesse 8-Johnson
CMA651	Tennessee 9 - Maury
CMA657	Texas 6 - Jack
CMA660	Texas 9 - Runnels
CMA662	Texas 11 - Cherokee

CMA	Name
CMA663	Texas 12 - Hudspeth
CMA668	Texas 17 - Newton
CMA669	Texas 18 - Edwards
CMA670	Texas 19 - Atascosa
CMA673	Utah 1 - Box Elder
CMA674	Utah 2 - Morgan
CMA681	Virginia 1-Lee
CMA682	Virginia 2-Tazewell
CMA690	Virginia 10-Frederick
CMA691	Virginia 11 - Madison
CMA691	Virginia 11-Madison
CMA692	Virginia 12-Caroline
CMA693	Washington 1 - Clallam
CMA697	Washington 5 - Kittitas
CMA698	Washington 6 - Pacific
CMA723	Puerto Rico 1 - Rincon
CMA724	Puerto Rico 2 - Adjuntas
CMA725	Puerto Rico 3 - Ciales
CMA726	Puerto Rico 4 - Aibonito
CMA727	Puerto Rico 5 - Ceiba
CMA728	Puerto Rico 6 - Vieques
CMA729	Puerto Rico 7 - Culebra

APPENDIX D
MARKET-SPECIFIC ANALYSIS

[REDACTED][607]

[607] This is a confidential exhibit which is available pursuant to the terms of the Protective Order. A redacted version of this Appendix D will be made available separately.

APPENDIX E
LIST OF T-MOBILE – CINGULAR JOINT VENTURE MARKETS

CEAs:

CEA	Name
CEA0680	Bakersfield, CA
CEA1620	Chico-Paradise, CA
CEA2840	Fresno, CA
CEA4120	Las Vegas, NV-AZ-UT
CEA4480	Los Angeles-Long Beach, CA
CEA4940	Merced, CA
CEA5170	Modesto, CA
CEA5775	Oakland, CA
CEA5945	Orange County, CA
CEA6780	Riverside-San Bernadino, CA-AZ
CEA6920	Sacramento, CA
CEA7120	Salinas, CA
CEA7320	San Diego, CA
CEA7360	San Francisco, CA
CEA7400	San Jose, CA
CEA7480	Santa Barbara-Santa Maria-Lompoc, CA
CEA7485	Santa Cruz-Watsonville, CA
CEA7500	Santa Rosa, CA
CEA8120	Stockton-Lodi, CA
CEA8720	Vallejo-Fairfield-Napa, CA
CEA8735	Ventura, CA
CEA8780	Visalia-Tulare-Porterville, CA
CEA9270	Yolo, CA
CEA9340	Yuba City, CA

CMAs:

CMA	Name
CMA002	Los Angeles/Long Beach, CA
CMA007	San Francisco, CA
CMA018	San Diego, CA
CMA027	San Jose, CA
CMA035	Sacramento, CA
CMA073	Ventura, CA
CMA074	Fresno, CA
CMA093	Las Vegas, NV
CMA097	Bakersfield, CA

CMA	Name
CMA107	Stockton, CA
CMA111	Vallejo-Fairfield-Napa, CA
CMA123	Santa Rosa-Petaluma, CA
CMA124	Maria-Lompoc, CA
CMA126	Monterey, CA
CMA142	Modesto, CA
CMA150	Visalia-Tulare-Porterville, CA
CMA171	Reno, NV
CMA175	Santa Cruz, CA
CMA215	Chico, CA
CMA254	Redding, CA
CMA274	Yuba City, CA
CMA339	California 4-Madera
CMA343	California 8-Tehama
CMA345	California 10-Sierra
CMA346	California 11-El Dorado
CMA347	California 12-Kings
CMA545	Nevada 3-Storey
CMA546	Nevada 4-Mineral

APPENDIX F
LIST OF TRITON MARKETS

CEAs:

CEA	Name
CEA0480	Ashville, NC
CEA0500	Athens, GA
CEA0600	Augusta-Aiken, GA-SC
CEA1440	Charleston-North Charleston, SC
CEA1760	Columbia, SC
CEA2560	Fayetteville, NC
CEA2655	Florence, SC
CEA2980	Goldsboro, NC
CEA3120	Greensboro-Winston-Salem-Hight Point, NC-VA
CEA3160	Greenville-Spartanburg-Anderson, SC-NC
CEA3605	Jacksonville, NC
CEA3660	Johnson City-Kingsport-Bristol, TN-VA
CEA5330	Myrtle Beach, SC
CEA8140	Sumter, SC
CEA9200	Wilmington, NC
CEA9528	Greenville, MS

CMAs:

CMA	Name
CMA067	Greenville-Spartanburg, SC
CMA085	Johnson City-Kingsport-Bristol, TN
CMA090	Charleston-North Charleston, SC
CMA095	Columbia, SC
CMA108	Augusta GA/SC
CMA149	Fayettesville, NC
CMA155	Savannah, GA
CMA183	Ashville, NC
CMA218	Wilmington, NC
CMA227	Anderson, SC
CMA234	Athens, GA
CMA258	Jacksonville, NC
CMA264	Florence, SC
CMA280	Burlington, NC
CMA374	Georgia 4-Jasper
CMA378	Georgia 8-Warren

CMA	Name
CMA452	Kentucky 10-Powell
CMA568	North Carolina 4-Henderson
CMA570	North Carolina 6-Chatham
CMA575	North Carolina 11-Hoke
CMA577	North Carolina 13- Greene
CMA625	South Carolina 1-Oconee
CMA626	South Carolina 2-Laurens
CMA627	South Carolina 3-Cherokee
CMA628	South Carolina 4-Chesterfield
CMA629	South Carolina 5-Georgetown
CMA630	South Carolina 6-Clarendon
CMA631	South Carolina 7-Calhoun
CMA632	South Carolina 8-Hampton
CMA650	Tennesse 8-Johnson
CMA681	Virginia 1-Lee
CMA682	Virginia 2-Tazewell
CMA690	Virginia 10-Frederick
CMA691	Virginia 11-Madison
CMA692	Virginia 12-Caroline

SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL

Re: Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, For Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 04-70, et al. (Adopted October 22, 2004).

Today the Commission concludes -- with significant conditions -- that Cingular's request to combine with AT&T Wireless serves the public interest. Cingular will emerge a stronger competitor with better coverage, improved customer service and a renewed commitment to innovation. This will not only be true in the voice market but also increasingly for data. The diverse cross section of support the transaction garnered from groups with disabilities, rural carriers, as well as labor and public safety organizations aptly demonstrates its benefits.

Even in light of these attributes, the Commission concluded that the deal could not go forward absent several conditions, including: business unit divestitures in 16 markets, limits on Cingular's acquisition of spectrum in an upcoming auction, and additional spectrum divestitures. The Commission has assessed, on a market-by-market basis, whether Cingular's acquisition of AT&T's customers and spectrum holdings pose a threat to competition. Only after we looked seriously at the proposed transactions effect upon intermodal competition did we conclude that the transaction was in the public interest. We believe our conditions, combined with the benefits to the consumer experience brought by Cingular's new scale and scope, will ensure the public interest is served by this transaction. Indeed, both before and after, this transaction the wireless market is the most competitive and innovative within the Commission's jurisdiction.

In their partial dissent, my colleagues incorrectly assert that we confined our merger evaluation to wireless intramodal issues. To the contrary, I took very seriously the complex issues that arise from the combination of wireless and wireline companies. This was and will remain a matter of focus and concern. However, at the end of the day, we did not believe that the evidence in the record was sufficient to justify and substantiate additional conditions beyond those already imposed by the *Order*.

Finally, this *Order* is the culmination of an enormous amount of work by a talented and dedicated FCC staff. The researchers and drafters of this *Order* did an extraordinary job of identifying specific harms and crafting appropriate detailed conditions. It is primarily because of their dedicated efforts that we are able to bring this decision to a close today.

STATEMENT OF COMMISSIONER KATHLEEN Q. ABERNATHY

Re: Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer of Control of Licenses And Authorizations, WT Docket No. 04-70 (adopted October 22, 2004).

I am pleased to support this decision approving the merger of AT&T Wireless Services and Cingular Wireless, because, with the conditions we have imposed, it will lead to significant consumer benefits.

One of the real success stories of the United States telecommunications market has been the competitive nature of the wireless industry. The wireless industry, and in particular the mobile wireless sector, is a shining example of what a well-functioning market can achieve when it is not hindered by unnecessary regulation. The FCC reaffirmed in its recent annual report on the state of wireless competition that the industry has continued to show significant growth despite a difficult economic environment. More specifically, the Commission found that the wireless industry continued to innovate, offered a wider variety of service offerings, and increased the availability of its services, all while reducing the prices charged to consumers. The wireless industry by all accounts is competitive, demonstrating how market-based solutions can best serve customers. Because of competition, the Commission found that 97 percent of the total population of the United States lives in a county with access to three or more different operators offering mobile telephone service, up from 95 percent in the previous year, and up from 88 percent in 2000, the first year these statistics were kept.

It is against this competitive backdrop that I reviewed the merger of AT&T Wireless and Cingular to determine if its approval would serve the public interest, convenience, and necessity. After an extensive review of data that was submitted to the Commission to determine the competitive effects of this transaction, we have concluded that competitive harm is unlikely in most mobile telephony markets, primarily because of the presence of multiple carriers that have the capacity to add subscribers and the ability to supplement their current capacity as well. More specifically, even after the merger, 97 percent of the total U.S. population will continue to live in a county with access to three or more different operators offering mobile telephone service. In addition, populations in many other counties will have access to 4, 5, 6 or even 7 or more different mobile telephone operators.

However, our careful review of the transaction did raise competitive concerns in several mobile telephony markets where our case-by-case review revealed that likely competitive harms exceed the likely benefits of the transaction. In these markets, the divestiture conditions that we are adopting should effectively ameliorate the expected harm. Therefore, with these conditions in place, in no area of the country will harm to users of mobile telephony services result from this acquisition.

I also believe that consumers are likely to recognize many benefits in the forms of efficiencies from this merger. These include improvements in service quality that will likely arise from the combination of the applicants' network operations and spectrum holdings, more ubiquitous and robust advanced services being deployed because of the additional spectrum available to the merged entity, and the ability of the merged entity to expand into previously unserved markets, among others. In the long term, it will be competitive marketplace that determines whether the merged entity is successful.

Finally, just as this transaction will benefit consumers of wireless services, I am likewise convinced that it will not undermine competition in the wireline communications market. Opponents of the transaction raise two concerns, neither of which persuades me to oppose the merger or support additional conditions. First, some parties assert that SBC and BellSouth, Cingular's corporate parents,

will have the incentive and ability to discriminate against unaffiliated wireless providers. To the extent such an incentive exists, it is unchanged by the merger with AT&T Wireless — the BOCs' wireline operations *already* overlap substantially with Cingular's footprint. And, more importantly, section 202 of the Act squarely prohibits SBC and BellSouth from according Cingular preferential treatment, making further merger conditions unnecessary. I am committed to stringent enforcement of this statutory provision. Second, some parties contend that the withdrawal of AT&T Wireless as a competitor will give the BOCs undue dominance in the mass market. While the withdrawal of one wireless competitor from the marketplace may slightly reduce the competitive pressures confronting SBC and BellSouth in the short term, those LECs will face ample competition going forward from other wireless carriers, VoIP providers, CLECs, and others.

I therefore conclude that the transaction, with the conditions we adopt, will serve the public interest.

STATEMENT OF FCC COMMISSIONER
MICHAEL J. COPPS
Approving in part, dissenting in part

RE: Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer of Control of Licenses and Authorizations (Memorandum Opinion & Order).

Among the FCC's many responsibilities under the public interest merger review standard, two stand out for purposes of analyzing this particular transaction. First, we must examine whether the combination results in a level of competition adequate to protect consumers as of this moment in time and as illuminated by our retrospective data. In this Order the FCC confines that analysis to an examination of intramodal wireless competition. Second, we must examine whether the merger will make changes to the communications marketplace that endanger Congress's public interest goals more generally. For purposes of this merger, that analysis largely concerns damage to intermodal competition and the relationship between the merged entity and its wireline parents. I support the Order as it relates to intramodal competition within the wireless market. With the divestitures achieved in this order, I believe that an acceptable level of competition will continue to characterize the wireless market. I must dissent to those parts of the Order relating to the intermodal aspects of the merger, however, because of the increased potential for discrimination by the merged entities' wireline parent companies and also because I find the lack of rigorous competitive analysis troubling.

Intramodal Competition

I have closely examined the data that the FCC staff has presented to me. My conclusion is that after the merger, an acceptable level of intramodal competition will remain in place in the wireless market in most geographic areas. While U.S. wireless telecommunications are characterized by effective competition in most markets, the market shares of various carriers are not equally distributed. In many markets the merged entity will have a nearly 50 percent market share. In some smaller markets the entity's market share will be significantly higher. In most of these markets, however, four or more able competitors will continue to compete post-merger. Even where the market shares of these competitors are substantially below that of the merged entity, under current market conditions they retain the ability to constrain excessive pricing. These competitors stand ready to snatch away Cingular/AWE customers who would become dissatisfied if the merged entity were to raise prices too high. Today, in fact, even in markets where the pre-merger Cingular has a very high market share, it has been unable to raise prices, presumably due to this competition.

In some markets, however, the proposed merger would have created unacceptable competitive harms. The Order therefore imposes competitive remedies where markets would become dangerously concentrated post-merger. The Order concludes that even where a market contains four or more able competitors to the merged entity, if the merged entity's market share is too high, competitors would not be able to discipline behavior. In one market, for example, the merged entity's post-transaction market share would be close to 60 percent. Other substantial national carriers compete in this market; one with 18 percent, a second with 17 percent, and a third with 4 percent. In this market, despite the presence of competing carriers, the order concludes that competitors would not be able to discipline the merged entity's behavior.[608]

[608] I have not identified the market in this example in order not to reveal proprietary information. Those with access to the unredacted version of the Order can reference the "Individual Market Analysis" to identify this market.

In other cases, even though another substantial carrier is competing, the Order concludes that "the merger would lead to an effective duopoly ... [and that] [w]e have previously been highly skeptical of mergers that would lead to a duopoly, and the courts have found that mergers to duopoly are generally unacceptable." The Order also finds that there are markets where the merged entity would control such a large amount of spectrum that competitors would not have the spectral resources to discipline its behavior. In many of these markets, the Order requires a spectrum divestiture. In other markets it imposes a condition that the merged entity cannot participate in the upcoming Auction 58. This latter enhancement of the Order will prevent the merged entity from denying new spectrum resources to potential competitors.

In the interest of improving and quickening the review of future mergers, I must note that the data that we relied upon in making these decisions were not what they could have been. The item relies almost exclusively on the NRUF database of telephone numbers to determine market shares. I am not convinced that this database alone is adequate for this important determination. Recognizing this possibility, the Commission requested data from wireless firms about actual customers, so it would not have to rely so heavily on potentially faulty NRUF database. But today the Commission largely ignores the valuable data that we collected from carriers. Limited analysis of this data demonstrated that it might produce significantly different results than the NRUF database. Unfortunately, these important data were not made available to Commissioners. Going forward, now that we know of the potential for inconsistency in the data, we must insist upon the provision of these data and the opportunity to compare them to the NRUF database before rendering a decision. This option was unavailable to me in this case.

I also want to note that the Order includes an analysis of Cingular's efforts to provide communications technologies to the disabilities community. I have been very favorably impressed with Cingular's efforts and the expansion of these efforts through the merger contributes significantly in Cingular's favor in the public interest analysis. I look forward to this work continuing in the merged entity. It is vitally important to the disability community and, indeed, to the nation.

Overall, I believe that the merger will not reduce intramodal competition in most markets to dangerous levels. It will, however, reduce this competition to some extent. The number of national carriers will shrink to five. A major competitor will disappear in hundreds of markets. The FCC has always been proud of the level of competition in the wireless market and of the fact that is has continuously grown. Here we create the potential for wireless competition to shrink, so we must now be far more vigilant to protect consumers. We are drawing down on the storehouse of intramodal competition that industry investment and wise FCC policy throughout the 1990's created. With less competition left in the storehouse by today's order, we need to be constantly monitoring, analyzing and preparing ourselves to deal with any competitive threats arising in the aftermath of this transaction.

Intermodal Competition

Turning now to our second responsibility, the Commission must examine whether the merger will make changes to the communications marketplace that endanger public interest goals more generally. In today's Order, this analysis largely concerns damage to intermodal competition and the relationship between the merged entity and its wireline parents.

This proceeding was harmed by the absence of rigorous analysis of the implications of this merger for intermodal competition. Again and again over the past few years the FCC has undermined competition to wireline incumbents. As a result, competitors have become far less effective. AT&T, the nation's largest long distance competitor to the Bells, has announced huge layoffs. Indeed, the company has said that it will, amazingly, exit the residential long distance market. Nonetheless, we are told not to be alarmed or to fear that phone rates will rise—because intermodal competition will save the day. In

other words, even if there is inadequate wireline-to-wireline competition to the incumbent carriers, other competitors using non-wireline technologies will fight the Bell operating companies for customers, thereby keeping prices low.

But who will these intermodal competitors be? Someday broadband over powerline may offer real competition. But today there are less than 10,000 BPL customers in the whole country. Maybe VoIP? I have high hopes here. But we need always to remember that as end-users of facilities-based carriers, VoIP competitors are beholden to the Bell and cable companies. We can cross our fingers and hope that growing duopoly does not discriminate so as to snuff out growing competition—but absent any commitment on the part of this Commission to insist on non-discrimination rules, I remain concerned for independent VoIP providers. Additionally, all customers desiring VoIP for their voice service must subscribe to expensive broadband services. As the U.S. continues its free-fall broadband descent—we are now Number13 in the world in penetration—and with broadband prices still out of the reach of many Americans, there is much to be done if VoIP is to fulfill its potential.

So that leaves wireless. My colleagues often point to wireless as a strong intermodal competitor. After this merger, however, the chance that wireless will compete effectively with wireline incumbents is diminished. AT&T Wireless was the largest non-Bell-affiliated wireless company in the country. Cingular and Verizon, both affiliates of BOCs, will now be the number one and two wireless carriers. Together the Bell-affiliated companies will now be more than 5 times larger than the next largest competitor.[609] Once Cingular acquires AT&T Wireless, more than half of all wireless customers will be controlled by the Bell companies for the first time ever. In many markets BOC control of wireless customers will be even higher.

Can we expect that Bell owned wireless carriers will compete tooth-and-nail against their wireline parents? I don't think so. Even the Order agrees: "The acquisition will also affect intermodal competition through the likelihood that Cingular will not pursue AT&T Wireless's extensive plans for wireline replacement offerings." It also notes that rather than developing products designed to compete with wireline services, "Cingular has developed and marketed many of its wireless products and services to complement – and specifically not to replace – residential wireline voice services. Cingular developed this strategy largely because SBC and BellSouth play a significant role in Cingular's business decisions." The Order continues, "it appears that Cingular is unlikely to initiate its own wireless substitute offering post-acquisition in the SBC and BellSouth regions." In other words, Bell-controlled wireless carriers will likely not be in-region intermodal competitors. Because Cingular and Verizon Wireless are the largest wireless carriers in their respective parents' wireline regions, this means that many Americans can expect intermodal competition by wireless carriers to suffer from this merger.

Despite these concerns, the Order devotes a mere 13 paragraphs of a more than 100 page order to the intermodal competition that stands at the center of so much of this Commission's competition philosophy. In the end the Order dismisses the problem posed by the merger by asserting that wireless was never really an intermodal competitor after all because "most wireline customers do not now consider wireless service to be a close substitute in the antitrust sense for their primary line obtained from a wireline carrier," and because "there remain qualitative differences between wireless and wireline services." I guess this means we won't be hearing so much rhetoric in the future about the power of wireless as an intermodal competitor.

I also believe that the FCC should have followed the precedent of past mergers by including a non-discrimination condition. Specifically, the Commission should have prohibited SBC and BellSouth,

[609] Securities and Exchange Commission, "Carrier Subscribers and Capital Expenditures," Second Quarter 2004.

in regions where they are the wireline incumbent, from discriminating against Cingular's wireless competitors. Today's Order allows Cingular to combine with AT&T Wireless in many markets where the merged entity will have a very large market share compared to its nearest wireless competitor. In theory, such a market still will be characterized by adequate competition. This is because if the merged entity raises prices above a certain level, its customers will be able to leave and sign up with a competitor. In order for competitors to be able to discipline the merged entity's behavior in this way, however, competitors must have the ability to absorb customers who want to leave because of the higher prices.

In order for wireless competitors to ramp up to compete with the merged entity in such a situation, competitors will need to purchase inputs from a wireline carrier in the market at issue, unless they have excess capacity currently laying fallow. Even if they have excess capacity, they must rely on a wireline carrier to maintain their current service without raising prices. In particular, if special access or interconnection is offered to an independent wireless carrier at higher rates or with less favorable terms or conditions compared with a Bell-affiliated wireless carrier, the independent carrier will find it extremely difficult to provide a competitive check on the affiliated carrier. If the incumbent wireline carrier controls the largest wireless carrier in a region, it has an incentive to provide superior special access and interconnection rates, terms, and conditions to its affiliate. That is because by crippling potential competitors it will enhance its affiliate's profits and thereby enhance its own profits. We could have made it clear that such behavior is unacceptable by including a non-discrimination condition in this merger. I welcome my colleagues' assertion that Section 202 already prohibits such behavior. The test will come when we are asked to use Section 202 to combat discrimination. The history here is not encouraging and I would have much preferred to be explicit so we would have a more powerful tool if and when we are presented with such a challenge.

To conclude, despite inadequate analysis and too dismissive an attitude toward the danger to intermodal competition posed by this merger, I welcome the Commission's strong warning about the future. "We caution, however, that we may take a different view with regard to any future transactions that would diminish significantly the ability of independent wireless carriers to offer intermodal alternatives to wireline service. At this time, we recognize that there are benefits to consumers from both wireline replacement offerings and complement offerings. We intend to monitor carefully further developments in this marketplace that may affect intermodal competition, and to consider carefully future transactions that may impede our efforts in that regard. The Commission has worked hard to create the regulatory conditions for robust intermodal competition, and it remains strongly committed to achieving that important policy goal." I agree.

SEPARATE STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent To Transfer of Control of Licenses and Authorizations*, Memorandum Opinion and Order, WT Docket No. 04-70

The wireless industry is the poster child for the success of competition. There are now more than 161 million wireless subscribers in this country. There are over 205,000 jobs in the wireless industry. The industry has invested more than $146 billion. 96.8% of the population live in counties with three or more wireless competitors. 93% live in counties with four or more. With this merger vigorous competition will remain.

As the Order explains, we find that the license transfers at issue are in the public interest and that competitive harm is unlikely in most markets. We also find that any potential public interest harm to competition in the wireline market is mitigated by the limited level of wireless-wireline competition.

These were difficult issues, as was deciding the appropriate divestitures and merger conditions. In the end, however, I think we put appropriate protections in place to address any concerns. Accordingly, I support this Order.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART, DISSENTING IN PART

Re: Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, For Consent to Transfer of Control of Licenses and Authorizations; WT Docket No. 04-70 et al

I generally approve this merger because I believe it will create a stronger, more vibrant provider of mobile wireless communications. Our deliberation has been a challenging one, though, and I am pleased that, with one notable exception, we generally have imposed conditions appropriate for a merger of this magnitude.

The growth of mobile wireless services over the last 10 years has been historic. Offering what was once considered a luxury item, only affordable to a few, the mobile wireless industry now serves more than 169 million customers – over a 50 percent penetration rate. Millions of customers have even "cut the cord," forgoing or canceling their wireline service in favor of going exclusively wireless. We frequently hear about customers substituting wireline minutes with wireless ones as "bucket" and nationwide calling plans are exploited by subscribers.

Competition has been the key driver of this growth. Without competition, we simply would not be where we are today. The Commission's policies encouraged innovation and development, and the mobile wireless industry responded with vigorous competition. It has been an unabashed success.

So now we have before us a merger of historic proportions. And it is up to this Commission to ensure that the competition that has benefited not only U.S. consumers, but the U.S. economy, is maintained. I take this charge seriously, and have viewed this merger through a number of different lenses. I have tried to consider the impact on customers in our larger, more populated cities, as well as those living in rural America. I have listened to groups representing our nation's disabled community, as well as those advocating on behalf of competitive carriers and rural wireless companies. This merger touches on so many different stakeholders, and it is crucial to make sure that everyone is given fair consideration.

At bottom, I support a large portion of this merger because for the most part the public interest benefits outweigh a number of the concerns identified in the item. I am hopeful about the creation of a stronger, more vibrant competitor that will dedicate its resources to provide better wireless service in more areas of the country. Cingular already has launched a campaign to work with its partners in rural America to push out the deployment of third generation wireless services. This is a positive development, and I believe the merger before us will drive wireless broadband services deeper and farther across America.

I have heard the loud chorus of supporters of this merger. For example, several of the nation's disability advocates support the merger and its impact on accessibility of telecommunications products and services for people with disabilities. We also have heard from many public safety entities that the merger will continue the increasingly rapid deployment of wireless E911 services. Union leaders have promoted the merger as being good for the economy and our nation's workers. Finally, a number of rural wireless carriers believe that the merger will improve wireless services in rural areas because the merged entity will be a more effective provider across the country and thus a more effective partner in rural areas.

Of course, a merger of this size requires a vigorous review to ensure that we do not inadvertently disadvantage the very communities we are trying to protect. An unchecked merger of this type could

harm the competitive environment in some communities in ways that the market is unlikely to overcome. Initially, it was unclear if our analysis took full advantage of the data available to us given time constraints, but I am pleased that we made some progress over the last few days by conducting a further review of some of the most sensitive markets affected by this merger.

That is why I fully support our decision to require divestiture in the markets identified in the item. While I have lingering concerns that the item does not dig deep enough, I think that with our recent work, we have done our best to ensure that few, if any, markets have fallen through the cracks. I appreciate very much the efforts of the Commission staff in pulling this information together, and am pleased that my colleagues were willing to consider additional divestiture actions.

I also am pleased that we have accepted an offer from the applicants to limit the ability of the merged entity to participate in Auction 58 with respect to a handful of markets. This is a simple but meaningful step that allows this transaction to go forward while ensuring that the merged entity does not gain even more spectrum within certain in–region markets so shortly after this massive transaction. In these limited markets, we ensure that a competitor will secure the Auction 58 spectrum, which will in turn appropriately protect competition in these markets.

Unfortunately, the majority falls short in addressing the impact of the improved market position and incentives of Cingular and its parent companies in the SBC and BellSouth regions. In many major in-region markets, Cingular now will have almost half of the mobile wireless market share. And in allowing the acquisition of AT&T Wireless, we permanently remove an independent source of competition to Cingular, SBC and BellSouth.

The majority declines to adopt any condition to ensure that intermodal competition does not disproportionately suffer as a result of our approval of the merger. They do so even though the item itself concludes that intermodal competition will suffer as a result of this merger. I find the unwillingness to confront this issue far too short-sighted for a Commission that is perfectly willing to look prospectively towards communications landscapes on the horizon when that approach is more convenient. For example, we could have dug deeper into bundling issues and tried to determine how we can minimize the competitive impact of the merger on this expanding market, as even the item recognizes that wireless-wireline bundling may be a significant product offering in the future. Ultimately, there were reasonable alternatives available to the Commission to guard against the merger's potentially negative impact on competition, but the majority declines to adopt any such protective measures.

As a result, Cingular, not to mention SBC and BellSouth, essentially gets a "pass" from the majority on these intermodal competition issues. For this reason, I must dissent in part from the item. I can only hope that, notwithstanding our rushed review, intermodal competition will not disproportionately suffer, and that the treatment of the next such merger application will be more considered.