



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 12TH STREET, S.W.

WASHINGTON, D.C. 20554

DA 01-665

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON CINGULAR WIRELESS LLC'S REQUEST FOR WAIVER TO EXCLUDE 1.5 MHZ OF SMR SPECTRUM FROM THE CMRS SPECTRUM CAP

Comment Date: April 3, 2001

Reply Comment Date: April 13, 2001

On March 7, 2001, pursuant to Section 1.925 of the Commission's rules, Cingular Wireless LLC ("Cingular") filed a request for waiver of the Commercial Mobile Radio Service ("CMRS") spectrum cap, Section 20.6(a) of the Commission's rules, to exclude up to 1.5 MHz of 900 MHz Specialized Mobile Radio ("SMR") spectrum held by its subsidiary, Cingular Interactive L.P. ("Cingular Interactive").¹ The Wireless Telecommunications Bureau seeks comment on Cingular's waiver request.

Cingular contends that it presents good cause for the waiver, based on unique factual circumstances. Specifically, Cingular contends, among other things, that: the 1.5 MHz of 900 MHz spectrum that Cingular seeks to exclude from the cap is *de minimis* because it is well below the recognized amount of spectrum needed to compete in the broadband CMRS market; the particular spectrum involved is not fungible with any of Cingular's cellular or broadband Personal Communications Services ("PCS") spectrum because it is only being used in conjunction with a stand-alone nationwide mobile data network that technically cannot be used to provide broadband services; and, the spectrum is being used to compete against narrowband competitors that are not covered by the CMRS spectrum cap. Cingular asserts that granting its waiver request would serve the public interest because excluding the 1.5 MHz of Cingular Interactive's 900 MHz spectrum would permit Cingular, in non-rural markets in which it already has a cellular license totaling 25 MHz, to obtain a second 10 MHz broadband PCS license without exceeding the CMRS spectrum cap. Cingular claims that it needs this additional 10 MHz of spectrum in order to meet its spectrum needs, which have grown significantly in recent years. Cingular also contends that the waiver is warranted because, as a practical matter, no other reasonable alternatives are available because Cingular has found it virtually impossible to obtain a broadband PCS license in increments of less than 10 MHz (or, alternatively, to sell very small amounts of spectrum).

Interested parties may file comments on or before **April 3, 2001**. The deadline for filing reply comments is **April 13, 2001**. All comments and reply comments should include the designated authority number of this *Public Notice*, **DA 01-665**. An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Federal Communications Commission, 445 Twelfth

¹ See Cingular Wireless LLC's "Request for Waiver of the CMRS Spectrum Aggregation Limit in Section 20.6(a) of the Commission's Rules," filed with Magalie Roman Salas, Secretary, Federal Communications Commission on March 7, 2001.

Street, S.W., TW-A325, Washington, D. C. 20554. **In addition, one copy of each pleading should be delivered to each of the following locations:** (1) the Commission's duplicating contractor, International Transcription Services, Inc. ("ITS"), 445 Twelfth Street, S.W., Room CY-B492, Washington, D. C. 20554; (2) Office of Media Relations, Reference Operations Division, 445 Twelfth Street, S.W., Washington, D.C. 20554; and (3) Paul Murray, Commercial Wireless Division, Wireless Telecommunications Bureau, Room 4-B442, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D. C. 20554.

By this *Public Notice*, we announce, pursuant to section 1.1200(a) of the Commission's rules, 47 C.F.R. § 1.1200(a),² that this proceeding will be governed by "permit-but-disclose" *ex parte* procedures under section 1.1206 of the Commission's rules. 47 C.F.R. § 1.1206. We believe the public interest will best be served by applying permit-but-disclose *ex parte* procedures in this case because this proceeding involves broad public policy issues. These procedures permit interested parties to make *ex parte* presentations to the Commissioners and Commission employees, but require that these presentations be disclosed in the record of the relevant proceeding. If a person makes a written *ex parte* presentation to a Commissioner or Commission employees, the written presentation must be filed with the Commission Secretary no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(1). Oral *ex parte* presentations must be summarized in writing, filed with the Commission Secretary, and copies must be delivered to the Commissioners or Commission employees involved with the oral presentation no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(2). All *ex parte* filings must also reference the designated authority number of this *Public Notice* as well as any other applicable docket or file numbers. Accordingly, as of the release date of this *Public Notice*, all parties making *ex parte* presentations in this proceeding shall file any written *ex parte* presentations and summaries of any oral *ex parte* presentations in accordance with the procedures applicable to permit-but-disclose proceedings set forth in section 1.1206 of the Commission's rules. 47 C.F.R. § 1.1206.

The waiver request is also available for public inspection and copying in the Reference Center, Room CY-A257, Federal Communications Commission, 445 Twelfth Street, S.W., Washington, D.C. 20554. Copies of this document is also available from ITS.

For further information, contact Paul Murray at (202) 418-7240.

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

² Section 1.1200(a) permits the Commission to adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires.