



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
WASHINGTON, D.C. 20554

DA 04-2119

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

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**CINGULAR WIRELESS CORPORATION AND T-MOBILE USA, INC.
SEEK FCC CONSENT TO ASSIGNMENT OF LICENSES AND APPROVAL OF LONG-TERM
DE FACTO LEASING ARRANGEMENTS**

WT Docket No. 04-254

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due: August 12, 2004
Oppositions Due: August 23, 2004
Replies Due: August 30, 2004

I. INTRODUCTION

Cingular Wireless Corporation (“Cingular”) and T-Mobile USA, Inc. (“T-Mobile”) (collectively, “the Applicants”) have filed three applications as part of a larger transaction in which Cingular and T-Mobile propose to unwind a network infrastructure joint venture (“Joint Venture”).¹ Two of these applications seek approval for a proposed long-term *de facto* transfer leasing arrangement between various subsidiaries of Cingular and a subsidiary of T-Mobile; the third application seeks consent under Section 310(d) of the Communications Act of 1934, as amended, to assign partitioned and disaggregated portions of three broadband Personal Communications Services (“PCS”) licenses from a subsidiary of Cingular to a subsidiary of T-Mobile. The Applicants propose to consummate these transactions following consummation of the proposed transfer of control of AT&T Wireless Services, Inc. (“AT&T Wireless”) to Cingular, assuming approval of that transfer of control.²

¹ 47 U.S.C. § 310(d). Some of these applications were amended subsequent to their initial submission. When searching for these applications on the Wireless Telecommunications Bureau’s Universal Licensing System (“ULS”), at <http://wireless.fcc.gov/uls/>, the amended versions of the applications should be reviewed.

² Applications are on file to transfer control of licenses and authorizations from AT&T Wireless to Cingular. See AT&T Wireless Services, Inc. and Cingular Wireless Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Public Notice*, DA 04-932 (rel. Apr. 2, 2004). Parties wishing to comment on the transfer of control of licenses and authorizations from AT&T Wireless to Cingular should comment in WT Docket No. 04-70.

II. DESCRIPTION OF TRANSACTION

Pursuant to the Joint Venture, the Applicants state that they jointly own and control the networks (“Joint Venture Networks”) by which they provide broadband PCS in the Los Angeles and San Francisco Major Trading Areas (“MTA”), as well as a partitioned portion of the New York MTA consisting of the New York Basic Trading Area (“BTA”). As more fully described in the applications identified below, the Applicants have decided to unwind the Joint Venture,³ and have entered into a number of agreements that, subject to Commission approval, will result in Cingular and T-Mobile owning and controlling separate networks in these markets.⁴

The Applicants state that, pursuant to an FCC License Purchase Agreement (“Purchase Agreement”), Cingular has agreed to partially assign certain licenses to T-Mobile. Specifically, a Cingular subsidiary would partition and disaggregate 10 MHz of spectrum in the Las Vegas, Sacramento, and San Francisco BTAs from its 20 MHz broadband PCS licenses in the Los Angeles and San Francisco MTAs for a total purchase price of \$180 million.⁵

Additionally, the Applicants state that Cingular will transition its customers currently using the Joint Venture Networks to the networks that it proposes to acquire through its merger with AT&T Wireless. To facilitate an orderly transition of Cingular’s customers and to ensure efficient operation of the Joint Venture Networks by T-Mobile, the Applicants entered into a Long-Term *De Facto* Transfer Lease Agreement (“Lease Agreement”). Under the Lease Agreement, the Applicants assert that T-Mobile will lease from Cingular subsidiaries, for a period of up to four years, 10 MHz of broadband PCS spectrum in the New York BTA and 20 MHz of broadband PCS spectrum in the Los Angeles and San Francisco MTAs. The Applicants explain that the amount of spectrum subject to the lease will be reduced (1) when T-Mobile completes the acquisition of the spectrum currently being assigned from Cingular and other licenses that T-Mobile may acquire from Cingular in the future under the Purchase Agreement, and (2) when Cingular exchanges spectrum with T-Mobile pursuant to a separate Exchange Agreement.⁶

Furthermore, the Applicants state that, pursuant to a Wholesale Agreement, T-Mobile will use its spectrum and the spectrum to be leased from Cingular to provide voice and data services to Cingular in the Los Angeles and San Francisco MTAs and the New York BTA for an interim period of up to four (4) years. The Applicants assert that this Wholesale Agreement will allow Cingular to transition its customers from the Joint Venture Networks to the networks to be acquired as part of the proposed merger of Cingular and AT&T Wireless.

³ See Assignment Application, File No. 0001771442, Exhibit 1, at 2 (filed June 16, 2004). The unwind of the Joint Venture is conditioned upon the consummation of the merger of Cingular and AT&T Wireless. See *id.*, Exhibit 1, at 1.

⁴ See *id.*, Exhibit 1, at 2 (stating Cingular will sell its interest in the Joint Venture Networks to T-Mobile for a net purchase price of \$2.3 billion).

⁵ See *id.*, Exhibit 1, at 1-2. Furthermore, pursuant to the Purchase Agreement, T-Mobile has a future option to purchase from Cingular 10 MHz of spectrum in the Los Angeles and San Diego, California BTAs. See *id.*, Exhibit 1, at 2.

⁶ See *id.*, Exhibit 1, at 2-3.

III. SECTION 310(d) APPLICATIONS

A. Applications for Long-Term *De Facto* Transfer Leasing Arrangements

The following applications seek FCC approval of long-term *de facto* transfer leasing arrangements between subsidiaries of Cingular and T-Mobile.

<u>File No.</u>	<u>Licensee/Lessor</u>	<u>Lessee</u>	<u>Lead Call Sign</u>
0001757186	Pacific Telesis Mobile Services, LLC	Omnipoint NY MTA License, LLC	KNLF205
0001757204	Cingular Wireless Spectrum Sub B LLC	Omnipoint NY MTA License, LLC	WPUK247

B. Application for Assignment of Licenses

The following application seeks FCC consent for an assignment of licenses from a subsidiary of Cingular to a subsidiary of T-Mobile.

<u>File No.</u>	<u>Licensee/Assignor</u>	<u>Assignee</u>	<u>Lead Call Sign</u>
0001771442	Pacific Telesis Mobile Services, LLC	VoiceStream PCS II License Corporation	KNLF205

IV. *EX PARTE* STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,⁷ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.⁸

Parties making oral *ex parte* presentations are directed to the Commission's statement re-emphasizing the public's responsibility in permit-but-disclose proceedings and are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.⁹ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁰ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹¹ We urge parties to use the Electronic Comment Filing System ("ECFS") to file *ex parte* submissions.¹²

V. GENERAL INFORMATION

⁷ 47 C.F.R. § 1.1200(a).

⁸ *Id.* § 1.1206.

⁹ See Commission Emphasizes the Public's Responsibilities in Permit-But-Disclose Proceedings, *Public Notice*, 15 FCC Red. 19945 (2000).

¹⁰ See 47 C.F.R. § 1.1206(b)(2).

¹¹ *Id.* § 1.1206(b).

¹² See discussion *infra* Part V.

The applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than fifteen days following the date of this Public Notice.¹³

Interested parties must file petitions to deny no later than **August 12, 2004**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **August 23, 2004**. Replies to such pleadings must be filed no later than **August 30, 2004**. All filings concerning matters referenced to in this Public Notice should refer to **DA 04-2119** and **WT Docket No. 04-254**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,¹⁴ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**¹⁵ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.
- **If filed by paper,** the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered

¹³ See 47 U.S.C. § 309(b).

¹⁴ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001); Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, 18 FCC Rcd 16705 (2003).

¹⁵ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., at FCC@BCPIWEB.COM or (202) 488-5563 (facsimile); (2) Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at susan.singer@fcc.gov, or (202) 418-7447 (facsimile); (4) Kathy Harris, Mobility Division, Wireless Telecommunications Bureau, at kathy.harris@fcc.gov, or (202) 418-7447 (facsimile); and (5) Neil Dellar, Office of General Counsel, at neil.dellar@fcc.gov, or (202) 418-1234 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>. In addition, applications filed under Parts 22, 24, 27, 90, and 101 of the Commission's rules are available electronically through ULS, which may be accessed on the Commission's Internet website. Additional information regarding the transaction will be available on the FCC's Office of General Counsel's website, <http://www.fcc.gov/ogc>, which will contain a fully indexed, unofficial listing and electronic copies of all materials in this docket. Alternate formats of this public notice (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 (voice), (202) 418-7365 (TTY), or send an e-mail to access@fcc.gov.

For further information, contact Erin McGrath, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2042, or Susan Singer, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-1340.

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