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See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974).

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FCC CONSENTS WITH CONDITIONS TO CINGULAR WIRELESS ACQUISITION OF AT&T WIRELESS LICENSES AND AUTHORIZATIONS

WASHINGTON, D.C. – Today, the Federal Communications Commission (Commission) consented to the applications filed in connection with the proposed merger of Cingular Wireless Corporation (Cingular) and AT&T Wireless Services, Inc. (AT&T Wireless), subject to a number of conditions. The Commission denied all of the petitions filed in opposition to the merger, finding that the merger as conditioned would serve the public interest. The Commission consented also to two related sets of applications: (1) the applications filed by Cingular and T-Mobile USA, Inc. (T-Mobile) in connection with the unwinding of their GSM network infrastructure joint venture in portions of California, Nevada, and New York, and (2) the applications filed by Triton PCS, Inc. (Triton PCS) and AT&T Wireless to exchange spectrum in portions of North Carolina and Georgia.

Analysis

With respect to Cingular's proposed acquisition of AT&T Wireless, the Commission analyzed the market for mobile telephony services and concluded that the companies had demonstrated that the proposed merger will serve the public interest, convenience, and necessity. Further, the Commission concluded that the likely public interest benefits of the merger outweigh the potential public interest harms. Based on the record developed in this proceeding, the Commission concluded the acquisition generally is not likely to cause competitive harm in most mobile telephony markets. In reaching these conclusions, the Commission analyzed many factors regarding the likely horizontal effects of the merger, including substitutability of products and services, possible competitive responses by rival carriers, spectrum aggregation, deployment of advanced wireless services, network effects on the merged company, and penetration rates in local markets. The Commission concluded that anti-competitive effects are unlikely in all but 22 of the Commission's 734 Cellular Market Areas, where the merger would cause significant competitive harm that exceeds the likely public interest benefits of the merger in those areas.

The Commission also analyzed the possible vertical effects of the merger, specifically with respect to the impact of the merger on roaming and special access. The Commission concluded that the proposed merger will not adversely affect the availability of roaming services or roaming rates. The provision of automatic roaming services has become increasingly competitive over time, and two major GSM carriers will remain post-merger, which should be

sufficient to ensure the continued availability of roaming services at competitive rates to Cingular's potential roaming partners. With respect to special access, the Commission concluded that the question of whether certain incumbent local exchange carriers have the incentive and ability under existing Commission rules to discriminate against either wireless or wireline competitors in the provision of special access is more appropriately addressed in the ongoing rulemaking proceeding on this issue. With respect to the effect of the merger on intermodal competition, the Commission considered whether the merger diminishes intermodal competition for mass market voice telecommunications services, and concluded that any potential public interest harm arising from the loss of AT&T Wireless as an independent competitor is mitigated by the current level of wireless-wireline competition.

Conditions to Approval

The Commission conditioned its consent on the companies taking certain actions in 22 local mobile telephony markets to ameliorate the anti-competitive effect of the merger in those markets. Specifically, the Commission disallowed the companies' plan to merge their mobile telephone businesses in 16 markets where there would have been high market share for the merged entity and fewer competing carriers than in most other markets: Oklahoma City, OK; Sherman-Dennison, TX; Owensboro, KY; Arkansas RSA No. 3 (Sharp); Arkansas RSA No. 4 (Clay); Arkansas RSA No. 5 (Cross); Arkansas RSA No. 6 (Clebune); Arkansas RSA No. 7 (Pope); Connecticut RSA No. 1 (Litchfield); Kentucky RSA No. 1 (Fulton); Mississippi RSA No. 2 (Benton); Mississippi RSA No. 4 (Yalobusha); Missouri RSA No. 14 (Barton); Oklahoma RSA No. 3 (Grant); Texas RSA No. 6 (Jack); and Texas RSA No. 11 (Cherokee). The Commission conditioned its consent on the divestiture of the AT&T Wireless operating units in these markets, including the spectrum associated with such operating units.

In two local markets -- Detroit, MI, and Dallas, TX -- the Commission required the companies to divest 10 MHz of spectrum throughout the license area to ensure that competing carriers in these urban markets will have access to sufficient spectrum to compete effectively against the merged entity. In Detroit, the Commission permitted the merged entity to hold a maximum of 65 MHz of mobile telephony spectrum. In Dallas, the Commission permitted the merged entity to hold 70 MHz of mobile telephony spectrum. In four additional local markets -- Shreveport, LA; Pittsfield, MA; St. Joseph, MO; and Louisiana RSA No. 1 (Claiborne) -- the companies are required to convert certain non-passive, minority equity interests of AT&T Wireless in competing mobile telephony carriers to passive interests.

The Commission also conditioned its consent on the parties fulfilling two commitments in their applications. First, Cingular and AT&T Wireless indicated that they would divest of any post-transaction spectrum holding in excess of 80 MHz. This commitment applies in 43 counties in Texas, Tennessee, and Georgia. Second, the companies indicated that they would not apply to bid in Auction No. 58 (Broadband PCS) for any licenses 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.

The Commission consented to, and conditioned its overall approval on consummation of, the applications filed by Cingular and T-Mobile to unwind their Joint Venture. The Commission approved the transfer of 10 MHz of PCS spectrum in the San Francisco, Sacramento, and Las Vegas BTAs from Cingular's PacTel subsidiary to T-Mobile. The Commission consented also

to a long-term *de facto* spectrum leasing arrangement whereby Cingular will lease spectrum to T-Mobile in the Los Angeles and San Francisco MTAs and New York BTA to allow for the transition of Cingular's customers off the Joint Venture networks.

The Commission consented to, and conditioned its overall approval on consummation of, the applications proposing an exchange of spectrum between AT&T Wireless Services and Triton PCS. Triton PCS will assign 20 MHz of PCS spectrum in the Augusta, GA BTA to AT&T Wireless, and AT&T Wireless will assign 10 MHz of PCS spectrum in the Asheville, NC, Jacksonville, NC, and Wilmington, NC BTAs to Triton PCS. In the Savannah, GA BTA, AT&T Wireless PCS will assign its 10 MHz A-block PCS license to Triton PCS, and Triton PCS will assign its 15 MHz C-block license (which covers nine of the nineteen counties in the BTA) to AT&T Wireless. The Commission consented also to applications permitting Triton PCS to acquire a 15 MHz C-block license from Lafayette Communications Company L.L.C. covering the remaining ten counties in the Savannah, GA BTA. Triton PCS will then to assign it to AT&T Wireless, which will assign it to Cingular in the merger.

Management Trustee

With respect to the required divestitures, the Commission required the companies to appoint a management trustee to serve as manager of the divestiture assets until such assets are sold to third party purchasers or transferred to a divestiture trustee. Within three calendar days after the date of the Commission's order, the companies must file applications to transfer the divestiture assets to the management trustee, including a request to approve the identity of the trustee and the terms of the trust agreement. The Commission permitted the companies to retain legal control of the assets and have the sole power to market and dispose of the assets to third party buyers, subject to the Commission's rules, during the period of time that the management trustee is in day-to-day control of the divestiture assets. The Commission required, however, that the divestiture assets be transferred to the trust no later than 12 calendar days from the filing of the applications, and that until the assets are transferred to the trust, both the companies and the management trustee must abide by the provisions regarding the duties of the trustee and the preservation of the divestiture assets contained in the companies' agreement with the United States Department of Justice.

Action by *Memorandum Opinion and Order* (FCC 04-255) in WT Docket Nos. 04-70, 04-254, and 04-343 by Chairman Powell, Commissioners Abernathy and Martin with Commissioners Copps and Adelstein approving in part and dissenting in part. Separate statements issued by Chairman Powell, Commissioners Abernathy, Martin, Copps, and Adelstein.

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WT Docket Nos. 04-70, 04-254, 04-343

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