September 15, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW-A325
Washington, DC 20554

Re: *WT Docket No. 04-70 – Written Ex Parte Presentation*

Dear Ms. Dortch:

Cingular Wireless Corporation ("Cingular") and AT&T Wireless Services, Inc. ("AWS") (collectively "Applicants") hereby respond to the "talking points" filed with *ex parte* notices of FCC meetings by Public Service Communications, the National Telecommunications Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (hereinafter collectively "PSC").[1] PSC makes allegations on the subject of roaming between rural and larger carriers that are unsubstantiated, untimely, and procedurally inappropriate. The allegations are made in an attempt to justify the imposition of merger conditions on Cingular and a *non-applicant,* T-Mobile USA, Inc. ("T-Mobile").[2] No specifics are offered. The allegedly affected rural carriers are not identified and no mention is made whether there are existing roaming agreements and whether or when they were allegedly violated or how.

As a threshold matter, PSC's attempt to use this merger to raise an industry-wide issue is inappropriate and should be rejected. For example, PSC proposes conditions that (i) would apply to T-Mobile, and (ii) would require the merged company to offer roaming agreements to **all**

---

[1] *See* Letter from Michael K. Kurtis, Counsel for Public Service Cellular, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 04-70 (filed Sep. 7, 2004); Letter from Michael K. Kurtis, Counsel for Public Service Cellular, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 04-70 (filed Sep. 8, 2004); Letter from Michael K. Kurtis, Counsel for Public Service Cellular, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 04-70 (filed Sep. 9, 2004); Letter from Michael K. Kurtis, Counsel for Public Service Cellular, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 04-70 (filed Sep. 9, 2004) (hereinafter collectively referred to as "Kurtis *Ex Parte*").

[2] PSC failed to participate in the pleading cycle associated with the merger. The first *ex parte* was filed on the 159th day of the 180 day merger review timeline and more than three months after the close of the pleading cycle. No explanation is offered why this eleventh hour, opportunistic filing should be permitted or considered.

carriers at the same rates contained in the Cingular/AWS roaming agreement.[3] As the Supreme Court has recognized, "rulemaking is generally better, fairer, and a more effective method of implementing a new industry-wide policy than the uneven application of conditions in isolated [adjudicatory] proceedings."[4] That is particularly true where, as here, there is a pending rulemaking proceeding addressing the issues PSC raises in its talking points.[5]

In any event, PSC's attempt to have the FCC dictate the terms and conditions of roaming agreements is fundamentally inconsistent with the Commission's decision to rely on market forces to ensure that consumers get roaming service at the best rates, terms, and conditions.[6] In

---

[3] Kurtis *Ex Parte* at 2.

[4] *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983). If PSC believes that Cingular or AWS is acting unreasonably or is charging unreasonable roaming rates in specific cases, the appropriate vehicle for seeking relief is a Section 208 complaint. *See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Third Report and Order and Memorandum Opinion and Order on Reconsideration*, 15 F.C.C.R. 15975, 15982 (2000).

[5] *See Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services*, WT Docket No. 00-193, *Notice of Proposed Rulemaking,* 15 F.C.C.R. 21628 (2000) ("*NPRM 2000*"). In the *NPRM*, the Commission tentatively concluded that: "We do not believe we should adopt any automatic roaming rule unless it is clear that providers' current practices are unreasonably hindering the operation of the market to the detriment of consumers." *Id.* at 21635. Nevertheless, the Commission sought comment on "whether carriers with nationwide or other geographically extensive holdings have an incentive to deny automatic roaming agreements to their local or regional competitors" and "whether small or local carriers need access to nondiscriminatory roaming agreements in order to compete." *Id.* at 21636; *see also Federal Communications Commission 2002 Biennial Regulatory Review, Staff Report of the Wireless Telecommunications Bureau*, 18 F.C.C.R. 4243, 4286 (2002)("Market forces are working to make roaming services, in particular automatic roaming, widely available and increasingly less expensive."); *Information for Part 90 Licensees, Public Notice*, 11 F.C.C.R. 9267, 9271 (1996)("the Commission acknowledges that once the broadband PCS licensees have built out their networks, market forces should eliminate the need for any roaming regulations.").

[6] *See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Second Report and Order and Third Notice of Proposed Rule Making*, 11 F.C.C.R. 9462, 9474 (1996) ("*FNPRM*") (rejecting proposals that would require all carriers to enter into automatic roaming agreements); and *NPRM 2000,* 15 F.C.C.R. at 21628.

1994, the Commission initiated a rulemaking to address roaming in the CMRS marketplace.[7] The allegation made by PSC– that larger carriers are not making roaming available to smaller, rural carriers – was raised in that proceeding.[8] After reviewing the entire record, however, the Commission determined that there was no need to require CMRS carriers to enter into automatic roaming agreements because "[t]he inconclusiveness of the original record does not present a basis for us to adopt automatic roaming rules."[9] Instead, the FCC allowed market forces to dictate the terms of roaming agreements between carriers.[10] Thus, there is no FCC rule or policy requiring a carrier to enter into an automatic roaming agreement with another carrier.

PSC urges the Commission to impose conditions on Cingular that would guarantee roaming revenue for select rural carriers by prohibiting larger carriers such as Cingular from entering into roaming agreements that establish roaming preferences, requiring that larger carriers maintain a minimum level of roaming traffic over the rural networks, and mandating that automatic roaming be made available to all carriers at the rate set forth in the Cingular/AWS roaming agreement.[11] Contrary to the FCC's policy of market-driven roaming rates, PSC would have the Commission impose a rate that does not take into account call volume, feature availability, and system quality. Roaming rates have decreased based on negotiations with competing industry players. If all carriers were entitled to the same rates as AWS for roaming, there would be no incentive for those other carriers to expand their systems or reduce their own roaming rates because their subscribers would be entitled to roam on the Cingular network at rates set by other parties during negotiations. Moreover, if a carrier knows that roamers must use its network, it has a powerful incentive to extract exorbitant charges for roaming. In essence, PSC seeks to bar Cingular from negotiating roaming agreements that permit its subscribers to roam on networks which offer the best price, coverage, quality, or any combination of these factors.[12] This is contrary to the FCC's roaming policy and the public interest.

---

[7] *See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *Notice of Proposed Rule Making and Notice of Inquiry*, 9 F.C.C.R. 5408 (1994).

[8] *See NPRM 2000,* 15 F.C.C.R. 21628, n.54.

[9] *FNPRM*, 11 F.C.C.R. at 9472.

[10] *Id.*

[11] *See* Kurtis *Ex Parte* at 2.

[12] *See id.* (stating that Cingular should be barred from sending traffic to T-Mobile if there is any other alternative).

In any event, as to the Applicants, PSC's claims are without merit. PSC does not allege that Applicants have violated any FCC decision, rule, or policy.[13] To the contrary, Cingular and AWS each have entered into numerous roaming agreements with rural carriers – including roaming agreements with PSC – and each carrier has entered into more than 100 roaming agreements overall.[14] Under most of the agreements with rural and regional carriers, Cingular and AWS are net payors.[15]

Although Cingular and AWS have adopted roaming preferences that shift roaming traffic to certain networks,[16] these preferences benefit consumers by ensuring broad coverage, with high

---

[13] PSC alleges that T-Mobile will not enter into roaming agreements with some rural carriers, but T-Mobile is not an applicant in this proceeding. Kurtis *Ex Parte* at 1.

[14] *See* Lead Application, Public Interest Statement and Waiver Request of Cingular Wireless Corporation, FCC Form 603, Ex. 1, WT Docket No. 04-70, ULS File No. 0001656065, at 21 (filed Mar. 18, 2004) ("Public Interest Statement") ("Cingular has entered into 114 roaming agreements . . . AWS has entered into nearly 140 roaming agreements").

[15] Response of Cingular Wireless Corporation to FCC's General Information Request, WT Docket No. 04-70, at 29 (July 15, 2004). Although not mentioned in the Kurtis *Ex Parte*, Communications Daily reported the PSC meetings with the Commission and indicated that PSC was claiming that Cingular is no longer paying roaming charges due rural carriers. *See, e.g.*, Howard Buskirk, *Rural Groups Warn of Threat From AT&T Wireless-Cingular Merger*, COMMUNICATIONS DAILY, Sept. 9, 2004 (quoting Shirley Bloomfield, vice president of NTCA: "The concern has been AT&T has not been paying any of the roaming fees to the small carriers, while Cingular has been fine. Since this merger has been on the table Cingular stopped paying to some of the small companies"). This charge is without merit. Roaming settlement payments are made based on (i) data received from roaming clearinghouses used by the CMRS industry and (ii) on invoices received directly from carriers. If Cingular receives an invoice from a carrier seeking payment that is supported by data from the roaming clearinghouse, payment is made. If there is a dispute or discrepancy, in general, payment is made for the original amount of the invoice and disputes are resolved outside of the invoice payment process. Exceptions could exist if the amount of the dispute is large in proportion to the total amount of the invoice (for example, if $200 is disputed out of a total invoice amount of $300). In some instances, roaming payments may be delayed due to incorrect mailing or banking information. Cingular and PSC had such an issue at one time, but the matter has been resolved. Contrary to the reported allegations, Cingular has not adopted a policy of non-payment with respect to rural carriers.

[16] Kurtis *Ex Parte* at 1. The Cingular/AWS roaming agreement, including the "preference," predates announcement of the merger by more than two years. Under the Cingular/AWS roaming agreement, both companies undertake to send their roaming GSM customers to one another where possible. Because GSM and TDMA footprints are not always

quality and low prices. If roaming preferences were precluded, Cingular subscribers could find themselves roaming on a network with extremely high rates and poor quality.[17] This would raise the costs associated with one-rate plans (due to uncontrolled roaming costs) and create customer dissatisfaction over such matters as feature unavailability and poor service quality. Furthermore, forced roaming would eliminate any incentive for the operator of the less built out or lower quality provider to spend the capital to address those shortcomings.

Similarly, PSC claims that Cingular and AWS "block" rural roaming.[18] This claim is misleading and confuses the intent of the Commission's roaming rules, which are designed to ensure that customers can obtain service when traveling beyond their home area, not to guarantee that a particular carrier receive roaming revenue.[19] Contrary to the claim that Cingular is unwilling to enter into roaming agreements with rural carriers,[20] Cingular has entered into roaming agreements with rural carriers *even where Cingular already has secured a roaming partner*. Thus, even where Cingular subscribers do not need access to a rural carrier's network for roaming purposes, Cingular has been willing to allow the customers of the rural carrier to roam on the Cingular network. In a few instances, however, Cingular has "blocked" *its* subscribers from roaming on a roaming partner's network in areas where the networks overlap. The same is true for AWS. The roaming limitation ensures that customers will not unnecessarily incur unreasonable roaming charges or poor service quality. PSC's objection to blocking is not based on customer concerns or the public interest – it is an attempt to prevent the loss of roaming revenue when market forces cause traffic to be shifted to alternate, less expensive networks. The

---

identical, a small carrier that has been carrying TDMA roamers may find that some TDMA minutes lost as subscribers migrate to GSM are not replaced with an equivalent number of GSM minutes.

[17] PSC claims that many larger carriers are charging a premium for roaming. Kurtis *Ex Parte* at 1. Cingular does not charge any such premium – roaming rates are based on a number of factors, such as volume, and continue to decrease. Roaming premiums were historically extracted from larger carriers by smaller carriers serving holes in the service area of larger carriers.

[18] Kurtis *Ex Parte* at 1.

[19] *See* 47 C.F.R. §20.12(c); *see also NPRM 2000*, 15 F.C.C.R. at 21636 (seeking comment on whether small and local carriers have viable options for automatic roaming if larger carriers refuse to enter into such arrangements).

[20] Kurtis *Ex Parte* at 1.

Commission has recognized, however, that the public interest is served by reducing roaming costs.[21]

Cingular's willingness to enter into automatic roaming agreements with rural carriers is reflected by the record. Virtually every rural carrier and wireless company that has participated in the docket has supported the merger: Rural Enterprises of Oklahoma Inc., First Cellular of Southern Illinois, Highland Cellular, LLC, Rural Cellular Corporation ("RCC"), United States Cellular Corporation, and Dobson Communications Corporation. RCC specifically observed that Cingular and its roaming partners have a "symbiotic relationship . . . that allows customers of each entity to benefit from roaming agreements that will be continued upon completion of the merger."[22] Because of this relationship, Cingular's roaming partners – and the customers of those roaming partners – will benefit from the merger through the improved quality of the merged company's services and through the merged company's ability to deploy new services more broadly and more quickly. As RCC explained, "to succeed we must have a strong national partner. The combined company that Cingular proposes is more likely to develop and deploy new services that we can also then deploy. . . . A combination of [Cingular and AWS] means a more efficient roaming relationship . . . making combined Cingular a better roaming partner and a more attractive service offering for our customers."[23]

Dobson also noted that, although national carriers have expanded their footprints into rural markets, these carriers still have been willing to enter into roaming agreements.[24] It stated that any claims that the merger would adversely affect roaming were without merit:

> Dobson has multi-year roaming arrangements with both Cingular and AT&T Wireless Services, Inc. In light of our past relationships and our strategic position as a leading service provider in rural and non-metropolitan areas, Dobson expects that

---

[21] *See SBC Communications, Inc., Memorandum Opinion and Order*, 15 F.C.C.R. 25459, 25480 (WTB 2000); *Vodafone AirTouch, PLC, Memorandum Opinion and Order*, 15 F.C.C.R. 16507, 16519-20 (WTB 2000).

[22] Letter from Richard P. Ekstrand, President and CEO Rural Cellular Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 04-70 (filed May 19, 2004).

[23] *Id.*

[24] Comments of Dobson Communications Corporation, WT Docket No. 04-70 (filed May 13, 2004).

> these roaming relationships will be unaffected by the transaction. Petitioners' suggestions to the contrary are without merit.[25]

First Cellular and Highland Cellular both urged approval of the merger because it would *improve* roaming for rural carriers.[26] Moreover, Highland Cellular touted the efforts of Cingular and AWS with regard to rural carriers:

> [B]oth Cingular and AWS have strong track records with respect to working with independent carriers, such as Highland, to extend the scope of coverage to very rural and low population density areas. Both of these companies understand that in many cases rural companies are the entities best positioned to serve rural markets. Highland has no reason to believe that the post-merger Cingular will not continue to work in partnership with rural carriers and rural America.[27]

For the foregoing reasons, the conditions proposed by PSC should be rejected. If you have any questions, please direct them to the undersigned.

Very truly yours,

/s/
Douglas I. Brandon
Vice President, Federal Affairs
AT&T WIRELESS SERVICES, INC.

/s/
Brian F. Fontes
Vice President – Federal Relations
CINGULAR WIRELESS CORPORATION

---

[25] *Id.* at n.13.

[26] Letter from Teddy Addington, CEO First Cellular of Southern Illinois, to Marlene H. Dortch, WT Docket No. 04-70, at 1-3 (filed Jun. 3, 2004); Reply Comments of Highland Cellular, WT Docket No. 04-70, at 2-5 (filed May 20, 2004)("Highland Reply Comments").

[27] Highland Reply Comments at 5.