October 8, 2004

VIA ECFS

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 most recent *ex parte* presentations made by certain limited partners in the Citrus Cellular Limited Partnership ("Citrus Partners").[1] Yet again, the Citrus Partners urge the Commission to get involved in a private contractual matter. Equally important, they imply that they hold interests in an FCC license subject to the Cingular/ AWS merger application. This simply is not true.

The Citrus Partners state that they are "minority, limited partners in Citrus Cellular Limited Partnership ("CCLP"), d/b/a AT&T Wireless, the licensee of KNKN738."[2] ***The Citrus Partners, however, hold no stake in AT&T Wireless Services of Florida, Inc. ("AWS Florida"), the licensee of KNKN738***. AWS Florida is a wholly-owned subsidiary of AT&T Wireless Services, Inc.

The Citrus Partners once held the license for KNKN738, but ***sold their interests more than one decade ago*** in return for shares in McCaw Cellular Communications, Inc. (which later became AT&T Wireless Services, Inc.) and minority, limited partnership interests in CCLP, a non-licensee company that holds operating assets in the market covered by KNKN738. Thus, any disputes the Citrus Partners have regarding their rights under the CCLP partnership agreement have no bearing on the disposition of the license – their concern is purely a private contractual matter. The Commission has long held that private contractual matters have no place in the consideration of a license transfer.[3]

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[1] *See* Letter from Robert H. Jackson, Reed Smith LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 5, 2004).

[2] *Id.* at 1.

[3] *See id.* at 1; *accord Applications of Centel Corporation and Sprint Corporation, Memorandum Opinion and Order*, 8 F.C.C.R. 1829, 1831 (CCB 1993) ("*Centel Order*") ("[T]he alleged violation of the partnership agreements amounts to a contractual dispute … and,

Based on the foregoing, the Citrus Partners' objections to the transfer of KNKN738 are without merit and should be summarily rejected. If you have any questions, please do not hesitate to contact 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

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therefore, a matter for resolution by a private cause of action, rather than resolution by the Commission. The Commission has repeatedly stated that it is not the proper forum for the resolution of private contractual disputes, noting that these matters are appropriately left to the courts or to other fora that have the jurisdiction to resolve them." (citation omitted)); *Sonderling Broadcasting Co.*, 46 Rad. Reg.2d (P&F) 890, 894 (1979) (Commission is not the proper forum for the resolution of private contractual disputes and such matters are appropriately left to the courts); *see Mid-Missouri Telephone Company,* 14 F.C.C.R. 18613 (CWD 1999) ("It is the Commission's policy, however, to not defer the consideration of outstanding matters, pending the outcome of litigation involving private contractual matters. Because the litigation at issue concerns a contractual dispute between the petitioner and the transferor, we will not defer or condition the grant of the above-captioned transfer of control applications.").