EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Forstall ((202) 205–3443), Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 4, 2004, the Commission issued a schedule for the conduct of the final phase of the subject investigation (69 FR 60423, October 8, 2004). Subsequently, counsel on behalf of petitioners in this investigation [1] requested that the Commission extend the deadline for filing posthearing briefs on issues related to tissue paper (also applicable to the deadline for the submission of a written statement of information on issues related to tissue paper by any person who has not entered an appearance as a party to the investigation) by one week or more (letter from Collier Shannon Scott, PLLC to Marilyn R. Abbott, Secretary, October 21, 2004). Upon consideration of the reasons stated for the request, including an overlapping deadline with a related filing on crepe paper from China, the Commission is revising its schedule to extend the deadline for filing posthearing briefs and written statements by non-parties on issues related to tissue paper from January 5, 2005, to January 12, 2005.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

[1] Petitioners are Seaman Paper Company of Massachusetts, Inc.; American Crepe Corp.; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL–CIO, CLC.

By order of the Commission.

Issued: November 8, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–25255 Filed 11–12–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation, and AT&T Wireless Services, Inc.; Competitive Impact Statement, Proposed Final Judgment, Complaint, Preservation of Assets Stipulation and Order

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Preservation of Assets Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Cingular Wireless Corps.*, Civil Case No. 1:04CV01850 (RBW). On October 25, 2004, the United States, along with the Attorneys General from the states of Connecticut and Texas, filed a complaint alleging that the proposed acquisition of AT&T Wireless Services, Inc. (''AT&T Wireless'') by Cingular Wireless Corp. (''Cingular''), which is jointly owned by BellSouth Corporation (''BellSouth'') and SBC Communications, Inc. (''SBC''), would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of mobile wireless telecommunications services and mobile wireless broadband services. The proposed Final Judgment, filed at the same time as the Complaint and Preservation of Assets Stipulation and Order, requires Cingular to divest assets in eleven states—Connecticut, Georgia, Kansas, Kentucky, Louisiana, Massachusetts, Missouri, Michigan, Oklahoma, Tennessee, and Texas—in order to proceed with Cingular Wireless's $41 billion cash acquisition of AT&T Wireless. A Competitive Impact Statement filed by the United States on October 29, 2004 describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Preservation of Assets Stipulation and Order, the Competitive Impact Statement, and all further papers filed with the Court in connection with the Complaint will be available for inspection at the Antitrust Documents Group, Antitrust Division, Liberty Place Building, Room 215, 325 7th Street, NW., Washington, DC 20530 (202–514–2481), and at the Office of the Clerk of the U.S. District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments in writing regarding the proposed consent decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621). At the conclusion of the sixty (60) day comment period. The U.S. District Court for the District of Columbia may enter the proposed consent decree upon finding that it serves the public interest.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Columbia

United State of America, State of Connecticut and State of Texas, Plaintiffs, v. Cingular Wireless Corporation, SBC Communications Inc., Bellsouth Corporation and AT&T Wireless Services, Inc., Defendants; Competitive Impact Statement

Civil No. 1:04CV01850 (RBW).
Filed: October 29, 2004.

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants Cingular Wireless Corporation (''Cingular''), SBC Communications Inc. (''SBC''), BellSouth Corporation (''BellSouth''), and AT&T Wireless Services, Inc. (''AT&T Wireless Services'') entered into an Agreement and Plan of Merger dated February 17, 2004, pursuant to which Cingular will acquire AT&T Wireless. Plaintiff United States and the states of Connecticut and Texas (''plaintiff states'') filed a civil antitrust Complaint on October 25, 2004, seeking to enjoin the proposed acquisition. The

Compliant alleges that the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services and mobile wireless broadband services (collectively, ''Mobile wireless services'') in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in consumers facing higher prices, lower quality or quantity of mobile wireless services, or delayed launch of new mobile wireless services.

At the same time the Complaint was filed, plaintiff United States also filed a Preservation of Assets Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest (1) AT&T Wireless's mobile wireless services business and related assets in five markets (''Wireless Business Divesture Assets''); (2) Cingular's or AT&T Wireless's minority interests in other mobile wireless services providers in five markets (''Minority Interests''); and (3) 10 MHz of contiguous PCS wireless spectrum in three markets (''Spectrum Divesture Assets''). Under the terms of the Preservation of Assets Stipulation and Order, defendants will take certain steps to ensure (a) that these assets are preserved and that the Wireless Business Divestiture Assets are operated as competitively independent, economically viable and ongoing businesses; (b) that they will remain independent and uninfluenced by defendants or the consummation of the transaction; and (c) that competition is maintained during the pendency of the ordered divestiture.

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Plaintiffs and defendants have also stipulation that defendants will comply with the terms of the Preservation of Assets Stipulation and Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation and Order, pending entry of the proposed Final Judgment by the Court and the required divestitures. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Preservation of Assets Stipulation and Order until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Cingular, with headquarters in Atlanta, Georgia, is a company organized and existing under the laws of the State of Delaware. Cingular was formed in 2000 by SBC and BellSouth, who own equity interests in it of 60 and 40 percent, respectively. SBC and BellSouth evenly share management control of Cingular. Cingular is the second-largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves more than 24 million customers. Cingular provides mobile wireless services in areas throughout the United States and is one of only six providers with a national presence. In 2003, Cingular earned revenues of approximately $15.5 billion.

SBC, with headquarters in San Antonio, Texas, is a corporation organized and existing under the laws of the state of Delaware. SBC is one of several regional Bell operating companies (''RBOCs'') formed in 1984 as a result of the breakup of AT&T Corporation's local telephone business. SBC's wireline telecommunications businesses serve 54.7 million access lines in 13 states: Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin. In 2003, SBC earned approximately $40.8 billion in revenues.

BellSouth, an RBOC with headquarters in Atlanta, Georgia, is a corporation organized and existing under the laws of the state of Georgia. BellSouth's wireline telecommunications businesses serve 23.7 million access lines in nine states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Its total operating revenues for 2003 were approximately $22.6 billion.

AT&T Wireless, with headquarters in Redmond, Washington, is a corporation organized and existing under the laws of the state of Delaware. Spun off from AT&T Corporation in 2001, it had more than 22 million subscribers as of August 2004 and earned revenues of approximately $16.6 billion in 2003. AT&T Wireless is the third-largest U.S. mobile wireless services provider by number of subscribers, and, like Cingular, it provides mobile wireless services in areas throughout the United States and has a national presence.

Pursuant to an Agreement and Plan of Merger dated February 17, 2004, Cingular will pay AT&T Wireless shareholders $15 in cash per common share and thereby plans to acquire AT&T Wireless for approximately $41 billion. If this transaction is consummated, Cingular and AT&T Wireless combined would have more than 46 million subscribers, with over $32 billion in revenues, making it the largest mobile wireless services provider in the United States, with operations in 49 states covering 97 of the top 100 marketing areas.

The proposed transaction, as initially agreed to by defendants, would lessen competition substantially for mobile wireless telecommunications service in 10 markets and for mobile wireless broadband services in three markets. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiffs.

B. Mobile Wireless Services Industry

Mobile wireless services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. This mobility is highly prized by customers, as demonstrated by the more than 160 million people in the United States who own mobile wireless telephones. In 2003, revenues for the sale of mobile wireless services in the United States were nearly $90 billion. To provide these services, mobile wireless services providers must acquire adequate and appropriate spectrum, deploy an extensive network of switches, radio transmitters, and receivers, and interconnect this network with those of local and long-distance wireline telecommunications providers and other mobile wireless services providers.

The first wireless voice systems were based on analog technology, now referred to as first-generation or ''1G'' technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire

United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent. Cellular licensees must support analog service until February 2008.

In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telephone services comparable to those offered by cellular licensees. These licenses are in the 1.8 GHz range of the radio spectrum and are divided into six blocks. A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C, D, E, and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS license, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. Unlike the cellular licensees, PCS licensees are not required to provide support for analog or any other technology standard. In 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum of offer mobile wireless telephone services comparable to those offered by other mobile wireless services providers, in conjunction with its dispatch, or ''push-to-talk,'' service.

Today, more than 90 percent of all mobile wireless services customers have digital service, and nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies: TDMA (time division multiple access), GSM (Global Standard for Mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA having been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (''2.5G'') have begun to be deployed for voice and data (e.g., IxRIT (a/k/a CDMA 2000), GPRS (General Packet Radio Service), and EDGE (Enhanced Data for GSM Evolution)). The data transmission speeds of these technologies vary. For example, 1xRTT provides average user speeds of 70 kilobits per second (''kbps''), and GPRS and EDGE provide average user speeds of 20 to 40 kbps and 80 to 110 kbps, respectively.

Currently, the U.S. mobile wireless services industry is taking the next evolutionary step in wireless technology to third-generation or ''3G'' technologies (e.g., for GSM, UMTS (Universal Mobile Telecommunications System) and for CDMA, Ev–DO/DV (Evolution Data Only/Date Voice)) that provide for more capacity and higher data throughout. All of the national mobile wireless services providers and some of the regional providers are considering how and where they will deploy 3G services across their networks. Some providers have already deployed this service in some areas of the country.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services and Mobile Wireless Broadband Services

Cingular's proposed acquisition of AT&T Wireless will substantially lessen competition in mobile wireless telecommunications services and mobile wireless broadband services in the relevant geographic areas. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires, such as when traveling. Mobile wireless broadband services offer data speeds four to six times faster than the 2G and 2.5G data offerings currently provided by the mobile wireless services providers. Mobile wireless broadband services, which are now being launched using various 3G technologies, offer average data speeds of 200 to 300 kbps, peaking at 2 megabits per second or higher. These speeds rival wireline broadband services at peak speeds. At average speeds, they are comparable to low-end wireline high-speed data offerings and can support bandwidth-intensive services including video conferencing, video streaming, downloading of music and video files, and voice over Internet protocol (''VoIP'') calling, none of which can be used reliably at slower speeds. Fixed wireless services and other wireless services that have a limited range (e.g., Wi-Fi) do not offer a viable alternative to either mobile wireless telecommunications services or mobile wireless broadband services primarily because customers using these services cannot maintain a call or data session while moving from one location to another.

Most customers use mobile wireless services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services and mobile wireless broadband services choose among mobile wireless services providers that offer services where they are located and travel on a regular basis: home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless services providers varies from geographic area to geographic area, along with the quality of their services and the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the actual price for customers by geographic area.

The relevant geographic markets for mobile wireless services are, therefore, local in nature and are generally centered around a metropolitan area or a population center and its environs. The FCC has licensed a limited number of mobile wireless services providers in these and other geographical areas based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless services. Although not all FCC spectrum licensing areas are relevant geographic areas for the purpose of analyzing the antitrust impact of this transaction, the FCC spectrum licensing areas that encompass the 13 geographic areas of concern in this transaction are where consumers in these communities principally use their mobile wireless services. As described in the Complaint, the relevant geographic markets where the transactions will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas: Oklahoma City, Oklahoma (CMA 045), Topeka, Kansas (CMA 179), Pittsfield, Massachusetts (CMA 213), Athens, Georgia (CMA 234), St. Joseph, Missouri (CMA 275), Connecticut RSA–1 (CMA 357), Kentucky RSA–1 (CMA 443), Oklahoma RSA–3 (CMA 598), Texas RSA–11 (CMA 662), and Shreveport, Louisiana (BTA 419). The relevant geographic markets where the transaction will substantially lessen competition for mobile wireless broadband services are represented by the following FCC spectrum licensing

areas: Dallas-Fort Worth, Texas (CMA 009), Detroit, Michigan (BTA 112), and Knoxville, Tennessee (BTA 232).

The 10 geographic markets of concern for mobile wireless telecommunications services were identified by a fact-specific, market-by-market analysis that included consideration of, but was not limited to, the following factors: the number of mobile wireless services providers and their competitive strengths and weaknesses, Cingular's and AT&T Wireless's market shares along with those of the other providers, whether additional spectrum is or is likely soon to be available, whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers or launch additional services, the population of a market as it affects the need for spectrum to serve the population, the concentration of the market, and the breadth and depth of coverage by different providers in each market.

Cingular and AT&T Wireless both own all or part of businesses that offer mobile wireless telecommunications services in the 10 relevant geographic areas. In five of these areas (Athens, Georgia; Topeka, Kansas; Pittsfield, Massachusetts; St. Joseph, Missouri; and Shreveport, Louisiana), Cingular or AT&T Wireless also owns minority equity interests in another mobile wireless telecommunications services provider that would be a significant competitor to the merged firm for these services. The minority equity interests range from approximately 9 to 24 percent. Based upon these significant minority equity interests and the specific facts of the relationships, it was appropriate to attribute the shares and assets of the mobile wireless services businesses partially owned by Cingular or AT&T Wireless in these markets to either Cingular or AT&T Wireless, thus increasing the percentage of customers served by the merged firm.

The individual market shares of Cingular's and AT&T Wireless's mobile wireless telecommunications services businesses in the 10 relevant geographic markets as measures in terms of subscribers range from 9 to more than 71 percent, and their combined market shares range from 61 to nearly 90 percent. In each relevant geographic market, Cingular or AT&T Wireless has the largest market share, and, in all but one, the other is the second-largest mobile wireless telecommunications services provider. In all but one of the relevant geographic markets, Cingular and AT&T Wireless are the original cellular licensees and, as a result, have the network infrastructures with the greatest depth and breadth of coverage. Cingular and AT&T Wireless are likely closer substitutes for each other than the other mobile wireless telecommunications services providers in the relevant geographic markets. Additionally in these markets, there will be insufficient remaining competitors post-merger with the ability to compete effectively to defeat a small, but significant price increase by the merged firm.

The relevant geographic markets for mobile wireless telecommunications services are highly concentrated. As measured by the Herfindahl-Hirschman index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to the Compliant, concentration in these markets ranges from approximately 2600 to more than 5300, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After Cingular's proposed acquisition of AT&T Wireless is consummated, the HHIs in the relevant geographic markets will range from approximately 4400 to more than 8000, with increases in the HHI as a result of the merger ranging from approximately 1100 to more than 3500.

Competition between Cingular and AT&T Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than would otherwise have existed in these geographic markets. If Cingular's proposed acquisition of AT&T Wireless is consummated, the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated, and the competition between Cingular and AT&T Wireless in mobile wireless telecommunications services will be eliminated in these markets. As a result, the loss of competition between Cingular and AT&T Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, refrain from or delay making investments in network improvements, and refrain from or delay launching new services.

In the relevant geographic markets for mobile wireless broadband services, Cingular and AT&T Wireless have either launched or are likely soon to launch mobile wireless broadband services. Each has the spectrum necessary to offer mobile wireless broadband services and has business plans to offer these services in these markets. Not all mobile wireless services providers have sufficient spectrum to launch mobile wireless broadband services in these markets, nor do they all have business plans to do so in the near future. In the relevant geographic markets, the current number of mobile wireless services providers that are likely to launch mobile wireless broadband services in the foreseeable future is limited. Because mobile wireless broadband services are nascent, however, HHIs are uninformative.

The competition between Cingular and AT&T Wireless has motivated their efforts to develop and launch mobile wireless broadband services in the relevant geographic markets. If Cingular's proposed acquisition of AT&T Wireless is consummated, the relevant geographic markets will lose one of only a few existing and likely mobile wireless broadband services providers. As a result, the loss of competition between Cingular and AT&T Wireless increases the likelihood of unilateral actions by the merged firm in these relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay the launch of mobile wireless broadband services.

Entry by a new mobile wireless services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services or mobile wireless broadband services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm that would result from Cingular's proposed acquisition of AT&T Wireless.

For these reasons, plaintiffs concluded that Cingular's proposed acquisition of AT&T Wireless will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services and mobile wireless broadband services in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in mobile wireless telecommunications services and mobile wireless broadband services in the 13 geographic markets of concern. The proposed Final Judgment requires defendants, within 120 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later, to

divest the Wireless Business Divestiture Assets, the Minority Interests, and Spectrum Divestiture Assets (collectively, ''Divestiture Assets''). The Wireless Business Divestiture Assets are essentially AT&T Wireless's entire mobile wireless business in the five markets where Cingular and AT&T Wireless both currently own and control providers of mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff United States in its sole discretion upon consultation with any relevant plaintiff state that they will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

With respect to the Wireless Business Divestiture Assets, in some markets the merged firm may retain some of AT&T Wireless's wireless spectrum (Connecticut RSA–1, Kentucky RSA–1, and Texas RSA–11). The spectrum that must be divested is adequate to support the operation and expansion of the mobile wireless services business being divested, and allowing the merged firm to retain some of AT&T Wireless's spectrum may benefit consumers by allowing the merged firm to provide improved or new services.

In the five markets where either Cingular or AT&T Wireless owns a minority interest in another mobile wireless services provider, the proposed Final Judgment requires defendants to divest these Minority Interests. The proposed Final Judgment allows defendants to retain the Minority Interests in the Missouri, Kansas, and Louisiana areas with the approval of plaintiff United States in its sole discretion if they demonstrate that the retained minority interest will become irrevocably and entirely passive so long as the merged firm owns the interest and will not significantly diminish competition. The size of the minority interests and market concentrations in the Georgia and Massachusetts markets created concerns that allowing the merged firm to continue to hold even a passive interest would diminish competition, and defendants are required to divest fully their interests in those markets.

The Spectrum Divestiture Assets consist of 10 MHz of contiguous PCS spectrum in three markets and must be divested in such a way as to remedy the competitive harm from the transaction in the relevant mobile wireless broadband services markets. The availability of this spectrum will make it more likely that another mobile wireless services provider could offer high-speed data services in these areas. In Knoxville, Tennessee, the merged firm can alternatively restructure its relationship with another spectrum licensee in the market so that the merged firm no longer has an effective controlling interest in the licensee and that the licensee's spectrum will be used by it in a manner that resolves the competitive concerns identified in the Complaint, which is effectively the same as if the merged firm were to divest the required amount of spectrum.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which plaintiff United States seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. The proposed Final Judgment in this case requires, in Section IV.A, divestiture of the Divestiture Assets, within 120 days after the filing of the Complaint, or five days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff United States in its sole discretion upon consultation with any relevant plaintiff state may extend the date for divestiture of the Divestiture Assets by up to 60 days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispositively before the end of the required divestiture period, the period for divestiture of those assets shall be extended until five days after the FCC has acted. This extension is to be applied only to the individual Divestiture Assets affected by the delay in approval of the license transfer and does not entitle defendants to delay the divestiture of any other Divestiture Assets for which license transfer approval has been granted.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Preservation of Assets Stipulation and Order.

B. Use of a Management Trustee

The Preservation of Assets Stipulation and Order, entered by the Court on October 26, 2004, ensures, prior to divestiture, that the Divestiture Assets are maintained and the Wireless Business Divestiture Assets remain an ongoing business concern and that the other Divestiture Assets remain economically viable. The Divestiture Assets will remain preserved, independent and uninfluenced by defendants, so that competition is maintained during the pendency of the ordered divestiture.

The Preservation of Assets Stipulation and Order appoints a management trustee selected by plaintiff United States upon consultation with plaintiff states to oversee the Divestiture Assets in the relevant geographic markets. The appointment of a management trustee in this unique situation is required because the Divestiture Assets are not independent facilities that can be held separate and operated as standalone units by the merged firm. Rather, the Wireless Business Divestiture Assets are an integral part of a nationwide network, and to maintain their competitive viability and economic value, they should remain part of that network during the divestiture period. To ensure that these assets are preserved and supported by defendants during this period, yet run independently, a management trustee is necessary to oversee the continuing relationship between defendants and these assets. The management trustee will have the power to operate the Wireless Business Divestiture Assets in the ordinary course of business, so that they will remain preserved, independent, and uninfluenced by defendants, and an ongoing and economically viable competitor to defendants and to other mobile wireless services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; insure defendants' compliance with the Preservation of Assets Stipulation and Order and the proposed Final Judgment; and maximize the value of the Divestiture Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Preservation of Assets Stipulation and Order provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his

or her appointment becomes effective, the management trustee will file monthly reports with plaintiffs setting forth the efforts to accomplish the goals of the Preservation of Assets Stipulation and Order and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the management trustee may become the divestiture trustee, pursuant to the provisions of Section V of the proposed Final Judgment.

C. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff United States upon consultation with any relevant plaintiff state to effect the divestitures. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will own and control the systems until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and ''at the best price then obtainable upon a reasonable effort by the trustee.'' In addition, to insure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, plaintiff United States, in its sole discretion upon consultation with any relevant plaintiff state, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Wireless Business Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the Divestiture Assets, but will also be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation, or management of the Divestiture Assets following consummation of the transaction, as provided by Section V, other than the right to receive the proceeds of the sale, and certain obligations to provide support to the Divestiture Assets, and cooperate with the divestiture trustee in order to complete the divestiture, as indicated in Section VI.L and in the Preservation of Assets Stipulation and Order.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.G of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiffs setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser or purchasers no later than six months after the assets are transferred to the divestiture trustee. At the end of six months, if all divestitures have not been accomplished, the trustee, plaintiff United States, and any relevant plaintiff state will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services and mobile wireless broadband services. The divestitures of the Wireless Business Divestiture Assets and the Minority Interests will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic markets. The divestiture of the Spectrum Divestiture Assets will preserve competition in mobile wireless broadband services by making assets available to establish a new, independent, and economically viable competitor.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered by a Court after compliance with the provisions of the APPA, provided that plaintiffs have not withdrawn their consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff United States considered, as an alternative to the proposed Final

Judgment, a full trail on the merits against defendants. Plaintiff United States could have continued the litigation and sought preliminary and permanent injunctions against Cingular's acquisition of AT&T Wireless. Plaintiff United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services and mobile wireless broadband services in the relevant markets identified in the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's compliant, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interest affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Corp.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. supp. 619, 622 (W.D. Ky. 1985) (approving the consent judgment even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft*, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: October 29, 2004.

Respectfully submitted,

/s/

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[1] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest''). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments field by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93d Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538–39.

[2] *Cf. BNS*, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft*, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

Certificate of Service

I hereby certify that copies of the Competitive Impact Statement have been mailed, by U.S. mail, postage preparid, to the attorneys listed below, the *29th* day of October 2004.

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In the United States District Court for the District of Columbia

United States of America, State of Connecticut and State of Texas, Plaintiffs, v. Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation and AT&T Wireless Services, Inc., Defendants; Final Judgment

Civil No.: 1:04CV01850 (RBW)
Filed: November 3, 2004

Whereas, plaintiffs, United States of America, and the states of Connecticut and Texas (''plaintiff states''), filed their Complaint on October 25, 2004, plaintiffs and defendants, Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation and AT&T Wireless Services, Inc. (''AT&T Wireless''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And Whereas, plaintiffs require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to plaintiffs that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''AT&T Wireless'' means defendant AT&T Wireless Services, Inc., a Delaware corporation with headquarters in Redmond, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''BellSouth'' means defendant BellSouth Corporation, a Georgia corporation with headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Cingular'' means defendant Cingular Wireless Corporation, a Delaware corporation with headquarters in Atlanta, Georgia, and Cingular Wireless LLC, a Delaware limited liability company formed as a joint venture between SBC and BellSouth, with headquarters in Atlanta, Georgia, their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means Wireless Business Divestiture Assets, Spectrum License Divestiture Assets, and Minority Interests, including any direct or indirect financial ownership or leasehold interests and any direct or indirect role in management or participation in control therein.

F. ''Minority Interests'' means the equity interests owned by any defendant in the following entities that are the licensees or operators of mobile wireless services businesses in the specified Metropolitan Statistical Areas (''MSAs'') and Rural Statistical Areas (''RSAs'') (collectively, Cellular Marketing Areas (''CMAs'')) used to define cellular license areas by the Federal Communications Commission (''FCC''):

(1) Alltel Communications of North Louisiana Cellular Limited Partnership, covering the Shreveport, Louisiana MSA (CMA 100), Monroe, Louisiana MSA (CMA 219), Louisiana RSA–1 (CMA 454), Louisiana RSA–2 (CMA 455) and Louisnana RSA–3 (CMA 456);

(2) Athens Cellular Inc., covering the Athens, Georgia MSA (CMA 234);

(3) CellTelCo, covering the St. Joseph, Missouri MSA (CMA 275);

(4) Pittsfield Cellular Telephone Co., covering the Pittsfield, Massachusetts MSA (CMA 213); and

(5) Topeka Cellular Telephone Co., Inc., covering the Topeka, Kansas MSA (CMA 179).

As an alternative to the divestiture of the Alltel Communications of North Louisiana Cellular Limited Partnership, CellTelCo, and Topeka Cellular Telephone Co., Inc. Minority Interests as required by Section IV of this Final Judgment, defendants may request, at least 20 days prior to consummation of the Transaction, approval from plaintiff United States to retain such interests. Plaintiff United States in its sole discretion may approve this request if it is demonstrated that the retained minority interest will become irrevocably and entirely passive, so long as defendants own the minority interests, and will not significantly diminish competition.

G. ''Multi-line Business Customer'' means a corporate or business customer that contracts with AT&T Wireless for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with a corporate or business customer.

H. ''SBC'' means defendant SBC Communications Inc., a Delaware corporation with headquarters in San

Antonio, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Skagit'' means Skagit Wireless LLC, an Oregon corporation with headquarters in Portland, Oregon, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

J. ''Spectrum License Divestiture Assets'' means a license for 10 MHz of contiguous PCS spectrum in the specified MSAs and Basic Trading Areas (''BTAs'') used to define cellular and PCS license areas by the FCC:

(1) The Dallas-Fort Worth, Texas MSA (CMA 009);

(2) The Detroit, Michigan BTA (BTA 112), provided that the license to be transferred does not have to include any PCS spectrum in Monroe and Sanilac counties; and

(3) The Knoxville, Tennessee BTA (BTA 232), provided that as an alternative to the divestiture of a license for 10 MHz of contiguous PCS spectrum as required by Section IV of this Final Judgment, defendants, with the approval of plaintiff United States in its sole discretion, can restructure AT&T Wireless's existing relationship with Skagit such that (i) defendants have no equity or leasehold interest in, hold no debt of, and have no managerial or operational interest in Skagit's PCS license in the Knoxville Tennessee BTA, and (ii) Skagit's PCS license in the Knoxville Tennessee BTA is contractually committed to be used in a manner that resolve the competitive concerns alleged by plaintiffs in the Complaint.

K. ''Transaction'' means the Agreement and Plan of Merger By and Among AT&T Wireless Services, Inc., Cingular Wireless Corporation, Cingular Wireless LLC, Links I Corporation, SBC Communications Inc., and BellSouth Corporation, dated February 17, 2004.

L. ''Wireless Business Divestiture Assets'' means, for each mobile wireless business to be divested under this Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless businesses to be divested (including the provision of long distance telecommunications services for wireless calls). ''Wireless Business Divestiture Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of AT&T Wireless in each of the following MSA and RSA license areas as required by this Final Judgment and to ensure that the divested mobile wireless businesses remain viable, ongoing businesses:

(a) Oklahoma City, Oklahoma MSA (CMA 045);

(b) Connecticut RSA–1 (CMA 357), provided that defendants may retain 10 MHz of AT&T Wireless's PCS spectrum, provided that 10 MHz of contiguous PCS spectrum throughout the RSA is divested to an Acquirer;

(c) Kentucky RSA–1 (CMA 443), provided that defendants may retain 15 MHz of AT&T Wireless's PCS spectrum in Fulton county and 10 MHz of AT&T Wireless's PCS spectrum in the other counties contained within the RSA, provided that 30 MHz of contiguous PCS spectrum in Fulton county and 20 MHz of contiguous PCS spectrum in the other counties contained in the RSA is divested to an Acquirer;

(d) Oklahoma RSA–3 (CMA 598); and

(e) Texas RSA–11 (CMA 662), provided that defendants may retain 25 MHz of AT&T Wireless's PCS spectrum in Sabine county, and 20 MHz of AT&T Wireless's PCS spectrum in Angelina, Nacogdoches, and San Augustine counties, provided that 10 MHz of contiguous PCS spectrum throughout the RSA is divested to an Acquirer.

Wireless Business Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless business being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from the divesting defendant, for assets described in (2) below; provided that defendants shall only be required to divest Multi-line business Customer contracts, if 50 percent or more of the Multi-line Business Customer's subscribers reside or work within any of the five (5) license areas described herein, and further, any subscribers who obtain mobile wireless services through any such contract retained by defendants and who are located within the five (5) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within 45 days after the closing of the Transaction.

These divestitures of the Wireless Business Divestiture Assets shall be accomplished by:

(1) Transferring to the Acquirers the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of AT&T Wireless's overall wireless business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested wireless businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to approval of plaintiff United States upon consultation with any relevant plaintiff state, shall not be divided); and

(2) Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff United States upon consultation with any relevant plaintiff state, at the election of an Acquirer to use any of AT&T Wireless's retained assets under paragraph (1) above, used in the operation of the wireless business being divested, so as to enable the Acquirer to continue to operate the divested wireless business without impairment. Defendants shall identify in a schedule submitted to plaintiffs and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestitures and before the approval by the Court of this Final Judgment, any intellectual property rights under third-party licenses that are used by the wireless businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

III. Applicability

A. This Final Judgment applies to defendants Cingular, SBC, BellSouth and AT&T Wireless, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided that defendants need not obtain such an agreement from the Acquirer(s).

IV. Divestitures

A. Defendants are ordered and directed, within 120 days after consummation of the Transaction, or five (5) days after notice of entry of this Final Judgment, whichever is later, to divest the Divestiture Assets to an Acquirer or Acquirers acceptable to plaintiff United States in its sole discretion upon consultation with any relevant plaintiff state, and, if applicable, to a Divestiture Trustee designated pursuant to Section V of this Final Judgment. Plaintiff United States, in its sole discretion upon consultation with any relevant plaintiff state, may agree to one or more extensions of this time period not to exceed 60 days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by defendants or the Divestiture Trustee, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer(s) of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which FCC approval has not been issued until five (5) days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants shall promptly make known, if they have not already done so, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work productive privileges. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person.

C. Defendants shall provide to the Acquirer(s) and plaintiffs information relating to the personnel involved in the operation, development, and sale of the Wireless Business Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any defendant employee whose primary responsibility is the operation, development, and sale of the Wireless Business Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to all Acquirer(s) that (1) each asset of the Wireless Business Divestiture Assets will be operational on the date of sale, and (2) every wireless spectrum license is in full force and effect on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, licensing, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer(s) of the Divestiture Assets that there are no material defects in the environmental, zoning, licensing or other permits pertaining to the operation of each assets, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, licensing or other permits relating to the operation of the Divestiture Assets.

H. Unless plaintiff United States otherwise consents in writing, upon consultation with any relevant plaintiff state, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and with respect to the Wireless Business Divestiture Assets and Spectrum License Divestiture Assets, shall be accomplished in such a way as to satisfy plaintiff United States, in its sole discretion upon consultation with any relevant plaintiff state, that these assets can and will be used by the Acquirer(s) as part of a viable, ongoing business engaged in the provision of mobile wireless services. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of plaintiff United States upon consultation with any relevant plaintiff state, that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures of the Wireless Business Divestiture Assets and Spectrum License Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer (or Acquirers) that, in plaintiff United State's sole judgment upon consultation with any relevant plaintiff state, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless services; and

(2) Shall be accomplished so as to satisfy plaintiff United States in its sole discretion upon consultation with any relevant plaintiff state, that none of the terms of any agreement between the Acquirer (or Acquirers) and any defendant shall give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the ability of the Acquirer to compete effectively.

I. At the option of the Acquirer(s), defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless services sufficient to meet all or part of the needs of the Acquirer'(s) needs for a period of up to one year. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

J. To the extent that the mobile wireless businesses to be divested use intellectual property, as required to be identified by Section II.L, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

K. In the event plaintiff United States approves retention of any Minority Interests, defendants shall not obtain any additional equity interest in such entity.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV.A, defendants shall notify plaintiff United States and any relevant plaintiff state of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Then, upon application of plaintiff United States, upon consultation with any plaintiff state, the Court shall appoint a Divestiture Trustee selected by plaintiff United States and approved by the Court to effect the divestiture of the Divestiture Assets. The Divestiture Trustee, will have all the rights and responsibilities of the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and will be responsible for:

(1) Accomplishing divestiture of all Divestiture Assets transferred to the Divestiture Trustee from defendants, in accordance with the terms of this final Judgment, to an Acquirer or Acquirers approved by plaintiff United States, upon consultation with any relevant plaintiff state, under Sections IV.A and IV.C of this Final Judgment, and

(2) Exercising the responsibilities of the licensee of any transferred Divestiture Assets and controlling and operating any transferred Wireless Business Divestiture Assets, to ensure that the businesses remain ongoing, economically viable competitors in the provision of mobile wireless services in the five (5) license areas specified in the Wireless Business Divestiture Assets, until they are divested to an Acquirer or Acquirers, and the Divestiture Trustee shall agree to be bound by this Final Judgment.

B. Defendants shall submit a proposed trust agreement (''Trust Agreement'') to plaintiff United States and any relevant plaintiff state, which must be consistent with the terms of this Final Judgment and which must receive approval by plaintiff United States in its sole discretion, upon consultation with any relevant plaintiff state, who shall communicate to defendants within ten (10) business days its approval or disapproval of the proposed Trust Agreement, and which must be executed by the defendants and the Divestiture Trustee within five (5) business days after approval by plaintiff United States; and

C. After obtaining any necessary approvals from the FCC for the assignment of the licenses of the remaining Divestiture Assets to the Divestiture Trustee, defendants shall irrevocably divest the remaining Divestiture Assets to the Divestiture Trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to Acquirer(s)) and control such assets, subject to the terms of the approved Trust Agreement.

D. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to plaintiff United States, in its sole judgment upon consultation with any relevant plaintiff state, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants the Management Trustee appointed pursuant to the Preservation of Assets Stipulation and Order, and any investment bankers, attorneys or other agents, who shall he solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

E. In addition, notwithstanding any provision to the contrary, plaintiff United States, in its sole discretion upon consultation with any relevant plaintiff state, may require defendants to include additional assets, or allow, with the written approval of plaintiff United States, defendants to substitute substantially similar assets, which substantially relate to the Wireless Business Divestiture Assets to be divested by the Divestiture Trustee to facilitate prompt divestiture to an acceptable Acquirer.

F. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiff United States, any relevant plaintiff state, and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

G. The Divestiture Trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff United States approves, and shall account for all monies derived from the sale of the assets sold and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures including their best efforts to effect all necessary regulatory approvals and will provide any necessary representations or warranties as appropriate related to sale of the Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to the assets to be divested as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

I. After its appointment, the Divestiture Trustee shall file monthly reports with plaintiff United states, any relevant plaintiff state, and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding

month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

J. If the Divestiture Trustee has not accomplished such divestitures within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the plaintiff United States and any relevant plaintiff state who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by plaintiff United States upon consultation with any relevant plaintiff state.

K. After defendants transfer the Divestiture Assets to the Divestiture Trustee, and until those Divestiture Assets have been divested to an Acquirer or Acquirers approved by plaintiff United States pursuant to Section IV.A and IV.H the Divestiture Trustee shall have sole and complete authority to manage and operate the Divestiture Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not retain any economic interest in the Divestiture Assets transferred to the Divestiture Trustee, apart from the right to receive the proceeds of the sale or other disposition of the Divestiture Assets.

L. The Divestiture Trustee shall operate the Wireless Business Divestiture Assets consistent with the Preservation of Assets Stipulation and Order and this Final Judgment, with control over operations, marketing and sales. Defendants shall not attempt to influence the business decisions of the Divestiture trustee concerning the operation and management of the Wireless business Divestiture Assets, and shall not communicate with the Divestiture Trustee concerning divestiture of the Divestiture Assets or take any action to influence, interfere with, or impede the Divestiture trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the Divestiture Trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the Divestiture Trustee, if requested to do so, with whatever resources or cooperation may be required to complete divestiture of the Divestiture Assets and to carry out the requirements of the Preservation of Assets Stipulation and Order and this Final Judgment. Except as provided in this Final Judgment and the Preservation of Assets Stipulation and Order, in no event shall defendants provide to, or receive from, the Divestiture Trustee or the mobile wireless businesses under the Divestiture Trustee's control any non-public or competitively sensitive marketing, sales, or pricing information relating to their respective mobile wireless businesses.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify plaintiff United States and any relevant plaintiff state in writing of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by plaintiff United States and any relevant plaintiff state of such notice, plaintiff United States and any relevant plaintiff state may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the Divestiture Trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff United States and any relevant plaintiff state have been provided the additional information requested from defendants, the proposed Acquirer or Acquirers, any third party, and the Divestiture Trustee, whichever is later, plaintiff United States, upon consultation with any relevant plaintiff state, shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.F of this Final Judgment. Absent written notice that plaintiff United States does not object to the proposed Acquirer or upon objection by plaintiff United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.F, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Preservation of Assets Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V of this Final Judgment, defendants shall deliver to plaintiff United States and any relevant plaintiff state and affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture

Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by plaintiff United States, after consultation with any relevant state, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiff United States and any relevant plaintiff state an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to plaintiff United States and any relevant plaintiff state an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits provided pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff United States' option, to require defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff United States to any person other than an authorized representative of the executive branch of the United States or, pursuant to a customary protective Order or waiver of confidentiality by defendants, the FCC, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire or lease any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

_____

United States District Judge

In the United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000, Washington, DC 20530, State of Connecticut, Office of the Attorney General, 55 Elm Street, Hartford, CT 06106, and State of Texas, Office of the Attorney General, P.O. Box 12548, Austin, TX 78711, Plaintiffs, v. Cingular Wireless Corporation, 5565 Glenridge Connector, Atlanta, GA 30349, SBC Communications Inc., 174 East Houston, San Antonio, TX 78205, Bellsouth Corporation, 1155 Peachtree Street, NE., Atlanta, GA 30309, and AT&T Wireless Services, Inc., 7277 164th Avenue, NE., Building 1, Redmond, WA 98052, Defendants; Complaint

Civil No.: 1:04CV01850 (RBW)
Filed: 10/25/04

The United States of America, acting under the direction of the Attorney General of the United States, and the states of Connecticut and Texas (''plaintiff states''), acting under the direction of their respective Attorneys General, or other authorized officials, bring this civil action to enjoin the merger of two of the largest mobile wireless telecommunications services providers in the United States, Cingular Wireless Corporation (''Cingular'') and AT&T Wireless Services, Inc. (''AT&T Wireless''), and to obtain other relief as appropriate. Plaintiffs allege as follows:

1. On February 17, 2004, Cingular, a joint venture between SBC Communications Inc. (''SBC'') and BellSouth Corporation (''BellSouth''), entered into an agreement to acquire AT&T Wireless under which the two companies would combine their mobile wireless services businesses. Plaintiffs seek to enjoin this transaction because it will substantially lessen competition in several geographic markets for mobile wireless telecommunications services and mobile wireless broadband services (collectively, ''mobile wireless services'').

2. Cingular and AT&T Wireless are the second and third-largest mobile wireless services providers in the

United States, with approximately 24 and 22 million subscribers, respectively. They both provide mobile wireless services in areas throughout the United States and are two of only six providers with a national presence. As a result, Cingular and AT&T Wireless both provide mobile wireless services in hundreds of overlapping geographic areas, and in 13 of these areas the combination of Cingular's and AT&T Wireless's assets and business will likely result in substantially less competition for mobile wireless services. In 10 of these overlapping geographic areas located in the states of Connecticut, Georgia, Kansas, Kentucky, Louisiana, Massachusetts, Missouri, Oklahoma, and Texas, the combination of Cingular and AT&T Wireless will substantially lessen competition for mobile wireless telecommunications services, increasing the likelihood of unilateral actions by the merged firm to increase prices, diminish the quality or quantity of services provided, refrain from or delay making investments in network improvements, and refrain from or delay launching new services, substantially lessening competition for these services. In three of these overlapping geographic areas located in the states of Michigan, Tennessee, and Texas, both Cingular and AT&T Wireless have launched or will likely soon launch mobile wireless broadband services, and the transaction will result in the loss of one of only a few existing and likely mobile wireless broadband services providers, substantially lessening competition for these services.

I. Jurisdiction and Venue

3. Complaint is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Plaintiff states bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain the violation by defendants of Section 7 of the Clayton Act, 15 U.S.C. 18. Plaintiff states, by and through their respective Attorneys General, or other authorized officials, bring this action in their sovereign capacities and as parens patriae on behalf of the citizens, general welfare, and economy of each of their states.

5. Cingular, AT&T Wireless, SBC, and BellSouth are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has jurisdiction over this action pursuant to Sections 15 and 16 of the Clayton Act, 15 U.S.C. 25, 26, and 28 U.S.C. 1331, 1337.

6. Cingular, AT&T Wireless, SBC, and BellSouth transact business or are found in the District of Columbia. Venue is proper in this Court pursuant to Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(b) and (c).

II. The Defendants and the Transaction

7. Cingular, which headquarters in Atlanta, Georgia, is a company organized and existing under the laws of the state of Delaware. Cingular was formed in 2000 by SBC and BellSouth, who own equity interests in it of 60 and 40 percent, respectively, SBC and BellSouth evenly share management control of Cingular. Cingular is the second-largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves more than 24 million customers. In 2003, Cingular earned revenues of approximately $15.5 billion.

8. SBC, with headquarters in San Antonio, Texas, is a corporation organized and existing under the laws of the state of Delaware. SBC is a regional bell operating company (''RBOC''), one of several regional holding companies formed in 1984 as a result of the breakup of AT&T Corporation's local telephone business. SBC's wireless telecommunications businesses serve 54.7 million access lines in 13 states; Arkansas, California, Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, and Wisconsin. In 2003, SBC earned approximately $40.8 billion in revenues.

9. BellSouth, an RBOC with headquarters in Atlanta, Georgia, is a corporation organized and existing under the laws of the state of Georgia. BellSouth's wireline telecommunications businesses serves 23.7 million access lines in 9 states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Caroline, South Carolina, and Tennessee. Its total operating revenues for 2003 were approximately $22.6 billion.

10. AT&T Wireless, with headquarters in Redmond, Washington, is a corporation organized and existing under the laws of the state of Delaware. spun off from AT&T Corporation in 2001, it had more than 22 million subscribers as of August 2004 an earned revenues of approximately $16.6 billion in 2003. AT&T Wireless is the third-largest U.S. mobile wireless services provider by number of subscribers.

11. Pursuant to an Agreement and Plan of Merger dated February 17, 2004, Cingular will pay AT&T Wireless shareholders $15 per common share and thereby plans to acquire AT&T Wireless for approximately $41 billion in cash. If this transaction is consummated, Cingular and AT&T Wireless combined would have more than 46 million subscribers, with over $32 billion in revenues, making it the largest mobile wireless sevices provider in the United States, with operations in 49 states covering 97 of the top 100 marketing areas.

III. Trade and Commerce

A. Nature of Trade and Commerce

12. Mobile wireless services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. This mobility is highly prized by customers, as demonstrated by the more than 160 million people in the United States who own mobile wireless telephones. In 2003, revenues from the sale of mobile wireless services in the United States were nearly $90 billion.

13. The first wireless voice systems were based on analog technology, now referred to as first-generation or ''IG'' technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent. Cellular licensees must support analog service until February 2008.

14. In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telephone services comparable to those offered by cellular licensees. These licenses are in the 1.8 GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A- and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C-, D-, E-, and F-block licenses are issued by Basic Trading Areas

(''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. Unlike the cellular licenses, PCS licensees are not required to provide support for analog or any other technology standard. In 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telephone services comparable to those offered by other mobile wireless services providers, in conjunction with its dispatch, or ''push-to-talk,'' service.

15. Today, more than 90 percent of all mobile wireless services customers have digital service, and nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies: TDMA (time division multiple access), GSM (Global Standard for Mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA having been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (''2.5G'') have begun to be deployed for voice and data (e.g., 1xRTT (a/k/a CDMA 2000), GPRS (General Packet Radio Service), and EDGE (Enhanced Data for GSM Evolution)). The data transmission speeds of these technologies vary. For example, 1xRTT provides average user speeds of 70 kilobits per second (''kbps''), and GRPS and EDGE provide average user speeds of 20 to 40 kbps and 80 to 110 kbps, respectively.

16. The U.S. mobile wireless services industry is taking the next evolutionary step in wireless technology to third-generation or ''3G'' technologies (e.g., for GSM, UMTS (Universal Mobile Telecommunications System) and for CDMA, Ev-DO/DV (Evolution Data Only/Data Voice)) that provide for more capacity and higher data throughout. All of the national mobile wireless services providers and some of the regional providers are considering how and where they will deploy 3G services across their networks. The data transmission speeds of these technologies vary. UMTS provides average user speeds of 200 to 300 kbps, whereas Ev-DO provides average user speeds of 300 to 500 kbps.

B. Relevant Product Markets

17. Mobile wireless telecommunications services and mobile wireless broadband services are relevant product markets (collectively, ''mobile wireless services'').

1. Mobile Wireless Telecommunications Services

18. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires, such as when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Fixed wireless services are not mobile, and other wireless services have a limited range (e.g., Wi-Fi); neither offers a viable alternative to mobile wireless telecommunications services. It is unlikely that a sufficient number of customers would switch away from mobile telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Mobile Wireless Broadband Services

19. Mobile wireless broadband services offer data speeds four to six times faster than the current data offerings fully deployed in any mobile wireless services provider's network. Mobile wireless broadband services, which are now being launched using various 3G technologies, offer average data speeds of 200 to 300 kbps, peaking at 2 megabits per second or higher. These speeds rival wireline broadband services at peak speeds. At average speeds, they are comparable to low-end wireline high-speed data offerings and can support bandwidth-intensive services including video conferencing, video streaming, downloading of music and video files, and voice over Internet protocol (''VoIP'') calling, none of which can be used reliably at slower speeds. There are no cost-effective alternatives to mobile wireless broadband services. As with mobile wireless telecommunications services, fixed wireless services and other wireless services that have a limited range (e.g., Wi-Fi) do not offer a viable alternative to mobile wireless broadband services. It is unlikely that a sufficient number of customers would switch away from mobile wireless broadband services to make a small but significant price increase in those services unprofitable. Mobile wireless broadband services is a relevant product market under Section 7 or the Clayton Act, 15 U.S.C. 18.

C. Relevant Geographic Markets

20. The large majority of customers use mobile wireless services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services and mobile wireless broadband services choose among mobile wireless services providers that offer services where they are located and travel on a regular basis: home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless services providers varies from geographic area to geographic area, along with the quality of their services and the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the actual price for customers by geographic area.

21. The United States comprises numerous local geographic markets for mobile wireless services. These local geographic markets are generally centered around a metropolitan area or a population center and its environs. The FCC has licensed a limited number of mobile wireless services providers in these and other geographic areas based upon the availability of radio spectrum. These FCC spectrum licensing areas therefore often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless services. The relevant geographic markets in which this transaction will substantially lessen competition in mobile wireless telecommunications services and mobile wireless broadband services are effectively represented, but not defined, by FCC spectrum licensing areas.

22. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas: Oklahoma City, Oklahoma (CMA 045), Topeka, Kansas (CMA 179), Pittsfield, Massachusetts (CMA 213), Athens, Georgia (CMS 234), St. Joseph, Missouri (CMA 275), Connecticut RSA–1 (CMA 357), Kentucky RSA–1 (CMA 443), Oklahoma RSA–3 (CMA 598), Texas

RSA–11 (CMA 662), and Shreveport, Louisiana (BTA 419).

23. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction will substantially lessen competition for mobile wireless broadband services are represented by the following FCC spectrum licensing areas: Dallas-Fort Worth, Texas (CMA 009), Detroit, Michigan (BTA 112), and Knoxville, Tennessee (BTA 232).

24. It is unlikely that a sufficient number of customers would switch to mobile wireless services providers in a different geographic market to make a small but significant price increase in the relevant geographic markets unprofitable for mobile wireless telecommunications services or mobile wireless broadband services.

D. Anticompetitive Effects

1. Mobile Wireless Telecommunications Services

25. Currently, Cingular and AT&T Wireless both own all or part of businesses that offer mobile wireless telecommunications services in the 10 relevant geographic areas. In Athens, Georgia; Topeka, Kansas; Pittsfield, Massachusetts; and St. Joseph, Missouri, AT&T Wireless owns a minority equity interest in Verizon Wireless's business providing mobile wireless telecommunications services. In Shreveport, Louisiana, Cingular owns a minority equity interest in AllTel Corporations' business providing mobile wireless telecommunications services. The minority equity interest range from approximately 9 to 24 percent. Based upon these significant minority equity interests and the specific facts of the relationships, the shares and assets of the mobile wireless services business partially owned by Cingular or AT&T Wireless in these markets should be attributed to either Cingular or AT&T Wireless.

26. The individual market shares of Cingular's and AT&T Wireless's mobile wireless telecommunications services businesses in the relevant geographic markets as measured in terms of subscribers range from 9 to more than 71 percent, and their combined market shares range from 61 to nearly 90 percent. In each relevant geographic market, Cingular or AT&T Wireless has the largest market share, and in all but one, the other is the second-largest mobile wireless telecommunications services provider. In all but one of the relevant geographic markets, Cingular and AT&T Wireless are the original cellular licensees and, as a result, have the network infrastructures with the greatest depth and breadth of coverage. Therefore, Cingular and AT&T Wireless are likely closer substitutes for each other than the other mobile wireless telecommunications services providers in the relevant geographic markets.

27. The relevant geographic markets for mobile wireless telecommunications services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these markets ranges from approximately 2600 to more than 5300, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After Cingular's proposed acquisition of AT&T Wireless is consummated, the HHIs in the relevant geographic markets will range from approximately 4400 to more than 8000, with increases in the HHI as a result of the merger ranging from approximately 1100 to more than 3500, much higher than the thresholds below which the Department considers a transaction unlikely to cause competitive harm.

28. Competition between Cingular and AT&T Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services, than would otherwise have existed in these geographic markets. If Cingular's proposed acquisition of AT&T Wireless is consummated, the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated, and the competition between Cingular and AT&T Wireless in mobile wireless telecommunications services will be eliminated in these markets. As a result, the loss of competition between Cingular and AT&T Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality of services provided, refrain from or delay making investments in network improvements, and refrain from or delay launching new services. Therefore, Cingular's proposed acquisition of AT&T Wireless will likely result in substantially less competition in mobile wireless telecommunications services in the relevant geographic markets.

2. Mobile Wireless Broadband Services

29. In the relevant geographic markets for mobile wireless broadband services, Cingular and AT&T Wireless have either launched or are likely soon to launch mobile wireless broadband services. Each has the available spectrum necessary to offer mobile wireless broadband services and has business plans to offer these services in these markets. Not all mobile wireless services providers have sufficient spectrum to launch mobile wireless broadband services in these markets, nor do they all have business plans to do so. In the relevant geographic markets, the current number of mobile wireless services providers that are likely to launch mobile wireless broadband services in the foreseeable future is limited. Because mobile wireless broadband services are nascent, however, HHIs are uninformative.

30. The competition between Cingular and AT&T Wireless has motivated their efforts to develop and launch mobile wireless broadband services in the relevant geographic markets. If Cingular's proposed acquisition of AT&T Wireless is consummated, the relevant geographic markets will lose one of only a few existing and likely mobile wireless broadband services providers. As a result, the loss of competition between Cingular and AT&T Wireless increases the likelihood of unilateral actions by the merged firm in these relevant geographic markets to increase prices, diminish the quality or quantity of services provided, refrain from or delay making investments in network improvements, and refrain from or delay launching mobile wireless broadband services. Therefore, Cingular's proposed acquisition of AT&T Wireless will likely result in substantially less competition in mobile wireless broadband services in the relevant geographic markets.

3. Entry

31. Entry by a new mobile wireless services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services or mobile wireless broadband services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from Cingular's proposed acquisition of AT&T Wireless, if it were to be consummated.

IV. Violation Alleged

32. The effect of Cingular's proposed acquisition of AT&T Wireless, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile

wireless telecommunications services and mobile wireless broadband services, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

33. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services and mobile wireless broadband services in the relevant geographic markets, among others:

a. Actual and potential competition between Cingular and AT&T Wireless will be eliminated;

b. Competition in general will be lessened substantially;

c. Prices are likely to increase;

d. The quality and quantity of services are likely to decrease;

e. Incentives to improve wireless networks will be reduced; and

f. Incentives to innovate or launch new services will be reduced.

V. Requested Relief

34. That Cingular's proposed acquisition of AT&T Wireless be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

35. That defendants be permanently enjoined from and restrained from carrying out the Agreement and Plan of merger, dated February 17, 2004, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless telecommunications services businesses of Cingular and AT&T Wireless under common ownership or control;

36. That plaintiffs be awarded their costs of this action; and

37. That plaintiffs have such other relief as the Court may deem just and proper.

Dated: October 25, 2004.

Respectfully Submitted,

For Plaintiff United States of America:

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/s/ _____

John T. Prud'homme, Jr.,

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Signature by the State of Texas on Complaint in *United States of America, State of Connecticut and State of Texas* v. *Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation and AT&T Wireless Services, Inc.*

Appendix A—Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (**Note:** Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

In the United States District Court for the District of Columbia

United States of America, State of Connecticut and State of Texas, Plaintiffs, v. Cingular Wireless Corporation, SBC Communications Inc., Bellsouth Corporation and AT&T Wireless Services, Inc., Defendants; Preservation of Assets Stipulation and Order

Civil No.: 1:04CV01850 (RBW)

Filed: 10/25/04

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I. Definitions

As used in this Preservation of Assets Stipulation and Order:

A. ''Acquirer'' or ''Acquirers'' means the entity or entities to whom defendants divest the Divestiture Assets.

B. ''AT&T Wireless'' means defendant AT&T Wireless Services, Inc., a Delaware corporation with headquarters in Redmond, Washington, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''BellSouth'' means defendant BellSouth Corporation, a Georgia corporation with headquarters in Atlanta, Georgia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Cingular'' means defendant Cingular Wireless Corporation, a Delaware corporation with headquarters in Atlanta, Georgia, and Cingular Wireless LLC, a Delaware limited liability company formed as a joint venture between SBC and BellSouth, with headquarters in Atlanta, Georgia, their successors and assigns, and their subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means Wireless Business Divestiture Assets, Spectrum License Divestiture Assets, and Minority Interests, including any direct or indirect financial ownership or leasehold interests and any direct or indirect role in management or participation in control therein.

F. ''Minority Interests'' means the equity interests owned by any defendant in the following entities that are the licensees or operators of wireless mobile telephone businesses in the specified Metropolitan Statistical Areas (''MSAs'') and Rural Statistical Areas (''RSAs'') (collectively, Cellular Marketing Areas (''CMAs'')) used to define cellular license areas by the Federal Communications Commission (''FCC''):

(1) Alltel Communications of North Louisiana Cellular Limited Partnership, covering the Shreveport, Louisiana MSA (CMA 100), Monroe, Louisiana MSA (CMA 219), Louisiana RSA–1 (CMA 454), Louisiana RSA–2 (CMA 455) and Louisiana RSA–3 (CMA 456);

Athens Cellular Inc., covering the Athens, Georgia MSA (CMA 234);

(3) CellTelCo, covering the St. Joseph, Missouri MSA (CMA 275);

(4) Pittsfield Cellular Telephone Co., covering the Pittsfield, Massachusetts MSA (CMA 213); and

(5) Topeka Cellular Telephone Co., Inc., covering the Topeka, Kansas MSA (CMA 179).

As an alternative to the divestiture of the Alltel Communications of North Louisiana Cellular Limited Partnership, CellTelCo, and Topeka Cellular Telephone Co., Inc. Minority Interests as required by Section IV of the proposed Final Judgment, defendants may request, at least 20 days prior to consummation of the Transaction, approval from plaintiff United States to retain such interests. Plaintiff United States in its sole discretion may approve this request if it is demonstrated that the retained minority interest will become irrevocably and entirely passive, so long as defendants own the minority interests, and will not significantly diminish competition.

G. ''Multi-line Business Customer'' means a corporate or business customer that contracts with AT&T Wireless for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to the contract with the corporate or business customer.

H. ''SBC'' means defendant SBC Communications, Inc., a Delaware corporation with its headquarters in San Antonio, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

I. ''Skagit'' means Skagit Wireless LLC, an Oregon corporation with headquarters in Portland, Oregon, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

J. ''Spectrum License Divestiture Assets'' means a license for 10 MHz of contiguous PCS spectrum in the specified MSAs and Basic Trading Areas (''BTA'') used to define cellular and PCS license areas by the FCC:

(1) The Dallas-Fort Worth, Texas MSA (CMA 009);

(2) The Detroit, Michigan BTA (BTA 112), provided that the license to be transferred does not include any PCS spectrum in Monroe and Sanilac counties; and

(3) The Knoxville, Tennessee BTA (BTA 232), provided that as an alternative to the divestiture of a license for 10 MHz of contiguous PCS spectrum as required by Section IV of the proposed Final Judgment, defendants, with the approval of plaintiff United States in its sole discretion, can restructure AT&T Wireless's existing relationship with Skagit such that (i) defendants have no equity or leasehold interest in, hold no debt of, and have no managerial or operational interest in Skagit's PCS license in the Knoxville Tennessee BTA, and (ii) Skagit's PCS license in the Knoxville Tennessee BTA is contractually committed to be used in a manner that resolves the competitive concerns alleged by plaintiffs in the Complaint.

K. ''Transaction'' means the Agreement and Plan of Merger By and Among AT&T Wireless Services, Inc., Cingular Wireless Corporation, Cingular Wireless LLC, Links I Corporation, SBC Communications Inc., and Bell South Corporation, dated February 17, 2004.

L. ''Wireless Business Divestiture Assets'' means, for each mobile wireless business to be divested under the proposed Final Judgment, all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless businesses to be divested (including the provision of long distance telecommunications services for wireless calls). ''Wireless Business Divestiture Assets'' shall be construed broadly to accomplish the complete divestitures of the entire business of AT&T Wireless in each of the following MSA and RSA license areas as required by the proposed Final Judgment and to ensure that the divested mobile wireless businesses remain viable, ongoing businesses:

(a) Oklahoma City, Oklahoma MSA (CMA 045);

(b) Connecticut RSA–1 (CMA 357), provided that defendants may retain 10 MHz of AT&T Wireless's PCS spectrum, provided that 10 MHz of contiguous PCS spectrum throughout the RSA is divested to the Acquirer;

(c) Kentucky RSA–1 (CMA 443), provided that defendants may retain 15 MHz of AT&T Wireless's PCS spectrum in Fulton country and 10 MHz of AT&T Wireless's PCS spectrum in the other counties contained within the RSA, provided that 30 MHz of contiguous PCS spectrum in Fulton county and 20 MHz of contiguous PCS spectrum in the other counties contained in the RSA is divested to an Acquirer;

(d) Oklahoma RSA–3 (CMA 598); and

(e) Texas RSA–11 (CMA 662), provided that defendants may retain in Sabine County, 25 MHz of AT&T Wireless's PCS spectrum, and in Angelina, Nacogdoches, and San Augustine counties, defendants may retain 20 MHz of AT&T Wireless's PCS spectrum, provided that 10 MHz of contiguous PCS spectrum throughout the RSA is divested to an Acquirer.

Wireless Business Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless business being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendants supply to their own employees, customers, suppliers, agents, or licenses, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from the divesting defendant,

for assets described in (2) below; provided that defendants shall only be required to divest Multi-line Business Customer contracts, if 50 percent or more of the Multi-line Business Customer's subscribers reside or work within any of the five (5) license areas described herein, and further, any subscribers who obtain mobile wireless services through any such contract retained by defendants and who are located within the five (5) geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within 45 days after the closing of the Transaction.

These divestitures of the Wireless Business Divestiture Assets as defined in Section II.L shall be accomplished by:

(1) Transferring to the Acquirer(s) the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of AT&T Wireless's overall wireless business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested wireless businesses and those not divested, or are assets that the defendants and the Acquirer(s) agree, subject to approval of plaintiff United States upon consultation with any relevant plaintiff state, shall not be divided); and

(2) Granting to the Acquirer(s) an option to obtain a non-exclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff United States upon consultation with any relevant plaintiff state, at the election of an Acquirer to use any of AT&T Wireless's retained assets under paragraph (1) above, used in the operation of the wireless business being divested, so as to enable the Acquirer to continue to operate the divested wireless business without impairment. Defendants shall identify in a schedule submitted to plaintiffs and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestitures and before the approval by the Court of the proposed Final Judgment, any intellectual property rights under third-party licenses that are used by the wireless businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of the Divestiture Assets for the purpose of preserving viable competitors in the provision of mobile wireless services in order to remedy the effects that plaintiffs allege would otherwise result from Cingular's acquisition of AT&T Wireless. This Preservation of Assets Stipulation and Order ensures, prior to such divestitures, that competition is maintained during the pendency of the ordered divestitures, and that the Wireless Business Divestiture Assets remain an ongoing business concern and the Divestiture Assets remain economically viable. The Divestiture Assets will remain, as provided herein, preserved, independent and uninfluenced by defendants.

III. Jurisdiction and Venue

This Court has jurisdiction over the subject matter of this action and each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

IV. Compliance With and Entry of Final Judgment

A. The parties stipulate that a proposed Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that no plaintiff has withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and other plaintiffs and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Preservation of Assets Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) any plaintiff has withdrawn its consent, as provided in Section IV.A above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Management Trustee

A. Plaintiff United States nominates Joseph J. Simons as Management Trustee in this case. The plaintiff states consent to, and defendants have no objection to, his immediate appointment by this Court. Accordingly, this Court appoints Joseph J. Simons as Management Trustee to serve as manager of the Divestiture Assets until the Divestiture Assets are sold or transferred to a Divestiture Trustee pursuant to Section V of the proposed Final Judgment. Nothing in this Stipulation shall be interpreted to prevent the Management Trustee from becoming the Divestiture Trustee pursuant to Section V of the proposed Final Judgment.

B. Within five (5) business days of the entry of this Stipulation by the Court, defendants shall enter into a trust agreement with Mr. Simons subject to the approval of plaintiff United States in its sole discretion upon consultation with plaintiff states, that will grant the rights, powers, and authorities necessary to permit him to perform the duties and responsibilities of the Management Trustee pursuant to this Stipulation. The trust agreement shall enable him to assume all rights, powers, and authorities necessary to perform his duties and responsibilities, pursuant to this Stipulation and the proposed Final Judgment and consistent with their

purposes. Mr. Simons or any other subsequently appointed Management Trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff United States approves upon consultation with plaintiff states, with a fee arrangement that is reasonable in light of the person's experience and responsibilities.

C. The Management Trustee will have the following powers and responsibilities with respect to the Divestiture Assets:

(1) The Management Trustee will have the power to manage the Divestiture Assets in the ordinary course of business consistent with this Stipulation. Only with the prior written approval of plaintiff United States upon consultation with plaintiff states, may the Management Trustee make any decision, take any action, or enter any transaction that is outside the ordinary course of business;

(2) The Management Trustee shall have a duty to, consistent with the terms of this Stipulation and the proposed Final Judgment, monitor the organization of the Divestiture Assets; manage the Divestiture Assets in order to maximize their value so as to permit expeditious divestitures in a manner consistent with the proposed Final Judgment; maintain the independence of the Divestiture Assets from defendants; control and operate the Wireless Business Divestiture Assets to ensure that the Wireless Business Divestiture Assets remain an independent, ongoing, economically viable competitor to the other mobile wireless services providers; and assure defendants' compliance with their obligations pursuant to this Stipulation and the proposed Final Judgment;

(3) The Management Trustee shall have the authority to employ, at the cost and expense of defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Management Trustee's duties and responsibilities;

(4) The Management Trustee and any consultants, accountants, attorneys, and any other persons retained by the Management Trustee, shall have full and complete access to all personnel, books, records, documents, and facilities of the Divestiture Assets or to any other relevant information as the Management Trustee may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Divestiture Assets. Defendants shall develop such financial or other information as the Management Trustee may request and shall cooperate with the Management Trustee. Defendants shall take no action to interfere with or impede the Management Trustee's ability to monitor defendants' compliance with this Stipulation and the proposed Final Judgment or otherwise to perform his duties and responsibilities consistent with the terms of this Stipulation and the proposed Final Judgment;

(5) The Management Trustee will ensure that the Divestiture Assets shall be staffed with sufficient employees to maintain their viability and competitiveness. To the extent that any employees whose principal responsibilities related to the Divestiture Assets leave or have left the Divestiture Assets prior to divestiture of the Divestiture Assets, the Management Trustee may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees; and

(6) Thirty (30) days after the Management Trustee has been appointed by the Court, and every thirty (30) days thereafter until the Divestiture Assets are either transferred to an Acquirer or to the Divestiture Trustee, the Management Trustee shall report in writing to the plaintiffs concerning the efforts to accomplish the purposes of this Stipulation and the proposed Final Judgment. Included within that report shall be the Management Trustee's assessment of the extent to which the Divestiture Assets are meeing (or exceeding) their projected goals as are reflected in existing or revised operating plans, budgets, projections or any other regularly prepared financial statements and the extent to which defendants are fulfilling their responsibilities under this Stipulation and the proposed Final Judgment.

D. The following limitations shall apply to the Management Trustee:

(1) The Management Trustee shall not be involved, in any way, in the operations of the other businesses of defendants;

(2) The Management Trustee shall have no financial interests affected by defendants' revenues, profits or profit margins, except that the Management Trustee's compensation for managing the Divestiture Assets may include economic incentives dependent on the financial performance of the Divestiture Assets provided that those incentives are consistent with the objectives of this Stipulation and the proposed Final Judgment and are approved by plaintiff United States upon consultation with plaintiffs states; and

(3) The Management Trustee shall be prohibited from performing any further work for defendants for two (2) years after the close of the divestiture transactions.

E. Defendants and the Management Trustee will take all reasonable efforts to preserve the confidentiality of information that is material to the operation of either the Divestiture Assets or defendants' businesses. Defendants' personnel supplying services to the Divestiture Assets pursuant to this Stipulation must retain and maintain the confidentiality of any and all confidential information material to the Divestiture Assets. Except as permitted by this Stipulation and the proposed Final Judgment, such persons shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing the confidential information of the Divestiture Assets to or with any person whose employment involves any of defendants' businesses, except as necessary to fulfill the purposes of this Stipulation and the proposed Final Judgment.

F. If in the judgment of the Management Trustee, defendants fail to provide the services listed in Section VI of this Stipulation to the satisfaction of the Management Trustee, upon notification to defendants and approval by plaintiff United States upon consultation with plaintiff states, the Management Trustee may engage third parties unaffiliated with the defendants to provide those services for the Divestiture Assets, at the cost and expense of defendants, provided that defendants may have reasonable access to information to satisfy themselves that after the services have been provided, the Divestiture Assets are in compliance with all applicable laws, rules, and regulations.

G. At the option of the Management Trustee, defendants may also provide other products and services, on an arms-length basis provided that the Management Trustee is not obligated to obtain any other product or service from defendants and may acquire any such products or services from third parties unaffiliated with defendants.

H. If the Management Trustee ceases to act or fails to act diligently and consistently with the purposes of this Stipulation and the proposed Final Judgment, if the Management Trustee proposed by plaintiff United States is not approved by this Court or resigns, or if for any other reason the Management Trustee ceases to serve in his or her capacity as Management Trustee, the United States may select upon consultation with any relevant plaintiff state, a substitute Management Trustee. In this event, plaintiff United States will

identify to defendants the individual or entity it proposes to select as Management Trustee. Defendants must make any such objection to this selection within five (5) business days after plaintiff United States notifies defendants of the Management Trustee's selection. Upon application of the United States, the Court shall approve and appoint a substitute Management Trustee. Within five (5) business days of such appointment, defendants shall enter into a trust agreement with the Management Trustee subject to the approval of plaintiff United States in its sole discretion upon consultation with plaintiff states, as described in Section V.B of this Stipulation.

VI. Preservation of Assets

Until the divestitures required by the proposed Final Judgment have been accomplished, except as otherwise approved in advance in writing by plaintiff United States upon consultation with plaintiff states:

A. Defendants and the Management Trustee shall preserve, maintain, and continue to support the Divestiture Assets, take all steps necessary to manage the Divestiture Assets in order to maximize their revenue, profitability and viability so to permit expeditious divestitures in a manner consistent with this Stipulation and the proposed Final Judgment.

B. The Wireless Business Divestiture Assets shall be operated by the Management Trustee as part of an independent, ongoing, economically viable competitive business to other mobile wireless services providers operating in the same license area. Defendants and the Management Trustee shall take all steps necessary to ensure that:

(1) The management, sales, and operations of the Wireless Business Divestiture Assets are independent from defendants' other operations; provided at the request of the Management Trustee, defendants shall include the marketing, pricing and sales of the mobile wireless services generated by the Wireless Business Divestiture Assets in the license areas served by the Wireless Business Divestiture Assets within its marketing, promotional, and service offerings, in the ordinary course of business, in any national, regional, and local marketing programs. Nothing in this Section shall prohibit the Management Trustee from developing his own reasonable marketing, sales, pricing or promotional offers, which shall be funded and supported by defendants;

(2) The Wireless Business Divestiture Assets are maintained by adhering to normal and planned repair, capital improvement, upgrade and maintenance schedules;

(3) The management of the Wireless Business Divestiture Assets will not be influenced by defendants;

(4) The books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning marketing, pricing or sales of mobile wireless services generated by the Wireless Business Divestiture Assets will be kept separate and apart from defendants' other operations; and

(5) The management of the Wireless Business Divestiture Assets acts to maintain and increase the sales and revenues of the mobile wireless services generated by the Wireless Business Divestiture Assets, and maintain at previously approved levels for 2004 and 2005, whichever are higher, all promotional, advertising, sales, marketing, and technical support for the Wireless Business Divestiture Assets.

C. The management of the Spectrum License Divestiture Assets and the Minority Interests shall be held entirely separate, distinct, and apart from those of defendants' other operations.

D. Defendants shall provide sufficient working capital and lines and sources of credit as deemed necessary by the Management Trustee to continue to maintain the Divestiture Assets consistent with this Stipulation.

E. Except (1) as recommended by the Management Trustee and approved by plaintiff United States upon consultation with plaintiff states, or (2) as part of a divestiture approved by plaintiff United States upon consultation with any relevant plaintiff state, in accordance with the terms of the proposed Final Judgment, defendants shall not remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Divestiture Assets outside the ordinary course of business.

F. The Management Trustee, with defendants' cooperation consistent with this Stipulation and the proposed Final Judgment, shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

G. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets nor shall defendants take any action that would interfere with the ability of any Divestiture Trustee appointed pursuant to the proposed Final Judgment to operate and manage the Divestiture Assets or to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer(s) acceptable to plaintiff United States.

H. Upon the filing of the Complaint in the action, defendants shall appoint sufficient employees for each of the Wireless Business Divestiture Assets, who are familiar with and have had responsibility for the management, operation, marketing, and sales of the Divestiture Assets, to assist the Management Trustee with his duties and responsibilities hereunder.

I. Except for employees (1) whose primary employment responsibilities relate to the Divestiture Assets, or (2) who are involved in providing support services to the Divestiture Assets pursuant to Sections V and VI of this Stipulation and Section V of the proposed Final Judgment, defendants shall not permit any other of their employees, officers, or directors to be involved in the operations of the Divestiture Assets.

J. Except as required by law in the course of (1) complying with this Stipulation and the proposed Final Judgment; (2) overseeing compliance with policies and standards concerning the safety, health, and environmental aspects of the operations of the Divestiture Assets and the integrity of their financial controls; (3) defending legal claims, investigations or enforcement actions threatened or brought against the Divestiture Assets; or (4) obtaining legal advice, defendants' employees (excluding employees (a) whose primary employment responsibilities relate to the Divestiture Assets, or (b) who are involved in providing support services to the Divestiture Assets pursuant to Sections V and VI of this Stipulation and Sections V of the proposed Final Judgment) shall not receive, or have access to, or use any material confidential information, not in the public domain, of the Divestiture Assets. Defendants may receive aggregate financial information relating to the Divestiture Assets to the extent necessary to allow defendants to prepare the defendants' consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

K. Defendants may offer a bonus or severance to employees whose primary employment responsibilities relate to the Divestiture Assets, that continue their employment until divestiture (in addition to any other bonus or

severance to which the employees would otherwise be entitled).

L. Until the Divestiture Assets are divested to an Acquirer(s) acceptable to plaintiff United States upon consultation with any relevant plaintiff state, defendants shall provide to the Divestiture Assets, at no cost, support services needed to maintain the Divestiture Assets in the ordinary course of business, including but not limited to:

(1) Federal and state regulatory policy development and compliance;

(2) Human resources administrative services;

(3) Environmental, health and safety services, and developing corporate policies and ensuring compliance with federal and state regulations and corporate policies;

(4) Preparation of tax returns;

(5) Financial accounting and reporting services;

(6) Audit services;

(7) Legal services;

(8) Routine network maintenance, repair, improvements, and upgrades;

(9) Switching, call completion, and other services necessary to allow subscribers to use mobile wireless services and complete calls; and

(10) Billing, customer care and customer service related functions necessary to maintain the subscriber account and relationship.

M. Within twenty (20) days after the filing of the Complaint, defendants will notify plaintiff United States and plaintiff states in writing of the steps defendants have taken to comply with this Section.

N. This Preservation of Assets Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: October 25, 2004

Respectfully submitted,

For Plaintiff United States

/s/ _____

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State of Connecticut

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Michael E. Cole,
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/s/ _____

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For Plaintiff State of Texas

Greg Abbott,

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Edward D. Burbach,

Deputy Attorney General for Litigation.

Mark Tobey,

/s/ _____

Assistant Attorney General, Chief, Antitrust & Civil Medicaid Fraud Division.

Rebecca Fisher,

/s/ _____

Assistant Attorney General, Chief, Antitrust Section.

/s/ _____

John T. Prud'Homme, Jr.,

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Signature by the State of Texas on Preservation of Assets Stipulation and Order in *United States of America, State of Connecticut and State of Texas* v. *Cingular Wireless Corporation, SBC Communications Inc., BellSouth Corporation and AT&T Wireless Services Inc.*

For Defendants Cingular Wireless Corporation and SBC Communications Inc.

/s/ _____

Richard L. Rosen (D.C. Bar # 307231),

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For Defendants Cingular Wireless Corporation and BellSouth Corporation

/s/ _____

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For Defendant AT&T Wireless Services, Inc.

/s/ _____

Ilene Knable Gotts (D.C. Bar # 384740),

Wachtell, Lipton, Rosen & Katz, 51 W. 52nd Street, New York, NY 10019, (212) 403–1247.

Order

It is so ordered by the Court, this ____ day of _____, 2004.

/s/ _____

United States District Judge

[FR Doc. 04–25323 Filed 11–12–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agencies. UIPL 30–04, Change 1 is published in the **Federal Register** in order to inform the public.

This UIPL provides additional guidance to the states regarding enacting legislation which conforms to the ''SUTA Dumping Prevention Act of 2004,'' which was signed by the President on August 9, 2004.

Dated: November 8, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration, Advisory System, U.S. Department of Labor, Washington, DC 20210

Advisory: Unemployment Insurance Program Letter No. 30–04 Change 1

To: State Workforce Agencies.

From: Cheryl Atkinson, Administrator, Office of Workforce Security.

Subject: SUTA Dumping—Amendments to Federal Law Affecting the Federal-State Unemployment Compensation Program—Additional Guidance.

1. *Purpose.* To provide additional guidance to states concerning the amendments to Federal law designed to prohibit ''SUTA Dumping.''

2. *References.* Public Law (Pub. L.) 108–295, the ''SUTA Dumping Prevention Act of 2004,'' signed by the President on August 9, 2004; the Social Security Act (SSA); the Internal Revenue Code (IRC), including the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letters (UIPLs) 30–04, 14–84, and 29–83, Change 3.

3. *Background.* UIPL 30–04 informed states of the amendments to Federal unemployment compensation (UC) law made by Pub. L. 108–295, the ''SUTA Dumping Prevention Act of 2004.'' Pub. L. 108–295 amended the SSA by adding section 303(k) to establish a nationwide minimum standard for curbing SUTA dumping. States will need to amend their UC laws to conform with the new legislation.

Since the issuance of UIPL 30–04, the Department of Labor has received requests for clarification and other questions on the Federal SUTA dumping requirements. This UIPL is issued to respond to these requests and questions. As was UIPL 30–04, it is a question and answer (Q&A) format. States are especially directed to Q&As 1, 2, 14, and 15, which include additions and modifications to the draft legislative language provided with UIPL 30–04.