

RESPONSE TO QUESTION 48

Cingular Wireless LLC (“Cingular”), the real party in interest, hereby submits this response to Question 48 of the FCC Form 601 concerning allegations against various indirect subsidiaries or affiliates of Cingular. While these cases may fall outside the scope of disclosures required by Question 48, they are nevertheless being reported out of an abundance of caution. **Pending litigation information for Cingular was previously reviewed and approved in connection with ULS File No. 0001916242, which was granted on October 29, 2004. In order to facilitate Commission review, changes to that previously-approved pending litigation information are underlined below.**

On March 1, 2002, *United States Cellular Telephone of Greater Tulsa, L.L.C. v. SBC Communications, Inc.*, No. 02CV0163C (J), was filed in the U.S. District Court for the Northern District of Oklahoma. SBC Communications, Inc. and SWB Telephone, L.P. (“SWBT”) are defendants. The complaint alleges that because of land use (residential zoning) restrictions, the roof of a telephone building owned by Defendants is an “essential facility” to which Defendants have permitted access by an affiliate (Cingular) while denying access to Plaintiff. Cingular is not a defendant. Among other things, the complaint alleges that Defendants have violated § 2 of the Sherman Act by treating United States Cellular less favorably than Cingular with respect to the claimed “essential facility.”

On or around August 23, 2002, an action styled *Millen, et al. v. AT&T Wireless PCS, LLC, et al.* was filed in the U.S. District Court for the District of Massachusetts (Case No. 02-11689 RGS). Cingular Wireless LLC is a named defendant along with several other wireless companies. Plaintiffs seek to certify a class of wireless customers in the Boston metropolitan area. Plaintiffs allege that defendants market handsets and wireless services through tying arrangements and that defendants monopolize markets for handsets. Plaintiffs seek damages and injunctive relief under the Sherman Act.

On or around September 20, 2002, an action styled *Truong, et al. v. AT&T Wireless PCS, LLC, et al.* was filed in the U.S. District Court for the Northern District of California (Case No. C 02 4580). This complaint is similar to the Millen complaint filed in the U.S. District Court for the District of Massachusetts.

On or around September 27, 2002, an action styled *Morales, et al. v. AT&T Wireless PCS, LLC, et al.* was filed in the U.S. District Court for the Southern District of Texas (Case No. L-02-CV120). This complaint is similar to the Millen complaint filed in the U.S. District Court for the District of Massachusetts.

On or around September 30, 2002, an action styled *Beeler, et al. v. AT&T Cellular Services, Inc., et al.* was filed in the U.S. District Court for the Northern District of Illinois (Case No. 02C 6975). This complaint is similar to the Millen complaint filed in the U.S. District Court for the District of Massachusetts.

On or around January 10, 2003, an action styled *Brook, et al. v. AT&T Cellular*

Services, Inc. et al. was filed in the U.S. District Court for the Southern District of New York (Case No. 02 Civ. 2637 (DLC)). This action was originally filed as a putative consumer class action alleging certain antitrust violations against a number of carriers in the New York area. The January 10 filing is an amended complaint that was amended to include Cingular Wireless as a defendant, and to drop price fixing and market allocation counts and to add a monopolization count. The amended complaint thus now includes the same defendants and the same tying and monopolization claims included in the *Millen, Truong, Morales* and *Beeler* cases mentioned above. On February 21, 2003, Cingular, along with the other 4 carrier defendants in *Brook*, filed a motion to dismiss that case for failure to state a claim under Rule 12(b)(6).

In fall of 2002, the defendants in *Millen, Truong, Morales, Beeler* and *Brook*, including Cingular, filed a motion with the Judicial Panel on Multi-District Litigation seeking to consolidate all five actions for pretrial purposes. Plaintiffs' counsel (who is the same in each case) did not oppose this motion, which was granted on March 5, 2003. The actions have been consolidated and transferred to the Southern District of New York as MDL-1513—*In re Wireless Telephone Services Antitrust Litigation*.

On August 11, 2003, the court in MDL-1513 issued an order consolidating *Millen, Truong, Morales, Beeler* and *Brook* for pretrial purposes. The court is treating the complaint in *Brook* as the consolidated complaint. On August 12, 2003, the court issued an order granting in part and denying in part defendants' motion to dismiss. The court dismissed five of the six claims in all five cases (the monopolization claims). In the remaining claim, plaintiffs allege that the carriers tied the sale of wireless service to the purchase of wireless handsets. The plaintiffs have since filed a Consolidated Amended Class Action Complaint.

American Cellular Network Company, LLC, d/b/a Cingular Wireless v. Capital Management Communications, Inc., d/b/a CMCI, C.A. No. 02-15175 (Montg. CCP): CMCI resells Cingular's wireless service pursuant to a 1992 Settlement Agreement. In August 2002, Cingular instituted litigation to terminate CMCI's agreement citing CMCI's refusal to participate in a contractually required migration of customers and recovery of past due balances. CMCI has asserted counterclaims for breach of contract and tortious interference with contract claiming Cingular failed to provide free or discounted phones and customers service support for CMCI's customer base. CMCI also denies it owes Cingular any monies. After discussions between the parties, it was agreed that the suit filed by American Cellular and CMCI's counterclaim would be dismissed. The parties are in the process of negotiating a new contract.

On or around February 28, 2003, an action styled *Unity Communications, Inc. v. BellSouth Cellular Corp; BellSouth Corp.; and Cingular Wireless LLC*, was filed in the U.S. District Court for the Southern District of Mississippi (Civil Action No. 2:03CV115PG). Plaintiff is a former reseller who alleges that Defendants refused to provide it digital services in violation of 251(c) of the Telecommunications Act, refused to provide it support in violation of 201(a) and (b) of the Communications Act, charged discriminatory rates under 202(a) of the Communications Act, conspired to eliminate

competition in violation of Section 1 of the Sherman Act, engaged in monopolization in violation of Section 2 of the Sherman Act, and committed breach of contract and tortious breach of contract. At a preliminary hearing on August 15, 2003, the plaintiff agreed to dismiss the claims made under Section 251(c) of the Communications Act, as well as three of the state law claims. In addition, BellSouth Cellular Corp., which no longer exists, was dismissed as a defendant. The Court ordered the parties to conduct discovery on the question whether all of plaintiff's claims are barred either under the doctrines of accord and satisfaction or by virtue of a release executed by the plaintiff in favor of Cingular Wireless in 2001. After this discovery, Cingular filed its motion for summary judgment on the grounds of release and accord and satisfaction. All other issues in the case were stayed pending resolution of these issues.

Due to Judge Pickering's appointment to the 5th Circuit Court of Appeals, the case was recently reassigned to Judge Stanwood Duval (E.D. La.) who set the hearing for Cingular's motion for summary judgment on October 20, 2004. The Court denied Cingular's motion at that hearing. Because the Court found that its order involved controlling issues of law and the issues presented close questions and were dispositive of the case, the Court certified its order denying Cingular's motion for interlocutory appeal pursuant to 28 U.S.C. 1292(b). Cingular will be pursuing the interlocutory appeal to the 5th Circuit.

Cell Comp v. Cingular Wireless, No. 2003-12-6181-D (District Court Cameron County Texas): Cell Comp is an authorized agent for Cingular Wireless in the South Texas market. Cell Comp alleges that after it signed an agency agreement in 2002, it began to "experience difficulties" with Cingular including unilateral changes in compensation, unrealistic demands on activations and improper cancellations. Cell Comp. claims breach of contract, fraud, fraudulent inducement, deceptive trade practices, conversion, conspiracy and tortious interference. The court reinstated this case on the active docket following Cingular's written response to Cell Comp's deceptive trade claims. The parties are in the process of exchanging written discovery.

Dash Retail v. Cingular, (Arbitration through AAA per Agency Agreement): Dash Retail approached Cingular to operate as an authorized agent in the Philadelphia region. Shortly after entering an agreement that would govern the relationship, Cingular discovered Dash or its predecessor in interest was not free of contractual obligations it had as an agent of T-Mobile. Upon learning of this information, Cingular refused to advance Dash certain funds and terminated its agreement. Dash has filed a claim for arbitration to recover the funds that were not advanced and for lost profits it claims it would have earned under the agreement. Dash also claims the termination of the contract was wrongful. An arbitrator has been selected. The parties have initiated written discovery. The arbitration hearing is currently scheduled for February 28-March 4, 2005.

Harvard Cellular v. Cingular, (Arbitration through AAA per Agency Agreement): Harvard claimed that it relied upon representations by Cingular representatives before entering into an agency agreement and opening 5 locations in Manhattan. After disappointing sales, Harvard closed all 5 of its stores within 6 months

of Cingular's entry into the New York City market. Harvard claimed, *inter alia*, that it relied upon representations of projected activations for Cingular in the New York City region and promises that it could conduct B2B sales. Harvard claimed that Cingular reduced its advertising budget and changed its business model resulting in lower sales. Harvard also claimed its attempts to pursue B2B sales were thwarted by Cingular. Finally Harvard claimed that its relationship with Cingular constituted a franchise under NY law and as such, it was entitled to damages associated with rescission of the agreement. Harvard also claimed that Cingular has indemnity obligation for any remaining obligations that Harvard has under the leases for its NY locations that were closed. Harvard also made a lost profit claim. The arbitrator awarded damages to Cingular and denied each of Harvard's counterclaims. Cingular has initiated a proceeding in the New York State Court to reduce the arbitration award to a judgment. Harvard Cellular has filed a motion in the same court to vacate the arbitration award. Cingular filed its reply to Harvard's motion to vacate. The parties are awaiting a notice from the court advising the parties whether a hearing will be scheduled.

Sinclair Interest (One Source Wireless) v. Cingular (No. 04-E-0131-C) District Court Matagorda County, Texas: One Source is an authorized agent for Cingular Wireless in the South Texas market. It alleges that Cingular unilaterally changed compensation schedules and made unrealistic demands with respect to activations and improperly cancelled customers. One Source claims breach of contract, fraud, conversion, conspiracy, and tortious interference. The case was removed to the federal court on the basis of diversity jurisdiction; however, because this federal circuit examines the citizenship of the members of a limited liability company when determining diversity, the plaintiff's motion to remand was not opposed upon confirmation that the citizenship of certain members of the limited liability companies at issue would destroy diversity. Accordingly, the case was remanded to the Texas state court on July 7, 2004. The District Court of Matagorda County denied Cingular's motion to transfer the case to another county within Texas where One Source has more store locations. The parties are now in the process of exchanging written discovery requests. The case is on the trial calendar for the spring of 2005.

Z-Page v. Southwestern Bell Wireless (District Court, Cameron County Texas) Z-Page claims in this suit that Cingular made fraudulent representations to induce Z-Page to open approximately 27 stores in Texas, and shortly thereafter changed its commission schedule. Z-Page also claims that Cingular interfered with Z-Page's efforts to sell its business. Z-Page is claiming damages for breach of contract and tortious interference of approximately \$10 M and is also making a punitive damage claim. Cingular has counter-claimed for unpaid refund of market development funds and return of monies paid for fraudulent advertisement invoices. Discovery is complete with the exception of the exchange of expert reports. Cingular is awaiting the overdue expert report for Z-Page. There is currently no trial date scheduled.

Foundation for Taxpayer and Consumer Rights v. Cingular Wireless, AWS, T-Mobile. (Superior Court for County of Los Angeles, California) Filed on June 7, 2004. This action, purportedly brought "on behalf of the general public," alleges that the

practice by the GSM carriers of locking handsets “thwarts” LNP and violates California Business and Professions Code sections 17200 and 17500. The complaint also alleges that defendants’ conduct constitutes unlawful tying (in violation of California’s antitrust statute) by requiring customers to purchase the carrier’s authorized handset in order to access the carrier’s network. The complaint seeks injunctive relief and restitution. On August 18, 2004 Michael Freeland v. AT&T Cellular Services, Inc., et al. (Case No. C-04-3366) was filed in the U.S. District Court for the Northern District of California asserting similar claims under California state law.

On or about September 5, 2001, the second amended complaint in a case captioned *DiBraccio v. AT&T Wireless Services, Inc., et al.* was filed in Florida State Court (Eleventh Judicial Circuit, in and for Miami-Dade County) (Case No. 99-20450 CA-20). The Company is named as a defendant, along with ABC Cellular Corp., a reseller of wireless services and handsets in South Florida. Plaintiff seeks damages for alleged monopolization of wireless phone services in South Florida under Section 542.19 of the Florida Statutes and conspiracy to monopolize under the same statute. Recently, DiBraccio was removed as the trustee, and the case name was revised to *Kapila*, to reflect the new trustee, Soneet Kapila.