## RESPONSE TO QUESTION 77

Cingular Wireless LLC ("Cingular"), the real party in interest, hereby submits this response to Question 77 of the FCC Form 603 concerning allegations against various indirect subsidiaries or affiliates of Cingular. While these cases may fall outside the scope of disclosures required by Question 77, they are nevertheless being reported out of an abundance of caution. **In order to facilitate Commission's review of the pending litigation information, pages 4 and 5 of this exhibit are copies of the cases previously reviewed and approved for Cingular in connection with ULS File No. 0001340256, which was consented on August 27, 2003. The current changes are underlined**.

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 are 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.

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 tortuous 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. The parties have exchanged discovery requests. Recently, the parties have agreed to a stay any further discovery and explore whether settlement is possible.

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 tortuous breach of contract. At a preliminary hearing on August 15, 2003, the plaintiffs 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 and submit briefing on the questions of 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. All other issues in the case have been stayed pending resolution of these issues.

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. **In order to facilitate Commission's review of the pending litigation information, pages 4 and 5 of this exhibit are copies of the cases previously reviewed and approved for Cingular in connection with ULS File No. 0001151493, which was granted on April 16, 2003. The current changes are underlined.**

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."

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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. The parties have exchanged discovery requests. Recently, the parties have agreed to a stay any further discovery and explore whether settlement is possible.

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, provided discriminatory rates under 202(a) of the Communications Act, conspired to eliminate competition in violation of Section 1 of the Sherman Act, willfully maintained monopoly power to foreclose competition in violation of Section 2 of the Sherman Act, unlawfully engaged in price squeezing in violation of Section 2 of the Sherman Act, engaged in breach of contract and tortious breach of contract. We are currently investigating facts and our response date is July 11, 2003.