

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

UNITED STATES OF AMERICA  
Department of Justice, Antitrust Division  
1401 H Street, N.W., 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, N.E.  
Atlanta, GA 30309,

and

AT&T WIRELESS SERVICES, INC.  
7277 164<sup>th</sup> Avenue, N.E., Building 1  
Redmond, WA 98052,

Defendants.

---

Civil No.: 1:04CV01850 (RBW)

Filed: 10/25/04

**COMPLAINT**

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. This 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, 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. 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 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.

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 serve 23.7 million access lines in 9 states: Alabama, Florida,

Georgia, Kentucky, Louisiana, Mississippi, North Carolina, 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 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.

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 services 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 “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.

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 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 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 GPRS 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 throughput. 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 wireless 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 of 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 (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).

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 interests 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 or quantity 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:

\_\_\_\_\_  
/s/  
R. Hewitt Pate  
Assistant Attorney General  
Antitrust Division

\_\_\_\_\_  
/s/  
J. Bruce McDonald  
Deputy Assistant Attorney General  
Antitrust Division

\_\_\_\_\_  
/s/  
J. Robert Kramer II  
Director of Operations  
Antitrust Division

\_\_\_\_\_  
/s/  
Nancy Goodman (D.C. Bar # 251694)  
Chief, Telecommunications & Media  
Enforcement Section  
Antitrust Division

\_\_\_\_\_  
/s/  
Laury Bobbish  
Assistant Chief, Telecommunications &  
Media Enforcement Section  
Antitrust Division

\_\_\_\_\_  
/s/  
Hillary B. Burchuk (D.C. Bar # 366755)  
Matthew C. Hammond  
David T. Blonder  
Benjamin Brown  
Michael D. Chaleff  
Benjamin Giliberti  
Lorenzo McRae (D.C. Bar # 473660)  
Jeremiah M. Luongo  
Attorneys, Telecommunications & Media  
Enforcement Section  
Antitrust Division

U.S. Department of Justice  
City Center Building  
1401 H Street, N.W., Suite 8000  
Washington, D.C. 20530  
(202) 514-5621  
Facsimile: (202) 514-6381





## 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.*