

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
APPROVING IN PART, DISSENTING IN PART**

*Re: Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation,  
For Consent to Transfer of Control of Licenses and Authorizations;  
WT Docket No. 04-70 et al*

I generally approve this merger because I believe it will create a stronger, more vibrant provider of mobile wireless communications. Our deliberation has been a challenging one, though, and I am pleased that, with one notable exception, we generally have imposed conditions appropriate for a merger of this magnitude.

The growth of mobile wireless services over the last 10 years has been historic. Offering what was once considered a luxury item, only affordable to a few, the mobile wireless industry now serves more than 169 million customers – over a 50 percent penetration rate. Millions of customers have even “cut the cord,” forgoing or canceling their wireline service in favor of going exclusively wireless. We frequently hear about customers substituting wireline minutes with wireless ones as “bucket” and nationwide calling plans are exploited by subscribers.

Competition has been the key driver of this growth. Without competition, we simply would not be where we are today. The Commission’s policies encouraged innovation and development, and the mobile wireless industry responded with vigorous competition. It has been an unabashed success.

So now we have before us a merger of historic proportions. And it is up to this Commission to ensure that the competition that has benefited not only U.S. consumers, but the U.S. economy, is maintained. I take this charge seriously, and have viewed this merger through a number of different lenses. I have tried to consider the impact on customers in our larger, more populated cities, as well as those living in rural America. I have listened to groups representing our nation’s disabled community, as well as those advocating on behalf of competitive carriers and rural wireless companies. This merger touches on so many different stakeholders, and it is crucial to make sure that everyone is given fair consideration.

At bottom, I support a large portion of this merger because for the most part the public interest benefits outweigh a number of the concerns identified in the item. I am hopeful about the creation of a stronger, more vibrant competitor that will dedicate its resources to provide better wireless service in more areas of the country. Cingular already has launched a campaign to work with its partners in rural America to push out the deployment of third generation wireless services. This is a positive development, and I believe the merger before us will drive wireless broadband services deeper and farther across America.

I have heard the loud chorus of supporters of this merger. For example, several of the nation’s disability advocates support the merger and its impact on accessibility of telecommunications products and services for people with disabilities. We also have heard from many public safety entities that the merger will continue the increasingly rapid deployment of

wireless E911 services. Union leaders have promoted the merger as being good for the economy and our nation's workers. Finally, a number of rural wireless carriers believe that the merger will improve wireless services in rural areas because the merged entity will be a more effective provider across the country and thus a more effective partner in rural areas.

Of course, a merger of this size requires a vigorous review to ensure that we do not inadvertently disadvantage the very communities we are trying to protect. An unchecked merger of this type could harm the competitive environment in some communities in ways that the market is unlikely to overcome. Initially, it was unclear if our analysis took full advantage of the data available to us given time constraints, but I am pleased that we made some progress over the last few days by conducting a further review of some of the most sensitive markets affected by this merger.

That is why I fully support our decision to require divestiture in the markets identified in the item. While I have lingering concerns that the item does not dig deep enough, I think that with our recent work, we have done our best to ensure that few, if any, markets have fallen through the cracks. I appreciate very much the efforts of the Commission staff in pulling this information together, and am pleased that my colleagues were willing to consider additional divestiture actions.

I also am pleased that we have accepted an offer from the applicants to limit the ability of the merged entity to participate in Auction 58 with respect to a handful of markets. This is a simple but meaningful step that allows this transaction to go forward while ensuring that the merged entity does not gain even more spectrum within certain in-region markets so shortly after this massive transaction. In these limited markets, we ensure that a competitor will secure the Auction 58 spectrum, which will in turn appropriately protect competition in these markets.

Unfortunately, the majority falls short in addressing the impact of the improved market position and incentives of Cingular and its parent companies in the SBC and BellSouth regions. In many major in-region markets, Cingular now will have almost half of the mobile wireless market share. And in allowing the acquisition of AT&T Wireless, we permanently remove an independent source of competition to Cingular, SBC and BellSouth.

The majority declines to adopt any condition to ensure that intermodal competition does not disproportionately suffer as a result of our approval of the merger. They do so even though the item itself concludes that intermodal competition will suffer as a result of this merger. I find the unwillingness to confront this issue far too short-sighted for a Commission that is perfectly willing to look prospectively towards communications landscapes on the horizon when that approach is more convenient. For example, we could have dug deeper into bundling issues and tried to determine how we can minimize the competitive impact of the merger on this expanding market, as even the item recognizes that wireless-wireline bundling may be a significant product offering in the future. Ultimately, there were reasonable alternatives available to the Commission to guard against the merger's potentially negative impact on competition, but the majority declines to adopt any such protective measures.

As a result, Cingular, not to mention SBC and BellSouth, essentially gets a “pass” from the majority on these intermodal competition issues. For this reason, I must dissent in part from the item. I can only hope that, notwithstanding our rushed review, intermodal competition will not disproportionately suffer, and that the treatment of the next such merger application will be more considered.