UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiffs, v. SBC COMMUNICATIONS INC., and BELLSOUTH CORPORATION, Defendants.	)	Case No: 1:00CV02073 (PLF)

RESPONSE OF PLAINTIFF UNITED STATES TO
PUBLIC COMMENT ON THE PROPOSED MODIFIED FINAL JUDGMENT

Pursuant to the Court's Order to Establish Procedures for Motion to Modify Final Judgment dated August 12, 2004, plaintiff United States of America ("United States") hereby files a comment received from a member of the public concerning the proposed Modified Final Judgment in this civil antitrust suit and the response of the United States to that comment.

I. BACKGROUND

On August 30, 2000, the United States filed a complaint in this case alleging that the proposed joint venture between SBC Communications Inc. ("SBC") and BellSouth Corporation ("BellSouth") to form Cingular Wireless LLC ("Cingular") would substantially lessen competition in wireless mobile telephone services in certain areas in California, Indiana, and Louisiana. On December 29, 2000, a Final Judgment was entered with the consent of the

defendants which required them to make certain divestitures of licenses and assets in relevant markets for mobile wireless telecommunications services in California, Indiana, and Louisiana.[1] The Final Judgment bars defendants from reacquiring any of the divested spectrum licenses for the term of the decree, which expires December 29, 2010. On February 17, 2004, Cingular announced an agreement to acquire AT&T Wireless Services Inc. ("AT&T Wireless"), which had previously acquired the divested licenses in California and Indiana. Due to changes in competitive conditions in the affected geographic areas, the United States believes that the Final Judgment's prohibition on reacquiring these spectrum licenses is no longer necessary to preserve competition in these affected areas. The modification would allow defendants to reacquire the divested spectrum licenses in the Los Angeles Metropolitan Statistical Area ("MSA") and in the Indianapolis Major Trading Area ("MTA"). However, reacquisition of the divested spectrum licenses in 5 Basic Trading Areas ("BTAs") within the Indianapolis MTA is conditioned upon Cingular not also acquiring control of or an interest in certain additional spectrum licenses in those BTAs (as part of its acquisition of AT&T Wireless) that are effectively controlled by AT&T Wireless through its relationship with Von Donop Inlet PCS ("Von Donop").

On August 11, 2004, defendants and the United States jointly moved to modify the Final Judgment entered by this Court on December 29, 2000, and to establish procedures for the modification. On the same date, the United States and defendants filed a Stipulation that stated:

1. Defendants and the United States would file a joint motion requesting that the

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[1] The Final Judgment required SBC and BellSouth to divest mobile wireless telephony businesses – spectrum licenses along with the related businesses and network assets – in the Los Angeles Metropolitan Statistical Area, the Indianapolis Major Trading Area, and multiple Cellular Marketing Areas in Louisiana.

Court modify the Final Judgment entered in this case on December 29, 2000, and a joint motion to establish procedures to modify the Final Judgment. The United States tentatively agreed to the modification of the Final Judgment if certain conditions are met, but as a matter of policy does not consent to the modification of judgments without public notice and an opportunity for public comment;

2. Defendants shall publish at their own expense a notice of the proposed modification in two consecutive issues of (a) The Los Angeles Times, (b) The Indianapolis Star, and (c) RCR Wireless News;

3. The United States would publish in the Federal Register a notice announcing the motion to modify the Final Judgment and the United States's tentative consent to it, summarizing the Complaint and Final Judgment, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments;

4. A period for public comment shall end 30 days after the last publication of the notices required by the Stipulation. Within a reasonable time after the conclusion of the 30-day public comment period, the United States would file with the Court copies of all comments that it receives and its response to those comments;

5. Defendants shall provide the United States for its review and approval in its sole discretion, copies of all agreements to be entered into by the Defendants or AT&T Wireless with Von Donop including any amendments to the existing agreements between AT&T Wireless and Von Donop, so that the United States will have the opportunity to review them before the Court enters an order modifying the Final

Judgment; and

6. An Order modifying the Final Judgment entered in this cause of action on December 29, 2000, and a Modified Final Judgment would not be entered until the United States filed any comments and its responses to those comments or the United States notifies the Court that no comments were received, and until the United States has reviewed and approved any agreements as described in the modification, and provided that the United States has not withdrawn its tentative consent.

A notice of the motion to modify the Final Judgment was published in the Federal Register on August 18, 2004. The Defendants published notices in the Los Angeles Times and the Indianapolis Star on August 16 and 17, 2004, and they published a notice in RCR Wireless News on August 16 and 23, 2004. The 30-day comment period commenced on August 24, 2004, and ended September 22, 2004. During the 30-day comment period, the United States received one public comment (attached as Appendix A).

II. RESPONSE TO PUBLIC COMMENT

A. Legal Standard Governing the Court's Public Interest Determination

Upon filing with the Court the public comment and this Response, the United States will have fully complied with the procedures established by the Court's Order on August 12, 2004. This Court has jurisdiction to modify or terminate the Final Judgment pursuant to Section XII of the Judgment, Fed. R. Civ. P. 60(b)(5), and "principles inherent in the jurisdiction of the chancery." United States v. Swift & Co., 286 U.S. 106, 114 (1932); see also In re Grand Jury Proceedings, 827 F.2d 868, 873 (2d Cir. 1987).

Where, as here, the United States tentatively has consented to a proposed modification of a judgment, the issue before the Court is whether modification is in the public interest. See, e.g., United States v. Western Elec. Co., 993 F.2d 1572, 1576 (D.C. Cir. 1993) ("Western Elec. II"); United States v. Western Elec. Co., 900 F.2d 283, 305 (D.C. Cir. 1990) ("Western Elec. I"); United States v. Loew's, Inc., 783 F. Supp. 211, 213 (S.D.N.Y. 1992); United States v. Columbia Artists Management, Inc., 662 F. Supp. 865, 869-70 (S.D.N.Y. 1987) (citing United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶ 60,201, at ¶ 65,702 (N.D. Ill. 1975)). A federal district court applies the same public interest standard in reviewing an initial consent judgment in a government antitrust case. See 15 U.S.C. § 16(e); Western Elec. I, 900 F.2d at 295; United States v. American Telephone & Telegraph Co., 552 F. Supp. 131, 147 n.67 (D.D.C. 1982), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983); United States v. Radio Corp. of Am., 46 F. Supp. 654, 656 (D. Del. 1942).

It has long been recognized that the United States has broad discretion in settling antitrust litigation on terms that will best serve the public interest in competition. See Sam Fox Publ'g Co. v. United States, 366 U.S. 683, 689 (1961). The Court's role in determining whether the initial entry of a consent decree is in the public interest, absent a showing of abuse of discretion or a failure to discharge its duty on the part of the United States, is to determine whether the United States's explanation is reasoned, and not to substitute its own opinion. See United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶ 61,508 at 71,980 (W.D. Mo. 1977); see also United States v. Microsoft Corp., 56 F.3d 1448, 1461-62 (D.C. Cir. 1995); United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981) (citing United States v. National Broad. Co., 449 F. Supp. 1127, 1143 (C.D. Cal. 1978)); United States v. Medical Mutual of Ohio, 1999-1

Trade Cas. ¶ 72,465 at 84,271 (N.D. Ohio 1999). The United States may reach any of a range of settlements that are consistent with the public interest. See, e.g., Microsoft, 56 F.3d at 1461; Western Elec. I, 900 F.2d at 307-09; Bechtel, 648 F.2d at 665-66; United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975). The Court's role is to conduct a limited review to "insur[e] that the government has not breached its duty to the public in consenting to the decree." Bechtel, 648 F.2d at 666; see also Microsoft, 56 F.3d at 1461 (examining whether "the remedies [obtained in the Final Judgment] were not so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'"). Where the United States has offered a reasoned and reasonable explanation of why the modification vindicates the public interest in free and unfettered competition, and there is no showing of abuse of discretion or corruption affecting the United States's recommendation, the Court should accept the United States's conclusion concerning the appropriateness of the modification.

B. Summary of Public Comment and the United States's Responses

One individual submitted a comment. Copies of this Response, without the Appendix, are being mailed to him. A summary of his comment and the response of the United States is provided below.

Dennis Moore

Dennis Moore, a former Cingular employee, provided the Department a copy of his letter to Federal Communications Commission Chairman Michael Powell about the proposed acquisition of AT&T Wireless by Cingular. A handwritten notation on Mr. Moore's letter states that it is a "[c]omment[] regarding the proposed modification of the Final Judgment . . . in Civil No. 1:00CV02073." Mr. Moore asserts concerns about "how Cingular might treat consumers,"

primarily on the basis of his experience as a former employee who allegedly suffered racial discrimination. Mr. Moore states that his claims are the subject of a racial and employment discrimination lawsuit he initiated against Cingular. Along with Mr. Moore's letter and comment, he submitted pleadings from his lawsuit against Cingular and documents that either relate to the acquisition of AT&T Wireless by Cingular or relate to lawsuits against Cingular. Those documents are a July 2004 Consumer Federation of America report, "Remonopolizing Local Telephone Markets: Is Wireless Next?" (including an August 3, 2004 press release, "Consumer Groups Call for State Scrutiny of Cingular/ATT Wireless Merger") and two newspaper articles (one about a former Illinois dealer who won a fraud and tortious interference case against Cingular and the other about a former Illinois authorized agent who also filed a discrimination suit against the company). Mr. Moore's comment, however, does not address the reacquisition of certain spectrum licenses by Cingular in the Los Angeles MSA or the Indianapolis MTA.

The United States appreciates Mr. Moore's comments. However, his concerns are outside the scope of this proceeding and the antitrust laws. This action was brought initially in order to prevent a potential violation of Section 7 of the Clayton Act, which protects consumers from the economic consequences of anticompetitive mergers and acquisitions. This statute seeks to prevent the higher prices, lower quality, or reduced innovation that may result from such transactions. The purpose of this proceeding is to determine whether the proposed modification that would allow the defendants to reacquire spectrum in the Los Angeles MSA and Indiana MTA, subject to certain conditions, is in the public interest. Nothing in Mr. Moore's letter or the attachments specifically relates to these geographic areas or provides an appropriate rationale for

approving or denying the proposed modification.

III. CONCLUSION

The United States hereby files the comment of a member of the public together with the Response of the United States to that comment, pursuant to the Court's Order to Establish Procedures for Motion to Modify Final Judgment dated August 12, 2004. The Memorandum of the United States in Support of Joint Motions to Modify Final Judgment and to Establish Procedures to Modify Final Judgment and this Response to Comments demonstrate that the proposed Modified Final Judgment serves the public interest. Accordingly, the United States has concurrently moved this Court for entry of the proposed Modified Final Judgment.

Dated this 5th day of October, 2004.

Respectfully submitted,

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March 17, 2004

Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Cingular Wireless Purchase and Acquisition of AT&T

Dear Chairman Powell:

Almost everyone is aware of the recent purchase of AT&T Wireless by Cingular Wireless. As a consumer and former employee of Cingular Wireless, I would like to weigh in on this transaction, as it is my understanding your Federal Communications Commission has final say in this. I encourage you and your commission to look at this deal with a jaundiced eye, as the impact of this deal will be felt by consumers and employees of both of the companies involved.

From a personal standpoint, I have a concern as to how Cingular Wireless might treat consumers. Cingular Wireless is having problems with fairness of its own employees, and if they are not being fair to its own employees, what can we expect of it for the consumers?

There are several lawsuits against Cingular Wireless in Federal District Court(s) here in Illinois, alleging "tortious interference with prospective economic advantage", "racial and employment discrimination", "violation of the Illinois Franchise Disclosure Act", "breach of contract", and "breach of covenant of good faith and fair dealings", among many other cause of actions.

The enclosed federal lawsuit (04C 0540), before Judge Norgle, alleges that **"Cingular discriminates against all blacks and minorities regardless of whether they are employees or Dealers who contract to do business with it."** What is particularly disturbing about this lawsuit is that one of the Cingular managers, Jim Moen, refers to blacks in paragraph 36, as "**the scum of the earth**", and there is a **"kill the niggers"** reference allegation in paragraph 33.

The enclosed copy of a **JUDGMENT IN A CIVIL CASE**, Case Number: 02 C 5403, **Kempner Mobile Electronics, Inc., v. Southwestern Bell Mobile**, indicates a jury verdict in favor of Kempner Mobile, and against Southwestern Bell Mobile, on all counts.

Cingular certainly can not argue the point that they were not aware of all of these problems and potential lawsuits, for the enclosed copy of an e-mail dated September 24, 2001, in which I copied Edward E. Whitacre, SBC CEO, made him and others aware. One would have thought that Mr. Whitacre and/or others would have done something pre-emptively to prevent the recent rash of federal lawsuits. My particular lawsuit (02-CV-02079) has been in federal court before Judge Plunkett going on 2 years. An interesting aspect of my lawsuit, alleging employment and racial discrimination, is the fact that prior to filing the lawsuit Cingular Wireless commissioned an outside consulting firm (SCENDIS) to interview me and several other black males there, to access our opinions on the racial and employment environment at Cingular Wireless, as it pertained to us as employees. The confidential findings of the SCENDIS report, which the Judge in my case has put under court seal, was provided to the CEO of SBC, Edward E. Whitacre, and other high level management, supposedly to access what direction the company wanted to go with the findings. Obviously Cingular has done nothing to sensitive its management to the need for inclusion and diversity, for the **"kill the niggers"** revelation came out later.

Again, if Cingular Wireless can not be fair to its own employees, what can we expect from them in regard to how they treat consumers, in the event the purchase of AT&T is approved by your Federal Communications Commission?

Cordially yours,

DENNIS MOORE, C.P.M., A.P.P.

cc: Stan Sigman, SBC
cc: Edward E. Whitacre, SBC
cc: Dave Davis, General Manager, WABC Eyewitness News
cc: David M. Milliner, Editor & Publisher, Chicago Defender Newspaper
cc: Fermen Beckless, Reporter, Chicago Defender Newspaper
cc: Reverend Jesse Jackson, Operation PUSH
CC: LISA MADIGAN, ILLINOIS ATTORNEY GENERAL

Encl

P.S. Comments regarding the proposed modification of the Final Judgment to the United States in Civil No. 1:00CV02073

Consumer Federation of America

Consumers Union
Publisher of Consumer Reports

REMONOPOLIZING LOCAL TELEPHONE MARKETS: IS WIRELESS NEXT?

Mark Cooper
July 2004

FEDERAL AND STATE ANTITRUST OFFICIALS SHOULD SAY NO TO THE CINGULAR- AT&T WIRELESS MERGER

The exit of AT&T Communications, the largest competitive local exchange carrier (CLEC) and provider of long distance service to residential customers, from the residential market is the strongest evidence to date that the decision of the Federal Communications Commission (FCC) and the White House not to defend the Triennial Review Order spells the end of landline competition for local residential telephone service. The political decision of the Administration and the business decision of AT&T place an immense amount of pressure on competition from other technologies – wireless and voice over the Internet. To date, these technologies have done little to end the Baby Bell monopoly. Wireless is widespread but has not eroded Bell market shares much to date. VOIP is nascent, at best. Whether these technologies can provide effective competition for basic telephone service is uncertain at best.

Ironically, the FCC and the Bush Administration are immediately faced with another huge decision that could undermine the potential for cross-technology competition. The Cingular/AT&T Wireless merger is currently being reviewed by the FCC and the Department of Justice (DOJ). Since SBC and Bell South are the owners of Cingular, which is seeking to become the largest wireless carrier in the nation by buying up AT&T Wireless Inc, this merger represents another anticompetitive blow to consumers. It removes the largest unaffiliated competitor from the wireless market and transfers it to local phone companies that dominate about half the country. In light of recent developments in local telephone markets, this merger requires very careful scrutiny.

This paper shows that if antitrust authorities take a close look, they will conclude that the merger is anticompetitive from every angle. The merger will harm consumers, is not in the public interest and should be blocked or subject to extensive restructuring if it is approved.

Wireless competition will be dramatically reduced by the merger, whether one views the wireless market as a national or local market. The merger would make SBC and Bell South the dominant wireless providers by far in highly concentrated local and national markets for wireless service.

- SBC and Bell South would be the dominant carrier in virtually every one of the markets in which they are the dominant local phone company.
- Nationally, Cingular would be 50% larger than Verizon and dwarf the few other national wireless carriers.
- Because SBC and Bell South also still have over 90 percent of residential local landline services in their home territories, the merger allows them to bundle local landline and wireless together, which makes it especially difficult for stand alone wireless companies to compete.
- In their home territories, SBC and Bell South control access to the local network on which competing wireless providers depend to complete calls. They have the ability to make it difficult or expensive for competitors to gain access to the local telephone network; the larger their market share becomes, the stronger their incentives and the greater their ability to undermine competition.

The merger would dampen cross-technology competition between wireless and landline local service.

- SBC and Bell South as the dominant wireless and landline providers will have little incentive to migrate customers off of landline service.
- The merger increases the incentive to raise prices for wireless (since that takes pressure off of landline prices).
- The merger severely impacts the likelihood of effective competition between wireless and landline high-speed data service. The merger would remove the spectrum licensed to AT&T as a potential, independent competitor for high-speed Internet service, in a product space where there are, today, only two facility-based providers (cable and telephone companies).

WIRELESS MUST BE ANALYZED AS A LOCAL PRODUCT

Wireless is sold as a local product. On the demand-side, consumers buy and use wireless as a local product. When a customer visits a local store in Dallas for wireless, they expect a local account. They want a local number to call and give out.

- Approximately 70 percent of wireless calls and 60 percent of wireless minutes are intralata. Approximately 80 percent of all wireless calls and 70 percent of all minutes are intrastate (Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service* (Federal Communications Commission, Washington D.C., 2003, 2004), Table 11-4).

The pattern of market penetration demonstrates the local nature of the service. Firms are less likely to market where they do not have spectrum. They control customer acquisition through advertising and marketing efforts. Firms have different success rates in local markets and act like spectrum is a local resource. Market shares in and out of region vary sharply in the wireless industry (based on top 50 markets for SBS/BS/VZ)

- The Baby Bells, as Incumbent Local Exchange Carrier (ILEC) are the number one wireless provider in almost 3/4 of home service areas (pre-merger).
- Market shares for wireless firms affiliated with ILECs are 50 percent higher in the home territory, than outside.
- Market dominance of ILEC is likely to be larger in smaller markets.

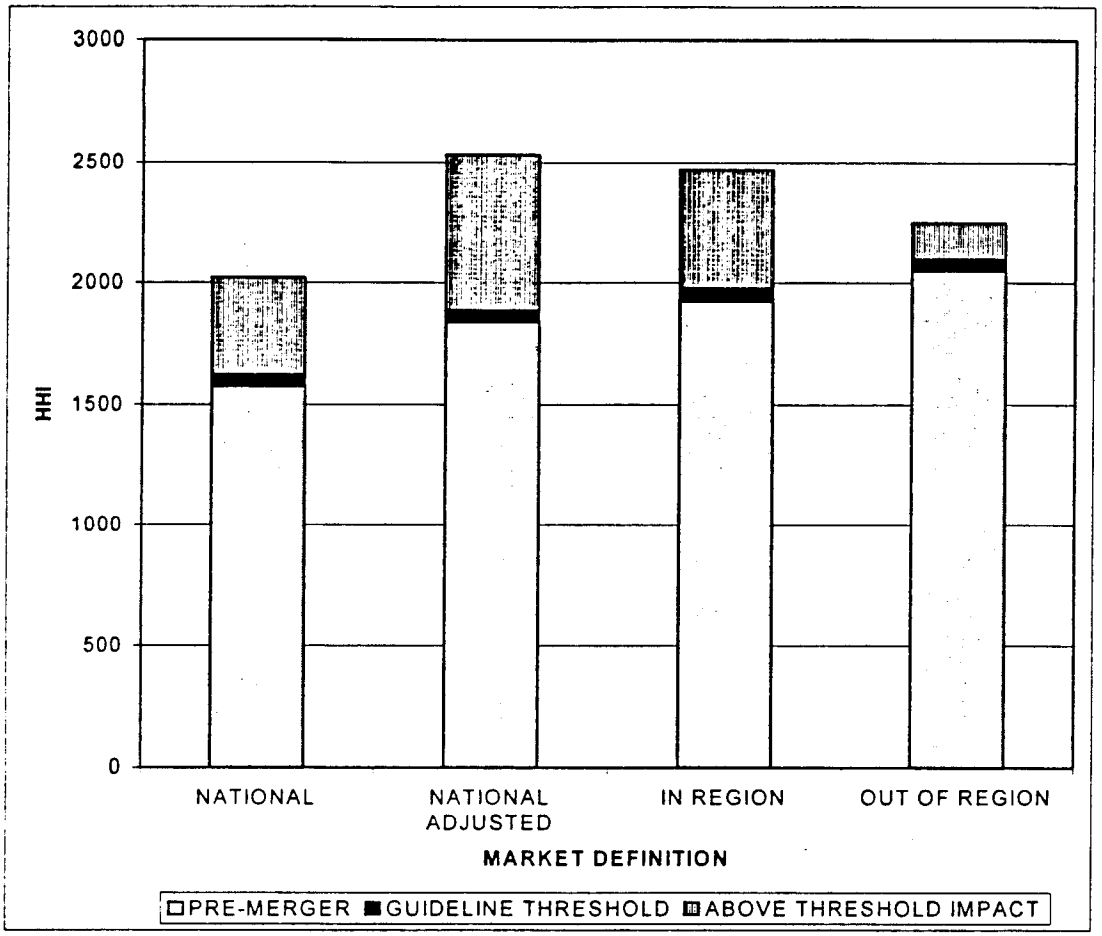
THE MERGER WILL SEVERELY REDUCE WIRELESS COMPETITION

The Department of Justice and Federal Trade Commission *Merger Guidelines* (1997) single out highly concentrated markets for special concern. The *Guidelines* define a highly concentrated market as one in which the concentration ratio (HHI) is greater than 1800. Mergers in such markets that increase the HHI by 50 points or more "potentially raise significant competitive concerns" because they are "likely to create or enhance market power or facilitate its exercise."

No matter how the market is defined, the Cingular-AT&T Wireless merger violates the *Guidelines* by a substantial margin. Figure 1 shows market concentrations before and after the merger based on customer accounts. Even if regulators were to view this as a national service, they would have to reject the merger. This is a merger between a number two and a number three firm in a market that is already moderately concentrated. The post-merger market would be highly concentrated and the increase in concentration exceeds the merger guidelines by a very substantial margin.

Moreover, while Cingular points to six national carriers and a set of regional carriers, a close look at the data shows that in eighty-five percent of the top 100 markets, at least one of the national competitors is absent or none of the major regional carriers is present. More importantly, looking at the major cities where the parents of Cingular are the dominant incumbent local exchange carriers, we find an even more troubling outcome. In two-thirds of the SBC/BellSouth local markets where both Cingular and AT&T wireless are present today, at least one of the national/regional wireless entities is not present.

Figure 1: Increases in Concentration Violate the *Merger Guidelines* by a Wide Margin



Source: *Declaration of Richard J. Gilbert*, p. 5; Local data base.

Looking at local markets in region, we find highly concentrated markets that will suffer a very large increase in concentration. Impacts in the home regions of the Baby Bell owners of Cingular will be especially large.

Although the HHI guidelines are only a screen to trigger scrutiny, the magnitude of the increase in concentration is so great that antitrust authorities frequently challenge mergers that have this large an impact on markets. Other evidence supports this view of the merger.

- The merger eliminates about half the top 50 markets where the ILEC is not the dominant wireless carrier.
- The merger eliminates a competitor in 87 of the top 100 markets.

- Estimates of potential price increases resulting from the merger are large enough to raise the red flags that traditionally get the attention of antitrust authorities. (Phoenix Center for Advanced Legal and Economic Public Policy Studies, *Higher Prices Expected From The Cingular/AT&T Wireless Merger,* May 26, 2004).
- Econometric evidence indicates that demand elasticity is low and margins are high, suggesting market power could be abused

SPECTRUM IS A SCARCE LOCAL RESOURCE

On the supply side, spectrum is a local input. The last mile transmission medium is the core of the network. The last mile is the gateway through which all services flow. It sets the pace of competition. One cannot sell wireless service to a customer in Dallas with spectrum in New York. Spectrum in Dallas is necessary to make the "last mile" connection in Dallas. To the extent that competing regional and national carriers must rely on roaming to deliver service where they do not hold a license to spectrum, they must rely on making a deal with a holder of local spectrum.

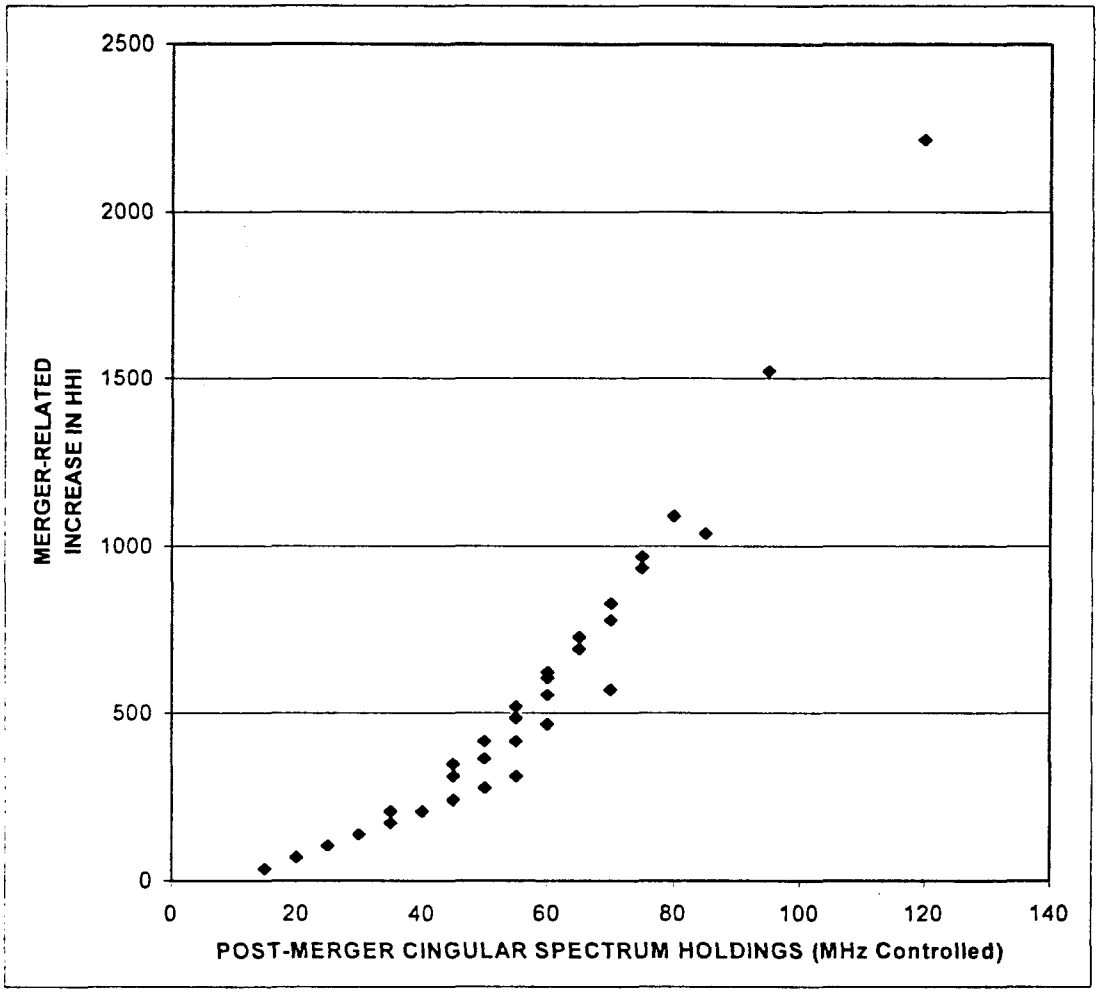
The merger raises severe concerns about the long-term competitiveness of wireless markets because of the scarcity of spectrum and the huge holdings the Cingular/AT&T Wireless combination would create.

- Separately Cingular and AT&T Wireless have more spectrum today than many of the other wireless license holders.
- Combined they will have a dominant holding of spectrum in many markets.
- At the level of spectrum that Cingular claims to need for a full service offering (80 MHz), local markets will support at most 2 to 3 full service wireless networks today.
- If firms are allowed to hold licenses to significantly more than 40 MHz, the spectrum available would support only three full service competitors.

Figure 2 shows the market concentration based on spectrum. It plots the increase in the HHI resulting from the merger against the post-merger holdings of Cingular. This analysis still underestimates the advantage the Cingular would have. As the holder of cellular licenses, its spectrum provides better coverage. (AT&T Wireless Services, Inc., Transferor, and Cingular Wireless LLC, Transferee, Applications for Transfer of licenses and Authorizations, WT Docket No. 04-07 (hereafter Application), p. 15)

- Anywhere that Cingular holds more than 40 MHz, post-merger; the spectrum market is above the moderately concentrated threshold.
- The merger increases the concentration by 175 points or more. For many markets the increase much larger.

Figure 2: Spectrum Concentration Resulting from the Cingular-AWE Merger



Source: AT&T Wireless Services, Inc., Transferor, and Cingular Wireless LLC, Transferee, Applications for Transfer of licenses and Authorizations, WT Docket No. 04-07 (hereafter Application), Attachment 8.

- The merger would require divestiture of spectrum in a majority of the markets where these companies serve.

While future spectrum might become available, exactly when is uncertain and its ability to discipline the market power created by this merger is highly speculative.

- The likely impact of future spectrum on the market is well beyond the time frame normally used by antitrust authorities in evaluating mergers.
- In any case, this merger will afford Cingular an enormous first mover advantage.

- At the level of spectrum that Cingular claims it needs, substantial new spectrum would be required to sustain vigorous competition, much more than is likely to be made available any time soon.

THE MERGER RAISES SEVERE, ANTICOMPETITIVE CROSS-TECHNOLOGY AND CROSS- PRODUCT PROBLEMS

To the extent that other telecommunications product markets are considered, the anticompetitive picture becomes even more ominous. Because Cingular would be the dominant holder of spectrum licenses and the parent companies are the dominant providers of landline access in the service territories, the merger raises significant cross-technology and cross-product concerns.

The largest impact would be in the markets where the parent companies of Cingular are the incumbent local exchange carriers (ILECs). As the dominant local exchange carrier SBC and BellSouth still have an 85 percent share of local lines and over a 90 percent share in residential markets. If the basis is the ownership of facilities, the figure is probably above 95 percent for the residential market. Thus,

ILECs dominate local markets (post-merger)

Landline market share	~ 90%
Wireless market share (in region)	~ 35%
Long distance market share (in region)	~ 30%
High-speed Internet access	~35%

(Industrial Analysis Division, Wireless Competition Bureau, *Local Telephone Competition: Status as of December 31, 2003, High-Speed Service for Internet Access: Status as of December 31, 2003* (June 2004); UBS Investment Research, *Wireline Postgame Analysis, 7.0*, June 1, 2004; Local data base)

With the recent exit of the largest CLECs and long distance carriers from the residential market, the Baby Bells are likely to hold onto their landline monopoly for local service and increase their market share in long distance. To the extent the wireless competes either with local or long distance service, allowing the dominant landline company to expand its control over wireless will significantly reduce the competitive pressures in the residential telephone market.

In the voice market the companies are schizophrenic about wireless-landline competition. In this proceeding they have produced a witness who claims that wireless and landline are not substitutes. In virtually every other proceeding the parent landline companies maintain that they are substitutes. If they are viewed as substitutes, the merger eliminates a facilities-based last mile competitor in a market with few such competitors.

If wireless and landline are combined into a market for "local telephone connectivity," then Cingular and its parents would have such a dominant position in the local connectivity market that the merger between AT&T wireless and these dominant ILECs would violate the *Merger Guidelines* by a mile.

- The market for local connectivity is highly concentrated (HHI just under 4000).
- The merger would raise the HHI by about 800 points, more than 15 times the threshold.

These concerns extend with even greater force to wireless data services. Cingular would control substantially greater spectrum than its competitors in many of its markets. The parent companies of Cingular are, at present, one of only two ubiquitous, high-speed data last mile facilities available. The DSL facilities are somewhat limited in capacity. Allowing the merger puts one of the more promising new entrant high-speed Internet access facilities into the hands of one of the current last mile owners. In this market, the prospects for numerous competitors are less promising than in the voice market.

- The HHI for this market is over 4000, indicating a duopoly. One of the duopolists is the incumbent local exchange carrier. Preserving potential competitors in this market is critical.

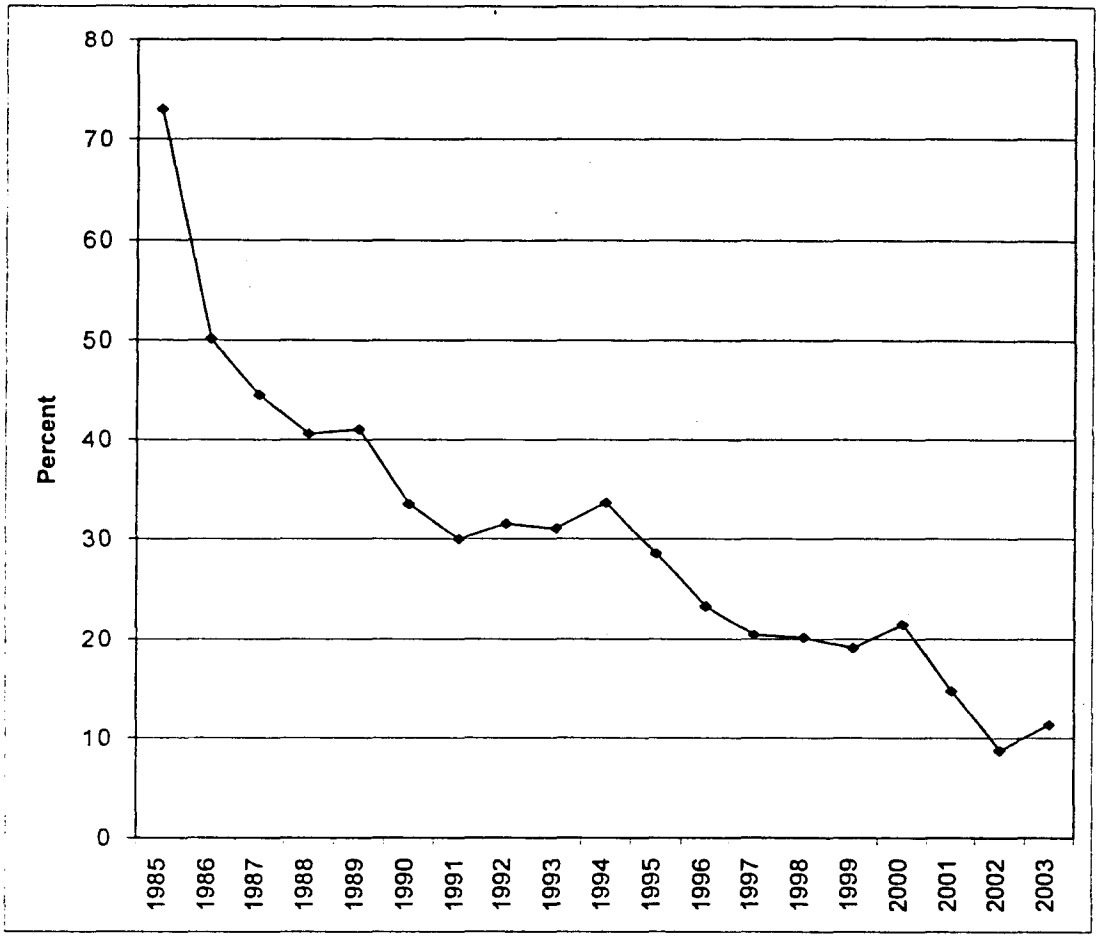
THE WIRELESS INDUSTRY IS A TIGHT OLIGOPOLY THAT PROVIDES NO UNIQUE PROTECTION AGAINST THE ABUSE OF MARKET POWER

The merger takes place in an industry that has matured, is already a tight oligopoly and is typified by significant barriers to entry. In other words, claims that the unique fluidity of the wireless market will protect consumers from the anticompetitive effects of this merger must be rejected. Contrary to Cingular's claim, all of the evidence points to an industry that has substantial barriers to entry. Indeed, exit seems to be the watchword, rather than entry.

Over the past several years the shares of regional firms have diminished sharply (Federal Communications Commission, *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, various issues; UBS Investment Research, *Wireless 411*June 23, 2004)

- The top six, national firms have increased their market share from 55% in 1997 to 85% today.
- New subscribers have declined sharply in the past several years (see Figure 3).
- Moreover, since the industry moved to uniform pricing, market shares and industry rankings have become quite stable (See Figure 4).

Figure 3: New Subscribers as a Percent of Year-End Total Customers

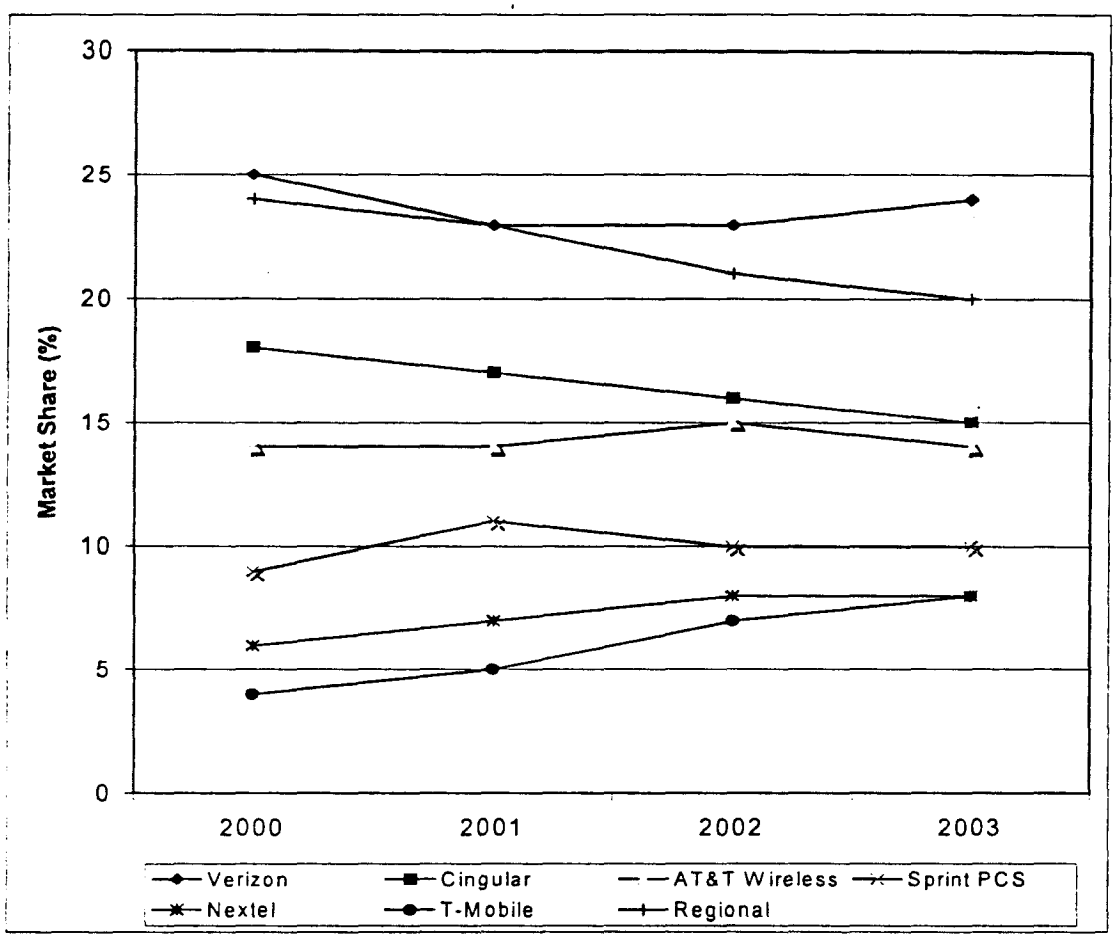


Source: Eight Annual Report, CTIA 2003 Report.

Barriers to entry are substantial. Spectrum is scarce. Infrastructure is a substantial sunk cost. Dealing with incumbent ILEC for network access is a challenge. Cingular's double talk on barriers to entry must be rejected.

Cingular asserts that infrastructure costs are not a barrier to entry for competitors who "include licensed PCS providers who have not yet built out in a particular area (for whom barriers to entry are low and consist mainly of the costs to build out or lease infrastructure and market the network in that area)."(**Opposition** of AT&T and Cingular, AT&T Wireless Services, Inc., Transferor, and Cingular Wireless LLC, Transferee, Applications for Transfer of licenses and Authorizations, WT Docket No. 04-07 (hereafter Application), p. 16, note 55). Yet, for Cingular, these very same costs and activities become a major hurdle because "a company must find a tower location with the right coverage and then address zoning,

Figure 4: Market Shares Since National Pricing



Source: Source: *Declaration of Richard J. Gilbert*, p. 5.

environmental, and political issues concerning the tower. This is both time-consuming and costly."(Application, p. 6)

Competitors are encouraged to purchase spectrum that might become available in future auctions. (Opposition, p. 12) Yet, Cingular never acknowledges the possibility that its needs could be met in this manner.

Similarly, while Cingular claims roaming agreements will be easy to reach (Opposition at 47), it has failed to do so in many markets (Application at 20-21). While Cingular is a net payor under roaming agreements today (Opposition, p. 48.) that will likely change when Cingular doubles its subscriber base and expands it coverage. With Cingular being 50 percent larger than its nearest rival and three to five times as large as the other national players, it is

almost certain to shift from being a net payor in reciprocal roaming agreements to a net receiver and have the incentive to increase roaming charges.

The merger would create a duopoly in the national market – six of seven Bell operating companies plus major independents – GTE, SNET, Contintental and more than half of all wireless subscribers would be concentrated in two regional giants.

- SBC/BS/Cingular will be a dominant vertically integrated firm, controlling large share of local wireless and landline markets, as well as national markets.
- Verizon is a similarly integrated firm, although about one-third smaller.
- With their regional dominance they would easily avoid competing with each other, as they have since the passage of the Telecommunications Act of 1996.

This is a crucial merger that will define the market structure. By creating a dominant firm that dwarfs others, it will ignite a merger wave.

- The remaining stand-alone firms would be dwarfed. Combined, the three national wireless carriers that are not affiliated with an ILEC would be smaller than Cingular.
- Antitrust authorities would be hard pressed to stop other mergers.

Cingular – AT&T Wireless Mergers Compared to the Next Possible Mergers

	Post Merger Market Share	HHI	HHI Change
Cingular	30	2023	449
Verizon-Sprint	33	2525	502
Nextel-T-Mobile	18	2626	101

THE MERGER RAISES SERIOUS CONCERNS ABOUT VERTICAL INTEGRATION AND CONGLOMERATION

The dominant position of the incumbent local exchange companies integrated into wireless gives them the incentive and ability to dampen competition in their home territories. The parent companies of Cingular could bundle all wireless and landline, voice and data and substantially reduce competitive pressures. This reflects both the fact that they control the facilities to deliver and especially large bundle, while competitors must act as CLEC to achieve a similar bundle. Stand-alone wireless competitors are at a severe disadvantage.

- They are dependent on the vertically integrated competitor for critical local inputs like special access to transport and access to central offices. The parent companies of Cingular have made CLEC life miserable in gaining access to their facilities.
- ILECs can withhold landline functionality to gain an advantage.
- Raising CLEC costs is the central strategy being pursued by the Baby Bells today.

To the extent that Cingular is the dominant spectrum holder, it has an incentive to withhold access to these inputs or to raise the cost for its rivals. Cingular profits doubly from such a strategy, once from the increased revenues and once from the ability to raise prices for its own service, should the competitors feel compelled to pass through increased roaming charges.

The larger their market share, the more incentive and ability they have to execute these anticompetitive strategies. Size matters in determining the profitability of discrimination and anticompetitive efforts to raise rivals costs. The larger the size of the firm instituting an effort to raise rivals costs, the more likely it is to succeed, as competitors have fewer options.

FOR IMMEDIATE RELEASE
August 3, 2004

CONTACT: Mark Cooper
Consumer Federation of America
301-384-2204

Consumer Groups Call for State Scrutiny of Cingular/ATT Wireless Merger

The nation's largest consumer organizations in a letter sent today asked Attorneys General in 10 states to closely examine the proposed Cingular Wireless – ATT Wireless merger for its local anti-competitive character. The Consumer Federation of America and Consumers Union warned that the merger could adversely affect residential phone customers in at least 10 states.

The groups included a recently released white paper entitled *Remonopolizing Local Telephone Market: Is Wireless Next?* The paper concludes that the merger will harm consumers, is not in the public interest and should be blocked or dramatically restructured before it is approved. [The white paper can be found at: www.consumerfed.org/localwireless.pdf]

The letter was sent to the Attorneys General in the following states: California, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Missouri, Tennessee and Texas.

The text of the letter follows:

August 3, 2004

Dear Mr/Mde. Attorney General,

As the state's chief antitrust official, we are sure you are aware of the proposed merger between Cingular and AT&T Wireless. Because Cingular is a privately held joint venture of the dominant local telephone company in your state, it could deeply affect the competitiveness of local telecommunications markets in your state. Indeed, the collapse of local phone (wireline) competition, in the wake of Federal policy decisions, the anticompetitive impact on consumers of the Cingular-AT&T wireless merger could be greatly magnified.

We are writing to urge you to take a careful look at this merger as it specifically affects residential telephone service consumers in your state. Attached you will find a recently released white paper, entitled *Remonopolizing Local Telephone Market: Is Wireless Next?* The paper concludes that the merger will harm consumers, is not in the public interest and should be blocked or dramatically restructured before it is approved.

The paper also demonstrates that the merger is anticompetitive from every angle. It will create a dominant firm in the wireless market in your state, generally almost twice as large as its nearest competitor. It will control vastly more spectrum than the other wireless companies. Moreover, the dominant local incumbent phone company in your state will gain a position of market dominance in wireless too.

Competition within the wireless market as well as competition between wireless and wireline will be weakened. As consumer choice is reduced and these dominant companies use their control of the local network to disadvantage stand-alone wireless companies, prices will rise.

That wireless phone service is a local service is clear, not only because spectrum is a local input, but also because over 80 percent of all wireless calls are intrastate. States have the authority to examine mergers, particularly when their impact on local market is so clear.

We urge you to take a close look at this merger, to gather your own data, or seek to review the data compiled by the Federal Communications Commission or the U.S. Department of Justice.

We would be glad to discuss our concerns at your convenience.

Sincerely,

Mark Cooper
Director of Research

Consumer Federation of America
1424 16th Street NW
Washington, DC 20036

Gene Kimmelman
Senior Director of Public Policy and Advocacy

Consumers Union
1666 Connecticut Ave. NW
Washington, D.C. 2009

Dealer wins case against Cingular, but gains little

BY DAN MEYER

A multi-year legal battle between Cingular Wireless L.L.C. and former Illinois dealer Kempner Mobile Electronics Inc. could be coming to an end as a jury again sided with Kempner in a ruling last week that followed a similar judgement from a separate jury trial last November. Both juries found Cingular guilty of fraud and tortuous interference in their dealings with Kempner.

The judge in the case ordered Cingular to pay Kempner nearly $22,000 in damages related to customers lost to Cingular, but ordered Kempner to pay more than $125,000 for equipment received from Cingular. The judge also denied Kempner's request for a jury to rule on punitive damages though Kempner owner Scott Kempner said he is planning to appeal the judgement.

"Kempner is planning on appealing the judge's ruling that foreclosed Kempner's ability to present the punitive damage question to the jury as well as the judge's ruling that foreclosed Kempner's abilities to prevent evidence of damages sustained as a result of Cingular's fraud and tortuous interference, which a jury ruled twice in Kempner's favor," Kempner said in a statement.

Kempner was originally seeking $25 million in punitive damages.

Cingular said in a statement that it had mixed feelings about the ruling.

"While Cingular Wireless respectfully disagrees with the jury's verdict, we are very pleased with the overall outcome and the court's decision that punitive damages are not warranted in this case," said Cingular spokeswoman Jennifer Bowcock in a statement. "The court has agreed that this dispute is, at its core, no more than a simple business disagreement."

Kempner hired this mobile billboard to try to solicit support from Cingular employees.

Kempner's claims against Cingular date back several years when Kempner originally filed a lawsuit alleging Cingular was stealing his customers by telling them they could only receive financial discounts on handsets if they were ordered directly through Cingular and not through Kempner's retail store.

Kempner eventually took his grievances to Cingular's door, hiring a mobile billboard company to drive around the carrier's Atlanta headquarters with a sign underlining his case against Cingular. The billboard also requested inside information from Cingular employees pertaining to the operator's alleged plans to put independent agents out of business.

Kempner won the original jury trial that took place last November including Kempner's claim of fraud and tortuous interference with perspective economic advantage, as well as counterclaims relating to accounts receivable for equipment and Cingular's claim that Kempner broke their contractual agreement by selling competing wireless services.

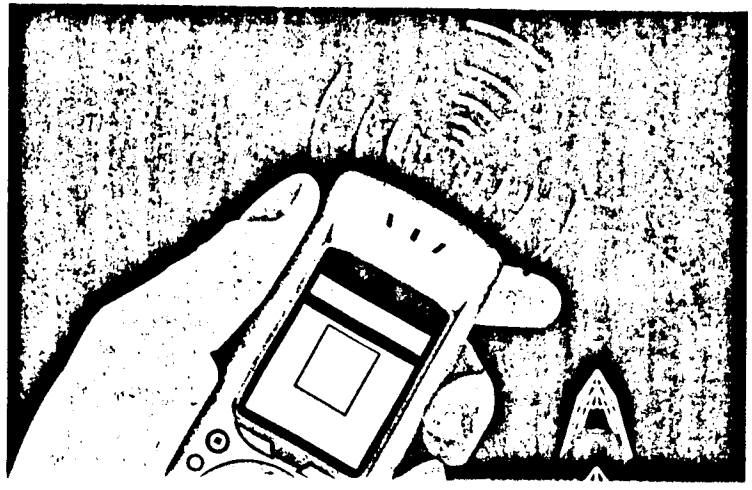
Cingular asked for and received a second jury trial on Kempner's tortuous interference and equipment receivable claims that Kempner again won earlier this month. The judge had originally approved a jury decision on punitive damages in June, but cited a lack of sufficient evidence that Cingular acted with intent to benefit from its dealings with Kempner in his recent decision, denying Kempner's request for a jury to decide on punitive damages. RCR

Bitfone buys Mobile Diagnostix to better differentiate in OTA space

BY SAM OMATSEYE

With a preponderance of smart cards on the market and the products getting cheaper, companies have been looking for ways to differentiate themselves. One viable answer has been by using over-the-air technology to manage smart cards.

One reason for the rise of OTA technology is such companies as Bitfone Corp., SmartTrust, Gemplus and Schlumberger are battling with a rash of smart-card makers out of Asia that have driven down



a predetermined list of preferred networks in a handset. But in an industry of changing network ownership, mergers and acquisitions and new applications, OTA technology comes in handy in helping to update the new preferred networks in a carrier group that handset customers may not be aware of as they roam.

"OTA can be used to update these roaming lists so the customer always roams onto the correct network—revenue always comes to the preferred partner," he said, adding

form will automatically install the right parameters, he noted.

With data services, operators can harness their OTA platforms to build a list of services, he said. All the user needs to do is scroll through them and click. No browser is necessary.

"The simplicity of these services has resulted in some enormous revenue increases and operators often state that it is the most effective way of offering data," he said.

Security and virus-related problems are also a good fit for OTA

REC

AUG - 9 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

----------X

DENNIS MOORE,

Plaintiff,

v.

CINGULAR WIRELESS,

Defendant.

----------X

Case No.: 02 C 02079

Honorable Judge: Plunkett

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF CROSS-MOTION TO STRIKE DEFENDANT'S AGENT DECLARATION AND TO RESPOND TO DEFENDANT'S MOTION TO STRIKE

PRELIMINARY STATEMENT

On December 18, 2003 Defendant filed a motion for summary judgment, pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, contending that there are no genuine issue as to any material fact and is entitled to judgment as a matter of law. Plaintiff filed a memorandum of law, in opposition on June 28 2004. On July 13, 2004, Defendant filed a Reply and a motion to strike Plaintiff's affidavit. This is a memorandum of law is in response to Defendant's motion to strike and in support of Plaintiff' Cross-motion to strike Defendant's agent, Cory Bolanowski, EEOC POSITION STATEMENT and her December 18, 2003 declaration.

STATEMENT OF FACTS

Plaintiff's memorandum in response to Defendant's motion for summary judgment clearly stated, "Defendant's argument raises several irrelevant issues that will not be addressed in this Memorandum."

The Plaintiff herein was representing himself initially, and then he obtained his current attorney. Plaintiff testified that he "neglected to give back to [his] newly assigned attorney one set of documents called: DEFENDANT CINGULAR WIRELESS' STATEMENT OF MATTER FACTS AS TO WHICH IT CONTENDS THERE IS NO GENUINE ISSUE.'" (See Plaintiff's accompanying August 9, 2004, affidavit)

Defendant's agent, Cory Bolanowski, works in the human resource Department. She never worked in the Purchasing Department; she never was the purchasing agent; she does not have any experience or knowledge in the Purchasing Field; she testified in a January 5, 2004 sworn statement, that she did not know the positions in the Purchasing Department and that she lacked knowledge in the Purchasing Field. (See Plaintiff's accompanying August 9, 2004, affidavit)

ARGUMENT

I. LOCAL RULE 56.1(b)(3) AND CASE LAW DO NOT PERMIT THE STRIKING OF PLAINTIFF'S ENTIRE RESPONSE TO MOTION FOR SUMMARY JUDGMENT.

Local Rule 56.1(b)(3) clearly states, "all material facts set forth in the statement required the moving party will be deemed to be admitted unless controverted by the statement of the opposing party." The case law defendant cites clearly does not require that plaintiff's entire response be stricken. Rather, the case law deems "plaintiff to have

admitted each of the factual statements in the movant's brief that were not properly denied." *Green v. Motorola, Inc.*, 1998 U.S. Dist. LEXIS 3595 (N. D. Ill. 1998).

The facts not responded to must be "material" before they can be admitted. Plaintiff stated that he will not be responding to "several irrelevant issues" that Defendant raises. The Defendant is being disingenuous in its argument. It raises these irrelevant issues to confuse Plaintiff and this Court and to redirect the controversy to immaterial matters. The Defendant is attempting to create a red herring in the hope of winning its argument. For example, the Defendant argues that the difference between the positions Financial Representative II and Buyer is only semantics.

In fact, there is a difference between the positions Financial Representative II and Buyer. To show there is a difference Plaintiff would need to raise several contentious facts and exhibits. Plaintiff would need to explain the history of both positions and how they are related to the Union. However, an argument to support the contention that the difference between Financial Representative II and Buyer is not semantics would be a waste of time and misleading to this Court.

The real issue is whether the difference between the positions Buyer and Purchasing Agent is only semantics. The Plaintiff in this case, was holding the position Buyer and he was seeking to be promoted to the position Purchasing Agent. The Plaintiff presented overwhelming evidence in his response that the difference between the positions Buyer and Purchasing Agent is not semantics.

The Defendant, in its declarations and memorandum of law did not refute the contention that the difference between the positions Buyer and Purchasing Agent is not semantics.

This Court must accept as admitted that Ms. Gail Schourek never applied for the Purchasing Agent position. Ms. Schourek, received this position in May of 2001, and the advertisement was made in June of 2001 (see Exhibit A & J to plaintiff's original affidavit in opposition to motion for summary judgment). Moreover, Exhibit E to plaintiff affidavit is a letter from Defendant's council confirming that "Schourek did not complete a written application." Nonetheless, defendant did not oppose this fact and thus, it should be admitted.

Defendant's contention of what exists in the "SCENDIS" report should also be stricken because the Defendant refused to disclose the entire report. The Defendant should not be allowed to make statements of what does exist in the report, while refusing to disclose it. Plaintiff Moore is entitled to the entire "SCENDIS" report to make a fair response to Defendants' allegations of what exists in this report.

Plaintiff was originally litigating this case pro se. In his August 9, 2004, affidavit he stated: "I had neglected to give back to my newly assigned attorney one set of documents called: DEFENDANT CINGULAR WIRELESS' STATEMENT OF MATTER FACTS AS TO WHICH IT CONTENDS THERE IS NO GENUINE ISSUE.'" Case law requires this Court to give more leeway to pro se litigants and they must be held to a less stringent standard than lawyers. Estelle v. Gamble, 429 U.S. 97, 106 (1976); Haines v. Kerner, 404 U.S. 519 (1972); Johnson v. Host Enterprise, Inc., 470 F. Supp. 381 (E.D.Pa. 1979).

Nonetheless, a Rule 56 response, to Defendant's contention that there is no genuine issue of material fact, has been submitted with this memorandum. As expected,

there is nothing new in this response and what is new is irrelevant or immaterial. Defendant was not prejudiced in any manner.

II. DEFENDANTS AGENT, CORY BOLANOWSKI, HAS NO EXPERIENCE OR KNOWLEDGE IN THE PURCHASING FIELD, NOR IS SHE AN EXPERT IN THIS AREA; THUS, HER OPINION AND ASSERTIONS REGARDING THE PURCHASING FIELD SHOULD BE STRICKEN.

Defendant's agent, Cory Bolanowski, works in the human resource Department. She never worked in the purchasing department; she never was the purchasing agent; she does not have any experience or knowledge in the Purchasing Field; she testified, in a January 5, 2004 sworn statement, that she did not know the positions in the purchasing department and that she lacked knowledge in the Purchasing Field. (See Exhibit 8 to Declaration of Shanthi Gaur in Support of Defendant's Response to Plaintiff's Second motion to Re-Open Discovery, dated January 6, 2004, and Plaintiff's August 9, 2004 affidavit.)

Cory Bolanowski's EEOC POSITION STATEMENT and her December 18, 2003 declaration, make assertions about the Purchasing Field as though she had extensive experience or is an expert in the Field. However, the fact that, in her January 5, 2004 sworn statement she confirmed that she does not have any knowledge in the Purchasing Field, should be more than sufficient to strike her declaration.

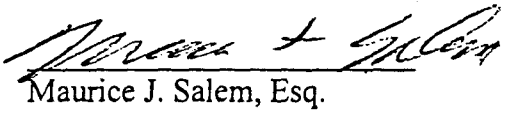
CONCLUSION

The Plaintiff being an African American within a protected class under title VII was qualified for the Purchasing Agent position as advertised by Defendant. He suffered

adverse employment action by not being given this position, for which he was the most qualified person for this position in his Department.

There are genuine issues of material facts in dispute and Defendant's motion for summary judgment should be denied in its entirety.

Dated: August 9, 2004
Palos Heights, Illinois

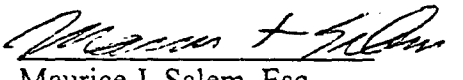


Maurice J. Salem, Esq.
P.O. Box 276
7400 Choctaw Road
Palos Heights, IL. 60463
(708) 448-4510
Fax. (708) 448-4515

CERTIFICATION OF SERVICE

I, Maurice J. Salem, am the attorney for Plaintiff and I hereby certify that I served a true copy of the above memorandum of law by depositing the same in a postage-prepaid envelope addressed to Defendant's Attorney, and caused said envelope to be placed in a United States mail box on August 9, 2004.

TO:
Littler Mendelson, P.C.,
Attn: Shanthi V. Gauer
200 North LaSalle Street, Suite 2900,
Chicago, Illinois 60601



Maurice J. Salem, Esq.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michael W. Dobbins
CLERK

Office of the Clerk

Dennis Moore
P.O. Box 957993
Hoffman Estates, IL 60195

Case Number: 1:02-cv-02079

Title: Moore v. Cingular Wireless

Assigned Judge: Honorable Paul E. Plunkett

SCHEDULE set on 7/14/04 by Hon. Paul E. Plunkett : ruling on motion for summary judgment is reset to 11:00 8/26/04 . Mailed notice

This docket entry was made by the Clerk on July 14, 2004

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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AUG - 9 2004

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

----------X

DENNIS MOORE,

Plaintiff,

v.

CINGULAR WIRELESS,

Defendant.

----------X

Case No.: 02 C 02079

Honorable Judge: Plunkett

PLAINTIFF'S AFFIDAVIT IN RESPONSE TO DEFENDANT'S MOTION TO STRIKE AND IN SUPPORT OF HIS CROSS-MOTION TO STRIKE

STATE OF ILLINOIS)
)ss.:
COUNTY OF COOK)

DENNIS MOORE, being duly sworn, hereby deposes and states:

1. I am the Plaintiff in the above captioned action and I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. I make this affidavit in response to Defendants' motion to strike and in support of my cross-motion to strike Defendant's agent, Cory Bolanowski, EEOC POSITION STATEMENT and her December 18, 2003 declaration.

2. I am qualified to be a Purchasing Agent. I have a certificate in purchasing management from Depaul University. At the Institute for Supply Management Inc. I became an accredited purchasing practitioner and a certified purchasing manager, see Exhibit A. I have experience in doing Purchasing Agent work for the Defendant herein. Exhibit B is my evaluation in which my supervisor stated in 2001 that I "carried a large portion of the work load in the Department for approximately two months, due to the departure of the Purchasing Agent."

3. The Purchasing Agent position that I applied for required the applicant to have at least 12 months time-in-title. Exhibit C is the online application that shows this requirement. Moreover, Exhibit D is a statement signed by my supervisor Martha Ann Morrison showing that she made a mistake by not considering the time-in-title requirement. Everyone in the Department and the Company understood that there was a time-in-title requirement.

4. I was required to submit a written online application for the position while Ms. Gail Schourek, who received the position, was not required to, nor did she, submit a written online application. Exhibit E is a letter from Defendant's council confirming that "Schourek did not complete a written application." Moreover, there is no evidence that she submitted an online application, but rather Exhibit J to my original affidavit shows that Gail Schourek was promoted to the Purchasing Agent position on May 4, 2001 prior to the position being posted online on June 12 2001, see Exhibit A to my original affidavit.

5. Defendant was initially against revealing Ms. Schourek's resume, but after filing a motion to compel Defendant reluctantly revealed it. Exhibit F shows that in June 2001 Ms. Schourek was a Purchasing Agent and in September 2000 she was a Buyer. She received a salary increase where she was making $15,000 more than Plaintiff. Exhibit F it also shows that Ms. Schourek did not meet the 12 months time-in-title requirement in her current Buyer position.

6. I remained as a Buyer and others in my Department remained as Buyers after the merger. The position of Finance Representative II was in the Accounting Department not the Purchasing Department. A Finance Representative II does not issue purchase

orders while Buyers do. Moreover, Ms. Bolanowski does not have any knowledge is this Field to make any declarations.

7. Exhibit G is an email from Plaintiff to the President of Cingular Wireless, Stephen Carter, and the CEO of SBC, Edward Whitacre Jr., informed them of the dispute in this action. They were further made aware of this discrimination by Moore deposition Exhibit 28, which is another e-mail from me to them. Moreover, Mr. Carter and Mr. Whitacre were continually kept informed of this matter and I had a face-to-face meeting with Mr. Carter regarding this matter. Nothing was done about it.

8. Exhibit H is another e-mail from Laura Patrick encouraging me to file an EEOC grievance based on her belief that I was discriminated against in regards to the Purchasing Agent position in the Purchasing Department. When I was promoted to Buyer I, Vickie Damato (CPM) became my supervisor.

9. I am by far much more qualified to be a purchasing agent then Ms. Gail Schourek. The difference in qualification is not even close. Most importantly, Ms. Cory Bolanowski does not have any experience or knowledge in the purchasing field and in this Purchasing Department to make any distinction between a Buyer and Purchasing Agent. I am much more qualified to make a distinction between a Buyer and a Purchasing Agent than Ms. Bolanowski, for I have a certificate in purchasing management from Depaul University, accredited as a Certified Purchasing Manager (CPM) and Accredited Purchasing Practitioner (APP) with the Institute for Supply Management, formally the National Association of Purchasing Management (NAPM). See Exhibits A & B. Ms. Bolanowski does not have any of these qualifications.

10. I was litigating this action pro se and I initially received all documents from defendant. I had neglected to give back to my newly assigned attorney one set of documents called: "DEFENDANT CINGULAR WIRELESS' STATEMENT OF MATTER FACTS AS TO WHICH IT CONTENDS THERE IS NO GENUINE ISSUE."

WHEREFORE, on the basis of the foregoing, the attached Exhibits and the accompanying memorandum of law, this Court should deny Defendant's motion for summary judgment in its entirety, together with such other further relief that this Court deems just and proper.

Dennis Moore

Dennis Moore

I declare under penalty of perjury and under the laws of the United States that the foregoing is true and correct. Sworn to before me on this 9th Day of August 2004

Luann Swichtenberg

Notary Public 8-9-04

"OFFICIAL SEAL"
LUANN SWICHTENBERG
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 02-24-07

DePaul University

This certifies that

Dennis Moore

has satisfactorily completed the

Certificate in Purchasing Management

Presented this 19th of June 2001

Dean, College of Commerce

Director, Management Development Center

PLAINTIFF'S EXHIBIT A

Institute for Supply Management, Inc.

ISM

Be it known that

Dennis Moore

has successfully achieved the prescribed requirements in education and experience as established by the Institute for Supply Management and is hereby awarded the designation of

Accredited Purchasing Practitioner

Registration No. *6099*

Issue Date: *January 04, 2002*

Expiration Date: *January 03, 2007*

R. David Nelson C.P.M., A.P.P.

Chair, ISM Board of Directors

Guy P. Buddle, C.P.M., A.P.P.

Chair, Certification Committee

Institute for Supply Management, Inc.

ISM™

Be it known that

Dennis Moore

has successfully achieved the prescribed requirements in education, personal development, and professional responsibility as established by the Institute for Supply Management and is hereby awarded the designation of

Certified Purchasing Manager

Registration No: *38254*
Issue Date: *March 27, 2002*
Expiration Date: *March 26, 2007*

R. David Nelson C.P.M., A.P.P.
Chair, ISM Board of Directors

Gary P. Bunker, C.P.M., A.P.P.
Chair, Certification Committee

SBC COMMUNICATIONS INC. AND ITS BUSINESS UNITS

ACHIEVEMENT AND DEVELOPMENT - Part A: Goals and Achievement Results

Name *Dennis Moore* Date 1/18/01

Title Buyer

Part I - Goals and Achievement Results

Corporate Goals:		
Increase shareowner value and achieve double digit earnings growth annually.	Focus on maximizing customer value through service quality and innovation to ensure SBC is the first choice in a competitive market.	Continue evolving the skills and diversity the employee team as SBC's competitive advantage.

Business Unit Goals:

Department Goals:

2000 - Achievements:

Merge Cellular One Purchasing Department and the Procurement Group from Ameritech into one unit. Convert purchasing from GEAC to Oracle.

Individual Goals: Areas of Focus

	What is expected	*What was achieved*
1	Goal	Achievement Results Carried a large portion of the work load in the department for approximately two months, due to the departure of the Purchasing Agent. Maintained lease files (Oliver-Allen) on approximately 250 pieces of computer equipment.
2	Goal	Achievement Results Assisted in the conversion of purchase orders from GEAC to Oracle. Signed on to CDW's (Computer Discount Warehouse) "Extranet", enabling me to track status of orders online that we have made with their company. Was given a password to facilitate that effort.

PLAINTIFF'S EXHIBIT B

	What is expected	What was achieved
3	Goal	Achievement Results Attended/completed seminar classes for all 4 modules of Nation Association of Purchasing Management (NAPM), after earlier attendind/completing NAPM sponsored class for new Buyers. Signed up for CBDisk, Government Publication for sales opportunities.
4	Goal	Achievement Results Currently attending Depaul University 24 week Purchasing Management Certificate Program. Passed the initial quiz which is microcosm of the NAPM CPM Exam.
5	Goal	Achievement Results Utilized SBC Intranet which enabled me to become more aware c existing Contracts such as Contract# 98005830 with Corporate Express in which I issued Purchase Orders 269405, 270165, 271102, 271241, 277778, 278603, 279762, 280970, 284575 and 288971.
6	Diversity Goal	Diversity Achievement Results Communicated with Christina Foster, SPHR, Vice President of Diversity and Certification, National Association of Purchasing Management (NAPM), in regard to joining the Minority and Wome Business Development Group. Betty Banks, contact person for thi group contacted me in regard to my expressed participation. Issued Purchase Order #269284 to Women Owned Business

Part II - Approval

Individual Goals: *Employee: Initial/Date* ___/___	Achievement Results: *Employee: Initial/Date* ___/___
Approved: *Supervisor: Initial/Date* ___/___	Approved: *Supervisor: Initial/Date* ___/___

Part III - Supervisor's Comments

Supervisor's comments regarding Goals and Achievement Results. Based on achievement of goals, the supervisor may note the employee's overall level of accomplishment. Note: The supervisor should complete *Documentation of Achievement Below Expectations* for employees not meeting expectations.

Dennis is the only surviving member of the Cellular One purchasing department and has made a tremendous effort to adjust to the new structure of the department. His will to succeed is commendable. He continues to build solid working relationships with user departments, and in the past months has begun taking NAPM classes.

This employee demonstrates an understanding and commitment to EEO/AA policies. ☐ Yes ☐ No

Part IV - Signatures

	Name	Title	Date
Supervisor:	Martha Morrison	Reg Purch Mgr.	01/19/01
Next Higher Manager:	[illegible]	DIR-ACCTG, & PS	1/22/01
Employee:	Dennis Moore	BUYER	1/19/01

Employee's Comments:

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This **is what you have told us. If you would like to make any changes, click your Back** Button. **Othe Submit at the bottom of the page.**

Name:	Dennis Moore
Address:	**2247** Pennview Lane
City:	Schaumburg
State:	IL
Postal Code:	**60194**
Country:	United States of America
county:	Cook
Email:	dennis.moore.jr@cingular.com
Phone:	**847-765-3639**
Alternate Phone:	**847-751-9019**
Social Security Number:	
Current Supervisor:	Martha Morrison
Current Supervisor's Phone:	**847 765-4548**
Position for **12** months+:	Yes
Supervisor Approval:	No
Satisfactory Last Review:	Yes
Disciplinary entries in last **12** mo:	No
Source:	Cingular.com Job Posting

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cingular-

PLAINTIFF'S EXHIBIT
C

company. An example of that was our past due balance with Ericsson last month (according to Roland Tunez, our ratio of past due to current invoices was 6%, while the rest of the company was at 48%).

- At times, I speak emphatically, a technique used by all managers to relay the importance of what is being said. If my subordinates find this type of communication uncomfortable, I would attribute it to the content of what I'm saying, rather than just the tone.

Have I made mistakes during my tenure? Of course. My most notable lapse has been regarding the time-in-title requirement. Quite frankly, I thought it only applied to departmental transfers, rather than being a requirement within a department.

My belief is that this whole incident - and the resulting reprimand - came about because Dennis Moore believed he should have been promoted to the professional level before Gail Schourek, another buyer in my department. I also believe the issue of a promotion would never have become an "issue" if my staff had been reclassified in February, 2001, as I had requested on February 7, 2001. The job mapping process from the spring of 2001 should have put Gail Schourek, Dennis Moore and Roger Reynolds in the "Buyer", or exempt position.

During my tenure, I have had a number of problems with Dennis. In retrospect, they seem to have begun shortly after I issued a verbal warning to him on the basis of a second violation of Company purchasing policy. Since that time, I have been subjected to an almost constant stream of indifference, bordering on outright disrespect, and several e-mails that - in my mind - attack me on a personal, as well as professional level. His latest e-mail, which prompted the investigation, actually accused me of illegal promotional activities, as with conspiring with an outside agency in hiring another staff member, Charles Smith. Yet, in my discussion with Tim, I learned that nothing was said to Dennis regarding the inappropriateness of this e-mail. On the contrary, taken at face value, Dennis's accusations resulted in a promotion being granted, which, in principle, I do not disagree with. However, by not informing him of my efforts to obtain promotions for all my staff in February, I believe HR has, in effect, negated any authority I have over Dennis for the next 30 to 60 days (the timeframe for closing the department). In addition, it also reinforces the belief that HR will give him whatever he wants, in spite of what the department manager says, and that he can say - or write - anything, however injurious, without suffering any disciplinary consequences.

I highly value my personal and professional integrity. While it is an important quality in any employee, it's doubly important in a purchasing professional because of the type of work we're required to do. As a result of Dennis's' last e-mail, I am firmly convinced that any hope I had of obtaining another position within this Company upon the closure of the Purchasing Department, has been destroyed. Not only because of what Dennis wrote, but also to whom he sent it.

As for the reprimand that is going to be placed in my file, I believe it to be completely unfair and unrelated to my most recent disagreement with Dennis. Its only specific reference is to unprofessional behavior on my part, relating to an incident which happened nine months ago. A criticism issued nine months after the fact, cannot be considered constructive and is contrary to the concept of Interaction Management taught in company management classes. The injustice of the reprimand being issued in response to an investigation of an e-mail from Dennis Moore that was full of falsehoods, half-truths and innuendoes, is extremely upsetting. Why HR insists that this reprimand be issued is incomprehensible to me. As I understand it, the Code of Business Conduct applies to all employees. I cannot help but feel that in this instance, the Company has let me down, not vice versa.

I understand that an unsigned copy of the reprimand will be included in my personnel file. I have forwarded this protest to Tim Smith and am formally requesting that my protest also be included.

Martha Ann Morrison

Martha Ann Morrison

PLAINTIFF'S EXHIBIT D

7/27/01

7/27/01

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NEW YORK
OHIO
PENNSYLVANIA
TEXAS
WASHINGTON

November 11, 2003

Kathryn M. Wilson
Direct: 612.313.7603
Direct Fax: 612.630.9626
kwilson@littler.com

Dennis Moore
P.O. Box 957993
Hoffman Estates, IL 60195

Re: Moore v. Cingular Wireless

Dear Mr. Moore:

Cingular Wireless opposes your motion to re-open discovery, as we did in open Court on August 16, 2003. Notwithstanding our objection, and in the spirit of cooperation, I write to respond to your voicemail of November 9, 2003, in which you requested that Cingular Wireless provide you a copy of Gail Schourek's "application for the purchasing agent position." As you may recall, Cingular Wireless explained in its Position Statement that Schourek was offered the Buyer position (which you refer to as the "Purchasing Agent" position), in part, because her immediate experience was in facilities buying, she was believed to be a strong performer, her workload had increased a great deal in the preceding months, and Cingular Wireless wanted to reward her for her extra effort. Schourek did not complete a written application. We produced Ms. Schourek's file in its entirety.

Your voicemail also seeks documents responsive to Request for Production of Documents No. 2, i.e., "all documents, e-mail transmissions, and/or communications relating to the advertising of the Purchasing Agent position." These documents were provided to you during your deposition on June 13, 2003, and are exhibits 7, 8, and 9 to your deposition transcript.

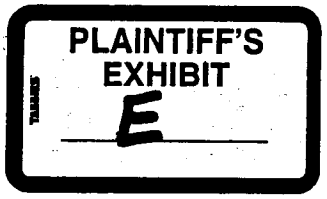
Should you have any questions, feel free to call me directly at 612.313.7603.

Very truly yours,

Kate

Kathryn M. Wilson

KMW/rss



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July 30, 2003

Kathryn M. Wilson
Direct: 612.313.7603
Direct Fax: 612.630.9626
kwilson@littler.com

Dennis Moore
P.O. Box 957993
Hoffman Estates, IL 60195

Re: Moore v Cingular Wireless

Dear Mr. Moore:

Pursuant to your request, we have located a resume of Gail Schourek, which had been removed from her personnel file.

Very truly yours,

Kathryn M. Wilson

KMW/amr
Enc.

MINNEAPOLIS:42811.1 037594.1004

PLAINTIFF'S EXHIBIT F

GAIL A. SCHOUREK

404 Fieldstone Lane Hampshire, IL 60140 847/ 683-9002

EDUCATIONAL BACKGROUND

Northern IL University • Master of Science, Professional Resources & Services 1994-95 Who's Who
Northern IL University • Bachelor of Science, Textiles, Apparel & Merchandising w/ Honors
Northern IL University • Bachelor of Science, Education w/Honors

SKILLS AND ABILITIES:

- Flexible; readily adapts to changing environment and new procedures while making a positive impression as a management representative.
- Excellent organization skills include effective planning, scheduling, coordinating resources and implementing plans.
- Consistent, dependable and accurate in carrying out responsibilities to a successful conclusion.
- Self-motivated; sets effective priorities to achieve immediate and long-term goals; meets operational deadlines.
- Strong interpersonal skills gained through interaction with diverse professionals, clients, and staff.
- Excellent oral and written communication skills.
- Strong leadership skills in team environment; equally effective working independently.
- Problem solving ability; able to find practical, workable solutions.
- Proficient in software applications including Microsoft Word, Excel, PowerPoint, Access and Oracle.

EMPLOYMENT HISTORY

CINGULAR WIRELESS (Formerly AMERITECH/SBC Wireless)
Purchasing Agent SBC/Cingular Wireless June 2001 - Present

- Manage daily purchasing activities related to facilities, collateral printing, and construction and real estate.
- Coordinate account maintenance for new stores and offices with Fixed Assets and Project Tracking.
- Actively control and maintain open blanket order and releases in excess of $10 million annually.

AMERITECH /SBC WIRELESS
Buyer SBC/Cingular Wireless Sept 2000 – May 2001

- Recognized as sole Buyer to achieve year-end zero balance goal for invoice discrepancies.
- Source materials, solicit bids, analyze quotations and process orders.
- Resolve order discrepancies, quality issues and supplier problems.
- Serve as liaison for new office supply account requests with Boise Cascade Office Products.
- Identify account coding problems to insure apportion costs by customer base are accurate.

Executive Assistant to CFO Ameritech Cellular & Paging 1997 – 2000

- Provide administrative support to Vice President of Finance and two Directors on a day to day basis including organization of meetings and materials, scheduling internal and external appointments, preparation of financial reports and presentations, correspondence, travel arrangements; skilled in all aspects of job
- Administer database for Distribution Payment Services and Dealer Activations and Credits..
- Prepare contracts for Director of Purchasing; upgrade and restructure contract-filing system.

EMPLOYEMENT HISTORY continued

MANPOWER 1997

Contract Employee for several corporations in the Northwest suburban area.

- Manage satellite office; coordinate records with central and regional facilities.
- Coordinate temporary staffing needs of departments with outside agencies; review resumes, recommend candidates and schedule interviews.
- Organize past records of staffing needs by company/division for analysis and reporting.

NORTHERN ILLINOIS UNIVERSITY 1991-1996

Instructor/Internship Coordinator

- Assemble and organize resource materials for course curricula, instruct classes; supervise internship program.
- Assist with conference planning; prepare budget, develop and correlate promotional materials, arrange appropriate facilities and resources.
- Serve on committees to improve processes, address issues and increase student satisfaction.

VENTURE STORES 1977-1996

Various Positions

- Manage various retail areas; responsible for planning, set-up, merchandising, inventory and scheduling resulting in improved store/department position within region.
- Order front-end merchandise and publications for the store.
- Analyze store merchandise models and research inventory position within district to maximize stock distribution.
- Recommend upgrades on stock positions and transfers to regional coordinator.
- Improve damage/loss position by developing sources for repackaging programs.
- Supervise Customer Service operations resulting in minimized loss, greater accuracy and improved customer satisfaction.

PROFESSIONAL ASSOCIATIONS

National Association of Purchasing Management

ACTIVITIES AND HONORS

- United Way Volunteer
- Who's Who at American Universities 1994-95
- Kappa Omicron Nu Honor Society
- Graduate Colloquium Committee
- College of Health and Human Sciences' Student Advisory Committee
- School District 300 School Improvement Committee Facilitator

References available upon request.

BOLANOWSKI, CORY

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REDACTED

—Original Message—
From: MOORE JR, DENNIS (SBMS) [mailto:dennis.moore.jr@mwmail.cingular.com]
Sent: Monday, September 24, 2001 5:46 PM
To: Johnson, Gloria (Cingular)
Cc: Carter, Stephen (Cingular); Feidler, Mark (Cingular); Whitacre Jr., Edward E (Sbc-Msi); Jensen, Russ (Cingular); Walker, Lew (Cingular); Bradley, Rick (Cingular); Sutton, Maureen (Cingular); Keathley, Tom (Cingular)
Subject: "Follow-up to our Meeting"

Gloria,

although in your letter to me dated September 18, 2001, you indicated to me that "any further communication on this issue should be directed to our legal department", due to my recent filing of an EEOC charge, I feel compelled to set the record straight with you. I never "demanded" three years of salary payment and three years of medical benefits coverage. I indicated to you and others at Cingular Wireless what I would consider to put this matter behind us. Again, you and Cingular have been very loose with words and terminology, such as "mapping", "Finance Representative II", "Buyer", "most qualified candidate", "erroneously listed" and "continued to mischaracterize the events". I think that I understand the English language pretty well, but I think that what you and Cingular have done is twist and contort this English language to defend yourself against the indefensible. **There simply is no way to defend against this company advertising for a Purchasing Agent position with the express indication/requirement of the applicant needing to be in their current position for a minimum of a year, then giving the position to a white female being in her position for less than a year, and not giving me, a black male that has been in his current position for more than a year, the courtesy of interview for the position.** For some reason in all of our discussions over the last several weeks, Cingular has not en attempted to address that particular issue, which dis-qualifies Gail Schourek on ots face.

It was you, and later Maureen Sutton, that I give Cingular Wireless more time to consider my proposal, which both you and her "mischaracterized" as a "demand".

September 24 - VP of Diversity... | June 21A.doc | Authorization Level.doc | Detante3.doc | Growing Pains!!!!4.doc | Resume4.doc

Dennis

PLAINTIFF'S EXHIBIT G

MOORE DEPOSITION EXHIBIT 25 6/13/03 BJP

September 24, 2001

Gloria L. Johnson
Vice President of Diversity
Cingular Wireless
5565 Glenridge Connector
Suite 700
Atlanta, GA 30342

Ms. Johnson:

I am having great difficulty understanding how you and Cingular can persist in stating that my e-mails "continue to reflect an inaccuracy about the job titles." It is beyond me how I can be interviewed for the position of Buyer in the latter part of 1999, get promoted into that position, then you tell me that "in June 2001, I held the position of a non-exempt Finance Representative II." You then go on to state that "Although this position may have been commonly referred to as a **Buyer** , this was not the proper title, because a Buyer is a higher level, exempt position under the new Cingular mapping." Then, there is a need to "promote" me back into the **Buyer** position. All of that sounds like doublespeak to me. Here I have been walking around for the last couple of years with business cards indicating that I am a Buyer, my "Achievement and Development" form dated 1/18/01 and signed off on by the Regional Purchasing Manager, Martha Morrison, and the Director of Accouting Operations, William (Bill) Perry, indicating that I am classified as a **Buyer,** and you tell me that I am a "Finance Representative II".

I am having the same degree of difficulty reconciling and understanding how you and Cingular Wireless can state that **"the Company strongly believes that the most qualified candidate was selected for the new Buyer position**, which you now say was erroneously listed as "Purchasing Agent", especially considering the fact that the white female that was selected did not meet the requirement of being in current position for a minimum of 1 year, and that I was never really a candidate, for I was not afforded the opportunity of an interview for the position. This white female was dis-qualified for consideration for this position by virtue of her not meeting the time requirement, not to mention the fact that I had more Oracle purchasing experience than her. You, and Cingular Wireless, conveniently dismiss the fact that I have issued purchase orders for the company for more than $38,000,000.00, while saving the company countless of thousands of dollars due to my experience, while the white female selected for the position (Gail Schourek) had issued purchase orders for less than $30,000,000.00. If you can not gauge the experience and effectiveness of Buyers on those figures alone, I am not sure what you can gauge the Buyers on. Perhaps, one could gauge them on their having a Certificate in Purchasing Management from DePaul University, which I have, while the white female that you have indicated is the most qualified, does not.

Recent rulings of law have indicated that in the absence of evidence of blatant racial discrimination, inferences of racism and discrimination, such as my being the only black person in the Purchasing Department, being continually subjected to being berated in full view of other employees by the white female Purchasing Manager, such as has been the case with me, being the lowest paid employee in the department, despite the fact of being the senior employee in the department, having the lowest authorization level (SOA), and being passed over for the Purchasing Agent position, can be drawn. That is not defensible, no matter what your "investigation" tells you. You work for the company and your position was created just for this particular purpose, to diffuse situations such as this....what else could you possibly say?

It is also sad, that you, a black female, presumably knowing something about the history and legacy of racism and discrimination in this country, when presented with the facts and circumstances surrounding this Purchasing Agent situation, can state: **"Our investigation revealed that the selection of the candidate (Gail Schourek) was reasonable, fully defensible and involved no element of racial discrimination."** Again, I state, this white female did not meet the posted and advertised requirement that the candidate had been in her current position for a minimum of 1 year. That is indefensible!

When you requested of me in your e-mail of 9/7/01 to **"Please give us an opportunity to thoroughly review your concerns"** , I now realize that it was only a ruse for you and the Company to formulate more doublespeak in an attempt to defend the position that you ultimately took, as expressed in your letter to me dated September 18, 2001. You never intended to seriously consider my proposal. Maureen Sutton's voice-mail message and e-mail to me that ill-fated day of September 11, 2001, was another attempt at staving off what I had been indicating to you and the company all along, that I had the intent to file a complaint of racial discrimination with the EEOC in regard to the Purchasing Agent situation, and ultimately, a federal lawsuit, for I am convinced beyond a shadow of a doubt that what has been done to me is patently illegal and discriminatory. There is also a violation of the Equal Pay Act to be considered in this.

It is very curious also as to why Gail Schourek would resign from the company about a week ago, especially after being deemed "best qualified" for the "Buyer" position, and being selected for the coveted Purchasing Agent position.

You stated in your letter : **In fact, there is and was not a position with the title of "Purchasing Agent"**, yet I have the business card of Charles Smith in our department specifically reading "Purchasing Agent, and Gail Schourek identified herself at that online requisition training session as Purchasing Agent. Are you to have us to believe that Cingular would have business cards printed up indicating titles that are non-existent? I have your card which indicates VP of Diversity, Maureen Sutton's which indicates Counsel – Labor & Human Resources, Tom Keathley's, which indicates Executive Director Supply Chain Management Network, David Sophie's, which indicates Director, GP&S Supply Chain Management, Martha Morrison's, which indicates Regional Purchasing Manager, Anthony Colon's, which indicates Systems Analyst RF Staff, Dianna Baylen's, which indicates Unix Systems Engineer, Marc Fawcett's, which indicates Manager – Staff Support, yet, you tell me that all along I have been mis-categorized as A "Finance Representative II", despite the fact of my business card indicating from day 1 that I am a **Buyer**. That is too convenient!

It was only after I protested my being passed over for the Purchasing Agent position , that Cory Bolanowski in HR deemed it necessary to correct/change my title from the alleged "Finance Representative II" to Buyer.

Contrary to what you have stated in your letter, It is truly unfortunate on your end that Cingular Wireless has continued to mischaracterize the events that have taken place, and no recitation of the facts in your response has clarified any of the events for me, other than the fact that you and the company will do and say anything to obfuscate the events and circumstances surrounding the selection of a white female for the position of Purchasing Agent.

There is an in-escapable fact that you and this company is and has attempted to ignore, that the position of Purchasing Agent was posted with the requirement that the candidate meet the requirement of being in their current position of a minimum of 1 year. I was the only one that met that requirement! The position was given to a white female with less experience in the department than me.

Perhaps what is most disturbing, egregious and contemptible about how Gail Schourek got the Purchasing Agent position was the fact that it was an orchestrated and conspired effort on the part of whites, as indicated to me by Regional Purchasing Manager Martha Morrison. In that meeting of June 21, 2001, in which I thought would be my interview for the position, Martha Morrison apologized and told me that "they", meaning Kelly Waite and Tim Smith, wanted to give the position to Gail. She also gave me an SBC document that was to bring about the title of Purchasing Agent for Gail. This document (SBC Communications Inc. – "Position Questionnaire") actually created a Purchasing Agent position, where there was none previously. This document is the "smoking gun" . This is not a document that I conjured up, for it was the first time that I had ever seen such a document. This document was further identified and described the position that Gail Schourek was to inherit as **Purchasing Agent – Facilities**, a copy of which I furnished you at that meeting down in Atlanta on August 31, 2001. You simply do not advertise for a position if it is the intent to give it to someone, especially if you indicate in that advertisement or posting that the candidate needed to meet a requirement of 1 year in current position, which Gail clearly did not meet. This is an indefensible position for Cingular Wireless to even attempt to defend.

MOORE JR, DENNIS (SBMS)

From: PATRICK, LAURA (AIT)
Sent: Monday, June 25, 2001 10:47 AM
To: MOORE JR, DENNIS (SBMS)
Subject: RE: Purchasing Agent!

Dennis,

I knew that the situation would come down to my response! Brother run not walk to you nearest Union rep and get this documented. It you are not satisfied with the rep's recommendation then hire you a labor lawyer and file an EEOC grievance.

I'm so sorry you are going thru all the bull! In your lifetime you have to decide what fights is worth fighting and Dennis this is one of them!

Keep me abreast of your activity.

God Bless you! And this to shall pass!

Laura

-----Original Message-----
From: MOORE JR, DENNIS (SBMS)
Sent: Monday, June 25, 2001 9:08 AM
To: PATRICK, LAURA (AIT)
Subject: Purchasing Agent!

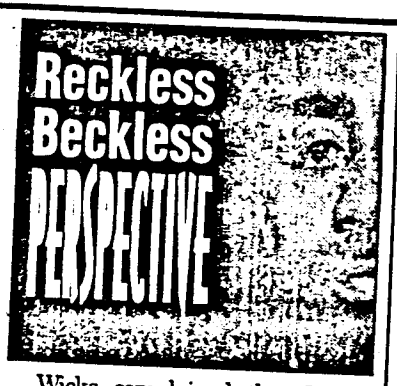
Laura,

in view of your experience in Purchasing, what do you make of the attached?

Dennis << File: June 21Purchasing Agent1.doc >> << File: Detante3.doc >> << File: Authorization Level.doc >>

PLAINTIFF'S EXHIBIT
H

Does Cingular deserve our business?



by Ferman Mentrell Beckless

The answer is cloudy right now.

Just ask Christopher Graham, Carl Blackmon, Edward Wicks, Dennis Moore and Ramon Hayes. All five men have either worked with or contracted with Cingular Wireless and all have pending cases against the communications giant, alleging discrimination against Blacks and other minorities.

The biggest case yet to be heard is that of Wicks, a former South Side businessman who said in his complaint that Cingular convinced him to close his business and become an exclusive agent with the Atlanta-based company. Wicks is suing for $600 million.

Wicks said he entered into a contract with Cingular on Jan. 15, 1997 and remained with the company until Feb. 27, 2002, doing business as an authorized agent under the name Mercedes Wireless, Inc.

In his complaint, filed in U.S. District Court in Chicago, Wicks, a Robeson High School graduate, said he sought to modify the contract, which would've allowed him to become a full-service agent where he could sell prepaid and postpaid wireless service. Wicks said Brian Lettrich, a white manager at Cingular, refused to modify the contract and told Wicks that he will not do well as a full-service agent in his neighborhood.

Wicks operated out of a location in the 200 block of East 69th Street,a neighborhood that hasn't seen a white resident since maybe the end of World War II.

During the last quarter of 1997, Wicks said there was a great demand for postpaid wireless service. He sought to modify his contract to become a contract dealer. This time, the Cingular manager he dealt with was Sal Moline, a Hispanic American.

Wicks said Moline granted him his wish and the ensuing deal benefited both Wicks and the community because postpaid contracted services were a much better deal that prepaid. He said his business skyrocketed in selling postpaid contract services. Wicks also said his increased sales also increased Cingular's bottom line. But he wanted to expand to the point of becoming a "Sales and Service" Dealer.

Jim Moen, part of Cingular's management team, and others recognized Wicks' success at his location. Wicks said if a white dealer had

Wicks complained that Moen, Lettrich, Laura Price, and Scott Nichole, all Cingular managers, commenced a concerted effort to put Wicks out of business. Wicks also said his customers were not properly serviced and Cingular withheld commissions. He alleges that Cingular intentionally erred when billing his customers, which caused customers to discontinue their service.

The bewildered dealer said when the customers reinstated, their accounts became corporate accounts and he was forced to pay back commissions after having lost the customer.

Wicks also alleged in his complaint that Price made racist comments toward him and adding insult to injury, he said Price called him a "Boy that did not know how to run his business" in front of her co-workers and to Wicks.

In Sept. 2002, according to Wicks' complaint, Moen threatened him, saying if Wicks goes over his (Moen's) head that would be the end of Wicks, relationship with Cingular. The complaint also alleges Nichols called Wicks "ignorant" because Wicks stated that it is wrong for Cingular to hold his commissions and residuals and pay him as late as they wanted and at the same time complain he is past due on his equipment bill.

These actions, according to Wicks, prompted him to attend Cingular's shareholders meeting in the summer of 2001 where he spoke with officials and explained the treatment he was receiving. At that time, Wicks said he figured on getting things straightened with the company. What he hadn't figured, was that he would start getting commission checks for just $1.00 per month.

Wicks said he was also told in order to stay in business he would have to sell cellular phones from the trunk of his car.

Sylvia Manrique, a spokeswoman for Cingular Wireless, said Thursday: "It is Cingular's policy not to comment on pending litigation. Cingular Wireless values and includes all types of individuals. It is our goal to practice inclusion and celebrate diversity."

The allegations are too numerous to mention in this space. But for his trouble, Wicks will likely go before a mostly white federal jury to award him $600 million he's seeking. Will he get it? That all depends on the jury.

As it stands, I don't look forward to doing business with any company that operates in this man-

IDOT, Tas
in harmony
reconstr

The Illinois Department of Transportation (IDOT) will submit the final Dan Ryan reconstruction plan to the Federal Highway Administration (FHWA) for approval with the blessings of The Dan Ryan Task Force, according to IDOT Secretary Tim Martin.

After a series of meetings with the Task Force, Martin said he expects the FWHA to approve the final plan and release the more than $430 million due IDOT for the rebuilding of the troubled expressway.

"We've had preliminary discussions with the feds," Martin said Thursday. "We've been keeping them up to date on what,s going on. We have not superceded the intent of the Task Force.

"It appears as though the consensus will be to move ahead with the project. We will finalize the plans and the discussions that we had with the Task Force and do a formal submittal."

According to traffic studies, the Dan Ryan is one of the busiest and most dangerous expressways in the nation. It currently accon more than 300,000 daily, which is m double what it was to carry when it wa in 1962.

With nearly 8,200 and more than 2 reported over a th period, the expre averaging appro seven accidents per

Currently, the Transit Authority making improvemen "Red Line," which r down the middle of Ryan from 31st Streets. Martin said reconstruction is co with the CTA and th Skyway, which is under reconstruction

The Ryan recon will also include r sures, but Martin main project won until next year.

"Some work, whic impacted by any of closures has alread place," Martin said also applauded t Force for its work, "The Dan Ryan Ta

State rules self-defens

The Cook County State's Attorney's Office declined to bring murder charges against an unidentified assailant who allegedly stabbed a 29-year-old man to death during an altercation in the 2300 block of South State Street late Wednesday afternoon.

The victim, identified by the Cook County Medical Examiner's Office as Jermaine Woodard, was engaged in a verbal altercation with his assailant just after 6:30 p.m. Police reports indicate the assailant stabbed Woodard in the chest and was immediately apprehended by police.

A police department News case self-defense an comment further.

Woodard was pronou on the scene.

In an unrelated stabb Area 1 Homicide Inv were seeking the boyf 36-year-old woman stabbed to death durin cation at a residence in block of South Peoria.

The Cook County Examiner's Office iden woman as Shirley S was pronounced dead tiple stab wounds jus p.m.

The woman's u boyfriend immediatel