

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Cingular Interactive, L.P.) File No. 0000226552
)
Showing of Substantial Service Pursuant to)
Section 90.665(c))

ORDER

Adopted: October 26, 2001

Released: October 26, 2001

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order addresses the Notification of Construction filed by Cingular Interactive, L.P.,¹ pursuant to section 90.665(c) of the Commission’s rules, 47 C.F.R. § 90.665(c),² with respect to licenses it holds in the 900 MHz Specialized Mobile Radio (SMR) service. In that filing, Cingular Interactive contends that it is providing “substantial service” in its licensed markets in compliance with the Commission’s construction requirements. Cingular Interactive states that its 900 MHz SMR system operates as an integrated, nationwide network, and that, due to the nationwide nature of its system, it is appropriate to review its substantial service showing in the aggregate rather than on a license-by-license basis. Cingular Interactive states that, at a minimum, the system will provide coverage to at least 30 percent of the population in each of its licensed markets by its construction deadline. We conclude that Cingular Interactive’s Notification does not meet the requirement of our rules, both because we disagree with Cingular Interactive’s interpretation of our rule and because Cingular Interactive’s showing is predicated on actions yet to be taken. Because, however, we wish to remove uncertainty regarding our evaluation of the specific showings provided by Cingular Interactive and to provide guidance for other providers regarding the meaning of “substantial service” for this service, we issue, on our own motion, the following declaratory ruling.³ As

¹ On February 5, 2001, the name of the licensee was changed from BellSouth Wireless Data, L.P., to Cingular Interactive, L.P.

² Bell South Wireless Data, L.P., Notification of Construction, File No. 0000226552, filed September 30, 1999 (Substantial Service Showing).

³ The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion, issue a declaratory ruling terminating a controversy or removing uncertainty. *See* 5 U.S.C. § 554(e); 47 C.F.R. § 1.2. In circumstances in which a licensee is uncertain as to whether it is satisfying the substantial service requirement, it has the option to file a proposed substantial service showing prior to its five-year construction deadline, and seek a declaratory ruling as to whether such showing meets the construction requirement. *See* In the Matter of Paging Network, Inc., Request for Waiver of Section 90.665 of the Commission’s Rules Relating to the Construction of 900 MHz SMR MTA Facilities, *Order*, 15 FCC Rcd 12141, ¶ 12 (2000).

discussed below, we conclude that Cingular Interactive will be providing substantial service in each of its licensed market areas if it achieves, by the applicable construction deadline,⁴ the level of construction specified herein.

II. BACKGROUND

2. Cingular Interactive currently holds 85 licenses in the 900 MHz SMR band in 49 MTAs.⁵ Thirty-nine of these licenses, in 27 MTAs, are at issue here.⁶ Section 90.665(c) of the Commission's rules provides that each MTA-based 900 MHz SMR licensee must construct and put into operation a sufficient number of base stations for each license to provide coverage to at least one-third of the population of that MTA within three years of the original license grant and two-thirds of the population within five years. In the alternative, a licensee may elect to demonstrate that it is providing substantial service to the population of the MTA five years from original license grant.

3. In an August 17, 1999 filing, Cingular Interactive elected to demonstrate substantial service with respect to 39 of the 900 MHz SMR licenses it held at that time.⁷ On September 30, 1999, Cingular Interactive filed the instant Notification of Construction, which included a proposed substantial service showing with respect to those 39 licenses, which were in 27 of its 49 MTAs. Cingular Interactive also filed supplements to its substantial service showing on February 21, 2001, and May 2, 2001.⁸

4. In its substantial service showing, Cingular Interactive provides the following information regarding its services in the 900 MHz SMR band: Cingular Interactive's network encompasses 49 of

⁴ The Wireless Telecommunications Bureau recently extended the construction deadline for 900 MHz SMR MTA licenses from August 12, 2001, to December 31, 2002. See FCI 900 Inc. Expedited Request for 3-year Extension of 900 MHz Band Construction Requirements and Newworld License Holdings, Inc. Request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling, *Memorandum Opinion and Order*, DA 01-1297 (WTB rel. May 25, 2001). Accordingly, Cingular Interactive must meet its substantial service requirements, as defined in this order, by the latter date.

⁵ The 900 MHz SMR band is divided into 20 ten-channel blocks in each of 51 service areas that are known as Major Trading Areas (MTAs). Of the 49 markets in which Cingular Interactive is licensed, there are 31 MTAs in which Cingular Interactive holds multiple channel blocks.

⁶ On August 17, 1999, Cingular Interactive notified the Commission that it had satisfied the two-thirds coverage requirement for 45 of its MTA licenses in its other 22 MTAs. See BellSouth Wireless Data, L.P., Notification of Construction, File No. 0000025493, filed August, 17, 1999. That notification of construction was granted on September 18, 1999. One of Cingular Interactive's licenses, Call Sign KNXX957, was acquired from CommNet Communications Network, Inc. See BellSouth Wireless Data, L.P., Application for Assignments of Authorization and Transfers of Control, File No. 0000211866, filed October 18, 2000. The Commission approved the assignment on November 4, 2000. Cingular Interactive has not filed a Notification of Construction for Call Sign KNXX957. Accordingly, Call Sign KNXX957 is not being considered here. This Order only addresses the 39 licenses identified in Cingular Interactive's September 30, 1999 filing, which cover a total of 27 markets.

⁷ BellSouth Wireless Data, L.P., Notification of Construction, File No. 0000025494, filed August 17, 1999.

⁸ BellSouth Wireless Data, L.P., Notification of Construction, Supplement to Substantial Service Showing, File No. 0000226552, filed February 21, 2001 (Supplement to Substantial Service Showing); BellSouth Wireless Data, L.P., Notification of Construction, Minor Amendment to Showing of Substantial Service, File No. 0000226552, filed May 2, 2001.

the 51 MTAs in the 900 MHz SMR service, *i.e.*, serving the continental United States, Alaska, and Puerto Rico. In the aggregate, Cingular Interactive had, at the time of filing, over 600,000 end users, and it estimated that 40,000 or more new users would be added to the system each month. With respect to actual constructed facilities, Cingular Interactive had placed into operation more than 2,000 base stations, with plans to construct more than 350 new base stations in 2001.⁹ On an aggregate population basis, Cingular Interactive provided coverage to more than two-thirds of the entire population of the United States, or approximately 182 million people, network-wide. A breakdown¹⁰ of all MTAs in which Cingular Interactive operates reveals that for each licensed channel block held in 15 of those MTAs, Cingular Interactive provided coverage to more than 75 percent of the population of the market, and its system served seven markets at the 66 to 74 percent level. Of the markets in which Cingular Interactive was providing service below the two-thirds coverage level, twenty-one of Cingular Interactive's MTAs had reliable coverage between 33 and 65 percent for each licensed channel block. In the remaining six markets, Cingular Interactive states that it will cover at least 30 percent of the population for each license held in those MTAs by the construction deadline.

5. Cingular Interactive argues that the integrated nature of its data network makes it appropriate for the Commission to evaluate its substantial service showing in the aggregate. It asserts that section 90.665(c) does not necessarily require the Commission to evaluate whether a licensee is providing substantial service within any individual license area and that the Commission, in setting out the alternative substantial service showing, recognized that strict adherence to a market-by-market analysis would be inappropriate in the case of large networks. Instead, Cingular Interactive maintains, the nationwide scope of its services as a whole, as well as the nature of the technologically sophisticated services it offers, are appropriate criteria by which to judge its substantial service showing. By these criteria, argues Cingular Interactive, it has fully met the construction and implementation requirement set out in section 90.665(c).

III. DISCUSSION

6. In setting out the specific construction requirements for the 900 MHz SMR service, the Commission found that the use of substantial service as a construction standard is appropriate for this band "because several current offerings in this band are cutting-edge niche services."¹¹ The Commission concluded that, in determining substantiality, it "may consider such factors as whether the licensee offers a service that covers multiple MTAs or is offering an otherwise specialized or technologically sophisticated service that does not require ubiquitous service to be of benefit to customers."¹²

⁹ Cingular Interactive added more than 250 base stations to its network in the interim between the filing of the original construction notification on September 30, 1999 and the February 21, 2001 supplement. *See* Supplement to Substantial Service Showing, p. 2.

¹⁰ The breakdown describes the level of coverage provided in each channel block held by Cingular Interactive within an MTA.

¹¹ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Implementation of Sections 3(n) and 322 of the Communications Act, PR Docket No. 89-553, PP Docket No. 93-253, GN Docket No. 93-252, *Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 6884, ¶ 41 (1995) (*900 MHz SMR Second Report and Order*).

¹² *Id.* at ¶ 4.

7. Based on the specific construction standards applicable to the 900 MHz SMR service, we do not agree with Cingular Interactive's assertion that, due to the integrated nature of its system, we should evaluate the sufficiency of its showing according to the level of construction across the entire network as a whole rather than by reviewing each MTA license individually. We evaluate such showings on a license-by-license basis. In markets in which a licensee holds multiple channel blocks, the licensee must satisfy the Commission's construction requirements for each block it holds within that MTA. We do conclude, however, that the nationwide nature and scope of the network is relevant under the service's construction standards in determining the sufficiency of service in each of Cingular Interactive's individual license areas.¹³ Cingular Interactive's service is deployed specifically as an integrated, multi-MTA system such that every subscriber has access to all of the facilities within the network when traveling outside his or her MTA. The *900 MHz SMR Second Report and Order* states that we may consider the extent to which a licensee provides service to multiple MTAs as a factor in evaluating substantial service. Accordingly, because Cingular Interactive's system operates as a nationwide network, we consider as relevant the extent of coverage available to subscribers throughout this 900 MHz SMR system in evaluating substantiality in individual MTAs. We note, however, that, under the Commission's 900 MHz SMR standards, significant construction across a multi-MTA system will not be sufficient to remedy a failure to construct with respect to a particular license. Construction must occur in each individual license area, on each licensed channel block, in order to comply with the Commission's construction requirements.

8. Based on the totality of Cingular Interactive's showing, we find that Cingular Interactive will comply with its construction obligations if it builds out its system as described in this Order. We conclude that Cingular Interactive's actual number of end users,¹⁴ current population coverage in certain markets, current base station buildout, and technologically sophisticated service offerings --- if combined with the further construction that Cingular Interactive projects, as described below --- will constitute substantial service for each of its licenses.

9. We start with the population coverage provided by Cingular Interactive's network. Of the 27 MTAs here at issue, we note that Cingular Interactive currently provides service at a level covering between 33 and 65 percent of the population in 21 of those markets, where it holds 31 licenses. In the remaining six markets, where it holds 8 licenses, Cingular Interactive projects that it will provide coverage of at least 30 percent of the population by its construction deadline. Our finding that Cingular Interactive's projected buildout in these six markets would constitute substantial service relies heavily on Cingular Interactive's representation that it will provide coverage to at least 30 percent of the population in each of its markets by the applicable construction deadline. Finally, looking to Cingular Interactive's integrated, multi-MTA network under the standard described above, we note that Cingular Interactive has provided extensive coverage in its 45

¹³ We note, however, that this conclusion is based on the specific substantial service criteria adopted for the 900 MHz SMR service, and may not be appropriate for other services that also have a substantial service construction standard.

¹⁴ We note that the number of end users currently served is significant in light of the specialized nature of services offered by Cingular Interactive's 900 MHz SMR network. The number of actual end users in this network is noteworthy given the cost of end user equipment. The cost of the equipment to access this wireless data network --- for example, a radio modem-equipped personal digital assistant --- may be significantly greater than the hand-held telephones or pagers used to access other wireless services.

licenses in the other 22 markets, having already met or surpassed the two-thirds coverage benchmark with respect to these licenses.¹⁵

10. We also find that the service offerings provided by Cingular Interactive are technologically sophisticated, and lend support to a finding of substantial service. The Commission adopted the substantial service option in the *900 MHz Second Report and Order* in order to provide flexibility to licensees, particularly in situations in which licensees offer cutting-edge niche services. Cingular Interactive's data network acts as a platform for a number of innovative products, and its business and public sector customers may use the wireless data network as a platform for such applications as computer-aided dispatch, remote database access, and telemetry.¹⁶ Public safety entities, such as law enforcement agencies, use the data network as a means of quickly transmitting critical information to employees in the field. Increasingly, Cingular Interactive's data network gives end users access to the Internet, email, and instant messaging services via handheld devices.¹⁷ Other applications include mobile communications to the hearing impaired¹⁸ and an advanced messaging service that bundles into one product an interactive pager, applications software, and Cingular Interactive's radio communications services.¹⁹

11. We conclude that the extent to which Cingular Interactive is placing its service into operation on both an individual market and a nationwide basis, as well as the innovative nature of its wireless data service, will support a finding of substantial service in each of its license areas. We reiterate, however, that this conclusion is based upon the totality of circumstances set out in this licensee's showing. If Cingular Interactive's actual construction materially deviates from the circumstances and projected buildout set forth above, including stated end users, stated infrastructure, and stated as well as projected coverage, it may be necessary to reevaluate our conclusion regarding the substantiality of Cingular Interactive's buildout. Based on the circumstances as presented, however, if Cingular Interactive meets the coverage levels as set out in

¹⁵ As noted, *supra*, in footnote 6, Cingular Interactive has previously satisfied the construction requirement for these 45 licenses.

¹⁶ Cingular Interactive, as a reseller, also provides enhanced coverage via interconnection with satellite communications services. For example, the satellite coverage offering enables one customer, Sears, Roebuck and Co., to use hand-held computers to give technicians in remote areas the ability to access customer account information, provide job estimates, and communicate with managers. *See* Substantial Service Showing, Attachment at 4.

¹⁷ For example, Cingular Interactive's network is used to provide services, such as AOL Mobile Messaging Service, BlackBerry Corporate Email Solution, and the Palm.net service, that provide applications such as instant messaging, e-mail, web clipping, and e-commerce. *See id.* at 6-7; Supplement to Substantial Service Showing, Attachment at 2.

¹⁸ Wynd Communications provides WyndTell service, which operates through a palm-sized device that alerts users of new messages by vibration, an LED, or an audible alert. The WyndTell service allows the hearing-impaired to communicate interactively using methods such as text telephone (TTY), Internet email, fax, alpha pager, and text-to-speech. *See* Substantial Service Showing, Attachment at 6.

¹⁹ Cingular Interactive's Interactive Paging Service gives Cingular subscribers the ability to initiate and respond to messages via the Internet, enterprise e-mail systems, telephone, or fax. Cingular Interactive customers can design customized applications using the interactive pagers. For example, users can access Fidelity Investment stock market information and execute stock trades over the interactive pagers. Others have used the interactive paging as a medium for applications such as enterprise information management, fleet dispatch, and automatic vehicle location. *See id.* at 4.

this Order, and provides notification of such construction on or before the construction deadline, we conclude that Cingular Interactive will satisfy the construction requirements set out in section 90.665(c) of the Commission's rules.

IV. CONCLUSION

12. Accordingly, IT IS ORDERED, pursuant to section 90.665(c) of the Commission's rules, 47 C.F.R. § 90.665(c), that the Notification of Construction, File Number 0000226552, filed by Cingular Interactive, L.P., IS DISMISSED.

13. Further, WE CONCLUDE, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), section 5(d) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that Cingular Interactive, L.P., will comply with construction requirements set out in section 90.665(c) of the Commission's rules, if it achieves, by the construction deadline, the level of construction for each of its markets as projected in its filing and described in this Order. In order to satisfy our construction rules, Cingular Interactive, L.P., will need to file a timely Notification of Construction at such time as it meets this requirement.

FEDERAL COMMUNICATIONS COMMISSION

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