

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own Motion into the Operations, Practices, and Conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of Cellular Collection of an Early Termination Fee and other Penalties from Consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
RE TELEPHIA TRADE SECRET MOTION**

On September 3, 2002, I heard the Motion of Telephia, Inc. (Telephia) to Protect Telephia's Trade Secrets (Motion), filed on August 14, 2002, by conference call hearing.

I denied Telephia's Motion and ruled that the "Drive Test Report" and "License Agreement" that were the subject of the Motion are, in whole or in part, necessary to the Commission's Consumer Protection and Safety Division's (CPSD's) prosecution of this action, assuming, *arguendo*, that the relevant documents are trade secrets. (I did not reach CPSD's argument that it is entitled to any document in the possession of any utility this Commission regulates regardless of whether an unaffiliated third party of the utility has intellectual property rights in such document.) If CPSD is to show that Cingular

misled the public by proclaiming its wireless services had greater coverage and capacity than it knew was the case, CPSD must show what Cingular actually knew. Since its complete knowledge on the subject cannot be known without the Telephia data, such information is necessary to the case, and I deny Telephia's Motion as to the information. I do not agree that an examination of Cingular's own studies (or even its analysis of the Telephia data, which Ms. Fugere represented Cingular did not perform) is adequate to know what Cingular knew. This ruling is subject to the conditions below.

I made the identical ruling as described above with regard to any "Radio Propagation Analysis," as described in the declaration of Telephia's witness, Liam Mahoney, filed August 21, 2002, at 2, paragraph 3. Counsel for Telephia explained that it makes such analyses available to cellular carriers, including Cingular, and has in the past also provided such information to parties that are not cellular carriers.

After filing its Motion, Telephia addressed a second and a third batch of documents Cingular claims are responsive to CPSD's discovery request(s). Telephia discussed the second batch in the Supplemental Brief of Telephia, Inc., in Support of Motion to Protect Telephia's Trade Secrets, dated August 29, 2002. These documents ("Wireless Phone User Survey Score Cards" and "Market Level Reports," as more fully described in the supplemental declaration of Telephia's witness John Dee Fair dated August 29, 2002) are generally characterized as customer satisfaction surveys. I ruled that while every such survey is not necessary to prosecution of this proceeding, some survey material may be necessary to establish that customers were (or were not) aware of (or satisfied/dissatisfied with) the alleged coverage/capacity deficiencies in

Cingular's service areas, and of/with Cingular's alleged policies prohibiting early termination of service or telephone set returns. Telephia shall produce such information subject to the conditions below.

Telephia did not address the third batch of documents in written form. Its counsel stated he believed the documents related to customer satisfaction, but would verify this matter. My ruling governs such material.

Since Telephia only submitted two documents under seal prior to the conference call hearing (all or a portion of the "Cingular Wireless Network Quality Assurance Test" [redacted and unredacted versions], and the Table of Contents and minimal text from the "Services Agreement Between Telephia Incorporated and Cingular Wireless LLC"), I was unable to ascertain which of Telephia's documents fell within this ruling. On my order, Telephia delivered unredacted copies of the remaining responsive documents under seal to me and I ruled on how responsive documents should be handled in open court on September 5, 2002. Since that hearing was transcribed, I do not repeat my rulings on the individual documents here.

IT IS RULED that:

1. Cingular Wireless (Cingular) shall produce to Consumer Protection and Safety Division (CPSD) those Telephia, Inc. documents entitled "Drive Test Report" and "License Agreement" that I determined on further review are necessary to CPSD's case against Cingular. I examined such documents in open court on September 5, 2002, and described individual portions of the Telephia documents that Cingular shall produce in the transcript of that hearing.

2. Cingular shall also produce the additional documents examined during the September, 2002 hearing in open court in accordance with my oral rulings reflected in the transcript of that hearing.

3. Anyone in need of the transcript of the hearing may call (415) 703-2288 to order a copy.

4. This ruling requires disclosure only to CPSD, and to no other party. I will require that CPSD sign a confidentiality agreement, in accordance with its voluntary agreement to do so, designed to allow it to use the produced materials only in this proceeding, and to protect their confidentiality by filing them under seal or using other similar measures.

5. Cingular shall have completed hand delivery of any documents ordered produced to CPSD no later than close of business on September 6, 2002.

Dated October 21, 2002, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas
Administrative Law Judge

