

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

WESTSIDE CELLULAR, INC.,
dba CELLNET,

Complainant

v.

NEW PAR, et al,

Respondents.

Case No. 02-2914-RC-CSS

PUCO

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RESPONDENTS' ANSWER TO THE COMPLAINT

For their Answer to the Complaint Respondents New Par, Verizon Wireless (VAW) LLC
fka Vodafone AirTouch Licensees LLC, AirTouch Cellular Eastern Region LLC *fka* AirTouch
Cellular Inc., and Cellco Partnership, *dba* Verizon Wireless state as follows.

PRELIMINARY STATEMENT

The responding parties are the entities who were served with the Complaint and directed
to respond by the Commission Secretary in his letter of November 5, 2002 filed in this case.
While the caption of the Complaint lists a number of other entities as parties respondent, these
other entities have not been served with the Complaint in accordance with Ohio Admin. Code §
4901-9-01(A). The other entities named in the caption of the Complaint are entities that at one
time had some interest in New Par but ceased to have any such interest before the time period
covered in the Complaint, January 1, 1998 through November 1, 2002. See Complaint at ¶ 1.
These other entities no longer exist and/or are not proper parties to this action because they have
been liquidated or merged with other entities or their interests in New Par have been transferred
to other entities. See In the Matter of the Joint Application of Cellular Communications, Inc. and
PacTel Corporation for Approval, If Required, of the Purchase and Sale of Capital Stock and of

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the Formation of a Joint Venture, New Par, to Operate Their Cellular Companies in Ohio, Case No. 91-467-RC-UNC, Finding and Order (May 16, 1991) (approving the creation of New Par); In the Matter of the Application of the New Par Companies to Complete an Internal Restructuring, Case No. 96-1134-CT-AMT, Entry (Dec. 30, 1996) (recognizing the merger and liquidation of Akron Cellular Telephone Company, Canton Cellular Telephone Company, Columbus Cellular Telephone Company, Dayton Cellular Telephone Company, Northern Ohio Cellular Telephone Company, Southern Ohio Cellular Telephone Company, and Toledo Cellular Telephone Company and the transfer of their certificates of public necessity and convenience to the surviving partnership New Par); In the Matter of the Joint Application for Approval of a Change in Ultimate Ownership of Air Touch Paging, New Par and New Par Subsidiaries, Case No. 99-130-CT-ZCO, Entry (March 5, 1999) (approving the merger of AirTouch Communications Inc. and Vodafone Group Plc into Vodafone AirTouch Plc); In the Matter of the Application of New Par and AirTouch Paging for Approval of Change in Ultimate Ownership, Case No. 00-0618-CT-ZCO, Memo (Apr. 3, 2000) (acquisition of New Par by Cellco Partnership).

In addition, the introductory paragraph of the Complaint also lists Verizon Wireless, Inc. and Verizon Communications, Inc., as parties against whom the Complaint is filed. Neither of these entities was served with the Complaint and neither is a proper party respondent in this case.

Because these other entities named in the Complaint have not been served and because they do not exist or are not proper parties to this action, no response by these parties is required.

ANSWER TO SPECIFIC ALLEGATIONS

1. Respondents admit that the Complaint purports to cover the time period January 1, 1998 through November 1, 2002, as alleged in paragraph 1 of the Complaint, but deny that it states any reasonable grounds for a claim against Respondents with respect to this time period.

2. Respondents admit the allegations in paragraph 2, but state on information and belief that Cellnet is no longer limited to the business of reselling cellular telecommunications services and that it also acts as an agent or dealer for the sale of cellular telecommunications services.

3. Respondents admit that New Par and Celco Partnership are licensed to provide cellular telecommunications services within the state of Ohio but otherwise deny the allegations in paragraph 3 of the Complaint, and expressly deny that the answering Respondents, other than New Par and Celco Partnership, are licensed to provide cellular telecommunications services within the state of Ohio.

4. Respondents admit the allegations in paragraph 4 of the Complaint with respect to Respondents New Par and Celco Partnership but otherwise deny the allegations in paragraph 4 of the Complaint.

5. Respondents admit that New Par and Celco Partnership offer and provide cellular service to entities that purchase such service for the purpose of reselling it to others, but deny the remaining allegations in paragraph 5 of the Complaint.

6. Respondents admit that New Par and Celco Partnership are engaged in the business of transmitting telephonic messages to, from and through the State of Ohio and are thus regulated telephone companies subject to the jurisdiction of, and regulation by, the Public Utilities Commission of Ohio ("PUCO" or "Commission") pursuant to Title 49 of the Ohio Rev.

Code, as made applicable or not by Commission orders adopted pursuant to Ohio Rev. Code § 4927.03, including the Finding and Order in In the Matter of the Commission Investigation Into the Alternative Regulatory Treatment of Commercial Mobile Radio Service Providers, Case No. 97-1700-TP-COI, Finding and Order (Dec. 16, 1999), Entry on Rehearing (Feb. 24, 2000) (the “1700 Order”) but otherwise deny the allegations in paragraph 6 of the Complaint.

7. Respondents admit that New Par and Celco Partnership operate under certificates of public necessity and convenience granted by the PUCO but otherwise deny the allegations in paragraph 7 of the Complaint.

8. Respondents state that the PUCO Orders referenced and paraphrased in paragraph 8 of the Complaint speak for themselves; Respondents deny the allegations in paragraph 8 of the Complaint because they do not accurately or fully describe those prior Orders and because they imply that those Orders continue to impose requirements on cellular providers that were eliminated by the 1700 Order, effective December 16, 1999.

9. Respondents state that the Orders referenced and paraphrased in paragraph 9 speak for themselves; Respondents deny the allegations in paragraph 9 of the Complaint because they do not accurately or fully describe the prior Orders and because they imply that those orders continue to impose requirements on cellular providers that were eliminated by the 1700 Order, effective December 16, 1999.

10. Respondents state that the Orders referenced and paraphrased in paragraph 10 speak for themselves; Respondents deny the allegations in paragraph 10 of the Complaint because they do not accurately or fully describe the prior Orders and because they imply that those orders continue to impose requirements on cellular providers that were eliminated by the 1700 Order, effective December 16, 1999. Further answering, Respondents deny that “the 753

Order” reaffirmed the Order in In the Matter of the Commission Investigation Into Implementation of Sections 4927.01 through 4927.05 Revised Code as They Relate to Competitive Telecommunications Services, PUCO Case NO. 89-563-TP-COI, Finding and Order (Oct. 22, 1993) (the “563 Order”).

11. Respondents state that the Orders referenced and paraphrased in paragraph 11 speak for themselves; Respondents deny the allegations in paragraph 11 of the Complaint because they do not accurately or fully describe the prior Orders and because they imply that those orders continue to impose requirements on cellular providers that were eliminated by the 1700 Order, effective December 16, 1999. Further answering, Respondents deny that the Finding and Order in In the Matter of the Complaint of Westside Cellular, Inc. dba Cellnet v. New Par Companies dba AirTouch Cellular and Cincinnati SMSA Limited Partnership, PUCO Case No. 93-1758-RC-CSS, Finding and Order (Jan. 18, 2001) (the “1758 Order”) reaffirmed the 563 Order.

12. Respondents state that the statute, legislative history and judicial opinions referenced and selectively paraphrased in paragraph 12 of the Complaint speak for themselves; Respondents deny the allegations in paragraph 12 of the Complaint because they do not accurately or fully describe the statute, legislative history and judicial opinions. Further answering, Respondents specifically deny that 47 U.S.C. § 332(c)(3)(A) reserved to the states the authority to regulate the rates charged for wholesale cellular service or for services and equipment bundles and deny that the legislative history stated or implied any such conclusion; deny that the federal district court in GTE Mobilnet of Ohio, LP, et al. v. David W. Johnson, et al., Case No. C-2-95-401 (S.D. Ohio Nov. 22, 1995) held or implied that the complaint filed by Cellnet in Case No. 93-1758 included a claim seeking redress for the bundling of services and

equipment; deny that GTE Mobilnet, et al. v. Johnson, 111 F.3d 469 (6th Cir. 1997) held that the district court should have “abstained in favor of the PUCO”; and deny that in its January 18, 2001 Opinion and Order (the 1748 Order), the Commission found that it had jurisdiction “over this matter.”

13. In response to paragraph 13 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 12 of this Answer.

14. Respondents admit that New Par has not maintained structurally separate wholesale and retail operations in Ohio but otherwise deny the allegations in paragraph 14 of the Complaint.

15. Respondents admit that they maintain accounting records for their businesses in total but otherwise deny the allegations in paragraph 15 of the Complaint.

16. Respondents deny the allegations in paragraph 16 of the Complaint.

17. Respondents deny the allegations in paragraph 17 of the Complaint because none of the Orders referenced in paragraph 17 required Respondents to maintain separate wholesale and retail operations and because the requirements of those Orders were eliminated by the 1700 Order, effective December 16, 1999.

18. Respondents state that the 1758 Order speaks for itself and deny the allegations in paragraph 18 of the Complaint because they do not accurately or fully describe that Order.

19. Respondents deny the allegations in paragraph 19 of the Complaint.

20. In response to paragraph 20 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 19 of this Answer.

21. Respondents deny the allegations in paragraph 21 of the Complaint.

22. Respondents state that the Orders referenced in paragraph 22 of the Complaint speak for themselves; Respondents deny the allegations in paragraph 22 of the Complaint because they do not accurately or fully describe those Orders or take into account the fact that any requirement to have an “affiliated reseller” was eliminated in the 1700 Order. Respondents deny that the 1758 Order reaffirmed any such requirement.

23. Respondents deny the allegations in paragraph 23 of the Complaint.

24. Respondents deny the allegations in paragraph 24 of the Complaint.

25. Respondents deny the allegations in paragraph 25 of the Complaint.

26. In response to paragraph 26 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 25 this Answer.

27. Respondents deny that there is any requirement that there be an “affiliated reseller” and accordingly deny the allegations in paragraph 27 of the Complaint.

28. Respondents deny the allegations in paragraph 28 of the Complaint.

29. Respondents deny the allegations in paragraph 29 of the Complaint.

30. Respondents state that the Orders referenced in paragraph 30 of the Complaint speak for themselves; Respondents deny the allegations in paragraph 30 the Complaint because they do not accurately or fully describe those Orders.

31. Respondents deny the allegations in paragraph 31 of the Complaint.

32. In response to paragraph 32 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 31 of this Answer.

33. Respondents deny the allegations in paragraph 33 of the Complaint.

34. Respondents deny the allegations in paragraph 34 of the Complaint.

35. Respondents deny the allegations in paragraph 35 of the Complaint.

36. In response to paragraph 36 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 35 of this Answer.

37. Respondents admit that New Par and Cellco Partnership offer, or offered in the past, different rate plans in the Ohio markets, including corporate or association rate plans, but Respondents deny that any of these rate plans are offered exclusively to retail customers and deny the remaining allegations in paragraph 37 of the Complaint.

38. Respondents deny the allegations in paragraph 38 of the Complaint.

39. Respondents deny the allegations in paragraph 39 of the Complaint.

40. Respondents deny the allegations in paragraph 40 of the Complaint.

41. In response to paragraph 41 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 40 of this Answer.

42. Respondents admit the allegations in paragraph 42 of the Complaint.

43. Respondents admit that New Par or Cellco Partnership have entered into reciprocal Roaming Agreements with other cellular licensees which set the rates to be charged between the licensees with respect to persons making cellular calls within the licensee's service territory but otherwise deny the allegations in paragraph 43 of the Complaint.

44. Respondents deny the allegations in paragraph 44 of the Complaint.

45. Respondents deny the allegations in paragraph 45 of the Complaint.

46. Respondents deny the allegations in paragraph 46 of the Complaint.

47. Respondents deny the allegations in paragraph 47 of the Complaint.

48. Respondents deny the allegations in paragraph 48 of the Complaint.

49. Respondents deny the allegations in paragraph 49 of the Complaint.

50. In response to paragraph 50 of the Complaint, Respondents incorporate and reallege the foregoing responses contained in paragraphs 1 through 49 of this Answer.

51. Respondents deny the allegations in paragraph 51 of the Complaint.

52. Respondents deny the allegations in paragraph 52 of the Complaint.

53. Respondents deny the allegations in paragraph 53 of the Complaint.

54. Respondents deny the allegations in paragraph 54 of the Complaint.

55. Respondents deny the allegations in paragraph 55 of the Complaint.

56. Respondents deny the allegations in paragraph 56 of the Complaint.

57. Respondents deny the allegations in paragraph 57 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

58. The Complaint must be dismissed for lack of jurisdiction because the Commission determined in the 1700 Order that it would no longer apply Ohio Rev. Code § 4905.26 to the cellular wholesale market.

SECOND AFFIRMATIVE DEFENSE

59. The Complaint fails to state reasonable grounds because any requirement that cellular providers maintain separate wholesale and retail operations or accounting was eliminated by the Commission in its 1700 Order.

THIRD AFFIRMATIVE DEFENSE

60. The Complaint must be dismissed for lack of jurisdiction because the Commission's jurisdiction over the market entry or rates charged by cellular providers is preempted as a matter of federal law, 47 U.S.C. § 332(c)(3)(A).

FOURTH AFFIRMATIVE DEFENSE

61. The Complaint must be dismissed for lack of jurisdiction because any requirement that cellular providers maintain separate wholesale and retail operations or offer a discount to resellers is in direct conflict with federal law and, therefore, is preempted.

FIFTH AFFIRMATIVE DEFENSE

62. Count VII of the Complaint must be dismissed because the Commission does not have jurisdiction to adjudicate claims of economic harm.

SIXTH AFFIRMATIVE DEFENSE

63. The Complaint fails to state reasonable grounds because the Commission determined in the 1700 Order that it would no longer apply Ohio Rev. Code §§ 4905.33 or 4905.35 to the cellular wholesale market.

SEVENTH AFFIRMATIVE DEFENSE

64. The Complaint fails to state reasonable grounds for a violation of Ohio Rev. Code § 4905.32 because cellular providers were not required to file rate schedules or tariffs during the period purportedly covered by the Complaint.

EIGHT AFFIRMATIVE DEFENSE

65. The Complaint fails to state reasonable grounds for a violation of Ohio Rev. Code § 4909.18 because cellular providers were not required to make application to the Commission for approval of rates during the period purportedly covered by the Complaint.

NINTH AFFIRMATIVE DEFENSE

66. The Complaint fails to state reasonable grounds for a violation of any requirement that cellular providers maintain separate wholesale or retail operations and accounting because the Commission determined in the 1700 Order that, to the extent that any transactional records

were ever required, such records needed to be maintained only for a period of 18 months from the date of the individual agreements.

TENTH AFFIRMATIVE DEFENSE

67. Cellnet is estopped from pursuing the claims asserted in this Complaint because it has never entered into a contract for cellular service with any of the Respondents as required of all other similarly situated customers.

ELEVENTH AFFIRMATIVE DEFENSE

68. Cellnet is precluded from asserting any claims with respect to any period prior to January 27, 1999 because it failed to raise these claims in Case No. 93-1758.

TWELFTH AFFIRMATIVE DEFENSE

69. The Complaint should be dismissed as to Respondents Verizon Wireless (VAW) LLC *fka* Vodafone AirTouch Licensees LLC and AirTouch Cellular Eastern Region LLC *fka* AirTouch Cellular Inc., because they are not telephone companies or public utilities subject to the Commission's jurisdiction or the statutes or Orders alleged to have been violated.

THIRTEENTH AFFIRMATIVE DEFENSE

70. The Complaint fails to state any reasonable grounds for a violation of any state law or any Commission order.

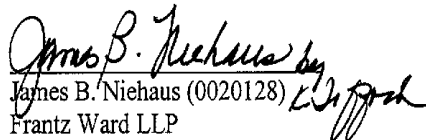
WHEREFORE, Respondents ask that the Complaint be dismissed for lack of jurisdiction and/or lack of reasonable grounds.

Respectfully submitted,



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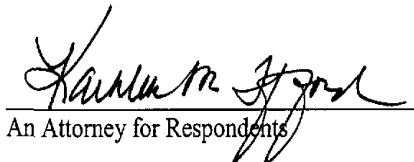
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Wireless

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Answer has been served by first class mail, postage prepaid on the following counsel this 24th day of January, 2003.

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