

**Before the
Washington Utilities and Transportation Commission**

In the Matter of Eligible Telecommunications Carriers (ETC) Rulemaking, WAC 480-120-311))))	Docket No. UT-053021
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COMMENTS OF CINGULAR WIRELESS

New Cingular Wireless PCS, LLC, Bellingham Cellular Partnership, Bremerton Cellular Telephone Company, Hood River Cellular Telephone Company, and Olympia Cellular Telephone Company (collectively “Cingular”) hereby respectfully submit these comments in response to the Draft Rules proposed by the Washington Utilities and Transportation Commission (“Commission”) in the above referenced docket.

I. INTRODUCTION

The Commission has a responsibility as part of its annual certification to the Federal Communications Commission (“FCC”) to ensure that all eligible telecommunications carriers (“ETCs”) in the State are using the federal universal service fund (“USF”) support for the purpose for which it was intended. This obligation, however, does not require the Commission to promulgate burdensome rules. In evaluating the Draft Rules, the Commission must carefully weigh each proposed rule to ensure not only that the benefit of each rule outweighs the administrative burden imposed, but also that the rules in the aggregate do not discourage investment in the State in light of the State’s express policy of promoting telecommunications infrastructure development.

While it appears that the Commission has used the requirements contained in the FCC's recent *ETC Order*¹ as a starting point for the Draft Rules, presumably based on previous comments, the Commission has wisely deleted or changed some requirements that would be infeasible or impractical.² The Draft Rules, however, contain requirements that differ from those contained in the FCC's *ETC Order*, but are nevertheless detailed and burdensome and do not appear to assist the Commission in determining that all ETCs in the State are using the federal USF support for the purpose for which it was intended. The Commission must carefully consider the benefits gained from any additional rules against administrative burdens or potential consequences to the State. The Commission should not adopt additional rules purely for the sake of having additional rules.

II. DISCUSSION

A. **The Commission Should Carefully Consider Whether it is in the State's Best Interest to Adopt the Draft Rules**

It is understandable that the Commission wants to make sure that ETCs in the State are using the federal USF support in the manner for which it was intended. As Cingular explained in response to the Notice of Inquiry, ETCs throughout the country, including those operating in Washington State, are already required to comply with numerous and significant federal requirements in order to receive support from the federal universal service fund.³ Although the FCC did adopt an order earlier this year that imposed additional requirements on ETCs designated by the FCC, the FCC specifically recognized that states are not required to adopt

¹ See In the Matter of Federal-state Joint board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 05-46, (rel. march 17, 2005) ("*ETC Order*"),.

² For example, the Commission has not included a requirement that carriers submit 5-year build plans, a requirement of the FCC's *ETC Order*.

³ See Cingular's Comments filed on June 1, 2005, in this docket, pages 3-4.

these new requirements.⁴ The FCC correctly pointed out that state commissions may already decline to file an annual certification or may withdraw an ETC's designation, if appropriate.⁵ The consequence of these actions would be that the ETC would no longer receive support from the federal universal service fund.

In considering whether to impose additional regulatory requirements on ETCs in Washington, the Commission should evaluate the additional requirements in the Draft Rules in light of the goal expressed by the Legislature to promote diversity in the supply of telecommunications service and products.⁶ Federal USF support is available to assist carriers in providing the supported services in rural, insular, and high cost areas of the United States, and the process for making such funds available in the states is through the ETC designation process. If the Commission adopts overly burdensome requirements for ETCs, carriers may forego seeking or relinquish existing ETC designations in the State as the administrative cost and burden of ETC status in Washington may be too great as compared to other states where federal USF support is also available. Thus, the net effect may be to discourage investment in the rural, insular, and/or high cost areas of Washington State.

Further, all ETCs are required to offer Lifeline service to low-income individuals throughout their respective ETC designated areas. This means that with additional ETCs there are more providers for low income consumers to choose from, allowing them to pick the plan and service that best meets their needs. The Commission must carefully balance any benefit of the additional requirements versus the additional administrative burdens.

⁴ *ETC Order* at ¶61

⁵ *Id.* at ¶62, also see 47 CFR §54.313 and §54.314

⁶ RCW 80.36.300 and (5)

B. Administrative Burden versus Benefit to Consumer

Certain provisions contained in the Draft Rules are particularly burdensome and appear to only add to the administrative burdens of the ETC without assisting the Commission with its responsibility to ensure that federal universal service support is used for the “provision, maintenance and upgrading of facilities” as intended.⁷ In this section, Cingular will discuss some of the most burdensome aspects of the Draft Rules.

1. Service Outage Report

A particularly onerous requirement is the detailed service outage reporting requirement as it is inconsistent with service outage reporting that carriers are already required to file with the FCC.

Pursuant to the Draft Rules, an ETC would have to file information on outages that last at least thirty (30) minutes and potentially affect at least ten percent (10%) of end users served in a designated area, or that potentially affect a public service answering point. The FCC through its *Outage Reporting Order*⁸ already requires all voice providers, including wireless, to report all outages to the FCC (1) that last at least 30 minutes; and (2) which potentially affect at least 900,000 user-minutes.⁹ These reports must be filed very shortly after the incident and therefore would be of more value to the Commission and to subscribers of the affected area. Specifically, for each reportable outage, carriers must file a Notification electronically with the FCC within 120 minutes of discovering the outage; a more detailed Initial Report within 72 hours after

⁷ 47 U.S.C. §254(e) and 47 CFR §54.7

⁸ See New Part 4 of the Commission’s Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking, ET Docket 04-25, FCC 04-188, (rel. August 19, 2004), (“*Outage Reporting Order*”).

⁹ *Id.* at ¶¶55 and 56

discovery of the outage; and a Final Report within 30 days of the outage.¹⁰ In the Final Report, the carrier must identify whether the outage was at least partially caused because the network did not follow engineering standards for full diversity (redundancy).¹¹

The Commission may obtain access to all carriers' outage reports filed with the FCC through the federal Department of Homeland Security.¹² The FCC outage reports provide much more valuable and timely information than the proposed annual filing contained in the Draft Rules. It is not clear how an outage report submitted well after the fact (up to one year) would assist the Commission in ensuring that ETCs are using federal USF support for the manner in which it was intended. Tapping into the FCC's outage reporting requirements would allow the Commission to gain more timely access to outage information and eliminate the need for redundant and costly filing requirements. Cingular thus respectfully requests that this proposed rule not be adopted.

2. Certification of Ability to Function in Emergency Situations

The Draft Rules would require a wireless carrier to demonstrate that it has at least four hours of back-up battery power at each cell site, back up generators at each microwave hub, at least five hours back up battery power, and back up generators at each switch.¹³ It is not clear why the Commission would exert such rigid requirements on providers when the FCC specifically rejected this requirement in its recent decision. The *ETC Order* requires that an ETC

¹⁰ *Id.*, ¶ 5.

¹¹ *Id.*, ¶ 6.

¹² *Id.*, ¶ 47 n. 145. In the FCC docket that resulted in adopting of the Outage Reporting Order, the Dept. of Homeland Security (DHS) specifically commented that outage information should be made available by DHS to state public utility commissions through homeland security channels to safeguard the information against disclosure to those who might use the information for hostile purposes. The FCC thus determined that it would make the outage reports available to DHS immediately upon receipt and that DHS could then provide information from the reports to other governmental authorities as appropriate. *See* ¶45.

¹³ See Draft Rule WAC 480-123-0020(g) implicated by 480-123-0060(6).

demonstrate that “it has a reasonable amount of back-up power to ensure functionality without external power sources, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.”¹⁴ The FCC specifically rejected the proposal that would require an ETC to maintain eight hours of back-up power finding that “such a benchmark is inappropriate because although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken”.¹⁵

Cingular Wireless is very concerned about emergency preparedness and has plans in place for the most likely scenarios in all of our areas of service. The impact to customers will depend on the scope of the disaster and network impact. Battery backup at cell sites is only one piece of the equation. Wireless carriers remain dependent on the wireline network, and lease voice and data circuits from landline carriers to provide connectivity between a cell site and the switch, switch to switch, wireless network to landline network, and for IT system connectivity. In vast emergencies, such as Hurricane Katrina, Cingular did set up microwave technology to decrease its dependence on landline providers, who were also struggling to restore their networks. Key to Cingular’s emergency preparedness is flexibility and freedom to act. Indeed there are permanent generators at many cell sites (not all cell sites are conducive to generators) and there are generators at all switch locations. Further, there are portable generators for deployment in each region.

Wireless ETCs are best equipped to develop plans for and implement in the event of a disaster. Cingular has monitoring systems in place so that it quickly knows if it has any switches or cells sites that are not functioning properly. In anticipation of Hurricane Wilma that hit

¹⁴ *ETC Order* at ¶25

¹⁵ *Id.*, at ¶26

Florida last month, Cingular had four staging areas set up for housing equipment to deploy for network recovery efforts. This equipment included additional portable generators, extra fuel for those generators, and COWs (cell sites on wheels). Further, a helicopter was reserved to survey damage in the wake of the storm, and boom trucks and chainsaw crews were staged for use in accessing sites during the recovery process. Last, in preparation for the storm, Cingular issued tips for its customers.

The prescriptive battery back-up requirements for cell sites and switch generators is unnecessary and unwarranted. Instead of adopting the requirements in the Draft Rule, if the Commission believes that a rule is necessary it should mirror the federal requirements.

4. Report on Complaints per 1,000 Handsets

The Commission's proposal for reporting complaints is far more detailed than the FCC's rule that requires reporting on complaints per 1,000 handsets. In particular, the Draft Rules require ETCs to provide detailed information on complaints customers make directly to the ETC as well as to various other agencies. There are several problems with this Draft Rule. First, the Draft Rule would require that the carrier have the ability to record and report on every phone call made by a customer in an ETC designated area to a Cingular customer care representative; this would be very difficult for Cingular to operationalize. Cingular operates a regional call center that handles complaints for several states, including Washington. While Cingular's call center representatives will place a note on an account if a customer calls in with an inquiry, Cingular does not have the ability to run a report detailing the nature of every call received from a customer that called Cingular in the last year, let alone the ability to sort those complaints into four different categories.¹⁶

¹⁶ Further, some sort of determination would have to be made as to whether an individual call to Cingular's customer care center constituted an inquiry or a "complaint" that would need to be reported.

The second problem with this Draft Rule is that it requires carriers to divide the complaints into subcategories and then to describe the nature of complaints and the efforts to resolve the complaints. While Cingular assumes that this means the carrier would just provide a summary for the category and a summary of the resolution for the category, this likely will be of no benefit to the Commission.

Cingular recommends that if the Commission adopts a requirement to report on complaints per 1,000 handsets, that it limits the report to the complaints filed with the Commission, the FCC or the Washington Attorney General. Further, the Commission should not require that these complaints be broken down into artificial sub-categories and then summarized. In this regard, Cingular recommends that if the Commission adopts a requirement it simply mirror the FCC's complaint reporting requirement contained in the *ETC Order*.

5. Advertising Certification: Safe Harbor

It is not clear what this Draft Rule is attempting to address as there are two separate requirements under the FCC's rules for ETCs to advertise. In the first sentence of this section it states that an ETC must certify that it has "provided the required advertisement, including advertisement reasonably calculated to reach low-income individuals not already receiving discounted services." Cingular assumes that the advertising requirements detailed in the section are to fulfill the federal Lifeline requirement to "publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."¹⁷ There are, of course, general advertising requirements for all ETCs to "advertise the availability of such service and the charges therefore using media of general distribution,"¹⁸ but it appears that this is

¹⁷ See 47 CFR 54.405(b)

¹⁸ See 47 CFR 54.201(d)(2)

not the underlying basis for this section. In order to avoid confusion, the Commission should clarify that this provision is intended to address Lifeline and Linkup outreach requirements.

The Commission should not implement prescriptive rules with respect to reaching out to low-income individuals as this will likely stifle innovative outreach opportunities. The FCC has already provided outreach guidelines to all ETCs.¹⁹ The FCC, however, choose not to apply prescriptive requirements. Carriers already communicate on a daily basis with customers and potential customers, and have developed an expertise in doing so. As such, carriers should be given the flexibility to structure their outreach plans accordingly. While the Draft Rules provide some helpful suggestions they should be in the form of guidelines and not strict rules.

Further, the Commission itself should do more to promote the availability of Lifeline service to low-income individuals in the state. The FCC has some innovative suggestions in this regard. For example the *Lifeline Order* suggests that “states and carriers should coordinate their outreach efforts with governmental agencies/tribes that administer any of the relevant government assistance programs.”²⁰ Cingular (at the time AT&T Wireless) attempted to contact the Department of Social and Health Services (“DSHS”) to inquire about posting signs or leaving brochures in their offices. DSHS, however, declined to allow this due to concerns that the agency would be perceived as favoring Cingular (AT&T Wireless) over other potential competitors. Another idea suggested in the FCC’s *Lifeline Order* is to “establish a consumer advisory board with state, carrier, non-profit and consumer representatives” as an effective way of developing outreach materials or programs.²¹ Cingular strongly recommends that instead of

¹⁹ See *In the Matter of Lifeline and Link-Up, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 03-109, (rel. April 29, 2004), (“*Lifeline Order*”)

²⁰ *Id.*, at ¶¶ 45 and 48.

²¹ *Id.*, at ¶48.

developing strict requirements at this time the Commission should instead develop a taskforce to more comprehensively evaluate this issue and bring all of the stakeholders together.

C. Implementation Timeframe

If after weighing the administrative costs against the benefits for each of the Draft Rules the Commission nevertheless decides to adopt additional requirements, it must allow a reasonable implementation period for existing ETCs. As currently proposed, it is unclear when the Draft Rules would go into effect.²² Cingular strongly recommends that the Commission follow the approach taken by the FCC. First, Cingular recommends that the Draft Rules should only be applicable on a prospective basis. Second, the Commission should not require carriers to demonstrate compliance with the added requirements in the Draft Rules until July 2007. When the FCC released its *ETC Order* in March of this year it explicitly stated that the additional requirements will be “applicable on a prospective basis to all ETCs previously designated by the Commission” and that such a demonstration would have to be made by October 1, 2006.²³ The FCC’s rules, therefore, allowed for over a fifteen (15) month implementation period.

III. CONCLUSION

Cingular recommends that the Commission carefully consider whether imposing additional reporting requirements on existing ETCs and requiring additional information in ETC applications will ultimately benefit the citizens of Washington State and whether the Draft Rules are consistent with the policy guidance from the Legislature.

²² The only exception is proposed rule 480-123-0070(3) that requires certain maps to be submitted starting in 2007.

²³ *ETC Order* at ¶2.

Respectfully submitted,

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