

**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 Washington Utilities and Transportation Commission (“Commission” or “Washington Commission”) Notice of Opportunity to File Written Comments in the above referenced docket.

As the Commission is aware, Cingular was granted eligible telecommunications carrier (“ETC”) status for receipt of federal universal service support in certain areas of Washington State.

I. INTRODUCTION

The Federal Communications Commission (“FCC”) recently adopted ETC eligibility criteria for carriers applying to the FCC for ETC designation. These additional requirements do not apply to states, such as Washington, that exercise jurisdiction over ETC designations; therefore, the Washington Commission is under no mandate to adopt the new federal ETC criteria.

In considering whether the Commission should apply any of the federal requirements to Washington ETCs or the designation process, the Commission should carefully weigh the benefits against the additional burdens associated with each and every requirement. Should the Commission decide to adopt any additional requirements, they should apply equally to all ETCs operating in the State.

II. DISCUSSION

A. The Commission is Not Required to Adopt the New Federal Requirements

Under Section 214(e) of the Telecommunications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e)(2), and FCC Rule 54.201, 47 C.F.R. § 54.201(b), a state commission may determine whether a carrier is eligible to receive federal universal service support in its state. If the state determines that it does not have jurisdiction over a particular class of carriers for the purpose of designation as an ETC for federal universal service support, the FCC may designate ETCs from that class of carriers for that State. Further, those carriers that are designated as ETCs by the FCC are required to make their annual certifications directly to the FCC.

The newly adopted federal requirements are mandatory only for those providers that must seek ETC status from the FCC for the purpose of receiving federal universal service support.¹ The *ETC Order* also sets forth annual reporting requirements for ETCs designated by the FCC. In the *ETC Order*, 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, (“ETC Order”), CC Dkt No. 96-45, (rel. March 17, 2005), ¶61.

these new requirements,² noting that state commissions are “the entities most familiar with the service area for which ETC designation is sought, [and] are particularly well-equipped to determine their own ETC eligibility criteria.”³

Further, the FCC specifically rejected the argument that it must adopt mandatory requirements for all ETCs operating anywhere in the country to prevent waste, fraud, and abuse in the distribution of high-cost support. 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.⁴ The consequence of these actions would be that the ETC would no longer receive support from the federal universal service fund.

B. The Commission Should Carefully Consider Whether it is in the State’s Best Interest to Adopt the Federal ETC Guidelines

1. All ETCs Must Already Comply With Numerous Requirements

All ETCs throughout the country, including those operating in Washington State, are already required to comply with numerous (and not insubstantial) federal requirements in order to receive support from the federal universal service fund. Specifically, an ETC must:

- Offer the nine supported services throughout the ETC designated service area.⁵
- Offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.⁶

² *Id.* at ¶61

³ *Id.* at ¶61

⁴ *Id.* at ¶62, also see 47 CFR §54.313 and §54.314

⁵ See 47 CFR §54.101. The nine supported services are: (1) Voice grade access to the public switched network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party access or its functional equivalent; (5) Access to emergency services; (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and, (9) Toll limitation for qualifying low-income consumers.

- Advertise the supported services and associated charges throughout the service area which designation is received, using media of general distribution.⁷
- Offer Lifeline and Linkup Service to qualifying low-income consumers with all of the corresponding requirements.⁸
- Advertise the availability of Lifeline and LinkUp services in a manner reasonably designed to reach those likely to qualify for those services.⁹
- Use federal universal service support only for the provision, maintenance and upgrading of facilities and services for which the support is intended.¹⁰
- Annually certify that all high-cost support received by the ETC will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹¹

Further, ETCs operating in Washington State are also required to offer discounted service through the Washington Telephone Assistance Program (WTAP) to qualifying subscribers.¹² ETCs in Washington State are, therefore, already required to comply with numerous requirements in order to be eligible for and continue to receive federal universal service report.

In considering whether to impose additional regulatory requirements on ETCs in Washington, the Commission should consider the potential effect this decision would have on

⁶ 47 U.S.C. §214(e)(1)(A) and 47 CFR §54.201(d)(1)

⁷ 47 USC §214(e)(1)(B) and 47 CFR §54.201(d)(2)

⁸ Lifeline 47 CFR §§54.401-54.409; LinkUp 47 CFR §§54.411-54.415

⁹ 47 CFR §54.405(b) and §54.411(d)

¹⁰ 47 USC §254(e) and 47 CFR §54.7

¹¹ 47 CFR §54.317(a) state certification, §54.317(b) carrier certification to the FCC and universal service fund administrator

¹² RCW 80.36.410 – 475, WAC 180-122-020

potential investment in facilities in the State. Carriers must make decisions as to where to allocate limited network build and upgrade dollars. As an ETC, the entity is required to use universal service support “only for the provision, maintenance, and upgrading of facilities....”¹³ If states choose to adopt additional and overly strict criteria and requirements for ETCs, carriers may forego or relinquish ETC status in Washington. This could have a disproportionately harmful affect on high cost areas for which universal support is intended. This point is particularly important in light of the expressed policy of the State to promote telecommunications infrastructure development, discussed in the following section.

2. The Commission Should Continue to Promote Competition, and Encourage Investment in the State

The Washington Legislature has declared that it is the policy of the state to, “preserve affordable universal service” and to "promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state..."¹⁴ Imposing additional requirements on ETCs in the state may have a chilling effect on bringing additional investment into the state in general, and particularly into high cost areas. The Commission should carefully weigh the cost of additional requirements placed on ETCs in this light.

Further, all ETCs are required to offer Lifeline and Linkup discounts to qualifying low income customers throughout the area that they are designated as an ETC. Washington has an additional state fund, WTAP, which provides additional discounts to qualifying low income subscribers in the state. Encouraging additional ETCs in the state provides low income subscribers with additional choices for telecommunications service. Placing additional

¹³ 47 U.S.C. §254(e)

¹⁴ RCW 80.36.300(1) and (5)

requirements on ETCs in the state may adversely impact the choices available to this group of consumers, both in available technologies and telecommunication providers.

The increasing size of the federal universal service fund may be a legitimate policy issue that should appropriately be considered. However, this is a larger issue that must be addressed on a more global basis, rather than by any particular state. First, the fund at issue is a *federal* fund created under federal law. Hence decisions about the size of the fund must be made by the FCC and the Congress, and not by a state commission. Second, while additional federal or state requirements on ETC providers may discourage those providers that are not the incumbent local exchange carrier (“ILEC”) from seeking money from the federal universal service fund, this in itself is a policy choice, and as such is only one small part of a much larger and more complex issue, which should be considered in that context. In the *ETC Order*, the FCC also noted that the Joint Board is currently contemplating in the Rural Referral Proceeding how universal service support can be targeted to rural ILECs and ETCs serving high-cost areas, while protecting against excessive fund growth.¹⁵ As suggested by the FCC, the Rural Referral Proceeding is the appropriate proceeding in which all interested persons can comment on appropriate ways to limit growth of the federal universal service fund.

3. The FCC’s Rules Have Not Yet Taken Effect

The mandatory requirements for ETCs designated by the FCC were just published in the Federal Register on May 25, 2005. Parties have 30 days, or until June 25, 2005, to file

¹⁵ *ETC Order* at ¶64. See Rural Referral Order, 19 FCC Rcd at 11538, ¶1

Petitions for Reconsideration.¹⁶ Prudence would dictate that the Commission waits to see if further changes to the federal rules will be adopted before proceeding further in this matter.

C. Certain Provisions in the FCC Guidelines are Particularly Burdensome

Certain provisions contained in the mandatory requirements may be particularly burdensome, serving only to generate additional administrative burdens on the Commission without helping the Commission to carry out its responsibility to ensure that federal universal service support is used for the “provision, maintenance and upgrading of facilities” as intended.¹⁷ For example, the *ETC Order* requires ETC Applicants to submit a five (5) year plan “describing with specificity its proposed improvements or upgrade”¹⁸ and detailing four separate requirements including, “the projected start and completion date for such improvement and the estimated amount of investment for each project that is funded by the high-cost support...”¹⁹ The FCC then requires ETCs to annually file progress reports on the five year plan.²⁰ (Question 5 and 29)

In the wireless industry, five years is an eternity. It is nearly impossible to anticipate needs that far in advance. Just look at the changes in wireless industry over the last five years alone. The number of wireless subscribers nationwide has increased from 97 million in 2000 to more than 190 million today.²¹ During this time, not only has the technology advanced from predominantly analog to digital, but even digital technology has changed from second generation

¹⁶ See 70 Fed. Reg. 29,960-29,979 (May 25, 2005) (Final Rule)

¹⁷ 47 U.S.C. §254(e) and 47 CFR §54.7

¹⁸ *ETC Order* at ¶23

¹⁹ *Id*

²⁰ *Id* at ¶69

²¹ See CTIA’s Semi-Annual Wireless Industry Survey. Figures reflect data from June 2000 and subscriber numbers pulled from the CTIA Web site www.ctia.org on June 1, 2005.

or “2G” (TDMA, CDMA) to 2.5G (EDGE) and now is now further being elevated to 3G (UMTS) offering customers high speed data access over wireless devices. Wireless industry participants have also greatly changed. Five years ago, Cingular Wireless did not exist, and at the beginning of last year, Cingular Wireless and AT&T Wireless were fierce competitors, with no hint that by this time the two companies would be one. Who knows what changes in the wireless industry are to come over the next five years. As importantly, population growth and migrations in various areas of the state will likely continue to change. Filing five year plans for wireless ETCs will quickly become a meaningless exercise and will no doubt require constant updates and revisions. It is doubtful then whether this information will offer any real benefit to the Commission, but will impose very real burdens upon the carriers that must file them.

Another example of a particular onerous requirement is the detailed submission of 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 911 facility. Cingular Wireless obviously strives to avoid any sort of network outage. However, there may be unforeseeable situations such as a large disaster, natural or otherwise, that, through no fault of the dedicated employees of Cingular, could nonetheless affect Cingular’s ability to provide uninterrupted service. It is difficult to understand how providing a detailed report on an annual basis will benefit consumers. Further, the FCC through its *Outage Reporting Order*²² already requires carriers to report outages of a certain magnitude to the FCC shortly after the outage

²² 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”).

occurs. This information is already available to the Washington Commission.²³ It is, therefore, not clear that this requirement furthers the availability of universal service in Washington State.

D. The Commission May Find Some of the FCC’s Guidelines More Useful Than Others in Carrying Out its Annual Certification Requirement

For the reasons stated above, Cingular believes that the Commission should carefully weigh the additional burdens of new regulations imposed on ETCs in the State of Washington against the likely benefits of such new regulations. If the Commission decides to adopt any additional requirements, it should ensure that these requirements are imposed on *all* ETCs operating in the state and not just wireless ETCs.²⁴ In this regard, certain requirements that may uniformly apply to all ETCs operating may be relatively less burdensome, but more beneficial than others. For example, it seems reasonable to require all ETC applicants to send copies of their petitions to tribal communities whose members may be able to avail themselves of the significant Lifeline/Linkup service discounts the applicant will be required to make available if the ETC designation is granted. (Questions 28.) Further, the Commission may desire an annual summary describing how the federal universal service support received will be spent, or how ETCs are fulfilling their Lifeline and Linkup obligations. (Question 29). Cingular will be prepared to engage in a more detailed discussion of specific proposals at the Workshop being held by the Commission on June 29th.

²³ *Id* at ¶47

²⁴ The *ETC Order* specifically states that it generally applies to any type of common carrier that seeks ETC designation before the FCC, ¶17.

E. Implementation of Any New Requirements

If the Washington Commission ultimately concludes that it should impose additional reporting requirements or implement additional criteria in Washington State for ETCs, Cingular strongly urges that the Commission take the approach adopted by the FCC. The FCC explicitly stated that these additional requirements will be “applicable on a prospective basis to all ETCs previously designated by the Commission” and requires that ETCs “submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006...”²⁵ The FCC has thus allowed previously designated ETCs approximately fifteen (15) months after the rules are published in the Federal Register to meet the new reporting requirements. Further, the FCC did not require previously designated ETCs to reapply for ETC designation. The Commission should allow a similar period of time from the adoption of any new rules to allow existing ETCs to demonstrate compliance with any new rules. Further, the Commission should not require existing ETCs operating in the state to reapply for ETC status. Instead, existing ETCs should only be required to comply with annual reporting requirements after an appropriate period of time for implementation.

III. CONCLUSION

The FCC in adopting its mandatory requirements for providers applying to the FCC for ETC designation decided not to impose these requirements on ETCs designated by state commissions. The FCC thus correctly recognized that each specific state is in the best position to determine whether additional requirements should be imposed on ETCs operating in the state. This allows each designating state to appropriately consider the specific policy goals and other conditions unique to each state. Cingular recommends that the Commission carefully consider whether

²⁵ Id at ¶2

imposing additional reporting requirements on existing ETCs and requiring additional information in ETC Applications will ultimately benefit the citizens of Washington State and whether they are consistent with the policy guidance from the Legislature. Cingular looks forward to participating in the workshop that will be held by the Commission on June 29th.

Respectfully submitted,

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