

Agenda Date: September 13, 2006  
Item Number: A2

**Docket:** UT-063065  
Company Name: Cingular Wireless (Cingular)

Staff: Bob Shirley, Telecommunications Policy Analyst

### **Recommendation**

Grant the temporary exemption from the requirements of WAC 480-123-070(2) requested by Cingular for its filing made in 2006.

### **Background**

Cingular has requested a temporary exemption from WAC 480-123-070(2), one of several new rules creating certification and reporting requirements for eligible telecommunications carriers (ETCs). The purpose of the rules is to permit the commission to determine if ETCs have used federal high-cost support in the manner prescribed by law. This purpose is to be achieved by collection of readily available information and certifications made by ETCs.

Cingular receives annually approximately \$24 million in federal support. Certification by the commission to the Federal Communications Commission (FCC) that Cingular “will use federal high-cost universal service fund support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended” is required for Cingular to continue receiving federal support. Cingular cannot obtain that certification if it does not comply with WAC 480-123-070(2) or receive a temporary exemption.

The rules were adopted June 28, 2006, and effective July 29. The rules required ETCs to file various reports by July 31. The report required under WAC 480-123-070(2) requires ETCs to report local service outages that occurred in calendar year 2005.

The rule states:

The report must include detailed information on every local service outage 30 minutes or longer in duration experienced by the ETC. The report must include:

- (a) The date and time of onset and duration of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected, including whether a public safety answering point (PSAP) was affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and
- (f) The estimated number of customers affected.

Cingular supplied some of the required information for 14 outages. Cingular states in its request for a temporary exemption that prior to adoption of WAC 480-123-070(2) it was not required in 2005 to maintain records of the information required by the rule and it was not required to retain the information for any other reporting function. Cingular also states that since 2005 it has changed its system for retaining service outage information and that extraordinary effort and expense would be required to recreate the required information, and Cingular doubts that it actually could recreate the required information.

Cingular also states that it is not able to report the estimated number of customers affected even for the 14 outages it reported.

### **Discussion**

The commission has provided temporary exemptions to rules when to do so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

Commission staff agrees with Cingular's assertion that Cingular was not required by the commission to maintain local service outage information in 2005.

Commission staff discussed with a representative of Cingular the company's representations that Cingular cannot provide the information without going to extraordinary effort and expense, and that Cingular does not believe the extraordinary effort and expense will result in a complete report. Commission staff has no basis to question Cingular's representation.

Commission staff reviewed Cingular's complaint information for 2005 reported under WAC 480-123-070(4). None of the complaints reported were characterized as complaints about outages. About 10% of complaints were in a category that could include complaints about outages. Therefore, if outages were significant enough to cause customers to complain, then outages caused 10% or fewer of complaints.

Commission staff also concludes the exemption will not create any insurmountable problem for the commission in its effort to determine if ETCs have used federal high-cost support in the manner prescribed by law because the rules will require collection of information for an indefinite number of years and the commission will be in a position to assess Cingular's efforts over time.

The rules adopted in WAC 480-123 are within the jurisdiction of the commission to adopt, but are not compelled by statute. An exemption from WAC 480-123-070(2) is not also an exemption from a statutory duty, requirement, or obligation that rests on Cingular.

A temporary exemption would not be contrary to the purposes underlying the regulation because the purpose of the rule is to collect information that was both informative for the commission but also readily available.

The exemption would also be in the public interest because it prevents expenditure of extraordinary effort and expense to collect data that might not be available.

**Conclusion**

Commission staff recommends the commission grant the temporary exemption from WAC 480-123-070(2) requested by Cingular for its filing made in 2006.