

Agenda Date: April 27, 2005
Item Number: A5

Docket: UT-043011

Company Name: Cingular Wireless (composed of Washington licensees Bellingham Cellular Partnership; Bremerton Cellular Telephone Company; Hood River Cellular Telephone Company, Inc.; New Cingular Wireless PCS, LLC; and Olympic Cellular Telephone Company, Inc.)

Staff: Robert Shirley, Telecommunications Policy Analyst

Recommendation:

Grant the petition of Cingular Wireless for designation as an eligible telecommunications carrier (ETC) in the place of AT&T Wireless.

Background

Ownership Change

Cingular Wireless and AT&T Wireless merged in October 2004 and as a result AT&T Wireless became a wholly-owned subsidiary of Cingular. At the time of the merger, AT&T Wireless was an ETC. Both AT&T Wireless and Cingular are commercial mobile radio service (CMRS) providers.

Cingular's Petition

Cingular Requests Designation in Place of AT&T Wireless

Cingular requests amendment of the ETC designation of AT&T Wireless to reflect the corporate reorganization that has taken place, to reflect the new licensees, and to include in the designation those subscribers of Cingular that reside in the locations for which the AT&T Wireless designation was made. Cingular does not seek to change the geographic scope of the designations.

As part of its petition, Cingular has made those representations expected of ETC petitioners. Like AT&T Wireless, the petition of Cingular meets the expectations the Commission has applied to previous petitioners and provided information sufficient to determine that designation is in the public interest.

Designation Will Result in an Increase in Federal Support

Because Cingular has a significant base of customers and because some of them reside in areas where AT&T Wireless is currently designated an ETC, Cingular will qualify for HCF support in an amount greater than that received by AT&T Wireless. AT&T Wireless was designated an ETC in Washington in April 2004 and it received approximately \$7 million dollars of federal high-cost fund (HCF) support for service

provided in part of 2004. According to Cingular, AT&T Wireless received \$3.3 million dollars per quarter of HCF support. Cingular estimates the combined companies will receive \$4.1 million dollars per quarter for a quarterly increase of 20% (an increase from \$13.2 million to \$16.4 million annually).

WITA Comments

The Washington Independent Telephone Association (WITA) requests the Commission undertake a close examination of Cingular's petition because the amounts of HCF support are substantial. WITA points out that the FCC has recently issued an order that "strongly urges state commissions to take a much closer look at the designation of competitive ETCs."

According to WITA's estimates, Washington ETCs will receive approximately \$87 million in HCF support on a combined basis, and Cingular will receive approximately 15% of this amount.¹

In addition to the comments on the amount of support, WITA recites several new requirements the FCC now places on ETC applicants and states these "and other issues should be given strong consideration" before the Commission makes a decision on Cingular's request.

Commission Staff Analysis

In previous dockets, including the designation of AT&T Wireless, rural telephone companies have raised concerns about the effect of new ETC designations on the total size of the HCF. The FCC has also stated a concern about the effect of individual designations on the size of the HCF. When the Commission granted ETC designation to AT&T Wireless, the Commission reviewed the FCC's then recent order in *Virginia Cellular* and concluded it was not bound by that decision and should not withhold designation based on the effect on the federal fund. In doing so, the Commission noted that not even the FCC was able to draw a conclusion regarding the impact of a single ETC designation on the HCF.²

¹ WITA, Cingular, and Commission Staff have all have had to make estimates in this docket. Commission Staff's view is that while the estimates may vary, the differences are not significant with respect to presenting positions, even in the example of a difference of \$2 million dollars, as is the case with the estimate for the annual combined HCF receipts that WITA estimates to be \$87 million and Commission Staff estimates it to be \$89 million.

² See WUTC Docket No. UT-043011, AT&T Wireless Order No. 1, n.7 (April 13, 2004).

When the Commission designated AT&T Wireless as an ETC, the Commission stated “the effect of additional ETC designations in areas served by rural carriers should be addressed at a national level.”³ Since designation of AT&T Wireless, the FCC has issued new rules that guide the FCC’s designation of ETCs, and it has encouraged states to adopt the same or similar rules for state ETC designations. The FCC commented on the effect of ETC designations on the HCF when it adopted the new rules. It stated:

We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission [FCC] has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive. Indeed, given the size of the total high-cost fund – approximately \$3.8 billion a year – it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund. In addition, the Commission [FCC] is considering in other proceedings, such as the *Rural Referral Proceeding*, how support is calculated for both rural incumbent LECs and ETCs. We also find, as discussed below, that certain proposals examining the effect on the fund as part of an ETC public interest analysis may be inconsistent with sections 214 and 254 of the Act and related Commission [FCC] orders.⁴

As in *Virginia Cellular*, the FCC has *raised* an issue of national import, but has not *addressed* the issue in a meaningful way. Because the FCC has not yet addressed this national issue, Commission Staff again recommends that designation of Cingular in place of AT&T Wireless, even with Cingular’s expected increased draw on the HCF, is in the public interest.

Commission Staff also notes that wireline carriers receive an estimated \$110 million in state revenue support each year and CMRS carriers receive no state revenue support.⁵ (Please see attached Power Point presentation on support amounts.)

Commission Options for Placing Requirements on Cingular

As stated above, the FCC has recommended that states follow its example and require carriers to take a number of actions not previously required for ETC designation in

³ Id., ¶ 36.

⁴ FCC ETC Designation Order, ¶ 54 (rel. March 17, 2005).

⁵ See WUTC Docket No. UT-980311.

Washington. The Commission has the choices of rejecting the FCC's guidance, conducting a rulemaking or other proceeding to determine what FCC suggestions would be consistent with Washington's policy goals, or proceeding on an *ad hoc* basis and apply some or all of the FCC's recommendations to companies as they come before the Commission.

Staff believes it will be premature to apply these conditions to an existing ETC when the Commission has not yet decided whether to apply them in reviewing new ETC applications. In the meantime, the Commission can rely on its rule, WAC 480-120-311, that requires all ETCs to certify that HCF support will be used only for the provision, maintenance, and upgrading of the facilities and services for which support is intended.

Summary

Commission Staff believes the requested designation is in the public interest and Commission Staff therefore recommends granting the petition of Cingular to be designated an ETC in place of AT&T Wireless for the identical geographic locations (listed in Exhibits A and B of Cingular's petition).