

The Washington Utilities and Transportation Commission does not use a court reporter to transcribe its open public meetings. This is an unofficial transcription of the audiotape of the April 27, 2005, open public meeting. The audiotape is included in the agency record.

TRANSCRIPTION OF DOCKET UT-043011

Item A5 and Item C1, Docket UT-043011

Bob Shirley: Good afternoon. Here is the first change for my speech. Robert . . . excuse me . . . Robert Shirley on behalf of Telecommunications staff . . . in Docket UT-043011 . . . a petition by Cingular Wireless. The recommendation of the staff is that the Commission grant the petition of Cingular Wireless, for designation as an Eligible Telecommunications Carrier in the place of AT&T Wireless.

The very briefest of background, and then tell you what staff did not attempt to do. Cingular Wireless and AT&T Wireless merged . . . in effective October of 2004. Earlier in 2004 . . . in April . . . after the announcement had been made that Cingular and AT&T were likely to merge . . . before that merger was complete...the Commission . . . uh . . . designated AT&T Wireless, and its several licensees, in Washington, as Eligible Telecommunications Carriers. And so, Cingular has asked for the identical geographic designation as the Commission gave to AT&T Wireless, one year and fourteen days ago.

Other than that . . . Cingular is here and the Washington Independent Telephone Association also is here, to comment, and I won't go through the memo. But, I should say that what staff didn't attempt to do was rethink or reconsider whether or not the Federal Communications Commission made a correct decision in 1997, when it determined that wireless companies should be eligible for ETC designation when they otherwise meet the threshold qualifications. Nor did staff attempt to determine whether or not the amount of support and the calculations of support all under control of the

Federal Communications Commission, deliver the correct or the incorrect amount of support to wireless carriers in rural areas. The FCC has a docket open on that topic. So, staff's recommendation is consistent with previous decisions that...that those issues are at the national level . . . and the question for Washington is, will Washington citizens benefit . . . will the public interest be served, if Cingular is designated in place of AT&T, and that is our recommendation.

Chairman Sidran: Do you want to take the opportunity now . . . because these issues . . .

Bob Shirley: On C1?

Chairman Sidran: Yes . . . are conjoined in a number of ways to just speak to this other issue?

Bob Shirley: Sure . . . and . . . so . . . call it C1 . . . don't know that this requires action but, certain explanation, and . . . uh . . . there may be comment. Just recently last month, the Federal Communications Commission changed its rules as to how it approaches designation of eligible telecommunications carriers that are required to apply to the FCC for that designation. It determined either that it could not or should not require states to follow suit, but has urged them to do so. It's a . . . a thirty pages of substance in a sixty-page order that lays out more than a dozen new requirements or requirements that the FCC has started to apply on an individual basis about two years ago to some carriers. And staff recommends that the Commission have a rulemaking proceeding here to

examine what the FCC did and essentially ask the question . . . should this Commission do some or all or perhaps none . . . as the Commission chooses of those same things with respect to either already designated ETCs, sweeping them all back in perhaps, at the end of the rulemaking for new requirements or on a going forward basis. That would also be part of the decision making in that rulemaking process.

And how that, particularly “dovetails” then back into today’s recommendation is that, Commission staff recommends against applying any of those FCC suggestions on an ad hoc basis beginning today, but rather that we . . . that the Commission proceed through a rulemaking and make determinations that are . . . would presumably apply to . . . to all ETCs, either going forward or looking backward, and then going forward as well.

Chairman Sidran: And . . . do you have an opinion on the suggestion, I think that some have made . . . that we should just defer action on this petition until that rulemaking process has been engaged?

Bob Shirley: I . . . yes, I do have an opinion. I think that’s unnecessary, because I believe that whatever the decisions the Commission might make at the end of a rulemaking, could be applied to Cingular then, and could be applied to . . . if appropriate . . . some thirty other companies that are not before you today, that have been designated as ETCs . . . and that, whether or not you were to do that today . . . well . . . if you were to defer, the . . . that leaves Cingular in an odd position where they’re not the designee, but they’ll be the ones asking the federal government to supply the support for the service, where they are otherwise qualified . . . and indeed, of the 80 percent of the

support for which they . . . Cingular will be qualified, is due to the customers and presumably the underlying infrastructure of AT&T Wireless. I did not ask the FCC if . . . if Cingular would not be able to collect that. But, I think this is more of a ministerial . . . it's putting the right company name with the entity that's providing the service.

Chairman Sidran: Thank you. And I should just note this Item C1 is not technically part of the open meeting...required to be taken up at an open meeting...but we are doing it for the convenience of the parties and the Commission. Commissioner's...any questions?

Commissioner Oshie: No questions here Mr. Chairman.

Commissioner Jones: Mr. Chairman . . . just a couple of factual quick questions. Bob . . . has Cingular Wireless ever applied on its own for ETC designation in the state, and what was the status? What's the current status of Cingular Wireless in the state . . . as an ETC designee?

Bob Shirley: It has not . . . like, three or four other wireless companies . . . it had not approached the Commission in the past for ETC designation. Verizon Wireless I know has not. T-Mobile has not. I think there might be another . . . and you can ask Cingular if there's a particular reason, but it may have to do with the location of the majority of their customers.

Commission Jones: And second quick questions is . . . is it your understanding from USAC, the people who receive the applications for high-cost fund assistance and deliver

the funds to the specific carriers . . . is it your understanding that they require a Commission action for a relatively . . . what I would regard a ministerial action . . . just a change of name based on an acquisition that has been approved by the FCC and Department of Justice? Is this something that is initiated by staff? Or, is it initiated by the company on the basis of previous mergers or any sort of similar actions before USAC?

Bob Shirley: This is before you today at the request of Cingular. I did not independently ask USAC if there would be a problem or not going forward. However, because the petition came here, and it seems . . . it's staff's opinion . . . it's always a good idea to have the correct legal entities named as . . . to have a current order at USAC . . . they do indeed follow our state orders. We think it's a reasonable petition, and timely, given that the legal structure of the company has changed. But . . . and that's reflected in the licensees . . . the underlying licensees.

Commissioner Jones: Well . . . I found it a little bit curious that you did not include that, perhaps as an option for us to consider by the Commission . . . and that is . . . for Cingular just to take over the current base of access lines from AT&T Wireless, where they have been receiving funds from USAC. And, without this increase of 20 percent or whatever . . . I think the amount is roughly \$4 million dollars a year and a 20 percent increase. I found it a little bit curious that you did not propose that as an option for our consideration.

Bob Shirley: The reason why I would have not have proposed such an option . . . and did not propose such an option Commissioner Jones, is that those customers of the combined company are in the . . . that result in an increase in support, as estimated by the company and by the Commission staff . . . are in . . . otherwise identical to the customers of AT&T Wireless. You could have family members in the same household . . . if one had been an AT&T Wireless before the merger, and one had been Cingular before the merger, and one would be a support customer and one would not. And . . . I think that I just couldn't logically explain why that should be the case. So, I didn't feel I could make that recommendation.

Commissioner Jones: Okay, thank you.

Chairman Sidran: Alright, thank you. Let's see . . . Kimberly Nielsen from Cingular, did you wish . . . I'm sorry . . . Cindy Manheim. There we go . . .

Cindy Manheim: Chairman Sidran, Commissioners Oshie and Jones, my name is Cindy Manheim. I am here on behalf of Cingular Wireless. Cingular Wireless is here today to request that the Commission amend its ETC designation that was previously granted by this Commission to AT&T Wireless, to both reflect the merger with Cingular and also a subsequent internal legal re-organization that occurred of the legal entities in Washington State. And this is all for the purpose of receiving Federal Universal Service Funds.

If it were not for the merger with AT&T Wireless, we would not have to be here today. And, I want to make clear by seeking this amended application, Cingular is not seeking in any way to expand the geographic areas where we receive ETC . . . or that we

were designated an ETC, and it will not change the number of ETCs currently in the state of Washington.

By approving this amended application, Cingular will include those subscribers that prior to the merger, were subscribers of Cingular Wireless. Again, but for the merger, the fact that there will be an increase in the number of supported lines, is not a matter that would otherwise be before this Commission. If AT&T Wireless has launched an aggressive marketing campaign or something in the areas in which it was designated an ETC, those subscribers would have been included on its line counts to USAC, and it again, would not be here before this Commission.

To follow up on what was said previously about the history. AT&T Wireless, on February 18, 2004, applied to this Commission to become an ETC in certain areas in the state, including both rural and non-rural areas. The matter was heard by the Commission and the Commission approved the designation in April of last year. On October 26th, of 2004, AT&T Wireless then became a wholly-owned subsidiary of Cingular Wireless. And, then on December 31st of the year . . . 2004 . . . excuse me, four of the legal entities that were the licensees previously designated as ETCs in this state, were merged into a single entity. The four other legal entities, though, remain the same as were designated previously.

(Inaudible) . . . service fund today and this will only increase the number of Cingular subscribers. We'd of previous raised this concern when AT&T Wireless was before this Commission requesting its initial designation, and at that time the Commission found that the AT&T Wireless petition satisfied the requirements for public interest in the rural areas. Further the Commission, in other ETC designations, has as

well, considered whether the addition of an ETC will benefit the consumers and has held that consumers will, in fact, benefit from competition, innovative products, and more attention to customer service.

Again, the mere fact that there may be more subscribers in an area in which a company has already been designated an ETC, would not normally be brought before this Commission.

The second argument that WITA makes is that the FCC recently adopted a report and order that puts additional requirements on carriers seeking ETC designation before the FCC. Cingular Wireless, again, is here simply to update the legal entities and make an ministerial change to the ETC designation that it previously . . . that AT&T Wireless previously received.

Applying a different standard to this amended application would put Cingular at a disadvantage to other ETCs already designated in the state. Cingular Wireless believes that it would be appropriate for the Commission to look at this more holistically through a rulemaking, as has already been proposed. Again, Cingular is just asking that the Commission update the ETC designation previously received by AT&T Wireless to reflect the merger.

Chairman Sidran: Thank you. Questions?

Commissioner Oshie: None.

Chairman Sidran: Commissioner Jones? Are you still with us?

Commissioner Jones: I'm still here Mr. Chairman. Thank you, but no questions.

Chairman Sidran: Thank you Ms. Manheim . . . uh . . . let's see . . . Mr. Finnigan?

Richard Finnigan: Good afternoon Commissioners, Rick Finnigan, on behalf of the Washington Independent Telephone Association. Let me start out by saying I respectfully disagree that this is a ministerial matter. If it was merely a name change, I wouldn't be standing here. But, the issue that's raised is the issue of adding essentially a new entity in . . . in with additional lines that they want support for, and an additional support. And . . . and I will respectfully assert that there is nothing in the record for you to evaluate the amount of support they're going to be receiving. They've thrown out a number on the table, but they haven't provided you with any back up information so that you can verify that calculation.

I informally asked for that verification and I had a conversation at four o'clock with Cingular's counsel, where they explained the process they used to calculate it, but did not . . . they did not provide any quantification, so that, that number could be validated. So, you really don't know, based on the record before you, whether it's a \$1 million a quarter that they're adding or \$4 million a quarter that their adding. It may be \$1 million, but they haven't provided any basis to evaluate their assertion.

There are two issues that we raised. One is, what are we doing here in terms of an overall view on the . . . the drawing on the Fund. But the more important issue . . . and the one that the FCC has put emphasis on...in its March 17th ETC designation order . . .

is . . . what's gonna be done with those funds? For an ETC applicant that comes forward today, if it was at the FCC, what they would need to do is to project, by wire center, the draws that they would expect over five years, and then tell you what they were gonna do with those funds over that same five-year period, and if they weren't going to invest in a particular wire center, then they would need to explain why they weren't going to do any investment in that rural wire center. And . . . and that's the type of accountability that they want to see for somebody coming forward with an ETC application.

And, there's an important distinction that needs to be drawn between when you have a new ETC app . . . entity coming forward, as I would assert they are, at least as to the additional . . . the additional support they want for the old Cingular, as opposed to the new Cingular subscribers . . . that they are in essence a new ETC applicant, as to those subscribers for those areas.

What the FCC has said is, look, when you've got an incumbent ETC, you know they're there . . . you take Tenino Telephone Company down the road. That's the only area they serve. So, the money they get for Universal Service by definition is going into area to support that area . . . and the provision of telecommunication service in that area. As you may remember, from discussion we had about a month ago . . . a little over a month ago . . . on the ETC issue, the incumbents get reimbursed on a two-year lag basis. When a wireless ETC's coming forward . . . what they are saying is . . . we want to get reimbursed now, based on the number of lines we have now in an area . . . and rightfully so . . . I think the FCC has said, okay, if you want to do that, then tell us what you're gonna do with that money, cause it's not on a lag basis. We don't know that you've

already made the investment. We want to know where you're gonna make the investment and how you're going to make that investment.

A couple of examples that I included in the letter, based on the USAC reports, and I've got to qualify, those were the only numbers we had available, and I have not found USAC to be 100 percent reliable. But, they were the only numbers I had available. On an annual basis, Cingular will be drawing in 2005, \$580,000 in the Kalama Telephone Company service area. That's about \$3 million dollars over five years. For their drawing . . . their 2005, \$1.5 million in the Ellensburg service area. That's \$7.5 million over five years.

What's the investment that they're going to make in those areas with that money? And, that's part of not just looking at it after the fact, but looking at it up front, when you consider the designation, and that's part of the consideration, at least from the FCC's viewpoint. And they've urged the states to consider taking the same viewpoint on an entry-level basis . . . when you've got somebody coming before you and asking for new money in essence. What are they gonna do with that new money? And, that's the issue we wanted to bring . . . bring before you and say, based on what you've got before you, you've got no way to evaluate that. And, I'm not suggesting we need to have this thing set for hearing. It might be a good idea, if you're interested, is to say to Cingular, we need more information. Go back and supplement your application and give us some of that information so we can evaluate it. It doesn't have to be a long drawn-out process. But, I think, based on what you've got before you, it's very difficult to evaluate their request for the amended application. And, that's what we'd urge you to do . . . is to ask for more information, more data, so that you can make that considered decision. Thank you.

Chairman Sidran: Thank you Mr. Finnigan. Any questions Commissioners?

Commissioner Jones, any questions?

Commissioner Jones: No . . . none for me.

Chairman Sidran: Anyone else who wishes to speak to this matter?

Commissioner Oshie: No.

Chairman Sidran: All right. Discussion . . . or is there a motion from a Commissioner.

Commissioner Jones: Chairman . . .

Chairman Sidran: All right, go ahead Commissioner Jones.

Commissioner Jones: As you know I raised my concerns about better oversight of this high cost federal support program through USAC at the last meeting. I still have those concerns and I think . . . I . . . they really haven't changed all that much since the last meeting. The reports from the FCC have come out and I would just urge us to consider this request . . . this petition in the context of that order. It is a substantial order. I have seen nothing from the staff, in terms of the analysis of that order yet, and as Mr. Finnigan states, I think, the information from Cingular is somewhat lacking in terms of the impact, and especially this 20 percent increase in subscribers that they're adding on to the

petition, as opposed to AT&T Wireless. I would . . . I would just urge us to delay consideration of this petition until we have reviewed Commission staff analysis of the FCC order, and then take action at that time.

Chairman Sidran: Okay . . . Comment Commissioner Oshie?

Commissioner Oshie: Well, I'd like to follow up with a question to Mr. Shirley, and it has to do with staff's review of Cingular's petition . . .

Commissioner Jones: Commissioner Oshie and Mr. Chairman . . . I have to run now, so that's where I stand on the issue . . . and you can take it from there.

Commissioner Oshie: Mr. Shirley, a couple of things. Staff, of course, has . . . has reviewed Cingular's petition, and do you agree with Mr. Finnigan that essentially, this isn't just a ministerial act in whole cloth, but it contains elements of both a ministerial act and also granting essentially . . . granting of a new petition, if you will, of Cingular, at least for the number of customers that would be rolled into the . . . to the ETC "pool" if you will, as a result of the merger of AT&T and Cingular.

Bob Shirley: I . . . I guess I do not, for this reason . . . for a couple of reasons. One is, but for the name change . . . but for the decision that the licensees should be changed to Cingular from AT&T . . . I'm quite certain that AT&T Wireless could have requested from USAC, on a going forward basis after October, an additional amount of support based on the . . . the additional customers that, that company, under that name would

have. So, I think the name really is “key.” I would also say that, in the petition, Cingular did say . . . you know . . . it was more than just change our name . . . it makes those appropriate representations that it will follow the federal code and the CFR, and deliver the service . . . offer the services . . . and deliver them, as required, just as some thirty other ETCs must do. So, I do disagree. I don’t mean that to say, that the money isn’t a significant amount . . . but to date . . . the FCC hasn’t given us a reason to conclude that \$13 million is okay, and \$16 million is too much. That’s my answer.

Commissioner Oshie: So, I guess maybe if I were to paraphrase . . . if it were . . . if AT&T maintained its original name, it would just have acquired Cingular’s customers under AT&T, and that would have been, in your mind . . . or in staff’s position . . . is that it would have been okay . . . and they could have been rolled into the . . . I guess AT&T’s ETC pool.

Bob Shirley: Just as every company . . . I’m gonna guess that Verizon, which was designated in 1997 . . . not wireless Verizon . . . perhaps has 100,000 more access lines today than it did in 1997, but we do not revisit that. Now . . . in the rulemaking, perhaps we could take that up . . . Is there a reason? Is there a threshold?

Commissioner Oshie: Now, just a follow up, and that has to do with your analysis of the impact on the fund. Understanding . . . you know . . . staff’s position, and frankly I would agree, the FCC has not given us any real guidance as to what they . . . what it would consider to be an improper draw upon the fund or a level of draw, an accumulative

or an individual way. So . . . but, just to kind of follow back on the path that Mr. Finnigan was on, just to give us some confidence that staff has reviewed those numbers and is comfortable with it . . . that staff believe that the draw down . . . additional draw down . . . from the acquisition of Cingular customer or . . . the . . . by pooling Cingular and AT&T customers, would be approximately \$800,000 a quarter.

Bob Shirley: Is that the number? Yes . . . it's a quarterly amount, about \$800,000 . . . yeah, about \$2 . . . \$2.4 . . .

Commissioner Oshie: About \$3.3 million to \$4.4 million (inaudible . . .).

Bob Shirley: Yeah . . .

Commissioner Oshie: Okay . . . thank you.

Chairman Sidran: Just . . . I want to confirm my understanding, so . . . if I'm misconstruing something here, let me know. So, my understanding, based on the last time we had an ETC issue before us, is that any allocation of these monies to Cingular, has no affect on the funding "stream" for WITA members?

Bob Shirley: This doesn't.

Chairman Sidran: This doesn't . . . this isn't a takeaway . . . this isn't any kind of (inaudible). And second, these federal funds, in terms of how they are allocated . . . if they're not allocated to the Cingular customers in support in this area . . . then they'll presumably, they'll be allocated somewhere else, including somewhere outside our state?

Bob Shirley: I think it would be more accurate to say that, in some miniscule fraction, the USAC would have to collect a little bit less to disburse a little bit less. In other words, this doesn't . . . just as it doesn't take away from any of the rural companies in Washington . . . it doesn't mean that . . . that a rural company or a wireless company in Illinois, will receive less . . . or more . . .

Chairman Sidran: Because, we are talking . . . we are talking about \$3.2 million dollars, this is a multi-billion dollar fund.

Bob Shirley: Up to \$3.8 now is what the FCC said on March 17th.

Chairman Sidran: \$3.8 billion?

Bob Shirley: Yes . . . for this portion of the fund . . . high cost.

Chairman Sidran: Okay, thank you. Well, perhaps we can have . . . are there any other comments? Yes, Mr. Finnigan.

Richard Finnigan: I don't want to belabor a point . . . but there were . . . just so that we don't have misconceptions out there. There are some lids that are built into the current funding mechanism. I'm not going to represent that this would make an additional . . . a significant impact on future draws . . . it will have an incremental impact on future draws. So, there are some mechanisms in place that . . . for portions of this fund . . . where there are lids in place, and . . . Anyway, I just wanted to make sure what you heard was clear.

Chairman Sidran: Thank you. I appreciate that. Are there any other comments? Well, my sense of this issue is somewhat of a continuation of the last time it was before us. I do think it would be useful for us to undertake a rulemaking here, because the . . . the ground is shifting . . . and I think . . . it would be valuable to go through that process, which at the end of the day would apply to, not only this particular issue in the context of Cingular, but to all of the ETCs, and I think that is something that we should do. At the same time, I don't think . . . given the margin here . . . I don't think it's really necessary or fair to hold this matter, during what . . . back . . . during what could be a fairly lengthy process. Although, I hope it'll be fairly expeditious. So, I'm prepared to support staff's recommendation, and that we do allow this amendment.

Commissioner Oshie: I would concur, Mr. Chairman, and be prepared to make the motion.

Chairman Sidran: All right. Thank you.

Commissioner Oshie: I move that the Commission grant the petition of Cingular Wireless for designation as an Eligible Telecommunications Carrier in place of AT&T Wireless.

Chairman Sidran: And I second. The motion carries. Do we need to take any action on the rulemaking matter or not? We do not. All right, thank you. And, thank you all for your patience, both those who stayed over the lunch hour in order to allow us to take this matter up, and to those who have been waiting on the Least Cost Plan, and we will now move to Item D1 of the Agenda, which is a presentation by PacifiCorp of their Least Cost Plan.