

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Request of)	DOCKET UT-063060
)	
)	ORDER 01
BELLINGHAM CELLULAR)	
PARTNERSHIP; BREMERTON)	
CELLULAR TELEPHONE)	ORDER DENYING PETITION FOR
COMPANY; HOOD RIVER)	PERMANENT EXEMPTION FROM
CELLULAR TELEPHONE)	WAC 480-123-070(6); GRANTING
COMPANY, INC.; NEW CINGULAR)	PARTIAL EXEMPTION FROM
WIRELESS PCS, LLC; and OLYMPIC)	WAC 480-123-030(1)(g) AND
CELLULAR TELEPHONE)	WAC 480-123-070(6) SUBJECT TO
COMPANY, INC. (collectively)	CONDITION
CINGULAR))	
)	
For a Permanent Exemption from the)	
Requirements of WAC 480-123-070(6))	
.....)	

BACKGROUND

1 Bellingham Cellular Partnership; Bremerton Cellular Telephone Company; Hood River Cellular Telephone Company, Inc.; New Cingular Wireless PCS, LLC; and Olympic Cellular Telephone Company, Inc. (collectively Cingular or the Company) is an eligible telecommunications carrier (ETC) subject to WAC 480-123-030(1)(g) and WAC 480-123-070(6). On July 31, 2006, Cingular requested a permanent exemption from its obligation under the rule to maintain four hours of battery power at its cell sites in its ETC designated service area in Washington.¹ In the alternative, Cingular requested a partial exemption from the rules, proposing eight options for a partial exemption. On November 28, 2006, Cingular clarified its request for a partial exemption.

2 On June 28, 2006, the Washington Utilities and Transportation Commission (Commission) adopted new rules that apply to ETCs effective

¹ Cingular received a temporary exemption from WAC 480-123-070(6) in Docket UT-063066.

July 29. Prior to adopting WAC 480-123, the Commission had placed no requirements on ETCs to provide back-up power.

- 3 Cingular is eligible to receive federal high-cost support because it is an ETC. Cingular is estimated to receive approximately \$36 million in federal support for service provided in 2007 based on recent actual data from the Universal Service Administrative Company. The federal support benefits Washington consumers when used to increase Cingular's network coverage and capacity or to improve network reliability.
- 4 To continue to receiving federal support, the Commission must certify 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." *47 C.F.R. § 54.313, 314*. Cingular cannot obtain that certification if it does not comply with WAC 480-123-030(1) (g) and WAC 480-123-070(6) or receive an exemption. WAC 480-123-060.

DISCUSSION

- 5 Given limited federal support funds, the issue is whether the benefit to subscribers from requiring Cingular to add up to two hours of battery power at a large number of cell sites is worth the substantial cost, in light of alternative investments that might be made in network coverage and capacity.
- 6 Cingular advances two arguments in favor of its request for permanent exemption to WAC 480-123-070(6): (1) Cingular provides sufficient power at cell sites through batteries and fixed and mobile generators to operate its cell sites in all but extreme, major power outages; and (2) Cingular commits to place at least four hours of back-up power at new cell sites, meaning federal high-cost support will be used in a manner consistent with law and the Commission's expectations.
- 7 If Cingular is not granted a permanent exemption, it will have to expend a substantial amount to increase battery power at cell sites that do not have four hours of battery power. Only 20 percent of Cingular's cell sites have four hours of battery power,

while 30 percent have 3.75 hours of battery power, and 50 percent have between two and 3.75 hours of battery power. The cost to increase battery power to four hours at all cell sites would be very substantial even in relation to Cingular's estimated \$36 million in federal support for 2007.²

8 Cingular uses a combination of battery power and fixed and towed generators to maintain power at cell sites during power outages. In essence, Cingular proposes that the Commission grant it an exemption from WAC 480-123-070(6) so that it can operate existing cell sites as it operated them prior to adoption of the rule. In particular, at the February 7, 2007, Open Meeting Cingular requested that we not require it to increase power for Priority 1 and -98 db cell sites³ from 3.75 to four hours of battery power.

9 Cingular provided information about network problems and outages. That information suggests that cell site outages caused by power outages are rare.⁴ For the period January through September 2006, Cingular reports that less than one percent of its network problems resulted from power outages.

10 Prior to adoption of the rule, ETCs were treated in a competitively neutral manner because there was no requirement for ETCs to have back-up power at any level. Under the new rule, all wireless ETCs are required to meet the battery power requirement.

11 A review of the information Cingular provides shows that Cingular maintains power at cell sites in almost all circumstances when there are commercial power outages. In only two instances in 2006 was Cingular unable to maintain power at all cell sites.

12 In the first instance, after an extreme power outage due to a storm in February, Cingular lost power to approximately 10 percent of its network cell sites. Cingular determined that 13 percent of these 10 percent affected cell sites (1.3 percent of the

² Cingular submitted confidential cost estimates.

³ Cingular describes these two types of sites in footnote three to its confidential Exhibit A. A cell site with -98 db coverage is generally considered to be a stationary outdoor coverage site. Cingular designates cell sites "Priority 1" if they serve important locations such as hospitals and important government buildings.

⁴ Cingular submitted confidential network problem information.

total cell sites) had two hours of battery power, and that they would have remained in service if they had four hours of battery power. Because of the overlapping coverage common to cell networks, and because Cingular did not examine the effects of the storm with the present issue in mind, we cannot determine whether coverage was compromised, or the effect on service.

- 13 We note that the mobility of wireless service means that if customers can move freely, customers can use their service even if a particular area is without coverage or has diminished capacity because the customer may be able to travel to a different location to complete a call. When a severe storm disrupts power to 1.3 percent of a wireless network, it does not follow that the service disruption is equal to the percentage of cell sites affected.
- 14 In the second situation, Cingular's network was disrupted by a nearly unprecedented windstorm in December 2006 affecting more than a million homes in the Puget Sound region. Cingular was unable to maintain power at many cell sites equipped with four hours of battery power. Under the circumstances, the difference between two and four hours of battery power made no difference to network operations immediately after the storm.
- 15 Although not a model of clarity, Cingular seems to advance (if not conflate) two arguments: (1) Four hours of back-up power is rarely necessary or useful – two hours is probably sufficient and if not, then 3.75 hours is close enough. The cost to increase from 3.75 to four hours is disproportionate to the benefit; and (2) The rule's requirement of *battery* power should be waived because there are alternatives (e.g., fixed or mobile generators, fuel cells) that may be equally reliable but more cost effective back-up power sources.
- 16 We take each of these arguments in turn based upon the record before us. Whether to set a particular time standard for back-up power was precisely the issue we decided in the rulemaking. As a matter of procedural fairness and competitive neutrality, we decline to revisit the issue in the guise of a permanent exemption for Cingular. If the time standard should be other than four hours, we can consider amending the rule.

- 17 We are mindful of the cost/benefit arguments, however, and therefore will grant a temporary two-year exemption from the rule's four hour requirement subject to the following condition: Within two years of the date of this Order, all the Company's "Priority 1" and -98 db cell sites must have four hours of reliable back-up power. By definition, these are high priority sites and during an emergency 3.75 hours is not the same as four hours.
- 18 As for the balance of Cingular's noncompliant sites, the public interest is better served over the next two years by deferring bringing them up to the four hour standard, thereby allowing additional investment in network coverage and capacity. We can revisit this issue at the expiration of the exemption if necessary.
- 19 Turning to Cingular's second argument regarding the nature of the back-up power supply, we find persuasive the argument that cost-effective and equally or more reliable sources should be permitted as an alternative to batteries. This is also an issue that may warrant revisiting our rule. For now, we grant a two-year exemption from the requirement that back-up power be provided by batteries and allow fixed generators and fuel cells as alternatives. We reject the use of mobile generators, particularly at the priority sites to be upgraded in the next two years, because of concerns that blocked or damaged roads might prevent mobile generators from reaching cell sites for prolonged periods.
- 20 Accordingly, we deny Cingular's initial request for a permanent exemption from WAC 480-123-070(6), and grant the Company's request for a partial, temporary exemption from WAC 480-123-030(1)(g) regarding the requirement for battery back-up power for a period of two years subject to the condition that the Company must increase to four hours alternative power (battery, fixed generation, or fuel cells) at all Priority 1 and -98 db cell sites that now have less than four hours of alternative power. Cingular requests two years to complete this requirement and we find that reasonable given that Cingular will have to make changes to more than one-third of its existing cell sites.

SUMMARY FINDINGS AND CONCLUSIONS

From the foregoing, the Commission finds and concludes:

- 21 (1) The Commission has jurisdiction over Cingular and the subject matter of this proceeding. *47 U.S.C. § 214(e); RCW 80.36.610.*
- 22 (2) The Commission's rules in WAC 480-123 governing eligible telecommunications carriers (ETCs) require ETCs to maintain four hours of battery back-up power at cell sites in their ETC designated areas in Washington.
- 23 (3) Cingular would incur substantial costs to increase to four hours the amount of battery power at the 80 percent of its cell sites that do not have four hours of battery power.
- 24 (4) The benefit to subscribers from requiring Cingular to comply with the battery power requirements in WAC 480-123-030(1)(g) at this time is outweighed by the cost, which would limit substantially the federal support available to Cingular for increasing network coverage and capacity.
- 25 (5) The importance of high priority cell sites, i.e., "Priority 1" or -98 db cell sites, in emergency situations requires that these sites meet the four hour back-up power requirements of WAC 480-123 within two years.
- 26 (6) Given the balance of costs and benefits of complying with the battery back-up requirements of WAC 480-123, the public interest is better served by deferring for two years the requirement that Cingular bring all non-priority cell sites up to the four hour back-up power standard.
- 27 (7) The balance of costs and benefits of complying with the battery back-up requirements of WAC 480-123 and the availability of alternative sources of

back-up power support a temporary exemption from the rule to allow Cingular to use batteries, fixed power generators or fuels cells to meet the back-up power requirements of the rule.

- 28 (8) Mobile generators are not an adequate alternative source of back-up power for high-priority cell sites because roads might be blocked or damaged during an emergency power outage, preventing mobile generators from reaching cell sites for prolonged periods.
- 29 (9) A partial exemption of WAC 480-123, subject to certain conditions to protect the public, is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

ORDER

THE COMMISSION ORDERS:

- 30 (1) The petition of Bellingham Cellular Partnership; Bremerton Cellular Telephone Company; Hood River Cellular Telephone Company, Inc.; New Cingular Wireless PCS, LLC; and Olympic Cellular Telephone Company, Inc. (collectively Cingular) for a permanent exemption from WAC 480-123-070(6) is denied.
- 31 (2) Bellingham Cellular Partnership; Bremerton Cellular Telephone Company; Hood River Cellular Telephone Company, Inc.; New Cingular Wireless PCS, LLC; and Olympic Cellular Telephone Company, Inc. (collectively Cingular) is granted a partial exemption from the battery power requirements of WAC 480-123-030(1)(g) and the certification requirements of WAC 480-123-070(6) regarding the requirement for battery back-up power at cell sites for a period of two years from the date of this Order subject to the following condition:

Within two years of the date of this Order, the Company must provide four hours of back-up at all Priority 1 and -98 db cell sites using reliable alternative power sources (battery, fixed generation or fuel cells).

DATED at Olympia, Washington, and effective February 15, 2007.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner