

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

In the Matter of the Petition of)	DOCKET NO. UT-043011
)	
BELLINGHAM CELLULAR)	ORDER NO. 02
PARTNERSHIP; BREMERTON)	
CELLULAR TELEPHONE)	
COMPANY; HOOD RIVER)	
CELLULAR TELEPHONE)	
COMPANY, INC.; NEW)	
CINGULAR WIRELESS PCS,)	
LLC; and OLYMPIC CELLULAR)	
TELEPHONE COMPANY, INC.,)	
d/b/a CINGULAR WIRELESS,)	ORDER GRANTING PETITION
LLC,)	FOR DESIGNATION AS AN
)	ELIGIBLE
For Designation as an Eligible)	TELECOMMUNICATIONS
Telecommunications Carrier)	CARRIER
.....)	

1 **Synopsis:** *The Commission grants the petition of Cingular Wireless for designation as an eligible telecommunications carrier. Cingular Wireless meets the requirements for designation, and granting the petition is in the public interest. Cingular Wireless is ordered to provide a map of its licensed service areas in electronic format.*

I. INTRODUCTION AND BACKGROUND

2 The Telecommunications Act of 1996 (federal Act or Act)¹ requires state utility commissions to make a number of decisions related to opening local telecommunications markets to competition and preserving and advancing universal service. One of those decisions is the designation of qualified common carriers as eligible telecommunications carriers (ETCs). In order to be eligible for federal universal service support from the federal High Cost Fund (HCF), a common carrier must be designated by

¹ Public Law 104-104, 110 Stat. 56 (1996), codified in scattered sections of Title 47 U.S.C.

the state commission as an ETC. 47 U.S.C. § 214(e)(1). Once designated as an ETC, a carrier must advertise the availability of service and offer service in the geographic area in which it is designated. *Id.*

- 3 The Commission considered this petition at its regularly scheduled open public meeting on April 27, 2005.
- 4 Cingular Wireless, LLC (hereafter “Cingular”) petitioned the Commission for designation as an ETC on March 2, 2005. Cingular merged with AT&T Wireless in October 2004 and now Cingular seeks to be designated an ETC in place of AT&T Wireless for the identical geographic areas. Cingular has represented that it will fulfill the requirements of 47 U.S.C. § 214(e) and comply with 47 U.S.C. § 254.
- 5 The Washington Independent Telephone Association (WITA) commented on Cingular’s petition. WITA does not oppose the designation in its comments as it did when the Commission considered the petition of AT&T Wireless. Rather, WITA directs the attention of the Commission to a recently released Federal Communications Commission (FCC) order in which state commissions are urged to adopt several requirements for applicants of ETC designation.
- 6 In particular, WITA points out that Cingular will be eligible to receive approximately \$14 million dollars of federal high-cost fund (HCF) support. This amount will be approximately 15 percent of all HCF support for ETCs in Washington in 2005. Implicit in the comments is WITA’s previously stated views that this may be too much support for a wireless carrier and that support in this amount, coupled with similar amounts of support for wireless carriers in other states, may be placing an unsustainable burden on the federal HCF.

- 7 Also implicit in WITA's comments is its view that the Commission should, if it grants the petition, condition that grant on Cingular's compliance with several of the requirements urged on states by the FCC.
- 8 Commission Staff provides information that places in a national context the HCF support amount provided to wireless carriers in Washington. Commission Staff recommends against denying the petition based on the amount of HCF support for which Cingular will be eligible. Commission Staff's view is that the effect of designations on the HCF is a national issue and that although the FCC has raised the issue of the effect of a single designation on the fund, it has not addressed this national issue in a meaningful way.
- 9 Commission Staff recommends the Commission refrain from imposing any requirements on Cingular like those urged on states by the FCC. Commission Staff believes it is 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, states Commission Staff, we may rely on WAC 480-120-311 to guide ETCs in the proper expenditure of HCF support.

II. DISCUSSION AND DECISION

- 10 The Commission has been petitioned by Cingular to replace AT&T Wireless with Cingular as the ETC for areas identical to the geographic areas for which AT&T Wireless was designated an ETC. AT&T Wireless is now a wholly-owned subsidiary of Cingular as a result of the merger of the companies.
- 11 We reiterate our view that the level of support provided to ETCs, wireline as well as wireless, is an issue for the FCC to address. It has a docket open on that topic.

- 12 The issues that the dissent raises are important policy considerations that should be addressed at the state level. We are mindful of these issues, including what requirements beyond those of WAC 480-120-311 should be applied to ETCs. We are now addressing those issues in a rulemaking in Docket No. UT-053021.
- 13 This petition, however, is not the appropriate proceeding in which to undertake a review of the policy considerations of ETC designations. Cingular seeks to serve in the exact same geographic territory as did AT&T. It is true that there will be a 20% (\$3.2 million) increase in high cost fund support reflecting the customers that Cingular brings to the merger. To delay or deny this petition, however, would have the practical effect of withdrawing \$13.2 million of existing high cost fund support from the former AT&T. We are concerned about the effect withdrawing this support would have on technology investment in Washington State. If these funds are not allocated to Cingular, there is no reason to believe they will otherwise accrue to the benefit of this state rather than being spent elsewhere.
- 14 We base our decision on the written materials provided in this docket, information presented at the Open Meeting, and on our knowledge and experience regarding ETC designation. We have a substantial number of thorough and reasoned decisions on which we rely to reach our conclusion. As a result, we will not discuss in detail every issue that has come before the Commission and has been discussed and decided in prior proceedings.
- 15 We conclude that it is in the public interest to grant the modification requested by Cingular. Our action will preserve and advance universal service and promote competition. *RCW 80.36.300; 47 U.S.C. § 254.*

III. OTHER ISSUES

- 16 The Commission orders Cingular to produce electronic maps of its licensed service areas. Production of electronic maps will assist Cingular in claiming federal universal service funds to which it will become entitled. Those maps will also assist rural incumbent local exchange carriers (ILECs), the FCC (through the Universal Service Administration Company), and, if need be, this Commission, to determine the accuracy of requests for federal support that are based on customer location. Cingular must prepare maps with the same standards and attributes required of rural ILECs, and its maps must be filed with the Commission, where they will be available to rural ILECs. The availability of electronic maps from ETCs serving rural areas (including Rural ILECs, Cingular, and others) will permit all interested persons to have an accurate representation of exchanges and service areas for the purpose of ensuring accurate requests for, and payment of, federal universal service support.
- 17 A combination of state and federal laws impose upon ETCs an obligation to offer reduced-price telephone service to low-income customers within the ETC's service area. *47 U.S.C. § 254(i), (j); 47 C.F.R. § 54.405, 411; RCW 80.36.420; WAC 480-122-020; Chapter 388-273 WAC.* Cingular acknowledges these obligations in its petition, and the commitments made by Cingular in its petition are sufficient to meet the criteria for designation as an ETC. Cingular will participate in the federal Lifeline and Link Up programs. *Petition, ¶¶ 13-14; Affidavit of Daniel Youmans, ¶ 8.* In addition, Cingular will offer additional discounts through the Washington Telephone Assistance Program, which is administered by the Department of Social and Health Services (DSHS). *Petition, ¶ 14.* There is some uncertainty about the appropriate role of wireless carriers in the state low-income program, but Cingular has committed to work with DSHS to ensure proper implementation of WTAP. *Id.*

IV. FINDINGS OF FACT

18 Having discussed above all matters material to our decision, and having
stated general findings and conclusions, the Commission now makes the
following summary findings of fact.

19 (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.), subsidiary licensees of Cingular Wireless LLC
(d/b/a Cingular Wireless), and referred to in this order as Cingular,
are telecommunications companies doing business in the state of
Washington.

20 (2) Cingular provides service in the exchanges listed in Appendix A.

21 (3) Cingular's petition satisfies the requirements of 47 U.S.C. §
214(e)(2).

22 (4) Cingular competes with rural ILECs and other telecommunications
carriers in the exchanges where it serves.

V. CONCLUSIONS OF LAW

23 (1) The Commission has jurisdiction over the subject matter of this
petition and over Cingular with respect to its designation as an
ETC.

24 (2) The Commission is not required by the Act or by any provision of
state law to hold an adjudicative proceeding or other hearing prior
to designating a telecommunication carrier an ETC.

- 25 (3) Granting Cingular's petition for designation as an ETC in the exchanges listed in Appendix A is consistent with the public interest, and is consistent with applicable state and federal law.
- 26 (4) Granting Cingular's petition for designation as an ETC in areas served by rural telephone companies is in the public interest.
- 27 (5) Requiring Cingular to create electronic maps of its licensed service areas is in the public interest.
- 28 (6) The Commission has authority to modify, suspend, or revoke the designations granted in this order at a future date.

VI. ORDER

29 This Order decides issues raised in a non-adjudicative proceeding. Based on the foregoing, the Commission orders:

- 30 (1) The Commission grants 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., subsidiary licensees of AT&T Wireless Service, Inc. (d/b/a Cingular Wireless), as modified by this Order. Each of the requested designations set forth in Appendix A is granted.
- 31 (2) Cingular must provide Lifeline and Link Up discounts consistent with 47 C.F.R. § 54.405 and 411.
- 32 (3) Cingular must prepare electronic maps of its licensed service areas with standards and attributes as described in the Commission's Order in Docket Nos. UT-013058 and UT-023020, entered August 2, 2002.

- 33 (4) The Commission has authority to modify, suspend, or revoke these designations, including the service areas accompanying those designations, at a future date.

DATED at Olympia, Washington, and effective this 29th day of April, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner (dissenting):

34 I respectfully disagree with the result of this order. I have previously voiced reservations about the financial sustainability of the federal high-cost funds (HCF).

35 The 2004 Recommended Decision of the Joint Board on Universal Service,² and the more recent FCC Order on Eligible Telecommunications Carrier (ETC) designation³ that responded to the Recommended Decision, should give the Commission reason to pause and rethink its ETC designation process. We as a

² *In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1, 19 FCC Rcd. 4257 (“Recommended Decision”) at ¶2 (2004).

³ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, FCC 05-46 (rel. March 17, 2005).

state commission play an important role in the joint federal-state regulation of telephone companies to ensure universal service. We should not represent only the interests of the petitioners in their claims to gain as much of the federal largesse of the Universal Service Administration Corporation (USAC) as possible. We also represent the interests of ratepayers who are paying an increasingly heavy burden to support universal service. We therefore represent the public interest in ensuring economy and purpose in the appropriate usage of USAC funds.

36 In my view, Cingular Wireless's petition does not merely seek the substitution of its name for that of AT&T. By Cingular's own estimates, there will be a 20% increase in the number of access lines covered by the newly combined entity.⁴ These additional access lines represent new ETC beneficiaries, bringing new financial obligations, and warranting a closer review of the petition.

37 I believe we should put a "freeze" on any expansion of ETCs pending the completion of the Commission's ETC rulemaking in Docket No. UT-053021. When subsidies spiral out of control in other arenas such as foreign trade, the parties often impose standstill agreements in which the status quo is preserved until the parties attempt to resolve the dispute over a certain period of time. Such a process is warranted here.

38 Our state demonstrated exemplary leadership in the years immediately following the passage of the 1996 Telecommunications Act by allowing a certain number of wireless carriers to benefit from ETC designation and compete with traditional rural ILECs. Geographic deaveraging of support has also promoted fair competition. However, as the number of ETCs continues to increase, it's important to step back and reconsider what subsidies are truly needed to obtain and maintain competition.

⁴ I should note these are estimates only provided by Cingular; the Commission Staff did not attempt to gather data or independently confirm these estimates.

39 The following factors influence my views:

- An increasing number of intermodal (such as cable) and other competitors (such as VoIP) do not support universal service
- An increase in the federal USF charge from 4% to 11%, with additional increases expected imminently
- An inadequate annual certification process that does not attempt to answer fundamental questions about how monies are spent
- A declining number of wireline access lines, both for ILECS and rural LECs, which serve as the majority basis for USAC funding (although wireless carriers make a pro rata contribution as well)
- The lack of time to analyze and respond to the important recommendations in the recent FCC Report and Order, such as "... a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund."⁵

40 While I am disappointed with the Commission action on the Cingular Wireless petition, I welcome the Commission's decision to open the rulemaking in Docket No. UT-053021. With good faith and hard work, I believe we can improve our oversight of the ETCs to ensure that funds are spent prudently on investments that truly promote the goals of universal service.

PHILIP B. JONES, Commissioner

⁵ *Supra*, fn. 3.