

Agenda Date: September 13, 2006
Item Number: A3

Docket: UT-063066
Company Name: Cingular Wireless (Cingular)
Sprint Nextel Corporation (Sprint)

Staff: Bob Shirley, Telecommunications Policy Analyst

Recommendation

Grant the temporary exemptions from the requirements of WAC 480-123-070(6) requested by Cingular and Sprint for the filings made in 2006.

Background

Cingular and Sprint each requested a temporary exemption from WAC 480-123-070(6), 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, and Sprint receives annually approximately \$2.8 million.¹ Certification by the commission to the Federal Communications Commission (FCC) that Cingular and Sprint “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 and Sprint to continue receiving federal support. Cingular and Sprint cannot obtain that certification if they do not comply with WAC 480-123-070(6) or receive a temporary exemption.

The new rules were adopted on June 28, 2006, and effective July 29. The rules required ETCs to file various certifications by July 31. The certification under WAC 480-123-070(6) requires ETCs to certify that in the previous calendar it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-030(1)(g).

The standards in WAC 480-123-030(1)(g) are that an ETC have at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch.

Cingular states in its request that in 2005 it had an internal standard in place to generally require a certain amount of back up power (not necessarily battery back up) at each cell site, but Cingular’s standard did not require four hours of battery back up at all cell sites.

¹ Cingular has also requested a permanent exemption from WAC 480-123-070(6) in docket UT-063060. That request will be presented at a future open meeting.

Cingular states that its experience is that its standard has been sufficient to protect against most commercial power outages.

Cingular states that because the requirement for back up power at each cell site was not adopted by the commission until June 28, 2006, Cingular had no way to know that it would be required to have four hours of battery back up power during calendar 2005.

Sprint states in its filing that it has one microwave hub that does not have an on-site generator. It is a hub for four microwave satellite sites.

Sprint states it is researching whether there is space for a generator at the location and researching zoning laws that could affect placement of a generator. Sprint states the hub has four hours of battery back up power and that Sprint will increase the level of back up battery power to 12 hours by November 1.

Sprint states it will report to the commission in its July 31, 2007, filing the status of power at the hub and seek another temporary exemption if necessary.

Discussion

The commission has approved temporary exemptions in individual cases 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 four hours of battery back up power at each cell site in 2005. Similarly, Sprint was not required by the commission to have in 2005 a back up generator at its microwave hub. Commission staff recommends granting the temporary exemptions because the ETCs could not have known in 2005 that the requirements would be created in 2006.

The rules adopted in WAC 480-123 are within the jurisdiction of the commission to adopt, but are not compelled by statute. Temporary exemptions from WAC 480-123-070(6) are not also exemptions from a statutory duty, requirement, or obligation.

Temporary exemptions 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. In this instance, the readily available information is that neither Cingular nor Sprint can certify that the standards in WC 480-123-070(6) were met prior to adoption of the standards.

Temporary exemptions are in the public interest because they recognize that these two companies were not required to operate at the required standard in 2005.

Conclusion

Commission staff recommends the commission grant the temporary exemptions from WAC 480-123-070(6) requested by Cingular and Sprint for the filings made in 2006.