

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

Cingular's Request for Partial Waiver of Rules Regarding Eligible Telecommunications Carriers as Contained in WAC 480-123))))	Docket No. UT- Pctition
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Bellingham Cellular Partnership; Bremerton Cellular Telephone Company, Hood River Cellular Telephone Company; New Cingular Wireless PCS, LLC; and, Olympia Cellular Telephone Company (collectively "Cingular") submits this Petition to respectfully request a partial waiver of the newly promulgated rules regarding Eligible Telecommunications Carriers ("ETC") in WAC 480-123 that go into effect on July 29, 2006. Specifically, Cingular requests that the Washington Utilities and Transportation Commission ("Commission") waive portions of the rules that require an ETC to provide certain information or certifications of compliance with newly promulgated requirements as applied to the annual report for calendar year 2005. While Cingular has used its best efforts to provide the required information and certifications for calendar year 2005, there are some requirements that Cingular simply cannot comply with on a retrospective basis. In support of its Petition, Cingular states as follows:

1. Cingular is commercial mobile radio service ("CMRS" or "wireless") provider designated by the Commission as an ETC in certain areas in the state of Washington for the purpose of receiving federal universal service support. By way of history, AT&T Wireless Services was designated as an ETC in Washington on April 13, 2004. Just a few months later on October 26, 2004, AT&T Wireless Services, Inc. was acquired through a merger with a subsidiary of Cingular Wireless Corporation resulting in AT&T Wireless Services, Inc.

becoming a wholly owned subsidiary of Cingular Wireless LLC. Cingular thus amended the previous AT&T Wireless designation to reflect the new legal entities, but no changes were made to the ETC designated service area. Cingular was granted this designation on April 29, 2005.

2. On May 4, 2005, the Commission filed a Preproposal Statement of Inquiry advising interested persons that the Commission was considering entering a rulemaking to consider whether to adopt rules concerning Commission delegation of eligible telecommunications carriers (ETCs). This inquiry was prompted, in part, by the Federal Communications Commission ("FCC") new rules that were released on March 17, 2005 in *ETC Designation Order*¹ for carriers seeking ETC status from the FCC. In that Order the FCC also suggested that states consider modifying their rules. As a result of the rulemaking activity in Docket UT-053021, the Commission ultimately issued an Order amending the rules and filed with the Code Reviser on June 28, 2006. The rules will go into effect on July 29, 2006, just before all ETCs must file their annual reports on July 31, 2006.

3. WAC 480-123-070 which was approved by the Commissioners on June 28, 2006, provides, in part,

Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity related to Washington state in the period January 1 through December 31 of the previous year.

4. Cingular is making a good faith effort to provide to the best of its ability the information required by WAC 480-123-070. There are, however, two items that Cingular will not be able to provide for calendar year 2005 and so is requesting a temporary waiver. In particular, Cingular is requesting a temporary waiver from providing in calendar year 2005: a) local service outage reports required by WAC 480-123-070(2) and, b) certification regarding

¹ See *In the Matter of Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45 (rel. March 17, 2005) ("*ETC Designation Order*").

amount of battery back-up and so forth as required by WAC 480-123-070(6). Each of these requirements will be discussed in more detail below.

5. WAC 480-123-070(2) requires wireless carriers that are ETCs to provide a report regarding local service outages. "The report must include detailed information on every local service outage lasting thirty minutes or longer in duration" and include the following information:

- (a) The date and time of onset and duration of the outage;
- (b) A brief description of the outage and its resolution;
- (c) The particular services affected, including whether a public safety answering point (PSAP) was affected;
- (d) The geographic areas affected by the outage;
- (e) Steps taken to prevent a similar situation in the future; and
- (f) The estimated number of customers affected.

6. Prior to promulgation of this rule, Cingular was not required to maintain records of all of the information now required to be reported. Cingular is providing the best information that it has in a readily available manner to fulfill this requirement for 2005. Specifically, Cingular is able to include in its 2005 report those outages of a certain severity. However, it is conceivable that the information does not include all of the outages that were over thirty minutes in duration as Cingular was not otherwise required to retain this information for any other reporting function.² Since 2005, Cingular has changed its system that would have retained trouble tickets with the necessary outage information for the relevant time period, so it would be very difficult, if not impossible, to find information on any other possible outages. This means that for calendar year 2005, Cingular would have to go to extraordinary effort and expense even to attempt to provide the newly required information which likely would be incomplete regardless of that effort. Further, Cingular is not able to report on the "estimated number of customers

² Cingular is also not including in its report any planned maintenance outages as this does not seem to be the concern of the Commission nor are landline carriers required to report planned outages under WAC 480-120-439(5).

affected” even for those outages that Cingular is otherwise including in its report for calendar year 2005.

7. The other provision for which Cingular seeks a waiver for 2005 calendar year is WAC 480-123-070(6), which requires ETCs to certify the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-030(1)(g). WAC 480-123-030(1)(g) requires wireless providers that are ETCs to have “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.”

8. During calendar year 2005, Cingular 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; however, this standard did not require four (4) hours of battery back-up at all cell sites. In Cingular’s experience its internal standard has been sufficient to protect against most commercial power outages. In fact, most unplanned outages are not driven by lack of power, but instead are due to problems with the infrastructure that the wireless carrier leases from the landline carrier (e.g. T-1 that connects the cell site to the switch) or equipment failure with the cell site such as a radio failing or so forth.

9. Since the requirement to have four (4) hours of battery back up 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 (4) hours of battery back-up power during calendar year 2005. Cingular obviously cannot go back in time to bring the battery back up at these sites into compliance with the Commission’s newly promulgated rules. Cingular is, therefore, is unable to certify that it was in compliance with a requirement that was not in existence in 2005. As such, Cingular is

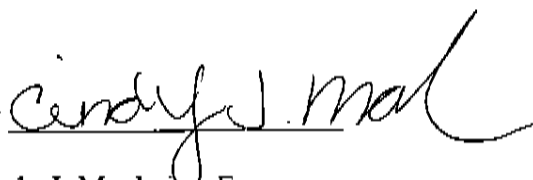
requesting a temporary waiver from certifying compliance with this requirement for purposes of its report on July 31, 2006.

WHEREFORE, for the foregoing reasons, Cingular requests that the Commission waive its obligation to comply with the requirements in WAC 480-123-070(2) and WAC 480-123-070(6) which references WAC 480-123-030(1)(g) for the calendar year 2005 Annual Certifications and Reports that must be filed no later than July 31, 2006.

Respectfully submitted,

July 28, 2006

By



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