

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of

**OREGON PUBLIC UTILITY
COMMISSION**

**Staff Investigation to Establish Requirements
for Initial Designation and Recertification of
Telecommunications Carriers Eligible to
Receive Federal Universal Service Support**

Docket No. UM 1217

**OPENING BRIEF OF
CINGULAR WIRELESS**

I. INTRODUCTION

Cingular Wireless, LLC (“Cingular”), on behalf of itself and its affiliated entities in Oregon, New Cingular Wireless PCS, LLC; Hood River Cellular Telephone Company, Inc., Medford Cellular Telephone Company, Inc., and Salem Cellular Telephone Company, (collectively “Cingular”), recently applied to be an eligible telecommunications carrier (“ETC”) in the state of Oregon.¹ Accordingly, the standards that the Commission establishes in this docket, both for initial designation and annual recertification, will be of especially significant to

¹ See generally, *In the Matter of the Application of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Oregon Pursuant to the Telecommunications Act of 1996*, OPUC Docket No. 1253.

Cingular. Though Cingular did not actively participate in the hearings on this matter, Cingular has been closely monitoring this docket and respectfully offers the following response on a subset of the issues identified below.

II. INITIAL DESIGNATIONS OF ETCs

A. WHAT SPECIFIC BASIC ELIGIBILITY REQUIREMENTS SHOULD THE COMMISSION ADOPT FOR THE INITIAL CERTIFICATION OF ETCs?

1. Should the Commission adopt any, or all, of the requirements proposed by the FCC in Order No. 05-46?

Cingular generally supports the adoption of the eligibility criteria set forth in Federal Communications Commission (“FCC”) Order No. 05-46 (“*ETC Order*”) with a few exceptions, discussed below, regarding provisions that are particularly burdensome and which serve only to add administrative burdens on the ETCs and the Commission, without assisting the Commission in carrying out its responsibility to ensure that federal universal service support is used for the “provision, maintenance and upgrading of facilities” as intended.² First, Cingular joins Staff, RCC and USCC in recommending that the Commission reject FCC’s recommended five year build out plan, and instead adopt a two year plan.³ Second, Cingular does not believe that the Commission has jurisdiction to require wireless ETCs to provide equal access.

Five (5) Year Build Plan: FCC Order No. 05-46 requires ETC Applicants to submit a five (5) year plan “describing with specificity its proposed improvements or upgrade”⁴ and detailing four separate requirements including, “the projected start and completion date for such improvement and the estimated amount of investment for each project that is funded by the high-

² See 47 U.S.C. §254(e) and 47 CFR §54.7.

³ OTA appears to also be in agreement with this recommendation. Exhibit OTA/5, Wolf /3. Qwest and Verizon do not appear to object to this recommendation.

⁴*ETC Order* at ¶23.

cost support...”⁵ As explained at length in the testimony of the RCC and USCC witnesses in this proceeding, in the wireless industry, five years is an eternity. A two year planning horizon is much more reasonable and will provide the Commission with the information needed for it to carry out its duties when designating and recertifying ETCs. Therefore, Cingular agrees with Staff’s version of the network improvement plan. *See Exhibits Staff/, Marinos/30-37 and Staff/4, Marinos/7-9.*

Equal Access: Today, many, if not most nationwide wireless carriers like Cingular include long distance service at no additional charge beyond the charges for the customer’s bucket of minutes, together with any per-minute charges if the customer uses his or her wireless service beyond that bucket of minutes. Thus, in effect, the customer’s local calling area is the entire United States, and the customer is not bound by artificial calling boundaries. Wireless carriers like Cingular have been able to make the convenience and consumer savings of nationwide calling available to their customers because under 47 U.S.C. §332(c)(8), wireless carriers are expressly *not* required to provide equal access to toll service providers. Under this provision of the Federal Communications Act, only the FCC, not the states, may require wireless carriers to make equal access available. Hence because states are not permitted to impose equal access requirements under federal law, the Commission should not adopt any equal access requirement for ETCs in Oregon.

2. Should the Commission Adopt Other Basic Eligibility Requirements?

Cingular generally does not believe that the Commission should adopt other basic eligibility requirements over and above those set forth in FCC 05-46. Staff recommended seven additional basic eligibility requirements that are not explicitly set forth in the FCC’s Order.

⁵ *Id*

Exhibit Staff/1, Marinos/47-48. While Cingular does not oppose these additional requirements, with the clarification noted below, Cingular does note that it does not believe these additional requirements are needed. Regarding Staff requirement #6 which requires carriers to disclose relevant resale agreements; Cingular interprets this to mean that, if a carrier does not have a license to cover an entire wire center or rural study area, it shall be required to disclose to the Commission the relevant resale agreement. If on the other hand, an ETC has not sought designation for any wire-centers or areas within wire centers that it does not cover with its own license, requirement #6 would not apply. With this clarification, Cingular also does not oppose this requirement.

3. Should the same requirements apply to applications for designations in rural and non-rural ILEC service areas?

FCC Order 05-46 extended the public interest requirement from rural ILEC service areas to now also include the areas served by non-rural telephone companies.⁶ Given this recent decision by the FCC, Cingular does not oppose this Commission applying a public interest test to non-rural areas. However, if federal standard changes, this Commission should revisit this requirement.⁷

B. WHAT SPECIFIC CRITERIA SHOULD THE COMMISSION ADOPT TO DETERMINE WHETHER DESIGNATION OF A COMPETITIVE ETC IS IN THE PUBLIC INTEREST, AS REQUIRED BY SECTION 214(e)(2) OF THE COMMUNICATIONS ACT?

5. Should the Commission adopt an upper limit on the number of ETCs that can be designated in any given area? Any party proposing the adoption of an upper limit should explain its proposal in detail, including the legal basis for its proposition.

Cingular does not believe that the Commission should adopt an upper limit on the number of ETCs in a given area. Cingular agrees with Staff, RCC and USCC that neither Verizon nor OTA have demonstrated how imposing limits would serve the interests of telecommunications consumers in Oregon.⁸ As Mr. Wood's testimony demonstrates, placing a cap on the number of ETCs is unnecessary as economics will naturally limit the number of ETCs in a given area.⁹ The Commission should not impose any artificial limits on the number of ETCs in a given area. The FCC made the decision not to limit ETCs in an area as it would limit competitive choice within a market. The Commission should find likewise.

⁶ The FCC limited the test to a statement that if a carrier demonstrates that it is in the public interest to be designated in an area served by a rural carrier, that is sufficient to demonstrate that it is in the public interest to designate in areas served by a non-rural carrier. *See Federal-State Joint Board on Universal Service, report and Order*, 20 FCC Rcd 6371, 6390 (2005) ; *see also Virginia Cellular, LLC*, 19 F.C.C.R. 1563, 1575 (2004).

⁷ This is consistent with the position advocated by RCC and USCC in this proceeding.

⁸ *See* Staff/4, Marinos/25.

⁹ *See* RCC-USCC/1, Wood/39.

III. ANNUAL CERTIFICATION REQUIREMENT

A. WHAT SPECIFIC REQUIREMENTS SHOULD THE COMMISSION ADOPT FOR THE ANNUAL RECERTIFICATION OF ETCs?

1. Should the Commission adopt any, or all, of the FCC reporting requirements proposed in Order 05-46?

In general, Cingular believes that the Commissions should adopt the reporting requirements proposed by the FCC with a few minor exceptions of some extremely burdensome requirements, as discussed below.

Five (5) year build plan: For the reasons discussed above, Cingular believes that ETCs should only be required to provide a two year build plan. On an annual basis ETCs should delineate the support received in the prior year and the manner in which the support was utilized. In addition, on an annual basis an ETC should file an “updated” two year plan. This is consistent with Staff’s recommendation and is supported by USCC, RCC and OTA, and not opposed by Qwest or Verizon.

Emergency Outage Reporting: Another example of a particular onerous requirement is the detailed submission of information on outages that last at least thirty (30) minutes and potentially affect at least ten percent (10%) of end users served in a designated area, or that potentially affect a 911 facility. Cingular Wireless obviously strives to avoid any sort of network outage. However, there may be unforeseeable situations such as a large disaster, natural or otherwise, that, through no fault of the dedicated employees of Cingular, could nonetheless affect Cingular’s ability to provide uninterrupted service. It is difficult to understand how providing a detailed report on an annual basis will benefit consumers. Further, the FCC through its *Outage*

*Reporting Order*¹⁰ already requires carriers to report outages of a certain magnitude to the FCC shortly after the outage occurs. Specifically, for each reportable outage, carriers must file a Notification electronically with the FCC within 120 minutes of discovering the outage; a more detailed Initial Report within 72 hours after discovery of the outage; and a Final Report within 30 days of the outage.¹¹ In the Final Report, the carrier must identify whether the outage was at least partially caused because the network did not follow engineering standards for full diversity (redundancy).¹² This information is already available to the Oregon Commission through the federal Department of Homeland Security.¹³

It is, therefore, not clear how an outage report submitted well after the fact (up to one year) would assist the Commission in ensuring that ETCs are using federal USF support for the manner in which it was intended. Tapping into the FCC's outage reporting requirements would allow the Commission to gain more timely access to outage information and eliminate the need for redundant and costly filing requirements. Cingular thus respectfully requests that this proposed rule not be adopted.

Equal Access Certification: See discussion above.

Complaint Reporting: The FCC's rules require reporting on complaints per 1,000 handsets; however, what qualifies as a "complaint" is not defined. Cingular does not object to filing data on complaints, but proposes reporting only on complaints filed with the Commission,

¹⁰ See New Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order and Further Notice of Proposed Rulemaking, ET Docket 04-25, FCC 04-188, (rel. August 19, 2004), ("*Outage Reporting Order*").

¹¹ *Id.*, ¶ 5.

¹² *Id.*, ¶ 6.

¹³ *Id.*, ¶ 47 n. 145. In the FCC docket that resulted in adopting of the Outage Reporting Order, the Dept. of Homeland Security (DHS) specifically commented that outage information should be made available by DHS to state public utility commissions through homeland security channels to safeguard the information against disclosure to those who might use the information for hostile purposes. The FCC thus determined that it would make the outage reports available to DHS immediately upon receipt and that DHS could then provide information from the reports to other governmental authorities as appropriate. See ¶45.

the FCC or the Oregon Department of Justice. Cingular operates a regional call center that handles complaints for several states, including Oregon. While Cingular's call center representatives will place a note on an account if a customer calls in with an inquiry, Cingular does not have the ability to run a report detailing the nature of every call received from a customer that called Cingular in the last year.

2. Should the Commission adopt other reporting requirements?

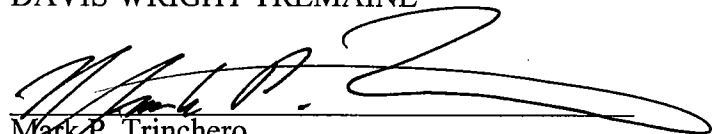
Cingular strongly believes that the Commission should only require those reporting requirements that have been recommended by the FCC with the exceptions noted above.

IV. CONCLUSION

Cingular urges the Commission to adopt by order non-discriminatory ETC certification and annual reporting requirements consistent with the foregoing discussion.

DATED this 17th day of April, 2006.

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CERTIFICATE OF SERVICE

UM 1217

I hereby certify on this 17th day of April, 2006, the Opening Brief of Cingular Wireless was filed electronically and will be sent via UPS overnight mail to the Oregon Public Utility Commission.

Also, a copy of the filing was sent electronically to the service list which is attached.

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Public Utility Commission

eDockets

Docket Summary

Docket No: UM 1217

Docket Name: TELCO CARRIERS ELIGIBLE FOR FEDERAL UNIVERSAL SERVICE SUPPORT

[Print Sum](#)

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Staff Investigation to Establish Requirements for Initial De and Recertification of Telecommunications Carriers Eligible to Receive Federal Universal Service Support. (Staff report

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