
**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Local Telephone Competition and
Broadband Reporting**

WC Docket No. 04-141

Local Competition and Broadband Reporting

CC Docket No. 99-301

Comments of Cingular Wireless LLC

J.R. Carbonell
Carol L. Tacker
M. Robert Sutherland

CINGULAR WIRELESS LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342

Telephone: (404) 236-6364
Facsimile: (404) 236-5575

Counsel for Cingular Wireless LLC

Date: June 28, 2004

TABLE OF CONTENTS

I.	Introduction and Summary.	1
II.	The Data Form 477 Collects is Inapplicable to CMRS.....	2
III.	Other Proposed Changes to Part III.	5
IV.	Public Availability of Data.	6

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Local Telephone Competition and Broadband Reporting)	WC Docket No. 04-141
)	
Local Competition and Broadband Reporting)	CC Docket No. 99-301
)	

Comments of Cingular Wireless LLC

Cingular Wireless LLC (Cingular), through undersigned counsel, hereby comments in response to the Notice of Proposed Rulemaking and Order on Reconsideration (Notice) released April 16, 2004 in the captioned proceeding.

I. Introduction and Summary.

In the Notice, the Commission proposes to extend and expand its Form 477 collection of data on the status of competition for local telephone service and on the deployment of broadband communications services. As a threshold matter, the Commission should insure that the information collected from carriers, particularly Commercial Mobile Radio Service (CMRS) providers, is of more benefit to the public interest than the cost imposed on those providers for that data collection and reporting. For example, under the current rules for filing Form 477, Cingular must file Form 477 for each of the states in which it operates nationwide to provide the Commission an admittedly “soft” estimate of the number of its CMRS customers in each state and the percent of those customers which it bills directly. Cingular will be required to report significantly more data once it rolls out wireless broadband services in the near future,

yet the Commission will not be able to make an “apples to apples” comparison between the data it collects on Cingular’s services and those provided by wireline and fixed wireless broadband service providers because of the inherently “mobile” nature of CMRS services. Form 477, and the information the Commission is trying to obtain through this form, is for the most part irrelevant in the mobile wireless context. At a minimum, including CMRS skews the data.

The Commission should also consider that as it requires ever more granular data reporting, the danger that the data collection and reporting will damage competition increases exponentially, and the ability of the Commission to mitigate these competitive harms through aggregation of data diminishes.

II. The Data Form 477 Collects is Inapplicable to CMRS.

When the Commission adopted the *Data Gathering Order*¹ in 2000, it expressly recognized the burden that its reporting requirement imposed on carriers and their customers.² It included CMRS carriers in the reporting requirement because of their potential to compete directly with wireline carriers.³ Because mobile wireless networks do not dedicate facilities to the use of particular customers, the Commission exempted mobile wireless carriers from the reporting requirements in Part II, and instead instructed mobile wireless providers to provide limited information about subscribers to mobile

¹ In the Matter of Local Competition and Broadband Reporting, CC Docket No. 99-301, *Report and Order*, 15 FCC Rcd 7717 (2000) (*Data Gathering Order*).

² “In crafting this information collection, we seek to minimize the burdens imposed and thus, we limit this effort to specifically targeted information. We focus on easily-quantified and readily-available statistics that will reflect the level of service—local telephony and broadband—that is actually provided by incumbents and new entrants.” *Data Gathering Order*, 15 FCC Rcd at 7721, ¶ 6.

³ “We also require certain providers of mobile telephony services to participate in this data collection program because of the potential of their services to become substitutes for wireline-delivered local exchange services offered by incumbent and competitive LECs.” *Data Gathering Order*, 15 FCC Rcd at 7733, ¶ 28.

telephone service in Part III of Form 477.⁴ Although mobile wireless service providers were included in Part I of Form 477 dealing with broadband reporting, mobile wireless providers at that time offered no services that met the minimum threshold for broadband reporting, and hence had nothing to report there. The Commission also exempted mobile wireless service providers from the requirement to list five-digit ZIP Codes associated with their subscribers in Part V of Form 477, recognizing that “it would be particularly difficult for these providers to determine the location of their customers.”⁵

As mobile wireless carriers begin to roll out high speed data services, the broadband reporting requirements in Part I will become an issue. Part I was clearly designed to collect data from wireline and fixed wireless providers. The mere requirement to report “lines or wireless channels connecting users to the Internet” is a meaningless concept in mobile wireless network architecture.⁶ Likewise, mobile wireless service providers make no distinction between business and residential customers, thereby making populating that portion of Part IA impossible. Part IB is also inapplicable to mobile wireless service providers.⁷ Mobile wireless networks do not connect customer premises or deliver services over local loop facilities.

The Commission’s proposed broadband reporting threshold of 250 lines in a state utilizing information transfer rates exceeding 200 kbps in at least one direction is problematic in the CMRS context. As noted above, mobile wireless networks do not utilize “lines” and “wireless channels” is inapplicable in this context. Mobile wireless

⁴ *Data Gathering Order*, 15 FCC Rcd at 7753, ¶ 75.

⁵ *Data Gathering Order*, 15 FCC Rcd at 7756, ¶ 83.

⁶ *Data Gathering Order*, Appendix B, Part IA.

⁷ *Data Gathering Order*, Appendix B, Part IB calls for reporting “your best estimate of the percentage of mass market end user premises in your service area, in this state, to which broadband connections are available over your own local loop facilities.”

switches will be equipped with high speed data capabilities. These switches will communicate with compatible devices used by Cingular's customers. Any attempt to report based on the number of devices capable of communicating at speeds in excess of 200 kbps will greatly overstate the number of subscribers that actually utilize the high speed data services Cingular will offer. Service plans, dependent on consumer demand and many of which are not yet devised, will dictate how difficult it will be for CMRS providers to track this information. Furthermore, because of roaming, the number of subscribers having high speed data capability in a given state at a given time will be in a constant state of flux. The same is true for wireless "hot spots". Users of hotspots generally are nomadic and the number of users could change daily or even hourly. These same issues make applying the Commission's other threshold—250 subscribers to broadband services in a state—problematic.

Because (1) the information to fill out Part I of form 477 does not exist for mobile wireless service providers, (2) the information sought is not applicable in the CMRS context, and (3) tracking/compiling such information would be burdensome, the Commission should eliminate Row 1.8 "Terrestrial wireless mobile" from Part I, Form 477, and exempt CMRS providers from reporting requirements in Part I.

If the Commission determines that it must have broadband deployment information from mobile wireless service providers, Cingular recommends that the Commission add a box in Part III that requires a mobile wireless service provider to indicate whether it has rolled out a high speed data service in that state capable of

providing bit transfer rates exceeding 200 kbps⁸ and list licensed market areas where such service is available. This level of detail—at the licensed market area—is the most relevant in the CMRS context.

Because of the mobile nature of wireless subscribers, subscriber counts and ZIP Code references are meaningless, as well as extremely burdensome to capture, *e.g.*, a subscriber may pass through numerous ZIP Codes between the time he/she establishes a call and the call is terminated. In the *Data Gathering Order* the Commission considered and rejected requiring carriers to report data at the ZIP Code level.

Not only would providers have to identify data at those levels of detail, but we think that a reporting requirement that requires a national service provider to complete over 30,000 zip-code based forms would impose costs far greater than the benefits to be derived.⁹

The Notice contains no analysis of the costs that would be incurred by carriers to gather and report data at the ZIP Code level. If each national carrier is required to file over 30,000 ZIP Code based forms, and each of the hundreds of smaller CMRS providers must report on every ZIP Code in which a subscriber resides, the Commission will be overwhelmed with reports. For this reason alone, the Commission has previously considered and rejected this proposal, and it should do so again in this proceeding.

III. Other Proposed Changes to Part III.

The Notice proposes to require carriers to report “the extent to which they are also the end user’s default interstate long distance carrier.”¹⁰ The Notice ties this data collection to the recent entry of the Bell Operating Companies into the domestic long

⁸ The Commission should keep in mind that the actual bit transfer rate experienced by end users will vary depending on the number of subscribers accessing the mobile switch at a given time. Because of the mobile nature of the service, the achieved bit transfer rate will vary constantly.

⁹ *Data Gathering Order*, 15 FCC Rcd at 7745, ¶ 53.

¹⁰ Notice ¶ 8.

distance market. While it is not clear what this data collection has to do with local service competition, it is clear that it is inapplicable to CMRS providers. All CMRS providers were relieved of the equal access obligation by the 1996 Act and shortly thereafter the integration of long distance service into rate plans became the norm. Therefore, the concept of a “default” long distance provider is meaningless in the mobile wireless context and provides the Commission with no information germane to the stated purpose of Form 477. The Commission should not require mobile wireless service providers to collect this extraneous data and report it in Part III of Form 477.

IV. Public Availability of Data.

The Commission should not change its policy of reporting only aggregated data.¹¹ The developing broadband market is expected to be highly competitive, with both traditional providers of telecommunications services and a whole range of new providers entering the market with a wide variety of technologies and capabilities. Local service competition is also expanding rapidly. To the extent that the Commission seeks more granular data from service providers, the competitive sensitivity of that data is heightened greatly. Any move by the Commission to release company specific data would clearly damage competition, and would force service providers to take legal steps to protect their data against disclosure to their competitors. The Commission was very careful in the *Data Gathering Order* to reassure carriers that their data would receive the maximum protection allowed under the law.¹² The Commission should do nothing in this proceeding to undermine the carriers’ confidence in the Commission’s commitment to

¹¹ Notice ¶ 12.

¹² *Data Gathering Order*, Section F, ¶¶ 86-96.

protect competitively sensitive data gathered by the Commission.

Respectfully submitted,

s/ M. Robert Sutherland_____

J.R. Carbonell

Carol Tacker

M. Robert Sutherland

CINGULAR WIRELESS LLC

5565 Glenridge Connector, Suite 1700

Atlanta, GA 30342

(404) 236-6364

Counsel for Cingular Wireless LLC

June 28, 2004

CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 28th day of June, 2004, courtesy copies of the foregoing Comments of Cingular Wireless LLC were sent via first class mail, postage prepaid to the following:

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

In addition, the document was filed electronically in the Commission's Electronic Comment Filing System on the FCC website.

s/ Lydia Byrd
Lydia Byrd