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

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*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

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**Reply Comments of Cingular Wireless LLC**

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**Reply Comments of Cingular Wireless LLC**

Cingular Wireless LLC (Cingular), through undersigned counsel, hereby replies to the comments received by the Commission in response to the Notice of Proposed Rulemaking and Order on Reconsideration (Notice) released April 16, 2004. The comments show overwhelmingly that the proposed expansion of the data collection on Form 477 is not necessary and that the cost of the proposed expansion would be far greater than any perceived benefits. The Commission should not expand the data collection as proposed in the Notice. Cingular urges the Commission to modify the reporting requirements for wireless carriers to reflect the inherent differences in the way wireless and wireline carriers will provide broadband services. The Commission should also retain its present confidentiality policy.

**I. The Cost of the Expanded Data Collection Proposed in the Notice Would Far Outweigh any Perceived Benefit.**

Parties that are subject to (or would become subject to) the expanded data collection proposed in the Notice generally oppose the expansion.<sup>1</sup> OPASTCO notes that the proposed

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<sup>1</sup> See Comments of EchoStar Satellite LLC (EchoStar) at 2-3; Comments of BellSouth Corporation (BellSouth) at 2; Comments of CTIA—The Wireless Association™ (CTIA) at 4-5; Comments of AT&T Corp. (AT&T) at 2; Comments of Verizon at 2; Comments of Sprint Corporation (Sprint) at 2; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) at 3.

data collection would be costly and difficult to obtain.<sup>2</sup> AT&T states that the proposed new data collection would provide little additional benefit, but would increase the burden of compliance exponentially.<sup>3</sup> Verizon states that it would cost millions to redesign its systems to capture data at the ZIP-code level, as proposed in the Notice.<sup>4</sup> Sprint also asserts that the cost of the expanded data collection is not justified by the benefits that would ensue.<sup>5</sup>

While the state regulators responding to the Notice generally support an expanded data collection, the California Public Utilities Commission (CPUC) acknowledges the value of the existing Form 477 data:

The data contained in Form 477 has been an invaluable source of information for California to identify and track the deployment of broadband services. We have used the Form 477 data to prepare three competition reports for the California legislature and the Governor's office and are currently using this data to prepare a legislative report on broadband deployment. We have found that the information collected through Form 477 is the best data available on broadband services to date.<sup>6</sup>

Form 477 was adopted to assist the Commission in fulfilling its responsibilities under Section 706 of the Telecommunications Act of 1996 (1996 Act).<sup>7</sup> That section directed the Commission to “determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”<sup>8</sup> That direction came as part of a statute designed “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”<sup>9</sup> In adopting

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<sup>2</sup> OPASTCO at 3.

<sup>3</sup> AT&T at 2.

<sup>4</sup> Verizon at 11.

<sup>5</sup> Sprint at 2-3.

<sup>6</sup> CPUC at 2.

<sup>7</sup> Public Law No. 104-104, Title VII, § 706, reproduced in the notes under 47 U.S.C. § 157.

<sup>8</sup> *Id.*

<sup>9</sup> 1996 Act, Preamble.

Form 477, the Commission expressly recognized that it was balancing its need for information on broadband deployment against the burden of the data collection on carriers:

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-quantifiable and readily-available statistics that will reflect the level of service—local telephony and broadband—that is actually provided by incumbents and new entrants. . . . We believe that we have distilled our proposal down to that information which is most essential to tracking the development of local competition and the deployment of broadband service to American consumers.<sup>10</sup>

The current Notice ignores that balance. It makes no attempt to minimize the burdens imposed on carriers, nor does it limit the proposed data collection to information that is “easily-quantifiable” and readily-available.” Requiring carriers to spend tens of millions of dollars on systems development to produce marginally useful information is completely at odds with the deregulatory intent of the 1996 Act.<sup>11</sup> Indeed, some commenters go so far as to ask the Commission to require carriers to provide information that they do not even possess. For example, the Staff of the Kansas Corporation Commission (KCC Staff) wants the Commission to require wireless carriers “to report the estimated percentage of wireless subscribers using their service as a replacement for traditional landline service.”<sup>12</sup> KCC Staff suggests that wireless carriers collect this “additional piece of data on service contracts or perhaps a statistically sound survey of the existing customer base.”<sup>13</sup> The Commission cannot fulfill its deregulatory mandate by imposing onerous new burdens on carriers based

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<sup>10</sup> In the Matter of Local Competition and Broadband Reporting, CC Docket No. 99-301, *Report and Order*, 15 FCC Rcd 7717, 7721 (2000) (*Data Gathering Order*).

<sup>11</sup> Verizon at 10-13.

<sup>12</sup> KCC Staff at 2.

<sup>13</sup> *Id.* Of course, the Commission could not adopt the KCC Staff proposal in this proceeding because it was not included in the Notice. In any event, such information is readily available from third party sources, so there is no justification to require carriers to collect this data.

on regulatory whim rather than a proven need for the information.<sup>14</sup> The Commission should impose new regulatory costs on carriers and their customers only upon a clear showing that the benefits to the public outweigh the costs.<sup>15</sup> No such showing was made in the record of this proceeding. The Commission has now collected Form 477 data nine times, with a tenth due soon. These data, together with data from other sources, have enabled the Commission to issue regular reports on the status of local telephone competition and broadband deployment.<sup>16</sup> The Commission does not need to expand the Form 477 data collection to fulfill its statutory duty under Section 706, and there is no other justification for increasing regulatory costs and burdens on carriers operating in competitive markets.<sup>17</sup>

## **II. The Commission Should Tailor its Data Collection from CMRS Carriers Based on Wireless Network Technologies.**

In its opening Comments, Cingular demonstrated that Part I of Form 477 was clearly designed to collect broadband provisioning data from wireline and fixed wireless providers. Mobile wireless providers do not dedicate network facilities to customers of broadband services, so the type of data collected in Part I either does not exist for CMRS carriers or is irrelevant. Cingular suggested that the Commission eliminate Row 1.8, “Terrestrial wireless mobile” from Part I of Form 477.<sup>18</sup> Cingular noted that if the Commission wants to collect broadband deployment data from CMRS providers, it can add a box in Part III to indicate if

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<sup>14</sup> Sprint at 4: (“The Commission should not impose new reporting requirements if it does not articulate the reasons why it believes such information would be helpful to performing its monitoring functions. Clearly this rationale is needed so that the costs of collecting this information can be weighed against the identified benefits.”)

<sup>15</sup> CTIA at 5: (The Commission “should impose an information collection on CMRS providers only if the quantifiable benefits of the information collection clearly outweigh its additional costs.”)

<sup>16</sup> Notice, ¶ 2; Verizon at 4-6 (listing other broadband data gathering efforts of the Commission).

<sup>17</sup> See Comments of The National Cable & Telecommunications Association (NCTA) at 8: (“The Commission should further recognize that, in an era of ‘light regulation’ of newly emergent Internet offerings, there should be equally streamlined reporting requirements. The Commission should not adopt reporting requirements that fail to meet this test.”)

<sup>18</sup> Cingular at 4.

the CMRS provider offers broadband service in the state. If the Commission wants information below the state level, then Cingular recommended that the Commission require wireless carriers to report in Part III the licensed market areas where broadband is available. The licensed market area is the smallest geographical area that is relevant to wireless broadband deployment.<sup>19</sup>

No commenting party refuted Cingular's showing that the existing Form 477 is inappropriate for wireless mobile providers. CTIA made the same point in its comments, calling on the Commission to ensure that Form 477 be made technologically and competitively neutral.<sup>20</sup> Cingular urges the Commission to cease trying to force a square peg into a round hole by requiring mobile wireless providers to report on a form designed for wireline networks.

Cingular concurs with the numerous parties who urge the Commission to collect broadband data based on the maximum data transfer rate available rather than the achieved transfer speed. Broadband providers using several different technologies demonstrated that the achieved data transfer speed will vary significantly depending on a number of factors beyond the control of the carrier and cannot be readily ascertained.<sup>21</sup>

### **III. The Commission Should Maintain the Privacy of Carrier-Specific Data.**

In the Notice, the Commission asked whether it should relax the confidentiality afforded to carrier-specific data.<sup>22</sup> The commenting parties universally urge the

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<sup>19</sup> Cingular at 4. *See also* CTIA at 6 (recommending that wireless carriers report based on their licensed service areas, i.e., MSAs, RSAs or BTAs).

<sup>20</sup> CTIA at 1-3.

<sup>21</sup> CTIA at 3 (wireless broadband), NCTA at 14 (cable modem), AT&T at 4 (cable modem and DSL), Verizon at 13 (DSL) Sprint at 4 CPUC at 4-5, OPASTCO at 7 (DSL).

<sup>22</sup> Notice, ¶ 12.

Commission to retain its existing policy with regard to confidentiality of data.<sup>23</sup> As various technologies are utilized to provide broadband services to consumers, the competitive sensitivity of Form 477 data increases.<sup>24</sup> If the Commission goes forward with requiring more granular data, then the risk to competition becomes more serious. As Sprint notes, “the more granular the data, the greater the risk to carriers associated with disclosure.”<sup>25</sup> With regard to the Commission’s suggestion that individual company data may become less competitively sensitive with the passage of one or two years, all parties commenting on the question disagree. As NCTA notes:

The proliferating deployment of broadband services and the dynamism of communications markets generally are likely to make company-specific data *more*—not less—competitively sensitive for a lengthier period than if the marketplace were not experiencing dynamic competition.<sup>26</sup>

AT&T states that by the time individual company data is stale enough not to be competitively sensitive, public disclosure of such data would serve no useful purpose.<sup>27</sup> The CPUC agrees, noting that “there is little to no benefit of disclosing the true values of old data.”<sup>28</sup> The Commission should adhere to its existing policy of not disclosing company-specific data.

#### **IV. Conclusion.**

The existing Form 477 data collection is sufficient for the Commission to fulfill its statutory mandate under Section 706 of the 1996 Act. The more granular data collection

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<sup>23</sup> CTIA at 6-7, NCTA at 4; EchoStar at 4, AT&T at 7, Verizon at 17, Sprint at 6, CPUC at 5-6.

<sup>24</sup> See, e.g., EchoStar at 2: (“The Commission must also continue to ensure that reviewing parties cannot trace competitively sensitive data to any particular broadband service provider so that filers’ willingness to respond is not undermined.”)

<sup>25</sup> Sprint at 6.

<sup>26</sup> NCTA at 5.

<sup>27</sup> AT&T at 7.

<sup>28</sup> CPUC at 6.

proposed in the Notice would be extremely burdensome to carriers while providing little in the way of public benefits. The Commission should not expand the scope of Form 477 data collection.

The Commission should recognize that Form 477 was designed to capture broadband data from wireline and fixed wireless carriers, not terrestrial mobile wireless carriers. The Commission should eliminate the requirement that mobile wireless carriers report in Part I of Form 477. The Commission should allow wireless carriers to report their broadband deployment in Part III at the licensed market level.

The Commission should not modify its confidentiality policy and should not release company-specific data at any time.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

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

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

s/ Lydia Byrd  
Lydia Byrd