

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Assessment and Collection of Regulatory) MD Docket No. 05-59
Fees for Fiscal Year 2005)

**REPLY COMMENTS OF
CTIA – THE WIRELESS ASSOCIATION™**

CTIA – The Wireless Association™ (“CTIA”)¹ hereby submits reply comments in the above captioned proceeding regarding the assessment of regulatory fees for Fiscal Year 2005.² CTIA, like Cingular Wireless,³ opposes the Commission’s proposal to assess CMRS providers “using information from the Numbering Resource Utilization Forecast (NRUF) form.”⁴ The Commission itself recognizes the inaccuracy of subscriber counts based on NRUF data and anticipates the need for carriers to amend their initial assessment letters using reliable records such as a carrier’s SEC filings, the Form 477 Report, or some other certified financial statement. CTIA urges the Commission to

¹ CTIA – The Wireless Association™ (formally known as the Cellular Telecommunications & Internet Association) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, MD Docket No. 05-59, Notice of Proposed Rulemaking, FCC 05-35 (rel.. Feb. 15, 2005) (“*NPRM*”).

³ *Comments of Cingular Wireless LCC*, MD Docket 05-59 (filed Mar. 8, 2005) (“*Cingular Comments*”).

⁴ *NPRM* at ¶ 51.

conserve carrier and Commission resources by calculating carriers' regulatory fee obligations using actual subscriber counts instead of relying on NRUF data that was designed to forecast number exhaust, and was never intended to accurately count the number of active customers on any individual carrier's network.

DISCUSSION

CTIA shares the same concerns that have been raised by other commenters regarding the Commission's proposal to assess CMRS regulatory fees using NRUF data.⁵ The Commission itself has acknowledged that use of the NRUF data is problematic but claims it is unable to correct the anomaly at this time.⁶ As an alternative to the flawed NRUF report information, CTIA advocates that the Commission allow carriers to report their actual subscriber counts using more reliable records such as a carrier's SEC filings, the Form 477 report, or some other certified financial statement. If the Commission would base its initial assessment letter on a carrier's SEC filings, or other certified statement, CTIA would have no objection to the Commission's proposal to send carriers two rounds of assessment letters -- an initial assessment letter that permits carriers to

⁵ See *Cingular Comments* at 2-4. See also *Cingular Wireless LLC, Petition for Reconsideration of Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-73 (filed Aug. 6, 2004) ("*Cingular Petition*"); *Reply Comments of the Rural Telecommunications Group, Inc.*, MD Docket No. 04-73 (filed Oct. 7, 2004); and *Comments of the Wireless Carriers*, MD Docket No. 04-73 (filed Sept. 27, 2004).

⁶ *NPRM* at ¶ 54. The Commission also claims it has found the NRUF subscriber count data to be very accurate, but offers no further elaboration of the basis for its conclusion. Since carriers had only 17 days to review and correct last year's NRUF data – using a very burdensome telephone number by telephone number process – it would not be appropriate to draw any conclusions regarding the accuracy of last year's NRUF-based assessments from CMRS carriers' acceptance of their initial FCC regulatory fee assessment.

amend their initial assessment to correctly identify their subscriber count prior to receiving a second final assessment letter establishing the carrier's annual regulatory fee.

As Cingular has emphasized, the Commission's proposal to give carriers the opportunity to reconcile their subscriber counts is needlessly burdensome.⁷ It makes no sense for the Commission to start with data that is known to have anomalies and then permit carriers to correct that data using reports the Commission has acknowledged are more accurate, when the Commission can start with the more accurate data for its initial assessment. In last year's Order, the Commission established a burdensome process for carriers seeking to amend any discrepancies between the Commission's NRUF-derived counts and a carrier's actual subscriber counts by requiring an arduous telephone number-by-telephone number analysis.⁸ This process is onerous and impractical, particularly for national wireless carriers serving millions of customers.⁹

The two-step process adopted by the Commission correctly anticipates miscalculations in its initial assessment letters, and encourages the use of carriers' SEC filings and other certified financial statements as a means for wireless providers to identify accurate subscriber counts.¹⁰ Rather than starting with the admittedly "anomalous" NRUF data, the Commission should apply publicly reported year end subscriber data to draft the regulatory fee assessment letters and continue providing

⁷ *Cingular Comments* at 5; *see generally Cingular Petition*.

⁸ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-73, *Report and Order*, FCC 04-146 (rel. Jun. 24, 2004) ("*Order*").

⁹ Just this week, Cingular announced it reached the 50 million subscriber mark, while Verizon Wireless' latest figures report 43 million subscribers. Cnet News.Com, *Cingular passes 50 million* (Mar. 15, 2005) available at http://news.com.com/Cingular+passes+50+million/2110-1039_3-5618578.html.

¹⁰ *NPRM* at ¶ 54.

carriers with the option of correcting and explaining any discrepancies.¹¹ Utilizing consistent statistics is the most efficient means for CMRS providers to meet their regulatory obligations. This methodology not only eliminates the responsibility imposed on carriers to reconcile NRUF and Local Number Portability (LNP) data to determine “actual” subscriber counts,¹² but also reduces costs incurred by the FCC to calculate estimated subscriber records of active, assigned telephone numbers, net of ported numbers.¹³

Moreover, it is in the public interest to permit carriers to harmonize subscriber counts reported to both the FCC and SEC. The Commission recognizes the veracity of SEC filings and advises carriers to reconcile discrepancies using such data. Unlike the subscriber count records submitted to the SEC pursuant to the compliance requirements of the Securities Act,¹⁴ the NRUF data was never intended to reflect a carrier’s actual subscriber count.¹⁵ Furthermore, submission of harmonized subscriber count data to both

¹¹ CTIA agrees with the Commission that carriers that do not publicly report subscriber data to the SEC should continue to be permitted to provide their customer count data as they have in prior years. *NPRM* at ¶ 53.

¹² See *Cingular Comments* at 2-3; *Comments of CTIA-The Wireless Association on the Petition for Reconsideration*, MD Docket No. 04-73 (filed Sept. 27, 2004).

¹³ *Order* at ¶ 47.

¹⁴ Wireless carriers must meet stringent financial disclosure and reporting requirements under the Sarbanes-Oxley Act of 2002 when filing with the SEC. Sec 302 of the Act requires chief executive officers and chief financial officers to separately certify they have reviewed each filed report and it is fair and accurate. Sarbanes-Oxley Act, 15 U.S.C § 7241 (2002).

¹⁵ As CTIA noted in its comments, the information carriers report in their NRUF Report describes how numbering resources are utilized – and a carrier’s NRUF report can include number utilization data for its own customers as well as customers served by other carriers.

the FCC and SEC will give investors, SEC and FCC staff and policymakers a common benchmark for analyzing a carrier's performance and ensure accurate counts while reducing the burdens imposed on the Commission and the wireless industry as a whole.¹⁶

CONCLUSION

For the aforementioned reasons, the Commission should calculate carriers' regulatory fee obligations using actual subscriber counts instead of relying on NRUF data that was designed to forecast number exhaust, and was never intended to accurately count the number of active customers on any individual carrier's network.

Respectfully submitted,

/s/ Michael Altschul

CTIA – THE WIRELESS ASSOCIATION™

1400 16th St., N.W. Suite 600
Washington, D.C. 20036
(202) 785-0081

Michael Altschul
Senior Vice President & General Counsel

Marlo Go
Staff Counsel

Its Attorneys

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¹⁶ Indeed, the Commission continues to rely primarily on company filings with the SEC and other public data, rather than the NRUF data, in preparing its Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, WT Docket No. 04-111, *Ninth Report*, FCC 04-216 (rel. Sept. 28, 2004), at ¶12.

CERTIFICATE OF SERVICE

I, Marlea Leary, hereby certify that a copy of the foregoing “Reply Comments of CTIA – The Wireless Association™” was sent on this 18th day of March, by first class U.S. Mail, postage prepaid, to the following:

J.R. Carbonell
Carol L. Tacker
David G. Richards
Cingular Wireless LLC
5565 Glenridge Connector
Suite 1700
Atlanta, GA 30342
(404) 236-5543

/s/ Marlea Leary
Marlea Leary