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

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Federal Communications Commission
Office of the Secretary

WT Docket No. 05-44

In the Matter of

Stokes Environmental Services, Inc.
Petition for Declaratory Ruling

Comments of Cingular Wireless LLC

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COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular"), through undersigned counsel, hereby comments on the Petition for Declaratory Ruling sought by Stokes Environmental Services, Inc. ("Stokes"). As discussed below, the Commission's rules are clear that under the circumstances outlined in the Stokes petition no environmental assessment ("EA") needs to be filed with the Commission. Therefore, the Commission should grant the declaratory ruling requested by Stokes.

On May 28, 2004, Stokes filed with the Commission a request for a declaratory ruling that when a proposed project will result in wetlands impacts and the project has been reviewed, approved, and permitted by the U.S. Army Corps of Engineers ("Corps"), no additional environmental review by the Commission is required and no EA needs to be filed with the Commission. On February 4, 2005, the Commission released a Public Notice, DA 05-313, seeking comment on the Stokes petition. The Public Notice seeks comment on the relationship between Section 1.1307(a)(7) of the Rules and the Corps' rules, practices and procedures. The Public Notice also notes that the Corps issues nationwide permits for projects which have *de minimis* individual and cumulative impact on the environment, and asks for comment on how construction pursuant to a nationwide permit is properly treated under Section 1.1307(a)(7) of the Commission's rules.

Primary responsibility for protecting the nation's wetlands has been assigned by Congress to the Department of the Army ("DA") in the Clean Water Act, 33 U.S.C.A §1251 *et seq.* The Secretary of the Army has delegated to the Corps the responsibility for issuing permits to fill wetlands. The Corps was empowered by Congress to issue individual, regional and nationwide permits. The Corps has adopted extensive regulations detailing the requirements for securing a permit to fill wetlands.[1] The permitting process involves a full review of the environmental impact of the project. The environmental procedures and documentation required by the National Environmental Policy Act of 1969 ("NEPA") are set forth in detail in 33 C.F.R. § 230, Appendix B. Unless it is included within a categorical exclusion, the Corps requires an EA or an environmental impact statement ("EIS") in connection with each permit issued.[2] This process includes public involvement and may include public hearings.[3] The district engineer prepares a statement of findings or, if an EIS has been prepared, a record of decision, in connection with each permit issued.[4] Thus, prior to issuing a permit to fill wetlands, the Corps performs a full NEPA review. There is no need for this Commission to duplicate that process. For that reason, Section 1.1311(e) of the Commission's rules provides:

> (e) An EA need not be submitted to the Commission if another agency of the Federal Government has assumed responsibility for determining whether of [sic] the facilities in question will have a significant effect on the quality of the human environment and, if it will, for invoking the environmental impact statement process.

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[1] 33 C.F§.R. §§ 320 *et seq.*
[2] 33 C.F.R. § 325.2(a)(4).
[3] 33 C.F.R. § 327.
[4] 33 .C.F.R. § 325.2(a)(6).

The Public Notice observes that the Corps can issue nationwide permits for projects that will have a *de minimis* impact on wetlands, and requests comment on how construction pursuant to a nationwide permit is properly treated under Section 1.1307(a)(7) of the Commission's rules.[5] As the Public Notice correctly states, only those projects that will have a *de minimis* impact on the environment qualify for a nationwide permit. Congress has included safeguards if a particular project subject to a nationwide permit threatens to harm the environment. 33 U.S.C.A. § 1344(e)(2) provides:

> . . . such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

District and division engineers have been delegated discretionary authority to suspend, modify, or revoke authorizations under a nationwide permit where an adverse environmental impact is likely to occur. The implementing regulations provide:

> . . . the DE[6] has the discretionary authority to review any activity authorized by NWP[7] to determine whether the activity complies with the NWP. If the DE finds that the proposed activity would have more than minimal individual or cumulative net adverse effects on the environment or otherwise may be contrary to the public interest, he shall modify the NWP authorization to reduce or eliminate those adverse effects, or he shall instruct the prospective permittee to apply for a regional general permit or an individual permit. . . .[8]

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[5] 47 C.F.R. § 1.1307(a)(7) provides: (a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§ 1.1308 and 1.1311) and may require further Commission environmental processing (see §§ 1.1314, 1.1315 and 1.1317): . . . (7) Facilities whose construction will involve significant change surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, see Executive Order 11990.)

[6] DE is the District Engineer.

[7] NWP is a Nationwide Permit.

[8] 33 C.F.R. § 330.1(d).

Thus, the Corps' permitting process contains adequate safeguards to protect the environment in case an individual project subject to a nationwide permit threatens the public interest. There is no need for the Commission to re-review a Corps permit.

Because the Commission's rules are clear that no EA needs to be filed with the Commission for a projected permitted by the Corps, there is no need for a declaratory ruling "terminating a controversy or removing uncertainty."[9] The Commission should simply advise Stokes that no EA is required for projects that have received a Corps permit.

Respectfully submitted,

s/ M. Robert Sutherland

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[9] 47 C.F.R. § 1.2.

CERTIFICATE OF SERVICE

I, Lydia Byrd, an employee in the Legal Department of Cingular Wireless LLC, hereby certify that on this 7th day of March, 2005, 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