cingular WIRELESS

Brian F. Fontes, Ph.D. • Vice President, Federal Relations • phone 202.419.3010 • fax 202.419.3052

July 18, 2006

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation - WC Docket No. 06-122
Universal Service Contribution Methodology

Dear Ms. Dortch:

On July 17, 2006, Cingular Wireless LLC ("Cingular") met with Michelle Carey, Senior Legal Advisor to Chairman Kevin Martin. Cingular was represented by Michael Goggin, Senior Counsel; Ben Almond, Vice President–Federal Regulatory; Carl Povelites, Executive Director–External Affairs (by teleconference); L. Charles Keller of Wilkinson Barker Knauer, LLP; and the undersigned. The purpose of the meeting was to discuss potential issues regarding the reporting of toll revenues arising out of the Commission's recent order regarding USF contribution issues.[1]

In the meeting, Cingular noted that the *2006 Contribution Order* discusses the definition of "toll revenues" in the wireless context for the first time in any Commission order.[2] The definition that has been included in the Instructions to FCC Form 499, phrased in terms of calling outside of a "local exchange," is based on a wireline construct. Cingular also discussed the longstanding direct conflict between the FCC's universal service contribution orders, which have consistently stated that wireless carriers may use the safe harbor to allocate *all* telecommunications revenues between the intrastate and interstate/international jurisdictions, and various versions of the Instructions to FCC Form 499, which have implied since 2000, and stated since 2002, that wireless carriers may not apply the safe harbor to "toll" revenues. This conflict is graphically depicted in the attached chart, which was provided to Ms. Carey in the meeting. We also discussed the wireless industry's prior efforts to obtain clarification of these issues.[3]

[1] *Universal Service Contribution Methodology, et al.*, WC Docket No. 06-122 *et al.*, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (rel. June 27, 2006) (the *"2006 Contribution Order")*.

[2] *Id.* at ¶¶ 29-31.

[3] *See, e.g., Ex Parte* Presentation of CTIA – The Wireless Association™, in CC Docket No. 96-45, dated July 14, 2004 (notice of meeting with Commission staff and representatives of CTIA, Cingular, Western Wireless, and US Cellular); *Ex Parte* Presentation of CTIA – The Wireless Association™, in CC Docket No. 96-45, dated May 19, 2004 (notice of meeting with Commission staff and representatives of CTIA, Cingular, Alltel, and US Cellular) (collectively, "*CTIA Ex Parte Filings*").

Given the uncertainty that has prevailed regarding the reporting and allocation of toll revenues, Cingular urged the Commission not to seek (and not to permit USAC to seek) to apply a definition retroactively to carriers that reasonably reported their revenues consistent with the Commission's Orders. Cingular further requested that the Commission fully clarify how it expects wireless carriers to report and allocate their revenues on a going forward basis.

If you have any questions concerning this notice, please contact the undersigned.

Sincerely,

/s/

Brian F. Fontes
Vice President, Federal Relations

cc: Michelle Carey

Attachment

CINGULAR WIRELESS LLC
TREATMENT OF WIRELESS TOLL REVENUES: ORDERS VS. WORKSHEET INSTRUCTIONS
July 17, 2006

Date	FCC/WCB Orders	Instructions
1997	*NECA II Order*: "Good faith estimates" – Contributors that could not "derive interstate revenues from their books of account or [could] not derive the line-by-line revenue breakdowns from their books of account" may rely on "good faith estimates."	
1998	*Safe Harbor Order*: Commission made clear that it was establishing "a safe harbor percentage of interstate revenues for cellular and broadband PCS providers of 15 percent *of their total cellular and broadband PCS telecommunications revenues.*" 15% safe harbor derived from wireline DEMs, which included *all* minutes of use, not simply local minutes.	
1999		First Worksheet following *Safe Harbor Order* does not mention safe harbor.
2000		Safe harbor available for "revenues associated with Line (309), Line (409) and Line (410)." Lines include mobile services revenue but exclude toll revenues. Instructions did not explicitly preclude use of safe harbor as "good faith estimate" to allocate revenues reported in the toll category.
2001	*Contribution NPRM*: "CMRS providers currently may report a fixed percentage of revenues ranging from one to fifteen percent *of total end-user telecommunications revenues.*"	Included language above.
2002	*Safe Harbor Modification Order*: Adopted new safe harbor, again based on evidence regarding *overall* minutes of use, including toll minutes. Reiterated that "[m]obile wireless providers availing themselves of the revised interim safe harbor will be required to report 28.5 percent *of their telecommunications revenues* as interstate."	Included language above, and added new language: "These safe harbor percentages may not be applied to the universal service pass-through charges, fixed local service revenues, or toll service charges. All filers must report the actual amount of interstate and international revenues for these services. For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls."
2003	*Reconsideration Order*: "For wireless telecommunications providers that avail themselves of the interim safe harbors, the interstate telecommunications portion of the bill would equal the relevant safe harbor percentage times the *total* amount of telecommunications charges on the bill."	Included all language above.
2005	*WCB BellSouth Recon Order*: FCC Rules "permit those utilizing the safe harbor procedure to report as interstate, for contribution purposes, 28.5 percent of their *total end user telecommunications revenues ....*"	Included all language above.
2006	*2006 Safe Harbor Modification Order*: Discussion of toll revenues is in the context of carriers using traffic studies or reporting actual revenues, not using the safe harbor. "[M]obile wireless providers that choose to use the revised interim safe harbor must report 37.1 percent of their telecommunications revenues as interstate...."	Included all language above.