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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Cingular Wireless, LLC	)	
	)	
Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia	)	
	)	
To: Wireline Competition Bureau	)	

OPPOSITION OF VERIZON[1]

Introduction

Cingular's decision to seek federal subsidies to continue offering service and expand its reach in Virginia, an existing Cingular service area, demonstrates the urgent need for reform of the High Cost Fund. The Commission should take steps now to stop the growth of the fund and move quickly to implement reverse auctions for high cost subsidies and other more fundamental high cost reforms. The Commission should defer action on Cingular's November 7, 2006 petition for designation as an eligible telecommunications carrier ("ETC") in Virginia until a system of competitive bidding for high cost support is in place.

I. The Clock Is Ticking.

Regardless of how wireless carriers secure ETC designations, all carriers that obtain ETC status in a service area receive high cost support under the current rules. And high cost subsidies to competitive ETCs ("CETCs") have increased dramatically over the last several years. In

1 The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

1999, wireless carriers received approximately $500,000 in high cost support.[2] By 2002 high cost subsidies to wireless CETCs had increased nearly 100-fold to approximately $45 million.[3] In 2005, wireless CETCs received more than $600 million in high cost subsidies, almost double the support received by wireless CETCs in 2004.[4] Through May 18 of this year wireless CETCs had already received more than $800 million in high cost subsidies, with approximately $50 million in additional high cost support going to wireline CETCs over the same period.[5] At this rate, CETCs will account for approximately 25 percent of high cost subsidies in 2006.[6]

Further, there are signs that wireless carriers will be even more aggressive in pursuing high cost support in the future. Cingular's petition is another clear warning. Additionally, just a few weeks ago Smith Bagley, Inc. ("SBI"), a wireless carrier operating in the Southwest, filed a petition for a writ of mandamus in the D.C. Circuit. SBI seeks an order requiring the Commission to act on SBI's pending petition for ETC designation within 45 days.[7]

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[2] *See* USAC, *Distribution of High Cost Support Between Wireless and Wireline CETCs*, http://www.universalservice.org/_res/documents/about/pdf/fundfacts-High-Cost-Support-Between-CETCs-1998-2006.pdf.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] This is not to say that the problems with the High Cost Fund are limited to wireless carriers and other CETCs. Because current subsidies are tied to the ILEC's per-line costs, incumbents are largely guaranteed to receive year-over-year high cost support in an amount that shields them from shifts in consumer preferences for different technologies and other marketplace changes. This discourages incumbents from innovating and becoming more efficient, which then makes high cost subsidies all the more attractive to competitive carriers that are entitled to the same per-line support upon gaining ETC status. Ultimately, the Commission must find a way to encourage innovation and to ensure that all ETCs have the proper efficiency incentives.

[7] Smith Bagley, Inc. Petition for Writ of Mandamus to the Federal Communications Commission, Docket No. 06-1379 (D.C. Cir. Nov. 15, 2006) at 1.

ETC designations in the states are also continuing independent of the Commission's designations. Pursuant to 47 U.S.C. § 214(e)(6), the Commission only has control over ETC designations of wireless carriers in a handful of states where state commissions have found that they lack jurisdiction to designate wireless carriers as ETCs. Unlike Virginia, most states have asserted jurisdiction over wireless carriers for purposes of ETC designation pursuant to 47 U.S.C. § 214(e)(2).

Left unchecked the trend of escalating subsidies to CETCs will continue – and may well worsen. Funding Cingular in Virginia (and potentially elsewhere) would encourage more ETC filings by wireless providers and other competitive carriers, further straining the fund and increasing the duplicative support paid out in areas where one or more ETCs are already subsidized.

II. Support Of Multiple Universal Service Networks Is Unnecessary And Inconsistent With The Public Interest Standard.

Cingular's petition is a good example of one of the many problems with the High Cost Fund. High cost support often flows to carriers that would offer the same services in the same service areas without any subsidy whatsoever. Moreover, in funding both the ILEC and one or more CETCs in many areas, consumers subsidize universal access often several times over.

For its part, Cingular claims to be the largest wireless company in the country with approximately 58 million wireless customers.[8] In 2005, Cingular enjoyed annual revenues of approximately $34.4 billion and a net income of $333 million.[9] Cingular self-promotes an ability "to provide cellular or PCS wireless communications services covering an aggregate of

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[8] Cingular, *About Us – Cingular At a Glance*, http://www.cingular.com/about/.

[9] Cingular Wireless LLC, Securities and Exchange Commission Form 10-K (filed Feb. 24, 2006) at 2, *available at* http://phx.corporate-ir.net/phoenix.zhtml?c=125269&p=irol-SECText&TEXT=aHR0cDovL2NjYm4uMTBrd2l6YXJkLmNvbS94bWwvZmlsaW5nLnhtbD9yZXBvPXRlbmsmaXBhZ2U9Mzk5MDkxMiZkb2M9MSZudW09Mw==.

294 million in population (POPs) or approximately 99% of the U.S. population, including all of the 100 largest U.S. metropolitan areas."[10]

In Virginia, Cingular has built new cell sites without high cost subsidies and has invested heavily in the region. "The Cingular Wireless market of Maryland, DC and Virginia is [sic] extends more than 20,000 square miles and covers a population in excess of 7 million. Last year, Cingular spent more than $120 million implementing an advanced GSM/GPRS network and enhancing coverage and capacity throughout the region."[11] That Cingular covets Virginia wireless customers comes as no surprise. Virginia is a huge state, the 12th largest in the nation with a population of more than seven million.[12]

The Act and the Commission's rules require any new ETC designations by the Commission to be "consistent with the public interest, convenience and necessity." 47 U.S.C. § 214(e)(6); *see also* 47 C.F.R. § 54.202(c). The Commission has previously found that the public interest standard applies "regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier." *Federal State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6389 ¶ 42 (rel. March 15, 2005) ("*2005 Order*"). Even though the Commission has declined to adopt "a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund," it did not limit the public interest standard to exclude consideration of the impact on the fund. *2005 Order*, ¶ 54. To the

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10 *Id.*

11 *See* Cingular MediaRoom – News Releases, *Cingular Wireless Network Expansion Enhances Fredericksburg Wireless Experience* (July 12, 2004), http://cingular.mediaroom.com/index.php?s=press_releases&item=1005; *see also Cingular Wireless Network Expansion Enhances Culpepper Wireless Experience* (Aug. 4, 2004), http://cingular.mediaroom.com/index.php?s=press_releases&item=1133.

12 *See* United States Census Bureau, U.S. Census 2000, *States Ranked by Population: 2000*, http://www.census.gov/population/cen2000/phc-t2/tab01.pdf.

contrary, the Commission recognized that whether approval of a new ETC "could impose strains on the universal service fund" was within the legitimate scope of inquiry when evaluating ETC applications. *2005 Order*, ¶ 55.

Through its petition, Cingular, some 58 million wireless customers strong, seeks ETC status for the provision of wireless services in one of the largest states in the country. If granted, subsidizing Cingular's services in Virginia could have a real impact on the fund.[13] Moreover, funding Cingular would continue the trend of subsidizing more and more CETCs with universal service funds in an increasing number of service areas. As discussed above, the collective impact of this and other USF practices has been a dramatic increase in the size of the High Cost Fund over the last several years. It is axiomatic that year-over-year increases of hundreds of millions of dollars in subsidies are ultimately not sustainable – and therefore at some point contrary to the public interest.

The Commission's current portability rules provide that all carriers that obtain ETC status, regardless of need or demonstrable efficiency, automatically receive the same per-line subsidy as the ILEC. 47 C.F.R. § 54.307. And a number of wireless carriers, Cingular's competitors, already enjoy ETC status in Virginia and the redundant subsidies that flow from CETC designations. Wireless carriers currently operating as CETCs in Virginia include Alltel, Highland Cellular, Sprint, Virginia Cellular, and Virginia PCS Alliance.[14]

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[13] In addition to evaluating the potential impact on the fund if Cingular's petition is granted, the Commission must also look closely at Cingular's application to ensure that high cost funds will be used to actually "improve signal quality, coverage, or capacity" and not merely to boost Cingular's profit margins on existing customers. 47 C.F.R. § 54.202(a)(6)(ii).

[14] *See* USAC, *HC20 - CETC Reported Lines by Incumbent Study Area - Interstate Access Support - 1Q2007*, http://www.usac.org/about/governance/fcc-filings/2007/quarter-1.aspx.

III. The Time For Reform Is Now.

It is ultimately consumers who pay for the growing High Cost Fund. Even if there were no additional growth in the fund, by the end of this year the total High Cost Fund would be larger than $4.1 billion per year[15] – more than double the size of the fund just seven years ago.[16] This trend cannot continue. *See, e.g., Alenco Communications v. FCC,* 201 F.3d 608, 620 (5th Cir. 2000) ("[E]xcess subsidization in some cases may detract from universal service by causing rates unnecessarily to rise, thereby pricing some consumers out of the market.").

The solution requires prompt action. Cingular's petition highlights the immediate need for the Commission to take steps to stop the growth of the fund. As a part of broader high cost reform, the Commission should move expeditiously toward a system of competitive bidding for high cost support as contemplated by the Federal-State Joint Board on Universal Service in the Joint Board's recent Public Notice regarding the merits of using reverse auctions to determine high cost subsidies. For all of the reasons discussed by commenters in the Joint Board docket, reverse auctions can work to distribute high cost subsidies to the most efficient carrier capable of providing supported services for the lowest amount of subsidy.

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[15] *See* USAC, *HC02 - High Cost Support Projected by State - 4Q2006,* http://www.usac.org/about/governance/fcc-filings/2006/quarter4/default.aspx.

[16] *See* USAC, *Universal Service Fund Facts-High Cost Program* Data, 1998-2005 Disbursements by *Calendar Year* (2005)(Unaudited), http://www.universalservice.org/about/universal-service/fund-facts/fund-facts-high-cost-program-data.aspx#calendar.

Conclusion

The Commission should immediately take steps to stop the growth of the fund, move quickly to implement reverse auctions for high cost subsidies and other more fundamental high cost reforms, and defer action on Cingular's petition until a system of competitive bidding for high cost support is in place.

Respectfully submitted,

By: _____

Edward Shakin
Christopher M. Miller
VERIZON
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3071

Attorneys for Verizon

Michael E. Glover, *Of Counsel*

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