

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

In the Matter of)	
)	
Petition of Cingular Wireless, LLC, for)	CC Docket No. 96-45
Designation as an Eligible)	DA 06-2367
Telecommunications Carrier (ETC) in the)	
Commonwealth of Virginia Pursuant to)	
Section 214(e)(6) of the Communications Act)	
of 1934, As Amended)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
REPLY COMMENTS**

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION

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**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments in response to the initial comments filed on December 4, 2006, as part of the Federal Communications Commission's (Commission's or FCC's) Public Notice² seeking comment on Cingular Wireless, LLC's (Cingular) Petition (Petition) seeking designation as an eligible telecommunications carrier (ETC) in the Commonwealth of Virginia pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (Act).³

The Commission should deny Cingular's Petition because it does not satisfy the public interest requirements of Section 214 and Section 254 of the Act.⁴ Due process

¹ NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Wireline Competition Bureau Invites Parties To Comment on the Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, DA 06-2367 (rel. Nov. 27, 2006) (Public Notice).

³ *Petition of Cingular Wireless, LLC Seeking Designation As An Eligible Telecommunications Carrier (ETC) in the Commonwealth of Virginia Pursuant to Section 214(e)(6) of the Communications Act of 1934, As Amended*, CC Docket No. 96-45 (filed November 7, 2006) (Cingular Petition or Petition).

⁴ NTCA Comment, p. 1. NTCA silence on any positions raised by parties in this proceeding connotes neither agreement nor disagreement with their positions or proposals.

concerns exist because NTCA and others have not been able to review or comment on Cingular's five-year improvement plan, estimated USF support and its impact on the high-cost USF. Reverse auctions are not the panacea for controlling high-cost USF support. Instead, the Commission should take the following actions:

1. Apply a meaningful public interest test when considering future ETC designations;
2. Eliminate the identical support rule;
3. Provide alternative cost based support to rural wireless ETCs; and
4. Expand the base of USF contributors to include all broadband service providers.

Implementing these four changes to the existing universal service rules will ensure comparable rates and services for rural and urban consumers and rein in the excessive growth of and inefficiency in the high-cost USF.

I. THE COMMISSION SHOULD DENY CINGULAR'S ETC PETITION BECAUSE IT IS NOT IN THE PUBLIC INTEREST

NTCA agrees with Embarq that Cingular's Petition for ETC status is not in the public interest and should be denied.⁵ For service areas already served by a rural carrier, Section 214(e)(6) of the Act requires the Commission to designate additional ETCs only upon finding that designation is "consistent with the public interest, convenience and necessity." Cingular's Petition does not satisfy the public interest component and the Commission should disregard assertions to the contrary, such as those submitted by CTIA.⁶ Contrary to CTIA's claim, Virginia is not an "underserved marketplace" as it has a statewide average voice penetration rate of over 95%.⁷ Allowing Cingular to draw from the high-cost USF support as an ETC will not change affordability of rates, bring ubiquitous service, or guarantee better services but will, instead, set a dangerous precedent that will destabilize the high-cost USF. Section 254 of the Act also contains a

⁵ Embarq Comment, p. 3.

⁶ CTIA— The Wireless Association (CTIA) Comment, pp. 4-6.

⁷ NTCA Comment, p. 6.

public interest test in that the services supported by the USF must be provided “consistent with the public interest, convenience and necessity.”⁸ Destabilizing the USF contravenes the public interest standard contained in Section 254(c)(1)(D) of the Act, so Cingular’s Petition fails two public interest tests under the Act.

The Commission should also examine closely the creamskimming allegations that Embarq, whose subsidiaries are ILECs in much of rural Virginia, provides in its comments.⁹ NTCA agrees with Embarq that creamskimming by an ETC applicant should be discouraged because it can make rural areas uneconomic to serve, and Embarq’s Meadowview wire center example demonstrates a real creamskimming potential.¹⁰ In sum, the Commission should deny the Petition because it fails the public interest test.

II. NTCA HAS BEEN DENIED DUE PROCESS TO REVIEW AND COMMENT ON CINGULAR’S PETITION

NTCA’s rights of due process regarding Cingular’s ETC Petition have been compromised and, consequently, the Commission should not grant the Petition. The Commission should recognize that legitimate due process concerns exist because NTCA and other commenters have not had an adequate opportunity to review or comment on Cingular’s five-year improvement plan, estimated USF support, and the Petition’s impact on the high-cost USF.

According to the November 27, 2006, Public Notice, commenters had one week to review the Petition and file comments and one week to file reply comments,¹¹ which is an inordinately short period of time to reflect on an ETC Petition of this magnitude and

⁸ 47 USC § 254(c)(1)(D).

⁹ Embarq Comment, pp. ii, 1, 4-6.

¹⁰ Embarq Comment, pp. 6-7.

¹¹ Public Notice, p. 1.

import. Cingular did not send a copy of its November 7, 2006 Petition to the Virginia state public service commission until November 30, 2006, and sent the Certificate by U.S. Mail.¹² Cingular, the largest national wireless provider, generated over \$9.5 billion in revenues in 3Q2006¹³ and is the joint venture of two RBOCs whose merger review is pending before the Commission.¹⁴ Cingular has not yet disclosed the financial impact of its ETC Petition on the USF. Analyzing the impact of allowing this behemoth to receive federal subsidies to provide wireless services throughout most of Virginia requires at least a 60 day comment period, not a short 14-day interval, for an adequate analysis of Cingular's ETC high-cost USF impacts.

Due process concerns will continue to exist even with a 60-day comment period if NTCA and commenters are not allowed to review and comment on Cingular's Exhibit E (which contains the five-year improvement plan, estimated USF support, and its financial impact on the high-cost USF. As noted in Embarq's December 7, 2006 Freedom of Information Act (FOIA) Request and Motion For Protective Order filed in this docket,¹⁵ the Commission has not yet entered a protective order that would allow NTCA or other commenters to review the confidential contents. Embarq correctly argues that: "the Commission will benefit substantially by enabling Embarq and parties in this proceeding

¹² The Cingular Wireless Certificate of Service for ETC Designation to the Virginia State Corporation Commission, dated Nov. 30, 2006, is available at:

http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518710402). The Certificate, however, is attached to oppositions filed by Verizon and Embarq, but does not appear to be attached to the Petition, its Exhibits, or Oppositions by NTCA, ITTA and WTA. Thus, it is unclear whether the Virginia SCC was served with the Petition itself.

¹³ Cingular Wireless LLC 3Q2006 10-Q quarterly report filed with the U. S. S.E.C., available at: <http://phx.corporate-ir.net/phoenix.zhtml?c=125269&p=irol-irhome>. Contrast this with the Universal Service Administrative Company (USAC)'s estimate on November 2, 2006 that the Fund Size Projections for 1Q2007 for high-cost support requirements will be \$1.06 billion (available at: <http://www.usac.org/about/governance/fcc-filings/2007/Q1/1Q2007%20Quarterly%20Demand%20Filing.pdf>).

¹⁴ *In the Matter of AT&T, Inc., and BellSouth Corporation Application for Consent to Transfer of Control*, WC Docket No. 06-74.

¹⁵ Embarq's Freedom of Information Act and Motion for Protective Order, filed Dec. 7, 2006 (Embarq FOIA Request), is available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518709537.

to review and comment on the information in Exhibit E. Moreover, administrative law and fundamental fairness require that Embarq and other interested parties be afforded the opportunity to review and comment on the evidence in this matter.”¹⁶ NTCA supports Embarq’s FOIA request and motion for protective order and seeks the same access to Cingular’s Petition Exhibit E.

Neither the redacted Petition nor Embarq’s comments were made publicly available on the ECFS docket under CC Docket No. 96-45 until just recently, making it difficult for commenters to examine the complete record.¹⁷ Finally, the Commission should, as a matter of due process, require Cingular to file publicly the dollar amount of financial impact on the high-cost USF together with Cingular’s calculation methodology that granting ETC status will have on the high-cost USF. The Commission and commenters needs to be able to review Cingular’s calculations to ensure that Cingular has properly estimated the financial impact that granting ETC status would have on the high-cost USF. The abbreviated comment period, confidential filing, delayed ECFS posting, and failure to provide the ETC financial impact and supporting calculations have impaired NTCA’s due process rights and ability to review and comment on the Petition.

III. THE COMMISSION SHOULD NOT RELY ON REVERSE AUCTIONS TO CONTROL HIGH-COST USF SUPPORT

Reverse auctions, untested for universal service purposes, are not the panacea for controlling high-cost USF support. NTCA is on record opposing the use of reverse auctions for universal service provisioning and asks the Commission to incorporate those comments into the record on this docket.¹⁸ As Dr. Dale H. Lehman of the Alaska Pacific

¹⁶ Embarq FOIA Request, p. 1

¹⁷ NTCA Comment, p. 3; Embarq Comment, Cover letter.

¹⁸ *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, CC Docket No. 05-337, NTCA Initial Comments (filed Oct. 10, 2006) and NTCA Reply Comments (filed Nov. 8, 2006).

University said in his recent white papers on reverse auctions, “There is scant empirical evidence on which to determine the feasibility or desirability of reverse auctions relative to alternative methods of providing universal service under these conditions.”¹⁹ Dr. Lehman’s white papers on reverse auctions are attached to these reply comments as Attachment A (“The Use of Reverse Auctions for Provision of Universal Service”) and Attachment B (“Reply to Reverse Auction Comments”). The implementation of reverse auctions for determining the distribution of universal service in those areas with pre-existing infrastructure and ubiquitous service would be a serious mistake. The potential downside of reverse auctions for the determination of universal service provision is too great, the risk of an unfavorable outcome too large, and the stakes too high for reverse auctions to be considered a feasible alternative.

Those commenters in the pending Reverse Auctions docket who supported using reverse auctions could not provide any relevant real world examples of reverse auctions that were successfully used for provisioning universal service support.²⁰ The Reverse Auction comments revealed disagreements on fundamental elements, such as geographic areas to be auctioned, time periods between auctions, and the number of winners to be selected.²¹ The biggest obstacle to using reverse auctions for high-cost USF is the recovery of ILECs’ previously-incurred investments in infrastructure.²²

NTCA urges the Commission to reject the reverse auction concept and to consider and recommend the following alternatives to accomplish the same goals, with much less

¹⁹ *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, CC Docket No. 05-337, “The Use of Reverse Auctions to Provision of Universal Service” by Dale H. Lehman (filed Oct. 10, 2006), NTCA Initial Comments, Attachment A, p. 1.

²⁰ *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, NTCA Reply Comment (filed Nov. 8, 2006), p. 7.

²¹ *Id.* at iii.

²² *Ibid*

risk to those both providers who rely on sufficient, reliable universal service support for the provision of affordable communications services and to the consumers who rely on those providers:

1. Apply a meaningful public interest test when considering future ETC designations;
2. Eliminate the identical support rule;
3. Provide alternative cost based support to rural wireless ETCs; and
4. Expand the base of USF contributors to include all broadband service providers.

Implementing these four changes to the existing universal service rules will enable the Commission to ensure comparable rates and services for rural and urban consumers and rein in the excessive growth of and inefficiency in the high cost universal service fund associated with the identical support rule. The proposed changes will also ensure that multiple ETCs in any given high-cost area in fact are necessary for providing rural consumers with affordable and comparable services. Lastly, expanding the base of contributors to include all broadband service providers will ensure sufficient, predictable and sustainable universal service support that will evolve with the future public communications network that will inevitably rely on IP-based transmission services.

NTCA's views on these recommendations, reflected in its comments in the Reverse Auctions docket, are reasonable alternatives to reverse auctions.²³ Taken as a whole, the record on reverse auctions leads inevitably to the conclusion that reverse auctions, quite simply, are not the answer.

IV. CONCLUSION

The Commission should deny Cingular's Petition because it does not satisfy the public interest requirements of Section 214 and Section 254. Due process concerns exist

²³ *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, NTCA Initial Comment (filed Oct. 10, 2006), NTCA Reply Comment (filed Nov. 8, 2006).

because commenters have not had the opportunity to review or comment on Cingular's five-year improvement plan, estimated USF support and its impact on the high-cost USF. Reverse auctions are not the panacea for controlling high-cost USF support. Instead, the Commission should take the following actions:

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, , Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 06-2367 was served on this 11th day of December 2006 via electronic mail to the following persons:

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