

**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 07-158
Telecommunications Carrier (ETC) in the)	
State of Georgia Pursuant to Section 214(e)(6))	
of the Communications Act of 1934, As)	
Amended)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
INITIAL COMMENTS**

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COOPERATIVE ASSOCIATION

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INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)¹ submits these comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) Public Notice² seeking comment on Cingular Wireless, LLC’s (Cingular) Petition seeking designation as an eligible telecommunications carrier (ETC) in the State of Georgia (Petition).³ NTCA urges the Commission to deny Cingular’s Petition. NTCA also urges the Commission to grant TDS Telecommunications Corp.’s (TDS) Motion for Protective Order, Freedom of Information Act Request, and Request for Extension of Time (TDS Motion).⁴

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 State of Georgia*, DA 07-158 (rel. Jan. 23, 2007) (Public Notice).

³ *Petition of Cingular Wireless, LLC Seeking Designation as an Eligible Telecommunications Carrier (ETC) in the State of Georgia*, CC Docket No. 96-45 (filed December 7, 2006) (Cingular GA Petition or Petition).

⁴ *TDS Telecommunications Corp.’s Motion for Protective Order, Freedom of Information Act Request, and Request for Extension of Time*, CC Docket No. 96-45 (filed Jan. 26, 2007) (TDS Motion).

I. INTRODUCTION AND SUMMARY

On December 7, 2006, Cingular filed its Petition with the Commission for designation as an ETC for the State of Georgia.⁵ Cingular alleged that the Georgia Public Service Commission does not have jurisdiction to grant Cingular ETC status and, consequently, the FCC has jurisdiction to determine Cingular's ETC designation.⁶ Cingular seeks both high-cost support and low income support from the Universal Service Fund (USF).⁷ Additionally, Cingular seeks ETC designation in 23 rural study areas that are already served by rural ILECs.⁸

The Commission should deny Cingular's Petition. Designating Cingular as an ETC will not change the existing affordability or comparability of rates and services in rural areas throughout the State of Georgia. The State of Georgia already has a high voice service penetration rate, and the FCC's designation of Cingular wireless as an ETC will only set a very dangerous precedent enticing all national wireless providers to seek federal USF support at the FCC and at state commissions in all 50 states and lead to the collapse of the universal service funding mechanisms which will harm consumers significantly. The Petition is not in the public interest and should be denied.

In denying the Cingular Petition, the Commission should take this opportunity, based on the voluminous record in CC Docket 96-45, to finally eliminate the identical support rule. The identical support rule allows competitive eligible telecommunications carriers (CETCs) to receive the same per-line support as rural ILECs based on the ILEC's costs. National and

⁵ The Petition was filed on behalf of Cingular, New Cingular Wireless PCS, LLC, Orange Licenses Holding, LLC, Chattanooga MSA Limited Partnership, Northeastern Georgia RSA Limited Partnership, and Georgia RSA No. 3 Limited Partnership, in 21 non-rural BellSouth [AT&T] wire centers and 23 rural study areas. Petition at 2.

⁶ Petition, p. 13; *Id.* at Exhibit H.

⁷ *Id.* at 2.

⁸ *Ibid*; *Id.* at Exhibit D.

regional wireless carriers, such as Cingular, are not “rural telephone companies” as defined by the Telecommunications Act of 1996. Because of the identical support rule, however, these wireless providers are able to circumvent this fact and receive substantial amounts of high-cost support tied to “rural telephone company” costs that have no relationship to their wireless costs.

Indeed, CETC support, which is primarily wireless CETC support, has escalated from \$106 million in 2003 to \$1.03 billion in 2006,⁹ an 870 percent change over this three year period. During this same time, ILEC high-cost USF support has remained unchanged at \$3.17 billion.¹⁰ The identical support rule is clearly the root of the escalating fund problem. Cingular’s Georgia Petition, like its identical petition in the Commonwealth of Virginia,¹¹ is a continued and escalating attempt to exploit this loophole in the rules and set a precedent that will likely lead to the unsustainability of the high-cost universal service mechanisms. The Commission should send a clear message to Cingular and others that a national wireless carrier’s petition for federal high-cost support is not in the Nation’s public interest.

Furthermore, the Commission should deny Cingular’s request to conceal Exhibit E and information about Cingular’s USF support. Commenters, including NTCA, have been denied due process because they have not been allowed to view the Five-Year Improvement Plan, especially Cingular’s calculations on the amount of USF support it anticipates receiving over the life of the five-year improvement plan. Furthermore, the Petition itself does not reveal the information that appears to be contained in Exhibit E. Neither Cingular’s Five-Year Improvement Plan nor the estimate of the amount of USF support that Cingular anticipates

⁹ See, Universal Service Administrative Company (USAC) filings with the FCC: USAC 1Q2003 HC01 and USAC 2Q2006 HC01.

¹⁰ *Id.*

¹¹ *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 Nov. 7, 2006) (Cingular Virginia ETC Petition). See also NTCA Initial Comment (filed Dec. 4, 2006) and NTCA Reply Comment (filed Dec. 11, 2006) in response to the Cingular Virginia ETC Petition.

receiving to fund that five-year plan are publicly available in its Petition. Disclosure is crucial to due process.

II. CINGULAR’S GEORGIA PETITION FOR ETC DESIGNATION IS NOT IN THE PUBLIC INTEREST AND SHOULD BE DENIED.

The Commission’s public interest analysis, based on Section 214(e), requires inquiry into “an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor’s service offering.”¹² The Commission has said that its public interest analysis is especially important where a rural incumbent LEC already serves the targeted territory.¹³ Cingular’s Petition for ETC designation in the State of Georgia is not in the public interest and should be dismissed.

Chairman Martin has stated that “in [his] view, the main goals of the universal service program are to ensure that all consumers--including those in high cost areas--have access at affordable rates. [He] remain[s] hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier.”¹⁴ Indeed, the Act seeks to provide that consumers in rural and high cost areas have services and rates comparable to urban areas.¹⁵ The Act does not guarantee that rural and high cost areas have the same number of supported ETCs as urban areas. Therefore, rather than simply granting additional ETC designations, the Commission must look at whether support will, in fact, promote comparability between rural and urban areas. As Commission Adelstein stated, “[those performing the public interest analysis] also need to consider whether the new service proposed is an enhancement or an upgrade to

¹² *In re the Matter of Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, Order (rel. Mar. 17, 2005) (ETC Order), ¶ 18.

¹³ 47 USC § 214(e)(2); ETC Order, ¶ 43.

¹⁴ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04J-1, Joint Board Recommended Decision, Separate Statement of FCC Commissioner Kevin Martin (rel. February 27, 2004)

¹⁵ 47 U.S.C. § 254(b)(3).

already existing or currently available service.”¹⁶ The Act provides that there be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.¹⁷ It is therefore incorrect for the Commission to ignore the demand for and ultimate sustainability of the universal service mechanisms as they decide future ETC designations.¹⁸

The public interest test should not focus on whether support will enhance competition but whether universal service is being maintained and preserved in accordance with the principles of Section 254. The public interest test should look at whether rural customers are receiving comparable services and rates as a result without designating additional ETCs within a designated area. Will designating Cingular as an ETC throughout the State of Georgia result in sustained comparability of rates and services in rural areas or will it lead to a deterioration of services and disparate rates? Will current multiple ETCs promote investment in the facilities needed to afford rural customers access to comparable broadband services at comparable rates?

As Dr. Lehman correctly identifies:

Artificially induced competition in rural areas serves to undermine the already weak business case for broadband deployment. It threatens the revenue base for [rural carriers] but does not reduce the investments required to provide service [and continue to meet carrier of last resort obligations]. ... Universal service should not be used to induce competition. Entry will occur where market conditions permit it.¹⁹

A meaningful public interest test should therefore look beyond the short-term and consider the long-term impact of Cingular’s ETC designation on the high-cost universal service fund. Cingular did not disclose adequately how much a financial impact ETC designation will

¹⁶ Speech by Commissioner Jonathan Adelstein, “Rural America and the Promise of Tomorrow,” NTCA Annual Meeting & Expo, Phoenix, Arizona (February 3, 2003).

¹⁷ 47 U.S.C. § 254(b)(5).

¹⁸ *In the Matter of RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, DA 02-3181, Memorandum Opinion and Order (rel. Nov. 27, 2002).

¹⁹ Dale Lehman, *The Cost of Competition*, NTCA 21st Century White Paper Series, Paper 3, p. 3 (December 2000).

have on the size and sustainability USF.²⁰ This is a key component of the public interest inquiry under Section 214 of the Act and is designed to allow the Commission to exercise some control over the size of the USF to maintain just, reasonable and affordable rates.²¹ The current policies for determining and distributing high-cost USF support have enabled the Commission to reach a 92.9 percent penetration rate in the State of Georgia as of July 2005.²² Thus, the Commission has already achieved Act's goal of providing comparable rates and services in Georgia. Repeatedly the Commission has stated that reigning in the size of the USF and auditing contributors and recipients of USF is a top priority.²³ The Commission can, and should, exercise that authority to control the unjustifiable growth in the high-cost universal service fund by denying Cingular's ETC designation petition.

III. GRANTING CINGULAR'S GEORGIA PETITION WOULD SET BAD PRECEDENT AND FURTHER OVERBURDEN AND DESTABILIZE THE HIGH-COST UNIVERSAL SERVICE FUND.

Cingular's Virginia and Georgia ETC Petitions are the first ETC designation petitions filed at the FCC by a national wireless provider since the Commission released its March 17, 2005 ETC Order.²⁴ These may not be the last national wireless provider ETC Petitions, however, if the Commission grants Cingular ETC status in either or both states. The Commission should consider whether the public interest is best served by the precedent, and the effect of that precedent, of future ETC designation applications by Cingular and other national wireless providers in wire centers elsewhere in the United States. The Commission cannot close this Pandora's Box and will not be able to undo the damage done to the USF. Allowing Cingular

²⁰ See ETC Order, ¶ 54.

²¹ ETC Order, ¶ 40; 47 USC § 214.

²² FCC Report: *Telephone Subscribership in the United States, Data Through November 2005* (rel. May 2006), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-265356A1.pdf.

²³ See, e.g., *In the Matter of OCMC, Inc.*, File No. EB-04-IH-0454, Order of Forfeiture (rel. Sept. 15, 2006).

²⁴ Cingular and Verizon Wireless filed temporary ETC designation petitions in the wake of Hurricane Katrina on November 9 and 3, respectively. These petitions were filed and granted under extraordinary conditions, contained expiration dates and, consequently, cannot be considered typical ETC designation petitions.

to draw from the USF will increase the size of the USF substantially. Tellingly, Cingular completely avoided specifying the financial impact that ETC designation will have for just this reason – Cingular does not want the Commission and the public at large to realize how much the USF will unjustifiably grow if Cingular is allowed to draw from it as an ETC. Consequently, the public interest is best served by denying Cingular’s Petition.

IV. THE COMMISSION SHOULD ELIMINATE THE IDENTICAL SUPPORT RULE TO REDUCE WIRELESS CARRIER HIGH-COST USF SUPPORT THAT HAS NO RELATION TO WIRELESS CARRIER COSTS.

The Commission should take this opportunity, based on the voluminous record in CC Docket 96-45, to finally eliminate the identical support rule. NTCA agrees with FCC Commissioner Jonathan Adelstein, Bob Rowe, and Nan Thompson in that they “believe that we have a sufficient record to recommend a policy goal that the amount of universal service support paid to competitive providers should not be based on the incumbent’s costs.”²⁵ The Act provides that all Americans should have access to adequate telecommunications services at reasonable and affordable charges.²⁶ It does not provide that every unregulated wireless CETC, such as Cingular, should receive the identical amount of universal service support that a rural ILEC receives. The Commission should not assume or pretend that high-cost USF support to Cingular would not be excessive or that Cingular would be using the support for the purposes intended under Sections 214 and 254 in the Act. By doing so the Commission cannot ensure CETC compliance with the Act or the preservation of universal service. The Commission should eliminate the “identical support rule” and require Cingular to demonstrate its cost to first

²⁵ Commissioners Adelstein and Rowe recommend that carriers receive support based on their own costs. Commissioner Thompson would not yet rule out the options that in high cost competitive markets support be based on a forward looking methodology or a bidding process. *See, In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Joint Board Recommended Decision, Separate Statement of Commissioners Adelstein, Rowe, and Thompson (rel. Feb. 27, 2004)

²⁶ 47 U.S.C. § 151.

determine whether or not Cingular is eligible to receive high-cost support, and if so, at what level to ensure that its USF support is not excessive and does not unjustly harm the sufficiency, sustainability, and preservation of the federal universal service support mechanisms.

National and regional wireless carriers, such as Cingular, are not “rural telephone companies” as defined by the Telecommunications Act of 1996. Because of the identical support rule, however, these large wireless providers are able to circumvent this fact and receive substantial amounts of high-cost support tied to “rural telephone company” costs that have no relationship to their wireless costs.²⁷ Indeed, CETC support, which is primarily wireless CETC support, has escalated from \$106 million in 2003 to \$1.03 billion in 2006,²⁸ an 870 percent change over this three year period. During this same time, ILEC high-cost USF support has remained unchanged at \$3.17 billion.²⁹ The identical support rule is clearly the root of the escalating fund problem.

The identical support rule allows CETCs to receive the same per-line support as rural ILECs based on the ILEC’s costs.³⁰ Thus it is entirely possible for a large wireless CETC to receive rural support even if it can be extremely profitable in rural markets without support. Indeed, the District Court in Nemaha County, Kansas, overturned a decision by the Kansas Commission that would have made state universal service support received by rural ILECs portable to CETCs on a per-line basis. The court determined that providing support to a CETC based on the costs of an ILEC is not competitively neutral. The Court found that:

²⁷ National and regional wireless carriers are currently receiving per-line support based on the costs of many small, landline, incumbent rural telephone companies serving less than 50,000 customers including such states as Alabama, Iowa, Michigan, Mississippi, Montana, North Dakota, South Dakota, Texas, Virginia, West Virginia, Washington, and Wisconsin.

²⁸ See, Universal Service Administrative Company (USAC) filings with the FCC: USAC 1Q2003 HC01 and USAC 2Q2006 HC01.

²⁹ *Id.*

³⁰ 47 CFR § 54.307.

The Order of the [Kansas Corporation] Commission violates the [state's] statutory requirement to make distributions in a "competitively neutral manner," because the Commission has failed to evaluate all the necessary cost/expense information from all providers. The LEC's [sic] are different in structure and treatment than the wireless providers. Attempting to establish competitive neutrality without evaluating all providers' costs and expenses, means that the [Kansas Corporation] Commission has compared apples to oranges. In order that its orders are competitively neutral, the [Kansas Corporation] Commission must compare the same units of measure.³¹

This regulatory disparity has created a dangerous incentive for wireless carriers to seek CETC status in rural high-cost areas where they already provide ancillary wireless service to ILEC customers. Even if the management of a wireless carrier knows that their costs are low enough to compete effectively without the additional support, they are compelled by the identical support rule to seek CETC designation so as to maximize profits and avoid lost opportunities to obtain support. This has led to a dramatic increase in CETC rural high-cost universal service support over the years. When a wireless CETC receives universal service support under these circumstances it is very likely a windfall.³²

Cingular's Georgia Petition, like its identical Virginia Petition, is an attempt to exploit this loophole in the rules and set a precedent that will likely lead to the unsustainability of the high-cost universal service mechanisms. Cingular is the nation's largest wireless provider, claims 57.3 million subscribers, and reports total 2006 operating revenues of over \$27 billion as of September 30, 2006.³³ Cingular is now the wholly-owned subsidiary of the merged BellSouth Corporation and AT&T, Inc. BellSouth reports total operating revenue of over \$26

³¹ *Bluestream Telephone Company, et al vs. Kansas Corporation Commission*, In the District Court of Nemaha County, Kansas, Case Nos. 01-C-39, 01-C-40, 03-C-20, and 2004-CV-19, Memorandum and Decision (rel. April 30, 2004).

³² Salomon Smith Barney, *Wireless Services, USF Subsidies May Significantly Improve Subscriber Economics for Rural Carriers*, Multi-Company Note, p. 1 (January 21, 2003) ("USF is the single-most important opportunity for rural wireless carriers to improve their return on capital.") *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 412 (U.S.C.A. 5th Cir. July 30, 1999) ("The term 'sufficient' appears in § 254(e), and the plain language of § 254(e) makes sufficiency of universal service support a direct statutory command rather than a statement of one of the seven principles.")

³³ Cingular Wireless LLC 10Q 2006 Report, filed Nov. 1, 2006.

billion as of September 30, 2006,³⁴ and AT&T reports total operating revenues of over \$47 billion as of September 30, 2006.³⁵ The sizes and revenue bases of Cingular, BellSouth and AT&T are relevant in assisting the Commission to gauge the impact that a Cingular ETC designation will have on the USF and the Commission's public interest determination. The Commission should send a clear message to Cingular and others that a national wireless carrier's petition for high-cost support is not in the Nation's public interest.

V. THE COMMISSION SHOULD DENY CINGULAR'S GEORGIA REQUEST FOR CONFIDENTIALITY BECAUSE CINGULAR FAILED TO PERMIT COMMENTERS A FULL AND FAIR OPPORTUNITY TO REVIEW AND COMMENT ON THE INFORMATION CONTAINED IN EXHIBIT E.

Cingular seeks confidential treatment under 47 CFR § 0.459 of Exhibit E which contains its Five-Year Service Improvement Plan including "financial information regarding how Cingular intends to spend universal service funds" and "information regarding capital expenditures and network improvements that would be made using universal service funding."³⁶ Presumably, this Exhibit E also contains an estimate of how much USF support Cingular anticipates receiving during those five years if the Commission grants the Petition.

The Commission should deny Cingular's request for confidentiality because Cingular has failed to permit commenters a full and fair opportunity to review and comment on the information contained in Exhibit E. Commenters, including NTCA, have been denied due process because they have not been allowed to view the unredacted Petition or Cingular's Five-Year Improvement Plan, especially, Cingular's calculations on the amount of USF support it anticipates receiving over the life of the five-year improvement plan. Furthermore, the Petition

³⁴ BellSouth Website, 10Q 2006 report, filed Nov. 1, 2006, available at http://media.corporate-ir.net/media_files/irol/95/95539/3q06x2.pdf.

³⁵ AT&T Website, 10Q 2006 report, filed Nov. 1, 2006, available at <http://phx.corporate-ir.net/phoenix.zhtml?c=113088&p=irol-sec>.

³⁶ Petition at 1.

itself does not reveal the information that appears to be contained in Exhibit E. Neither Cingular's Five-Year Improvement Plan nor the estimate of the amount of USF support Cingular anticipates receiving to fund that five-year plan are publicly available in its Petition.

The Commission should deny Cingular's request to conceal its five-year improvement plan, especially its estimates of the amount of USF support Cingular anticipates receiving during the five years of the plan, because Cingular has not satisfied the Commission's standard of review for confidential treatment of this information under 47 CFR § 0.459. Contrary to Cingular's claim, it is in the public interest to require Cingular to disclose publicly its estimated amounts of USF support as a way of measuring the anticipated impact that granting Cingular will have on the USF. This information should not receive privileged treatment because Cingular has not demonstrated how revealing its anticipated USF support, and the impact that support amount will have on the USF, will cause it substantial competitive harm.³⁷ Due to the confidential filing, commenters are unable to ascertain whether Cingular has already disclosed, or will disclose, its anticipated USF support in Cingular's publicly-available SEQ filings, annual reports, or prospectus filings, or whether Cingular has used its anticipated USF support in publicly-available financials as an inducement to investors.

Furthermore, the Commission should deny Cingular's request to conceal Exhibit E and information about Cingular's USF support for ten years, because that time frame is unjustifiable and well beyond the term of the improvement plan.³⁸ Cingular's attempt to cloak its anticipated USF support is merely the type of "casual request" for confidentiality that the Commission should not consider.³⁹ The Commission should deny Cingular's request for confidentiality of

³⁷ 47 CFR § 0.459(b)(5).

³⁸ Petition at 1; 47 CFR § 0.459(b)(8).

³⁹ 47 CFR § 0.459(c).

Exhibit E or, at a minimum, should require Cingular to disclose the anticipated amount of USF support it expects to receive over the life of its five-year improvement plan.

VI. CONCLUSION

For these reasons, the Commission should deny Cingular's Georgia Petition because it is not in the public interest under Section 214 of the Act. The Commission should deny Cingular's Petition and avoid opening the Pandora's Box of allowing Tier I wireless provider ETC designation. Giving ETC status to Cingular, the nation's largest wireless provider whose total operating revenue for the past nine months was over \$27 billion, will have a huge adverse impact on USF sustainability. The Petition threatens USF stability and is another reason for the Commission to eliminate the Identical Support Rule. Granting the Petition also will set dangerous precedent that may lead to more Tier I wireless provider ETC petitions. Finally, Cingular's filing fails to satisfy the Commission's standards for confidential treatment of its five-year improvement plan and estimated USF support information.

Respectfully submitted,

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February 6, 2006

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 07-158 was served on this 6th day of February 2007 by U.S. postage mail and/or via electronic mail to the following persons:

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