

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petition of Cingular Wireless, LLC for)	
Designation as an Eligible Telecommunications)	
Carrier in the State of Georgia)	

**COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the FCC’s Public Notice in the above-captioned proceeding.¹ The Public Notice seeks comment on the petition of Cingular Wireless, LLC (Cingular) for designation as an eligible telecommunications carrier (ETC) in the state of Georgia. OPASTCO is a national trade association representing over 550 small incumbent local exchange carriers (ILEC) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

¹ *The Wireline Competition Bureau Invites Parties to Comment on the Petition of Cingular Wireless, LCC for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, CC Docket No. 96-45, DA 07-158, Public Notice (rel. Jan. 23, 2007).

The Commission should deny Cingular's petition for ETC designation in Georgia, as it is readily apparent that the costs of their designation would far outweigh any benefits to the public. As the largest wireless carrier in the United States, Cingular's designation as an ETC in Georgia and other states could ultimately cause the High-Cost universal service program to reach an unsustainable level, thereby jeopardizing rural ILECs' provision of affordable, high-quality, ubiquitous service to rural consumers throughout the nation. In addition, if the FCC designates Cingular as an ETC in Georgia or elsewhere, it will lead to more multi-state and national wireless providers seeking ETC designation in numerous states. If the designation of Cingular as an ETC in one or more states does not, on its own, push the size of the High-Cost program past its breaking point, then the designation of other large wireless providers most certainly will.

The benefits that would accrue to the public from granting Cingular's ETC petition are minimal, if they exist at all. Based on wireless statistics from the FCC and the fact that Nextel Partners (Nextel) has already been designated as an ETC in numerous rural study areas in Georgia, it is likely that the vast majority of rural subscribers in Cingular's Georgia license area have access to at least one wireless service provider in addition to the ILEC. Therefore, consumer choice is already present throughout rural Georgia and little, if anything, would be gained from Cingular's designation.

Absent the denial of Cingular's petition for ETC designation in Georgia, the public interest would be served by staying consideration of the petition until after the open proceeding on reform of the high-cost support mechanism has been completed. This would prevent the High-Cost program from growing to an unsustainable level while

at the same time a thorough review of the rules concerning high-cost support calculations and ETC designations is underway.

Finally, elimination of the identical support rule in rural service areas would target the root cause of the rapid and unnecessary growth in the rural High-Cost program. Cingular's ETC petitions highlight the particularly absurd result that comes from applying the identical support rule to large, national wireless carriers – it provides the greatest amount of support to those carriers that need it the least. If the Commission were to were to grant Cingular's ETC petition for Georgia at this time, it would be a wasteful use of limited public funding and would threaten the ability of the High-Cost program to continue achieving the purposes for which it is intended.

II. CINGULAR'S PETITION FOR ETC DESIGNATION IN GEORGIA SHOULD BE DENIED, AS THE COSTS OF THEIR DESIGNATION FAR EXCEED ANY BENEFITS

Prior to designating a telecommunications carrier as an ETC, the FCC has committed to conducting a fact-specific public interest analysis, which includes weighing the costs and benefits of the designation.² When such an analysis is performed in this instance, it is readily apparent that the costs of designating Cingular as an ETC in Georgia far outweigh any benefits. Cingular's petition should therefore be denied.³

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6388-6396, ¶¶40-57 (2005) (ETC Designation Order).

³ For the same reasons set forth in these comments, the FCC should also deny Cingular's petition for ETC designation in Virginia. *See, The Wireline Competition Bureau Invites Parties to Comment on the Petition of Cingular Wireless, LCC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 13732 (2006).

A. Designating Cingular as an ETC in Georgia would result in excessive, unnecessary, and quite possibly unsustainable growth in the High-Cost program, ultimately threatening the provision of universal service in rural service areas

Designation of Cingular as an ETC in Georgia will severely compound the already serious problem of rapid and unnecessary growth in the High-Cost program, a concern that has been raised by both the FCC and the Federal-State Joint Board on Universal Service (Joint Board).⁴ Moreover, Cingular's designation in Georgia and other states could ultimately cause the Fund to reach an unsustainable level, thereby jeopardizing rural ILECs' provision of true universal service to high-cost rural consumers throughout the nation.

Cingular is the largest wireless carrier in the United States, with 61 million subscribers.⁵ Cingular's petition asserts that their designation as an ETC in Georgia serves the public interest,⁶ yet it fails to publicly reveal the number of subscribers Cingular has in the state and, more importantly, how many customers they claim to serve in each of the study areas for which they seek ETC designation. Absent this vital information, it is impossible for interested parties to calculate with any precision the financial impact that Cingular's ETC designation in Georgia would have on the High-Cost program, a critical factor in performing a thorough cost-benefit analysis. It can only be assumed that Cingular chose not to reveal this information because it would illustrate the excessive burden their designation would impose on the Fund.

⁴ For example, the Joint Board has stated that there is the "... potential for uncontrolled [Fund] growth as more and more competitive ETCs are designated in rural and high-cost areas." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4257, 4285-4286, ¶67 (2004) (Recommended Decision).

⁵ <http://www.cingular.com/about>.

⁶ *Petition of Cingular Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Georgia*, CC Docket 96-45, pp. 1, 14 (fil. Dec. 7, 2006) (Cingular Petition).

In previous ETC designation proceedings regarding Nextel and ALLTEL Communications (ALLTEL), OPASTCO warned that granting ETC status to those carriers would lead other large national wireless carriers to also apply for ETC designation.⁷ This is because once one wireless carrier obtains ETC status in a rural area, the other wireless providers in the area are compelled to seek ETC designation as well in order to improve their competitive and financial well-being. Thus, given the fact that the FCC has already designated Nextel as an ETC in numerous rural study areas in Georgia,⁸ it is not surprising that Cingular is also seeking ETC designation in many of these same study areas. Furthermore, once the FCC demonstrated its willingness to grant ETC designation to large wireless carriers like Nextel and ALLTEL, other large carriers could be viewed as neglecting their fiduciary obligation to their shareholders if they choose not to apply. Surely then, if the FCC grants Cingular's ETC petition for Georgia or elsewhere, it will lead to more multi-state and national wireless providers seeking ETC designation in numerous states.

For this reason, it is critical that the Commission not analyze Cingular's petition for ETC designation in a vacuum. If the designation of Cingular as an ETC in one or more states does not, on its own, push the size of the High-Cost program past its breaking point, then the designation of other large wireless providers most certainly will. In addition, were the FCC to designate Cingular as an ETC, it would signal to state commissions that it is appropriate for them to designate large, national wireless carriers

⁷ See, for example, OPASTCO comments in CC Docket No. 96-45 (fil. Jul. 14, 2003); OPASTCO comments in CC Docket No. 96-45 (fil. Aug. 18, 2003); OPASTCO comments in CC Docket No. 96-45 (fil. Sept. 4, 2003).

⁸ *Federal-State Joint Board on Universal Service, NPCR, Inc. d/b/a Nextel Partners, Petition for Eligible Telecommunications Carrier in the state of Alabama, et al.*, CC Docket No. 96-45, Order, 19 FCC Rcd 16530 (2004).

as well. By denying Cingular's ETC petition, the FCC can send the proper message to other large wireless carriers and state commissions, and preserve the viability of the High-Cost program.

In its 2003 white paper, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO estimated that if all wireless carriers nationwide were granted ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.⁹ Four years later, that estimate has proven to be entirely reasonable, and perhaps even conservative. According to the Joint Board's 2006 Universal Service Monitoring Report, total high-cost support payments to competitive ETCs skyrocketed from \$129.6 million in 2003 to an estimated \$820.4 million in 2006, a rise of \$690.8 million, or 533 percent, in just three years.¹⁰ It is not a stretch to suggest, then, that the designation of all of the largest wireless carriers throughout the nation would cause annual support received by competitive ETCs to swell to at least \$2 billion.

If the funding requirement for the High-Cost program reaches an unsustainable level, pressure will increase to either freeze or scale back support payments to rural ILECs. However, unlike competitive ETCs operating in rural study areas, high-cost universal service support reflects the legitimate costs of rural ILECs serving as ubiquitous, facilities-based common carriers in their rural territories. Without this crucial source of cost recovery, many rural ILECs would no longer be capable of providing services throughout their territories that are reasonably comparable to those offered in

⁹ Stuart Polikoff, *Universal Service in Rural America: A Congressional Mandate at Risk*, OPASTCO, p. 21 (Jan. 2003).

¹⁰ *Universal Service Monitoring Report*, CC Docket No. 98-202, Prepared by Federal and State Staff for the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, pp. 3-14 (rel. Dec. 29, 2006). The Congressional Budget Office estimates that 95 percent of the high-cost funding received by competitive ETCs is going to wireless carriers. Congressional Budget Office, *Factors That May Increase Future Spending from the Universal Service Fund* (Jun. 2006), Summary, p. 10; Chapter 3, p. 12.

urban areas and at reasonably comparable rates.¹¹ They would also be deprived of the ability and incentive to continue investing in the multi-functional infrastructure capable of providing advanced services. Furthermore, for some rural ILECs, their very existence would be placed in jeopardy. At greatest risk would be the continued availability of high-quality service – or in some cases, any service – to customers living in high-cost, remote areas.

In addition, as Cingular points out in its petition, “...wireless carriers remain dependent on the wireline network...” for their provision of service.¹² Thus, curtailing funding to rural ILECs not only would negatively affect the services and rates they are able to offer to end users, but would also jeopardize the reliability of wireless services in rural areas as well.

In short, there can be no doubt that the monetary costs and potential adverse impacts to rural consumers that would result from granting Cingular’s ETC petition for Georgia are far too high. Cingular’s petition should therefore be denied.

B. The benefits of granting Cingular’s petition for ETC designation in Georgia are few, if any

In stark contrast to the extremely high cost of granting Cingular’s petition for ETC designation in Georgia, the benefits that would accrue to the public are minimal, if they exist at all. Cingular states in its petition that it will use high-cost support to provide telephone service to consumers that currently have no choice of telephone provider.¹³ However, it is impossible to determine the approximate number of new consumers that will gain access to Cingular’s service based on the publicly available information in the

¹¹ 47 U.S.C. §254(b)(3).

¹² Cingular Petition, p. 11.

¹³ *Id.*, p. 14.

petition. More importantly, though, the Commission needs to recognize that just because Cingular is presently unable to serve certain rural consumers in its Georgia license area does not mean that those consumers do not already have a choice among telephone service providers.

The Commission's Eleventh CMRS Competition Report found that less densely populated counties (100 persons per square mile or less) have an average of 3.6 mobile wireless competitors.¹⁴ The report concluded that "...CMRS providers are competing effectively in rural areas."¹⁵ In addition, as stated earlier, the FCC has already designated Nextel as an ETC in many of the same rural study areas that Cingular is seeking ETC designation for, which theoretically should have resulted in improved wireless coverage in those areas. It is therefore likely that the vast majority of rural subscribers in Cingular's Georgia license area have access to *at least one* wireless service provider in addition to the ILEC. Thus, consumer choice is already present throughout rural Georgia and little, if anything, would be gained from Cingular's designation.

While it is possible that some rural consumers do not yet have access to wireless service at their place of residence, there is no evidence that Cingular will use the high-cost support it receives to reach those particular customers. Instead, it is more likely that Cingular will use most of the high-cost support it receives to improve their existing network in areas where the population density is greater and the competition for customers is stronger. Even where Cingular does use high-cost support to build out to additional rural consumers, many of those consumers will likely already have access to

¹⁴ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 10982, ¶86 (2006) (Eleventh CMRS Competition Report).

¹⁵ *Id.*, 21 FCC Rcd 10982-10983, ¶88.

one or more wireless providers. It is not in the public interest to provide high-cost support to a nationwide wireless carrier with substantial resources so that it may bolster its competitive position and improve its profit margin for the benefit of shareholders.

Granting Cingular's petition for ETC designation in Georgia will do little, if anything, to preserve and advance universal service in high-cost rural service areas. In fact, it will accomplish the opposite, threatening the sustainability of the Fund and ultimately jeopardizing the ability of rural ILECs to provide affordable, high-quality, ubiquitous service to rural consumers. Therefore, because the costs of Cingular's ETC designation in Georgia far outweigh any benefits, the Commission should deny the petition.

III. ABSENT THE DENIAL OF CINGULAR'S ETC PETITION FOR GEORGIA, THE COMMISSION SHOULD STAY ITS CONSIDERATION OF THE PETITION UNTIL AFTER THE OPEN PROCEEDING ON REFORM OF THE HIGH-COST SUPPORT MECHANISM HAS BEEN COMPLETED

At present, there is a proceeding underway considering fundamental reform of the High-Cost support mechanism.¹⁶ Specifically, the Joint Board is considering reform proposals, such as reverse auctions, that would dramatically alter the manner in which competitive ETCs are designated and the amount of support they would receive. In fact, it is likely that Cingular is seeking ETC designation at this time, in part, because of their belief that the designation process and support calculation methodology for competitive ETCs will change in the not-so-distant future. Therefore, absent the denial of Cingular's

¹⁶ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004); *Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 20 FCC Rcd 14267 (2005); *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, CC Docket No. 96-45, Public Notice, 21 FCC Rcd 9292 (2006).

petition for ETC designation in Georgia, the public interest would be served by staying consideration of Cingular's petition until after the high-cost universal service reform proceeding has been completed. This would prevent the High-Cost program from growing to an unsustainable level while at the same time a thorough review of the rules concerning support calculations and ETC designations is being undertaken.

In a recent speech, Commissioner Robert McDowell noted the "astonishing" growth in support going to competitive ETCs.¹⁷ He further stated that the Commission is working to achieve comprehensive reform in order to ensure the long-term sustainability of universal service.¹⁸ Most importantly, Commissioner McDowell stated that he would be guided in this process by several principles, the first being to "slow the growth of the Fund."¹⁹ Obviously, granting Cingular's ETC petition would be contrary to this principle.

As discussed in the prior section, the grant of Cingular's ETC petitions for Georgia and elsewhere would place a significant strain on the High-Cost program that would only be exacerbated when other large, multi-state wireless carriers inevitably apply for ETC designation as well. Therefore, if the Commission is not prepared to deny Cingular's petition at this time, it should, at the very least, stay its consideration of the petition until after the proceeding considering reform of the High-Cost support mechanism has been completed.

¹⁷ Remarks of Commissioner Robert M. McDowell before the National Telecommunications Cooperative Association, Orlando, FL, p. 4 (Feb. 6, 2007).

¹⁸ *Id.*, p. 5.

¹⁹ *Id.*

IV. ELIMINATION OF THE IDENTICAL SUPPORT RULE WOULD ADDRESS THE ROOT CAUSE OF THE RAPID AND UNNECESSARY GROWTH IN THE RURAL HIGH-COST PROGRAM

If Cingular's petitions for ETC designation are beneficial in any respect, it is that they help to place a spotlight on the need to eliminate the identical support rule²⁰ in rural service areas. The identical support rule is the root cause of the rapid and unnecessary growth in the rural High-Cost program because it creates arbitrage incentives for competitive carriers to seek ETC status in order to receive windfalls of support that exceed the "sufficient" levels called for in the 1996 Act.²¹ Even the Joint Board has acknowledged that "...funding a competitive ETC based on the incumbent LEC's embedded costs may not be the most economically rational method for calculating support."²²

Furthermore, Cingular's ETC petitions highlight the particularly absurd result that comes from applying the identical support rule to large, national wireless carriers – it provides the greatest amount of support to those carriers that need it the least. Upon being granted ETC status, the identical support rule immediately provides competitive carriers with the rural ILEC's cost-based per-line support amount for all of its existing customers in the designated service territory, whom they were successfully serving without any support. This rule therefore allows a national carrier such as Cingular, with a huge, primarily urban customer base, to receive the largest windfalls from the Fund via per-line support amounts that were specifically designed for the characteristics of small, rural carriers. Similar to the Regional Bell Operating Companies, large wireless carriers such as Cingular have significant financial resources, economies of scale, and internal

²⁰ 47 C.F.R. §54.307(a)(1).

²¹ 47 U.S.C. § 254(b)(5).

²² Recommended Decision, 19 FCC Rcd 4297-4298, ¶96.

averaging abilities – characteristics that rural ILECs typically lack – that make them the carriers least in need of high-cost support. Thus, the identical support rule is particularly egregious when applied to a large wireless carrier in a rural service area. If the Commission were to grant Cingular’s ETC petition for Georgia at this time, it would be a wasteful use of limited public funding and would threaten the ability of the High-Cost program to continue achieving the purposes for which it is intended.

V. CONCLUSION

Cingular’s petition for ETC designation in Georgia should be denied. There can be no doubt that the monetary costs and potential adverse impacts to rural consumers that would result from designating Cingular as an ETC are extremely high. Conversely, the benefits that would accrue to the public are minimal, if they exist at all. Absent the denial of Cingular’s petition, the public interest would be served by staying consideration of the petition until after the open proceeding on high-cost universal service reform has been completed. This would prevent the High-Cost program from growing to an unsustainable level while at the same time a thorough review of the rules concerning support calculations and ETC designations is being undertaken. Finally, in order to address the root cause of the rapid and unnecessary growth in the rural High-Cost program, the identical support rule should be abandoned in rural service areas.

Respectfully submitted,

**THE ORGANIZATION FOR THE
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CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent on this, the 20th day of February, 2007 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

By: /s/ Brian J. Ford
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