

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**Reply Comments of the

INDEPENDENT TELEPHONE and
TELECOMMUNICATIONS ALLIANCE

and the

WESTERN TELECOMMUNICATIONS ALLIANCE**

To the Commission:

The Independent Telephone and Telecommunications Alliance (ITTA) and the Western Telecommunications Alliance (WTA) hereby submit these reply comments in the above-captioned proceeding. In their initial comments, ITTA and WTA stated that the Commission should not now permit grant of another ETC petition without implementing fully new public interest standards based on current conditions that call for reform. ITTA and WTA urged the Commission to utilize the record created in the reverse auctions proceeding to create public interest standards that can be applied to disposition of the Cingular Petition.

Cingular’s Petition for eligible telecommunications carrier (ETC) designation in the Commonwealth of Virginia drew strong opposition from major national carriers as well as carrier associations.¹ Filed comments, with the exception of CTIA, were a resounding opposition to grant of the Cingular petition. These objections ranged from data-rich illustrations that revealed the shortcomings of the Petition,² to demonstrations as to how grant of the Petition would contravene public policy,³ to a call to defer action until reverse auctions are implemented.⁴

As described by ITTA/WTA in their initial comments, the Commission must incorporate into this proceeding a renewed definition of the public interest standard.⁵ This is necessary not only in light of a pending petition for reconsideration of ETC standards,⁶ but also because the Commission’s broader investigation into the high cost fund (HCF) and attendant reforms evidences that continuing along the current path is no longer a viable option. NTCA stated correctly that, “the public interest test should not

¹ The only party that supported grant of the Petition was CTIA – The Wireless Association. Wireless CETC funding has been highlighted by ITTA and WTA, respectively, as the major force of HCF growth. *See, generally, I/M/O Federal-State Joint Board on Universal Service., Comments of Balhoff & Rowe, LLC on Behalf of ITTA*, CC Docket No. 96-45, WC Docket No. 05-337; *see, also, Comments of the Western Telecommunications Alliance* at 8, 9.

² *See, i.e.,* Comments of Embarq.

³ *See, i.e.,* Comments of National Telecommunications Cooperative Association (NTCA).

⁴ *See, i.e.,* Comments of Verizon. While Verizon, ITTA, and WTA disagree on the propriety of reverse auctions, all agree that, “Cingular’s petition is a good example of one of the many problems with the High Cost Fund.” Verizon at 3.

⁵ Comments of ITTA/WTA at 7.

⁶ ITTA/WTA at 7.

focus on whether support will enhance competition but *whether universal service is being maintained and preserved in accordance with the principles of Section 254.*”⁷

The public interest determination can be effected only by evaluating an ETC application against the facts on the ground in the areas in which the carrier proposes to serve. The data-rich response provided by Embarq (a carrier operating in Virginia with access to pertinent data) brought to light startling revelations that underscore the danger of granting the Cingular Petition. These hazards are related not only to limited scope of Cingular’s service areas in regions for which it seeks support based upon averaged line costs,⁸ but to global HCF concerns, as well. The Cingular Virginia problem risks multiplication on a National basis to exorbitant results.

As NTCA points out, grant of the Cingular Petition could “entic[e] all national wireless providers to seek federal USF support at the FCC and at state commissions in all 50 states . . . lead[ing] to the collapse of universal service funding mechanisms”⁹ This concern is especially troubling when one considers that, as Verizon and NTCA provided, Cingular has at least 57.3 million subscribers and annual revenues in the tens of billions of dollars (\$27 billion in 2006, \$34.4 billion in 2005).¹⁰ The public interest demands whether wholesale funding of this carrier is truly consistent with the public interest. Verizon predicted, “funding Cingular would continue the trend of subsidizing

⁷ NTCA at 5 (emphasis added).

⁸ Embarq at 5-9.

⁹ NTCA at 2.

¹⁰ NTCA at 9, Verizon at 3.

more and more CETCs with universal service funds in an increasing number of service areas.”¹¹

Ultimately, consumers pay for the growing HCF.¹² As illustrated by Verizon, the HCF is expected to reach more than \$4.1 billion per year *without additional growth* – more than double the size of the fund just seven years ago.¹³ The receipt of support by more carriers necessitates enlargement of the HCF, which in turn is passed along to consumers who must absorb higher monthly bills. This increase in the fund collides with the statutory mandate to create “just, reasonable, and affordable rates.”¹⁴ No bargain is realized when increased rates are precipitated by the growing support of multiple carriers in markets where the viability of even a single unsupported carrier is not feasible. The perverse results are a cannibalization effect where consumers pay more for competition, rather than less. This trend cannot continue. Verizon cited correctly *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,”¹⁵ and Embarq warned, “having too many providers in a rural market can make it uneconomic for any of them to provide service.”¹⁶

¹¹ Verizon at 5.

¹² See ITTA/WTA at n.19, citing *I/M/O Schools and Libraries Universal Service Support Mechanism: First Report and Order*, CC Docket No. 02-6, FCC 02-175, Separate Statement of Chairman Michael K. Powell, Approving in Part and Concurring in Part (rel. Jun. 13, 2002).

¹³ Verizon at 6.

¹⁴ 47 USC 254(b)(1).

¹⁵ Verizon at 6.

¹⁶ Embarq at 18.

In a lone voice supporting Cingular, CTIA declared that “designating Cingular as an ETC in covered areas in the Commonwealth of Virginia would serve the public interest by increasing the availability of new, competitively-priced services and technologies in Virginia communities.”¹⁷ CTIA’s support, however, seemed to only mirror the assertions offered by Cingular in its Petition. Those assertions are rebutted plainly by the data set forth by Embarq, which illustrate the paucity of the Cingular Petition. As described by Embarq, Cingular provides service to less than one-third of Embarq’s service in Virginia, and is concentrated only in low-cost, easier-to-serve parts of those service areas.¹⁸ Moreover, Cingular plans to rely heavily on resale. As described by Embarq, “[i]n doing so, [Cingular] avoids the costs of actually serving the high cost areas just as surely as if it had not entered the high-cost portion of the market at all.”¹⁹ Such a result is hardly consistent with the public interest, and cannot justify the expense of ETC designation for Cingular.

Finally, ITTA/WTA agree with NTCA’s opposition to the identical support rule,²⁰ which has inflicted terrific growth on the HCF by awarding wireless carriers support they would otherwise not receive,²¹ *i.e.*, access-based revenues. Moreover, Cingular acknowledges its “dependen[ce] on the wireline network for voice and data circuits that

¹⁷ CTIA at 6.

¹⁸ Embarq at 2, 4-9.

¹⁹ Embarq at 6.

²⁰ NTCA at 7-10.

²¹ *I/M/O Federal-State Joint Board on Universal Service*; *Comments of Balhoff & Rowe, LLC on Behalf of ITTA*, CC Docket No. 96-45, WC Docket No. 05-337, at 25.

provide connectivity between the cell site and the switch, from switch to switch, between the wireless network and the landline network, and for IT system connectivity.”²² If granted ETC status, Cingular would receive support based on costs of another’s network that it will use, but has never, and will never, deploy. Competitive ETCs should receive only support based on their own costs in serving the designated areas.

For the reasons stated above and in ITTA/WTA’s initial comments, the Commission should construct new public interest standards based upon the record developed in the reverse auctions proceeding and apply those standards to the instant Petition.

Respectfully submitted,

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²² Cingular Petition at 11.