

DIVIDER

**STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)**

**PU-2077-03-636
WWC Holding Co., Inc.
Designated Eligible Carrier
Application
Filed 11/5/2003**

Closed 2/13/2004

03



Public Service Commission
Receipt of Payment

Receipt# 5917

Received: 8/3/2004 Check# 81448 for \$409.29
Subject: Utility Valuation

Docket # PU-2077-03-636

Western Wireless
3650 131st Ave SE #400
Bellevue WA 98006

16	PU-2077-03-636	Pages: 1
	Receipt# 5,917 \$409.29	
	by Western Wireless	
	08/03/2004	

APPROVED

DATE: 3-31-04
KMF

MOTION

March 31, 2004

*Admin
A1*

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

I move the Commission bill WWC Holding Co., Inc. for costs incurred to date in Case No. PU-2077-03-636, WWC Holding Co., Inc., Designated Eligible Carrier, Application.



Public Service Commission
State of North Dakota

COMMISSIONERS

Tony Clark, President
Susan E. Wefald
Kevin Cramer

Executive Secretary
Jon H. Mielke

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
web: www.psc.state.nd.us
e-mail: ndpsc@psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

March 31, 2004

Thomas D Kelsch
Atty for WWC Holding Co Inc.
PO Box 1266
Mandan ND 58554-7266

RE: Case No. PU-2077-03-636
WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Enclosed is a copy of the statement approved at the March 31, 2004 Public Service Commission meeting for the expenses incurred to date in Case No. PU-2077-03-636.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the telecommunications company involved.

Please make your check payable to the *Public Service Commission*.

Sincerely,

Gloria Geiger
Admin Staff Officer
701-328-2401

Enc.

Billing Statement

March 31, 2004

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

Bill To:

WWC Holding Co., Inc. \$409.29

Expenses Incurred to Date:

Advertising Costs \$409.29

Send Payment and a Copy of this Statement To:

Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck ND 58505-0480

Federal Tax ID 45-0309764

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **13th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota **one** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelope was addressed as follows:

Thomas D Kelsch
Atty for WWC Holding Co Inc
P O Box 1266
Mandan ND 58554-7266
701-663-9818
Cert. No. 7002 2410 0003 4911 4363



Sharon Helbling further deposes and says that on the **13th day of February, 2004**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Jim Blundell
WWC Holding Co
3650 131st Ave SE Ste 400
Bellevue WA 98006

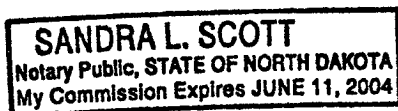
Mark J Ayotte
Briggs and Morgan P A
2200 1st Nat'l Bk Bldg
St Paul MN 55101

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **13th day of February, 2004**.



Notary Public

SEAL



14 PU-2077-03-636 Pages. 1
Affidavit of Service
by Public Service Commission
02/13/2004 CC: Comm Legal PUD (3)

APPROVED

MOTION

DATE: 2-12-04
KMF

February 12, 2004

**WWC Holding Co., Inc.
Designated Eligible Carrier
Application**

Case No. PU-2077-03-636

I move the Commission adopt the Order in WWC Holding Co., Inc.'s application for eligible carrier designation, Case No. PU-2077-03-636.

PJF/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

ORDER

February 12, 2004

Preliminary Statement

On October 15, 2003, an application for designation as an Eligible Telecommunications Carrier (ETC) was filed by: WWC Holding Co., Inc., d/b/a CellularOne (Western Wireless). WWC Holding Co., Inc. is the operating entity doing business as CellularOne and is a wholly owned subsidiary of Western Wireless Corporation.

Western Wireless seeks ETC designation for purposes of qualifying to receive federal universal service support in the study areas of Absaraka Co-operative Telephone Company, Inc., Citizens Telecom, Griggs County Telephone Co., Inter-Community Telephone Company, L.L.C., Midstate Telephone Company, Moore and Liberty Telephone Company, Nemont Telephone Cooperative, Inc., Noonan Farmers Telephone Company, Polar Telecommunications, Inc., Red River Rural Telephone Association-ND, Red River Telecom, Inc., Wolverton Telephone Company-ND and York Telephone Company. The companies listed are classified as rural telephone companies.

On November 20, 2003 the Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing providing that comments or requests for hearing be filed by January 8, 2004 and scheduling an informal hearing for January 14, 2004. No comments or requests for hearing were received. The informal hearing was held as scheduled. The notice stated that the Commission could determine the matter without a hearing.

The issues to be considered are:

1. The qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.
2. The ETC universal service support area to be designated for the applicant.

On January 14, 2004 Western Wireless filed an affidavit of James H. Blundell, Director of External Affairs for Western Wireless, in support of the application.

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Pages: 9

Order

by Public Service Commission

02/13/2004

CC: Comm Legal PUD (3)

On January 20, 2004 Western Wireless filed a letter responding to questions raised at the January 14, 2004 informal hearing.

ETC Designation

The Telecommunications Act of 1996 provides financial support for universal services to common carriers that have been designated as eligible telecommunications carriers (ETCs) and that (1) offer the universal services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services and (2) advertise the universal services, advertise the availability of such services, and advertise the charges for such services, using media of general distribution.

The universal services designated for support by Federal universal service support mechanisms include voice grade access to the public switched network, local usage, dual tone multi-frequency signaling or its functional equivalent, single-party service or its functional equivalent, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying low-income consumers.

Both federal law and state law provide that the Commission designate a common carrier as an ETC. In areas served by a rural telephone company, the Commission must find that ETC designation is in the public interest.

The affidavit of James Blundell states that

- 1) Western Wireless is a common carrier currently providing commercial mobile radio service (CMRS) throughout the State of North Dakota including mobile telephony, data/facsimile, 911, voice mail, and other features and services.
- 2) Western Wireless currently offers and is able to provide, throughout the areas in which it is seeking ETC designation, the required telecommunications services that are supported by universal service funding.
- 3) Western Wireless advertises the federally supported universal services throughout its requested designated service area through several different media including newspaper, television, radio, and billboard advertising.
- 4) Western Wireless will advertise the availability of and charges for its universal service offerings through media of general distribution, in accordance with 47 C.F.R. § 54.201(d)(2).

- 5) Western Wireless's requested designated service areas are equivalent to the rural telephone company's study area, in accordance with 47 U.S.C. § 214(e)(5).
- 6) Granting ETC designation to Western Wireless as requested will provide rural consumers with a choice of providers for their telecommunications needs regarding pricing, services, service features, service quality, customer service, and service availability.
- 7) Granting ETC designation to Western Wireless as requested will lead to further deployment of Western Wireless's cellular network.
- 8) Granting ETC designation to Western Wireless as requested will provide competition that will incent incumbent local exchange companies to invest in new technologies and additional infrastructure to the benefit of consumers.

Western Wireless has indicated that its compliance tariff for its universal service offering previously submitted in Case No. PU-1564-98-248 will apply throughout the requested designated service areas in this proceeding. We acknowledge the tariff submitted in Case No. PU-1564-98-248 for application in this proceeding.

Western Wireless agrees that an applicant for ETC status is not required to be providing the required universal services to 100% of a service area before receiving designation as an ETC and that facilities to serve customers are required at some reasonable time after the customer agrees to the terms and conditions of the service provided. We continue to subscribe to this policy.

Western Wireless agrees to provide quarterly reports describing the status of its E911 implementation in North Dakota.

Universal Service Support Areas

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. § 214(e)(5).

The Act defines service area:

- (5) **SERVICE AREA DEFINED**-- The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under

section 410(c), establish a different definition of service area for such company.¹

Table 1 lists, for purposes of federal universal service funding, the North Dakota study areas that have been established by the Federal Communications Commission and listed by the Universal Service Administrative Company (USAC) for incumbent local exchange companies (ILECs) serving customers in North Dakota:

TABLE 1

Study Area Name	Local Exchange Company service areas included in study area
Absaraka Cooperative Telephone Co., Inc.	Absaraka Co-operative Telephone Company, Inc.
BEK Communications Cooperative	BEK Communications Cooperative
Consolidated Telcom	Consolidated Telcom
Dakota Central Telecommunications Cooperative	Dakota Central Telecommunications Cooperative Dakota Central Telecom I, Inc.
Dickey Rural Telephone Cooperative	Dickey Rural Communications, Inc. Dickey Rural Telephone Cooperative Dickey Rural Access, Inc.
Griggs County Telephone Company	Griggs County Telephone Co
Inter-Community Telephone Company L.L.C.	Inter-Community Telephone Company, L.L.C.
Midstate Communications Inc.	Midstate Communications Inc.
Midstate Telephone Company	Midstate Telephone Company
Moore & Liberty Telephone Company	Moore and Liberty Telephone Company
Nemont Telephone Cooperative, Inc.	Nemont Telephone Cooperative, Inc. Missouri Valley Communications, Inc
Noonan Farmers Telephone Company	Noonan Farmers Telephone Company
North Dakota Telephone Company	North Dakota Telephone Company
Northwest Communications Cooperative	Northwest Communications Cooperative, a Cooperative Association
Polar Communications Mutual Aid Corporation	Polar Communications Mutual Aid Corporation
Polar Telecommunications, Inc.	Polar Telcom, Inc.
Qwest Corporation	Qwest Corporation
Red River Rural Telephone Association	Red River Rural Telephone Association Red River Telecom, Inc.

¹ 47 U.S.C. § 214(e)(5)

Reservation Telephone Cooperative	Reservation Telephone Cooperative
SRT Communications, Inc.	SRT Communications, Inc.
United Telephone Mutual Aid Corporation	United Telephone Mutual Aid Corporation Turtle Mountain Communications, Inc.
West River Telecommunications Cooperative	West River Telecommunications Cooperative
Wolverton Telephone Company	Wolverton Telephone Company

Table 2 lists, for purposes of federal universal service funding, the Minnesota study areas that have been established by the Federal Communications Commission and listed by the USAC for ILECs serving customers in North Dakota:

TABLE 2

Study Area Name	Local Exchange Company service areas included in study area
Citizens Telecommunications Company of MN	Citizens Telecommunications Company of Minnesota, Inc.
Halstad Telephone Co.	Halstad Telephone Company
Loretel Systems, Inc	Loretel Systems, Inc.

Table 3 lists, for purposes of federal universal service funding, the South Dakota study areas that have been established by the Federal Communications Commission and listed by the USAC for ILECs serving customers in North Dakota:

TABLE 3

Study Area Name	Local Exchange Company service areas included in study area
James Valley Cooperative Telephone Company	James Valley Cooperative Telephone Company
Roberts County Telephone Cooperative Association	Roberts County Telephone Cooperative Association RC Communications, Inc.
Venture Communications Cooperative	Venture Communications, Inc.
West River Cooperative Telephone Company	West River Cooperative Telephone Company

Table 4 lists, for purposes of federal universal service funding, the Montana study areas that have been established by the Federal Communications Commission and listed by the USAC for ILECs serving customers in North Dakota:

TABLE 4

Study Area Name	Local Exchange Company service areas included in study area
Mid-Rivers Telephone Cooperative, Inc.	Mid-Rivers Telephone Cooperative, Inc.

On December 15, 1999 the Commission granted Western Wireless ETC designation with a designated service area that included all exchanges in the service area of U S WEST Communications, Inc. (now known as Qwest Corporation), including the Alexander, Fairmount, Gwinner, Lisbon, Pembina, Watford City, Williston, and Wyndmere exchanges subsequently sold to Citizens Telecommunications Company of North Dakota (Case No. PU-1564-98-428).

On October 31, 2000 Citizens Telecommunications Company of North Dakota (Citizens ND) received Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in the exchanges of Alexander, Fairmount, Gwinner, Lisbon, Pembina, Watford City, Williston, and Wyndmere, formerly served by U S WEST. Western Wireless continued to have ETC designation in those exchanges under the Commission's December 15, 1999 Findings of Fact, Conclusions of Law and Order, Case No. PU-1564-98-428.

On October 3, 2001, Case No. PU-1564-98-428, the Commission granted Western Wireless ETC designation with a designated service area that included the study areas of:

- BEK Communications Cooperative
- Consolidated Telcom
- Dakota Central Telecommunications Cooperative
- Dickey Rural Telephone Cooperative
- North Dakota Telephone Company
- Northwest Communications Cooperative
- Polar Communications Mutual Aid Corporation
- Reservation Telephone Cooperative
- SRT Communications, Inc.
- United Telephone Mutual Aid Corporation, and
- West River Telecommunications Cooperative

On November 1, 2002 Polar Telecommunications, Inc. received a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services in the Pembina exchange, formerly served by Citizens ND. Western Wireless continues to have ETC designation in the Pembina exchange under the Commission's October 3, 2001 Order on Remand, Case No. PU-1564-98-428. Polar also provides local exchange telecommunications services to the Adams, Edmore, Fordville, Gilby, and Lakota exchanges in North Dakota.

On November 1, 2002 Dickey Rural Access, Inc. received Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in the exchanges of Gwinner and Lisbon formerly served by Citizens ND. Western Wireless continued to have ETC designation in those exchanges under the Commission's October 3, 2001 Order on Remand, Case No. PU-1564-98-428. Dickey Rural Access, Inc. provides no other exchanges with local exchange telecommunications services in North Dakota.

On November 1, 2002 Red River Telecom, Inc. received Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in the Fairmount and Wyndmere exchanges formerly served by Citizens ND. Western Wireless continued to have ETC designation in the Fairmount and Wyndmere exchanges under the Commission's October 3, 2001 Order on Remand, Case No. PU-1564-98-428. Red River Telecom, Inc. also provides local exchange telecommunications services to the Hankinson and Lidgerwood exchanges in North Dakota.

On April 1, 2003 Reservation Telephone Cooperative (Reservation) received Certificates of Public Convenience and Necessity to provide local exchange telecommunications services in the Alexander and Watford City exchanges formerly served by Citizens ND. Western Wireless continued to have ETC designation in the Alexander and Watford City exchanges under the Commission's October 3, 2001 Order on Remand, Case No. PU-1564-98-428. Also, Western Wireless continued to have ETC designation in all other exchanges in North Dakota where Reservation Telephone Cooperative provides local exchange services under the Commission's October 3, 2001 Order on Remand.

On April 1, 2003 Missouri Valley Communications, Inc. received a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services in the Williston exchange formerly served by Citizens ND. Western Wireless continued to have ETC designation in the Williston exchange under the Commission's October 3, 2001 Order on Remand, Case No. PU-1564-98-428. Missouri Valley provides no other exchanges with local exchange telecommunications services in North Dakota.

In this proceeding, Western Wireless is requesting a designated service area that includes the study areas of:

Absaraka Cooperative Telephone Co., Inc.
Citizens Telecommunications Company of MN
Griggs County Telephone Company
Inter-Community Telephone Company L.L.C.
Midstate Communications Inc.,
Midstate Telephone Company
Moore & Liberty Telephone Company
Nemont Telephone Cooperative, Inc.
Noonan Farmers Telephone Company
Polar Telecommunications, Inc.

Red River Rural Telephone Association
Wolverton Telephone Company

Inter-Community Telephone Co. II, L.L.C., listed as a requested designated service area in the Western Wireless application, merged into Inter-Community Telephone Company, L.L.C. effective April 3, 2002. York Telephone Co., listed as a requested designated service area in the Western Wireless application, changed its name to Midstate Communications Inc. effective May 1996. Red River Telecom, Inc., listed as a requested designated service area in the Western Wireless application, is part of the Red River Rural Telephone Association study area.

Western Wireless has not requested that its designated service area include the Halstad Telephone Co, James Valley Cooperative Telephone Company, Loretel Systems, Inc., Mid-Rivers Telephone Cooperative, Inc., Roberts County Telephone Cooperative Association, Venture Communications Cooperative, or West River Cooperative Telephone Company study areas.

Based on the evidence in this proceeding, Western Wireless is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding and it is in the public interest that Western Wireless be designated as an ETC in the requested designated service areas.

Order


The Commission orders:


1. WWC Holding Co., Inc. d/b/a CellularOne (Western Wireless) is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support. The designated service area in this proceeding consists of the following study areas:

Absaraka Cooperative Telephone Co., Inc.
Citizens Telecommunications Company of MN
Griggs County Telephone Company
Inter-Community Telephone Company L.L.C.
Midstate Communications Inc.
Midstate Telephone Company
Moore & Liberty Telephone Company
Nemont Telephone Cooperative, Inc.
Noonan Farmers Telephone Company
Polar Telecommunications, Inc.
Red River Rural Telephone Association
Wolverton Telephone Company

2. Western Wireless Corporation shall file quarterly reports to the Commission describing the status of its wireless E-911 implementation in North Dakota.

PUBLIC SERVICE COMMISSION


Susan E. Wefald
Commissioner


Tony Clark
President


Kevin Cramer
Commissioner

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

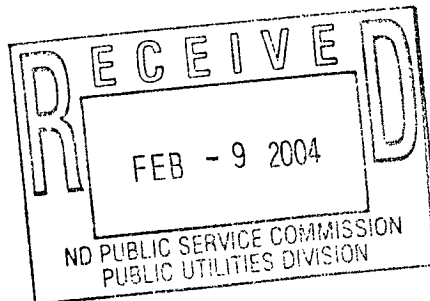
WRITER'S DIRECT DIAL

(651) 808-6561

WRITER'S E-MAIL

mayotte@briggs.com

February 5, 2004



VIA FAX (701) 328-2410 AND U.S. MAIL

Patrick Fahn
Chief Engineer
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: In the Matter of the Application of WWC Holding Co., Inc. d/b/a
CellularOne© for Designation as an Eligible Telecommunications Carrier
Docket No. PU-2077-03-636**

Dear Mr. Fahn:

I am writing to confirm the matters discussed in our telephone conversation of February 5, 2004, concerning the above-captioned matter. Specifically, I advised you that Western Wireless Corporation is the parent company of its wholly-owned subsidiary corporation, WWC Holding Co., Inc. In the State of North Dakota, WWC Holding Co., Inc. is the operating entity doing business as CellularOne©. For purposes of the above-captioned proceeding, we recommend that the Commission's order granting federal ETC status be issued to "WWC Holding Co., Inc. d/b/a CellularOne© ('Western Wireless')." Such a designation will be consistent with the Application, as well as similar designations in other States.

If you should have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark J. Ayotte".

Mark J. Ayotte

MJA/sjc

cc: James H. Blundell
Thomas D. Kelsch

BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

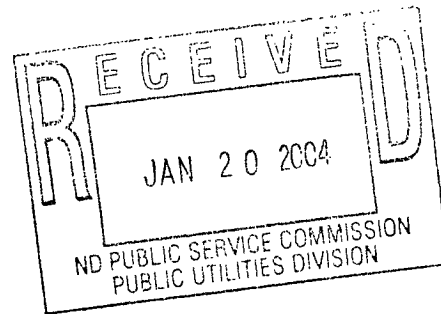
WRITER'S DIRECT DIAL

(651) 808-6561

WRITER'S E-MAIL

mayotte@briggs.com

January 16, 2004



Patrick Fahn
Chief Engineer
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: In the Matter of the Application of WWC Holding Co., Inc. d/b/a
CellularOne© for Designation as an Eligible Telecommunications Carrier
Docket No. PU-2077-03-636**

Dear Mr. Fahn:

I am writing as a follow-up to the items discussed at the Informal Hearing of January 14, 2004, in the above-captioned matter. Specifically, the Commission raised a question regarding WWC Holding Co.'s ("Western Wireless") obligation to provide service as a federal eligible telecommunications carrier ("ETC") throughout its designated service areas.

The Federal Communications Commission ("FCC") has set forth the standard regarding an ETC's obligation to provide service throughout a designated service area in *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket 96-45, Declaratory Ruling, 15 FCC Rcd. 15168 (2000) ("*Declaratory Ruling*"). A copy of the FCC's *Declaratory Ruling* is enclosed. As set forth in para. 17, the FCC addressed whether gaps in coverage throughout a service area could preclude designation. The FCC specifically determined that a new entrant, once designated as an ETC, is required to extend its network to serve new customers upon reasonable request. (*Declaratory Ruling*, ¶ 17.) Western Wireless reaffirms its obligation as a designated ETC to comply with this standard throughout its designated service areas in North Dakota.

Moreover, the Commission issued its "Findings of Fact, Conclusions of Law and Order" on December 15, 1999 when designating Western Wireless as a federal ETC in Case No. PU-1564-98-428. As set forth in Finding of Fact No. 36, the Commission determined that an applicant for ETC status is not required to be providing the required universal services to 100% of a service area before receiving designation as an ETC. Moreover, the Commission stated, "Facilities to serve customers are required at some reasonable time after the customer agrees to the terms and conditions of the service provided." (*Id.*) Western Wireless agrees the

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Pages 22

BRIGGS AND MORGAN

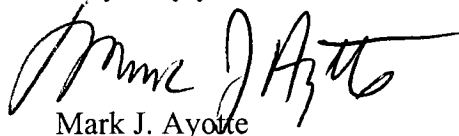
Patrick Fahn
January 16, 2004
Page 2

Commission should include a similar finding in its Order granting ETC designation in this proceeding.

Finally, Western Wireless' compliance filing previously submitted in Case No. PU-1564-98-248 will apply throughout the newly designated areas which are the subject of the Application in this proceeding. Similarly, Western Wireless agrees the Commission should include the requirement to provide quarterly reports describing the status of its E911 implementation, pursuant to the Order on Remand dated October 3, 2001 in Case No. PU-1564-98-248, in the Order granting ETC designation in this proceeding.

Thank you for the opportunity to provide this additional clarification. If you should have any questions, please feel free to contact me.

Very truly yours,



Mark J. Ayotte

MJA/sjc
Enclosure

cc: Illona Jeffcoat-Sacco (w/enclosure)
James H. Blundell (w/enclosure)
Rae Ann Kelsch (w/enclosure)
Thomas D. Kelsch (w/enclosure)

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
)	
Western Wireless Corporation)	
Petition for Preemption of an)	
Order of the South Dakota)	
Public Utilities Commission)	

DECLARATORY RULING

Adopted: July 11, 2000

Released: August 10, 2000

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. In this Declaratory Ruling, we provide guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) of the Communications Act of 1934, as amended, (the Act) requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier (ETC) that may receive federal universal service support.¹ We believe the guidance provided in this Declaratory Ruling is necessary to remove substantial uncertainty regarding the interpretation of section 214(e)(1) in pending state commission and judicial proceedings.² We believe the guidance provided in this Declaratory Ruling will assist state commissions in acting expeditiously to fulfill their obligations under section 214(e) to designate competitive carriers as eligible for federal universal service support.

¹ The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion, issue a declaratory ruling terminating a controversy or removing uncertainty. See 5 U.S.C. § 554(e), 47 C.F.R. § 1.2.

² See, e.g., Letter from Competitive Universal Service Coalition, to Chairman William E. Kennard, FCC, dated March 8, 2000 at 2, 6; Letter from Gene DeJordy, Western Wireless, to Chairman William E. Kennard, FCC, dated March 29, 2000 at 1-2; *Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, filed by Western Wireless (June 23, 1999) (*Western Wireless petition*); *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Notice of Appeal to the Supreme Court of South Dakota, Civ. 99-235, filed by the South Dakota Public Utilities Commission (May 10, 2000) (South Dakota PUC Notice of Appeal).

2. We believe that interpreting section 214(e)(1) to require the provision of service throughout the service area prior to ETC designation prohibits or has the effect of prohibiting the ability of competitive carriers to provide telecommunications service, in violation of section 253(a) of the Act. We find that such an interpretation of section 214(e)(1) is not competitively neutral, consistent with section 254, and necessary to preserve and advance universal service, and thus does not fall within the authority reserved to the states in section 253(b). In addition, we find that such a requirement conflicts with section 214(e) and stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress as set forth in section 254. Consequently, under both the authority of section 253(d) and traditional federal preemption authority, we find that to require the provision of service throughout the service area prior to designation effectively precludes designation of new entrants as ETCs in violation of the intent of Congress. We believe that the guidance provided in this Declaratory Ruling will further the goals of the Act by ensuring that new entrants have a fair opportunity to provide service to consumers living in high-cost areas.

3. We note that Western Wireless has raised similar issues in its petition for preemption of a decision of the South Dakota Public Utilities Commission (South Dakota PUC).³ In its petition, Western Wireless asks the Commission to preempt, under section 253 and as inconsistent with the Act, the South Dakota PUC's requirement that, pursuant to section 214(e), a carrier may not receive designation as an ETC unless it is providing service throughout the service area. In light of the recent South Dakota Circuit Court decision overturning the South Dakota PUC's decision and granting Western Wireless ETC status in each exchange served by non-rural telephone companies in South Dakota, we believe that it is unnecessary to act on the Western Wireless petition at this time.⁴ In doing so, we note that section 253(d) requires the Commission to preempt state action only "to the extent *necessary* to correct such violation or inconsistency."⁵ We acknowledge, however, that the *South Dakota Circuit Court Order* has been automatically stayed with the filing of the South Dakota PUC's notice of appeal to the Supreme Court of South Dakota.⁶ We therefore place Western Wireless' petition for preemption of the South Dakota PUC Order in abeyance pending final resolution of this appeal.⁷ The Commission

³ See *Western Wireless petition*. Comments cited herein are in response to this petition. See also *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Finding of Facts and Conclusions of Law; Notice of Entry of Order, Before the Public Utilities Commission of the State of South Dakota, TC98-146 (May 19, 1999).

⁴ *Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Findings of Fact, Conclusions of Law, and Order, Civ. 99-235 (SD Sixth Jud. Cir. March 22, 2000) (*South Dakota Circuit Court Order*) (concluding that the South Dakota PUC "erred as a matter of law by determining that an applicant for ETC designation must first be providing a universal service offering to every location in the requested designated service area prior to being designated an ETC").

⁵ 47 U.S.C. § 253(d) (emphasis added).

⁶ See South Dakota Codified Laws § 15-26A-38.

⁷ South Dakota PUC Notice of Appeal.

will make a determination at that time as to whether it is necessary to proceed consistent with the guidance provided in this Declaratory Ruling.

II. BACKGROUND

A. The Act

4. Section 254(e) provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁸ Section 214(e)(2) provides that “[a] State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of [subsection 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State commission.”⁹

5. Section 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under [subsections 214(e)(2), (3), or (6)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.¹⁰

6. Section 253 establishes the legal framework for Commission preemption of a state statute, regulation, or legal requirement that prohibits or has the effect of prohibiting the competitive provision of telecommunications service. The Commission has interpreted and applied this standard on a number of occasions.¹¹ First, the Commission must determine whether

⁸ 47 U.S.C. § 254(e).

⁹ 47 U.S.C. § 214(e)(2).

¹⁰ 47 U.S.C. § 214(e)(1).

¹¹ See, e.g., *American Communications Services, Inc., MCI Telecommunications Corp. Petition for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to Sections 251, 252, and 253 of the Communications Act, as amended*, Memorandum Opinion and Order, CC Docket No. 97-100, FCC 99-386 (rel. Dec. 23, 1999); *Pittencrieff Communications, Inc., for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, File No. WTB/POL 96-2, 13 FCC Rcd 1735 (1997) *aff’d* *CTIA v. FCC*, 168 F.3d 1332 (D.C. Cir. 1999) (*Pittencrieff Communications, Inc.*); *Silver Star Telephone Company, Inc., Petition for Preemption* (continued....)

the challenged law, regulation, or requirement violates section 253(a). Specifically, the Commission examines whether the state provision “prohibit[s] or ha[s] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”¹²

7. If the Commission finds that the state requirement violates section 253(a), then it will determine whether it is nevertheless permissible under section 253(b). The criteria set forth in section 253(b) preserve the states’ ability to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service.¹³ The Commission has held that a state program must meet all three criteria – it must be “competitively neutral,” “consistent with Section 254,” and “necessary to preserve and advance universal service” – to fall within the “safe harbor” of section 253(b).¹⁴ The Commission has preempted state regulations for failure to satisfy even one of the three criteria.¹⁵ If a requirement otherwise impermissible under section 253(a) does not satisfy section 253(b), the Commission must preempt the enforcement of the requirement in accordance with section 253(d).¹⁶

B. Federal Preemption Authority

8. The Supremacy Clause of the Constitution empowers Congress to preempt state or local laws or regulations under certain specified conditions.¹⁷ As explained by the United States Supreme Court:

Pre-emption occurs when Congress, in enacting a federal statute, expresses a clear intent to preempt state law, when there is outright or actual conflict between federal and state law, where compliance with both federal and state law is in effect physically impossible, where there is implicit in federal law a barrier to state regulation, where Congress has legislated comprehensively, thus occupying an entire field of regulation

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and Declaratory Ruling, Memorandum Opinion and Order, CCB Pol 97-1, 12 FCC Rcd 15639 (1997) (*Silver Star*) *reconsideration denied*, 13 FCC Rcd 16356 (1998) *aff’d*, *RT Communications, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000).

¹² 47 U.S.C. § 253(a).

¹³ 47 U.S.C. § 253(b).

¹⁴ *Pittencrieff Communications, Inc.*, 13 FCC Rcd at 1752, para. 33.

¹⁵ For example, in *Silver Star*, the Commission preempted a Wyoming statute for its failure to satisfy the “competitive neutrality” criterion. *Silver Star*, 12 FCC Rcd at 15658-60, paras. 42, 45.

¹⁶ 47 U.S.C. § 253(d). (“If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”).

¹⁷ *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 368 (1986).

and leaving no room for the States to supplement federal law, or where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress.¹⁸

It is well established that “[p]re-emption may result not only from action taken by Congress itself; a federal agency acting within the scope of its congressionally delegated authority may preempt state regulations.”¹⁹

III. DISCUSSION

A. Section 253(a) Analysis

1. Background

9. In order to determine whether a section 253(a) violation has occurred, we must consider whether the cited statute, regulation, or legal requirement “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”²⁰ We therefore examine whether the requirement that a carrier must be providing service throughout the service area prior to designation as an ETC “may prohibit or have the effect of prohibiting” carriers that are not incumbent LECs from providing telecommunications service.

2. Discussion

10. We find that requiring a new entrant to provide service throughout a service area prior to designation as an ETC has the effect of prohibiting the ability of the new entrant to provide intrastate or interstate telecommunications service, in violation of section 253(a).

11. Legal Requirement. As an initial matter, we find that the requirement that a new entrant must provide service throughout its service area as a prerequisite to designation as an ETC under section 214(e) constitutes a state “legal requirement” under section 253(a). We have previously concluded that Congress intended the phrase, “[s]tate or local statute or regulation, or other State or local requirement” in section 253(a), to be interpreted broadly.²¹ The resolution of

¹⁸ *Id.* at 368-369 (citations omitted).

¹⁹ *Id.* at 369; *Fidelity Federal Sav. And Loan Ass’n v. De La Cuesta*, 458 U.S. 141, 153-54 (1982); *City of New York v. FCC*, 486 U.S. 57, 64 (1988) (“[t]he statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof”).

²⁰ *See* 47 U.S.C. § 253(a).

²¹ *See The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, Memorandum Opinion and Order, CC Docket No. 98-1, FCC 99-402 (rel. Dec. 23, 1999) (concluding that an agreement between a developer and the State creates a “legal requirement” subject to section 253 preemption) at paras. 17-(continued....)

a carrier's request for designation as an ETC by a state commission is legally binding on the carrier and may prohibit the carrier from receiving federal universal service support. We find therefore that any such requirement constitutes a "legal requirement" under section 253(a).

12. Prohibiting the Provision of Telecommunications Service. We find that an interpretation of section 214(e) requiring carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting the ability of prospective entrants from providing telecommunications service.²² A new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas. We believe that requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC. Such a requirement would deprive consumers in high-cost areas of the benefits of competition by insulating the incumbent LEC from competition.

13. No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support.²³ We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support.²⁴ In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

14. In addition, we find such an interpretation of section 214(e)(1) to be contrary to the meaning of that provision. Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall "offer" and advertise its services.²⁵ The language of the

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18 (*Minnesota Declaratory Ruling*). "We believe that interpreting the term 'legal requirement' broadly, best fulfills Congress' desire to ensure that states and localities do not thwart the development of competition." *Id.*

²² See, e.g., ALTS comments at 3-5; AT&T comments at 7-9; CTIA reply comments at 4; Minnesota PUC comments at 2; PCIA comments 4-5; Washington UTC reply comments at 3.

²³ *Western Wireless petition* at 8.

²⁴ See *Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier, Order Granting Preliminary Approval and Requiring Further Filings*, Docket No. P-5695/M-98-1285 (Oct. 27, 1999) (*Minnesota PUC Order*) at 7.

²⁵ 47 U.S.C. § 214(e)(1).

statute does not require the actual provision of service prior to designation.²⁶ We believe that this interpretation is consistent with the underlying congressional goal of promoting competition and access to telecommunications services in high-cost areas. In addition, this interpretation is consistent with the Commission's conclusion that a carrier must meet the section 214(e) criteria as a condition of its being designated an eligible carrier "and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support."²⁷

15. In addition, we note that ETC designation only allows the carrier to become *eligible* for federal universal service support. Support will be provided to the carrier only upon the provision of the supported services to consumers.²⁸ We note that ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service.²⁹ We also note that the state commission may revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria.

16. In addition, we believe the fact that a carrier may already be providing service within the state prior to designation is not conclusive of whether the carrier can reasonably be expected to provide service throughout the service area, particularly in high-cost areas, prior to designation. While a requirement that a carrier be providing service throughout the service area may not affect the provision of service in lower-cost areas, it is likely to have the effect of prohibiting the ability of carriers without eligibility for support to provide service in high-cost areas.³⁰

17. Gaps in Coverage. We find the requirement that a carrier provide service to every potential customer throughout the service area before receiving ETC designation has the effect of prohibiting the provision of service in high-cost areas. As an ETC, the incumbent LEC is required to make service available to all consumers upon request, but the incumbent LEC may not have facilities to every possible consumer.³¹ We believe the ETC requirements should be no different

²⁶ See, e.g., *Western Wireless Corporation Designated Eligible Carrier Application*, Findings of Fact, Conclusions of Law and Order, North Dakota Public Service Commission, Case No. PU-1564-98-428 (Dec. 15, 1999) (*North Dakota Order*); *Minnesota PUC Order*. See also Washington UTC reply comments at 3-5.

²⁷ *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8876, 8853, para. 137 (1997), as corrected by *Federal-State Joint Board on Universal Service*, Erratum, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *aff'd in part, rev'd in part, remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) *cert. granted*, 120 S.Ct. 2214 (U.S. June 5, 2000) (No. 99-1244) (*Universal Service Order*) (emphasis in original).

²⁸ *Universal Service Order*, 12 FCC Rcd 8853, para. 137.

²⁹ Washington UTC reply comments at 4.

³⁰ ALTS comments at 4-5.

³¹ See *Minnesota PUC Order* at 11, concluding that, "[a]ll carriers, but especially rural carriers, have pockets within their study areas where they have no customers or facilities. If development occurs, they have to build out to the new customer or customers. Minnesota Cellular appears to have the same build-out capacity as the (continued....)

for carriers that are not incumbent LECs. A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. We find, therefore, that new entrants must be allowed the same reasonable opportunity to provide service to requesting customers as the incumbent LEC, once designated as an ETC.³² Thus, we find that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.

18. **State Authority.** Finally, although Congress granted to state commissions, under section 214(e)(2), the primary authority to make ETC designations, we do not agree that this authority is without any limitation.³³ While state commissions clearly have the authority to deny requests for ETC designation without running afoul of section 253, the denials must be based on the application of competitively neutral criteria that are not so onerous as to effectively preclude a prospective entrant from providing service. We believe that this is consistent with sections 214(e), 253, and 254, as well as the decision of the United States Court of Appeals for the Fifth Circuit in *Texas Office of Public Utility Counsel v. FCC*.³⁴ We reiterate, however, that the state commissions are primarily responsible for making ETC designations. Nothing in this Declaratory Ruling is intended to undermine that responsibility. In fact, it is our expectation that the guidance provided in this Declaratory Ruling will enable state commissions to move expeditiously, in a pro-competitive manner, on many pending ETC designation requests.

B. Section 253(b) Analysis

1. Background

19. Section 253(b) preserves the state's authority to impose a requirement affecting

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incumbents, and the potential need for build-out is no reason to deny ETC status." See also *North Dakota Order* at para. 36, concluding that, "[a] requirement to be providing the required universal services to 100% of a service area before receiving designation as an ETC could be so onerous as to prevent any other carrier from receiving the ETC designation in any service area and would require the Commission to rescind the ETC designation already given to North Dakota ILECs and Polar Telecom, Inc."

³² See, e.g., *Minnesota PUC Order* at 10-11; *North Dakota Order* at para. 36; Washington UTC reply comments at 5-6. See also *South Dakota Circuit Court Order*, Conclusions of Law at para. 12.

³³ See, e.g., Coalition of Rural Telephone Companies comments at 12 (contending that state decisions under section 214(e) should not be reviewed under section 253); South Dakota PUC comments at 9 (contending that preemption may not be granted because the South Dakota PUC exercised a power lawfully delegated to it by Congress in a manner consistent with federal law).

³⁴ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 n.31 (5th Cir. 1999) cert. granted, 120 S.Ct. 2214 (U.S. June 5, 2000) (No. 99-1244) ("if a state commission imposed such onerous eligibility requirements that no otherwise eligible carrier could receive designation, that state commission would probably run afoul of § 214(e)(2)'s mandate to 'designate' a carrier or 'designate' more than one carrier.").

the provision of telecommunications services in certain circumstances.³⁵ Section 253(b) allows states to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications service, and safeguard the rights of consumers.³⁶ Section 253(d) requires that we preempt such requirements unless we find that they meet each of the relevant criteria set forth in section 253(b). The Commission has preempted state regulations for failure to satisfy even one of the relevant criteria.³⁷

2. Discussion

20. We find that a requirement to provide the supported services throughout the service area prior to designation as an ETC does not fall within the “safe harbor” provisions of section 253(b). To the contrary, we find that this requirement is not competitively neutral, consistent with section 254, or necessary to preserve and advance universal service. We therefore find that a requirement that obligates new entrants to provide supported services throughout the service area prior to designation as an ETC is subject to our preemption authority under section 253(d).

21. Competitive Neutrality. We find that the requirement to provide service prior to designation as an ETC is not competitively neutral. We believe this finding is consistent with the Commission’s determination in the *Universal Service Order* that “[c]ompetitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”³⁸

At the outset, we believe that, to meet the competitive neutrality requirement in non-rural telephone company service areas, the procedure for designating carriers as ETCs should be functionally equivalent for incumbents and new entrants.³⁹ As discussed above, requiring the actual provision of supported services throughout the service area prior to ETC designation unfairly skews the universal service support mechanism in favor of the incumbent LEC. As a practical matter, the carrier most likely to be providing all the supported services throughout the requested designation area before ETC designation is the incumbent LEC.⁴⁰ Without the

³⁵ 47 U.S.C. § 253(b). Section 253(c) sets forth additional situations, which are not present here, in which a state or local government requirement that inhibits entry may still be acceptable.

³⁶ 47 U.S.C. § 253(b).

³⁷ For example, in *Silver Star*, the Commission preempted a Wyoming statute for its failure to satisfy the “competitive neutrality” criterion. *Silver Star*, 12 FCC Rcd at 15658-60, paras. 42, 45.

³⁸ *Universal Service Order*, 12 FCC Rcd at 8801, para. 47.

³⁹ We thus would be troubled by a process in which the incumbent LEC were able to self-certify that it meets the criteria for ETC designation, while new entrants were subject to a more rigorous, protracted state proceeding.

⁴⁰ The 1996 Act required carriers to receive an eligible telecommunications carrier designation under section 214(e) to become eligible for federal high-cost support. 47 U.S.C. § 254(e).

assurance of eligibility for universal service funding, it is unlikely that any non-incumbent LEC will be able to make the necessary investments to provide service in high-cost areas.

22. We are not persuaded that such a requirement is competitively neutral merely because the requirement to provide service prior to ETC designation applies equally to both new entrants and incumbent LECs.⁴¹ We recently concluded that the proper inquiry is whether the *effect* of the legal requirement, rather than the method imposed, is competitively neutral.⁴² As discussed above, we find that the result of such a requirement is to favor incumbent LECs over new entrants. Unlike a new entrant, the incumbent LEC is already providing service and therefore bears no additional burden from a requirement that it provide service prior to designation as an ETC. We therefore find that requiring the provision of supported services throughout the service area prior to ETC designation has the effect of uniquely disadvantaging new entrants in violation of section 253(b)'s requirement of competitive neutrality.

23. Consistent with Section 254 and Necessary to Preserve and Advance Universal Service. We find that the requirement to provide service prior to designation as an ETC is not consistent with section 254 or "necessary to preserve and advance universal service."⁴³ To the contrary, we find that such a requirement has the effect of prohibiting the provision of service in high-cost areas. As discussed above, this requirement clearly has a disparate impact on new entrants, in violation of the competitive neutrality and nondiscriminatory principles embodied in section 254.⁴⁴ We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. If new entrants are not provided with the same opportunity to receive universal service support as the incumbent LEC, such carriers will be discouraged from providing service and competition in high-cost areas.⁴⁵ Consequently, under an interpretation of section 214(e) that requires new entrants to provide service throughout the service area prior to designation as an

⁴¹ South Dakota PUC comments at 10; South Dakota Independent Telephone Coalition at 31.

⁴² *Minnesota Declaratory Ruling* at para. 51 (emphasis added). "We do not believe that Congress intended to protect the imposition of requirements that are not competitively neutral in their *effect* on the theory that the non-neutral requirement was somehow *imposed* in a neutral manner. Moreover, we do not believe that this narrow interpretation is appropriate because it would undermine the primary purpose of section 253 – ensuring that no state or locality can erect legal barriers to entry that would frustrate the 1996 Act's explicit goal of opening all telecommunications markets to competition."

⁴³ 47 U.S.C. § 253(b).

⁴⁴ *Universal Service Order*, 12 FCC Rcd at 8801, para. 48 ("We agree with the Joint Board that an explicit recognition of competitive neutrality in the collection and distribution of funds and determination of eligibility in universal service support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework.").

⁴⁵ The Commission recognized that, in order to promote competition and the availability of affordable access to telecommunications service in high-cost areas, there must be a competitively neutral support mechanism for competitive entrants and incumbent LECs. *Universal Service Order*, 12 FCC Rcd at 8932, para. 287.

ETC, the benefits that may otherwise occur as a result of access to affordable telecommunications services will not be available to consumers in high-cost areas. We believe such a result is inconsistent with the underlying universal service principles set forth in section 254(b) that are designed to preserve and advance universal service by promoting access to telecommunications services in high-cost areas.⁴⁶

24. A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state;⁴⁷ (3) a description of the extent to which the carrier has entered into interconnection and resale agreements;⁴⁸ or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.⁴⁹ We caution that a demonstration of the capability and commitment to provide service must encompass something more than a vague assertion of intent on the part of a carrier to provide service. The carrier must reasonably demonstrate to the state commission its ability and willingness to provide service upon designation.

C. Federal Preemption Authority

1. Background

25. State regulatory provisions may be preempted when enforcement of a state legal requirement conflicts with federal law or “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”⁵⁰ Preemption may result not only from action taken by Congress, but also from a federal agency acting within the scope of its congressionally delegated authority.⁵¹

26. In section 254, Congress codified the Commission’s historical policy of promoting universal service to ensure that consumers in all regions of the nation have access to

⁴⁶ See 47 U.S.C. § 254(b).

⁴⁷ See *North Dakota Order* at para. 39.

⁴⁸ See *North Dakota Order* at para. 34.

⁴⁹ Washington UTC reply comments at 5.

⁵⁰ *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984), citing *Hines v. Davidowitz*, 312 U.S. 57, 67 (1941); *State Corporation Commission of Kansas v. FCC*, 787 F.2d 1421, 1425 (10th Cir. 1986). See also *Louisiana PSC*, 476 U.S. at 368-69.

⁵¹ *Louisiana PSC*, 476 U.S. 368-69, citing *Fidelity Federal Savings and Loan Assn. v. De la Cuesta*, 458 U.S. 141; *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691.

telecommunications services.⁵² Congress, recognizing that existing universal service support mechanisms were adopted in a monopoly environment, directed the Commission, in consultation with a federal-state Joint Board, to establish support mechanisms for the preservation and advancement of universal service in the competitive telecommunications environment that Congress envisioned.⁵³ Section 254(b) sets forth the underlying principles on which Congress directed the Commission to base policies for the preservation and advancement of universal service. These principles include the promotion of access to telecommunications services in rural and high-cost areas of the nation.⁵⁴ As noted above, consistent with the recommendation of the Joint Board, the Commission adopted the additional guiding principle of competitive neutrality.⁵⁵ In doing so, the Commission concluded that competitive neutrality will foster the development of competition and benefit certain providers, including wireless carriers, that may have been excluded from participation in the existing universal service mechanism.⁵⁶ Section 254(f) also provides that, “[a] State may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.”⁵⁷

2. Discussion

27. We find an interpretation of section 214(e)(1) that requires a new entrant to provide service throughout the service area prior to designation as an ETC to be fundamentally inconsistent with the universal service provisions in the 1996 Act. Specifically, we find such a requirement to be inconsistent with the meaning of section 214(e)(1), Congress’ universal service objectives as outlined in section 254, and the Commission’s policies and rules in implementing section 254. As discussed above, this approach essentially requires a new entrant to provide service throughout high-cost areas prior to its designation as an ETC. We find that such a requirement stands as an obstacle to the Commission’s execution and accomplishment of the full objectives of Congress in promoting competition and access to telecommunications services in high-cost areas.⁵⁸ To the extent that a state’s requirement under section 214(e)(1) that a new entrant provide service throughout the service area prior to designation as an ETC also involves

⁵² See generally section 254.

⁵³ According to the Joint Explanatory Statement, the purpose of the 1996 Act is “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition” Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

⁵⁴ See 47 U.S.C. § 254(b)(3).

⁵⁵ *Universal Service Order*, 12 FCC Rcd at 8801-8803, paras. 47-51.

⁵⁶ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49.

⁵⁷ 47 U.S.C. § 254(f).

⁵⁸ See Joint Explanatory Statement at 113.

matters properly within the state's intrastate jurisdiction under section 2(b) of the Act,⁵⁹ such matters that are inseparable from the federal interest in promoting universal service in section 254 remain subject to federal preemption.⁶⁰

28. Section 214. We find that the requirement that a carrier provide service throughout the service area prior to its designation as an ETC conflicts with the meaning and intent of section 214(e)(1). Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall "offer" and advertise its services.⁶¹ The statute does not require a carrier to provide service prior to designation. As discussed above, we have concluded that a carrier cannot reasonably be expected to enter a high-cost market prior to its designation as an ETC and provide service in competition with an incumbent carrier that is receiving support. We believe that such an interpretation of section 214(e) directly conflicts with the meaning of section 214(e)(1) and Congress' intent to promote competition and access to telecommunications service in high-cost areas.⁶²

29. While Congress has given the state commissions the primary responsibility under section 214(e) to designate carriers as ETCs for universal service support, we do not believe that Congress intended for the state commissions to have unlimited discretion in formulating eligibility requirements. Although Congress recognized that state commissions are uniquely suited to make ETC determinations, we do not believe that Congress intended to grant to the states the authority to adopt eligibility requirements that have the effect of prohibiting the provision of service in high-cost areas by non-incumbent carriers.⁶³ To do so effectively undermines congressional intent in adopting the universal service provisions of section 254.

30. Section 254. Consistent with the guidance provided above, we find a requirement that a carrier provide service prior to designation as an ETC inconsistent with the underlying principles and intent of section 254. Specifically, section 254 requires the Commission to base policies for the advancement and preservation of universal service on principles that include promoting access to telecommunications services in high-cost and rural areas of the nation.⁶⁴ Because section 254(e) provides that only a carrier designated as an ETC under section 214(e) may be eligible to receive federal universal service support, an interpretation of section 214(e) requiring carriers to provide service throughout the service area prior to designation as an ETC

⁵⁹ 47 U.S.C. § 152(b).

⁶⁰ See *Louisiana Public Service Commission v. FCC*, 476 U.S. at 368-69; *AT&T v. Iowa Utilities Board*, 119 S.Ct 721, 730 (1999); *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 423.

⁶¹ 47 U.S.C. § 214(e)(1).

⁶² See Joint Explanatory Statement at 113. See also *supra* section III.B for discussion of competitive neutrality.

⁶³ See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 418 n.31.

⁶⁴ See 47 U.S.C. § 254(b)(3).

stands as an obstacle to the accomplishment of the congressional objectives outlined in section 254.⁶⁵ If new entrants are effectively precluded from universal service support eligibility due to onerous eligibility criteria, the statutory goals of preserving and advancing universal service in high-cost areas are significantly undermined.

31. In addition, such a requirement conflicts with the Commission's interpretation of section 254, specifically the principle of competitive neutrality adopted by the Commission in the *Universal Service Order*.⁶⁶ In the *Universal Service Order*, the Commission stated that, "competitive neutrality in the collection and distribution of funds and determination of *eligibility* in universal service support mechanisms is consistent with congressional intent and necessary to promote a pro-competitive, de-regulatory national policy framework."⁶⁷ As discussed above, a requirement to provide service throughout the service area prior to designation as an ETC violates the competitive neutrality principle by unfairly skewing the provision of universal service support in favor of the incumbent LEC. As stated in the *Universal Service Order*, "competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers."⁶⁸ Requiring new entrants to provide service throughout the service area prior to ETC designation discourages "emerging technologies" from entering high-cost areas. In addition, we note that section 254(f) provides that, "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service."⁶⁹ For the reasons discussed extensively above, we find an interpretation of section 214(e) requiring the provision of service throughout the service area prior to designation as an ETC to be inconsistent with the Commission's universal service policies and rules.

⁶⁵ 47 U.S.C. § 254(e).

⁶⁶ *Universal Service Order*, 12 FCC Rcd at 8801, para. 47.

⁶⁷ *Universal Service Order*, 12 FCC Rcd at 8801-02, para. 48 (emphasis added).

⁶⁸ *Universal Service Order*, 12 FCC Rcd at 8803, para. 50.

⁶⁹ 47 U.S.C. § 254(f).

IV. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that pursuant to sections 4(i), 253, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 253, and 254, and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, and Article VI of the U.S. Constitution, that this Declaratory Ruling IS ADOPTED.

33. IT IS FURTHER ORDERED that Western Wireless' Petition for Preemption of an Order of the South Dakota Public Utilities Commission shall be placed in abeyance pending resolution of the appeal.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

**DISSENTING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Federal-State Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45.

I dissent from today's Declaratory Ruling. It is not necessary for the Commission to issue this advisory statement, and its ruling is inconsistent with section 253's plain mandate and with past Commission precedent interpreting that provision. Indeed, the Commission rests its section 253 analysis upon a factual predicate that does not exist. Moreover, the South Dakota PUC has permissibly interpreted section 214(e)(1), and it is inappropriate for the Commission to override the PUC's determination.

This Declaratory Ruling Is Unnecessary. To begin with, there is no need for the Commission to issue an advisory statement concerning the South Dakota Public Utilities Commission's decision. A South Dakota trial court has vacated the PUC's order, and an appeal is currently pending in the South Dakota Supreme Court.¹ There is no reason to think that the state supreme court will not appropriately resolve the issue. Further, contrary to the Commission's assertions,² this order will be of no assistance to other state commissions. No other state commissions have interpreted section 214 in the way that the South Dakota PUC has done, nor have other state commissions indicated that they plan to adopt the South Dakota PUC's interpretation of section 214. There is therefore no need for the Commission to offer "guidance" on this issue.

The Commission Has Improperly Applied Section 253. Not only is the Commission's ruling unnecessary, but also its preemption analysis is faulty. Oddly, although the Commission claims that the purpose of this order is to "provide guidance to remove uncertainty and terminate controversy regarding whether section 214(e)(1) . . . requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier,"³ it devotes the bulk of its discussion to preemption under section 253.

First, even if it were appropriate for the Commission to issue a statement regarding its understanding of section 214(e) – which it is not – there is no reason for it also to address section 253 preemption. Moreover, by issuing an advisory statement regarding section 253, the Commission wades into dangerous waters. Section 253(d) specifies that the Commission should preempt state regulations only "to the extent necessary to correct . . . a violation or inconsistency

¹ See *Federal-State Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45*, at ¶ 3 (hereinafter "*Declaratory Ruling*"); *Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, Findings of Fact, Conclusions of Law, and Order, Civ. 99-235* (S.D. Sixth Jud. Cir. March 22, 2000).

² See *Declaratory Ruling* at ¶ 1.

³ *Declaratory Ruling* at ¶ 1.

[with sections 253(a) and (b)].” In view of this statutory directive, it is inappropriate for the Commission to issue *any* advisory statement regarding section 253. Quite simply, how can it be “necessary” for the Commission to act to correct a violation of sections 253(a) or (b) where, as here, a court has vacated the state PUC’s order, and no state requirement even exists?

Even assuming that the South Dakota PUC’s order presented an issue that could appropriately be addressed under section 253, the Commission’s application of that provision to South Dakota’s requirement is inconsistent with the statute’s plain language. Section 253(a) proscribes only those state requirements that “*may prohibit or have the effect of prohibiting* the ability of any entity to provide any interstate or intrastate telecommunications service.”⁴ It is impossible to understand how failing to assign a new carrier eligible telecommunications carrier status could “prohibited” or had the “effect of prohibiting” it from providing service in South Dakota. The Declaratory Ruling asserts that “[a] new entrant faces a substantial barrier to entry if the incumbent local exchange carrier (LEC) is receiving universal service support that is not available to the new entrant for serving customers in high-cost areas.”⁵ Amazingly, however, the order leaves out the fact that in the non-rural areas of South Dakota, the incumbent does *not* receive federal universal support for *any* of the non-rural lines it serves. In other words – and contrary to the linchpin of the Commission’s reasoning here – designation as an ETC confers *no* benefit at all upon the non-rural incumbent carrier that has received that status, and there is no factual basis for concluding that another carrier’s lack of ETC status could have the effect of prohibiting that carrier from offering service.

To be sure, incumbent carriers that serve rural areas in South Dakota do receive some federal universal service support. But whether to designate more than one carrier as an ETC in these rural areas lies *entirely* within the South Dakota PUC’s discretion, and I do not understand the majority to question that principle, which is dictated by the 1996 Act and our precedent.⁶ A state commission remains free to decline to grant an applicant ETC status for rural areas, based on public interest considerations, and this order can have no effect on its exercise of that discretion.

In addition to being incompatible with section 253’s plain language, the Commission’s interpretation of this provision is not consistent with this agency’s precedent. The Commission pretends that its prior decisions support its preemption of the South Dakota PUC’s order. But an examination of the facts of these cases demonstrates just the opposite. In its past decisions, the

⁴ See 47 U.S.C. § 253(a) (emphasis added).

⁵ *Declaratory Ruling* at ¶ 12.

⁶ See 47 U.S.C. § 214(e)(2) (“Upon request and consistent with the public interest, convenience, and necessity, the State commission *may*, in the case of an areas served by a rural telephone company . . . designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [§ 214(e)(1)].”) (emphasis added); *Federal-State Joint Board On Universal Service*, 12 FCC Rcd 8776 [¶ 135] (1997) (“[T]he discretion afforded a state commission under section 214(e)(2) is the discretion to decline to designate more than one eligible carrier in an area that is served by a rural telephone company; in that context, the state commission must determine whether the designation of an additional eligible carrier is in the public interest.”).

Commission has indicated that section 253 preemption is appropriate only if a state requirement is so burdensome it effectively precludes a provider from providing service, and it previously has refused to preempt state requirements that fall short of that standard.⁷

For example, the majority cites *Pittencrieff Communications, Inc.* as support for its preemption analysis here.⁸ But the Commission did *not* preempt the Texas requirement at issue in that case, which required all carriers, including the petitioner, a commercial mobile radio service provider operating in Texas, to contribute to the state universal service fund.⁹ The Commission ruled that the requirement did not prohibit a CMRS provider from entering the market since it applied to *all* telecommunications providers operating in Texas.¹⁰ Indeed, the logic applied in *Pittencrieff* compels the conclusion that preemption is inappropriate here – the South Dakota PUC’s requirement that, in order to qualify as an eligible telecommunications carrier under section 214(e), a carrier must currently be providing service to subscribers, applies to incumbents and new entrants alike.¹¹

The Commission’s decision is also at odds with its recent decision rejecting Minnesota’s petition for a declaration that its contract with a fiber optics developer was permissible under the 1996 Act. Under the contract at issue, the developer was to receive exclusive access to freeway rights-of-way in Minnesota in exchange for installing 1,900 miles of fiber optic cable and allowing the state to use some of that cable. For procedural reasons, the Commission did not preempt Minnesota’s contract.¹² Nevertheless, it determined that the contract posed grave problems under section 253, in that it gave a single developer what amounted to a monopoly on freeway rights-of-way. The contract would essentially have precluded later entrants from gaining access to the freeway rights-of-way to lay their own fiber optic cable for ten years,¹³ and it would have been prohibitively expensive for competitors to purchase alternative rights-of-way.¹⁴ In view of these facts, the Commission determined that the agreement potentially ran afoul of section 253 because it singled out one provider for preferential treatment, while effectively prohibiting others from entering the market altogether. Similarly, in *New England Public Communications Council*

⁷ See, e.g., *The Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, Memorandum Opinion and Order, CC Docket No. 98-1, ¶ 32 (rel. Dec. 23, 1999) (hereinafter “*Minnesota Declaratory Ruling*”).

⁸ *Declaratory Ruling* at ¶ 7.

⁹ See *Pittencrieff*, 13 FCC Rcd 1735 [¶ 2].

¹⁰ See *id.* at 1751-1752, ¶ 32.

¹¹ See *Declaratory Ruling* at ¶ 23.

¹² See *Minnesota Declaratory Ruling*, *supra* note 21, at ¶ 64.

¹³ See *id.* at ¶¶ 1 & 19.

¹⁴ See *id.* at ¶¶ 22-36.

Petition for Preemption Pursuant to Section 253,¹⁵ a state requirement had the effect of completely preventing independent payphone providers from entering the payphone market, in direct contravention of section 276 of the 1996 Act.¹⁶ Consistent with section 253(a), the Commission preempted the requirement.

The South Dakota PUC, by contrast, has not accorded preferential treatment to any carrier. Rather, it has simply directed that a carrier that wishes to be designated an eligible telecommunications carrier under section 214 show that it currently provides service in the areas in which it seeks ETC status. Even if ETC status conferred some benefit on a carrier (which it clearly does not), I do not understand how a generally applicable rule such as this one could “prohibit” or have the “effect of prohibiting” the ability of a carrier to provide telecommunications services within the meaning of section 253.

The South Dakota PUC’s Construction of Section 214(e) Is Permissible. The South Dakota PUC, in ruling that a carrier may not receive ETC designation unless it currently provides service throughout the service area, has permissibly construed section 214(e)(1). That provision states that a common carrier designated as an eligible telecommunications carrier “shall, throughout the service area for which the designation is received . . . offer the services that are supported by Federal universal service support mechanisms under section 254(c).¹⁷ The verbs “shall” and “offer” are used the present tense, and the South Dakota PUC reasonably concluded that these terms mean that a carrier must *presently* offer its service throughout the service area before it may be designated an ETC and may not merely *intend* to offer that service at some point in the future. Although other state commissions might interpret section 214(e)(1) differently, the South Dakota PUC’s interpretation of that provision is clearly permissible.

Indeed, in order to override the South Dakota PUC’s determination and reach the outcome it prefers, the Commission must manufacture a far more strained definition of the term “to offer.” “To offer,” the Commission reasons, has nothing to do with whether an entity actually provides service or is immediately capable of providing that service upon a customer’s request. The Commission stretches the statute’s language past the breaking point. If Congress had intended for carriers to be eligible telecommunications carriers based simply on a readiness to provide service, it could easily have said so. And the Commission’s construction of section 214(e)(1) effectively reads out of the Act one of the provision’s chief requirements. If carriers may qualify for ETC status based merely on their “readiness” to make service available, section 214(e)(1) becomes nothing more than a self-certification provision, a result that is plainly at odds with the statute’s intent. It is elementary that a construction that renders a statutory provision superfluous must be avoided, and the Commission has ignored that principle here.¹⁸

¹⁵ 11 FCC Rcd 19713 (1996) (hereinafter “*New England Public Communications*”).

¹⁶ See *New England Public Communications*, 11 FCC Rcd at 19726-19727 [¶¶ 27-30].

¹⁷ 47 U.S.C. § 214(e).

¹⁸ See, e.g., *Kawaauhau v. Geiger*, 523 U.S. 57, 62 118 S.Ct. 974, 977 (1998); *United States v. Menasche*, 348 U.S. 528, 538-539, 75 S.Ct. 513, 519-520 (1955).

* * * * *

Because the Commission's decision is unnecessary, inconsistent with sections 253, and improperly overrides the South Dakota PUC's application of section 214(e), I dissent from this Declaratory Ruling.

INFORMAL HEARING AGENDA

January 14, 2004

PU-2077-03-636 WWC Holding Co., Inc.
Designated Eligible Carrier
Application

PU-2948-03-577 Granite Telecommunications, LLC
Local Exchange
Public Convenience and Necessity

PU-2957-03-624 XO Network Services, Inc.
Local Exchange
Public Convenience and Necessity

9 **PU-2077-03-636** ✓ Pages: 0
Informal Hearing held
by Public Service Commission
01/14/2004 CC: Comm Legal PUD (3)

20 **PU-2948-03-577** Pages: 0
Informal Hearing held
by Public Service Commission
01/14/2003 CC: Comm Legal Ilona Jerry

13 **PU-2957-03-624** Pages: 0
Informal Hearing held
by Public Service Commission
01/14/2004 CC: Comm Legal Ilona Jerry Mike

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
WWC Holding Co., Inc. d/b/a)
CellularOne© for Designation)
as an Eligible Telecommunications)
Carrier)

RECEIVED
JAN 14 2004
NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
DOCKET NO. PU-2077-03-636
EXECUTIVE SECRETARY

AFFIDAVIT OF JAMES H. BLUNDELL IN SUPPORT OF APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

I, James H. Blundell, being first duly sworn on oath, state:

1. I am over eighteen years of age and competent to make this affidavit.
2. I serve as Director – External Affairs for WWC Holding Co., Inc. d/b/a CellularOne© ("Western Wireless" or the "Company").
3. Western Wireless has filed with the North Dakota Public Service Commission (the "Commission") an Application for Designation as an Eligible Telecommunications Carrier (the "Application"), pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12). Attachment A to the Application identifies the particular rural telephone company study areas for which Western Wireless seeks designation as an eligible telecommunications carrier ("ETC").
4. I have responsibility for the filing and management of applications for ETC designation in several jurisdictions, including North Dakota. In that capacity, I have knowledge of Western Wireless' products and services, as well as its network and business operations. I am also familiar with federal and North Dakota law governing designation of ETCs.
5. This Affidavit is submitted in support of Western Wireless' Application for ETC designation in the above-captioned docket. The statements contained herein are true and correct and within my personal knowledge.
6. Western Wireless currently provides commercial mobile radio service ("CMRS") under the CellularOne© national brand name in 19 states west of the Mississippi River. The Company owns cellular licenses covering about 25 percent of the land and two percent of the population of the continental United States.
7. Western Wireless provides CMRS throughout the State of North Dakota. The services provided by Western Wireless in North Dakota include mobile telephony, data/facsimile, 911, voice mail, and other features and services.
8. 47 U.S.C. § 214(e), the rules and regulations of the Federal Communications Commission ("FCC"), specifically 47 C.F.R. § 54.101(a), and N.D. Cent. Code § 49-21-01.8 establish the exclusive criteria for designation of a federal ETC in North Dakota. The Commission has previously designated Western Wireless as an ETC in study areas of certain rural telephone companies throughout North Dakota. *Western Wireless Corp. Designated Eligible Carrier Application*, Case No. PU-1564-98-428, Order on Remand (Oct. 3, 2001) ("*Western Wireless ETC Order*").

9. The Application seeks an order immediately designating Western Wireless as an ETC in the study areas of the rural telephone companies in North Dakota identified on Attachment A to the Application. This Affidavit confirms that Western Wireless continues to satisfy all applicable requirements for federal ETC designation.

10. First, Western Wireless is a CMRS provider and, as such, is a common carrier. *See Western Wireless ETC Order, Conclusions of Law, ¶ 2. See also 47 C.F.R. § 20.9(a)(7).*

11. Second, Western Wireless currently offers and is able to provide the supported services and functionalities identified by the FCC in 47 C.F.R. § 54.101(a)(1)-(9). *See Western Wireless ETC Order, Conclusions of Law, ¶ 8.* Western Wireless currently provides the nine supported services throughout the areas in which it is seeking ETC designation over its existing network infrastructure in North Dakota as follows:

a. Voice-grade access to the public switched telephone network. Voice-grade access means the ability to make and receive phone calls within a voice frequency range of between 300 and 3000 Hertz. 47 C.F.R. § 54.101(a)(1). All customers of Western Wireless are able to make and receive calls on the public switched network within the prescribed frequency range.

b. Local usage. Western Wireless provides its customers with an amount of local usage, free of charge, as required by 47 C.F.R. § 54.101(a)(2). Unlimited local usage is not required of any ETC. Western Wireless will comply with any and all specific local usage requirements adopted by the FCC in the future and required of federal ETCs.

c. Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). As required, Western Wireless uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.

d. Single-party service or its functional equivalent. A CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user's particular transmission. 47 C.F.R. § 54.101(a)(4). Western Wireless does in fact provide a dedicated message path for the length of all customer calls.

e. Access to emergency services. Western Wireless provides access to the 911 system for its customers, and has implemented and will continue to implement Enhanced 911 ("E911") services consistent with the FCC's rules and orders and local public safety answering point requests.

f. Access to operator services. Access to operator services means any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Western Wireless provides all of its customers with access to operator services provided by either the Company or other entities.

g. Access to interexchange service. Access to interexchange service means allowing customers to make and receive toll or interexchange calls. Equal access to interexchange service is not a required service or functionality. Western Wireless provides its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements it has with several interexchange carriers (IXCs). Customers are also able to reach their IXC of choice by dialing the appropriate access code.

h. Access to directory assistance. Western Wireless provides all of its customers with access to directory assistance by dialing "411" or "555-1212."

i. Toll limitation for qualifying low-income consumers. An ETC must offer either "toll control" or "toll blocking" to qualifying low-income customers as a means of limiting the completion of outgoing toll calls. 47 C.F.R. § 54.101(a)(9). An ETC is not required to provide both services if the carrier is incapable of providing both. Western Wireless cannot provide toll control, but does provide toll blocking for international calls and customer selected toll calls, as well as for Lifeline customers in States in which it has been designated as an ETC, including North Dakota. The Company will continue to offer toll blocking to Lifeline customers at no additional charge when designated in these additional areas.

12. Third, the Company currently offers and advertises the federally supported services throughout its requested designated service area, through several different media, including newspaper, television, radio, and billboard advertising. *See* 47 U.S.C. § 214(e)(1)(B). Western Wireless also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. Once designated, Western Wireless will advertise the availability of and charges for its universal service offerings through media of general distribution, in accordance with 47 C.F.R. § 54.201(d)(2). Additionally, Western Wireless will comply with all applicable provisions of N.D. Admin. Code § 69-09-05-12.

13. Fourth, Western Wireless complies with all service area obligations. For areas served by a rural telephone company, 47 U.S.C. § 214(e)(5) provides that the ETC's designated service area must be equivalent to the rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange areas in a given state. Western Wireless is licensed by the FCC to provide and currently provides CMRS throughout North Dakota. Western Wireless seeks designation as an ETC in the study areas of the rural telephone companies identified on Attachment A. Western Wireless will offer and advertise its universal service offerings throughout these designated study areas.

14. Finally, the designation of Western Wireless in the study areas identified on Attachment A to the Application serves the public interest. The Commission has already determined that it is in the public interest to designate Western Wireless as an additional ETC in certain study areas of rural telephone companies in North Dakota. *See Western Wireless ETC Order*, Conclusions of Law, ¶ 10.

15. The Commission has determined that the public interest analysis under 47 U.S.C. § 214(e)(2) should balance increased benefits of competition against any proven detrimental

impacts on the preservation and advancement of universal service. *Western Wireless ETC Order*, ¶¶ 11-38. The public interest determination required under 47 U.S.C. § 214(e) depends on whether the proposed universal service offering will promote competition, and if so whether consumers will ultimately realize benefits related to competition and the new services provided.

16. Competition in the telecommunications industry is, as a general matter, in the public interest, and the hallmark of a competitive marketplace is the maximization of consumer choice. It is also clear that the public interest is served where there is a reasonable expectation that competition may have beneficial impacts for consumers.

17. The public interest factor must be applied in a way that advances universal service as contemplated by federal law. Congress gave the FCC responsibility to create rules and policies "for the preservation and advancement of universal service." 47 U.S.C. § 254(b). The Commission must keep these policies in mind as it makes the public interest determination.

18. Granting ETC status to Western Wireless as requested in the Application will recognize the importance of allowing rural consumers a choice of providers for their telecommunications needs. Consumers should be able to choose services based on their own needs, and not just the service of the incumbent LEC. When the Commission designates a competing carrier as an additional ETC, rural consumers choose their service provider on the basis of the most advantageous pricing, services, service quality, customer service, and service availability.

19. Having this choice is important to rural consumers because Western Wireless' universal service offerings will provide benefits not otherwise available from the landline LECs. For example, current universal service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Western Wireless provides an expanded local calling area, which is of great benefit to rural consumers who otherwise have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. Western Wireless' service also provides the benefits of mobility, which has great appeal to many rural consumers.

20. In addition to increased choices, North Dakota's rural consumers can also expect lower rates and better service resulting from competition in the marketplace. Western Wireless provides 24-hour customer service, technical and operational support, which is more responsive than the support currently available from many LECs.

21. Granting ETC status to Western Wireless will improve choices for rural consumers, thereby advancing universal service for North Dakotans. A variety of services, improved quality and lower rates give consumers additional options and also make it more likely that high cost areas of the state will have affordable phone service as implicit subsidies are phased out. In addition, designating Western Wireless as an ETC may allow those consumers not currently receiving telephone service an opportunity to obtain telephone service for the first time. Western Wireless' ETC designation will advance universal service by increasing consumer choices and bringing new telecommunications services to rural areas consistent with the public interest.

22. Designating Western Wireless as an ETC will also lead to the further deployment of Western Wireless' cellular network, which will be available to benefit North Dakota's rural

consumers. Western Wireless is a facilities-based telecommunications provider serving North Dakota consumers with state-of-the-art wireless technology. Western Wireless' network will have the capability of providing advanced services that meet or exceed what can be provided on a landline network. The development of the Western Wireless network will give North Dakota's rural consumers access to these developing technologies to the same degree as urban consumers.

23. Competition also provides an incentive for the incumbent LECs to invest in new technologies and additional infrastructure, which likewise will benefit the consumers. Ultimately, the Commission should apply the public interest factor in a way that will bring providers and new technologies to rural, high cost areas.

24. The designation of Western Wireless as an ETC will not result in any significant adverse impact to any rural telephone company. None of the areas in which Western Wireless is seeking designation is incapable of supporting more than one ETC.

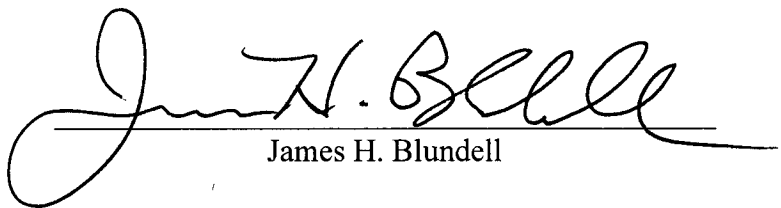
25. Western Wireless provides the supported services, satisfies all applicable requirements, will provide the supported services throughout the entire study areas, and will meet the obligations of an ETC. As was found in the *Western Wireless ETC Order*, the Company's designation will bring new technology, lower rates, and better service, and so is clearly in the public interest.

26. Accordingly, Western Wireless respectfully requests the Commission to follow the directives and principles of the Act and to grant its Application by issuing an order designating Western Wireless as an ETC in the study areas of the rural telephone companies listed on Attachment A pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12).

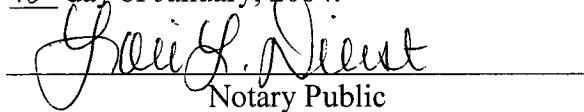
27. I provided a Certification attached to the Application filed with the Commission. This Certification constitutes my attestation as to the truth of the allegations set forth in the Application based on my personal knowledge and understanding.

28. I hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This concludes my affidavit.


James H. Blundell

Subscribed and sworn to before me this
12 day of January, 2004.


Notary Public

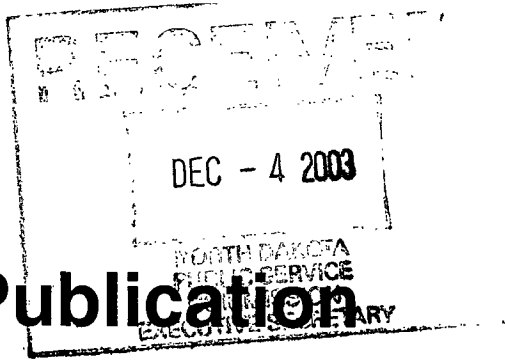
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ATTACHMENT A

Rural Telephone Company Study Areas For Which Western Wireless Seeks ETC Designation

- Absaraka Cooperative Telephone Co.
- Citizens Telecom
- Griggs County Telephone Co.
- Inter-Community Telephone Co.
- Inter-Community Telephone Co. II, Inc.
- Midstate Telephone Co.
- Moore & Liberty Telephone Co.
- Nemont Telephone Cooperative, Inc.
- Noonan Farmers Telephone Co.
- Polar Telecommunications, Inc.
- Red River Rural Tel. Assn. – ND
- Red River Telecom, Inc.
- Wolverton Telephone Co. – ND
- York Telephone Co.



Affidavit of Publication

Colleen Park, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of:
PSC, WWC Holding Co., 1 time(s)
as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

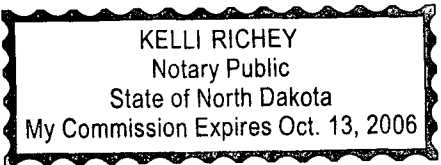
Signed: Colleen Park

State of ND

County of Burleigh

Subscribed and sworn to before me this 3rd day of December 2003.

Kelli Richey





North Dakota Newspaper Association

1435 Interstate Loop
Bismarck, ND 58503-0567
Ph (701) 223-6397 • Fax (701) 223-8185

INVOICE

DEC - 4 2003

Order 18350-03121PP0

Invoice # 28838

December 3, 2003

Advertiser: Public Service Commission

Attn: JONH. MIELKE
PUBLIC SERVICE COMMISSION
600 E. BOULEVARD AVE.
STATE CAPITOL
BISMARCK, ND 58505

P.O.#: PU-2077-03-636

Amount Due \$409.29

Amount Paid

Voice: 701-328-4076

Please detach and return this portion with your payment

Public Service Commission Invoice # 18350-03121PP0-28838 PO# PU-2077-03-636

Table with columns: Ad Size, Rate Type, Rate, Total, Discount (%), Caption, Page, Run Date. Includes rows for various newspapers like Bismarck Tribune, Devils Lake Daily Journal, etc.

Summary table with columns: Gross Advertising, Agency Discount, Other Discount, Service Charge, Total Misc, Tax, Total Billed, Unbilled, Amount Paid, Adjustments, Payment Date, Balance Due.

State Of North Dakota

Public Service Commission

Case No. PU-2077-03-636

Notice Of Opportunity For Hearing
And Notice of Informal Hearing
November 20, 2003

Bismarck	11-28
Devils Lake	11-28
Dickinson	11-28
Fargo	12-1
Grand Forks	11-29
Jamestown	11-28
Minot	11-28
Star	
Valley City	11-28
Wahpeton	11-28
Williston	11-28

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota **one** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Opportunity For Hearing and Notice of Informal Hearing

The envelope was addressed as follows:

Thomas D Kelsch
Atty for WWC Holding Co Inc
P O Box 1266
Mandan ND 58554-7266
701-663-9818
Cert. No. 7003 1680 0004 9646 3214

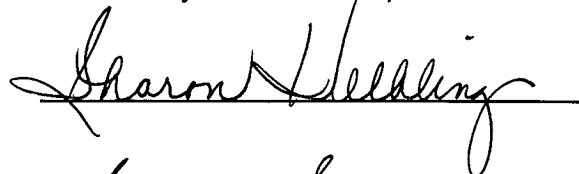
Sharon Helbling further deposes and says that on the **21st day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Jim Blundell
WWC Holding Co
3650 131st Ave SE Ste 400
Bellevue WA 98006

Mark J Ayotte
Briggs and Morgan P A
2200 1st Nat'l Bk Bldg
St Paul MN 55101

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **21st day of November, 2003**.



Notary Public

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

SEAL

6

PU-2077-03-636

Pages: 14

Affidavits of Service

by Public Service Commission

11/21/2003

CC: Comm Legal PUD (3)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **21st day of November, 2003**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, and/or e-mailed a copy of:

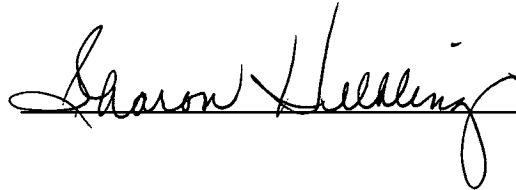
Notice of Opportunity For Hearing and Notice of Informal Hearing


To:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **21st day of November, 2003**.





Notary Public

SEAL



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Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Thursday, November 20, 2003 2:35 PM
To: ndna (E-mail)
Subject: Notices, Case Nos. PU-2077-03-636; PU-2746-03-585; PU-2746-03-586; PU-2342-03-632

**Colleen Park
North Dakota Newspaper Association**

Colleen:

Please have the attached Notice of Opportunity for Hearing and Notice of Informal Hearing; Notice of Opportunity to File Written Comments; and Notice of Opportunity to File Written Comments and Notice of Opportunity for Hearing published as legal publications in the next issue of the ten North Dakota daily newspapers, and run them as "News Item Only" articles as well.

Please send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, please call me at 701-328-4076.

Thank you.

**Sharon Helbling
Public Utilities Division**

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PU-2077-03-636

Pages. 1

Notice e-mailed to NDNA requesting
publication
by Public Service Commission

11/20/2003

11/20/2003

CC. Comm Legal PUD (3)

APPROVED

MOTION

DATE: 11-20-03
KMF

November 20, 2003

**WWC Holding Co., Inc.
Designated Eligible Carrier
Application**

Case No. PU-2077-03-636

I move the Commission issue a Notice of Opportunity for Hearing and Notice of Informal Hearing in the above captioned application for eligible carrier designation.

PJF/sdh

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

WWC Holding Co., Inc.
Designated Eligible Carrier
Application

Case No. PU-2077-03-636

**NOTICE OF OPPORTUNITY FOR HEARING AND
NOTICE OF INFORMAL HEARING**

November 20, 2003

On October 15, 2003, an application for designation as an Eligible Telecommunications Carrier (ETC) was filed by: WWC Holding Co., Inc., d/b/a CellularOne (Western Wireless). Western Wireless seeks ETC designation for purposes of qualifying to receive federal universal service support in the study areas of certain rural telephone companies.

Western Wireless states that it currently provides signal coverage throughout the rural telephone company study areas and will offer and advertise its universal service offerings throughout the designated service areas pursuant to 47 U.S.C. §214(e) and the FCC's regulations.

The issues to be considered are:

1. The qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.
2. The ETC universal service support area to be designated for the applicant.

Those interested are invited to comment on the application in writing. Persons desiring a hearing must file a written request identifying their interest in the proceeding and the reasons for requesting a hearing. Comments and requests for hearing must be received by **January 8, 2004**. If deemed appropriate, the Commission can determine the matter without a hearing.

An **informal hearing** on this matter will be held on **January 14, 2004 at 1:30 p.m. (CST)** in the Commission hearing room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. At the informal hearing Western Wireless will be given an opportunity to present an overview of its petition and interested persons will be given an opportunity to be heard.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

PUBLIC SERVICE COMMISSION



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Commissioner



Tony Clark
President



Kevin Cramer
Commissioner

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Mandan, North Dakota

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WILLIAM J. DELMORE
CYNTHIA WAGNER GOULET
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*Also Licensed in Minnesota

 MERITAS LAW FIRMS WORLDWIDE

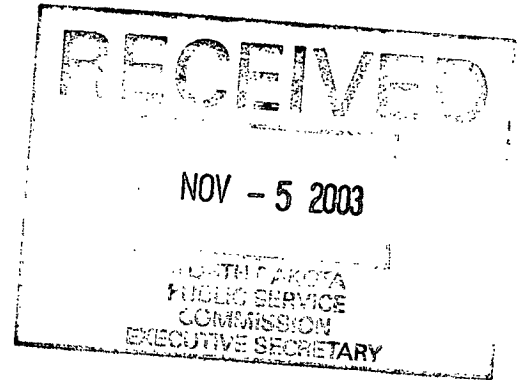
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1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

November 5, 2003

HAND DELIVERED

PUBLIC SERVICE COMMISSION
12TH & 13TH FL DEPT 408
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RE: Verified Application of WWC Holding Co. Inc.
Our File No. 10784



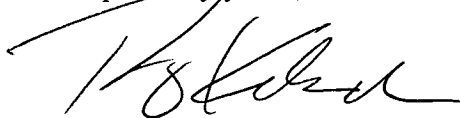
Ladies or Gentlemen:

Enclosed for filing is the original and seven copies of the following documents:

1. Verified Application for Designation as an Eligible Telecommunications Carrier;
2. Certification of James H. Blundell; and
3. Notice of Opportunity for Hearing and Notice of Informal Hearing.

Thank you for your attention to this matter and if you have any questions please contact me.

Respectfully yours,



Thomas D. Kelsch

ve
Encs

c: Gene DeJordy
Jim Blundell
(Fax 425-586-8118)



2

PU-2677-03-636

Pages: 1

Cover letter re application

by WWC Holding Co., Inc. by Thomas D. Kelsch, Attor

11/05/2003

CC: Comm Legal PUD (3)

I. GENERAL BACKGROUND

3. Pursuant to Commission Rule 69-02-02-04(1), Western Wireless states its name, telephone number and designated contact person as follows:

WWC Holding Co., Inc. d/b/a CellularOne©
Attention: James H. Blundell
3650 - 131st Avenue S.E., Suite 400
Bellevue, WA 98006
Telephone No. (425) 586-8736
Fax No. (425) 586-8118

4. Since 1992, Western Wireless, through its subsidiaries (including WWC Holding Co., Inc.), has provided telecommunications services to rural communities in the western United States. Western Wireless currently provides commercial mobile radio service ("CMRS") under the CellularOne© national brand name in 19 states west of the Mississippi River. The Company owns cellular licenses covering about 25 percent of the land and two percent of the population of the continental United States.

5. The FCC has regulatory jurisdiction over Western Wireless' provision of CMRS services in all states in which it provides services. The services provided by Western Wireless in North Dakota include mobile telephony, data/facsimile, 911, voice mail, and other features and services. WWC Holding Co., Inc. is the non-wireline FCC licensee in all of the cellular license areas in North Dakota.

II. ETC REQUIREMENTS

6. Under 47 U.S.C. § 214(e)(2) and N.D. Cent. Code §§ 49-21-01.7(12), (13), the Commission has the authority to designate Western Wireless as an ETC in its requested designated areas. The requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2), 47 C.F.R. § 54.101, and incorporated by reference in N.D. Cent. Code § 49-21-01.8.

A. Western Wireless is a Common Carrier

7. The first requirement for ETC designation is that the applicant is a common carrier. 47 U.S.C. §§ 153(10) and 214(e)(1). Western Wireless is a CMRS provider and, as such, is a common carrier. See *Western Wireless ETC Order*, Conclusions of Law, ¶ 2. See also 47 C.F.R. § 20.9(a)(7).

B. Western Wireless Offers the Supported Services

8. The second requirement for ETC designation is that the applicant provide the services set forth in 47 C.F.R. § 54.101(a)(1)-(9) throughout the requested designated service areas. 47 U.S.C. § 214(e)(1)(A). Western Wireless currently offers and is able to provide the services and functionalities identified by the FCC in 47 C.F.R. § 54.101(a)(1)-(9). See *Western Wireless ETC Order*, Conclusions of Law, ¶ 8. In implementing Sections 214(e) and 254, the FCC identified the specific services that a carrier must provide to be designated as an ETC and receive universal service support. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Report and Order (rel. May 8, 1997) (“*Universal Service Order*”). The required services are as follows:

<u>Supported Service</u>	<u>Does Western Wireless currently provide the service or function</u>
1. Voice-grade access to the public switched network	Y
2. Local Usage	Y
3. Dual tone multi-frequency (DTMF) signaling or its functional equivalent	Y
4. Single-party service or its functional equivalent	Y
5. Access to emergency services	Y
6. Access to operator services	Y
7. Access to interexchange service	Y

- | | |
|--|---|
| 8. Access to directory assistance | Y |
| 9. Toll limitation for qualifying Lifeline customers | Y |

9. Western Wireless currently provides the nine supported services set forth in 47 C.F.R. § 54.101(a)(1)-(9) over its existing network infrastructure in North Dakota as follows:

a. Voice-grade access to the public switched telephone network. Voice-grade access means the ability to make and receive phone calls within a voice frequency range of between 300 and 3500 Hertz, a bandwidth of approximately 2700 Hertz. 47 C.F.R. § 54.101(a)(1). All customers of Western Wireless are able to make and receive calls on the public switched network within the prescribed frequency range.

b. Local usage. Western Wireless provides its customers with an amount of local usage, free of charge, as required by 47 C.F.R. § 54.101(a)(2). Unlimited local usage is not required of any ETC. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) (“*July 2003 Order*”). Western Wireless will include local usage in all of its universal service offerings, and intends to offer unlimited local usage as part of at least one of its universal service offerings. In addition, Western Wireless will comply with any and all specific local usage requirements adopted by the FCC in the future and required of federal ETCs.

c. Dual-tone, multi-frequency (“DTMF”) signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). The FCC recognized that “wireless carriers use out-of-band digital signaling mechanisms [I]t is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.” *Universal Service Order*, ¶ 71. Western Wireless currently uses out-of-band digital

signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling and, therefore, the Company meets this requirement.

d. Single-party service or its functional equivalent. “Single party service” means that only one party will be served by each subscriber loop or access line, in contrast to a multi-party line. The FCC determined that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user’s particular transmission. 47 C.F.R. § 54.101(a)(4); *Universal Service Order*, ¶ 162. Western Wireless meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

e. Access to emergency services. The fifth supported service is the ability to reach the appropriate public service answering point (PSAP) by dialing “911.” 47 C.F.R. § 54.101(a)(5); *Universal Service Order*, ¶ 72. The FCC also requires that a carrier must provide access to enhanced 911, or “E911,” which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), when the PSAP submits a compliant request to the carrier. In order to qualify as a compliant Phase I E911 request under the FCC’s rules, the PSAP must “be capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point’s costs of the enhanced 911 service [must be] in place.” 47 C.F.R. § 20.18(j). Western Wireless currently provides all of its customers with access to emergency services by dialing 911 and stands ready to provide E911 service to its customers once a PSAP submits a compliant request for E911 service. The Company will work with PSAPs within its designated service areas to make E911 service available according to federal requirements.

f. Access to operator services. Access to operator services means any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Western Wireless meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities.

g. Access to interexchange service. As explained by the FCC, an ETC must offer consumers access to interexchange service for the purposes of making and receiving toll or interexchange calls. 47 C.F.R. § 54.101(a)(7); *Universal Service Order*, ¶ 78; *see also* 47 U.S.C. § 332(c)(8). Equal access to interexchange service, *i.e.*, the ability of a customer to access a presubscribed long distance carrier by dialing 1+number, is not required. *Universal Service Order*, ¶ 78; *July 2003 Order*, ¶¶ 14-15. Western Wireless presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers (“IXCs”). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code. Consequently, Western Wireless satisfies this universal service requirement.

h. Access to directory assistance. The eighth supported service is access to directory assistance. 47 C.F.R. § 54.101(a)(8). Western Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

i. Toll limitation for qualifying low-income consumers. The final supported service to be provided by an ETC is either “toll control” or “toll limitation” services to qualifying low-income consumers receiving subsidies pursuant to the federal Lifeline

program. 47 C.F.R. § 54.101(a)(9). The FCC no longer requires an ETC to provide both services if the carrier is unable to do so. *See Universal Service Fourth Order on Reconsideration*, FCC 97-240 (rel. Dec. 30, 1997). The FCC made toll limitation for Lifeline customers a supported service because it determined that uncontrolled toll charges were a significant factor in low subscribership levels among low-income consumers. *Universal Service Order*, ¶ 82. Today, the Company provides toll-blocking services for international calls and customer selected toll calls, as well as for Lifeline customers in states in which it has been designated as an ETC, including North Dakota. Once designated as an ETC in these new North Dakota study areas, Western Wireless will continue to offer toll blocking to Lifeline customers at no additional charge.

C. Western Wireless Advertises the Supported Services

10. The third requirement for ETC designation is that the applicant advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1)(B). The Company currently offers and advertises the federally supported services throughout its requested designated service area, through several different media, including newspaper, television, radio, and billboard advertising. Western Wireless also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. Once designated, Western Wireless will advertise the availability of and charges for its universal service offerings through media of general distribution, in accordance with the requirements of 47 C.F.R. § 54.201(d)(2). Additionally, Western Wireless will comply with all applicable provisions of N.D. Admin. Code § 69-09-05-12.

D. Western Wireless Complies With The Service Area Requirements

11. For areas served by a rural telephone company, Section 214(e)(5) of the Act provides that the ETC's designated service area must be equivalent to the rural telephone

company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange area in a given state. *Universal Service Order*, ¶ 172, n. 434. Moreover, the FCC's rules recognize that the study area is subject to redefinition if the FCC and the Commission establish a different service area in accordance with 47 C.F.R. § 54.207(c)-(d) and 47 U.S.C. § 214(e)(5).

12. Western Wireless seeks designation as an ETC in the study areas of the rural telephone companies identified on Attachment A. Western Wireless currently provides signal coverage throughout these rural telephone company study areas and will offer and advertise its universal service offerings throughout these designated service areas.

E. The Public Interest Determination Applicable to Rural Telephone Company Areas

13. The final requirement for ETC designation relates to the public interest. Section 214(e)(2) of the Act requires that the Commission find, before designating an additional ETC in an area served by a rural telephone company, that the designation is in the public interest. The Commission has already determined that it is in the public interest to designate Western Wireless as an additional ETC in study areas of rural telephone companies. *See Western Wireless ETC Order*, Conclusions of Law, ¶ 10.

14. The Commission has determined that the public interest analysis under 47 U.S.C. § 214(e)(2) should balance increased benefits of competition against any proven detrimental impacts on the preservation and advancement of universal service. *Western Wireless ETC Order*, ¶¶ 11-38.

15. The public interest determination required under Section 214(e) of the Act depends on whether the proposed universal service offering will promote competition, and if so whether consumers will ultimately realize benefits related to competition and the new services provided. The express purposes of the Act in this regard are as follows:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

16. Competition in the telecommunications industry is, as a general matter, in the public interest, and the hallmark of a competitive marketplace is the maximization of consumer choice. It is also clear that the public interest is served where there is a reasonable expectation that competition may have beneficial impacts for consumers.

17. As it applies to the designation of an additional ETC in an area served by a rural telephone company, the public interest necessarily must focus on the benefits of competition to the rural consumer.

18. The Commission must also apply the public interest factor in a way that advances universal service as contemplated by the Act. Congress gave the FCC responsibility to create rules and policies “for the preservation and advancement of universal service.” 47 U.S.C. § 254(b). States must respect and defer to those FCC determinations. States cannot use a public interest standard to affect a result contrary to FCC directives. The FCC, for example, has directed that a state cannot deny an application because a CMRS provider may not meet “the regulatory requirements that govern ILECs, including privacy, marketing, service provisioning, and service quality requirements, as well as carrier of last resort (COLR) obligations.” *Universal Service Order*, ¶ 142. The Commission must always remain consistent with the Act and FCC directives as it makes the public interest determination under Section 214(e)(2).

19. To further these general principles of public interest, the Commission should utilize the following four-part standard to determine whether designating Western Wireless as an additional ETC in the rural telephone company service areas is in the public interest:

- a. Will the ETC designation facilitate competition in the provision of universal services to the benefit of North Dakota's rural consumers?
- b. Will the ETC designation advance universal service by bringing new telecommunications services to North Dakota's rural consumers?
- c. Will ETC designation promote the rapid deployment of new technologies in the rural areas of North Dakota?
- d. Will any rural LEC experience any significant adverse impact resulting from ETC designation so significant as to justify denying rural consumers the benefits of competition?

i. Granting ETC Designation Will Facilitate Competition to the Benefit of Consumers

20. Granting ETC status to Western Wireless will recognize the importance of allowing rural consumers a choice of providers for their telecommunications needs. Consumers should be able to choose services based on their own needs, and not just the service of the incumbent LEC. When the Commission designates a competing carrier as an additional ETC, rural consumers choose their service provider on the basis of the most advantageous pricing, services, service quality, customer service, and service availability.

21. Having this choice is important to rural consumers because Western Wireless' universal service offerings will provide benefits not otherwise available from the landline LECs. For example, current universal service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Western Wireless provides an expanded local calling area, which is of great benefit to rural consumers who otherwise have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. See *Universal Service Order*, ¶ 114. Western Wireless' service also provides the benefits of mobility, which has great appeal to many rural consumers. Western Wireless provides innovative service offerings that will be tailored to consumers' needs.

22. In addition to increased choices, North Dakota’s rural consumers can also expect lower rates and better service resulting from competition in the marketplace. Western Wireless provides 24-hour customer service, technical and operational support, which is more responsive than the support currently available from many LECs. In designating Western Wireless an ETC in Minnesota, the Minnesota Commission found that the designation would provide consumers with benefits of “affordability, reliability, and service quality” and noted that Western Wireless’ “service would include specific features and enhancements not available, or available only at a premium, from the incumbents.” *Order Granting Preliminary Approval and Requiring Further Filings*, Minnesota Public Utilities Commission Docket No. P-5695/M-98-1285, p. 16 (Oct. 27, 1999). The Commission further reasoned that Western Wireless’ designation would further “at least three of the goals underlying federal and state policies favoring competition—customer choice, innovative services, new technologies.” *Id.*

23. The FCC has confirmed that competition and universal service are to be accomplished together, and that rural consumers are entitled to achieve universal service goals through the benefits of competition:

Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers. For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.

Universal Service Order, ¶ 50 (emphasis added).

24. The FCC and other state commissions have considered and rejected speculative claims that competition will hurt rural consumers. The FCC has rejected arguments that the designation of an additional ETC in rural telephone company service areas would reduce investment in infrastructure, raise local service rates, reduce service quality to consumers, or result in loss of network efficiency:

We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.

In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896, ¶ 22 (rel. Dec. 26, 2000) (“*Wyoming Order*”). Faced with claims that rural LECs could not respond to competition and would go out of business, the Minnesota Commission found it more likely that competition would “perform its widely recognized function of motivating the incumbents to find and implement new operating efficiencies, lowering prices and offering better service in the process.” *Order Granting Preliminary Approval and Requiring Further Filings*, Minnesota Public Utilities Commission Docket No. P-5695/M-98-1285, p. 17 (Oct. 27, 1999). Similarly, the Washington Commission dismissed as “overly speculative” rural LEC concerns that ETC designation would erode universal service for consumers. *In the Matter of the Petition of United States Cellular Corp., et al. for Designation as Eligible Telecommunications Carriers*, Third Supplemental Order

Granting Petition for Designation as Eligible Telecommunications Carrier, Docket No. UT-970345, ¶ 46 (Jan. 2000) (“*US Cellular Order*”).

ii. **Granting ETC Designation Will Advance Universal Service by the Provision of New Telecommunications Services to Rural Consumers**

25. Granting Western Wireless ETC status in rural areas will improve choices for rural consumers, thereby advancing universal service for North Dakotans. Different services, improved quality and lower rates not only give the consumer additional options, but also make it more likely that high cost areas of the state will have affordable phone service as implicit subsidies are phased out. In addition, the designation of Western Wireless as an ETC may allow those consumers who are not currently receiving telephone service of any kind an opportunity to obtain telephone service for the first time. There is simply no question that the designation of Western Wireless as an ETC will advance universal service by increasing consumer choices and bringing new telecommunications services to rural areas consistent with the public interest.

iii. **Granting ETC Designation Will Promote The Deployment of New Telecommunications Technologies.**

26. Designating Western Wireless an ETC will also lead to the further deployment of Western Wireless’ cellular network, which will be available to benefit North Dakota’s rural consumers. Western Wireless is a facilities-based telecommunications provider serving a substantial portion of the state utilizing state-of-the-art wireless technology.

27. Western Wireless’ network will have the capability of providing advanced services that meet or exceed what can be provided on a landline network. The Commission should continue to facilitate the development of the Western Wireless network so that North Dakota’s rural consumers will have access to these developing technologies to the same degree as urban consumers. The Washington Commission made a similar determination when it designated a CMRS provider in rural LEC areas:

Cellular providers are offering access to the Internet over wireless hand-held telephones. Consumers now have access to electronic mail over wireless telephones. These two innovations reflect the rapid deployment of new technology Congress intended to promote with the Act. It is in the public interest that all consumers in Washington should have access to this technology.

US Cellular Order, ¶ 42.

28. Competition also provides an incentive for the incumbent LECs to invest in new technologies and additional infrastructure, which likewise will benefit the consumers. Ultimately, the Commission should apply the public interest factor in a way that will bring providers and new technologies to rural, high cost areas, consistent with the FCC's stated goals:

As noted above, in the *Universal Service Order* the [FCC] sought to adopt rules that would facilitate the entry of new providers and promote competition in the context of universal service We seek comment here on the success of that goal. . . . We also seek comment on whether, in practice, any of our universal service rules discourage wireless service providers or cable service providers from offering supported services to low-income subscribers and rural, insular, and high cost subscribers.

In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278, ¶¶ 44-45 (rel. Oct. 26, 1998).

iv. **No Rural LEC Will Experience Any Significant Adverse Impact from Western Wireless' ETC Designation to Justify Denying Consumers the Benefits of Competition**

29. The designation of Western Wireless as an ETC will not result in any significant adverse impact to any rural telephone company. None of the areas in which Western Wireless is seeking designation is incapable of supporting more than one ETC.

III. CONCLUSION

30. The Act and the North Dakota Code establish clear, consistent and competitively fair mechanisms for allowing carriers, including a CMRS provider, to be designated as an ETC

for the purpose of federal universal service support. Western Wireless provides the supported services, satisfies all applicable requirements, will, subject to the redefinition of the service areas, provide the supported services throughout the entire service area, and can and will meet the obligations of an ETC. For rural customers, designation will bring new technology, lower rates, and better service, and so is clearly in the public interest.

31. Western Wireless respectfully requests the Commission to follow the directives and principles of the Act and to grant its Application by issuing an order designating Western Wireless as an ETC in the study areas of the rural telephone companies listed on Attachment A pursuant to 47 U.S.C. § 214(e) and N.D. Cent. Code § 49-21-01.7(12).

Dated: November 5, 2003

BRIGGS AND MORGAN, P.A.

By 

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Attorneys for WWC Holding Co., Inc.
d/b/a CellularOne©

ATTACHMENT A

Rural Telephone Company Study Areas For Which Western Wireless Seeks ETC Designation

- Absaraka Cooperative Telephone Co.
- Citizens Telecom
- Griggs County Telephone Co.
- Inter-Community Telephone Co.
- Inter-Community Telephone Co. II, Inc.
- Midstate Telephone Co.
- Moore & Liberty Telephone Co.
- Nemont Telephone Cooperative, Inc.
- Noonan Farmers Telephone Co.
- Polar Telecommunications, Inc.
- Red River Rural Tel. Assn. – ND
- Red River Telecom, Inc.
- Wolverton Telephone Co. – ND
- York Telephone Co.

BEFORE THE NORTH DAKOTA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
WWC Holding Co., Inc. d/b/a)
CellularOne© for Designation)
as an Eligible Telecommunications)
Carrier)

DOCKET NO. _____

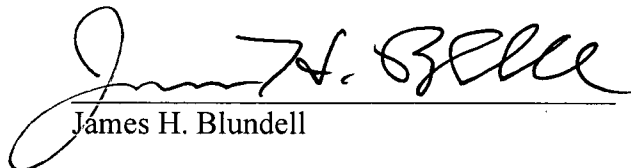
CERTIFICATION OF JAMES H. BLUNDELL

I, the undersigned, James H. Blundell, do hereby certify as follows:

1. I serve as Director – External Affairs for WWC Holding Co., Inc. d/b/a CellularOne© (“Western Wireless”).
2. This Certification is submitted in support of Western Wireless’ Application for Designation as an Eligible Telecommunications Carrier (“Application”).
3. I further declare that I have reviewed the Application and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

I certify that the foregoing is true and correct to the best of my knowledge, information and belief.

Date: November 4, 2003


James H. Blundell

STATE OF NORTH DAKOTA

BEFORE THE PUBLIC SERVICE COMMISSION

**North Dakota Network Co.
Designated Eligible Carrier
Application**

Case No. _____

**NOTICE OF OPPORTUNITY FOR HEARING AND
NOTICE OF INFORMAL HEARING**

On November 5, 2003, WWC Holding Co., Inc., dba CellularOne© (Western Wireless) filed an application for designation as an Eligible Telecommunications Carrier (ETC) for receiving federal universal service support for the study area/universal service support area served by the Rural Telephone Companies listed on Attachment A. Western Wireless proposes to provide universal services using a combination of its own personal communications service facilities and resale of other carriers' services.

The issues to be considered are:

1. The qualification of the applicant under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding.
2. The ETC universal service support area to be designated for the applicant.

Those interested are invited to comment on the applications in writing. Persons desiring a hearing must file a written request identifying their interest in the proceeding and the reasons for requesting a hearing. Comments and requests for hearings must be received by _____, 2003. If deemed appropriate, the commission can determine the matter without a hearing.

An informal hearing on this matter will be held on _____ (CDT) in the Commission hearing room, State Capitol, 12th Floor, Bismarck, North Dakota 58505. At the informal hearing, Western Wireless, will be given an opportunity to present an overview of its petition and interested persons will be given an opportunity to be heard.

For more information contact the Public Service commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary.

PUBLIC SERVICE COMMISSION

**Susan E. Wafald
Commissioner**

**Tony Clark
President**

**Leo M. Reinbold
Commissioner**

ATTACHMENT A

Rural Telephone Company Study Areas For Which Western Wireless Seeks ETC Designation

- Absaraka Cooperative Telephone Co.
- Citizens Telecom
- Griggs County Telephone Co.
- Inter-Community Telephone Co.
- Inter-Community Telephone Co. II, Inc.
- Midstate Telephone Co.
- Moore & Liberty Telephone Co.
- Nemont Telephone Cooperative, Inc.
- Noonan Farmers Telephone Co.
- Polar Telecommunications, Inc.
- Red River Rural Tel. Assn. – ND
- Red River Telecom, Inc.
- Wolverton Telephone Co. – ND
- York Telephone Co.

PU-2077-03-636

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Thomas D Kelsch
 PO Box 1266
 Mandan ND 58554-1266

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
Thomas D Kelsch

B. Received by (Printed Name) C. Date of Delivery
Latene Ehrlich *4/26/03*

D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7003 1680 0004 9646 3214**

PU-2077-03-436

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Thomas D Kelsch
 PO Box 1266
 Mandan ND 58554-1266

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
Thomas D Kelsch

B. Received by (Printed Name) C. Date of Delivery
Latene Ehrlich *2-17*

D. Is delivery address different from item 1? Yes
 if YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7002 2410 0003 4911 4363**