



GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

ATTORNEYS AT LAW

WYNN A. GUNDERSON  
J. CRISMAN PALMER  
G. VERNE GOODSSELL  
JAMES S. NELSON  
DANIEL E. ASHMORE  
TERENCE R. QUINN  
DONALD P. KNUDSEN  
PATRICK G. GOETZINGER  
TALBOT J. WIECZOREK

AMERICAN MEMORIAL LIFE BUILDING  
440 MT. RUSHMORE ROAD  
POST OFFICE BOX 8045  
RAPID CITY, SOUTH DAKOTA 57709-8045

TELEPHONE (605) 342-1078 • FAX (605) 342-9503

PAUL S. SWEDLUND  
MARK J. CONNOT  
JENNIFER K. TRUCANO  
MARTY J. JACKLEY  
DAVID E. LUST  
THOMAS E. SIMMONS  
TERRI LEE WILLIAMS  
PAMELA SNYDER-VARNS  
ROBERT C. SCREMIN  
SARA FRANKENSTEIN

ATTORNEYS LICENSED TO PRACTICE IN  
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA  
MONTANA, WYOMING, MINNESOTA & CALIFORNIA

January 31, 2003

RECEIVED

FEB 03 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BY FACSIMILE AND FEDERAL EXPRESS

Pamela Bonrud  
Executive Director  
SD PUC  
500 E Capitol Avenue  
Pierre SD 57501

FAX Received JAN 31 2003

RE: Docket No. TC98-146  
Western Wireless Corporation

Dear Ms. Bonrud:

Enclosed for filing is Western Wireless Corporation's ("Western Wireless") Request for Certification under 47 C.F.R. §§ 54.313 and 54.314 to the South Dakota Public Utilities Commission. The Request for Certification has been signed by a corporate representative of Western Wireless and certifies that all federal universal service support funds received will only be used for the provision, maintenance, and upgrading of facilities for which the support is intended consistent with the applicable law.

As part of the support of the certification financial information has been attached as Exhibit A. Exhibit A contains information concerning projected investments and expenses in the state of South Dakota. That information constitutes trade secrets as recognized and protected by law. In addition, Western Wireless requests that the Commission deem this information confidential as the cost information could be used by competitors.

Based on the confidential information that is being provided in Exhibit A, Western Wireless specifically requests that Exhibit A be given confidential treatment pursuant to A.R.S.D. 20:10:01:41. Pursuant to that regulation, Western Wireless provides the following information:

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

Pamela Bonrud  
January 31, 2003  
Page 2

- (1) The exhibit contains cost information and investment information that Western Wireless has slated for investment in South Dakota in 2003. Western Wireless is only requesting that Exhibit A of the Request for Certification be made confidential.
- (2) Western Wireless requests that the information be kept confidential for two (2) years.
- (3) The names, addresses and phone numbers of the persons to be contacted regarding any confidentiality requests are:

Suzie Rao  
Western Wireless  
3650 131<sup>st</sup> Avenue SE, Suite 400  
Bellevue, Washington 98006  
Telephone: 1-425-586-8287  
Email: [suzie.rao@wwireless.com](mailto:suzie.rao@wwireless.com)

Talbot Wiczorek  
Counsel for Western Wireless Corporation  
Gunderson, Palmer, Goodsell & Nelson, LLP  
440 Mt. Rushmore Road  
P.O. Box 8045  
Rapid City, South Dakota 57709  
Telephone: 1-605-342-1078, Extension 139  
Email: [tjw@gpgnlaw.com](mailto:tjw@gpgnlaw.com)

- (4) A.R.S.D. 20:10:01:39(4) and (6) are grounds for the confidential treatment of this material.
- (5) The material is confidential in that it is trade secrets that deal with marketing and investments within a specific defined region.

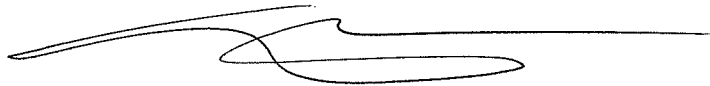
For the Commission's convenience, I have enclosed the original plus ten copies. Contained in the separate envelope in this package is the original Exhibit A plus ten copies. Each envelope and the original and ten copies have been labeled "Confidential Treatment Requested".

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

Pamela Bonrud  
January 31, 2003  
Page 3

If there is any objection to treating Exhibit A as confidential, please let me know. If there are any questions or if any further information is needed to approve the Request for Certification, please feel free to call.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Talbot J. Wiczorek

TJW:klw

Enclosures

c: James Blundell  
Suzie Rao w/enclosures via facsimile

TC 03-045  
RECEIVED

FEB 03 2003

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST OF )  
WESTERN WIRELESS CORPORATION )  
FOR CERTIFICATION REGARDING USE )  
OF FEDERAL UNIVERSAL SERVICE SUPPORT )

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
DOCKET NO. \_\_\_\_\_

FAX Received JAN 31 2003

REQUEST FOR CERTIFICATION

Western Wireless Corporation ("Western Wireless") hereby submits its Request for Certification ("Request") to the South Dakota Public Utilities Commission ("Commission") pursuant to 47 C.F.R. §§ 54.313 and 54.314. In support of this Request, the Company states the following:

1. On October 18, 2001, the Commission by Order designated Western Wireless as an Eligible Telecommunications Carrier ("ETC") in certain non-rural telephone company exchanges and notified the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC") of the designation and, further, by additional Order designated Western Wireless as an ETC in certain rural telephone company study areas and requested a compliance filing. See Order Designating GCC License Corporation as an Eligible Telecommunications Carrier in Non-Rural Telephone Company Exchanges, No. TC98-146, dated October 18, 2001 and Commission's Finding of Facts and Conclusions of Law, No. TC98-146 dated October 18, 2001 (finding it in the public interest to designate GCC an ETC in study areas of listed rural telephone companies).

3. On January 6, 2003, the Commission approved Western Wireless' Compliance Filing and issued an Order in file No. TC98-146.

4. The purpose of this filing is to provide the necessary information to verify that the Company will use all federal universal service support received only for the provision, maintenance, and upgrading of facilities for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1996, 47 C.F.R. § 254(e).

5. As a designated ETC in South Dakota, Western Wireless expects to receive High-Cost support in calendar year 2003 for the Company's South Dakota universal service customers. Included in Exhibit A, attached hereto, are estimated universal service support amounts for 2003 by USAC.
6. Western Wireless also provides in Exhibit A estimates of the expenditures that the Company will incur in year 2003 for the provision, maintenance, and upgrading of facilities and services in South Dakota supported by universal service. Consistent with federal and state law, Western Wireless will only use federal universal service support received in 2003 to offset a portion of the Company's costs for the provision of universal service in South Dakota. Federal support will enable Western Wireless to provide universal service in rural and high-cost areas.
7. The matters addressed above are within my personal knowledge and are true and correct.

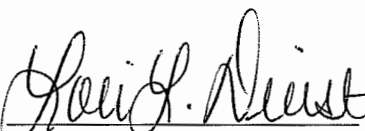
Dated this 30<sup>th</sup> day of January 2003.

Respectfully submitted,

  
Gene DeJordy, Esquire

AWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this the 30<sup>th</sup> day of January 2003.



  
Lori L. Dierst  
Notary Public – State of Washington

CONFIDENTIAL

# /

South Dakota Public Utilities Commission

**WEEKLY FILINGS**

For the Period of January 30, 2003 through February 5, 2003

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3705

**CONSUMER COMPLAINTS**

**CT03-003 In the Matter of the Complaint filed by Mark Van Den Hoek on behalf of Hard Drive Central, Mitchell, South Dakota, against Ionex Communications North, Inc. Regarding Quality of Service Issue.**

The complainant alleges that Ionex failed to provide long distance service from August 16, 2002, through November 1, 2002. The complainant seeks to have the unpaid charges for local service waived as compensation for the hardship caused as a result of the long distance issue.

Staff Analyst: Jim Mehlhaff  
Staff Attorney: Kelly Frazier  
Date Docketed: 02/05/03  
Intervention Deadline: n/a

**TELECOMMUNICATIONS**

**TC03-042 In the Matter of the Filing for Approval of an Adoption Agreement between Qwest Corporation and Page Data.**

On January 28, 2003, the Commission received a Filing for Approval of an Adoption Agreement between Qwest Corporation (Qwest) and Page Data (Page). According to the filing, Page chooses to adopt, in its entirety, the terms and conditions of the Interconnection Agreement and any associated amendments, if applicable, between Arch Paging, Inc. and Mobile Communications Corporation of America and Qwest Corporation f/k/a U S WEST Communications, Inc. which was approved by the Commission on September 29, 2000, in Docket TC00-108. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 17, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier  
Date Docketed: 01/28/03  
Initial Comments Due: 02/17/03



**TC03-043 In the Matter of the Application of Convergia, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.**

Convergia, Inc. is seeking a Certificate of Authority to provide interexchange telecommunications services in South Dakota. The Applicant intends to offer direct dial long distance, switched and dedicated toll-free services and post and prepaid calling card services on a resale basis.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Date Docketed: 01/30/03  
Intervention Deadline: 02/21/03

**TC03-044 In the Matter of the Filing for Approval of an Adoption Agreement between Qwest Corporation and Wavesent, L.L.C.**

On January 30, 2003, the Commission received a Filing for Approval of an Adoption Agreement between Qwest Corporation (Qwest) and Wavesent, L.L.C. (Wavesent). According to the filing, Wavesent chooses to adopt, in its entirety, the terms and conditions of the Interconnection Agreement and any associated amendments, if applicable, between Arch Paging, Inc. and Mobile Communications Corporation of America and Qwest Corporation f/k/a U S WEST Communications, Inc. which was approved by the Commission on September 29, 2000, in Docket TC00-108. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than February 19, 2003. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier  
Date Docketed: 01/30/03  
Initial Comments Due: 02/19/03

**TC03-045 In the Matter of the Request of Western Wireless Corporation for Certification Regarding its Use of Federal Universal Service Support.**

On January 31, 2003, Western Wireless Corporation provided information constituting Western Wireless Corporation's plan for use of its federal universal service support and to otherwise verify that Western Wireless Corporation will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best  
Staff Attorney: Karen E. Cremer

Date Docketed: 01/31/03  
Intervention Deadline: 02/14/03

**TC03-046 In the Matter of the Application of Transcom Communications, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.**

On February 5, 2003, Transcom Communications, Inc. filed an application for a Certificate of Authority to provide interexchange telecommunications services in South Dakota. The applicant intends to provide resold interexchange services, including 1+ and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services and travel card service throughout South Dakota.

Staff Analyst: Michele Farris  
Staff Attorney: Kelly Frazier  
Date Docketed: 02/05/03  
Intervention Deadline: 02/21/03

**TC03-047 In the Matter of the Application of Bee Line Long Distance, LLC d/b/a Hello Telecom for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.**

Bee Line Long Distance, LLC d/b/a Hello Telecom is seeking a Certificate of Authority to provide interexchange telecommunications services in South Dakota. The Applicant intends to offer a full range of 1+ interexchange telecommunications services on a resale basis.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Date Docketed: 02/05/03  
Intervention Deadline: 02/21/03

**You may receive this listing and other PUC publications via our website or via internet e-mail.  
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc>**



South Dakota Telecommunications Association  
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501  
605/224-7629 ■ Fax 605/224-1637 ■ sdtaonline.com

*Rural roots, global connections*

RECEIVED

FEB 14 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

February 14, 2003

Pamela Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501

Re: SD-PUC Docket TC<sup>03-045</sup>~~98-146~~ In the Matter of the Filing by GCC License Corporation for  
~~Designation as an Eligible Telecommunications Carrier~~

Dear Ms. Bonrud:

Enclosed for filing in the above referenced matter are the original and ten (10) copies of South Dakota Telecommunications Association's Petition for Intervention.

Please distribute these as needed to Commissioners and Staff.

Thank you for your assistance.

Sincerely,

Richard D. Coit,  
Executive Director  
and General Counsel

**CLEAR**  
connections

KELO-TV Sunday nights following the 10 p.m. news

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

**RECEIVED**

FEB 14 2003

**IN THE MATTER OF THE REQUEST OF )  
WESTERN WIRELESS CORPORATION FOR )  
CERTIFICATION REGARDING ITS USE OF )  
FEDERAL UNIVERSAL SERVICE SUPPORT )  
)  
)  
)**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION  
DOCKET TC03-045**

**SDTA Petition for Intervention**

The South Dakota Telecommunications Association ("SDTA") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDTA states as follows:

1. SDTA is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. All of the SDTA member companies operate as "rural telephone companies" for purposes of the Federal Telecommunications Act of 1996 and also the state laws enacted in 1998 addressing local exchange competition (SDCL §§ 39-31-69, et. seq.).

3. On January 31, 2003 Western Wireless Corporation ("Western Wireless") filed with the Commission its Request for Certification under 47 C.F.R. §§ 54.313 and 54.314. Western Wireless states the filing is to provide the necessary information to verify that it will use all federal universal service support received only for the provision, maintenance, and upgrading of facilities for which the support is intended, consistent with Section 254(e) of the Telecommunications Act of 1996. Western Wireless states that it expects to receive High-Cost support in calendar year 2003 for the Company's South Dakota universal service customers

4. SDTA has reviewed USAC's "Federal Universal Service Support Mechanisms Fund Size Projection for the Second Quarter 2003," dated January 31, 2003, which is available on the USAC website at [www.universalservice.org](http://www.universalservice.org). In that document, on page 14 of Appendix HC04, USAC indicates that 4,626 "working loops" have been report for the Western Wireless (Pine Ridge Reservation) study area in South Dakota (SAC 39901) and that 31,422 "working loops"

have been report for the Western Wireless South Dakota study area (SAC 39902) for a total of 36,048 “working loops” in South Dakota.

5. Western Wireless’ claim for universal service funding on 36,000 plus loops clearly indicates that Western Wireless is seeking universal service funding for conventional mobile cellular services.

6. This is further indicated by a recent Ex Parte Presentation of Western Wireless to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, filed November 21, 2002, Western Wireless stated that it “intends to apply the federal universal service support that it receives to the full range of its offerings that satisfy the eligible telecommunications carrier criteria, including rate plans provided to customers using conventional cellular handsets, as well as the “Wireless Residential Service” rate plan provided to customers using special terminal equipment.

7. If Western Wireless will be collecting universal service funding based on its existing mobile cellular services, there are affordability concerns that should be addressed in this proceeding in the context of determining whether they intend to use universal service funding as intended. As part of this proceeding, at a minimum, Western Wireless should be required to provide information to the Commission specifically indicating which of its existing mobile service customers and/or mobile cellular rate plans will be considered eligible for line submittal to USAC. To this point, no information has been provided by Western Wireless indicating which of its existing mobile cellular service plans will be considered universal service offerings, eligible for federal USF.

8. State Commissions, along with the FCC, are charged under 47 U.S.C. § 254(i) with the responsibility to “ensure that universal service is available at rates that are just, reasonable, and affordable.” The purpose of this very proceeding is to ensure compliance with the provisions of 47 U.S.C. § 254(e) requiring that universal service support is used only “for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” How can the Commission stay true to these provisions without additional information from Western Wireless as to which of its existing mobile offerings are to be treated as universal service offerings? Which of these rate plans does Western Wireless intend to submit for federal universal service support? Will only those plans offering essential telecommunications services at affordable prices be submitted? Or will Western Wireless be submitting any of its higher


priced plans that include more premium type services? SDTA believes these questions should be answered in this process. This is necessary to ensure that universal service funding is not misused, for purposes unrelated to the established universal service objectives.

9. Decisions of the Commission in this matter have the potential to affect all of the SDTA member companies. Accordingly, based on all of the foregoing, SDTA alleges that it is an interested party in this matter and would seek intervening party status.

Dated this \_\_\_ day of February, 2003.

Respectfully submitted:

THE SOUTH DAKOTA  
TELECOMMUNICATIONS ASSOCIATION

By:   
Richard D. Coit  
Executive Director and General Counsel

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

FEB 20 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST OF )  
WESTERN WIRELESS CORPORATION FOR ) DOCKET NO. TC03-045  
CERTIFICATION REGARDING ITS USE OF )  
FEDERAL UNIVERSAL SERVICE SUPPORT )

FAX Received FEB 20 2003

WESTERN WIRELESS OPPOSITION TO SDTA'S MOTION AND GROUNDS  
FOR INTERVENTION

Western Wireless Corporation ("Western Wireless") responds to the South Dakota Telecommunications Association's ("SDTA") Petition for Intervention in the above-captioned proceeding. For the reasons set forth below, the Public Utilities Commission ("Commission") should deny intervention, based on the absence of any demonstrated pecuniary interest in this proceeding.<sup>1</sup> In addition, the Commission should reject SDTA's claims as irrelevant for purposes of federal ETC certification. As such the Commission should grant Western Wireless' Request for Certification ("Request").

INTRODUCTION

This proceeding is limited to the specific issue of ETC certification under 47 C.F.R. §54.314. In 2001, the Federal Communications Commission ("FCC") established a procedure by which state commissions annually certify to the FCC that federal high cost universal service support provided to ETCs, both competitive and incumbent, is

<sup>1</sup> See SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03, 20:10:01:15.05 for intervention requirements.

being used consistent with §254(e) of the Federal Telecommunications Act (FTA).<sup>2</sup> The ETC certification rules are straightforward and succinct. The rules state:

States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§ 54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter must file an annual certification with the Administrator stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

47 C.F.R. 54.314(a). On January 30, 2003, Western Wireless submitted to the Commission its Request by Affidavit of Gene DeJordy, Vice President of Regulatory Affairs for Western Wireless. The Affidavit and attached Exhibit A, marked “confidential and proprietary,” was very similar to the certifications that the SDTA’s member companies submitted to the Commission last year. This Commission summarily granted SDTA’s member companies’ ETC certifications. No parties intervened, and as such, the certifications filed currently entitle SDTA’s member companies to receive federal universal service support in 2003. Western Wireless filed its ETC certification with the Commission on January 30, 2003, because it is a designated ETC in the state of South Dakota. As such, certification is timely filed and should be approved by the Commission.

## ARGUMENT

### 1. **The SDTA Petition for Intervention should be denied.**

SDTA’s Petition for Intervention should be denied. The South Dakota Statute, SDCL, 1-26-17.1, states that “A person who is not an original party to a contested case

---

<sup>2</sup> See, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking* in CC Docket No.96-45, and *Report and Order* in CC Docket No. 00-256, (the FCC's *Fourteenth Report and Order*), rel. May 23, 2001.



and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention..."<sup>3</sup> The FCC did not envision ETC certifications, which entitle ETCs to receive federal universal service support, as contested, adjudicative proceedings. Rather, the FCC's purpose was simply to require state commissions to certify *by letter* that ETCs in their state would use federal universal service support payments for the "provision, maintenance and upgrading of facilities and services for which the support is intended" pursuant to section 254(e) of the Federal Act.<sup>4</sup>

Additionally, it is difficult to ascertain what SDTA's pecuniary interests actually are as they relate to Western Wireless' Request. Nothing in Western Wireless' Request will affect the right of the SDTA member companies to continue to receive federal universal service support. SDTA's member companies are currently receiving federal universal service support for calendar year 2003 and will continue to receive federal universal service support regardless of whether Western Wireless is certified for purposes of section 254(e) of the Act. The only reason SDTA wishes to intervene in this matter is to prevent Western Wireless from receiving federal universal service support. Therefore, since SDTA cannot establish a pecuniary interest in this proceeding, the Commission should deny the Petition for Intervention.

2. **The SDTA's Arguments Opposing Western Wireless Request for Certification should be Rejected.**

In the event that the Commission accepts SDTA's Petition for Intervention, SDTA's claims regarding "affordability" should be rejected. SDTA states that since Western Wireless will be collecting universal service for its existing mobile cellular

---

<sup>3</sup> SDCL 1-26-17.1

<sup>4</sup> See 47 U.S.C. § 254(e).

services, there are “affordability concerns that should be addressed in this proceeding...” (see SDTA Petition for Intervention, p. 2). SDTA’s claim is nothing but a thinly disguised attempt, once again, to (1) raise red herrings that are not within the scope of federal ETC certification; (2) raise substantive federal policy issues that should be addressed by the FCC; and (3) persuade this Commission into re-opening issues that have been definitely addressed either through the Commission’s Order designating Western Wireless as an ETC or that have been addressed through the recently approved compliance filing.

**a. Scope of federal ETC certification**

As stated earlier, the ETC certification process is governed by 47 C.F.R. § 54.314(a). First, affordability “tests” are wholly unrelated to the governing certification criteria in 47 C.F.R. § 54.314. Rather, SDTA’s claim that the Commission must request more information from Western Wireless about the Company’s pricing is an effort to once again delay Western Wireless’ entry into the universal service market so that SDTA’s long-standing monopoly position is further protected. The rule does not mention affordability, and there is no test for affordability, and therefore affordability is not within the scope of federal ETC certification. In fact, it is interesting to note that SDTA’s member companies did not submit information in their ETC certifications about “affordability” of their rate plans. In sum, affordability is not a factor in the certification process nor is it a factor which is contingent upon receipt of federal universal service funding.

**b. SDTA raises substantive policy issues that should be addressed at the FCC.**

SDTA raises federal policy issues, such as “affordability” that are not within the

purview of this Commission. If SDTA has concerns about whether a competitive carrier's universal service offerings are affordable, the FCC is the proper forum to debate the issue. It is inappropriate for SDTA to force this Commission to resolve matters of federal policy in a certification proceeding that the FCC envisioned would be procedural and administrative in nature for ILECs and competitive carriers alike.

The FCC has not adopted any affordability criteria either for ETC designation or ETC certification. Furthermore, state commissions are not allowed to make case-by-case determinations about whether each ETC has an affordable package of universal services as either a prerequisite to ETC designation or federal ETC certification. The FCC has stated that a carrier will preserve and advance universal service consistent with the Act by simply providing the supported services to customers (including low-income customers) in high-cost areas of the state in compliance with Section 214(e) of the Federal Act.<sup>5</sup>

Moreover, the affordability principle is identified in 47 U.S.C. § 254(b)(1), where Congress directed the FCC to consider the principle of "affordability" in defining the scope of services considered to be "universal." The FCC did just that in defining the supported services.<sup>6</sup> Yet affordability is not a criteria for either ETC designation or ETC certification. As such, it cannot be used by either the ILEC or the state commission to deny ETC certification to competitive carriers.

**c. SDTA is re-litigating issues that have been decided by the Commission.**

Although this Commission has unequivocally granted Western Wireless ETC designation, SDTA does not appear to accept the finality of the Commission's act. Again and again, SDTA encourages the Commission, through ministerial proceedings such as

---

<sup>5</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157 (May 8, 1997), ¶ 138 [hereinafter *Universal Service Order*].

<sup>6</sup> *Universal Service Order*, ¶ 56.

certification, to re-litigate policy issues that have been resolved. SDTA now seeks to have the Commission address the issue of affordability.

It is important to recognize that Congress has specifically preempted states from regulating the rates charges by CMRS providers.<sup>7</sup> Denying ETC certification based on a CMRS providers rates would be in contravention of this statutory prohibition. The principle of affordability does not trump this state preemption provision.

It is clear that ETC designation applies to carriers and not specific service offerings of those carriers. As long as WW is properly designated as an ETC and certified, WWC is entitled to receive federal universal support. If a consumer is willing to purchase Western Wireless' services, then one deems the service to be affordable to the consumer. It is interesting to note that SDTA raises the issue of affordability, but never seeks to define the concept. Competition for telecommunications services ensures that rates are reasonable. If Western Wireless' services are not "affordable," then a consumer will not purchase it. If the consumer does not purchase the service, then Western Wireless will not receive federal universal service support for that consumer. Conversely, if the consumer decides to purchase Western Wireless' service, then presumably the service is considered to provide a value and benefit to the consumer at an affordable price.

SDTA raised these "affordability" concerns during the pendency of Western Wireless' ETC litigation, but both the Commission and the state Supreme Court refused to make affordability a criteria of ETC designation. Not satisfied with that result, SDTA again brought claims that Western Wireless' service must meet "affordability criteria" – criteria which are undefined by the FCC or any Commission rules or orders – during the

---

<sup>7</sup> 47 U.S.C. § 332(c)(3)(a)

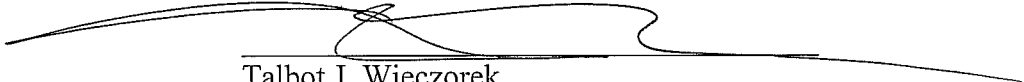
pendency of Western Wireless' compliance filing. Again the Commission rejected SDTA's claims. Indeed the Commission was aware at the time of the compliance filing that Western Wireless was seeking federal universal service support for different universal service offerings, as evidenced by the fact that Western Wireless filed two different terms and conditions documents –one of which included the measured rate plans and did not impose any affordability requirements.

### CONCLUSION

For these reasons, SDTA's Petition for Intervention should be rejected and any such affordability claims should be dismissed as irrelevant to the certification proceeding. The Commission should, without delay, grant Western Wireless' Request for Certification. In sum, affordability factors are not criteria for ETC certification, have no place in a certification proceeding, and do not justify the Commission's denial of certification to a competitive ETC such as Western Wireless.

Dated this 20 day of February, 2003.

ATTORNEYS FOR WESTERN WIRELESS  
CORPORATION:



Talbot J. Wieczorek  
GUNDERSON, PALMER, GOODSSELL  
& NELSON, LLP  
PO Box 8045  
Rapid City SD 57709  
1-605-342-1078

Mark J. Ayotte  
Briggs and Morgan  
2200 First National Bank Building  
332 Minnesota Street  
St. Paul, Minnesota 55101

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE SOUTH DAKOTA

IN THE MATTER OF THE REQUEST OF )  
WESTERN WIRELESS CORPORATION FOR ) DOCKET NO. TC03-045  
CERTIFICATION REGARDING ITS USE OF )  
FEDERAL UNIVERSAL SERVICE SUPPORT ) CERTIFICATE OF SERVICE

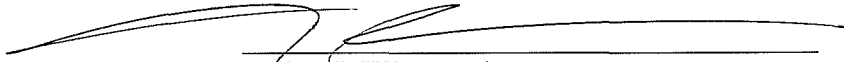
The undersigned hereby certifies that on the 20th<sup>t</sup> day of February, 2003, I served a true and correct copy of the **WESTERN WIRELESS OPPOSITION TO SDTA'S MOTION AND GROUNDS FOR INTERVENTION** by fax at 7:00 a.m., to:

**1-605-773-3809**  
Pamela Bonrud  
Executive Director  
SD PUC  
500 E Capitol Avenue  
Pierre SD 57501

**1-605-224-1637**  
Richard D. Coit  
PO Box 57  
320 E Capitol Ave  
Pierre SD 57501-0057

hand delivered to Pamela Bonrud the original plus ten copies and a copy mailed by U.S. Mail, postage prepaid to Richard D. Coit.

GUNDERSON, PALMER, GOODSSELL  
& NELSON, LLP

  
Talbot J. Wiecezorek  
Attorney for Western Wireless Corporation  
PO Box 8045  
Rapid City SD 57709  
1-605-342-1078

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE REQUEST OF )</b>	<b>ORDER GRANTING</b>
<b>WESTERN WIRELESS CORPORATION FOR )</b>	<b>CERTIFICATION</b>
<b>CERTIFICATION REGARDING ITS USE OF )</b>	
<b>FEDERAL UNIVERSAL SERVICE SUPPORT )</b>	<b>TC03-045</b>

On May 23, 2001, the Federal Communications Commission (FCC) released an Order concerning the federal universal service support mechanism for rural carriers.<sup>1</sup> This Order (hereafter referenced as the "Fourteenth Report and Order"), in part, codifies at 47 § C.F.R. 54.314, a requirement for States to provide a certification regarding federal universal service support that is received by rural incumbent local exchange carriers and/or eligible telecommunications carriers (ETCs) providing service in rural service areas. Pursuant to such rule, a state that desires rural carriers or ETCs within its jurisdiction to receive future federal universal service support must file an annual certification with the FCC and the Universal Service Administrative Company (USAC) stating that federal high cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This certification requirement applies to various categories of federal universal service support, including support provided pursuant to 47 C.F.R. §§ 54.301, 54.305, and/or 54.307, and/or 47 C.F.R. Part 36, Subpart F (high-cost loop support, local switching support, safety net additive support, and safety valve support). Support provided under these FCC rule provisions will only be made available in the future if the State Commission files the requisite certification pursuant to § 54.314.

On January 31, 2003, the South Dakota Public Utilities Commission (Commission) received a filing from Western Wireless Corporation (Western Wireless) regarding its Request for Certification. The purpose of this filing was to provide information constituting Western Wireless' plan for the use of its federal universal service support and to otherwise verify that Western Wireless will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. § 254. As a part of its plan, Western Wireless listed estimates of the support it expected to receive from USAC as well as its estimated costs for the provision, maintenance, and upgrading of facilities and services. Western Wireless filed confidential information regarding this matter pursuant to Staff's request.

On February 6, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of February 14, 2003, to interested individuals and entities. On February 14, 2003, the Commission received a Petition for Intervention from South Dakota Telecommunications Association (SDTA). On February 20, 2003, the Commission received Western Wireless' Opposition to SDTA's Motion and Grounds for Intervention.

---

<sup>1</sup>CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157, Released May 23, 2001.

At the meeting on February 20, 2003, a representative of SDTA stated that SDTA wished to withdraw SDTA's Petition for Intervention and just make comments on the filing.

At its regularly scheduled meeting of February 20, 2003, the Commission considered this matter.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 254. The Commission found that Western Wireless is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission unanimously voted to approve Western Wireless' Request for Certification. It is therefore

ORDERED, that the Western Wireless is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. It is

FURTHER ORDERED, that the Commission approves Western Wireless' Request for Certification.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of March, 2003.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melaine Kolbo</u>
Date:	<u>3/7/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr  
ROBERT K. SAHR, Chairman

Gary Hanson  
GARY HANSON, Commissioner

James A. Burg  
JAMES A. BURG, Commissioner





Bob Sahr, Chair  
Gary Hanson, Vice-Chair  
Jim Burg, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue, Pierre, South Dakota 57501-5070  
Website: [www.state.sd.us/puc](http://www.state.sd.us/puc)

Capitol Office  
(605) 773-3201  
(605) 773-3809 fax

Transportation/Warehouse  
(605) 773-5280  
(605) 773-3225 fax

Consumer Hotline  
1-800-332-1782

March 7, 2003

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street S.W.  
Washington, DC 20554

Ms. Irene Flannery  
Universal Service Administrative Company  
2120 L Street N.W., Suite 600  
Washington, DC 20037

Re: CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157, Released May 23, 2001

State Certification of Support for Western Wireless

Dear Ms. Dortch and Ms. Flannery:

The South Dakota Public Utilities Commission ("SDPUC") hereby states that Western Wireless Corporation ("Western Wireless"), a competitive eligible telecommunications carrier, has been certified to receive support pursuant to 47 C.F.R. §§ 54.301, 54.305, and/or 54.307 and/or part 36, subpart F. On January 31, 2003, Western Wireless filed a Request for Certification with the SDPUC which supports its affirmation that all federal high-cost support provided to it will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with section 254(e) of the Communications Act.

Enclosed is the Order Granting Certification to Western Wireless. Should you have any questions, please do not hesitate to contact us for further information.

Sincerely,

Robert K. Sahr  
Chairman

Gary Hanson  
Commissioner

James A. Burg  
Commissioner