

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE FILING BY  
WWC LICENSE, LLC D/B/A CELLULARONE  
FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN  
OTHER RURAL AREAS

TC03-191

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Transcript of Proceedings  
August 17, 2004

**ORIGINAL**

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BEFORE THE PUBLIC UTILITIES COMMISSION,  
ROBERT SAHR, CHAIRMAN  
GARY HANSON, VICE CHAIRMAN  
JIM BURG, COMMISSIONER

COMMISSION STAFF

Rolayne Ailts Wiest  
John Smith  
Karen Cremer  
Greg Rislov  
Harlan Best  
Keith Senger  
Dave Jacobson  
Michele Farris  
Jim Mehlhaff  
Tina Douglas  
Heather Forney  
Pam Bonrud

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UTILITIES COMMISSION

Reported By Cheri McComsey Wittler, RPR

**PRECISION REPORTING**

**L I M I T E D**

## APPEARANCES BY TELEPHONE

Rachel Torrence  
Mark Meierhenry  
Karen Huizenga  
Mark Rodvolt  
Marv Truhe  
Larry Hettinger  
Talbot Wieczorek  
Jeff Carmen  
Marlene Bennett  
Mark Ayotte  
Jim Blundell  
Doug Eidahl  
Wendy Harper  
Chris Clark  
Mary Lohnes  
Tom Burns  
Pat Mastel  
Gene Ward  
Jeff Heig  
Dan Larson  
James Cremer

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TRANSCRIPT OF PROCEEDINGS, held in the  
above-entitled matter, at the South Dakota State  
Capitol, Room 412, 500 East Capitol Avenue, Pierre,  
South Dakota, on the 17th day of August 2004,  
commencing at 9:30 a.m.

1 CHAIRMAN SAHR: TC03-191, In the  
2 Matter of the Filing by WWC License, LLC Doing  
3 Business as CellularOne For Designation as an  
4 Eligible Telecommunications Carrier in Other Rural  
5 Areas.

6 I do want to go through the call-in list,  
7 though, and make sure all the people who want to be  
8 present are on the line. So I'm going to run  
9 through the call-in list again. As we go through  
10 that, please indicate if you're still on the line.

11 Rachel Torrence.

12 MS. TORRENCE: Yes.

13 CHAIRMAN SAHR: Tim Goodwin and  
14 Tom Welk.

15 MR. GOODWIN: Yes.

16 MR. WELK: Yes.

17 CHAIRMAN SAHR: Mark Meierhenry.

18 MR. MEIERHENRY: Yes.

19 CHAIRMAN SAHR: Karen Huizenga.

20 MS. HUIZENGA: Yes, I am because  
21 Mark Rodvolt wants to be on.

22 CHAIRMAN SAHR: How do you spell  
23 Mark's last name?

24 MS. HUIZENGA: R-O-D-V-O-L-T.

25 CHAIRMAN SAHR: Marv Truhe.

1 MR. TRUHE: Mr. Commissioner, I am  
2 here. I guess I have a question. In terms of the  
3 agenda, was I to understand we're going to a  
4 different issue?

5 CHAIRMAN SAHR: Yes. We're moving  
6 to page 3 of the agenda under Telecommunications  
7 and taking up TC03-191.

8 MR. TRUHE: Then are we going back  
9 to the regular?

10 CHAIRMAN SAHR: Yes, we will.

11 MR. TRUHE: That's fine. Thank you.

12 CHAIRMAN SAHR: Thank you.

13 Larry Hettinger.

14 MR. HETTINGER: Yes.

15 CHAIRMAN SAHR: Talbot Wieczorek.

16 MR. WIECZOREK: Yes.

17 CHAIRMAN SAHR: Jeff Carmen.

18 MR. CARMEN: Yes, Mr. Chairman.

19 CHAIRMAN SAHR: Marlene Bennett.

20 MS. BENNETT: Yes. I'm still here,  
21 Mr. Chairman.

22 CHAIRMAN SAHR: Okay. Thank you.  
23 Mark Ayotte.

24 MR. AYOTTE: Yes.

25 CHAIRMAN SAHR: Wendy Harper.

1 MS. HARPER: Yes. I am still here.

2 CHAIRMAN SAHR: Chris Clark.

3 MR. CLARK: Present.

4 CHAIRMAN SAHR: Pat Mastel.

5 MR. MASTEL: Present, Mr. Chair.

6 CHAIRMAN SAHR: Mary Lohnes.

7 MS. LOHNES: Here.

8 CHAIRMAN SAHR: Tom Burns,

9 Gene Ward, and Jeff Heig.

10 MR. BURNS: We're here.

11 CHAIRMAN SAHR: And Jim Cremer.

12 MR. CREMER: Present.

13 CHAIRMAN SAHR: Mr. Ayotte, is

14 Jim Blundell with you still?

15 MR. AYOTTE: I believe he still is.

16 Jim, are you there?

17 MR. BLUNDELL: Yes, I am,

18 Mr. Chairman.

19 CHAIRMAN SAHR: And, Doug Eidahl,

20 are you with Wendy Harper still?

21 MR. EIDAHL: Correct.

22 CHAIRMAN SAHR: I've got that

23 everybody's still on the line. Thank you very much

24 for your patience.

25 The question today is what is the Commission's

1 decision. And I should note at the outset that I  
2 thank the parties for their input on this. It  
3 certainly was a challenging case and certainly one  
4 involving law. We've seen in the past on the  
5 wireline side that certainly ETC designation has  
6 helped our providers in South Dakota be able to  
7 bring some state-of-the-art services to rural areas  
8 especially but to parts of the state that might not  
9 otherwise have them, and I think we can all be very  
10 happy with the state of telecommunications on the  
11 wireline side.

12 On the wireless side we all, I think, share  
13 the common goal of wanting to see rural areas get  
14 better coverage, get enhanced services, and to see  
15 that happen sooner rather than later. And that,  
16 frankly, is going to involve some investment, and  
17 that potential investment can have a very positive  
18 impact for public safety, for economic development,  
19 and for consumers' choice.

20 And while those policy considerations I think  
21 probably are in the back of everyone's mind, the  
22 question really becomes whether or not the legal  
23 requirements for ETC status have been met. And I  
24 think in this case that they have been met and I'm  
25 going to go through a rather lengthy Motion but I

1 do want to note that in my belief and putting forth  
2 this Motion that ETC designation is appropriate.  
3 We certainly are not doing this without strings and  
4 we certainly expect this to be a process that will  
5 have follow-up and that will demonstrate that the  
6 money is being spent appropriately and we certainly  
7 want to see dollars invested into new  
8 infrastructure as much as possible.

9 And we are, you know, encouraged by  
10 indications that 17 new towers are on the way for  
11 this year and we hope that we can continue to see  
12 similar build-out along those lines but ultimately  
13 it does come down to a legal issue and a legal  
14 test.

15 With that in mind, I am going to make the  
16 following Motion: I move that the Commission find  
17 that Western Wireless has met the requirements to  
18 be designated as an ETC in the requested ETC  
19 service areas. I further move that the designation  
20 of Western Wireless as an additional ETC in the  
21 requested service areas is in the public interest  
22 subject to the following conditions:

23 One, Western Wireless shall comply with the  
24 conditions set forth in Findings of Fact 20 through  
25 24 of the Findings of Fact, Conclusions of Law in

1 order in Docket No. TC98-146. Western Wireless may  
2 amend its compliance filing in Docket TC98-146 to  
3 add the newly designated areas and to use the same  
4 service agreements and procedures in the requested  
5 service areas as previously filed with the  
6 Commission. For any requirement that cannot be  
7 fulfilled by amending the previous compliance  
8 filing, Western Wireless may submit the document in  
9 this proceeding. Western Wireless will not have to  
10 make a separate compliance filing in order to be  
11 designated as an ETC in this Docket.

12 Two, Western Wireless shall continue to build  
13 out facilities and extend service to meet the  
14 statutory obligations of offering service  
15 "throughout the service area for which the  
16 designation is received."

17 Three, in conjunction with but separate from  
18 and in addition to the annual certification filings  
19 under 47 CFR 54.313 and 54.314 Western Wireless  
20 shall submit records and documentation on an annual  
21 basis detailing its progress towards meeting the  
22 statutory objective of offering service throughout  
23 the service area for which the designation is  
24 received. At a minimum such information shall  
25 detail the capital expenditure made by Petitioner



1 within each RLEC's service area during the  
2 preceding annual period and shall include its  
3 proposed capital budget for each RLEC's service  
4 area for the ensuing year.

5 Four, Western Wireless shall annually submit a  
6 proposed plan for the upcoming calendar year which  
7 sets forth Western Wireless's proposed facility  
8 expansion and service enhancement to the existing  
9 facilities. The plan shall be submitted no later  
10 than January 1 of each year. Following the filing  
11 due January 1, 2005 Western Wireless's subsequent  
12 annual filing shall also submit a report stating  
13 whether the proposed plan was implemented, any  
14 deviations from the previous year's proposed plan  
15 and the reason for any deviations. Following this  
16 annual filing --

17 I'm going to go off the record for a second.

18 (Discussion off the record)

19 CHAIRMAN SAHR: Following this  
20 annual filing, Western Wireless shall meet with  
21 Commission staff to discuss the proposed plans and  
22 any deviation from a previous year's proposed  
23 plans.

24 Five, Western Wireless shall construct the  
25 17 additional cell sites during 2004 as it

1 committed to in its proceeding. If it is unable to  
2 construct all 17 cell sites during 2004, Western  
3 Wireless shall submit a report detailing the  
4 reasons why it is unable to do so and shall  
5 thereafter submit monthly reports detailing its  
6 progress towards meeting this goal.

7 Six, Western Wireless shall continue to abide  
8 by the terms of the Cellular Telecommunications  
9 Industry Associates Consumer Code For Wireless  
10 Services as it is amended from time to time.

11 Seven, by January 1 of each year, Western  
12 Wireless shall provide an annual report detailing  
13 the consumer Complaints that it has received during  
14 the previous one-year period. This report shall  
15 include categories for the Complaints.

16 Eight, by January 1 of each year Western  
17 Wireless shall provide a report itemizing requests  
18 for service from potential customers within each  
19 RLEC's service area that went unfulfilled during  
20 the previous year, including the steps Western  
21 Wireless took to provide service and the reason why  
22 such requests went unfulfilled. And I'll add on to  
23 that "if so," if so unfulfilled.

24 Following the submission of this report  
25 Western Wireless shall meet with Commission staff

1 to discuss the report.

2 And that concludes my Motion.

3 COMMISSIONER BURG: I'll second the  
4 Motion. To me this is maybe one of the most  
5 important decisions we've made this year. I think  
6 it's important that we get whatever funds are  
7 available to help get the build-out in South Dakota  
8 necessary but at the same time we treat the  
9 providers that we have here fairly.

10 I have been very, very concerned that the  
11 money that -- in other words, ETC status was  
12 implemented so that money could be available to get  
13 wireless service into areas that would not be  
14 affordable otherwise, and I think we need to take  
15 advantage of that. I've been extremely concerned,  
16 though, that those moneys be spent in the areas  
17 that made them eligible to receive the moneys.

18 I am satisfied that the way this is written  
19 and that the order that we will submit will give us  
20 that opportunity to receive those dollars and to  
21 make sure those dollars go for the purpose that  
22 they were designated to. So that's the reason that  
23 I am seconding the Motion.

24 VICE CHAIR HANSON: This is  
25 Commissioner Hanson. I concur with the Motion.

1 Western Wireless went through a -- I have to say I  
2 really appreciate the passion and the completeness  
3 that all of the parties went to and the  
4 presentations that we received.

5 Western Wireless has fulfilled their  
6 requirements to show that they are entitled to the  
7 ETC status. As previous Commissioners have stated  
8 and I might state it a little bit differently, in  
9 order to provide the services that the rural areas  
10 truly deserve to have, in order to have the  
11 economic prosperity, the quality of life and  
12 certainly from a health and safety standpoint I  
13 believe it's important to provide the opportunity  
14 for the funding which comes through the ETC status  
15 for Western Wireless so I concur on the Motion.

16 COMMISSIONER BURG: Maybe I would  
17 like to add one other thing. I also think we have  
18 the ability through the annual certification to  
19 make what adjustments are necessary to make sure  
20 that they do comply. I was completely prepared to  
21 deny this if I did not feel that the dollars that  
22 were going to be received from the Universal  
23 Service Fund were not going to be spent in the  
24 areas that made them eligible, and if it doesn't  
25 prove to be, I imagine we can make those

adjustments through the certification process that  
may be necessary.

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1 STATE OF SOUTH DAKOTA )

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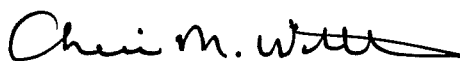
CERTIFICATE

3 COUNTY OF HUGHES )

4  
5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter and Notary Public in and for the  
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 17th day of  
11 August 2004, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 20th day  
14 of August 2004.

15  
16  
17 

18 Cheri McComsey Wittler,  
19 Notary Public and  
Registered Professional Reporter