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BEFORE THE SOUTH DAKOTA

PUBLIC UTILITIES COMMISSION SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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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  
HEARING  
(November 30, 2004)

BEFORE: Chairperson Robert K. Sahr  
Commissioner Gary Hanson  
Commissioner James Burg

APPEARANCES: Ms. Rolayne Ailts Wiest  
Public Utilities Commission  
Pierre, South Dakota  
  
Attorney for the Commission.  
  
Mr. John J. Smith  
Public Utilities Commission  
Pierre, South Dakota  
  
Attorney for the Commission Staff.  
  
Mr. Mark Ayotte  
Briggs & Morgan  
St. Paul, Minnesota  
  
Attorney for WWC Holding Company, Inc.  
  
Mr. Richard D. Coit  
Attorney at Law  
Pierre, South Dakota  
  
Attorney for the South Dakota Independent  
Telephone Coalition, Inc.

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APPEARANCES: Ms. Darla Pollman Rogers  
Meyers & Rogers  
Pierre, South Dakota  
  
Attorney for Golden West Telephone  
Communications, Vivian Telephone Company,  
Venture Communications Cooperative,  
Tri-County Telecom, Inc. and James Valley  
Coop Telephone.

PROCEEDINGS: The above-entitled matter came on for hearing  
on the 30th day of November, 2004, commencing  
at the hour of 3:50 p.m. at the Holiday Inn  
City Centre, Sioux Falls, South Dakota.

\* \* \* \* \*

I N D E X

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1           CHAIRPERSON SAHR: Next item, Number 9, is TC03-191.  
2           In the matter of the filing by WWC License, LLC, doing  
3           business as CellularOne, for designation as an eligible  
4           telecommunications carrier in other rural areas. And the  
5           question today is shall the Commission grant the petition  
6           of WWC License, LLC, doing as business as CellularOne for  
7           reconsideration and clarification.

8           And, Miss Wiest, I may look to you procedurally. You  
9           want to hear from CellularOne first?

10          MS. WIEST: Yes.

11          MR. AYOTTE: Chairman Sahr, members of the  
12          Commission. I'm Mark Ayotte representing WWC Holding  
13          Company, Inc. We have filed a petition seeking some  
14          reconsideration and clarification of two specific issues  
15          that were raised by conditions that were placed in the  
16          ETC designation order that is dated September 2nd of  
17          2004.

18          I want to make clear up-front that Western Wireless  
19          is not challenging the spirit or the intent of any of the  
20          conditions set forth in the ETC order. Western Wireless  
21          appreciates the Commission's efforts and consideration in  
22          granting the additional ETC designation. And our request  
23          for reconsideration and clarification is -- is intended  
24          to enable Western Wireless to comply, not seek to avoid  
25          the condition.

1           Specifically we are seeking reconsideration of a part  
2 of Condition Number 3 in the ETC order, which relates to  
3 capital expenditures information being filed by Western  
4 Wireless for each RLEC service area. Now, Condition 3,  
5 when you read it, states both general and specific  
6 requirements relating to the filing of network build-out  
7 information designed to demonstrate that it's meeting the  
8 statutory objective of offering service throughout its  
9 designated service areas.

10           In the first sentence of Condition Number 3, it  
11 states generally that Western Wireless is to annually  
12 submit records and documentation detailing its progress  
13 toward meeting the statutory objective of offering  
14 service throughout the service area for which designation  
15 is received. That stated requirement is non-specific,  
16 and Western Wireless doesn't take any issue with that  
17 aspect of the condition.

18           It appears that Western Wireless can satisfy that  
19 condition by providing maps of its cell sites, signal  
20 propagation maps, build-out plans, capital expenditure  
21 information, subscriber information, and the like. We  
22 don't challenge that aspect of the condition, and are  
23 fully prepared to work with Staff in terms of submitting  
24 records and documentation detailing our progress.

25           We do ask, however, with respect to that first aspect

1 of Condition Number 3, that the order be modified to  
2 state that any records or documentation that are filed  
3 relating to network build-out and the like be protected  
4 from public disclosure. That information should be  
5 deemed to be confidential under the state statute and  
6 Commission rules. It's competitively sensitive. And we  
7 would ask that the order clearly state that such  
8 information being filed will be treated in a confidential  
9 manner and not subject to public disclosure.

10 But the specific information that is contemplated by  
11 Condition Number 3 regarding Western Wireless's capital  
12 expenditures for each RLEC service area should be  
13 reconsidered and deleted because Western Wireless can't  
14 realistically comply with that aspect of the condition.  
15 Specifically the second condition of Condition Number 3  
16 requires the filing of information detailing capital  
17 expenditures made by Western Wireless within each RLEC  
18 service area during the preceding annual period and a  
19 proposed capital budget for each RLEC service area for  
20 the ensuing year.

21 Now, again, Western Wireless doesn't have any problem  
22 with the concept of submitting annually its capital  
23 expenditure information, both actual as well as  
24 projected. That, too, should be treated on a  
25 confidential and proprietary basis. But Western Wireless

1 simply can't provide that capital expenditure information  
2 with reference to the RLEC service areas or broken down  
3 to the RLEC service area level. Western Wireless's  
4 business is different from each of the RLECs, uses a  
5 different technology, different network, has different  
6 accounting practices, and it has different service areas.  
7 And Western Wireless's accounting systems and the  
8 budgeting process is not set up to track capital  
9 expenditures or to project capital expenditures with  
10 reference to the geographic area served by the RLEC.

11 And that is not surprising. I mean Western Wireless  
12 doesn't have any business purpose to maintain its  
13 information or to account for its expenditures in that  
14 fashion with reference to somebody else's service area.  
15 Rather, Western Wireless maintains its financial data  
16 with reference to its markets based on its engineering  
17 and sales activities for its business. And we can  
18 provide the capital expenditure information to Staff  
19 consistent with the spirit of Condition Number 3 with  
20 respect to a statewide basis. And we don't have any  
21 problem with that.

22 But otherwise, it's going to require some arbitrary  
23 and manual allocation method by Western Wireless to break  
24 down its capital expenditure information to the RLEC  
25 service area. And, again, that is not a function that is

1 currently supported by Western Wireless's existing  
2 systems or accounting practices. And depending upon the  
3 allocation method that would be used, it's going to  
4 result in data of little or no significance, and perhaps  
5 even misleading, depending upon which allocation method  
6 you use to allocate these expenditures.

7 We include within our petition a couple of exhibits,  
8 Exhibits 1 and 2, with probably the most simple example  
9 to illustrate this point, a cell site. Assume a 300,000  
10 dollar capital expenditure to put in a cell site. And  
11 because the radio waves that are propagated by that cell  
12 site are not going to terminate at the exchange boundary  
13 but rather are going to serve however many customers  
14 happen to be served within the area of that sell site,  
15 you then have to pick some arbitrary allocation method  
16 for that assumed 300,000 dollar capital expenditure.

17 You could allocate that cost based on the physical  
18 geographic location of where the cell site is  
19 constructed. And that's Exhibit Number 1 in our  
20 petition. Again, very simple. The gray cloud here is to  
21 reflect the signal propagation of the cell site. In this  
22 example, we have RLEC service area number one and RLEC  
23 service area number two.

24 If we pick the physical geographic location of the  
25 cell site for purposes of allocating the 300,000 dollar

1 allocation or capital expenditures, because the cell site  
2 is located in our RLEC service area number one, we would  
3 allocate the entire 300,000 dollars to RLEC service area  
4 number one and nothing to RLEC service area number two.  
5 I suppose that could be done, but I'm not sure what that  
6 demonstrates.

7 In contrast, if you look at some other possible  
8 allocation method, the percentage of geographic -- the  
9 percent of the geography that is covered by the cell site  
10 or the population covered by the cell site, or perhaps  
11 the number of subscribers that are served by that cell  
12 site, or perhaps some other allocation factor, you are  
13 still going to get something which isn't going to provide  
14 any meaningful information. And that is Exhibit Number  
15 2.

16 Exhibit Number 2 with our petition, we have the same  
17 300,000 dollar capital expenditure, it's still physically  
18 located in RLEC service area number one, but it's going  
19 to serve more subscribers or a greater population in RLEC  
20 service area number two. In that situation, you start  
21 allocating the cost differently.

22 We don't know what to do to satisfy the Commission's  
23 concern for providing the capital expenditure information  
24 on a RLEC service area. We don't think that allocating  
25 it, which we don't do today, but having to allocate



1 capital expenditure information, both actual and  
2 projected, with reference to the RLEC service area is  
3 going to provide any meaningful information to the  
4 Commission or to the Staff as it relates to the overall  
5 intent and purpose of the condition which is monitoring  
6 the progress toward meeting the build-out requirement.  
7 And it's certainly not going to provide anymore helpful  
8 information than will otherwise be provided under the  
9 first sentence of Condition Number 3 which is general  
10 information that could be provided to Staff.

11 I think the company and Staff will be far better  
12 served working out what information the company has that  
13 will demonstrate its progress toward meeting the  
14 build-out. And therefore we would ask that you  
15 reconsider that specific requirement of Condition Number  
16 3 relating to the filing of capital expenditure data, not  
17 to an RLEC service area basis, but rather on a statewide  
18 basis. And anymore specific information or documentation  
19 that is needed to analyze Western Wireless's progress of  
20 meeting the statutory objective can be provided on a  
21 case-by-case basis to Staff under the first provision of  
22 the condition.

23 But if -- if the Commission insists upon the filing  
24 of this capital expenditure information on a RLEC service  
25 area basis, then at a minimum you need to clarify to us

1 how you want to allocate the costs. And, again, we are  
2 not challenging the intent of Condition Number 3. We  
3 need guidance to enable us to provide the most beneficial  
4 information in a manner which is doable by the company,  
5 and to clarify in the order that such information will be  
6 confidential.

7 The second issue that we have sought reconsideration  
8 on relates to Condition Number 8. And we need  
9 clarification frankly in terms of the unfulfilled service  
10 request standard. Condition Number 8 is simply vague and  
11 ambiguous in requiring Western Wireless to annually  
12 report the number of unfulfilled service requests it's  
13 received from potential customers and, again, within each  
14 RLEC service area.

15 We are seeking clarification as to what an  
16 unfulfilled service request is. We think -- what we have  
17 asked the Commission to clarify, is if an unfulfilled  
18 service request for purposes of that condition relates to  
19 signal quality complaints from Western's current  
20 customers that are communicated to Western Wireless and  
21 that will invoke Western Wireless's commitment to follow  
22 the five-step process in responding to reasonable  
23 requests for service.

24 You will recall from the hearing, and I believe it's  
25 summarized in Finding of Fact Number 25, that in an

1 effort to meet its obligation as an ETC of providing  
2 service to customers within its designated service area  
3 in response to reasonable requests for service, Western  
4 Wireless is committed to following a five-step program to  
5 insure that that standard will be met. But we need  
6 clarification in order to accurately track this and  
7 report it to the Commission consistent with the spirit of  
8 Condition Number 8.

9 A potential customer is simply over-broad. We don't  
10 track potential customers. People may inquire and choose  
11 not to subscribe to Western Wireless's service for a  
12 variety of reasons; price, customer need, other reasons.  
13 There may be potential service inquiries to the store,  
14 phone calls, the internet, but by definition they are not  
15 a customer. We don't have any record of why they may  
16 have chosen not to purchase the service.

17 So we ask that you clarify the condition -- for  
18 purposes of Condition Number 8, that it has to be a  
19 current customer within a designated area who makes a  
20 request to the company for service at their residence.  
21 That is what this is all about. And that complaints for  
22 unfulfilled service means it's made to Western Wireless,  
23 a complaint relating to the quality of the service that  
24 invokes the five-step process that is outlined in Finding  
25 of Fact Number 25 because it is that process that was

1 designed to demonstrate Western Wireless's commitment to  
2 respond to reasonable requests for service from customers  
3 within its designated areas.

4 And even Finding of Fact Number 25 speaks to  
5 consumers who are unable to receive service from Western  
6 Wireless and the steps to be followed once notice is  
7 given of an inability to receive that service. It's not  
8 potential customers. And related to that, it's simply  
9 unnecessary to report these unfulfilled requests for  
10 service with respect to each RLEC service area. Western  
11 Wireless doesn't run its business and track complaints  
12 with reference to who the incumbent provider is for that  
13 customer.

14 And frankly, the identity of the RLEC is irrelevant  
15 as it relates to whether Western Wireless is meeting its  
16 obligation and commitment as an ETC to provide service  
17 and respond to reasonable requests. And to the extent  
18 that would be necessary, then fine, that can be tracked  
19 down and the identity of the RLEC could be realized, but  
20 it's not contemplated to be information that is part of  
21 Western Wireless's system. So we would ask that  
22 Condition Number 8 be clarified in that manner.

23 Well, again, on behalf of Western Wireless, we thank  
24 you for your vote of confidence in granting additional  
25 ETC status to Western Wireless. Western is pleased to

1 comply with these conditions to the best of its ability.  
2 And we seek this limited reconsideration and  
3 clarification of Conditions 3 and 8. And I'm happy to  
4 answer any questions you may have.

5 CHAIRPERSON SAHR: It's appears we have some other  
6 people who may want to weigh in, and I think we will have  
7 a few questions. I anticipate that. Why don't we hear  
8 from any of the others present. Thank you for your  
9 participation now. Mr. Coit.

10 MR. COIT: Thank you, Mr. Chairman. Thank you,  
11 Commissioners, for giving us the opportunity to address  
12 this with some oral argument today. SDTA filed some  
13 joint return comments with the other intervening parties  
14 who are company members of SDTA. I'm going to provide  
15 some summary of our arguments, and Darla Rogers may have  
16 some additional comment, I guess, depending on how well  
17 she believes I have addressed the issues.

18 The first thing I would say, if you go to the written  
19 comments, this is a point that we try to make as well.  
20 Western Wireless is claiming in this -- with respect to  
21 their petition for reconsideration that they are not  
22 challenging the spirit or intent of the conditions. They  
23 have classified the information or they have  
24 characterized the information that is being requested in  
25 the conditions as being data of no significance, of being

1 data that really isn't meaningful, and data that is  
2 probably not helpful.

3 We strongly disagree with those characterizations.  
4 This is, in our view, is a significant issue in terms of  
5 what they are asking for. If you go back to the hearing  
6 and look at the transcript, think back to the arguments,  
7 the evidence, the -- I would say the primary position and  
8 the reason for the independent companies involved in that  
9 process and SDTA in objecting to the finding in the  
10 public interest was of concern over the capability and  
11 commitment of that -- of Western Wireless to offer  
12 services throughout the service area within a reasonable  
13 time frame.

14 And the public interest test is one of weighing  
15 benefits, and obviously the negatives. And our argument  
16 at the time was that if you can't show that they are  
17 going to actually extend the service to those parts of  
18 the state that are the highest cost parts of the state  
19 within the rural service area where they are seeking  
20 designation, that you don't have the public benefit. So  
21 you don't have a -- an affirmative -- you don't have  
22 grounds to make an affirmative public interest finding.

23 The conditions and the specific sentences that we are  
24 talking about in the conditions seem to me are --  
25 particularly Condition Number 3, goes to making sure that

1 you as a Commission can insure that they are in fact  
2 building their network out to the most rural parts of the  
3 service area where they are seeking designation. So for  
4 them to characterize it as somehow being insignificant,  
5 we strongly oppose those characterizations and we don't  
6 believe that at all.

7 As a matter of fact, the Commission found in its  
8 order that it was in the public interest. And I think if  
9 -- in looking at the order the way I read the order, the  
10 way we read the order, it certainly appears that the  
11 public interest finding in large part was -- was founded  
12 upon the conditions that you found that they were  
13 committed, but you felt there was some need to insure  
14 that they would actually meet the obligations, so you  
15 went ahead and you imposed the conditions.

16 And I don't know how you can separate the public  
17 interest finding from those specific conditions that you  
18 imposed. You could maybe argue that there is other  
19 conditions that provide information that might be  
20 similar. I guess we would disagree. The information  
21 that you have asked them to provide is specific. We  
22 believe it should be specific. It will give you a much  
23 better idea of what they are doing in those service  
24 areas. We believe the record in this matter and all of  
25 the testimony shows the need for specific and enforceable

1 commitments and requirements.

2 If you will look at the arguments that are in the  
3 petition for reconsideration with respect to why they  
4 feel they need this clarification, or I would  
5 characterize it as a change in conditions, they talk  
6 about not being able to comply. What does that mean; not  
7 being able to comply.

8 I find it hard to believe that, you know, that they  
9 can't somehow comply by manually, you know, having  
10 someone manually look at their capital expenditure  
11 information, look at it, and manually segregate it out to  
12 the service areas. They say they can't do it under their  
13 existing systems and practices. You know, through the  
14 years, there have been a lot of regulatory requirements  
15 that we have had to comply with that we have not been  
16 able to under our existing systems and practices. And  
17 there are a lot of regulatory requirements that impose  
18 burdens. And I think to say that they cannot do it, I  
19 find that hard to believe that they cannot do it with a  
20 little bit of manual effort.

21 And if you will look at the amount of money that we  
22 are talking about in terms of USF funding, I think the  
23 record would show that -- I think the record shows that  
24 just in the area where they were designated prior to the  
25 areas that this case is concerned with, that they had



1 received somewhere around 12 million dollars or were set  
2 to receive somewhere around 12 million dollars annually.  
3 With respect to these additional areas, the amount was  
4 estimated to be somewhere around 6 million at a minimum.  
5 So you are talking right around 20 million dollars  
6 annually.

7 Is there a better reason for them to come forth with  
8 a little bit of effort to manually track where they are  
9 making these expenditures? I think there is plenty of  
10 reason to require them to continue to comply with the  
11 conditions as you have set them forth in your order.

12 I also look at it -- if you look at the grounds for  
13 the petition for rehearing and reconsideration, there are  
14 a number of grounds set forth in the administrative rule,  
15 at least two of those -- there is three grounds, and I  
16 will just read the rule.

17 Application for rehearing or reconsideration based  
18 upon newly discovered evidence, upon facts and  
19 circumstances arising subsequent to the hearing, or upon  
20 consequences resulting from the compliance with the  
21 decision or order. I am assuming that Western Wireless  
22 is looking at the consequences resulting from compliance  
23 as maybe the grounds for their petition for rehearing or  
24 reconsideration, but normally, and most often I think at  
25 least in the Court -- in court proceedings that I am

1 aware of, most often the grounds for reconsideration or  
2 rehearing are newly discovered evidence, new facts or  
3 circumstances.

4 What new facts or circumstances have been presented  
5 indicating to this Commission that it should be less  
6 concerned about Western Wireless's capability and  
7 commitment to provide service throughout those areas  
8 within a reasonable time frame? I don't see that they  
9 have come forth with any facts that would justify this  
10 Commission stepping back from its firm and enforceable  
11 commitments that it put forth in the initial order.

12 With respect to the allocation issues, we also do not  
13 agree that the order requires them to look at particular  
14 switch investment and allocate the expenses associated  
15 with that to the service areas that are covered. Just  
16 looking at the language, I think a reasonable person  
17 might look at it and say all they need to do is indicate  
18 the expenditure amount and where that expenditure is made  
19 in terms of where was the equipment put, where was the  
20 facility deployed. And I think that if you have that  
21 information and you know where it's at, if you know that  
22 there is a cell tower that was deployed in one particular  
23 service area and you know the town that it's near, you  
24 are going to have a pretty good idea as a Commission in  
25 terms of, you know, where does the benefit flow from that

1 tower. I mean I think all of us are somewhat familiar  
2 with propagation after -- after all the hearings that we  
3 have been through.

4 So I think that to say that they somehow have to  
5 allocate this out in order for you to have any meaningful  
6 information, I don't agree with that at all. I think all  
7 they need to do is provide the capital expenditure  
8 amount, indicate where it was spent, the physical  
9 location of the equipment or the facility. It would seem  
10 to me that that is all that order really requires.

11 The public disclosure, first, I guess I get -- would  
12 like to comment just briefly on the unfulfilled service  
13 request. I would think that there is maybe some need to  
14 -- to clarify what an unfulfilled service request is.  
15 But I don't necessarily think that Western Wireless's  
16 proposed language does clarify what that is. I don't  
17 think it's really anymore clear looking at their language  
18 than looking at the language that is already in the  
19 order.

20 I would also say that in terms of being able to track  
21 that information, again, they may not be able to do it  
22 automatically under their existing systems, but they do  
23 indicate in their comments that they -- they have the  
24 customer address. If they have the customer address, how  
25 hard is it to go through your complaint list, look at the

1 customer address and say, oh, yeah, that is in this  
2 service area over here. I think that it's a manual thing  
3 again, and I don't believe that is too burdensome.

4 One last thing I would like to just comment on, and  
5 that is I find it somewhat amusing that Western Wireless  
6 can file reports with USAC that segregate the lines to a  
7 particular rural service area in order to get universal  
8 service funding, but when it comes to spending the money,  
9 they are unwilling to say, okay, this money is going here  
10 in this service area. They have to do that in order to  
11 get the monies. Why can't they do that in order to track  
12 the expenditures.

13 I think both of those are -- are things that they  
14 probably have to do manually as companies. And I -- if  
15 it's a question of burden, looking at the amount of money  
16 that we are talking about, I wouldn't think that it would  
17 be too much of a burden. Thank you.

18 CHAIRPERSON SAHR: Thank you. Miss Rogers.

19 MS. ROGERS: Good afternoon, Commissioners. I am  
20 appearing on behalf of Golden West, Vivian Telephone  
21 Company, Venture, Tri-County and because Jim Cremer was  
22 unable to be here today, I am also appearing on behalf of  
23 James Valley.

24 Rich has made my job pretty easy this afternoon. I  
25 concur with the points that he has made. And I would

1 just like to draw your attention to a couple of other  
2 matters. I would suggest as you, the Commissioners, in  
3 this case consider whether or not to reconsider your  
4 initial order and findings, that you review your current  
5 findings carefully because they were based on the  
6 evidence of the hearing. And I would point out maybe  
7 three things from the current order that you have  
8 entered.

9 First of all, you said that one of the things that  
10 concerned you was whether Western Wireless has complete  
11 coverage in the requested area. And you said if they do  
12 not, it's not grounds for denial. The thing -- you went  
13 on to find, however, the fact that Western Wireless is  
14 not currently able to provide service to everyone in the  
15 area requires the Commission to place conditions to  
16 insure that Western Wireless will meet this requirement  
17 in the near future. You were obviously concerned about  
18 expansion of service into the rural areas.

19 There was very detailed and controverted evidence  
20 submitted at the hearing with regard to coverages. And  
21 you sorted through that evidence. You looked at  
22 propagation maps. You looked at amount of dollars  
23 received in each service area. And what you concluded  
24 was the maps do not point -- pinpoint whether an  
25 individual consumer is able to receive Western Wireless

1 services.

2 Likewise, you said the same thing about receipt of  
3 funds. The problem you said with relying on total  
4 dollars invested in South Dakota, which is exactly what  
5 Western Wireless is asking you to do, the problem with  
6 that, you said, is in determining whether the funds are  
7 improving service in under-served and unserved areas.  
8 Therefore you found as a Commission that you would set  
9 conditions to insure that Western Wireless will use its  
10 ETC funds to provide service to customers in any areas  
11 where Western Wireless does not currently provide service  
12 and where its current signal coverage may not be  
13 sufficient.

14 Those were your concerns as a Commission. Those were  
15 the findings that you made in your order. And I think  
16 they are very legitimate findings. Those are in Findings  
17 Number 27 and 29.

18 And you also found that the conditions that you  
19 imposed are necessary to sustain a public interest  
20 finding, i.e., is this going to benefit the consumers out  
21 there.

22 Now Western Wireless is asking you to modify those  
23 findings. And what they are really asking you to do is  
24 to completely undermine what you required in the findings  
25 that I just pointed out to you. The first thing that you

1 need to perhaps review is what is the legal basis or  
2 authority to change those -- these findings. And I would  
3 suggest to you that they have not given you any legal  
4 basis or authority for doing so.

5 And then the second thing, and as Rich has touched  
6 on, I don't believe that there is an allocation  
7 requirement in your current order. By contrast, the  
8 conditions that you have imposed are both factually and  
9 legally well grounded. You did the public interest  
10 analysis, which you're required to do under law. And you  
11 determined whether the consumers will realize benefits.  
12 And the way they will is by the conditions imposed. You  
13 also looked at whether they could provide service  
14 throughout the service area, and you imposed these  
15 conditions to insure that they do so. You -- you  
16 analyzed that, you tell how you accomplish this is to  
17 require the conditions as stated in your current order.

18 I would suggest to you that Western Wireless has no  
19 legal authority to challenge the conditions that you have  
20 imposed. This Commission is not here to protect Western  
21 Wireless from inconvenience or to protect Western  
22 Wireless's current business practices. This Commission  
23 is here to assure that there will be a benefit to  
24 unserved consumers, and the conditions as you have  
25 imposed them will assure that. That's the reason you did

1 what you did in your order.

2 I would urge you to not -- to deny the motion for  
3 reconsideration. Thank you.

4 CHAIRPERSON SAHR: Thank you. Mr. Smith.

5 MR. SMITH: Thank you. For the benefit of the  
6 Commission, you may already have this. I printed out  
7 some red line versions of the exact changes Western  
8 Wireless is requesting. Would that be useful for the  
9 Commissioners?

10 COMMISSIONER HANSON: If you have it, yes.

11 MR. SMITH: So you can see exactly the changes they  
12 are asking be made. By the way, I'm John Smith, counsel  
13 for Commission Staff.

14 The way -- what led to this is a meeting that  
15 occurred following issuance or about contemporaneously  
16 with issuance of the order which was -- which was  
17 requested by Western Wireless to discuss with Staff  
18 issues of practical compliance with the Commission's  
19 order. And in particular the conditions that -- that  
20 were imposed in the order. One of those issues dealt  
21 with the timing of the filing of reports. And based on  
22 the way the Commission wrote the order, I think everyone  
23 agrees that we can accommodate Western Wireless's  
24 practical realities just fine without an amendment.

25 Because of Western Wireless's belief that certain



1 other conditions cause them practical problems, it was --  
2 there was a discussion that was had, and it was our  
3 thought that the best way to do that would be to bring  
4 the matter before the Commission on a motion to  
5 reconsider so that the Commission itself, and without  
6 being in an ex parte contest, could engage Western  
7 Wireless in a dialogue about the practical issues that  
8 are presented in their mind by these conditions.

9 At least with respect to Condition Number 3, the  
10 objected to portion of this particular condition is  
11 language that the Commission added over and above what  
12 Commission Staff originally recommended. We are -- our  
13 proposed condition did not contain the language that  
14 refers to RLEC -- by RLEC area breakouts. And I think  
15 from Staff's point of view, having discussed this with --  
16 Harlan and I discussed this with Western Wireless at some  
17 length that day, I think we stand by our original  
18 recommendation of language.

19 And I -- I don't say that with any level of  
20 negativity toward the RLECs at all. It's simply that in  
21 our view the important thing here, and what Western  
22 Wireless's obligation is following receipt of ETC  
23 designation, is to build-out throughout the service  
24 territory. And throughout the service territory  
25 following its designation does not refer to throughout

1 the service territory of any other entity, including any  
2 of the RLECs who are parties to this case. It's its  
3 service territory, and that means the whole thing. The  
4 entirety of it.

5 With respect to the issue of physical location of  
6 facilities, is that somehow facilitated by this? I would  
7 submit that it's not. I would submit that that issue is  
8 -- is adequately addressed and better addressed in the  
9 other conditions in the order which are the Condition  
10 Number 3 involving detailing of capital expenditures.

11 And I guess maybe we could have put something in  
12 there that stated including geographic location of those.  
13 I am assuming that such -- that the report would contain  
14 that kind of data. But also if you look at the  
15 following -- if you look at the following condition, that  
16 is Condition Number 4, that clearly contemplates physical  
17 locational data with respect to build-outs. In terms of  
18 knowing where the facilities are being built, money is  
19 being spent, you are going to know that. The issue here  
20 isn't that.

21 The issue is for Western Wireless -- it's not in the  
22 RLEC business -- to then have to somehow artificially  
23 carve up what they are doing in the state to extend  
24 service into somebody else's boundaries that really are  
25 meaningless with respect to -- to the extension of

1 service in the state for a wireless provider. And so I  
2 think we stand by our original recommendation to the  
3 Commission, and I would support Western Wireless's  
4 request for confidential treatment subject to our -- our  
5 confidentiality rules which do provide other parties both  
6 opportunities to gain access to that information and the  
7 request at some point for, if you want to call it that, a  
8 declassification of that information.

9 With respect to the second -- with respect to the  
10 second requested change, to me that gets down to just  
11 whether you feel the information that you are going to  
12 receive from putting Western Wireless through this hoop,  
13 it is worth what you are going to get. And this  
14 language, except for the RLEC language, is in accord with  
15 Staff's recommendation for that condition.

16 I don't know what Western Wireless's reporting  
17 systems are. I mean I can honestly see some very  
18 practical reasons why it would be difficult for a  
19 company, when you are dealing with largely a sales force  
20 that is probably largely under 25 years old out there in  
21 retail locations all over the place, to have sufficient  
22 discipline in just your inquiries that you get in a store  
23 front to obtain meaningful data. Having been in the  
24 Verizon store here in Sioux Falls on many occasions, I  
25 can just tell you, as a practical matter, I think it

1 would be difficult for the salespeople in that store to  
2 be able to, when they are trying to wait on 5,000 people,  
3 to just obtain meaningful data.

4 And maybe in defense of Western Wireless's plea here,  
5 when I think about where we find the data that we end up  
6 finding really to be meaningful in terms of where this  
7 Commission encourages Western Wireless to provide  
8 service, that is really not the avenue from which we  
9 obtain it. When people out there are demanding service  
10 extensions, where do we really get that data from? We  
11 get it from reports made directly by consumers to us.  
12 And we maintain a log of that. Our consumer complaint  
13 staff maintains a log of those contacts. And I think you  
14 guys know this. You know, the squeaky wheel gets the  
15 grease in terms of where things really get done.

16 And actually I really don't have any problem with the  
17 condition as we originally recommended it, but I would  
18 listen to Western Wireless, and I just would encourage  
19 the Commission not to impose things just for the sake of  
20 imposing bureaucratic hurdles. And I hope that is not  
21 what I recommended you do, and then you did, based on  
22 that recommendation in part. So with that, that's  
23 Staff's position. And thank you.

24 CHAIRPERSON SAHR: Thank you. Does -- Mr. Ayotte, do  
25 you want an opportunity to respond?

1 MR. AYOTTE: Thank you, Chairman Sahr. I will be  
2 brief. I realize you have had a long day.

3 The ultimate irony here is that we filed a request  
4 for reconsideration and clarification in effort to enable  
5 Western Wireless to comply with the Commission's  
6 conditions. And we are being opposed in -- in a sincere  
7 effort to seek to comply.

8 At the same time, I think the comments of Mr. Coit  
9 and Ms. Rogers illustrate the need for some  
10 clarification. Miss Rogers said with respect to the  
11 capital expenditure by RLEC service area issue, she  
12 doesn't read the order to -- to see any need to allocate  
13 that. Rich says, well, just report it on the basis of  
14 the physical location of the equipment and the facility.  
15 And I think Mr. Smith probably got it right which is, you  
16 know, what is going to be meaningful and helpful to us.

17 There are numerous conditions in here. We have told  
18 you our -- our systems don't enable us -- we don't track  
19 our expenditures in our accounting systems and processes  
20 with respect to somebody else's service area. Mr. Coit's  
21 suggestion that, gee, we report our lines to USAC with  
22 respect to the RLEC service area, so why can't we report  
23 the expenditures in the same fashion simply demonstrates  
24 a fundamental misunderstanding he has in terms of the  
25 processes and the systems and the accounting practices

1 that go into it.

2 One is a system that geo-codes customers with respect  
3 to the incumbent's service area for purposes of reporting  
4 to USAC. That is the system. It has nothing to with an  
5 accounting system that is designed to run Western  
6 Wireless's business. We simply don't track it with  
7 reference to their areas. And I will bet you the rural  
8 electricians don't track their expenditures with regard  
9 respect to the wireless carriers that operate in their  
10 service territory.

11 The suggestion that there is a lot of universal  
12 service support that Western Wireless will receive and  
13 therefore they can suffer a little bit, and they -- it's  
14 not real burdensome in light of that -- in light of that  
15 amount, and that they suffer some inconvenience in doing  
16 this manually, is probably the worst possible  
17 justification that could be offered in response to these  
18 -- these conditions.

19 We are not taking these conditions lightly. We agree  
20 that these conditions are significant and important, and  
21 we seek to comply. But we seek to comply in a manner  
22 which is reasonable, which will provide helpful  
23 information to the Commission. As Mr. Smith indicated,  
24 with respect to Condition Number 3, Staff doesn't need  
25 capital expenditure information allocated by RLEC service

1 area. And that's the only thing that we are seeking to  
2 modify of that condition.

3 There are other conditions in the order, and the  
4 first sentence of Condition Number 3 which requires us  
5 very generally and broadly to provide information  
6 demonstrating our progress toward build-out, we are  
7 willing to work with that. We are willing to provide the  
8 information to Staff to enable them to track our progress  
9 in building out in these areas.

10 And, finally, with respect to the unfulfilled service  
11 request, again, I have identified how we would like that  
12 clarified. We don't track the potential customers. We  
13 track customers. And the objective there is to  
14 demonstrate to the Commission that we are meeting our  
15 obligation as an ETC which is to provide service to  
16 customers within our designated service areas. In that  
17 vein, the identity of the RLEC is simply irrelevant. And  
18 Mr. Coit never explained why he thought that was an  
19 important piece of information in light of the condition  
20 in the report demonstrating that we are providing service  
21 consistent with the obligation of the ETC.

22 So we appreciate whatever help and clarification the  
23 Commission can provide. We are not seeking to undermine  
24 any of these conditions. We are, rather, here seeking  
25 clarification of the guidance to enable us to better

1 comply. I'm happy to answer any questions you might  
2 have.

3 CHAIRPERSON SAHR: Why don't we go ahead and go to  
4 questions. Miss Wiest, did you want to lead things off.

5 MS. WIEST: One of the questions I had was do you  
6 track capital expenditures by ETC, your entire ETC  
7 service area then?

8 MR. AYOTTE: Capital expenditures are tracked  
9 relative to Western Wireless's market, so in the State of  
10 South Dakota, it would be on a statewide basis.

11 MS. WIEST: Because when -- your proposed language  
12 says such information shall detail the capital  
13 expenditures made by Western Wireless in its designated  
14 areas, which I would assume means the ETC areas. And  
15 then when you go the capital budget, you said just for  
16 the State of South Dakota. So did you really mean the  
17 designated areas there? Didn't you really mean State of  
18 South Dakota there?

19 MR. AYOTTE: Yes. And I'm not sure that there is  
20 much difference between the two.

21 MS. WIEST: Well, you don't serve CRST service area.

22 MR. AYOTTE: You are right. I appreciate that  
23 clarification.

24 MS. WIEST: And foreign exchanges.

25 MR. COIT: Yes.



1 MS. WIEST: You don't serve the entire state as an  
2 ETC?

3 MR. AYOTTE: I believe you are correct, and your  
4 suggestion would be -- would be a good one. As we laid  
5 out in our petition, we track our expenditures on a  
6 statewide basis, and we can report them actual and  
7 projected on a statewide basis.

8 MS. WIEST: And then when you were reading through  
9 this and we were talking about detailing capital  
10 expenditures, was it your intent that when you do that,  
11 that you would be giving us the exact physical locations  
12 of each of these capital expenditures, plus the amount?

13 MR. AYOTTE: It was not my intention to include  
14 within the capital expenditure information the specific  
15 locations of where it was spent, but rather the detail  
16 would be by category, type and amount.

17 MS. WIEST: But that would be similar to what you  
18 file with ETC certification?

19 MR. AYOTTE: Yes.

20 MS. WIEST: So it would be fairly general information  
21 then?

22 MR. AYOTTE: Yes. With respect to that aspect of the  
23 condition. But keep in mind really what we are looking  
24 at is the first sentence of Condition Number 3. Records  
25 and documentation on an annual basis detailing our

1 progress toward meeting the statutory objective. That is  
2 fairly broad. And we think based upon our discussions,  
3 very preliminary discussions, with Staff, as Mr. Smith  
4 alluded to, that that is going to give the Commission and  
5 Staff a much clearer picture of our progress. We can  
6 provide maps that show new cell sites, we can provide  
7 signal propagation maps throughout the State of South  
8 Dakota which then can be compared annually to one another  
9 to show increasing coverage.

10 MS. WIEST: So you, under Condition 3, you would be  
11 -- you would provide maps of cell sites, but you wouldn't  
12 actually provide specific capital expenditure locations?

13 MR. AYOTTE: The location of the capital expenditure,  
14 no.

15 MS. WIEST: No.

16 MR. AYOTTE: That is not what is tracked in terms of  
17 the RLEC service area.

18 MS. WIEST: No, not in -- I'm just saying statewide,  
19 not in terms of RLEC service territory.

20 MR. AYOTTE: On that particular point, Miss Wiest, I  
21 would have to defer to the company to -- to fully  
22 understand with their accounting systems whether that  
23 system also details the specific location of the capital  
24 expenditure.

25 MS. WIEST: I mean because we can put a map over --

1 if you give us your -- your locations of your capital  
2 expenditures, we can put a map of the RLEC service over  
3 that, but what I am merely concerned about is the detail  
4 that you would be providing with your capital  
5 expenditures. And I know Condition 4 goes into some of  
6 that when they talk about, you know -- we talk actually  
7 about cell sites and those kind of things, but that's  
8 what I didn't know if you can get back to me on that, but  
9 we would be interested I think in having that  
10 information. And whether that is -- I mean it's up to  
11 the Commissioners, but whether that would be on a  
12 statewide basis or not.

13 MR. AYOTTE: In our proposed language with respect to  
14 Condition Number 3, the reference to detailing the  
15 capital expenditures would be by type and amount, not  
16 location. Whether the company has the ability to include  
17 location, I would have to check. My only assumption is  
18 not because if we had that ability to do it, then it's  
19 not much of a step to detail the location with respect to  
20 the RLEC service areas. But I don't know.

21 MS. WIEST: Can you follow that up with a letter to  
22 the Commission?

23 MR. AYOTTE: Certainly.

24 MS. WIEST: And then on the confidential portion, I  
25 guess my only comment would be that, you know, under our

1 rules what the parties do, you just file it as  
2 confidential. We don't actually deem it as confidential,  
3 but you file it as confidential. Under our rules we will  
4 treat it as confidential. I guess I don't know that we  
5 need any information in there because once you file it as  
6 confidential, we treat it as confidential. The only way  
7 it would not be treated as confidential, of course, is if  
8 someone challenged the confidentiality. And then that  
9 would lead to an in camera hearing that could be appealed  
10 and everything that would go on from that.

11 So my only question would be whether actually us  
12 telling you in advance that all this information you  
13 file, that we are actually saying that it's confidential  
14 and putting on our stamp, that it isn't really consistent  
15 with our confidentiality rules the way I read them. But  
16 you can look that up.

17 MR. AYOTTE: Miss Wiest, on that point, therein lays  
18 the concern. I mean I don't think it takes a rocket  
19 surgeon to realize that this -- I said it that way on  
20 purpose, all right, see if you guys were awake. I don't  
21 think it takes much of a critical analysis or  
22 determination to realize that build-out plans, capital  
23 expenditure information and the like, locations of towers  
24 and other information that is going to be filed in  
25 demonstrating our build-out of our network is of a

1 confidential and proprietary nature, and therefore we  
2 would ask that the Commission's order in this docket that  
3 requires us to file that information designate it and  
4 treat that as confidential.

5 MS. WIEST: And I'm not arguing, necessarily  
6 disagreeing with you about the confidentiality of that  
7 type of information. I'm just trying to say whether  
8 under our rules, that we can proceed in the manner that  
9 you are asking us to do.

10 And then going to the second change in Number 8, I  
11 can certainly understand your point about every, you  
12 know, potential customer that comes in. I guess my  
13 concern is -- is when you go through those five steps,  
14 you know, part of those steps is that if a customer  
15 receives poor or no service at their house, and I would  
16 limit it to the customer's house, one of those steps is I  
17 assume that the customer could buy the high grade  
18 antenna, correct?

19 MR. AYOTTE: Yes.

20 MS. WIEST: Generally the company is not providing  
21 any of the antennas. And my concern would be for those  
22 customers who don't choose to make any of those  
23 investments, and then they say we can't receive service,  
24 we are not going to put any additional money into those.  
25 So under your proposal, none of -- and they return the

1 service within the 14 days or whatever, but they were a  
2 customer, they signed up for the service, it's just not  
3 working out, they are not putting anymore money into it,  
4 they return it, but under the way it's written here,  
5 those customers wouldn't be counted as a customer you are  
6 unable to serve because they didn't choose to go through  
7 the five steps. Is that the way you see it or not?

8 MR. AYOTTE: Well, I guess I don't see it that way.

9 MS. WIEST: Okay.

10 MR. AYOTTE: As I read Condition Number 8, because  
11 Condition Number 8 in speaking of request to service from  
12 customers, that report itemizes any unfulfilled requests  
13 for service needs to include the steps that we took to  
14 provide the service and the reasons why it went  
15 unfulfilled. And I believe a fair reading of this  
16 condition about the steps that we took is a reference  
17 back to the five-step service extension program that's  
18 summarized in Finding of Fact Number 25.

19 MS. WIEST: And so it would be your understanding  
20 then that the -- in a situation that I just described,  
21 that that customer would be counted in this report?

22 MR. AYOTTE: They would be a customer, and it would  
23 be tracked in terms of the steps taken to provide service  
24 to that customer and why the service went unfulfilled.  
25 In your situation the answer was customer refused an

1 antenna, and therefore it went unfulfilled.

2 MS. WIEST: And would your salespeople, would they be  
3 trained -- isn't there a 14 day -- is that correct, 14  
4 day window to bring back --

5 MR. AYOTTE: Fourteen day under the ETC code, yes.

6 MS. WIEST: If someone just brings it back and says  
7 I'm not getting good service, does the customer -- your  
8 sales representatives, do they just say, okay, we will  
9 take it back, or are they going to automatically escalate  
10 that type of return, that it would make it into this  
11 complaint process? How accurate is this going to be?

12 MR. AYOTTE: A hundred percent accurate. Yeah. I  
13 don't know the answer to your specific question in terms  
14 of how well they are trained. So I don't want to be in a  
15 position of representing anything inaccurate on that.  
16 But the difference there, and that is one of our  
17 concerns, the order talks about potential customers, and  
18 in your situation, that is a customer.

19 MS. WIEST: Yes.

20 MR. AYOTTE: They are a customer, and as long as they  
21 communicate to Western Wireless a signal quality problem,  
22 that will enable Western Wireless to invoke its five-step  
23 program, so forth, that's the information that we are  
24 seeking to capture here. And the concern is it's not the  
25 potential customers. It's not the person that -- whoever

1 chooses to subscribe to the service.

2 MS. WIEST: What it wouldn't capture is the person  
3 who comes in and they talk to your sales person, they say  
4 I really want the service, here is where I live, and the  
5 person says, well, you know, that service probably isn't  
6 going to reach to your house or it won't be good, and the  
7 person just says, well, no thank you then. That is just  
8 a potential customer, and that won't be reached by that  
9 link?

10 MR. AYOTTE: Yeah. It's a rather suspect type in  
11 terms of a service approach, say don't buy it because  
12 it's -- you are not going to get service. I would assume  
13 that what would be presented in that situation is you  
14 have got nothing to lose by trying the service. You have  
15 got a 14 day, you know, terminate without penalty, give  
16 it a try, go out, try, let us know how it works. I mean  
17 we are in the business of attracting customers, not  
18 driving them away. But we are just making up stories  
19 now.

20 MS. WIEST: Thanks.

21 CHAIRPERSON SAHR: Thank you. Any questions from  
22 Commissioners? The -- I think this is something I would  
23 feel most comfortable if I had a chance to check the  
24 transcript, do some comparisons to what is in the order  
25 now, and take a little time to digest this and go through



1 it with our -- our general counsel and advisors. So at  
2 this point in time, I would make a motion that we take  
3 this matter under consideration.

4 COMMISSIONER BURG: I also want to make sure we get  
5 the information relayed and requested, that that  
6 pertinent one to me in your -- I mean I want better  
7 designation of where that money is being spent than just  
8 anyplace in South Dakota. That was one of the pertinent  
9 things. It sounds to me like that can be done. I can't  
10 believe that they don't know where they spent the money  
11 to the individual tower. I would think we should be able  
12 to get that information. But that was -- I think that  
13 was the answer to your question. So I will second that  
14 motion.

15 COMMISSIONER HANSON: Yes, I concur. Thank you.

16 MR. AYOTTE: Chairman Sahr, if I could just ask for  
17 clarification on Miss Wiest's question. Is the question  
18 whether Western Wireless can identify the location of its  
19 capital expenditures or is the question whether they can  
20 identify the location of the capital expenditures with  
21 reference to the RLEC service area?

22 MS. WIEST: The first.

23 MR. AYOTTE: Thank you.

24 COMMISSIONER BURG: You're indicating if we have the  
25 first, we can figure out the second?

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MS. WIEST: Yes.

CHAIRPERSON SAHR: Anything else? If not, we can go  
off the record.


(End of proceedings at 4:50 p.m.)

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STATE OF SOUTH DAKOTA            )  
  :SS                    CERTIFICATE  
COUNTY OF MINNEHAHA            )

I, Kerry Lange, Court Reporter in the above-named County and State, certify that the above-entitled proceedings were reported by me, and the foregoing Pages 1 - 42, inclusive, are a true and correct transcript of my stenotype notes.

Dated at Sioux Falls, South Dakota, this 15<sup>th</sup> day of December, 2004.

  
Kerry Lange