

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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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

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Transcript of Proceedings
December 14, 2004

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
ROBERT SAHR, CHAIRMAN (by telephone)
GARY HANSON, VICE CHAIRMAN
JIM BURG, COMMISSIONER (not present)

COMMISSION STAFF
Rolayne Ailts Wiest
John Smith
Karen Cremer
Sara Harens
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Jim Mehlhaff
Tina Douglas
Pam Bonrud

APPEARANCES

Darla Rogers

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

1 APPEARANCES BY TELEPHONE

- 2 Colleen Sevold
- 3 Suzan Stewart
- 4 Marv Sorenson
- 5 Jean Calligan
- 6 Larry Hettinger
- 7 Bill Heaston
- 8 Jeff Larson
- 9 Corey Kasuski
- 10 Mary Lohnes
- 11 Doug Eidahl
- 12 Mark Ayotte
- 13 Melissa Thompson
- 14 Melanie Acord
- 15 Steve Wegman
- 16 Kae Ann Kelsch

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18 TRANSCRIPT OF PROCEEDINGS, held in the

19 above-entitled matter, at the South Dakota State

20 Capitol, Room 412, 500 East Capitol Avenue, Pierre,

21 South Dakota, on the 14th day of December 2004,

22 commencing at 9:30 a.m.

1 VICE CHAIR HANSON: TC03-191, In the
2 matter of the filing by Western Wireless License,
3 LLC, doing business as Cell One for designation as
4 an eligible telecommunications carrier in other
5 rural areas.

6 And the question before the Commission is
7 shall the Commission grant the petition of WWC
8 License, Cell One, for reconsideration and
9 clarification?

10 MS. AILTS WIEST: I can start if
11 that's all right. This is Rolayne Wiest. Since
12 the last meeting we did have two letters put into
13 the record, one from Western Wireless in response
14 to a question we had at the last meeting and
15 another from staff. So at this point I would just
16 ask if Western Wireless had any additional comments
17 they would like to make on their letter. I'll ask
18 staff if they had any additional comments they
19 would like to make on their letter, and then I will
20 ask any of the other parties if they had any
21 responses to either of the letters and any
22 questions from Commissioners.

23 Mr. Ayotte, do you have anything further you'd
24 like to add or not?

25 MR. AYOTTE: With respect to the

1 Western Wireless letter, no. We hope that it was
2 responsive to your question, and if you had any
3 further questions, we're happy to address them.

4 MS. AILTS WIEST: Okay. Thank you.
5 Staff, did you have anything further you'd like to
6 add with respect to your letter?

7 MR. SMITH: The only comment I would
8 make is a correction. In the letter I included a
9 procedure which would involve a mandatory
10 conference between the parties to resolve any data
11 issues. And I then stated that if that were
12 unsuccessful, that the party would move the
13 Commission for a change in the conditions. I think
14 I'd like that to be amended to read petition the
15 Commission because by then this Docket will be
16 closed and we'll be opening a new proceeding.

17 Thank you.

18 MS. AILTS WIEST: Thank you. I
19 would ask if any of the other parties had any
20 comments on either of these letters.

21 Ms. Rogers.

22 MS. POLLMAN ROGERS: We would just
23 renew our objections to granting the petition for
24 reconsideration. We believe that in fact at a
25 minimum Western Wireless could at least provide the

1 location of any new improvements and if you put it
2 just on a statewide basis, we believe that that
3 totally takes away the ability of the Commission to
4 track whether or not Western Wireless is indeed
5 providing services throughout the service area,
6 which is their obligation if they are to receive
7 ETC designation. And we would rely on the other
8 arguments that we made at the previous meeting of
9 the Commission.

10 MS. AILTS WIEST: Did anyone want to
11 state any position on staff's letter which would
12 add a condition?

13 Mr. Ayotte, did you have a position on that?

14 MR. AYOTTE: Yes. We have no
15 objection to staff's proposed additional condition
16 as further amended by Mr. Smith this morning.
17 We're fine with that.

18 MS. AILTS WIEST: Okay. Thank you.
19 Does anyone have any questions of any of the
20 parties?

21 Commissioners or staff?

22 VICE CHAIR HANSON: Bob, do you have
23 any questions?

24 CHAIRMAN SAHR: No, I don't.

25 VICE CHAIR HANSON: No, I don't.

1 MS. AILTS WIEST: I did have a
2 question about the letter from Western Wireless.
3 And my question is would it make any difference if
4 the Commission would actually put any type of
5 dollar amount on the type of capital expenditures
6 that you were -- that you needed to report to the
7 Commission by location?

8 MR. AYOTTE: This is Mark Ayotte on
9 behalf of Western Wireless. I think it would make
10 a difference. It would probably add a further step
11 and perhaps make it more difficult to add another
12 level of analysis to the information. I think it
13 would be more complete and an easier report if we
14 simply reported all of the capital expenditures,
15 both actual and projected with respect to the
16 state, rather than having to weed out certain
17 capital expenditures that may be below a certain
18 threshold.

19 MS. AILTS WIEST: Okay. Thank you.
20 And I did have a question for staff. Did staff
21 have a position on the confidential language that
22 Western Wireless had proposed? Do you think the
23 Commission can make it confidential prior to
24 receiving it?

25 MR. SMITH: I think that a party has

1 an absolute right under our rulings to make a
2 filing that's confidential. And I don't know that
3 any particular additional condition language need
4 be added. I guess my feeling would be the
5 Commission probably has the power to issue an order
6 relative to that, but I don't really know that it's
7 necessary.

8 MS. AILTS WIEST: Okay. Thank you.
9 Any other questions from Commissioners or --

10 MS. POLLMAN ROGERS: Could I address
11 that?

12 MS. AILTS WIEST: Go ahead.

13 MS. POLLMAN ROGERS: I would just
14 state that I concur with staff, and I concurred
15 with your position as stated at the last hearing.
16 I don't think that the conditions in this order
17 need to be changed. I think that Western Wireless
18 can follow the rules that are currently in place
19 and that would protect their rights to preserve
20 confidentiality under the rules. So I don't think
21 any further clarification in the order is
22 necessary.

23 MR. SMITH: May I make one last
24 observation on that? It follows up I think
25 positively on what Darla is saying is that if we

1 operate strictly in accordance with the system --
2 with the rules that we have, the system setup and
3 the rules; at least we know exactly what the
4 procedure is then for obtaining determinations
5 concerning release of that information.

6 MS. POLLMAN ROGERS: And I think
7 there would maybe be some ambiguity if it was
8 addressed in that order. Do we follow the rules or
9 does the Order in some way take precedence over it?
10 And I think if we just follow the rules in place,
11 it would be a better procedure.

12 MS. AILTS WIEST: Mr. Rislov.

13 MR. RISLOV: Mr. Ayotte, I have a
14 couple of questions I would like to ask. I believe
15 Ms. Wiest mentioned that looking at a minimum
16 dollar level of upgrade as an option or at least
17 pointed out that the Commission could examine a
18 minimum level, and I believe you stated that would
19 add another layer and the company would find that
20 more difficult to report than all capital
21 expenditures by location.

22 Am I correct?

23 MR. AYOTTE: You're correct in your
24 understanding of my response. Let me try to
25 clarify it. The company's systems, accounting

1 systems whereby they track capital expenditures,
2 don't segregate out the capital expenditures by
3 amount. If the Commission wanted it, you know,
4 only certain capital expenditures over a certain
5 threshold, my point simply was Western Wireless is
6 still going to have to aggregate all of the capital
7 expenditure information first as a first step and
8 then weed out capital expenditures that were below
9 whatever threshold the Commission might establish.

10 Simple point being it simply adds another step
11 to the process. But if the Commission only wants
12 certain information, you know, that's fine. My
13 point simply was since Western Wireless has to
14 gather all the capital expenditure information in
15 the first instance, it would be simpler to simply
16 file it all. But if you wanted us to filter it
17 down or filter out certain capital expenditures --

18 MR. RISLOV: I have to be honest.
19 In all my years here with the Commission this is
20 the first time I've ever heard someone claim that
21 reporting over a certain level is somehow more
22 difficult than reporting every financial
23 expenditure. In other words, maybe we don't
24 understand each other.

25 MR. AYOTTE: Maybe --

1 MR. RISLOV: If I could finish. If
2 we looked at a dollar amount, let's say it's 500 or
3 20,000 or 50,000, and say Western Wireless only has
4 to report individual projects that exceed that
5 amount, what you are telling me is that would be
6 more difficult than reporting all capital
7 expenditures?

8 MR. AYOTTE: I can't tell if you're
9 finished.

10 MR. RISLOV: I am finished.

11 MR. AYOTTE: I don't mean to
12 overstate the degree of difficulty. It's much more
13 simple than that. I don't see it as a tremendous
14 burden either way. My simple point was in order to
15 report capital expenditures over a certain
16 threshold initially Western Wireless will have to
17 gather all of the capital expenditure information.
18 Once that's done, it would be simpler to file the
19 complete report rather than filter out certain
20 things. But I suspect it's just a function of, you
21 know, working a spreadsheet to delete certain
22 amounts.

23 It would not be burdensome either way. Does
24 that help? I'm not saying it's a tremendous burden
25 to weed out capital expenditures over a certain

1 amount.

2 MR. RISLOV: I guess I'm still
3 surprised of the answer, but that's fine. I guess
4 the second part of that question would be then by
5 location. And let's not talk about RLEC service
6 areas. Let's just talk about by location where one
7 could, let's say, come to the conclusion that there
8 was significant upgrade in coverage or capacity.

9 And, again, we're applying these numbers to
10 those two circumstances. What would your answer be
11 then?

12 MR. AYOTTE: I'm not sure that I --

13 MR. RISLOV: In other words, you
14 know, as we're going through this, I think it's
15 quite clear the Commission at least in my mind is
16 interested in knowing where the company is
17 extending service or upgrading the service in a
18 particular area where they're already serving. And
19 very honestly the type of information I'm
20 discussing at this point would represent an upgrade
21 to what the company is doing in various locations
22 across the state.

23 And when we talk about significant
24 expenditures it's not replacing a bolt or, you
25 know, something of that nature. It would be an

1 upgrade to a specific area where they already serve
2 or are adding new service capabilities in areas
3 that were previously, let's say, unserved or
4 perhaps underserved. And the type of expenditure
5 data I'm discussing here would apply to those type
6 of projects.

7 And, again, I don't want to complicate this
8 too much. I don't think as I've thought about it
9 it doesn't have to be to the penny. Rounding would
10 be accepted, but at least it would give the
11 Commission some idea or an approximation of where
12 the company is constructing these facilities.

13 And very honestly I guess I'm really not
14 understanding your answer all that well or why that
15 would be difficult. I don't know if my question is
16 clear but I'd try to explain more clearly if I
17 could but could you respond to that?

18 MR. AYOTTE: The company does have
19 the ability as we stated in our letter -- the
20 company does have the ability and does track their
21 capital expenditures with reference to the
22 location, not the location relative to the rural
23 LEC, but they know where their capital expenditures
24 are made. Pulling that information and putting
25 into a usable format for the Commission would be

1 burdensome.

2 MR. RISLOV: If I could interrupt,
3 maybe that's where I'm having a problem. What are
4 you calling a usable format? I saw that was in
5 your letter as well, and I guess I have a question
6 mark for that term. And maybe you're making it
7 more complicated than what I'm discussing?

8 MR. AYOTTE: Well, I'm not trying to
9 make it more complicated.

10 MR. RISLOV: Could you explain what
11 you consider usable format to be, please.

12 MR. AYOTTE: It's a process of
13 pulling the information from Western Wireless's
14 accounting system and putting it in the form of a
15 report. Now there hasn't been such a report filed
16 by Western Wireless, but at least it's contemplated
17 that it would put the information into a form of a
18 report as contemplated by the position number 3
19 that would identify those capital expenditures by
20 amount and by type, what are they.

21 And it would just simply -- our sense is that
22 it would provide a much more extensive report and
23 information to have to delineate the location of
24 the capital expenditures.

25 MR. RISLOV: Thank you.

1 MS. AILTS WIEST: Any additional
2 questions from Commissioners?

3 VICE CHAIR HANSON: If I may, I have
4 two questions. One is of whoever, I'm going to
5 assume it's Harlan, and if I make -- usually when I
6 make an assumption like that I'm inaccurate, but,
7 Harlan, would you be the person who would be
8 required to analyze this information, receive it
9 and analyze it and give it to us?

10 MR. BEST: My assumption is yes.

11 VICE CHAIR HANSON: Well, continuing
12 with your assumption, have you had an opportunity
13 to look at this where you would be comfortable that
14 you would be able to tell the Commission in an
15 analytical form what improvements have been made or
16 at least give us an idea if USF funds are being
17 used in the State of South Dakota?

18 Is this a very good tracking mechanism?

19 MR. BEST: Well, it's an additional
20 element that the Commission does not presently
21 have, absent staff asking the companies
22 specifically where and what they have installed in
23 the prior calendar year, which is what I did do
24 this past certification process. I did ask each
25 company, be it incumbent LEC or competitive LEC or

1 wireless carrier, where they had provided
2 additional facilities.

3 VICE CHAIR HANSON: If I could
4 continue, you say it's an additional tool or
5 additional information. As a Commissioner -- as a
6 Commission we are going to want to be able to get
7 some handle on how the moneys are spent and whether
8 or not they're being spent in South Dakota. Is
9 this going to be valuable, what we see, what we're
10 doing at the very present time, or can we make it
11 in your eyes more valuable?

12 MR. BEST: This would be something
13 they'd have to report up front so I wouldn't have
14 to ask it again or a second time as an additional
15 request. In addition to the investment, though,
16 the funds can be used for expenses too. So they
17 don't necessarily have to install towers or bury
18 facilities or whatever it would happen to be. The
19 moneys can also be used for expenses.

20 VICE CHAIR HANSON: I understand
21 that. I'm just trying to -- and I appreciate very
22 much your explanation. Obviously we don't have
23 20/20 hindsight on this. We're trying to construct
24 something here that's going to be providing us the
25 opportunity to gauge somehow how the moneys are --

1 where the moneys are being spent. And I'm not
2 being the person who's going to be crunching
3 numbers, wondering whether the product that we're
4 seeking at this point is going to be what we're
5 going to receive.

6 Do you have any feeling towards that at all?

7 MR. BEST: Being as this is the
8 first time the Commission has set this specific
9 type of guideline in an order, it may need some
10 tweaking. And if that is -- does occur, staff
11 would come back to the Commissioners and based upon
12 conversation with Western Wireless may request the
13 Commission to modify its requirement slightly.

14 VICE CHAIR HANSON: Do you see any
15 clarification that needs to take place at this
16 time, any ambiguities that you're concerned with?

17 MR. BEST: No.

18 VICE CHAIR HANSON: Thank you very
19 much, Harlan. John, if I could continue, do you
20 have any concerns on this, clarifications that you
21 feel need to be --

22 MR. SMITH: I really don't. I think
23 as I stated in my letter -- and I think this
24 follows up on what Harlan just said. This is
25 really a new thing, and I personally think what's

1 going to have to happen is we're going to have to
2 go through a couple of reporting cycles and see as
3 we go down the road what turns out to be and not to
4 be of value.

5 One thing I think is important to remember is
6 in addition to -- it's sort of like when you're
7 dealing with the legislation a lot of times. You
8 don't always write the whole bill in every section.
9 And I think that's important to remember that here
10 is in addition to condition number 3 in which
11 Western Wireless reports its capital budget we also
12 have condition 4, which requires both a prospective
13 build-out plan to be filed every year and a report
14 on the previous years area progress toward
15 achieving the build-out plan that it filed in that
16 previous year.

17 To me those two conditions were meant to be
18 read together and ought to provide us with a fairly
19 good indication of what the intended roll-out of
20 both new tower facilities and system upgrades is
21 going to be.

22 And one caveat I have with getting -- I think
23 the locational data, frankly -- I know with all
24 deference to Mark I was a business manager for a
25 long time. Every fixed asset system I've ever seen

1 has locational data that can easily be cranked into
2 a Excel sheet and manipulated anyway you want. I
3 think, frankly, they can report that information
4 simply. I think any guy, any spreadsheet manager
5 out there, can do that in an hour.

6 But I think the real one concern that I have
7 with getting too hung up with the wrong kind of
8 locational analysis is that it may lead us down
9 to -- down roads of critiquing Western Wireless's
10 progress that are absolutely not meaningful toward
11 meeting their standard.

12 And a good example of that -- I'll give you
13 one example. It would be the installation at such
14 time as they get to a ascertain capacity of
15 installing say a million dollars worth of switch
16 capacity. That expenditure is probably going to be
17 made in Sioux Falls. But that does not in any way
18 mean that that's not making progress toward
19 fulfilling the statutory objective of performing
20 service throughout the service territory.

21 And that's my concern, I think, and it was one
22 of my concerns with this RLEC boundary business is
23 I just don't know that that particular way of
24 looking at the data is meaningful. And, in fact, I
25 think it can send you down really, really wrong

1 directions in terms of how this thing ought to
2 happen.

3 VICE CHAIR HANSON: Thank you,
4 Rolayne.

5 MS. AILTS WIEST: Any further
6 questions from Commissioners? If not, it would be
7 my recommendation at this time that given -- based
8 on the additional information that the Commission
9 received that the Commission defer this until its
10 December 28 meeting.

11 VICE CHAIR HANSON: Bob, is there a
12 Motion?

13 CHAIRMAN SAHR: Yes, there is. And
14 I do want to have an opportunity to look at this
15 and be able to evaluate it, especially in light of
16 making sure that we're, you know, treating everyone
17 consistently under some of the reporting
18 requirements. So I think it is a good idea to
19 defer this. And I would move that we defer this
20 matter.

21 VICE CHAIR HANSON: To the December
22 28 meeting?

23 MS. AILTS WIEST: Yes.

24 VICE CHAIR HANSON: And I second the
25 Motion.

1 STATE OF SOUTH DAKOTA)

2 :SS

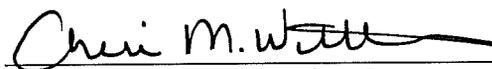
CERTIFICATE

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 14th day of
11 December 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 December 2004.

15
16
17 

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

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