

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

<b>IN THE MATTER OF THE FILING BY WWC )</b>	<b>AMENDED<sup>1</sup> ORDER</b>
<b>LICENSE, LLC D/B/A CELLULARONE FOR )</b>	<b>DESIGNATING WESTERN</b>
<b>DESIGNATION AS AN ELIGIBLE )</b>	<b>WIRELESS AS AN ELIGIBLE</b>
<b>TELECOMMUNICATIONS CARRIER IN OTHER )</b>	<b>TELECOMMUNICATIONS</b>
<b>RURAL AREAS )</b>	<b>CARRIER; FINDINGS OF</b>
<b>)</b>	<b>FACT AND CONCLUSIONS</b>
<b>)</b>	<b>OF LAW; AND NOTICE OF</b>
<b>)</b>	<b>ENTRY OF ORDER</b>
<b>)</b>	<b>TC03-191</b>

On November 5, 2003, the Public Utilities Commission (Commission) received a filing by WWC Holding Co., Inc. d/b/a CellularOne (Western Wireless) petitioning for approval of it as an eligible telecommunications carrier (ETC) in the study areas of the following rural telephone companies: Golden West Telecommunications Cooperative, Inc., James Valley Cooperative Telephone Company, Splitrock Properties, Inc., Venture Communications Cooperative f/k/a Sully Buttes Telephone Cooperative, Inc., Tri-County Telcom, Inc., Vivian Telephone Company, West River Telecommunications Cooperative (Mobridge) - SD, and West River Telecommunications Cooperative - SD.

On November 6, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of November 21, 2003, to interested individuals and entities. On November 21, 2003, Petitions to Intervene were filed by James Valley Cooperative Telephone Company, South Dakota Telecommunications Association, Alliance Communications Cooperative, Inc., Splitrock Properties, Inc., West River Telecommunications Cooperative, Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, Venture Communications Cooperative, and Tri-County Telcom, Inc. Western Wireless objected to the intervention of South Dakota Telecommunications Association. At its regularly scheduled meeting of December 2, 2003, the Commission granted the above Petitions to Intervene. On January 2, 2004, Western Wireless filed a Motion to Amend Petition to substitute as petitioner WWC License, LLC as the correct party. At its regularly scheduled meeting of January 20, 2004, the Commission granted the Motion to Amend Petition. By order dated February 13, 2004, the Commission scheduled the hearing for May 4 through May 6, 2004.

On March 11, 2004, the Commission received a Motion to Withdraw Petition to Intervene of Alliance and Splitrock. At its March 23, 2004, meeting, the Commission considered this motion. No party objected to granting the Motion to Withdraw Petition to Intervene of Alliance and Splitrock. An Order Granting Motion to Withdraw Petition to Intervene of Alliance and Splitrock was issued on March 25, 2004.

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<sup>1</sup> On September 30, 2004, Western Wireless filed a Petition for Reconsideration and Clarification. By order dated January 3, 2005, the Commission granted in part and denied in part Western Wireless' Petition. See *Order Granting in Part and Denying in Part Western Wireless' Petition for Reconsideration and Clarification; Findings of Fact and Conclusions of Law; and Notice of Entry of Order ('Reconsideration Order')*. The Reconsideration Order explains the amendments made to the conditions in this Amended Order. The Reconsideration Order is hereby incorporated by reference into this Amended Order.

On March 22, 2004, the Commission received a Motion to Withdraw Petition of West River Telecommunications Cooperative (West River). At its April 6, 2004, meeting; the Commission considered this motion. No party objected to granting the Motion to Withdraw Petition of West River. An Order Granting Motion to Withdraw Petition of West River was issued on April 19, 2004.

The hearing was held as scheduled, beginning on May 4, 2004. Following the hearing, the parties submitted briefs. At its August 17, 2004, meeting, the Commission considered this matter. The Commission voted unanimously to grant Western Wireless designation as an ETC in the requested areas, subject to conditions.

Having reviewed the evidence of record, the briefs of the parties, and applicable law, the Commission makes the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. On November 5, 2003, the Commission received a filing by Western Wireless petitioning for approval of it as an ETC in the study areas of the following rural telephone companies: Golden West Telecommunications Cooperative, Inc., James Valley Cooperative Telephone Company, Splitrock Properties, Inc., Venture Communications Cooperative f/k/a Sully Buttes Telephone Cooperative, Inc., Tri-County Telcom, Inc., Vivian Telephone Company, West River Telecommunications Cooperative (Mobridge) - SD and West River Telecommunications Cooperative - SD. WWC Exh. 1.
2. The Commission granted intervention to James Valley Cooperative Telephone Company, South Dakota Telecommunications Association, Alliance Communications Cooperative, Inc., Splitrock Properties, Inc., West River Telecommunications Cooperative, Golden West Telecommunications Cooperative, Inc., Vivian Telephone Company, Venture Communications Cooperative, and Tri-County Telcom, Inc. Subsequently, Splitrock, Alliance, and West River filed petitions to withdraw as intervenors. The petitions to withdraw were granted by the Commission.
3. On January 2, 2004, Western Wireless filed a Motion to Amend Petition to substitute as petitioner WWC License, LLC as the correct party. At its regularly scheduled meeting of January 20, 2004, The Commission granted the Motion to Amend Petition.
4. Western Wireless is a common carrier and is authorized to provide CMRS in its licensed cellular market areas in South Dakota. WWC Exh.1 at 2.
5. In order to be designated an ETC, a carrier must offer supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e). The Federal Communications Commission (FCC) has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).
6. Voice grade access is defined as "a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an

incoming call." 47 C. F. R. § 54.101(a)(1). The FCC has defined the minimum bandwidth for voice grade access at 300 to 3,000 Hertz. *Id.* Western Wireless' customers will be able to make and receive calls on the public switched network within this specified bandwidth. WWC Exh. 2 at 9. The Commission finds Western Wireless will provide voice grade access to the public switched network.

7. Local usage is defined as "an amount of minutes of use of exchange service, prescribed by the [FCC], provided free of charge to end users[.]" 47 C. F. R. § 54.101(a)(2). Western Wireless will meet this requirement by including local usage as part of all of its universal service offerings, and "unlimited local usage as part of at least one of its universal service offerings." WWC Exh. 2 at 10. The Commission finds Western Wireless will provide local usage.

8. DTMF is defined as "a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time[.]" 47 C. F. R. § 54.101(a)(3). Western Wireless will provide the functional equivalent to DTMF by using "out-of-band digital signaling and in-band multi-frequency signaling. WWC Exh. at 10. The Commission finds Western Wireless will provide dual tone multi-frequency (DTMF) signaling or its functional equivalent.

9. Single party service provided by wireless carriers is defined as a service which uses "spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission[.]" 47 C. F. R. § 54.101(a)(4). Western Wireless will provide a dedicated path for each customer's calls. WWC Exh. 2 at 10. The Commission finds Western Wireless will provide single party service or its functional equivalent.

10. Access to emergency services is defined as "access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations." 47 C. F. R. § 54.101(a)(5). Access to these services are required "to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911[.]" *Id.* Western Wireless provides its customers with access to 911 and will provide E911 service to its customers once a PSAP submits a compliant request. WWC Exh. 2 at 11. Western Wireless stated that it "will continue to work with PSAPs within its designated service areas to make E911 service available to its customers." *Id.* The Commission finds Western Wireless will provide access to emergency services.

11. Access to operator services is defined as "access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call[.]" 47 C. F. R. § 54.101(a)(6). Western Wireless will meet this requirement by providing its customers with access to operator services via Western Wireless or other entities. WWC Exh. 2 at 11. The Commission finds Western Wireless will provide access to operator services.

12. Access to interexchange service is defined as "the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network[.]" 47 C. F. R. § 54.101(a)(7). Western Wireless stated that it will meet "this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangement the Company has with several interexchange carriers (IXCs). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code." WWC Exh. 2 at 11. The Commission finds Western Wireless will provide access to interexchange service.

13. Access to directory assistance is defined "as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings[.]" 47

C. F. R. § 54.101(a)(8). Western Wireless provides access to directory assistance by dialing "411" or "555-1212." WWC Exh. 2 at 12. The Commission finds Western Wireless will provide access to directory assistance.

14. Each company designated as an ETC must offer either toll blocking or toll control to qualifying Lifeline customers at no charge. 47 C. F. R. § 54.400(a)(b)(c)(d). Toll blocking is defined as "a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel." 47 C. F. R. § 54.400(b). Western Wireless will provide toll blocking. WWC Exh. 2 at 12. Western Wireless currently provides toll blocking for international calls and customer selected toll calls. *Id.* Western Wireless will use this technology to provide toll blocking "to its Lifeline and Link Up customers, at no charge, as part of its universal service offerings once designated as an ETC." *Id.* The Commission finds Western Wireless will provide toll limitation for qualifying low-income consumers.

15. Western Wireless will provide the supported services using its own facilities. WWC Exh. 2 at 12-13. The Commission finds Western Wireless meets this requirement.

16. With respect to the advertising of its universal service offering, Western Wireless states that it "currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising." WWC Exh. 2 at 16. Western Wireless states that it "also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising." *Id.* Western Wireless stated that its current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market" and that it "will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings." *Id.* The Commission finds Western Wireless meets the advertising requirement.

17. In order to designate an additional ETC in an area served by a rural telephone company, the Commission must also find that the designation is in the public interest. 47 U.S.C. § 214(e)(2). In a previous decision the Commission adopted the following public interest test:

The question of whether it is in the public interest to designate an additional ETC in an area served by a rural telephone company necessarily requires a two-part analysis. The first part of the analysis is whether consumers will realize benefits from increased competition. The fact that the area in question involves a rural area leads to the second part of the public interest analysis: whether the rural area is capable of supporting competition. Or, in other words, will the introduction of competition in rural telephone company areas have detrimental effects on the provisioning of universal service by the incumbent carriers. As evidenced by 47 U.S.C. § 254(b)(3), Congress was concerned with the advancement and preservation of universal service in rural areas.

*In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, Findings of Fact and Conclusions of Law, Docket TC98-146 at 3.*

18. The FCC has recently adopted a more stringent public interest analysis than it has used in the past for ETCs seeking designation in a rural telephone company's service area. *In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum and Order, FCC 03-338 (rel. January 22, 2004) (Virginia Cellular).* First the FCC

determined that "the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas." *Id.* at ¶ 4. To determine the public interest, the FCC stated that it "would weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service areas within a reasonable time frame." In addition, the FCC adopted the commitments made by Virginia Cellular as conditions of the FCC's approval of Virginia Cellular's ETC designation. *Id.* at ¶ 46. These commitments included: the submission of records and documentation on an annual basis detailing its progress towards meeting its build-out plans in the requested service area; a commitment to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service; a commitment to provide the number of consumer complaints per 1,000 mobile handsets on an annual basis; and information detailing how many requests for service from potential customers in the designated service areas were unfulfilled for the past year. *Id.*

19. The Commission finds that it will use its prior definition of public interest and will also adopt the FCC's public interest analysis.

20. With respect to competitive benefits, Western Wireless states that a benefit to rural consumers is increased competition which includes increased choices, higher quality service, and lower rates. Western Wireless Exh. 2. at 20. Another benefit cited by Western Wireless is that consumers will receive an expanded local calling area. *Id.* at 20. An expanded local calling area will allow consumers to make more local calls, thus avoiding some toll charges. *Id.* In addition, Western Wireless will offer unlimited local usage as part of one its universal service offerings. *Id.* at 10. Western Wireless states that, once finalized, its universal service offering will be comparable to, if not less than, the local service rates charged by the incumbent LEC. *Id.* at 20-21. Western Wireless' universal service offerings will also have the benefit of mobility. *Id.* at 20. The Commission finds that Western Wireless' service offerings will bring benefits, including increased choices, expanded local calling areas, and mobility.

21. The Commission will next look at the impact of multiple designations on the universal service fund. In *Virginia Cellular*, the FCC found that granting ETC designation for that particular carrier would not dramatically burden the universal service fund. *Virginia Cellular* at ¶ 31. If the carrier had captured each customer in the area, the amount of universal service support would be about 0.105%. *Id.* at fn. 96. In this case, Western Wireless estimated that it would receive approximately 0.002% of the total high-cost support available for all ETCs. WWC Exh. 4 at 22. However, the FCC also noted that "in light of the rapid growth in competitive ETCs, comparing the impact of one competitive ETC on the overall fund may be inconclusive." *Id.* The Commission finds that designation of Western Wireless as an ETC in the requested areas will not dramatically burden the universal service fund. However, the Commission agrees with the FCC that the impact of one competitive ETC is inconclusive, and the Commission will closely review this issue in future ETC cases.

22. With respect to the issue of any unique advantages or disadvantages of the Western Wireless' service offerings, the Commission finds that any unique advantages or disadvantages are already covered in its discussion of the other criterion.

23. Another criteria to consider is whether Western Wireless had made any commitments regarding quality of telephone service. Under the facts of this case, this issue is intertwined with the questions

regarding Western Wireless' ability to provide the supported services throughout the designated service areas within a reasonable time frame. Thus, the Commission will consider these criterion together.

24. One of the major criticisms of Western Wireless concerned its current coverage and its ability to provide acceptable coverage in the requested areas. In its prefiled testimony, Western Wireless stated that it had requested ETC designation only in the "study areas where its *existing and future* network reaches at least 85% of the population in each wire center within the study area." WWC Exh. 2 at 18 (emphasis added). Western Wireless stated that upon ETC designation it would add 17 cell towers this year. TR. at 132. Western Wireless further stated that its 85% coverage is already achieved in some areas but in other areas the 85% coverage will only be achieved after the construction of the 17 cell towers. TR. at 127-28. Western Wireless intends to use the universal service money to provide service into the areas where it currently does not have coverage, whether it be an additional 15%, 10%, or 5% for any area. TR. at 129.

25. Western Wireless states that if a consumer requests service and is unable to receive service Western Wireless will take the following steps:

First, the Company can ensure that the customer's equipment is working properly and that it is the appropriate equipment for the customer's location and usage. Second, enhancements can be made to the customer's premises to enhance receipt of the signal, including the addition of a high-powered antenna or the reconfiguration of the customers' equipment. Third, the new technology is now available that can be added to the customer's equipment to boost the signal. Fourth, the wireless network in the areas of the customer's use can be enhanced by adjusting power levels, signal strength and directional transmission of cell sites and by deploying network signal boosting technology. Finally, it is possible to enhance a customer's signal coverage by network expansion, such as the construction of cell site extenders and cell sites.

WWC Exh. 3 at 7.

26. The question of the extent of Western Wireless' current coverage was disputed. Western Wireless submitted its signal propagation maps as did the Intervenor. WWC Conf. Exh. 7; Int. Exh. 1 at 39-40, Int. Exh 2, Exh GHB-8. The maps showed varying degrees of coverage. *Id.* In addition, the parties disagreed on what was an acceptable signal strength. Int. Exh.2 at 15-16; WWC Exh. 4 at 11-14.

27. The FCC has clearly stated that ETC designation should not be denied because a requesting carrier is not actually providing the service prior to its ETC designation. *Virginia Cellular* at ¶ 17. The South Dakota Supreme Court has agreed with that interpretation. *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 S.D. 32, 623 N.W.2d 474, ¶ 19 (S.D. 2001). Thus, the fact that Western Wireless does not have complete coverage in the requested areas is not a grounds for denial. However, the fact that Western Wireless is not currently able to provide service to everyone in the area requires this Commission to place conditions to ensure that Western Wireless will meet this requirement in the near future.

28. The Intervenor also contend that in prior areas where Western Wireless has been designated as an ETC, Western Wireless has not used its universal service money to significantly improve its cellular coverage in those areas. The Intervenor state that Western Wireless has added only 12 towers since October of 2001 and that most of the towers are located in more densely populated

areas. Int. Exh. 1 at 41-42. The Intervenor's assert that this shows Western Wireless' lack of capability and commitment to provide universal service in the requested areas. In response, Western Wireless points out that the number of towers show only a part of its investment in its ETC areas. Western Wireless points to its other investments and states that its universal service funds for 2003 accounted for only 10% of Western Wireless' total expenditures in South Dakota. TR. at 213-15.

29. The problem with relying solely on any of the maps presented by the Intervenor's or Western Wireless is that although the maps attempt to show the extent of coverage, the maps do not pinpoint whether an individual consumer is able to receive Western Wireless' services. In addition, the problem with relying on total dollars invested in South Dakota is in determining whether the funds are improving service in undeserved or unserved areas. Thus, the Commission finds that, consistent with the *Virginia Cellular* decision, the Commission will set conditions in order to ensure that Western Wireless will use its ETC funds to provide service to customers in any areas where Western Wireless does not currently provide service or where its current signal coverage may not be sufficient.

30. The Commission's final consideration under the public interest analysis is whether the designation of Western Wireless as an ETC will have detrimental effects on the provisioning of universal service by the incumbent carriers. The Intervenor's point to the Joint Board's Recommended Decision in which it recommended the funding of only one primary line to each customer location. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision, FCC 04J-1, at ¶ 56. Currently, support is provided to all lines served by ETCs. The Intervenor's stated that if the primary line recommendation is adopted by the FCC, then when "multiple ETCs are placed in a high-cost area with a fixed amount of support, it becomes increasingly difficult for any of them to effectively serve throughout the entire study area and function as a carrier of last resort. This would carry the prospect of significant harm to consumers in the most rural parts of South Dakota." Int. Exh. 1 at 47. Western Wireless counters that it is far from certain that the FCC will adopt the primary line recommendation and, even if it is adopted, there will most likely be hold harmless provisions put into place to mitigate some of the detrimental impacts that could be experienced by the incumbent rural companies. WWC Exh. 3 at 14.

31. The Commission does not lightly dismiss the possibility that a primary line restriction could have detrimental effects on the Intervenor's. However, the Commission cannot deny ETC status to Western Wireless based on something that may never happen. Moreover, even if the primary line restriction is adopted, the effect on any of the Intervenor's will be highly dependent on the manner in which it is implemented. Thus, the Commission finds that the possibility that the FCC may implement a primary line restriction in the future is not a basis for denying ETC status.

### CONDITIONS

Based on the foregoing findings of fact the Commission finds it is in the public interest to designate Western Wireless as an ETC in the requested areas. The Commission further finds that, based on the evidence of record and the applicable rules and statutes, it is in the public interest to place conditions on Western Wireless' ETC designation. The conditions are as follows:

1. Western Wireless shall comply with the conditions set forth in Findings of Fact 20 through 24 of the Findings of Fact, Conclusions of Law and Order in Docket TC98-146. These commitments include: 1) providing its advertising plan; 2)

providing a list of its local calling areas; 3) advising customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and providing basic information on how to apply; 4) ensuring that its service agreements are consistent with the Commission's service quality rules and state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; and 5) notifying the Commission when it begins to offer its universal service package and in what study areas. Western Wireless may amend its Compliance Filing in Docket TC98-146 to add the newly designated areas and to use the same service agreements and procedures in the requested service areas as previously filed with the Commission. For any requirement that cannot be fulfilled by amending the previous Compliance Filing, Western Wireless may submit the document in this proceeding. Western Wireless will not have to make a separate compliance filing in order to be designated as an ETC in this docket.

2. Consistent with its obligation pursuant to section 214(e)(1), Western Wireless shall continue to build out facilities and extend service to meet the statutory objective of offering service "throughout the service area for which the designation is received. . . ." The Commission notes that Western Wireless has committed to using its universal service funds to bring service to the areas that it does not yet provide coverage. TR. at 129.

3. In conjunction with, but separate from and in addition to its annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, Western Wireless shall submit records and documentation on an annual basis detailing its progress towards meeting the statutory objective of offering service throughout the service area for which the designation is received. At a minimum, such information shall detail the location and cost of material capital expenditures made by Western Wireless within each RLEC's service area the State of South Dakota during the preceding annual period and shall include its proposed capital budget for the State of South Dakota each RLEC's service area for the ensuing year. Western Wireless shall work with Commission Staff to determine what constitutes material.

4. Western Wireless shall annually submit a proposed plan for the upcoming calendar year which sets forth Western Wireless' proposed plan for construction of new facilities and service enhancements to existing facilities. The plan shall be submitted by January 1 of each year. Following the first filing, Western Wireless' subsequent annual filings shall also submit a report stating whether the proposed plan was implemented, any deviations from the previous year's proposed plan, and the reasons for any deviations. Following this annual filing, Western Wireless shall meet with Commission Staff to discuss the proposed plans and any deviations from a previous year's proposed plans.

5. Western Wireless shall construct the 17 additional cell sites during 2004 as it committed to in this proceeding. If it is unable to construct all 17 cell sites during 2004, Western Wireless shall submit a report detailing the reasons why it is unable to do so and shall thereafter submit monthly reports detailing its progress toward meeting this goal. The initial report shall be due by January 1, 2005.



6. Western Wireless shall continue to abide by the terms of the Cellular Telecommunications Industry Associates Consumer Code for Wireless Service as it is amended from time to time.

7. By January 1st of each year, Western Wireless shall provide an annual report detailing the consumer complaints that it has received during the previous one year period. This report shall include the nature and location of the complaints.

8. By January 1st of each year, Western Wireless shall provide a report itemizing the number of unfulfilled requests the Company received to provide service to a current customer's residence during the previous year, requests for service from potential customers within each RLEC's service area that went unfulfilled during the previous year, including the steps Western Wireless took to provide service, and the reasons why such request went unfulfilled. Following the submission of this report, Western Wireless shall meet with Commission Staff to discuss the report.

9. In the event that Commission Staff believes that information beyond what Western Wireless has provided is necessary for Staff and the Commission to perform their responsibilities relating to Western Wireless' meeting its obligations under the law and this Order, Staff shall first make a request for such information to Western Wireless. If Western Wireless objects to such request, Staff and Western Wireless shall first confer in an effort to resolve the issue. If after such conference, Staff and Western Wireless are unable to reach agreement concerning the need for such information or the reasonableness of such request, Staff may petition the Commission for an order modifying the Conditions herein upon a showing of good cause therefor.

If the reports are unable to be compiled by January 1st of each year, Western Wireless shall work with Commission Staff to determine when the reports must be filed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2).

3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.

4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

5. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.

6. Pursuant to findings of fact 17-18, the Commission finds that it will use its prior definition of public interest and will also adopt the FCC's public interest analysis in *Virginia Cellular*.

7. ETC designation cannot be denied because a requesting carrier is not actually providing the service prior to its ETC designation. *Virginia Cellular* at ¶¶ 17. The South Dakota Supreme Court has agreed with that interpretation finding that "a carrier need not be presently offering required services before qualifying as an eligible carrier. Likewise, inability to provide service immediately upon designation is not a basis for denying ETC status. New carriers, like incumbent carriers, are required to serve new customers on reasonable request." *The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 2001 S.D. 32, 623 N.W.2d 474, ¶ 19 (S.D. 2001).

8. Pursuant to findings of facts 6 through 15, the Commission finds that Western Wireless will offer the supported services, using its own facilities, throughout the service areas within a reasonable time frame, subject to the conditions listed above.

9. Pursuant to finding of fact 16, the Commission finds that Western Wireless will advertise the availability and the charges for the supported services in the service areas, subject to the conditions listed above.

10. Pursuant to findings of fact 20 through 31, the Commission finds it is in the public interest to designate Western Wireless as an ETC in the study areas of the above listed rural telephone companies as requested by Western Wireless, subject to the conditions listed above.

It is therefore

ORDERED, that Western Wireless is designated as an ETC in the study areas of the following rural telephone companies: Golden West Telecommunications Cooperative, Inc., James Valley Cooperative Telephone Company, Splitrock Properties, Inc., Venture Communications Cooperative f/k/a Sully Buttes Telephone Cooperative, Inc., Tri-County Telcom, Inc., Vivian Telephone Company, West River Telecommunications Cooperative (Mobridge) - SD, and West River Telecommunications Cooperative - SD; and it is

FURTHER ORDERED, that Western Wireless shall comply with the conditions as listed above.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 3rd day of January, 2005. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 3rd day of January, 2005.

**CERTIFICATE OF SERVICE**

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: *William Kalls*

Date: 1/5/05

(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