TC98-146

KC/RW/WB

TC98-146

DOCKET NO.

In the Matter of

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Public Utilities Commission of the State of South Dakota

DATE		MEMORANDA
8/25	98	Filed and Docketed;
8/26	98	Weekly Filings;
9/3	98	Petition to Intervene by DTG;
9/8	98	Motion for Admission by Resident Practicing Attorney [illegible];
9/10	98	Petition to Intervene by SDITC;
9/11	98	Petition for Leave to Intervene by US West;
10/8	98	Order Granting Intervention;
10/27	98	Order for and Notice of Hearing;
11/25	98	Amended Order for and Notice of Hearing;
11/25	98	Direct Testimony of Christopher R. Johnson;
11/25	98	Direct Testimony of Brian Kirkpatrick;
12/10	98	Direct Testimony of David L. [illegible];
12/10	98	Direct Testimony of Christopher [illegible];
12/17	98	Order for Admission of Non Resident Attorney [illegible];
12/17	98	Amended Certificate of Service;
12/23	98	Transcript of Hearing held on 12/17/98;
1/29	99	Initial Brief of GCC;
1/29	99	GCC's Proposed Order;
2/12	99	Staff's Letter Brief;
3/1	99	US West's Post-Hearing Response Brief;
3/1	99	Reply Brief of SDITC;
3/19	99	Reply Brief of GCC;
5/19	99	Find of Fact and Con of Law; Notice of Entry of Order;
5/19	99	Docket Closed.
5/31	01	Stipulation for Procedure on Remand;
6/7	01	Order Approving Stipulation;
6/11	01	Supplemental Brief of GCC on Remand Regarding the Public Interest;
6/27	01	Supplemental Rebuttal Brief of SDITC;
7/9	01	Reply Brief of GCC on Remand Regarding the Public Interest;
7/19	01	Order Setting Oral Argument;

Film No. 150

(over)

8/28/01	Transcript of Hearing held 7/26/01;
8/30/01	Proposed Order Designating GCC an ETC in Non-Rural [illegible]
10/18/01	Order Designating GCC as an ETC in Non-Rural Telephone Company [illegible]
10/18/01	Find. of Fact and Con. of Law, Notice of Entry of Order;
10/18/01	Docket Closed.
8/29/02	Compliance Filing;
9/5/02	Weekly Filing;
10/11/02	Compliance Filing;
12/2/02	Amended Compliance Filing;
12/3/02	Order Granting Philip Sachenberg's Motion for Admission as a Non-[illegible]
12/3/02	Order Granting Mark Ayotte's Motion for Admission as a Non-[illegible]
12/12/02	Comments of SDTA;
12/27/02	Response to Comments of SDTA;
1/6/03	Order Designating Western Wireless as an ETC for [illegible]
1/6/03	Docket Closed.

SDITC

South Dakota Independent Telephone Coalition, Inc.

Richard D. Coit
Executive Director
320 E. Capitol Ave.
Pierre, SD 57501

May 31, 2001

RECEIVED

MAY 31 2001

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Ms. Deb Elofson, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Ave.
Pierre, SD 57501

RE: Docket TC98-146, In the Matter of the Filing by GCC License Corporation For Designation as an Eligible Telecommunications Carrier

Dear Ms. Elofson:

Enclosed for filing with the Commission is the original and 10 copies of a Stipulation for Procedure on Remand executed by GCC License Corporation, applicant in the above referenced proceeding, and the South Dakota Independent Telephone Coalition ("SDITC").

The Stipulation has been reached by the parties to facilitate a decision by the Commission consistent with the South Dakota Supreme Court's remand of the case for a determination regarding the remaining public interest issue.

SDITC and GCC License Corporation both respectfully request approval of the Stipulation and Commission action in accord with the Stipulation.

Thank you for your assistance in this matter.

A copy of this filing has been forwarded to other parties to the Docket.

Sincerely,

Richard D. Coit, General Counsel

CC: Mark Ayotte, Counsel for GCC License Corp.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED
MAY 11 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF

THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))	DOCKET NO. TC 96-160

STIPULATION FOR PROCEDURE ON REMAND

GCC License Corporation ("GCC") and the South Dakota Independent Telephone Coalition ("SDITC") hereby stipulate and propose to the South Dakota Public Utilities Commission ("Commission") the issuance of an Order adopting the following items on remand of this matter from the South Dakota Supreme Court.

1. On or before June 8, 2001, GCC will serve and file with the Commission a Supplemental Memorandum addressing whether designating GCC as an additional eligible telecommunications carrier ("ETC") in the areas served by certain SDITC companies is in the public interest in accordance with 47 U.S.C. § 214(e)(2) and SDCL § 49-31-78. On or before June 27, 2001, SDITC will serve and file with the Commission a Supplemental Rebuttal Memorandum addressing whether designating GCC as an additional ETC in the areas served by the SDITC companies is in the public interest in accordance with 47 U.S.C. § 214(e)(2) and SDCL § 49-31-78. GCC may file a Reply Memorandum on or before July 6, 2001. Each party's Memorandum will reference the portions of the existing evidence and record in this docket that support its position. Each party may also include a discussion and analysis of any FCC or any state commission decision relevant to the necessary public interest determination or any other

legal authority relevant to the designation of an additional ETC in an area served by a rural telephone company.

2. The Commission will schedule oral argument before the Commission on the public interest issue, which the parties request to occur within thirty (30) days after the date on which GCC's Reply Memorandum is due. After oral argument, the Commission will take the matter under advisement and issue a decision.

3. GCC and SDITC further stipulate and agree that GCC's Application in this docket for seeking designation as an additional ETC in areas served by a rural telephone company shall be amended to include the South Dakota study areas of only the following telephone companies:

(a) Armour Independent Telephone Company
(b) Baltic Telecom Cooperative
(c) Beresford Municipal Telephone Company
(d) Bridgewater-Canistota Independent Telephone
(e) Brookings Municipal Telephone/Swiftel Communications
(f) Dakota Cooperative Telecommunications, Inc.
(g) East Plains Telecom, Inc.
(h) Fort Randall Telephone Company
(i) Interstate Telecommunications Cooperative, Inc.
(j) Jefferson Telephone Company
(k) Kadoka Telephone Company
(l) Kennebec Telephone Company
(m) McCook Cooperative Telephone Company
(n) Midstate Communications, Inc.
(o) Mount Rushmore Telephone Company
(p) RC Communications, Inc.
(q) Roberts County Telephone Cooperative Assn.
(r) Sanborn Telephone Cooperative
(s) Sancom, Inc.
(t) Sioux Valley Telephone Company
(u) Splitrock Telecom Cooperative, Inc.
(v) Stockholm-Strandburg Telephone Co.
(w) Union Telephone Company
(x) Valley Telecommunications Cooperative
(y) Western Telephone Company
(z) West River Cooperative Telephone Company

In stipulating to the amendment of GCC's Application for ETC designation, SDITC does not stipulate to any finding on the public interest issue yet to be determined in this docket. Nothing in this Stipulation shall affect GCC's request for ETC designation in the South Dakota exchanges of Qwest Communications (f/k/a US WEST Communications, Inc.).

4. By the signatures of their counsel below, GCC and SDITC respectfully request the Commission adopt this stipulated procedure on remand and issue an Order amending the Application as set forth in paragraph 3 above.

GCC LICENSE CORPORATION

By _____
Mark J. Ayotte
Phillip R. Schenkenberg
W-2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101

Attorneys for GCC License Corporation

Dated: May 31, 2001

SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION

By _____
Richard D. Coit
Executive Director
P.O. Box 57
Pierre, SD 57501

Attorneys for SDITC

Dated: May 31st, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	))))	ORDER APPROVING STIPULATION TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

GCC appealed the Commission's decision to circuit court. The circuit court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the circuit court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the circuit court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

> On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest.
>
> On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue, and
>
> On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission considered this matter. The Commission voted to approve the Stipulation for Procedure on Remand. It is therefore

ORDERED, that the Stipulation for Procedure on Remand is approved.

Dated at Pierre, South Dakota, this 7th day of June, 2001.

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: Delaine Kolbo

Date: 6/7/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

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Telephone 605 336-2424
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June 6, 2001

Debra Elofson, Executive Director
South Dakota Public Utilities Commission
500 Capitol
Pierre, SD 57501

Re: In the Matter of the GCC License Corporation Petition for Designation as an Eligible Telecommunications Carrier (TC 98-146) (Supreme Court Nos. 21510, 21521 & 21523)
Our File No. 2104.011

Dear Ms. Elofson:

Qwest Corporation has authorized me to inform you that Qwest withdraws from any future participation in this docket. You are authorized to discontinue any further notices regarding this matter to Qwest or myself.

Sincerely yours,

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

Thomas J. Welk

TJW/vjj
cc: Rolayne Wiest
Paul Swedlund
Gene DeJordy
Richard Coit
Mark J. Ayotte
Philip R. Schenkenberg
Colleen Sevold
Larry Toll

RECEIVED
JUN 08 2001
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

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June 8, 2001

Debra Elofson
South Dakota Public Utilities Commission
500 Capitol
Pierre, South Dakota 57501

RE: *The Filing by GCC License Corporation for designation as an Eligible Telecommunications Carrier (TC 98-146)(Supreme Court Nos. 21510, 21521, & 21525)*
Our File No: 000362

Dear Ms. Elofson:

Please find enclosed the original and ten copies of the Supplemental Brief of GCC License Corporation on Remand Regarding the Public Interest, for filing with your office in the above-referenced case. By copy of this letter I am serving the same on all parties of record.

Sincerely,

Paul S. Swedlund

PSS:hrr
Enclosures
cc: Rolayne Wiest
Richard Coit
Mark Ayotte
Alex Duarte

RECEIVED
JUN 11 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF

THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER) DOCKET NO. TC ~~96-160~~ 98-146

SUPPLEMENTAL BRIEF OF GCC LICENSE CORPORATION ON REMAND REGARDING THE PUBLIC INTEREST

I. INTRODUCTION

GCC License Corporation, a wholly owned subsidiary of Western Wireless Corporation ("Western Wireless") hereby submits its Supplemental Brief in support of its request to be designated as an eligible telecommunications carrier ("ETC") for purposes of obtaining federal universal support in the study areas of the rural telephone companies listed on Attachment A hereto ("SDITC Companies"). All that remains before the South Dakota Public Utilities Commission ("Commission") is to determine whether designating Western Wireless as an additional ETC in each area served by affected SDITC Companies is in the public interest as contemplated by 47 U.S.C. § 214(e)(2). For the reasons set forth below, the Commission should conclude it is in the public interest and proceed to designate Western Wireless as an additional ETC in each study area.

When this matter was initially briefed to the Commission no carrier in the country had been designated as an additional ETC in an area served by a rural telephone company. Now, multiple states have acted to designate competitive ETCs in rural telephone company areas consistent with the public interest. In addition, the Federal Communications Commission ("FCC") recently acted to designate Western Wireless as an ETC in rural telephone company areas in Wyoming, and has given direction to state

commissions as to what Congress meant when it established the public interest factor in Section 214(e)(2).

When the record evidence is considered in light of the purpose of Section 214(e) and decisions of other state commissions and the FCC, it is abundantly clear that the public interest standard is met in this case. Western Wireless thus asks the Commission to make a finding that designating Western Wireless as an additional ETC in each rural telephone company area is in the public interest, and proceed to bring competitive universal service to rural consumers in South Dakota.

II. STATEMENT OF FACTS

Western Wireless does business in South Dakota as "Cellular One," and is authorized and licensed by the FCC as a commercial mobile radio service ("CMRS") provider throughout South Dakota. Circuit Ct. Order, p. 6.[1] Western Wireless provides wireless telecommunications service in South Dakota, including mobile telephony, data/facsimile, 911, voice mail and several other functions and services. (GCC Ex. 4, p. 21.) The SDITC Companies are incumbent local exchange carriers and each one is the only designated ETC in its respective service area. (Tr. 144.) Thus, Western Wireless' designation as an additional ETC will for the first time provide consumers in SDITC Companies' service areas with a choice of universal service providers.

As has already been determined, Western Wireless meets the basic ETC eligibility criteria set forth in Section 214(e)(1) of the Act – it is a common carrier, it provides the

[1] All prefiled testimony and exhibits will be referred to as "Party's Ex. ___, p. ___," and all transcript references will be designated by page number as "Tr. ____." Reference to the Hughes County Circuit Court Findings of Fact, Conclusions of Law and Order dated March 22, 2000 is denoted as "Circuit Ct. Order, p. __." Reference to the South Dakota Supreme Court's Order dated March 14, 2001 is denoted as "Supreme Ct. Order, ¶ __."

services supported by federal universal service mechanisms over its existing network, and it has the intent and ability to advertise and provide universal service throughout its requested service areas once designated an ETC. Circuit Ct. Order, p. 6. For this reason, Western Wireless qualifies to be an ETC in areas served by a non-rural telephone company. See Circuit Ct. Order, pp. 10-11; Supreme Ct. Order, ¶ 27. As a result, the numerous SDITC challenges previously made to Western Wireless' Application have been foreclosed, and the sole issue before the Commission is whether the public interest is served by designating Western Wireless as an additional ETC in rural telephone company service areas.

To demonstrate the public interest is served by designating Western Wireless as an additional ETC, Western Wireless testified that its universal service offerings would bring tangible consumer benefits to consumers in the rural telephone company areas. For example, Western Wireless committed to providing a high level of customer service and promised responsiveness to customer demands. (GCC Ex. 4, p. 13; Tr. 43, 95.) Western Wireless described how its provision of wireless local loop service will allow customers a level of mobility currently unavailable in a landline universal service offering. (Tr. 25-26; 58-59.) Western Wireless also demonstrated that it would provide consumers with an expanded local calling area, larger than the incumbent LECs', which would allow consumers to avoid toll charges that would otherwise accrue on landline service. (Tr. 131-32.)

In response to Western Wireless' evidence, the SDITC Companies simply claimed that Western Wireless did not meet the basic ETC criteria, and that the possibility of adverse impacts on rural telephone companies was not in the public interest. (SDITC Ex.

6, pp. 10-11.) SDITC did not offer any evidence specific to any SDITC Company study area tending to show the company's ability to respond to competition by Western Wireless either by reducing costs or exploring new revenue streams. SDITC thus made no showing that consumers would be harmed in any way if Western Wireless were designated an ETC as requested.

Ultimately, Western Wireless based its public interest argument on the general benefits of competition recognized in the Federal Telecommunications Act, the specific benefits of Western Wireless' proposed service as an ETC, and the lack of record evidence to suggest any harms would come with Western Wireless' designation. (WW Post-Hearing Brief, pp. 25-34.) The Commission's review of this evidence in light of the public interest analysis of other state commissions and the FCC should result in a determination that the public interest standard has been satisfied in this case.

IV. ARGUMENT

A. THE PUBLIC INTEREST FACTOR IS A TOOL TO BRING THE BENEFITS OF COMPETITION TO CONSUMERS IN RURAL TELEPHONE COMPANY AREAS

1. Western Wireless' Proposed Public Interest Standard

The issue before the Commission is whether the designation of Western Wireless as an additional ETC in each SDITC Company study area is in the "public interest." 47 U.S.C. § 214(e)(2). As Western Wireless explained in its Post-Hearing Brief, the public interest standard is one of reasonableness that looks to whether competition will be promoted and if so, whether consumers will ultimately realize benefits related to the competition and the new services provided. Western Wireless proposed that the Commission look to the well-established benefits of competition, and at the specific

benefits of Western Wireless' new service offerings utilizing wireless technology. (WW Post-Hearing Brief, pp. 29-32.) Western Wireless also proposed to consider any adverse impacts demonstrated by opposing rural LECs, but argued that the burden of showing any such adverse impacts in any particular service area should be placed on the affected rural LEC. (Id. at 33.)

Western Wireless' proposed public interest analysis is consistent with the South Dakota Supreme Court's ruling that Section 214(e) must be applied consistent with the main purpose and goal of the Act – promoting competition. As the Supreme Court held:

> ETCs are creations of the 1996 Act. Before this legislation, regulation of the telephone industry was "premised on the belief that only monopolies could provide reliable, universal service." The 1996 Act represents a substantial change in telecommunications regulation. It seeks to encourage multiple providers and competition.
>
> Congressional desire to bring competition to this long-time monopolistic industry is explicit in the preamble to the 1996 Act: "An act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." *See* PubLaw 104-104, 110 Stat 56 (1996).

Supreme Ct. Order, ¶¶ 13-14 (citations omitted). The Supreme Court went on to explain that promoting competition is "the thrust of the 1996 Act." Id. ¶ 14. Although the Supreme Court did not have the "public interest" question before it, the Court's clear direction to the Commission is to interpret and apply the public interest standard Section 214(e) in a way that promotes competition among ETCs.

2. The FCC's Public Interest Analysis is Consistent with that Proposed by Western Wireless

In December of 2000, the FCC for the first time conducted a "public interest" analysis and designated an additional ETC in areas served by rural telephone companies.

In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier In the State of Wyoming, CC Docket No. 96-45, Memorandum Opinion and Order (rel. Dec. 26, 2000) ("Wyoming Order"). This decision represents the FCC's binding interpretation of federal law, and makes clear that the public interest analysis and evidence offered by Western Wireless is correct and should be applied.

In 1998, Western Wireless filed a request for ETC designation in the state of Wyoming. The Wyoming Commission dismissed the petition on jurisdictional grounds, so Western Wireless refiled the petition with the FCC under 47 U.S.C. § 214(e)(6).[2] Id. ¶¶ 4-5. On December 26, 2000, the FCC issued its Wyoming Order designating Western Wireless as an ETC in both non-rural and rural telephone company areas.

The FCC's public interest analysis is quite similar to the factors proposed and evidence offered by Western Wireless in this proceeding. In the Wyoming Order, the FCC recognized that competition was presumed to benefit consumers, and put the burden on rural telephone companies who would oppose the ETC designation to identify specific harms based on empirical support rather than rely on speculation. The FCC stated:

> 16. Public Interest Analysis. We conclude that it is in the public interest to designate Western Wireless as an ETC in Wyoming in those designated service areas that are served by rural telephone companies. Western Wireless has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition. We find that there is no empirical evidence on the record to support the contention that the designation of Western Wireless as an ETC in those designated service areas served by rural telephone companies in Wyoming will harm consumers. In fact, we conclude that these

[2] Section 214(e)(6) sets forth standards for designation by the FCC that are identical to the standards for state commissions under Section 214(e)(1)-(2).

consumers will benefit from the provision of competitive service and new technologies in high-cost and rural areas.

17. We note that an important goal of the Act is to open local telecommunications markets to competition. Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies. We agree with Western Wireless that competition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers. In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Wyoming by creating incentives to ensure that quality services are available at "just, reasonable, and affordable rates."

18. Although we recognize the substantial benefits of competition to consumers, we conclude that additional factors may be taken into consideration in the public interest examination required by section 214(e)(6) prior to the designation of an additional ETC in an area served by a rural telephone company, such as whether consumers will be harmed. In so doing, we recognize that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges.

. . .

20. Nor are we convinced that the incumbent rural telephone carriers will relinquish their ETC designation or withdraw service altogether in the event that Western Wireless is designated as an ETC in Wyoming. None of the incumbent rural telephone companies at issue in this proceeding has indicated any intention to do so. In the absence of any empirical information to support this assertion, we decline to conclude that this constitutes a serious risk to consumers . . . .

. . .

22. We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating

> efficiencies, lower prices, and offer better service to its customers. While we recognize that some rural areas may in fact be incapable of sustaining more than one ETC, no evidence to demonstrate this has been provided relating to the requested service areas. We believe such evidence would need to be before us before we could conclude that it is not in the public interest to designate Western Wireless as an ETC for those areas served by rural telephone companies.

Wyoming Order, ¶¶ 16-22 (footnotes omitted) (emphasis added). The FCC's presumption in favor of competition, recognition of the benefits of Western Wireless' service as an additional ETC, and requirement that rural telephone companies bear the burden of demonstrating harm to consumers resulting from the designation, are consistent with Western Wireless' analysis, and require a finding that designation meets the public interest requirement based on the evidence in this proceeding.

B. THE RECORD EVIDENCE DEMONSTRATES THE PUBLIC INTEREST STANDARD IS MET

The Commission's public interest analysis must recognize the benefits of competition to consumers in the SDITC Company areas and the specific benefits of Western Wireless' provision of universal service, and weigh any showing made by the SDITC Companies that any particular service area cannot sustain competition, or that consumers will be harmed. By applying this analysis to the record evidence, the Commission will find the public interest standard is met.

1. Designating Western Wireless Promotes Competition Consistent With the Public Interest

Western Wireless' designation will undoubtedly advance the public interest because it will for the first time bring universal service competition to consumers located in large, rural areas of South Dakota. Because each SDITC Company is the only ETC in its respective study area (Tr. 151), Western Wireless' designation as an ETC will, for the

first time, allow rural consumers a choice of providers for their universal telecommunications services. As described by the South Dakota Supreme Court, promoting competition is the "thrust of the 1996 Act." Even SDITC witness Hickman agrees the public interest determination should focus on the consumer, and the Commission should both benefit and protect rural consumers. (Tr. 182.) Given that landline-based universal service competition seems only a distant hope, the Commission should embrace this chance to bring competition to these consumers in rural areas.

Competition is not, however, valued for its own sake, but is instead valued because economists recognize it increases customer satisfaction, and leads to better services and lower costs. For example, the FCC found that competition to rural LECs can be expected to bring new technologies, better services, greater efficiencies, and provide incentives for incumbents to work harder to meet customer needs. Wyoming Order, ¶¶ 17-22. Rural consumers will have new service offerings available, and would still be able to take service from the incumbent if desired. (Tr. 132.)

Designating Western Wireless as an additional ETC will bring universal service competition to areas currently served only by incumbents, thereby furthering this critical goal of competition, and advancing the public interest.

2. Western Wireless will Bring Specific Benefits to Consumers that Advance the Public Interest

In addition to promoting the broad goal of competition, Western Wireless' designation as an ETC will provide benefits to rural consumers that further demonstrate the public interest standard is met. The record evidence demonstrates that once designated an ETC, Western Wireless will offer the universal services to rural consumers, as well as services not currently provided by the landline LECs. For example, certain

first time, allow rural consumers a choice of providers for their universal telecommunications services. As described by the South Dakota Supreme Court, promoting competition is the "thrust of the 1996 Act." Even SDITC witness Hickman agrees the public interest determination should focus on the consumer, and the Commission should both benefit and protect rural consumers. (Tr. 182.) Given that landline-based universal service competition seems only a distant hope, the Commission should embrace this chance to bring competition to these consumers in rural areas.

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In addition to promoting the broad goal of competition, Western Wireless' designation as an ETC will provide benefits to rural consumers that further demonstrate the public interest standard is met. The record evidence demonstrates that once designated an ETC, Western Wireless will offer the universal services to rural consumers, as well as services not currently provided by the landline LECs. For example, current

universal service offerings by incumbent LECs have limited local calling areas and are bound by the limitations of landline technology. Western Wireless will offer an expanded local calling area, which will be of great benefit to rural consumers who currently have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. (GCC Ex. 4, p. 13; Tr. 131-32.) Western Wireless presented evidence that consumers want a larger local calling area, and that it would meet that consumer need. (Tr. 58.) Western Wireless witness testified:

> . . . that's one of the biggest concerns these consumers have that live in rural, remote areas is that their ability to call may be long distance but doesn't allow them to call a lot of different people because there's not that many people that live in these rural areas. By having expanded local calling area they're able to extend their ability to call people with and have it a local call.

(Tr. 131-32.)

Western Wireless' service also provides the benefits of mobility, which will have great appeal to many rural consumers. (Tr. 58-59.) The evidence reflects that a residence-based service that has mobile capabilities will be a valued part of Western Wireless' service offering. (Tr. 58-59.)

Ultimately, Western Wireless will provide service offerings which will be tailored to consumers' needs (GCC Ex. 4, p. 13), and must provide service that is equal or better than the incumbent LEC at a price competitive with the incumbent's or else it will not obtain customers. (Tr. 43, 95.) Unless Western Wireless provides comparable service at a comparable price, customers simply will not subscribe. (Tr. 90, 95.) Western Wireless also committed to serving the communications needs of South Dakotans by expanding coverage, adding capacity and improving service quality. (Tr. 88, 129-30.)

Western Wireless also demonstrated its ETC designation will bring universal service to some consumers who currently do not have phone service. Western Wireless can serve throughout its requested ETC service areas (Circuit Ct. Order, p. 6), and committed to providing service wherever the customer demand exists. (Tr. 88.) For example, Western Wireless is providing a "universal service" to consumers in Reese River and Antelope Valley, Nevada, which were previously unserved areas too expensive to be served by the landline LEC. (Tr. 66-67.) Given Western Wireless' extensive network, and the fact that a wireless network can be extended more quickly than a landline network (Tr. 100-01), the Commission should find that designating Western Wireless as an additional ETC in the SDITC Company areas will bring universal service to more South Dakota consumers.

These specific benefits of Western Wireless service – larger local calling areas, mobility, increased subscribership – will clearly benefit rural consumers. Accordingly, the Commission should find those specific benefits advance the public interest in accordance with Section 214(e)(2) of the Act.

3. No SDITC Company Has Demonstrated Any Significant Adverse Impacts Resulting From the ETC Designation

The SDITC Companies oppose the Application by complaining of potential lost revenues attributable to the presence of an additional ETC, and claiming that until those potential losses can be calculated with great specificity, Western Wireless' designation cannot be in the public interest. (SDITC Ex. 6, p. 11.) This general claim should be rejected by the Commission. As the FCC specifically found, there is "no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise

rates, or reduce service quality to consumers in rural areas." Wyoming Order, ¶ 22. Such a finding could be based only on "record evidence" that showed designation would "harm consumers," or that a particular rural company study area was "incapable of sustaining more than one ETC." Wyoming Order, ¶¶ 16, 22.

As the SDITC Companies must admit, the record evidence fails to support any finding of any adverse impact as contemplated by the FCC. The SDITC Companies have failed to demonstrate, and did not introduce any evidence showing any adverse impact resulting from Western Wireless' ETC designation. Rather than offer evidence of adverse impact for any particular SDITC Company study area, the SDITC witness Mr. Hickman simply speculated that such adverse impact might occur and recommended denial of the Application on that basis. (SDITC Ex. 6, p. 11.) This evidence is woefully insufficient to support an adverse public interest determination under the FCC's analysis.

Consistent with the FCC's determination, the burden of proof must be on the SDITC Companies to prove significant adverse financial impacts resulting from the designation of Western Wireless as an ETC. This is appropriate since each rural telephone company has control over critical financial information relating to their respective sources of revenues, expenses and retained earnings necessary to enable any such determination. The SDITC Companies are the only ones knowledgeable of their respective financial condition and ability to withstand some degree of competition. In fact, SDITC witness Hickman is an experienced accountant in the telephone industry, who represents many of the SDITC member companies. (SDITC Ex. 6, pp. 2-3; Tr. 142-43.) The Commission cannot assume significant adverse impacts on a rural LEC absent an affirmative showing of the current financial condition of each company and an

assessment of each company's ability to generate new revenue or decrease expenses to replace any lost federal subsidy. More importantly, only the SDITC Companies can demonstrate such a claim.

The FCC has now confirmed that the SDITC Companies bear the burden of proof on this issue. The SDITC Companies wholly failed to meet that burden in this case. No record evidence exists to support a finding of any adverse impact for any SDITC Company that would overcome the proven benefits of Western Wireless' designation as described above. The Commission should thus proceed to find the public interest standard is met and to designate Western Wireless as an additional ETC in areas served by the SDITC Companies.

C. OTHER STATE COMMISSIONS HAVE DESIGNATED WESTERN WIRELESS AS AN ETC CONSISTENT WITH THE PUBLIC INTEREST

When this case was heard, Western Wireless was asking the Commission to do something unprecedented – designate a wireless carrier as an additional ETC in rural telephone company areas. Since then, numerous states have found Western Wireless does meet the public interest standard under Section 214(e)(2), and have designated Western Wireless as an additional ETC in such areas. The Commission should and can take guidance from those decisions, which support Western Wireless' public interest analysis on similar record evidence.

1. Minnesota

The Minnesota Commission found the public interest was served by designating Western Wireless as an additional ETC in rural and non-rural areas based on an analysis similar to that later adopted in the FCC's Wyoming Order. The Minnesota Commission was guided by the goals of underlying federal and state policies favoring competition,

such as customer choice, innovative services and new technologies. In re Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier, Order Granting Preliminary Approval and Requiring Further Findings, Minn. PUC Docket No. P-5695/M-98-1285, p. 16 (Oct. 27, 1999). The Minnesota Commission also recognized specific benefits to be provided by Western Wireless as an ETC in Minnesota, such as affordability, reliability and service quality. Id.

As to adverse impact, the Minnesota Commission expressly rejected the rural LECs' generalized claims of economic harm stating:

> [A]rguments from general economic theory cut both ways. It is not self-evident that telephone companies serving rural areas cannot survive competition from wireless providers. For example, although competition *could* produce a disincentive to invest in infrastructure (for fear of being unable to recoup the investment), it could also spark investment in infrastructure (to provide superior service to beat the competition). Similarly, competition could perform its widely recognized function of motivating the incumbents to find and implement new operating efficiencies, lowering prices and offering better service in the process.

Id. at 17. The Minnesota Commission instead placed the burden of proof on the rural telephone companies to demonstrate specific harms based on the record evidence. Id. at 17. Ultimately the Commission found the rural telephone companies "presented no facts" to support such claims. Id. at 17. Based on the record evidence, the Minnesota Commission proceeded to designate Western Wireless as an ETC in rural telephone company areas consistent with the public interest under Section 214(e)(2).

2. Texas

The Texas Public Utility Commission designated Western Wireless as an additional ETC consistent with Section 214(e)(2) by Order dated October 30, 2000. Application of WWC Texas RSA Limited Partnership, Public Utility Commission of

Texas, Order, Texas PUC Docket Nos. 22289 and 22295 (Oct. 30, 2000). The Texas Commission's analysis is also consistent with Western Wireless' proposed public interest analysis in this case. The Texas Commission recognized a clear public policy in favor of competitive telecommunications choices for citizens in all areas. Id. at 19. The Texas Commission found that giving rural consumers a choice of providers (which might not happen in the absence of designating Western Wireless an ETC) could be expected to give consumers new service choices, and pricing driven by the market rather than the monopolistic needs of a single provider. Id. at 19-20. As to claims of adverse impact, the Commission found that the evidence presented did not prove "that any affected area is unable to support more than one ETC." Id. at 20. The Commission proceeded to find the public interest met and to designate Western Wireless as an ETC.

3. Nebraska

The Nebraska Public Service Commission has designated Western Wireless as an additional ETC in areas served by rural telephone companies in that state. The Nebraska Commission issued its Order on November 21, 2000, and denied reconsideration by Order dated February 21, 2001. The Nebraska Commission's approach to the public interest question recognized that Section 214(e)(2) should be used as a mechanism to insure competition develops in rural telephone company study areas. In the Matter of the Application of GCC License Corporation, Order Granting ETC Status and Issuing Findings, Nebraska PSC Application No. C-1889, ¶ 15. In addition to the general benefits of competition, the Nebraska Commission found that Western Wireless demonstrated it would provide increased choices, an expanded calling area and the benefits of mobility, which are "every bit as valuable, if not more so, to the rural

customers as to the urban customer." Id. ¶ 17. The Commission further evaluated the record evidence and found no demonstrated adverse impact that would result from designation. Id. ¶¶ 18-21. With regard to other purported "public interest" criteria proposed by the rural LECs, the Nebraska Commission rejected such criteria out of a concern that it would stifle competition in rural areas. Id. ¶ 20.

4. Kansas

Although the Kansas Commission still has Western Wireless' ETC application under advisement as to most rural telephone company areas, it has designated Western Wireless as an ETC in the rural Sprint Telephone Company areas and established a presumption in favor of competition in smaller rural telephone company areas. In the Matter of GCC License Corporation, KCC Docket No. 99-GCCZ-156-ETC, Order No. 10 (May 19, 2000) and Order No. 11 (June 30, 2000). The Kansas Commission noted that "[t]he clear and unmistakable public policy imperative from both the federal and state legislatures is that competition is a goal, even in rural areas." Order No. 10, p. 3. The Kansas Commission rejected rural LECs' claims that the designation of any other ETC would necessarily threaten universal service, reasoning:

> general concerns and speculation are not sufficient justification for adopting a policy that would result in benefits and services that are available to other Kansans not also being available to rural telephone customers.

Id. at 3. The Commission concluded that competition in rural telephone company service areas is presumed to be in the public interest and placed the burden to show the public interest is not met in any particular Rural LEC service area entirely on the affected Rural LEC. Id. at 4.

6. Colorado, Oklahoma, Iowa and Nevada

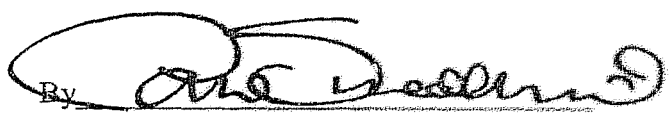
Western Wireless' applications for ETC designation in rural telephone company areas have also been approved as consistent with public interest in the states of Colorado, Oklahoma, Iowa and Nevada. See In the Matter of Western Wireless Holding Co., Decision on Exceptions, Colorado PUC Docket No. 00K-255T (May 4, 2001) ("In light of [the rural LECs'] failure to offer credible evidence of countervailing adverse impacts on the rural companies, we affirm the ALJ's conclusion that it is in the public interest to designate Western Wireless as an ETC."); Application of GCC License Corporation, Final Order Approving GCC License Corporation as an Eligible Telecommunications Carrier, Oklahoma Corporation Comm'n Cause No. PUD 980000470, p. 17 (April 11, 2001) (Western Wireless' designation will provide greater customer choice, new telecommunications services, rapid deployment of new technologies, and better service for consumers); In Re WWC License LLC, Order Granting Request for Eligible Telecommunications Carrier Status, Iowa Utilities Board, Docket No. 199IAC39.2(4) (Nov. 21, 2000) ("No party to this proceeding has raised serious questions regarding Western's [eligibility]."); In Re Application of WWC License LLC, Compliance Order, Nevada PUC Docket No. 00-6003 (Aug. 22, 2000). See also In the Matter of the Petition of United States Cellular Corporation, Third Supplemental Order Granting Petition for Designation as Eligible Telecommunications Carrier, Washington Utilities and Transportation Commission Docket No. UT-970345 (Jan. 2000) (designating United States Cellular as an additional ETC in areas served by rural telephone companies in Washington).

III. CONCLUSION

The time for universal service competition has come. Western Wireless qualifies as an ETC and stands ready to bring the benefits of its universal service offerings to consumers of rural telephone companies in South Dakota. Given these specific benefits, the general benefits that will accompany competition, and the SDITC Companies' failure to demonstrate the designation would be contrary to the public interest, the Commission's path is clear. The Commission should apply the public interest consistent with federal law and other state commissions and designate Western Wireless as an additional ETC in the areas served by the SDITC Companies.

Respectfully submitted,

Dated: June 8, 2001

By 

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June 27th, 2001

RECEIVED

JUN 27 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Deb Elofson, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Ave.
Pierre, SD 57501

RE: Docket TC98-146, In the Matter of the Filing by GCC License Corporation For Designation as an Eligible Telecommunications Carrier

Dear Ms. Elofson:

Enclosed for filing with the Commission is the original and ten (10) copies of the Supplemental Rebuttal Brief of SDITC in the above referenced docket.

Also attached to the Brief is a certificate of service verifying service on the Commission's Counsel and counsel for the other parties.

Please distribute this as necessary.

Thank you for your assistance.

Sincerely,

Richard D. Coit
Executive Director and General Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
JUN 27 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE

FILING BY GCC LICENSE CORPORATION	)	DOCKET NO. TC98-146
FOR DESIGNATION AS AN ELIGIBLE	)	
TELECOMMUNICATIONS CARRIER	)	

SUPPLEMENTAL REBUTTAL BRIEF OF THE SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION

I. INTRODUCTION

The South Dakota Independent Telephone Coalition, Inc. ("SDITC"), on behalf of its member company local exchange carriers, hereby submits this Supplemental Rebuttal Brief in the above captioned matter pursuant to the Commission's Order Approving Stipulation herein, dated June 7, 2001, as its response to the Supplemental Brief of GCC License Corporation filed with the Commission on June 8, 2001.

In this Brief, GCC License Corporation, the applicant in this proceeding shall be referenced as "GCC". Qwest Corporation, formerly US WEST Communications, will be referenced as "Qwest." The Federal Telecommunications Act of 1996 will be referenced as the "Federal Act" or "the Act." All prefiled testimony and exhibits will be referred to as "Exh" followed by the appropriate exhibit and page number(s). All references to the transcript of the hearing in this matter held on December 17, 1998, will be denoted as "Tr" followed by the appropriate page number(s). References to the South Dakota Supreme Court's decision dated March 14, 2001, will be denoted as "Supreme Court Decision" followed by the appropriate paragraph reference.

The South Dakota Supreme Court by its decision in The Filing by GCC License Corporation, 2001 SD 32 (March 14, 2001), has remanded this case back to the Commission for a determination

on the remaining issue of whether it is in the public interest to designate GCC as an additional eligible telecommunications carrier ("ETC") within any rural telephone company service area in South Dakota. The additional "public interest" requirement applicable to ETC designations within rural telephone company service areas is established by the provisions of 47 U.S.C. § 214(e)(2) and the provisions of SDCL § 49-31-78.[1] Specifically, the pending public interest issue, as a result of the "Stipulation for Procedure on Remand" approved by the Commission, is now limited to only certain designated rural telephone company service areas in South Dakota. A number of rural telephone companies that were subject to GCC's initial "statewide" application for ETC status have now been removed from the application. A public interest determination is only requested by GCC with respect to the study areas of those rural telephone companies listed on page 2 of the approved Stipulation.

The Supreme Court stated in its decision that "if based on record evidence the PUC finds that the public interest test has been satisfied in the rural areas where GCC is seeking ETC status, then the PUC must award such designation in those areas." Supreme Court Decision ¶ 26. GCC generally argues in its brief that "when the record evidence is considered in light of the purpose of Section 214(e) and decisions of other state commissions and the FCC, it is abundantly clear that the public interest standard is met in this case." SDITC strongly disagrees. Contrary to what GCC claims, the evidence presented in this matter is insufficient to establish that it would be in the public interest to grant GCC ETC designation in the identified rural service areas. GCC attempts to build a case for a positive public interest finding based on merely a policy preference for competition and a presumption that competition will benefit consumers. GCC Supplemental Brief pp. 5, 6. The actual evi-

[1] 47 U.S.C. § 214(e)(2) provides in pertinent part that "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest." SDCL § 49-31-78 contains similar language stating that "[t]he commission may not in an area served by a rural telephone company designate more than one eligible telecommunications carrier absent a finding that the additional designation is in the public interest."

dence of record is, however, very vague and is also conflicting. The evidence fails to show that consumers in the rural areas would see any significant or real benefit from the additional designation of GCC and, further, there is no showing that such designation would actually work to preserve and advance universal service in South Dakota consistent with the universal service policies contained in 47 U.S.C. § 254. GCC relies on the FCC's Memorandum Opinion and Order, DA 00-2896, released December 26, 2000 in CC Docket No. 96-45, In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming (hereinafter referenced as "Wyoming Order") and various state commission decisions that have designated GCC as an ETC in rural service areas. Although these decisions resulted in affirmative public interest findings, the decisions were made under different state laws and on different administrative records. Contrary to the support which GCC sees in these decisions, the decisions actually indicate that there are other considerations, in addition to promoting competition, that must be addressed in the required public interest analysis and indicate that the evidence in this case is insufficient to conclude that GCC has met the public interest requirement.

It is SDITC's position in this matter that the public interest requirement set forth in both federal and state law, applicable to additional ETC designations in rural service areas, has not been satisfied and that GCC should be denied designation in all of the rural service areas subject to its amended application. All of the following reasons support a finding that designating GCC in the identified rural service areas would not be in the public interest: (1) GCC carries the burden of proof in this matter and this burden requires more than just a showing of competition; (2) the record is insufficient to conclude that consumers in the rural service areas would actually see any real or significant benefits if GCC is designated an ETC and commences offering its fixed wireless services; (3) GCC failed to present evidence indicating that its proposed "universal service offering" would be

affordable and that it would otherwise actually work to preserve and advance universal service in the rural service areas; (4) it would not be in the public interest to designate GCC as an ETC based on its fixed wireless service if the Commission has no ability to protect consumers through its service quality regulation and/or complaint procedures that are applicable to all other incumbent and competitive local exchange carriers ("LECs"); (5) it would not be in the public interest to designate GCC as an ETC in rural service areas and allow it to receive portable universal service support, before the state process of disaggregating and more closely targeting universal service support in rural LEC service areas has been completed; and (6) uncertainties at the federal level concerning interstate access reform for rural carriers and proposals to freeze support on a per-line basis further support a finding that designating GCC as an additional ETC in rural service areas would not be in the public interest.

II. ARGUMENT

A. GCC carries the burden of proof and that burden requires more than a showing of competition.

GCC as the applicant in this case has the burden to establish that granting its req ested ETC designation is in compliance with all of the requirements found in the federal and state law relating to ETC designation and this includes the additional public interest criteria that applies to rural service areas. GCC attempts to minimize this burden by suggesting that it may satisfy the public interest standard by simply showing that an additional ETC designation would promote competition in rural service areas and that this competition should result in benefits to rural consumers. With respect to showing consumer benefits related to its proposed fixed wireless offering, GCC suggests that it may simply be presumed that competition will bring benefits to all service areas, including rural service areas.

In support of its position, GCC cites to the South Dakota Supreme Court Decision issued in this matter, arguing that this Commission must interpret the "public interest" language found in 47

U.S.C. § 214(e)(2) "in a way that promotes competition among ETCs." In addition, GCC relies on the FCC's Wyoming Order, DA 00-1896, wherein the FCC concluded that it was in the public interest to designate Western Wireless Corporation (GCC's parent company) as an ETC in rural service areas in the State of Wyoming. Specifically, GCC contends that its evidentiary showing is consistent with the FCC's public interest analysis as set forth in the Wyoming Order and that therefore a similar public interest finding is warranted here.

Contrary to what is argued by GCC, neither the Supreme Court Decision nor the FCC's Wyoming Order require this Commission to make a finding that GCC's request for designation as it relates to the identified South Dakota rural service areas is in the public interest. Although the Supreme Court in its decision emphasizes the goal of competition in referencing the 1996 Telecommunications Act, the decision focuses strictly on what interpretation should be applied to the provisions of 47 U.S.C. § 214(e)(1). The Court did not engage in any analysis regarding the additional public interest language applicable to rural ETC designations found in Section 214(e)(2) and its decision should not be construed to prevent a fair consideration of universal service concerns in this public interest review process.

The Supreme Court Decision speaks to competitive goals in the Federal Act, but very clearly this Commission is aware that there are other equally important goals stated in the Act relative to the preservation and advancement of universal service. Section 47 U.S.C. § 254. There are various provisions in the Act recognizing the special universal service concerns presented by competition in high-cost rural areas. 47 U.S.C. §§ 214(e)(2), 214(e)(3), 214(e)(5), 251(f), 253(b), 253(f), and 259. Included as one of these provisions is the additional public interest standard established in Section 214(e)(2). All of these provisions are founded on concerns that expanding competition in certain

areas of the country, particularly high-cost rural areas, has the potential to adversely affect, rather than improve, universal service.

Regarding specifically the public interest standard established in Section 214(e)(2), Congress enacted the additional requirement based on an understanding that there are certain areas (where the costs of service are high and customers are few) that may not be capable of sustaining multiple providers. Congress understood that competition for telecommunications services in certain areas, rather than benefiting consumers, could have the opposite effect and it was this concern that led to the adoption of the "public interest" language. The public interest language found in Section 214(e)(2) of the Federal Communications Act was added to law as an amendment to Senate Bill 652 (the 1996 Telecommunications Act). In speaking specifically to the amendment (Amendment 1259), U.S. Senator Byron Dorgan made the following comment:

> . . . the protection of universal service is the most important provision in this legislation. S.652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring that competition benefits consumers rather than hurts them. Under this legislation, the State will retain the authority to control the introduction of competition in rural areas and, with the FCC, retain the responsibility to ensure that competition is promoted in a manner that will advance the availability of high quality telecommunications services in rural areas.

The above statement by Senator Dorgan, who introduced Amendment 1259, clarifies the precise intent of the public interest standard established in Section 214(e)(2). It recognizes the reality that competition in rural service areas may adversely impact the affordability and quality of service to many customers.

GCC argues that the Commission in this process should, above all else, focus on promoting competition and takes the position that it has satisfied the public interest standard by showing that its designation would be consistent with competition and certain alleged competitive benefits. Regard-

ing possible harm to consumers resulting from its designation, GCC completely ignores the issue. Despite recognition in the Federal law that competition in high-cost areas has the potential to adversely affect service affordability and/or quality, GCC presented no evidence to address the concern. Instead, GCC has taken the position that SDITC and/or its member LECs carry the burden to demonstrate harm to consumers and that absent a showing of harm by such companies, the Commission must find that designating GCC as an additional ETC in rural service areas is in the public interest.

GCC is clearly wrong regarding the burden of proof in this case. In making a determination under the public interest standard, this Commission cannot merely rely on a general policy preference for competition, but must look specifically to the purpose behind the Section 214(e)(2) public interest requirement and also the provisions found in Section 254 of the Federal Act. It is significant that nowhere in Section 214(e) or Section 254 is competition referenced as a guiding principle, but rather each Section is expressly concerned with the preservation and advancement of universal service.[5] Congress clearly intended that preserving universal service, not promoting competition, be the primary concern in interpreting and applying the public interest standard contained in Section 214(e)(2). Accordingly, for an applicant to make a prima facie case under such standard it is necessary to make some showing relating to universal service concerns – that universal service will be preserved and not harmed by the additional ETC designation. It is insufficient to rests one's case merely on the promotion of competition and an assumption that competition will always benefit consumers. If a showing of competition alone were sufficient, there would have been no reason to even incorporate the additional public interest requirement into the law. If competition were the only fac-

[5] The heading to Section 214(e), for example, is specifically captioned the "PROVISION OF UNIVERSAL SERVICE."

be to consider, every request by a competitive LEC, because it results in competition, would automatically qualify for ETC designation.[3]

GCC attempts to unfairly shift the burden of proof in this matter and is effectively asking this Commission to close its eyes to the very real universal service concerns expressed and addressed by Congress in the federal law. Contrary to GCC's position, it is not SDITC's burden to prove that GCC's additional designation is not in the public interest. GCC carries the burden to make an affirmative showing under the standard and this includes the burden to make an initial or threshold showing that rural area consumers would not be harmed by its additional designation.[4]

As noted above, GCC cites to the FCC's Wyoming Order as support for its position. In regards to the Wyoming Order, SDITC does not agree that the Order should in any way be considered binding to the Commission's interpretation and application of Section 214(e)(2) in this case. As the FCC has conceded in other proceedings, State Commission's, not the FCC, are given primary responsibility under the federal law to make ETC designations under Section 214(e).[5] State Commissions, not the FCC, are the implementing agencies for purposes of making ETC designations falling under Section 214(e)(2). The FCC's decision more specifically deals with 214(e)(6) of the Federal

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[3] As support, SDITC cites the Commission to the Nebraska decision on GCC's request for ETC designation. In that decision, the Nebraska Public Service Commission stated: "[W]e acknowledge that the mere provision of additional competition by the entry of another ETC into a rural area is not sufficient in and of itself as a demonstration of the public interest. We accept the argument made by the Interveners that competition is not tantamount to public interest. If that were the case, no public interest test review would be necessary since any and all new competitors would represent additional benefit to the public." Order Granting ETC Status and Issuing Findings, p.6, In the Matter of the Application of GCC License Corporation Seeking Designation as an Eligible Telecommunications Carrier that May Receive Universal Service Support, Application No. C-1889.

[4] SDITC's position on the burden of proof in this case is further supported by the Minnesota PUC's decision in Docket No. P-5695/M-98-1285, In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier, issued October 27, 1999. The Minnesota Commission on page 16 of its decision agreed with the position of rural LECs in Minnesota on the burden of proof noting that "Minnesota Cellular had the burden of making an initial showing that subsidy-fueled competition would not harm consumers."

[5] Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, In the Matters of the Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, FCC 00-208, p. 47, *See also* Declaratory Ruling, CC docket No. 96-45, In the Matter of the Federal-State Joint Board on Universal Service, Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission, FCC 00-248, released August 10, 2000, ¶ 18.

Act, which is more limited and gives the FCC authority to make designations only where the state is without authority. With respect to designation applications filed under Section 214(e)(2) that have specifically been assigned to the States for determination, the FCC's decision should not be viewed as controlling. Also, it should be noted that the Wyoming Order is currently subject to at least one petition for reconsideration and that the Order is not backed by any court decision(s).[6] At this point, it represents only the FCC's interpretation of the public interest standard used in Section 214(e)(6) (not Section 214(e)(2)). Moreover, even the FCC in its decision indicates that competition is not the only factor to consider in the public interest review process prescribed under 47 U.S.C. § 214(e)(6). The FCC stated therein that "[a]lthough we recognize the substantial benefits of competition to consumers, we conclude that additional factors may be taken into consideration in the public interest examination required by Section 214(e)(6) prior to the designation of an additional ETC in an area served by a rural telephone company, such as whether consumers will be harmed."

The FCC's Wyoming Order does not restrict this Commission in the task at hand and SDITC urges the Commission to interpret and apply the public interest standard in a manner that is consistent with the strong universal service principles established in the Federal Act and the true purpose of the public interest standard established in Section 214(e)(2). While the promotion of competition may be one factor relevant to the public interest standard found in Section 214(e)(2), it is neither the most important factor nor the only factor. Accordingly, in addition to showing competitive benefits, GCC must also show that its additional ETC designation in the identified rural service area would be consistent with preserving and advancing universal service and not harm consumers.

In sum, it is SDITC's position that GCC in order to satisfy the public interest requirement, must not only prove that its competitive ETC offering would bring specific benefits to the rural ser-

[6] *See* Petition for Reconsideration and/or Clarification of Chugwater Telephone Company, Range Telephone Cooperative, Inc. and RT Communications, Inc., In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Docket No. 96-45, dated January 24, 2001.

rural area consumers it must also show that it would work to facilitate the provisioning of universal service consistent with the universal service principles contained in the federal law. As is shown below, GCC has failed to meet this burden and should therefore be denied designation.

B. GCC has not shown that consumers in rural service areas would see any real or significant benefits if GCC is designated an ETC.

GCC argues that its ETC designation and proposed fixed wireless offering would bring benefits to rural area consumers, but a review of the record indicates that there is insufficient evidence to fairly conclude that the affected consumers would actually see any real or significant benefits from the designation and offering. GCC's case regarding benefits for the most part relies on general economic theories surrounding competition and its usual effect in the marketplace. Various statements are made in its testimony suggesting that its provisioning of competitive fixed wireless services in rural service areas will bring benefits of a type generally associated with competition such as "increased choices," "higher quality," and "lower rates."[7] These statements are entirely speculative and hold little value in trying to determine whether GCC's designation as an additional ETC would in fact bring actual benefits to rural area consumers. As earlier mentioned, competition in rural service areas presents special universal service concerns. Congress recognized these concerns by incorporating various rural safeguard provisions in the Federal Act and it is contrary to the intent of these provisions to presume that competition in rural service areas will always be in the best interest of consumers. A showing of consumer benefits requires a greater showing than GCC has presented.

[7] For example, the pre-filed testimony of Christopher R. Johnson states that "GCC stands ready to bring the benefits of competition to South Dakotans – benefits of competitive pricing, better service quality, immediate service availability, and better customer service. There can be no dispute that making available to consumers a choice in services and service providers is in the public interest." Exh. 4, pp. 13, 14. The prefiled testimony of Brian Kirkpatrick makes similar general statements regarding competitive benefits, claiming that "[c]onsumers in rural areas will be significantly benefited by the competition brought about by designating GCC as an additional ETC," and that "[t]he failure to designate GCC as an ETC would deprive consumers of the benefits of competition, including increased choices, higher quality, and lower rates." Exh. 3, pp. 10, 11. The Kirkpatrick testimony even makes a general claim that "[c]ompetition is in the public interest."

GCC contends in its brief that it will bring specific benefits to consumers through its fixed wireless offering, referring to competitive pricing, expanded local calling areas, mobility, increased subscribership, and improved service quality. GCC Supplemental Brief pp. 9-11. The actual evidence offered regarding each of these alleged benefits is however very non-specific and conflicting.

1. **Alleged pricing benefits.**

GCC claims that its fixed wireless service offering will benefit consumers by bringing lower rates, but its testimony is limited to only suggesting that the service will be comparably priced with the local exchange services of incumbent local exchange carriers. TR 34, 90, 95, 116, 117. At the time of the hearing, GCC's witness Gene DeJordy admitted that GCC had not yet determined a rate for its universal service offering in South Dakota. TR 33, 35, 36, 55, 56, 89. He was repeatedly asked for more specific information concerning the rate or rates that might be charged, but refused to provide any more detail based on a contention that it was not possible for GCC to establish the rate(s) until after it receives designation. More specifically, according to Mr. DeJordy it was not possible for GCC to provide specific rate information because it would not know until after designation what universal service subsidy it would receive. TR 33-35, 39. The invalidity of this excuse offered by GCC was, however, clearly demonstrated through certain questions asked by Chairman Jim Burg relating to pricing. Mr. DeJordy was asked if GCC could currently determine what any individual customer or a telephone exchange receives as universal service support. He responded with a yes, indicating that the information could be obtained from the National Exchange Carriers Association (NECA). TR 90, 94. Thus it was possible for GCC to come forward with more specific price information regarding its fixed wireless offering, but the company failed to do so. Evidence in the record suggests that GCC was unable to do so because at the time of the hearing its universal service offering was simply undefined. Few decisions had been made by the company as to how the

universal service offering would actually be provisioned to South Dakota consumers. TR 33, 34, 55, 56, 57-59, 95, 96, 117; Exh. 3, p. 8; and Exh. 4, p. 13.

Statements were made by Mr. DeJordy indicating that GCC's universal service offering would be comparably priced with offerings of the incumbent carriers, but even these statements offer no assurance of any consumer benefit. As pointed out by SDITC witness Christopher Hickman during his cross examination by Staff Counsel, if the rates of the competitive carrier only mirror the rates of the incumbent carrier, it doesn't meet any kind of classic definition of competition. If "you're offering the same service for the same rate . . . it really wouldn't be competition." TR 165. Moreover, other record evidence gives reason to doubt GCC's claims that it could offer its fixed wireless service at a comparable price to the existing local exchange services. Substantial evidence is on the record concerning a fixed wireless service being offered by GCC in Reese River and Antelope Valley, Nevada. Rate information concerning the service in these areas was offered by GCC and Qwest. This information, which is the only specific rate information on the record concerning GCC's provisioning of a fixed wireless service, indicates that GCC was offering the service at a flat fee of $13.50 per month, but only for a limited amount of local usage per month. Usage exceeding the limited usage was paid for separately through a stipulation entered into between GCC (Western Wireless) and Nevada Bell (at rates of either 37 cents or 25 cents per minute depending on the time of day). Exh. 10; TR 70. In addition, Nevada Bell made payments to GCC (Western Wireless) to subsidize the installation of customer premise equipment and also to establish a reporting system that was required for the fixed wireless service. TR 66-69, 72, 73. Mr. DeJordy was asked by Qwest counsel to clarify just how much of a subsidy it was receiving on a monthly basis to provide its fixed wireless service in Nevada, but was unable to provide the information. TR 71-72. In addition, it should be noted that when initially questioned as to what rate was being charged for the service in

Nevada, Mr. DeJordy indicated that it was $12 per month and gave no indication that the service offering was also being subsidized. Exhibit #10 later presented to the Commission indicated that the cited figure of $12 a month was inaccurate and also showed that the service in Nevada is highly subsidized by Nevada Bell through payments into a special rural improvement fund.

Substantial evidence on the record contradicts GCC's claims that it could offer its fixed wireless service at comparable rates to South Dakota consumers and, in any event, without additional information identifying the actual rates to be charged, this Commission has insufficient evidence to conclude that GCC's designation will result in any rate related benefit.

2. Alleged local calling area benefit.

GCC also contends that its ETC designation will benefit rural area consumers by making available an expanded local calling area. Again, with respect to this alleged benefit, the evidence is terribly non-specific and only allows for speculation as to whether consumers would in fact see any related benefit. It is interesting that GCC under its application now seeks ETC designation on a specific rural study area basis, but has not supplied the Commission with any information as to the actual calling scope that it would offer in each of the identified study areas. Without more detailed information indicating the increased calling scope to be offered by GCC in each of the identified rural service areas, the Commission has no real ability to determine whether or not the affected consumers would benefit. GCC has only indicated in its testimony that its calling area will be larger than that offered by the incumbent LEC. Exh. 4, p. 13. TR 58. Absent more specific calling scope information related to each of the rural service areas, the Commission has no ability to compare the calling scope to be offered with the relevant community of interest for the affected subscribers and to determine the corresponding benefit. It is also impossible to determine whether consumers would benefit from GCC's increased calling scope without more information identifying the rate(s) to be

charged for the local service offering. Whether or not consumers actually receive a benefit depends on the level of charges. If customers of GCC were required to pay twice the amount that they currently pay for local exchange service they may not see any benefit. The question of benefit under such circumstances depends on the customer's reliance on toll services and whether the increased charges for expanded local calling exceed the monthly toll charges attributable to calls in the same area.

More information is needed for the Commission to quantify the value associated with GCC's claims of an expanded calling scope.[8] Under the present record, the Commission cannot resolve the question of whether it would actually benefit consumers.[9]

3. Alleged service mobility.

Service mobility is also cited in GCC's Supplemental Brief as a consumer benefit that would result from GCC's designation as an additional ETC. The testimony offered by GCC does not, however, clearly indicate that GCC intends to make mobility a part of its universal service offering. Mr. DeJordy commented on how consumers might benefit from increased mobility associated with its service, but in its prefiled testimony GCC indicated that initially its universal service offering would not include a mobility component.[10] Exh. 4, p. 8. In light of the fact that GCC's universal service offering will not upon its initial offering be mobile in type, and because GCC has presented no evidence indicating when the mobility component will be added, it would be improper to give any weight to GCC's claims that its fixed wireless service will include the benefit of mobility.

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[8] See Texas Public Utility Commission, PUC Docket No. 22289, Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier, Order dated October 30, 2000, ¶ 43.

[9] It should be noted that in the State of Oklahoma, in presenting its case for ETC designation, Mr. DeJordy testified in more detail concerning its plans to offer expanded local calling through its fixed wireless offering. See Final Order Approving GCC License Corporation as an Eligible Telecommunications Carrier, Cause No. PUD 980000470, Order No. 450765, dated April 11, 2001, p. 8. In Oklahoma, GCC indicated that it would attempt to determine a particular locality's "community of interest" and design its local calling area to correspond with that.

[10] The prefiled testimony of Christopher R. Johnson adopted by Mr. DeJordy states that "[o]ver time, GCC intends to expand its universal service offering to introduce a mobility component." *Emphasis added.* Exh. 4, p. 8.

4. Alleged increased subscribership.

GCC also argues that its ETC designation will be beneficial by bringing universal service to some consumers who do not currently have phone service. As an example of this alleged benefit, GCC cites to its fixed wireless deployment in Reese River and Antelope Valley, Nevada, which it indicates were previously unserved areas too expensive to be served by the landline LEC. Contrary to the claims made in this case, the record evidence does not suggest that GCC is positioned to serve consumers in rural South Dakota more completely or less expensively than the existing rural LECs. No evidence was presented by GCC indicating that South Dakota has any unserved areas, let alone areas similar to the areas around Reese and Antelope Valley, Nevada, or that it has any similar significant subscribership issues to address. There is also no evidence supporting GCC's claims that it can make its service available to existing unserved customers more quickly than the existing rural carriers. The evidence presented instead leads to the opposite conclusion. Substantial evidence was presented indicating that GCC's existing network is designed to serve mobile customers and that improvements would be needed to establish its basic universal service offering. Exh. 4, pp. 7, 12; and TR 28, 30, 31, 81, 87, 88, 99, 100,105, 106, 109, 112, 133. GCC admitted that in order to cover all areas that it would need to construct additional cellular towers. Exh. 4, p. 12; and TR 87, 100, 106, 109, 112. In light of all these facts, there is no basis to contend that its designation and offering of service would result in increased subscribership.

5. Alleged improved service quality.

GCC also argues that its designation would lead to a higher level of service quality for South Dakota consumers. GCC's Supplemental Brief p. 3; Exh. 4, pp. 12, 13. A review of the record indicates, however, that there is absolutely no evidentiary support for this claim. GCC's witness at the

hearing was questioned by several parties on service quality issues and was unable to provide any helpful responses to the questions asked.

First, Mr. DeJordy was questioned by SDITC regarding this Commission's service quality rules found in ARSD Chapter 20:10:33. Specifically, he was asked whether GCC would consider itself subject to these rules. In response, Mr. DeJordy indicated that he was not familiar with the rules -- that he would first have to look at the rules to know if they would apply to GCC. TR 47, 48. He also stated that "just because a CMRS carrier obtains ETC designation doesn't necessarily mean that it becomes a local exchange carrier subject to the full range of regulations that apply to local exchange service." TR 49. Mr. DeJordy was unable to provide any definite answer to the question asked, his responses, however, at least imply that GCC does not view itself as being subject to the Commission's service quality jurisdiction.

Mr. DeJordy was then questioned by Qwest regarding GCC's fixed wireless service offering in the State of Nevada. TR 59. He was asked whether there have been any service quality problems with any of the fixed wireless loops in that State. TR 60. In response, he again indicated that he did not have enough information to answer the question. He stated that he didn't know of any specific service quality issues, but also indicated that he couldn't say that they've never had a service quality issue. TR 61. Qwest counsel then proceeded to ask Mr. DeJordy who within GCC could address service quality issues. He responded unclearly indicating that it would depend on what question was being asked. TR 61.

These questions were followed with inquiry by the Commission's Staff counsel related to GCC's service quality. Staff specifically questioned Mr. DeJordy regarding the reliability of 911 service over GCC's wireless network. He was asked how the company's 911 service was configured and whether it had any redundant feature to it. TR 85. In response, Mr. DeJordy stated that he

didn't know. He guessed that they might have redundancy in terms of 911 service, but didn't know definitely that this was true. TR 86. Staff also asked what data capability could be provided over GCC's existing wireless network. It was indicated in response to this question, that the network would only be capable of transmitting data at a rate of 9.6 kilobytes per second. T 86.

Clearly, the above referenced testimony shows a lack of support for GCC's claims of service quality benefits. GCC's prefiled testimony suggests that because its designation would bring competition for local exchange services this would bring "better service quality." Exh. 4, pp. 13. The actual evidence offered at the hearing, however, contradicts these general claims.

C. GCC failed to present evidence indicating that its proposed "universal service offering" would be affordable and that it would otherwise be consistent with universal service goals.

The public interest standard prescribed under both federal and state law requires a two-part showing. Not only must the carrier seeking designation in rural service areas show that its designation would in fact bring benefits to rural area consumers it is also necessary to show that the designation would actually work to preserve and advance universal service. The record in this case demonstrates that GCC's request for designation in rural service areas fails to satisfy either part of the public interest test.

GCC argued during the Commission's hearing in this matter and in its brief following the hearing that it was improper for this Commission to consider affordability as a factor in the process of reviewing requests for ETC designation pursuant to 47 U.S.C. § 214(e). SDITC disputes this position. It has now clearly been established in the courts that states are not prohibited by the provisions of Section 214(e) from imposing additional criteria on eligible telecommunications carriers. Texas Office of Public Utility Counsel v. FCC, 183 F.3rd 393, 418 (5th Cir.). Even more importantly, although arguably there may have been some basis prior to this court decision to object to afforda-

ility as a criteria in applying the provisions of Section 214(e)(1), there is absolutely no justification to suggest that affordability concerns are not relevant to the additional public interest review required for rural service areas under Section 214(e)(2) of the Federal Act.

In order to find GCC's requested designation in rural service areas in the public interest, this Commission should obviously first be able to conclude that such designation is consistent with the basic universal service goals/principles stated in Section 254 of the Federal Act. There are various universal service principles and policies stated in that Section of the Act, but specifically the provisions found in 47 U.S.C. §§ 254(b)(1), 254(b)(3) and 254(i) are most pertinent to the issue at hand. Under Section 254(b)(1) it is stated that policies for the preservation and advancement of universal service should be based on the principle that "[q]uality services should be available at just, reasonable, and affordable rates." Section 254(b)(3) provides further that all consumers, "including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." In regards to these basic universal service principles, the Act also makes it clear that not only the FCC, but also the States have responsibility to see that they are implemented. Section 254(i) states specifically that "the Commission [FCC] and the States should ensure that universal service is available at rates that are just, reasonable, and affordable." The FCC in its interpretation of the Section 254(i) language has taken the view that states "should exercise initial responsibility" and have the "primary responsibility for determining affordability of rates."[11]

These provisions within Section 254 of the Federal Act serve to emphasize the core purpose of the federal universal service support mechanisms, which is to make basic telecommunications

[11] Report and Order, FCC 97-157, In the Matter of the Federal-State Joint Board on Universal Service, released May 8, 1997, ¶¶ 108, 118.

services available to all consumers at affordable rates. Recognizing this purpose which goes to the very heart of federal universal service policy, how can it reasonably be argued that this Commission in its process of determining which carriers should be designated as eligible for universal service support cannot consider affordability of the service to be offered? Contrary to what GCC may still attempt to allege, affordability is a very pertinent and appropriate factor in considering the public interest. An affirmative public interest finding is not justifiable if the end result is to provide a universal service subsidy to a carrier that is not in fact offering its basic service at rates that are low enough to actually meet consumer needs and enhance universal service. If this were done, conceivably, consumers who could not afford the competitive ETC's alternative service would find themselves paying into a federal universal service fund that supports carriers that do not even offer an affordable alternative.

The issue of whether affordability can properly be considered in the public interest review process was specifically addressed by the Minnesota PUC in its proceedings dealing with an application for ETC designation submitted by the Minnesota Cellular Corporation ("Minnesota Cellular"). In these proceedings, Minnesota Cellular argued as GCC has in this case that the State Commission could not consider affordability in reviewing the company's ETC designation request. This argument was rejected by the Minnesota Commission based on the following findings and conclusions:

> The Commission accepts Minnesota Cellular at its word – and intends to hold it to its word – that it will offer at least one universal service package with an unlimited local usage priced within 10% of the incumbents' standard rates. That is affordable by any reasonable standard. . . .
>
> . . . the critical issues is not what the Company believes to be the scope of the Commission's authority, but what *is* the scope of the Commission's authority. The Commission is satisfied that its authority over the Company's universal service offering is broad enough for it to ensure high-quality service and affordable rates throughout the Company's designated service area. . . .

Minnesota Cellular . . . made a threshold showing of affordability, reliability, and service quality. . . . This is credible evidence supporting the claim that designating Minnesota Cellular an ETC is in the public interest. . . .

This controversy was settled by the Fifth Circuit Court of Appeals, which invalidated the FCC rules barring state commissions from applying state criteria in ETC designations. The Court interpreted the mandatory, discretion-limiting language in the statute as referring to *how many* ETCs a state commission was to designate, not to its criteria for designating them.

Minnesota Cellular continued to maintain, however, that this Commission could not consider service quality and affordability in evaluating the application, because there were no existing regulatory requirements on service quality or affordability applicable to wireless carriers. The Company also maintained that considering affordability ran afoul of the federal prohibition on state regulation of wireless rates and of state law exempting radio common carriers from the definition of "telephone company." The Commission disagrees. . . .

The Commission . . . agrees with the Department that the federal Telecommunications Act of 1996, which authorizes it to make ETC designations, authorizes it to apply the public interest goals articulated in the Act in making those designations. The universal service goals of the Act include a statement that "quality services should be available at just, reasonable, and affordable rates."
The Act also makes it clear that state commissions bear major responsibility for ensuring that universal service rates are affordable: "The [Federal Communications] Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable. . . .

Minnesota Cellular also claimed that federal law preempted the Commission from requiring that its universal service offering be affordable. The Commission disagrees.

While 47 U.S.C. § 332(c)(3) clearly bars states from regulating wireless entry or wireless rates except in carefully defined circumstances, requiring a threshold showing of affordability to qualify for a public subsidy is not rate regulation. Rate regulation is much more precise and thoroughgoing than merely requiring a demonstration that rates fall within an affordable range.

> Furthermore, if states cannot require a showing of affordability of wireless carriers, they cannot fulfill their responsibility, shared with the FCC, to ensure that universal service "is available at rates that are just, reasonable, and affordable. The Commission concludes that it is not preempted from considering affordability in acting on Minnesota Cellular's application.

Emphasis added. Order Granting Preliminary Approval and Requiring Further Filings, dated October 23, 1998, pp. 10, 11, 16, 18, 19, 20, 21, In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier, Docket No. P-5695/M-98-1285. The end result in the Minnesota case was an affirmative public interest finding, but the Minnesota Commission only made such finding after considering affordability concerns and mandating that the company offer at least one universal service package with unlimited local usage priced within 10% of the incumbents' standard rates." Finding that such a package "is affordable by any standard."

SDITC urges this Commission to also take into account the affordability concerns that have been raised in this docket and to deny GCC's request for designation in rural service areas based on the company's refusal to provide any specific information concerning the rates it would charge for its universal service offering. In Minnesota and other states where the company has received ETC designation within rural service areas, more information was provided to ensure that the rates to be charged would be affordable.[12] In this case, GCC refused to provide any specific information regarding the rates that would be charged for its fixed wireless service and only made claims that its rates would be comparable to those of the existing rural LECs. Moreover, with respect to GCC's claims of rate comparability, the evidence is conflicting, suggesting that the company may not in fact

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[12] See Decision of Exceptions, In the Matter of Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Provider Pursuant to 4 CCR 723-41-8, Colorado PUC Docket No. 00K-255T, Decision No. R01-19, dated May 4, 2001, pp. 5, 6, 13; Final Order Approving GCC License Corporation as an Eligible Telecommunications Carrier, Application of GCC License Corporation for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996, Oklahoma Corporation Commission Cause No. PUD 980000470, Order No. 450765, dated April 11, 2001, p. 9; and Order of Texas Public Utility Commission, Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418, PUC Docket No. 22289, dated October 30, 2000, pp. 7, 8.

be able to charge comparable, affordable rates. See pp. 12, 13 supra. In order to meet its burden in this case and show that its designation would preserve and advance universal service, additional rate information is needed giving some assurance of service affordability.[13] Under the present record, the affordability issue cannot be addressed and therefore the Commission has no basis to conclude that GCC's designation would be consistent with universal service principles and not harm rural consumers.

D. It would not be in the public interest to grant ETC designation to GCC if the Commission has no ability to protect consumers through its service quality regulation and/or complaint procedures.

Because GCC is seeking universal service support based on its offering of a fixed wireless service, questions are presented as to whether GCC in providing the service would be subject to the Commission's regulatory authority over local exchange services. Currently, all other carriers providing local exchange type services, including all LECs and competitive LECs, are subject to some level of state regulation. The local exchange services of Qwest are more heavily regulated that the similar services of other LECs, but all LECs, including CLECs, are subject to provisions in state statute and administrative rules dealing with certification of local exchange carriers, discontinuance of service, prohibitions on discrimination, service quality requirements, slamming and cramming, and consumer complaints. SDCL §§ 49-31-3, 49-31-3.1, 49-31-4.2, 49-31-5, 49-31-7, 49-31-11, 49-31-69 thru 49-31-72, 49-31-89 thru 49-31-97; SDCL Chapter 49-13; and ARSD Chapters 20:10:01, 20:10:32, and 20:10:33.

GCC's witness, Mr. DeJordy, was questioned by both SDITC and Commission Counsel at the hearing concerning GCC's position on state regulation of its fixed wireless service offering. Mr. DeJordy conceded that GCC as an entity would probably fall into the definition of "telecommunications company" as it is defined under state statute (SDCL § 49-31-1(26), but indicated that the com-

[13] See Hickman prefiled testimony, Exh. 6, p. 6.

pany did not feel that it would need to get a certificate of authority from the Commission to provide its fixed wireless services. TR 46, 121. Mr. DeJordy further admitted, however, that the issue of whether fixed wireless services should be regulated as any other Commercial Mobile Radio Service ("CMRS") was still an open issue before the FCC. TR 121. Regarding service quality regulation, Mr. DeJordy was asked whether GCC would consider itself subject to the Commission's service quality jurisdiction including its existing service quality rules. TR 47. His response was vague and certainly leaves the impression that the company does not view itself subject to the Commission's service quality rules or other Commission regulation that is applicable to local service type offerings.

SDITC disagrees with the position stated by GCC concerning the applicability of state regulation to its fixed wireless service offering. As pointed out in SDITC's Reply Brief filed during the first stage of briefing in this matter, it is SDITC's position that the certification provisions found in state statute and in the Commission's administrative rules and also all other Commission regulation applicable to local service type offerings is equally applicable to GCC's provisioning of fixed wireless services. Reply Brief of SDITC pp. 3-8. Under circumstances where a CMRS provider is providing a fixed wireless local loop service which is intended to replace existing landline local exchange services and the service is not offered as an incidental, ancillary, or auxiliary service to the provider's mobile cellular service, this Commission is not preempted by 47 U.S.C. § 332(c)(3) from requiring such provider to obtain certification as a local exchange carrier. SDITC stands by this stated position. The issue of whether GCC's proposed fixed wireless service requires the company to be certified as a LEC or whether the service would be subject to the Commission's regulatory authority applicable to other local exchange services including its service quality regulation is an open issue that must be addressed. For further clarification on such issue, SDITC refers the Commission to its comments submitted to the FCC in WT Docket No. 00-239, In the Matter of Petition of the

State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering provided by Western Wireless in Kansas is subject to Regulation as a Local Exchange Service. Since the time of the first briefing in this matter, the FCC has issued a subsequent order declaring that determinations regarding the regulatory treatment of fixed wireless services must be made on a case-by-case basis taking into account the particular attributes of the service and whether the service is "fixed" or "mobile." Second Report and Order on Reconsideration, FCC 00-246, In the Matter of the Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, released July 20, 2001.

This Commission did not in its first order on GCC's application for designation address the issue of whether GCC's fixed wireless offering is subject to its local exchange certification provisions and other Commission regulation, including its service quality rules and complaint procedures. SDITC continues to believe that GCC in its offering of fixed wireless service is subject to the same level of regulation as other local exchange carriers and believes that issues surrounding this Commission's regulatory authority over the proposed ETC service are important to this public interest review process. Specifically, SDITC does not believe the public interest would be served by designating GCC if this Commission has no ability after such designation to ensure that the service actually offered by GCC is consistent with the Commission's service quality rules and no ability to address consumer complaints concerning the service. GCC's proposed universal service offering is intended to be a substitute local service offering that will provide consumers with their basic telephone service. Given this basic, essential character of the proposed service, an inability to ensure adequacy of the service should give rise to serious public interest concerns.

As support for this argument, GCC cites to a number of state commission decisions where it was determined that GCC's designation meets the public interest standard. A close reading of these

decisions, however, indicates that the affirmative public interest findings were made only after the state commission determined they had a continued ability to ensure adequacy of service and other basic consumer protections. In the various cases cited, consumer protection concerns were addressed. The state commissions either determined that they had sufficient regulatory authority after designation to address the concerns or required the wireless provider seeking designation to make certain service related commitments as a condition to granting designation. A brief summary of how these concerns were addressed in each state is provided below:

> Minnesota – The Minnesota PUC concluded that "its authority is broad enough for it to ensure high-quality service and affordable rates throughout the Company's designated service area." Final approval of the ETC application was conditioned upon Commission review and approval of a compliance filing that includes a tariff containing a detailed description of the universal service offering, a plan for advertising the universal service offering, and a customer service agreement complying with the Commission's service quality standards. Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P-5695/M-98-1285, pp. 11, 18-22. *Emphasis added.*
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> Texas - The Texas PUC in granting designation concluded that Western Wireless was subject to many of its service quality rules and also certain other consumer protection rules. In addition, the Commission also satisfied itself that Western Wireless was committed to complying with these rules and various other standards it felt were necessary to ensure adequate service. A compliance docket was also ordered to "properly evaluate WWC's provision of basic local telecommunications service; compliance with Commission rules governing customer service, customer protection, Lifeline, Linkup, and Tel-Assistance; and correct delineation of designated exchanges prior to WWC receiving distributions." The Commission further determined that "this compliance docket is in the public interest and consistent with federal and state law and Commission rules." *Emphasis added.* Order pp. 8, 14-21, 25-30, Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214(e) and PUC SUBST. R. 26.418, PUC Docket No. 22289.
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> Nebraska - The Nebraska Public Service Commission determined in the process of granting designation that it had the necessary powers to enforce its jurisdiction over any carrier receiving universal service fund support. It was specifically determined that this power extended

to service quality standards. Order Granting ETC Status and Issuing Findings, p 28, In the Matter of the Application of GCC License Corporation Seeking Designation as an Eligible Telecommunications Carrier (ETC) that may Receive Universal Service Support, Application No. C-1889.

Kansas - Western Wireless agreed that its designation could be conditioned upon compliance with all applicable service quality rules adopted in a future proceeding. The Kansas Corporation Commission further determined that service quality issues related to the wireless offering would be addressed in another docket. Order #7, pp. 2, 3, In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier, Docket No. 99-GCCZ-156-ETC.

Colorado - Designation was granted to Western Wireless based on a Stipulation and Settlement Agreement entered into between Colorado Corporation Commission Staff, the Office of Consumer Council and Western Wireless. The Stipulation was specifically incorporated into the Commission's final order and in such Stipulation Western Wireless agreed to certain terms and conditions that are analogous to the Commission's quality of service rules applicable to other LECs. Decision on Exceptions, supra, pp. 5, 6, 10, 11, 12, 14, 18-21, 29.

Oklahoma - The Oklahoma Corporation Commission in designating GCC as an ETC also ordered that the company must submit to ongoing Commission oversight and regulation, specifically regarding quality of service, consumer complaints, and pricing of its universal service offerings (tariffs). Final Order Approving GCC License Corporation as an Eligible Telecommunications Carrier, p.17, par. 22, Order No. 450765, Application of GCC License Corporation for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996.

Iowa - Although the Iowa Utilities Board determined that Western Wireless was not subject to the Board's certification process for the proposed wireless offering, it was determined based on certain voluntary commitments made by Western Wireless that public interest concerns in the local exchange market would be satisfied. This included commitments by Western Wireless to (1) file its customer service agreement with the Board; (2) allow for Board investigations and review of customer complaints with respect to the proposed ETC offering; (3) maintain internal performance records regarding customer service quality and complaints and that "the general concept of quality [is an issue] that the Board will have authority to review; and (4) comply with any lawful condition imposed by the Board. The Board stated

> that these "voluntary commitments by Western will be adequate to assure that public interest concerns will be satisfied", and further noted that it was "expressly relying upon these commitments in issuing this decision." Order Granting Request for Eligible Telecommunications Carrier Status, pp. 11-13, In Re: WWC License LLC, d.b.a. Cellular One, Docket No. 199 IAC 39.2(4).

In light of the foregoing, very clearly, issues surrounding this Commission's ability to ensure adequacy of service through service quality rules and its complaint procedures should be considered in this process of making a public interest determination. Support for considering such matters relevant to the public interest is also found in the South Dakota Supreme Court's decision in Cheyenne River Sioux Tribe Telephone Authority v. PUC, 595 NW2d 604, 612 (SD 1999). In that case, the Supreme Court concluded that it was proper for the Commission to consider "lack of regulatory control" in the process of reviewing whether a proposed telephone exchange sale is in the public interest as required under the provisions of SDCL § 49-31-59. A lack of regulatory control was specifically considered pertinent because it could "negatively affect adequacy of service." Id.

In this case the issue of whether this Commission will have the ability to ensure adequacy of service after designation is unresolved and cannot be determined from the existing record. GCC apparently does not view itself subject to any continuing Commission authority with respect to its proposed fixed wireless offering and also has not, as it has in other states, made any commitments that would otherwise give this Commission assurance that it can protect consumers from service quality problems. This uncertainty relating to the Commission's continued authority to regulate or address service quality concerns provides further reason to conclude that GCC's designation as an additional ETC would not be in the public interest.

E. It would also not be in the public interest to designate GCC as an ETC in rural service areas before the process of disaggregating universal service support in rural LEC service areas has been completed.

The Federal Communications Commission ("FCC") has consistently recognized that arbitrage opportunities may result if universal service support is distributed based on costs computed over a large geographic area, such as a study area. In its First Report and Order on Universal Service, the FCC noted that while the cost of providing supported services would be calculated at the study area level, the cost of unbundled network elements ("UNEs") is calculated by the states, possibly over geographic areas smaller than study areas.[14] This could result in a potential arbitrage opportunity, as eligible telecommunications carriers ("ETCs") could use UNEs to provide universal service and receive universal service support. The FCC provided an example of this situation, stating ". . . a CLEC might pay $10.00 to purchase access to an unbundled network element in order to serve a customer in a city, but receive $20.00 in universal service support."[15] For this reason, the FCC found that ". . . a state commission may consider whether a competitive carrier seeking designation as an eligible carrier will be able to exploit unjustly the asymmetry between the price of unbundled network elements and the level of universal service support."[16] While GCC will likely not be using UNEs to provide service, the general concept still applies to this case. GCC would be able to exploit arbitrage opportunities between the cost of providing service in geographic areas that are smaller than study areas, against universal service support payments, which are averaged over an entire study area.

In the Seventh Report and Order on Universal Service, the FCC developed the concept that support should be targeted so that more support is available to high-cost wire centers, instead of

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[14] *See* FCC 97-157 Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order ("*First Report and Order on Universal Service*") (rel. May 8, 1997) at ¶172.

[15] Id.

[16] Ibid. at &176.

making support available in a uniform amount per line.[17] The Commission observed that this approach would ensure that support reaches wire centers that need it the most. In the Ninth Report and Order on Universal Service, the FCC adopted this concept for the non-rural universal service support mechanism.[18] In adopting this approach the FCC noted that "[b]y targeting the total amount of support to high-cost wire centers, the federal mechanism avoids the inefficiencies and potential market distortions that could be caused by distributing federal support on a uniform statewide basis."[19] The method to be used to target support relied on a cost-proxy model developed by the FCC, thus no additional action to target support was necessary on the part of the carriers receiving support or the states.

In its recently released order implementing the Rural Task Force ("RTF") recommendation on disaggregation and targeting of universal service support, the FCC further reinforced its concerns about arbitrage opportunities that result from the delivery of universal service support on a uniform per-line basis. The FCC agreed with the RTF that support should be disaggregated and targeted below the study area level. The following rationale was put forth for disaggregation and targeting of universal service support:

> Because support is averaged across all lines served by a carrier within its study area under the existing mechanism, the per-line support available throughout the study area is the same even though the costs throughout the study area may vary widely. As a result, artificial barriers to competitive entry in the highest-cost areas and artificial entry incentives in relatively low-cost portions of a rural carrier's study area are created. For example, support would be available to a competitor that serves only the low-cost urban lines, regardless of whether the support exceeds the cost of any of the lines. We conclude therefore that, as a general matter, support should be disaggregated and targeted below the study area level so that support will be dis-

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[17] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and *Access Charge Reform*, CC Docket No. 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, FCC 99-119 (rel. May 28, 1999) at ¶108.

[18] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report & Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov. 2, 1999) at ¶73.

[19] Ibid. at ¶76.

tributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service.[20]

The disaggregation and targeting rules adopted by the FCC require all rural incumbent local exchange carriers ("ILECs") to select a disaggregation option within 270 days of the effective date of the rule, and to file the appropriate documentation for that option with its state regulatory commission.[21] This rule is not yet effective. Therefore, it will be at least nine months before rural ILECs will be required to select a disaggregation option. In addition, a carrier seeking to disaggregate and target its support under Path 2 (47 CFR § 54.315(c)) must receive the approval of its state regulatory commission for its plan, which will take additional time. The rules do not specify a timeframe in which a state regulatory commission must issue a decision on a disaggregation and targeting plan for a rural ILEC under this option. Depending upon the disaggregation option chosen and the amount of time a state regulatory commission may spend reviewing and approving a disaggregation and targeting plan, it could easily be a year or more from now before such a plan is approved and implemented. If GCC were designated as an ETC in rural service areas, it could avail itself of the arbitrage opportunities described previously for a year or more. The existence of these arbitrage opportunities under the present system of distributing universal service support to rural carriers provides further grounds to reject GCC's request for designation in rural service areas. It would not be in the public interest to designate GCC as an ETC in rural service areas and allow it to receive portable universal service support before the disaggregation process has been completed and support is more closely targeted to the actual cost of serving each line. Designation prior to the time that dis-

[20] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket in CC Docket No. 00-256 ("*RTF Order*") (rel. May 23, 2001) at ¶145.

[21] *See RTF Order*, 47 CFR § 54.315 at A-8-A-11.

aggregation of support is actually implemented would result in windfalls to GCC and unfair competition that may seriously impact the existing LEC's ability to maintain universally affordable rates.[22] Decisions regarding the granting of ETC status for GCC in other states have recognized the importance of having the disaggregation of universal service support completed before designating a competitive ETC ("CETC") in rural companies' service areas. In North Dakota, a group of rural telephone companies presented testimony that GCC would be able to target customers for whom costs are the lowest, while receiving the benefit of universal service support for the higher costs associated with the larger geographic base of customers served by ILECs.[23] The witness further stated "the current system of portable federal support did not directly consider the possible negative impact of competition in rural areas."[24] North Dakota did not grant GCC ETC status, indicating it would, if requested, re-open the case after changes to federal universal service were determined.[25] The Colorado Public Utilities Commission required the targeting and disaggregation of universal service support prior to designating additional ETCs for rural areas.[26]

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[22] It should also be noted that there is no evidence on the current administrative record concerning the actual costs that GCC incurs in providing its fixed wireless service on a per customer basis. Without such evidence, it is impossible to gauge whether the company has an actual need for the Federal universal service funding or whether the company is simply attempting to receive USF windfalls through the ETC designation process.

[23] *See* Western Wireless Corporation Designated Eligible Carrier Application, Case No. PU-1564-98-428, Second Findings of Fact, Conclusions of Law and Order, April 26, 2000 at ¶11.

[24] Id.

[25] Ibid. at p.13.

[26] *See* Western Wireless Holding Co., Inc's Application for Designation as an Eligible Telecommunications Provider Pursuant to 4 CCR 732-41-8, Docket No. 00A-174T and Western Wireless Holding Co., Inc's Application for Designation as an Eligible Telecommunications Provider Pursuant to 4 CCR 723-42-7, Docket No. 00A-171T, Decision No. C01-476 (Adopted Mar. 14, 2001) at pp. 25-27. The Colorado Commission agreed with rural LECs in that case, finding that "it is important to target high cost support for those areas. This step is necessary to prevent inappropriate practices that could seriously affect the existing rural ILECs, such as 'cream skimming' of customers, especially when a new entrant will not serve the entire study area." The Commission emphasized the importance of targeting all high cost support before designating additional ETCs for rural areas. Decision on Exceptions, supra pp. 24-27.

F. Uncertainties at the Federal level concerning interstate access reform for rural carriers and proposals to freeze support on a per-line basis further support a finding that designating GCC as an additional ETC would not be in the public interest.

The FCC is currently addressing the issues of interstate access reform for rate-of-return ("ROR") carriers and possible further changes in the universal service support system for rural carriers. The outcomes of both of these proceedings will also have a significant impact on whether designating GCC as an additional ETC would be in the public interest.

The Multi-Association Group ("MAG") filed a proposed plan to reform interstate access for ROR carriers, on which the FCC has solicited comment.[27] The MAG plan could significantly alter existing cost recovery for interstate access charges. The plan as proposed allows ROR carriers to opt into incentive regulation or to stay with a form of regulation that is more similar to current ROR regulation. Under the incentive regulation option, or Path A, carriers would lower their composite access rate ("CAR") to a prescribed rate of $0.016 per minute.[28] The interstate access revenue requirement that is not recovered through increased subscriber line charges and the billing of access at the CAR would be recovered through rate averaging support ("RAS").[29] RAS would be considered to be a universal service support payment, and would be portable. In other words, CETCs would receive both universal service support payments under the existing mechanism and RAS for each customer that they obtain.

Under the MAG plan as proposed, carriers that opt for Path B would not be subject to any of their access revenues being converted into a portable subsidy. However, the FCC asked if a two-path scheme was necessary, and whether the potential regulatory complexity of two options would

[27] *See* Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, and Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers, CC Docket No. 98-166, Notice of Proposed Rulemaking, FCC 00-448 (rel. Jan. 5, 2001).

[28] Ibid. at ¶8.

[29] Id.

have practical or administrative consequences.[30] Furthermore, the FCC asked whether the MAG plan should be adopted in its entirety.[31] Thus, the FCC has indicated by its questions that it may make modifications to the MAG plan. If the FCC finds that two paths are not necessary or would be administratively burdensome, it might order all companies to move part of their access cost recovery into the portable subsidy RAS.

One of the changes being considered to the universal service support system for rural carriers is to freeze support on a per-line basis in study areas where a CETC initiates service. The RTF had made a recommendation to the Federal-State Joint Board on Universal Service to implement this proposal, as the RTF had concerns that excessive growth in the universal service fund might result from incumbent carriers' loss of lines to CETCs.[32] The FCC declined to adopt the RTF's proposal on freezing support at this time.[33] However, the FCC recognized that as competition develops in high cost areas and rural ILECs lose lines to competitors, excessive fund growth may occur. Therefore, the FCC is seeking comment on this issue in a Further Notice of Proposed Rulemaking ("FNPRM").[34] The FCC has indicated that it intends to resolve the issues raised by a freeze after developing the record more fully through this comment cycle.[35]

The FCC has noted that freezing support in competitive study areas may have the consequence of discouraging investment in rural infrastructure, contrary to the fundamental goals of the RTF plan and findings by the FCC.[36] Carriers in competitive study areas would have reduced incen-

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[30] Ibid. at ¶17.
[31] Ibid. at ¶15.
[32] *See* RTF Order at ¶120.
[33] Ibid. at ¶123.
[34] Ibid. at ¶124.
[35] Ibid. at ¶211.
[36] The FCC concurred with the RTF in its recommendation that universal service support funds are appropriate to be used to invest in infrastructure capable of providing access to advanced services. Ibid. at ¶200.

tives to invest in infrastructure, because they would be unable to obtain additional support for such investments once their high-cost loop support is frozen.[37]

Compounding the potential harm caused by a freeze in universal support to an incumbent rural carrier is the fact that the FCC did not address the "stranded cost" issue,[38] as it had been requested to do so by the RTF.[39] Due to high fixed costs in the telecommunications industry, when a customer switches carriers and the portable support associated with that customer goes to a different carrier, the costs incurred by the previous carrier are not likely to be reduced by an offsetting amount.[40] If the costs cannot be recovered through other means, the costs are considered "stranded." The RTF noted that not all ILECs have the potential to attract alternative revenue sources from their investment in plant, and the only alternative for many rural carriers would be to increase basic local service rates to cover the shortfall.[41]

Decisions on these various issues still pending before the FCC, because they may substantially change the present system of cost recovery for rural LECs, have the potential to harm universal service efforts in rural areas and these concerns should also be taken into account in this process of making a determination under the public interest standard.[42] As of this time, given the uncertainties still surrounding interstate access reform and also a possible freeze of universal service support it would not be in the public interest to designate GCC as an additional ETC in rural service areas.

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[37] Ibid. at ¶129.
[38] *See* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (rel. Sept. 29, 2000) at p. 39.
[39] *See* RTF Order at footnote 322.
[40] *See* Competition and Universal Service, Rural Task Force White Paper 5, September 2000 at p. 19.
[41] Ibid. at pp. 19-20.
[42] See Hickman prefiled testimony, Exh. 6, pp. 9-12.

III. CONCLUSION

Based on all of the foregoing arguments and authorities, SDITC urges the Commission to deny GCC's request for designation in those rural service areas that are identified in the Stipulation for Procedure on Remand executed between the parties. GCC has failed to satisfy the public interest test imposed under both federal and state statute and, accordingly, the application insofar as it relates to rural service areas should be dismissed without prejudice.

Dated this 27th day of June, 2001.

Respectfully submitted:



Richard D. Coit
SDITC General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the foregoing document were hand delivered on the 27th day of June, 2001 to:

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Sent: Friday, June 29, 2001 2:23 PM
To: Kolbo, Delaine
Subject: TC98-146

Mark Johnson for United Utilities in Ankorage (sp), Alaska would like copies of some of the documents in the above docket. Please call him at 907-273-5290. He said to remind that there is a 3-hour time difference

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-Public Interest-

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

July 6, 2001

South Dakota Supreme Court
Clerk of Court
500 East Capitol
Pierre, South Dakota 57501-5070

RE: *The Filing by GCC License Corporation for designation as an Eligible Telecommunications Carrier*
Civil No. 21-521
Our File No: 000362

Dear Clerk of Court:

Please find enclosed the original and five copies of the Reply Brief of GCC License Corporation on Remand Regarding the Public Interest for filing with your office in the above-referenced case. By copy of this letter I am serving the same on all parties of record.

Sincerely,

/s/ Paul S. Swedlund

Paul S. Swedlund

PSS:hrr
Enclosures

RECEIVED
JUL 0 9 2001
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF

THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER) DOCKET NO. TC 98-146

REPLY BRIEF OF GCC LICENSE CORPORATION ON REMAND REGARDING THE PUBLIC INTEREST

INTRODUCTION

GCC License Corporation, a wholly owned subsidiary of Western Wireless Corporation ("Western Wireless") hereby submits its Reply Brief in support of its request to be designated as an eligible telecommunications carrier ("ETC") for purposes of obtaining federal universal support in the study areas of the SDITC Companies. Western Wireless responds specifically to the arguments raised by SDITC in its Supplemental Rebuttal Brief, and again asks the South Dakota Public Utilities Commission ("Commission") to find that designating Western Wireless as an additional ETC in each area served by affected SDITC Companies is in the public interest as contemplated by 47 U.S.C. § 214(e)(2).

I. THE COMMISSION MUST FIND THAT BRINGING UNIVERSAL SERVICE COMPETITION TO SDITC AREAS FURTHERS PUBLIC INTEREST GOALS UNDER THE FEDERAL ACT

The clear directives of the federal Act, the FCC, the South Dakota Supreme Court, and other state commission decisions, demonstrate that designating Western Wireless as an ETC will bring competitive universal service to rural consumers in South Dakota, which advances the public interest. See

WW Supp. Br., pp. 4-7.[1] As noted by SDITC, the "public interest" requirement is in place to ensure "that competition benefits consumers rather than hurts them." SDITC Br., p. 6 (quoting statement by Senator Byron Dorgan). The assumption underlying this statement is that there will be competition in rural telephone company areas because rural consumers "deserve the same benefits and access to high quality telecommunications services as everyone else." Id. Western Wireless welcomes the application of a public interest standard that strives to bring competition to South Dakota's rural consumers in a way that provides them with the benefits of competition.

SDITC's cannot read a preference for monopoly service into the Act or its legislative history. The Act reflects a clear policy preference in favor of bringing competition to all telecommunications markets. 47 U.S.C. § 254(b)(3). A fundamental tenet of this nation's economic policy is that competition is the best way to promote consumer welfare. This belief lies at the heart of the federal Act, which requires (among other goals) that universal service be reformed so that it is compatible with a competitive environment. Id. The goal, then, is to extend the benefits of competition to all consumers, including consumers in rural areas. After all, this is not a debate over the availability of a harmful substance – the issue is whether rural consumers should have the ability to choose for

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[1] All prefiled testimony and exhibits will be referred to as "Party's Ex. ___, p. ___," and all transcript references will be designated by page number as "Tr. ____." Reference to the Hughes County Circuit Court Findings of Fact, Conclusions of Law and Order dated March 22, 2000 is denoted as "Circuit Ct. Order, p. __." Reference to the South Dakota Supreme Court's Order dated March 14, 2001 is denoted as "Supreme Ct. Order, ¶ __."

themselves their provider of a socially desirable (i.e., universal service) product. In this debate, the presumption should favor entry and competition as in the public interest, with those who would deny fair competition being required to make a compelling showing that government should deny rural consumers the opportunity to choose which provider has earned the subsidy instituted on the consumer's behalf. This presumption is fully consistent with the FCC's Wyoming Order and the South Dakota Supreme Court's statement that any ETC requirements "must be competitively neutral and consistent with the Act's aim of promoting competition." Supreme Ct. Order, ¶ 22, fn.11 (emphasis added).

SDITC misstates and oversimplifies Western Wireless' position on the importance of competition to the public interest determination. See SDITC, pp, 4, 7. Western Wireless does not claim that competition is the only factor, and has never relied solely on general benefits of competition to support its public interest case. As discussed below, Western Wireless has demonstrated specific benefits to rural consumers resulting from its designation, and no record evidence whatsoever shows that Western Wireless' designation will adversely impact consumers in any specific SDITC service area. Together, these points should lead the Commission to find the public interest standard is satisfied.

II. THE COMMISSION CANNOT DISREGARD THE FCC'S WYOMING ORDER

SDITC seeks to avoid the Act's focus on competition by claiming the FCC's Wyoming Order is either not on point or can be ignored by the Commission. These arguments must be rejected. SDITC claims that the FCC's "public interest" determination under Section 214(e)(6) is a different standard

than that under Section 214(e)(2). SDITC Br., pp. 8-9. This is incorrect for two reasons. First, the directives to a state commission in Section 214(e)(2) and to the FCC in Section 214(e)(6) are identical in both language and purpose, and there is nothing in the Act or any FCC order suggesting the standard should be applied differently. Second, SDITC's argument would suggest, for example, that the FCC applied a different "public interest" test to Western Wireless in Wyoming than the Wyoming Public Utility Commission would apply to a landline carrier. This is patently inconsistent with the Act's requirement that standards for designation be "competitively neutral" as to all carriers. 47 U.S.C. § 254(b).

SDITC's claim that the Commission need not give deference to the FCC's analysis also fails. SDITC Br., pp. 8-9. Although states are responsible for implementing Section 214(e), the South Dakota Supreme Court mandated deference to the FCC's construction:

> [I]f we retained some doubt on the proper construction of § 214(e)(1), we give a federal agency's interpretation of the statutes it administers highly deferential review.

Supreme Ct. Order, ¶ 19 (emphasis added). This is consistent with the United States Supreme Court's recognition that:

> [t]here is no doubt ... that if the federal courts believe a state commission is not regulating in accordance with federal policy they may bring it to heel.

AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721, 730 n.6 (1999). As much as it tries, SDITC cannot avoid the fact that the public interest standard must be applied in a way that is consistent with the Act, promotes competition, and is true to the FCC's guidance as to why Congress established the public interest requirement in rural areas.

II. WESTERN WIRELESS HAS DEMONSTRATED SPECIFIC BENEFITS IT WILL PROVIDE AS AN ETC

Western Wireless identified the specific benefits it will provide as an ETC, and cited to the record evidence that demonstrates those benefits. WW Supp. Br, pp. 9-10. In response, SDITC mistakenly claims the record does not reflect such benefits with sufficient specificity. SDITC Br., p. 11. SDITC overlooks that it was these same "specificity" arguments that the FCC has already found could not be a basis for denying a competitor's ETC designation. In the FCC's Declaratory Ruling relating to the Commission's initial order in this case, the FCC made quite clear that it would be unreasonable to expect a competitive carrier to have fully finalized its business plans prior to being designated.[2] In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling, CC Docket No. 96-45, FCC 00-248, ¶ 13 (rel. Aug. 10, 2000). Having lost this "specificity" argument as to Section 214(e)(1), SDITC attempts to make the same argument as to Section 214(e)(2). The Commission should reject this argument as inconsistent the specific determination of the FCC in its Declaratory Ruling.

Contrary to SDITC's claims, the record evidence reflects consumer benefits that will come with designating Western Wireless as an additional ETC in the SDITC areas. For example, the record reflects that designating Western

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[2] This case presents a good example why this makes sense. Had Western Wireless committed to a specific price or local service areas in its application, those business determinations would now be three years old. Competitors do not operate based on business decisions that are three years old.

Wireless will provide customer benefits of a larger local calling area. Western Wireless gave clear testimony that this feature would be one of the primary ways Western Wireless would distinguish its service from the incumbents':

> One of the interesting service options are services that would be provided by GCC is an expanded local calling area, and that has been a big concern to a lot of our customers. Our customers are rural customers as well. It's just that we happen to serve them today with cellular technology and mobile services. But a lot of our customers have concerns about their ability to place calls and not incur toll on their landline network. GCC, as an ETC provider, envisions providing an expanded local calling area to customers, much like we do today on a cellular network.... By having expanded local calling area they're able to extend their ability to call people and have it be a local call.

Tr. 131-32. SDITC simply complains that "the Commission has no real ability to determine whether or not the affected consumers would benefit." SDITC Br., p. 13. SDITC appears to be afraid to let their customers decide for themselves what benefits them. The fact is that this expanded local calling area will be a new service option for the rural consumer, and provides a universal service choice he or she does not have today. When consumers have several options available and are able to choose the one that best fits their needs, competition is working to increase customer satisfaction, thereby benefiting the public interest. Tr. 132.

The record also reflects benefits of increased subscribership. WW Supp. Br., p. 10. SDITC disagrees based on claims that Western Wireless' network cannot provide service more completely than the incumbents. SDITC Br., p. 15. The record in this proceeding clearly demonstrates that wireless technology, like that deployed by Western Wireless, is capable of serving consumers not served or ineffectively served by wireline technology. The Supreme Court affirmed the

Circuit Court's finding that GCC has existing signal coverage in 98% of the state, and can offer universal service throughout the state upon designation. Circuit Ct. Order, p. 6. As the FCC has said, "[a]t the simplest level, increasing the number of people connected to the telecommunications network makes the network more valuable to all of its users." In the Matter of Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 (rel. May 8, 1997), as corrected by Federal-State Board on Universal Service, CC Docket No. 96-45 Erratum, FCC 97-157, ¶ 8 (rel. June 4, 1997), aff'd in part, rev'd in part, remanded in part sub. nom. Texas Office of Pub. Util. Counsel v. F.C.C., 183 F.3d 393 (5th Cir. 1999) ("Universal Service Order"). Consequently, the Commission should find that the availability of a universal service offering using wireless technology will cause greater subscribership of universal service in South Dakota, which clearly furthers the public interest under Section 214(e)(2).

The public interest will also be advanced by the provision of a universal service offering with a mobility component. SDITC again ignores the findings made by the Circuit Court and claims Western Wireless' service would not provide mobility. SDITC Br., p. 14. As the Circuit Court explained, Western Wireless' network does not distinguish between a conventional cellular handset and the wireless access unit that would be used as part of a universal service offering. Circuit Ct. Order, pp. 5-6. Use of a wireless access unit, then, is not limited to a specific home or location, just as with a cellular handset. The Commission should find that Western Wireless will provide universal service over

its cellular network thereby bringing a mobility benefit to universal service consumers who find that feature to be important to them.

Finally, SDITC argues Western Wireless did not demonstrate the benefits of affordable pricing and better service quality. While Western Wireless did not guarantee a specific price, Western Wireless must provide more attractive service and pricing than the incumbent carrier if it hopes to obtain customers. Tr. 43, 95. Moreover, once SDITC stops fighting competition and starts fighting for customers, it will undoubtedly seek to cut costs, innovate, and provide better service. This is exactly how competition brings consumers better service at lower prices. The Commission should find that designating Western Wireless as an ETC will lead to lower rates and better service for South Dakota's rural consumers.

III. THE FCC'S UNIVERSAL SERVICE FUNDING MECHANISMS DO NOT WEIGH AGAINST WESTERN WIRELESS' DESIGNATION

Consistent with its position at the 1998 hearing, SDITC again claims the current federal universal service mechanisms are insufficient or not properly developed to allow for competition in rural company service areas. SDITC Br., pp. 28-34. In essence, SDITC seeks to second-guess the FCC as to what is needed to fund competition for federal universal service support. As support for this position, SDITC relies on the decision of the North Dakota Commission in which that commission speculated that federal funding would not be sufficient to support competition. SDITC Br., p. 31. That decision, however, has been reversed on appeal, and the public interest issue under Section 214(e)(2) was remanded to the North Dakota Commission to decide the issue on lawful criteria.

The court order reversing the North Dakota Commission's order relied on by SDITC is attached hereto. The court addressed and rejected the exact "public interest" argument made by SDITC as being contrary to law:

> Federal case law indicates that in regards to federal funding mechanisms, the PSC cannot determine, or rely on its own determination, that the FCC's universal service mechanisms are not sufficient to provide for competition among universal service providers.... The Telecommunications Act of 1996 contemplates that separate universal service funds would be established at both the state and federal levels. The FCC has established mechanisms for the collection and disbursement of monies for the Federal Universal Service Fund which are independent of any state fund. By denying Western Wireless access to federal subsidies based on North Dakota's failure to create a separate state fund, the PSC is frustrating the purpose of the Telecommunications Act of 1996.

Western Wireless Corp. v. Rural Telephone Company Group et al., Civil No. 00-C-1800, Slip Op. at 3-4 (N.D. Dist. Ct. Nov. 13, 2000).

The North Dakota court's order makes clear that a Commission cannot use the FCC's decisions as to amount of funding, the method of funding, or the targeting of funding, or the lack of a state fund to deny Western Wireless designation. The Commission in this docket is making a decision that affects the distribution of federal universal service support. Claims that the distribution of funding must await further reforms are inconsistent with federal law, and are nothing more than another attempt to delay competition to the ultimate detriment of consumers.[3]

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[3] In addition, SDITC quotes part of the Colorado Commission's Decision on Exceptions for the proposition that there should be targeted support before designating a competitive ETC in rural areas. SDITC Br., p. 31 fn.26. In fact, the Colorado Commission designated Western Wireless as an ETC in all rural telephone company areas where Western Wireless had signal coverage throughout the study area. The Colorado Commission's concern over "targeting" of support

IV. WESTERN WIRELESS' REGULATORY TREATMENT CANNOT BE HELD AGAINST IT IN THE PUBLIC INTEREST ANALYSIS

Having no record evidence whatsoever that Western Wireless' designation will harm consumers, SDITC resorts to the claim that it cannot be in the public interest to designate a commercial mobile services ("CMRS") provider as an ETC. As an initial matter, the Commission should reject SDITC's suggestion that Western Wireless is required to obtain a state certificate of public convenience and necessity to provide services as an ETC. SDITC Br., p. 23. The Supreme Court ordered that Western Wireless be designated as an ETC in Qwest exchanges without any certification requirement, and specifically recognized that Western Wireless is a CMRS provider (Supreme Ct. Order, ¶ 4) which brings Western Wireless within the preemptive effect of 47 U.S.C. § 332(c)(3)(A). The Supreme Court further noted that whether or not a state commission can impose additional criteria on ETCs, there are no such additional criteria applicable to Western Wireless' request. Supreme Ct. Order, ¶ 22. Moreover, as noted by SDITC, there is a pending FCC proceeding relating to the regulatory treatment of a wireless local loop universal service offering. SDITC Br., pp. 23-24. If the regulatory status of Western Wireless' offerings changes by order the FCC, this Commission will have the opportunity to revisit the issue at that time.

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was limited to areas where Western Wireless sought to be designated in only a part of a rural telephone company's study area. In those areas, the Commission decided not to take steps to designate Western Wireless as an ETC in those partial study areas until it could accomplish funding targeted by exchange. In the Matter of Western Wireless Holding Co., Decision on Exceptions, Colorado PUC Docket No. 00K-225T, p. 22 fn. 9 (May 4, 2001). In South Dakota, Western Wireless seeks designation throughout each SDITC Company's study area, rendering the "targeting" of support a non-issue in this proceeding.

Because there is no certification requirement applicable to Western Wireless, SDITC's claim that it cannot be in the public interest for the Commission to designate a carrier not subject to regulation as to its rates (SDITC Br., pp. 20-21) or service quality (SDITC Br., pp. 22-24) must be rejected. SDITC's claim that the Commission must be able to ensure "affordability" is a red herring for several reasons. First, Western Wireless said clearly that it will price its offering competitively with the incumbents' price:

> I would say, you know, without making a commitment as to what the price would be, I would say it's going to be whatever the local exchange carrier offers service at. It's similar to, I guess, if a CLEC goes into a market and tries to compete with the incumbent carrier, if they go in and say, well, I'm going to give you local exchange service a hundred bucks a month, they won't have any customers. As we go into the universal service market, if the incumbent is offering service at $15 a month, we'll offer service at a similarly $15 a month.
>
> ...
>
> So what we would do is we would enter a market, take a look at what the offering is available to consumers today, take a look at what consumers want. And we recognize they want larger local calling areas. And make a universal service offering available to them that is very attractive.

Tr. 117. The record fails to reflect any concern that Western Wireless will provide service at rates that consumers will not find affordable. More importantly, Western Wireless will be entitled to receive support only for those universal service customers who choose to take its service. Supreme Ct. Order, ¶¶ 16-17. Thus if Western Wireless does not provide an affordable service it will not obtain customers and will not receive federal universal service support.

SDITC also argues it is not in the public interest to designate an ETC that is not subject to service quality standards. SDITC Br., 22. Again, nothing in the

record suggests Western Wireless will provide service in a way that harms consumers. As with its rates, Western Wireless will be unable to win and retain customers if it provides a poor service or does not treat its customers well. The benefit of competition is that if consumers do not feel they are obtaining the desired level of service, they can take their business to the other carrier. Nothing in the FCC's Wyoming Order suggests the public interest is compromised by having an ETC that is not subject to landline service quality rules. This is an attempt to bar Western Wireless from being designated solely because it is a CMRS provider.[4]

SDITC places great emphasis on service standards Western Wireless meets as an ETC in other states. SDITC Br., pp. 25-27. Contrary to SDITC's claim, in no state were service standards applied as part of any "public interest" determination. Instead, Western Wireless volunteered to provide service

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[4] In the Wyoming Order the FCC rejected with similar attempts to use Western Wireless' CMRS status against it:

> We also reject the contention that Western Wireless has not sufficiently specified whether it intends to use its fixed or mobile service to fulfill its ETC obligations. In so doing, we reject the implication that service offered by CMRS providers is ineligible for universal service support. In the *Universal Service Order*, the [FCC] concluded that universal service support mechanisms and rules should be competitively neutral. The [FCC] concluded that the principle of competitive neutrality includes technological neutrality. Thus, a common carrier using any technology, including CMRS, may qualify for designation so long as it complies with the section 214(e) eligibility criteria.

In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896, ¶ 11 (rel. Dec. 26, 2000)

pursuant to a service agreement, filed with each state commission, that spells out customer rights and service standards. The specific terms of the service agreements have been proposed by Western Wireless or agreed to by Western Wireless in other states to ensure a high level of service quality. It will do the same in South Dakota.

In Texas and Nebraska, specific terms of service come from lawfully promulgated rules that apply to the receipt of state universal service funding. In Kansas, the Commission determined it could promulgate rules for receipt of state funding by wireless ETCs, but then decided against the adoption of any service quality rules as unnecessary in a competitive market. In the Matter of a General Investigation into Quality of Service Standards to Determine Whether a Universal Set of Standards Can Be Applied to all Eligible Telecommunications Carrier, Kansas Corp. Comm'n Docket No. 00-GIMT-584-61T, Order 3: Addressing Jurisdiction, p. 10 (May 5, 2000).

Should the Commission decide to implement a state fund, Western Wireless would participate and would comply with any lawful provision adopted by the Commission. Since no such rules apply today to a CMRS provider, denying designation on that basis is not competitively neutral. Moreover, nothing in the record shows consumers will be harmed if Western Wireless is not subject to quality of service standards.

Western Wireless wants to work with the Commission to bring high quality universal service to rural consumers. Once designated, Western Wireless will

file its customer service agreement with the Commission for informational purposes and will provide universal service consistent with the Act.

V. THERE IS NO RECORD EVIDENCE THAT CONSUMERS WILL BE HARMED BY DESIGNATING WESTERN WIRELESS AS AN ADDITIONAL ETC

As discussed above, Western Wireless and SDITC seem to agree that the public interest test should be used to ensure that competition is brought to rural telephone company areas in a way that benefits consumers rather than harms them. Western Wireless has demonstrated consumer benefits from competition, and was prepared to oppose any claim by SDITC that the record shows consumers will be harmed by Western Wireless' designation. SDITC, however, fails to point to any consumer harm from designating Western Wireless an additional ETC in the SDITC areas. There is no record that the SDITC companies are unable to respond appropriately to competition by cutting costs, providing better service, and exploring new revenue streams. Further, there is no evidence questioning Western Wireless' commitment to providing service that will meet its customers' needs. In short, while SDITC claims that the Commission should consider customer harms, it has failed to show any such harms based on the record evidence.

CONCLUSION

The Commission is being asked to conduct a public interest balancing test. This analysis must favor competition over monopolies, and must consider specific consumer benefits of Western Wireless' entry into the universal service market. The only detriments alleged by SDITC are either unlawful considerations (e.g., FCC funding decisions, Western Wireless' regulatory status), or claims of

harm that are not supported by the record. Under these circumstances the result of the balancing test is clear – the Commission should designate Western Wireless as an additional ETC in the identified SDITC Company study areas consistent with the public interest in accordance with 47 U.S.C. § 214(e)(2).

Respectfully submitted,

Dated: July 6, 2001

By

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ATTORNEYS FOR GCC LICENSE CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July, 2001, I sent, by first-class mail, postage prepaid, a true and correct copy of the **REPLY BRIEF OF GCC LICENSE CORPORATION ON REMAND REGARDING THE PUBLIC INTEREST** to:

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Paul S. Swedlund

IN DISTRICT COURT, COUNTY OF BURLEIGH, STATE OF NORTH DAKOTA

Western Wireless Corporation, Appellant, vs. Rural Telephone Company Group, US West Communications, Inc., and North Dakota Public Service Commission, Appellees.	)	Civil No. 00-C-1800 MEMORANDUM OPINION AND ORDER

In August 1998, Appellant, Western Wireless, filed an application with the North Dakota Public Service Commission (PSC). Western Wireless requested that the PSC designate it as an eligible telecommunications carrier (ETC) in North Dakota. The Appellees, Rural Telephone Company Group and U S West Communications, opposed the designation of Western Wireless as an ETC in North Dakota.

On December 15, 1999, the PSC issued its Findings of Fact, Conclusions of Law and Order (hereinafter, "First Order"). In the First Order, the PSC conditionally designated Western Wireless as an ETC in the non-rural service areas of North Dakota, which in effect designated Western Wireless as an ETC in the urban areas served by U S West. The PSC also indicated in the First Order that it did not have sufficient evidence to determine whether it would be in the public interest to designate Western Wireless as an ETC in the rural service areas of North Dakota. Therefore, another hearing before the PSC took place on January 31, 2000.

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After the hearing on January 31, 2000, the PSC issued its Second Findings of Fact, Conclusions of Law and Order on April 26, 2000. (hereinafter, "Second Order"). In the Second Order, the PSC determined that it would not be in the public interest to designate Western Wireless as an ETC in North Dakota's rural service areas. Based on that determination, the PSC denied the application of Western Wireless to be designated as an ETC in the rural service areas served by the Rural Telephone Company Group member companies. Western Wireless filed a Notice of Appeal dated May 26, 2000, appealing the PSC's Second Order. Western Wireless raises three issues in this appeal.

The first issue raised by Western Wireless is whether the PSC made adequate findings of fact to support its decision to deny Western Wireless' ETC application in its Second Order. An agency is required to state explicit and concise findings of fact. N.D.C.C. § 28-32-13(1). Recitation of testimony is not equivalent to stating findings of fact. Matter of Estate of Dittus, 497 N.W.2d 415, 419 (N.D. 1993); Evans v. Backes, 437 N.W.2d 848, 850 (N.D. 1989).

Paragraphs nine through thirty-three of the PSC's Second Order merely recite some of the testimony and arguments presented by the parties. Paragraph thirty-four concludes that "it is not in the public interest to grant Western (Wireless) ETC status." However, it is unclear from the Order just how the PSC reached this conclusion as the findings of fact only recite the arguments of the parties. The Court finds that the PSC failed to make adequate findings of fact in its Second Order to support its decision to deny Western Wireless' ETC application.

The second issue raised in this appeal by Western Wireless is whether the PSC should have relied on the sufficiency of the Federal Communications Commission's (FCC) federal universal service support mechanisms or lack of a state universal service fund to support its denial of Western Wireless' ETC application based on the "public interest." In paragraph two of the PSC's Second Order, the PSC stated that it would (if requested) re-open this case "after the FCC Federal-State Joint Board on Universal Service recommends and the FCC provides funds to adequately support universal service in high cost areas. The same consideration will prevail when the North Dakota Legislature establishes a state universal service fund. . . ." Second Order p. 13, ordering paragraph 2.

Federal case law indicates that in regards to federal funding mechanisms, the PSC cannot determine, or rely on its own determination, that the FCC's universal service mechanisms are not sufficient to provide for competition among universal service providers. See Alenco Communications, Inc. v. FCC, 201 F.3d 608 (5th Cir. 2000) (upholding the FCC's funding rules against these exact challenges and finding that the FCC has successfully provided for specific, predictable and sufficient mechanisms to support competitive universal service).

The Telecommunications Act of 1996 contemplates that separate universal service funds would be established at both the state and federal levels. See 47 U.S.C. § 254(e) and (e) (regarding federal universal service support), and § 254(f) (regarding state authority to adopt universal service regulations not inconsistent with the Act). The FCC has established mechanisms for the collection and disbursement of monies for the Federal Universal Service Fund which are independent of any state fund. By denying Western

Wireless access to federal subsidies based on North Dakota's failure to create a separate state fund, the PSC is frustrating the purpose of the Telecommunications Act of 1996.

This Court must affirm the decision of the PSC unless it is not in accordance with the law. N.D.C.C. § 28-32-19(1). The Court finds that the Second Order is not in accordance with federal law because the PSC considered the sufficiency of the FCC's federal universal support mechanisms and the lack of a state universal service fund when it denied Western Wireless' ETC application based on the "public interest."

The third and final issue raised by Western Wireless in this appeal is whether the PSC properly applied its stated "public interest" standard in considering Western Wireless' ETC application. Western Wireless argues that in the Second Order, the PSC failed to properly apply the "public interest standard" that the PSC had identified in paragraph forty-seven of the First Order of December 15, 1999.

The appealing party of an administrative agency decision is required to file specifications of error "specifying the grounds on which the appeal is taken." N.D.C.C. § 28-32-15(4). The North Dakota Supreme Court has said that "(t)he time has come to compel compliance with the specificity requirement of § 28-32-15(4), N.D.C.C. Summary affirmance of an administrative agency decision is appropriate if an appellant's specifications of error 'fail to specifically identify any error with any particularity.'" Vetter v. North Dakota Workers Compensation Bureau, 554 N.W.2d 451, 454 (N.D. 1996) (citing Maginn v. North Dakota Workers Compensation Bureau, 550 N.W.2d 412, 417 (N.D. 1996) (Sandstrom, J., concurring); Held v. North Dakota Workers Compensation Bureau, 540 N.W.2d 166, 171 (N.D. 1995) (Sandstrom, J., concurring)).

Western Wireless is the appealing party in this matter. Western Wireless did not raise the issue of misapplication of a previously stated "public interest standard" in its May 26, 2000 Specifications of Error. Therefore, Western Wireless is precluded from raising and arguing that issue in this appeal.

ORDER

Based on the foregoing, the Second Order of the PSC, dated April 26, 2000, is **REVERSED AND REMANDED.** On Remand the PSC is instructed to issue an Order consistent with the requirements of N.D.C.C. Chapter 28-32. More specifically, the PSC is instructed to:

1. Prepare more specific findings of fact to support its decision to deny Western Wireless' ETC application.

2. Not consider the sufficiency of the FCC's federal universal support mechanisms or lack of a state universal service fund in making its public interest determination.

Dated this 9th day of November, 2000

CV-00-C-1800

BY THE COURT:

Norman J. Backes
Judge of the District Court
East Central Judicial District

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	))))	ORDER SETTING ORAL ARGUMENT TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

GCC appealed the Commission's decision to circuit court. The circuit court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the circuit court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the circuit court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

> On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest;
>
> On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and
>
> On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission will listen to oral arguments on July 26, 2001, beginning at 1:00 p.m., in Room LCR 1, the State Capitol Building, 500 East Capitol, Pierre, SD.

ORDERED, that the Commission will listen to oral arguments on July 26, 2001, beginning at 1:00 p.m., in Room LCR 1, the State Capitol Building.

Dated at Pierre, South Dakota, this 19th day of July, 2001.

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: Delaine Kolbo

Date: 7/19/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER — TC98-146

Transcript of Proceedings
July 26, 2001

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIRMAN

COMMISSION STAFF
Rolayne Ailts Wiest
Greg Rislov
Dave Jacobsen
Heather Forney
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Keith Senger
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appearing as co-counsel on behalf of GCC;

RICHARD D. COIT,
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Attorney at Law, P.O. Box 57,
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appearing on behalf of SDITC.

PRECISION REPORTING
LAW WRITERS

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER — TC98-146

Transcript of Proceedings
July 26, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIRMAN

COMMISSION STAFF
Rolayne Ailts Wiest, Karen Cremer
Greg Rislov, Keith Senger
Dave Jacobsen, Michele Farris
Heather Forney, Sue Cichos

APPEARANCES

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RICHARD D. COIT,
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION,
Attorney at Law, P.O. Box 57,
Pierre, South Dakota 57564,
appearing on behalf of SDITC

TRANSCRIPT OF PROCEEDINGS, held in the above-entitled matter, at the South Dakota State Capitol, LRC1, 500 East Capitol Avenue, Pierre, South Dakota, on the 26th day of July 2001, commencing at 1:00 p.m.

(There were no exhibits marked for identification)

CHAIRMAN BURG: The purpose of this meeting is to hear oral arguments in Docket TC98-146, the filing by GCC License Corporation for designation as an eligible telecommunications carrier.

We will just hear the oral arguments first from GCC. And, Rich, are you representing SDITC?

MR. COIT: Yes.

CHAIRMAN BURG: I'll allow rebuttal after that. Mr. Ayotte

MR. AYOTTE: Thank you, Commissioner Burg and Commissioner Nelson. I'm Mark Ayotte, A-Y-O-T-T-E. I'm a lawyer from the Briggs & Morgan firm in St. Paul, Minnesota representing GCC License Corporation. With me is Talbot Wieczorek.

Commissioners, the only issue before you today is to determine whether designating GCC as an ETC, or eligible telecommunications carrier, in each area served by a rural LEC is in the public interest in accordance with Section 214(e)2 of the Federal Act.

As you may recall, the Commission did not address the public interest issue in its initial Order last may. So it's time for a fresh look at

the public interest based on the record evidence before you. The Commission, we think, should also consider the analysis of numerous other state commissions and the FCC decisions that have already acted to designate a competitive ETC in areas served by a rural telephone company, consistent with the public interest.

You may recall at the time that we first filed the application and we had the hearing it was somewhat of a case of first impression. We really didn't have any guidance in terms of how to assess the public interest, what factors should be considered. Nevertheless, the parties did introduce their evidence, and we have briefed it.

But today we do -- the Commission does have some guidance. It has guidance from numerous other state commissions and guidance from the FCC. When the record evidence is considered in light of the purposes of Section 214(e) and the decisions of the other commissions and the FCC, the Commission should conclude that the public interest standard is met in this case.

GCC would ask the Commission to make the necessary findings that designating it as an ETC in each rural telephone company area is in the public

interest and to act to designate GCC as an additional eligible telecommunications carrier in each of the study areas as requested and to bring competitive universal service to the rural consumers in South Dakota

Now briefly a little bit of the background just to refresh GCC does business in South Dakota as Cellular One. It is authorized and licensed by the FCC as a commercial mobile radio services provider throughout South Dakota They have an existing network in place today through which they provide their wireless telecommunications services Those services include mobile telephony, data facsimile services, 911, voice mail, and several other features and functions.

GCC is seeking designation as an additional ETC in the South Dakota study areas of 26 rural telephone companies that were identified in the stipulation. Now I think all parties agree that the proper designated service area is the LEC's study area under the federal statute and the FCC's rules. And GCC is licensed and can provide service throughout each of the 26 study areas And once designated as an ETC, GCC can and will provide the supportive services throughout each of the 26 study

areas.

Each rural LEC where we're seeking designation has already been designated by the Commission as an ETC throughout its respective study area Each rural LEC is the only ETC in their respective exchanges. So the designation of GCC as an additional ETC is going to enable competition in the provisioning of universal service. And that's largely what this case is all about, competition. Now not competition for the sake of competition but rather competition as a means to an end.

Now the SDITC is going to try to overstate and oversimplify GCC's position They're going to suggest that our public interest argument is that competition equals the public interest. Well, that's nonsense. If competition equaled the public interest, there really wouldn't be need for the public interest standard set forth in the statute because every time you designated an additional ETC you would have competition. And it would almost write the public interest factor right out of the statute. So that is not our position.

Rather, our position on the public interest as supported by the record evidence is that competition provides certain general benefits to

consumers. Just the simple act of promoting competition is going to benefit the rural consumers And you ought to consider that.

In addition, you ought to consider the specific benefits of competition from GCC. Demonstrated by the record, those specific benefits will include lower rates, improved services, expanded local calling areas, mobility, and customer choice And these are benefits to the rural consumers.

Now the SDITC witness, Mr. Hickman, testified at the hearing and agreed that the public interest determination should focus on the consumer. And we agree with that. And the FCC and numerous other state commissions have recognized that the goals of promoting competition in rural areas and advancing universal service are not mutually exclusive goals. They're compatible goals.

And those who claim that you need to choose between competition and preserving universal service are really presenting you with a false choice. One of the primary purposes of the 1996 Federal Telecommunications Act was to create mechanisms to sustain universal service while at the same time having competition emerge both in

urban as well as rural areas. It's an expressed goal of the 1996 Act

So we'd ask the Commission at this point to establish the proper considerations for the public interest factor and apply it to the record evidence in this case. And the Commission should determine that the public interest is served when there's a reasonable expectation that competition may have beneficial impact for the consumers.

You ought to consider the general benefits of competition to the rural consumers as well as the specific benefits of GCC's services in their provisioning of universal services. And you ought to then balance the benefits against any showing made by the SDITC companies that any particular study area cannot sustain competition or that there's any demonstrated harm to the consumers.

Do not presume that competition cannot be sustained in any area served by a rural LEC in South Dakota. The Commission shouldn't require specific evidence on the SDITC's company's claims that whether a loss of customers or a loss of revenue to GCC would cause some detrimental impact on universal services. This would allow the Commission to balance the benefit to the consumers

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with any demonstrated detriment and to determine whether GCC designation or ETC is going to be in the public interest and preserve an advanced universal service.

So my comments today are going to deal with this framework for making the public interest determination, the consideration of the general benefits of competition, the specific benefits of GCC's universal service offering utilizing wireless technology and any adverse impact that may have been demonstrated by a rural LEC.

That analysis, that framework for considering the public interest, is consistent with GCC's position throughout this proceeding. It's consistent with the evidence in this proceeding. It is also consistent with the analysis of numerous other State Commissions as well as the FCC who have determined whether it's in the public interest. And, most importantly, it keeps the focus of the analysis on the consumer.

Commissions should also follow the guidance that was provided by the South Dakota Supreme Court's ruling that Section 214(e) must be applied consistent with the main goal of the 1996 Act, which is promoting competition.

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South Dakota Supreme Court recognized that the '96 Act seeks to encourage multiple providers and competition. They describe promoting competition as the thrust of the 1996 Act. And although the public interest question was not before the Supreme Court, I think the Court gave the Commission some pretty clear guidance and direction on how to interpret and to apply the public interest standard under Section 214(e) in a way that will promote competition among ETCs. And by applying this standard to the record evidence the Commission should find that the public interest standard is met.

So let's look at the record evidence on some of these factors. The record evidence shows that granting ETC designation to GCC will facilitate competition and will provide substantial specific benefits to South Dakota's rural consumers. On the general benefit, for the first time the rural consumers will have a choice of providers.

And the Commission should endorse the benefits of competition everywhere in South Dakota, including the rural areas. And this competitive choice is not just an abstract policy goal, but rather the FCC's decision involving the state of

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Wyoming that was cited in our brief, the FCC found that competition to rural LECs is going to bring about new technologies, better service, greater efficiency and is going to provide incentives to the incumbents to better meet the consumer's needs.

And the Commission should trust that the rural consumers are fully capable of choosing the service provider who will best meet their needs. Do not make that decision for them. Give them that choice. Because the benefits, the general benefits of having competition, are going to result in lower rates, better service, and a choice to the consumers. That's just inherit in the nature of a competitive market.

The specific benefits of GCC's service offerings were also demonstrated in the record evidence. The first benefit is the competition by GCC is going to result in expanded local calling areas for the consumers. Now today service by the land line LECs have limited local calling areas, and GCC testified that it would offer expanded local calling areas that are larger than the incumbent LECs.

Why is this a specific benefit? Well, because it's a benefit to the consumers today who have to

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pay total charges in order to reach local government offices, health care providers, business, family members, who live outside the scope of their restricted local calling areas. By GCC offering them a choice and an opportunity to have an expanded local calling area, these consumers are going to be benefited because what would otherwise be a toll call to them will now be part of their local usage.

A second specific benefit that was demonstrated by the record is is that the competition by GCC is going to provide a mobility component, which will have a great appeal to many rural consumers. It's inherent in the wireless technology.

Inherent in that technology is the fact that the wireless access unit can be moved. It is mobile. It was found by the Circuit Court that the service is a commercial mobile radio service. It has a battery backup that will allow it to operate while it's in motion, and as a result consumers who subscribe to the wireless local loop service of GCC are going to have the ability to take that unit -- they could take it down to the barn, take it down the road. They could use it just about anywhere.

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They're not restricted to the jack on the wall. And that mobility component will be of benefit to the consumer for those who choose to subscribe.

A similar specific benefit that's demonstrated by the record evidence really has to do with line extension. Competition by GCC is going to benefit consumers who want an additional line but who otherwise might face some costly line extension charges from the incumbent LEC. Because the wireless access unit can be deployed without any changes in Western Wireless's network, consumers will now have the ability to get an additional line to their home, to an outbuilding on their property, whether that's a barn or the garage, whatever wherever they need it.

And when you think about that benefit of being able to deploy the service faster without having to trench a line and incur line extension charges, everybody wins. The incumbent LEC wins because they save in having to make the expenditure and the investment to put in additional lines. GCC wins because they got a subscriber and they're able to provide the service less expensive than the incumbent LEC.

And, ultimately, the customer wins because

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they're going to be paying less for the service. They won't have to pay the line extension charges. And in that situation the consumers will receive a specific benefit from GCC's service. In addition, competition by GCC is going to result in lower rates and better service to the consumers, simply a result of competition in the marketplace.

Now Mr. DeJordy for GCC testified that GCC is going to provide service offerings that are tailored to meet the consumer's needs. And they're going to provide service that is equal to or better than the incumbent at a competitive price and if they don't, they will not be successful in attracting or retaining any customers.

And simple economics tells you that when companies have to compete for their customers, they will have to improve the quality of their service and/or lower their prices if they're going to do so successfully. And any suggestion or claim by SDITC of a need to raise prices for local service if GCC succeeds at attracting customers is flawed and inconsistent because one of the benefits of competition is that the price for a service that is subject to competition cannot be raised without the further loss of customers.

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Price increases in a competitive market will not provide economic success but instead will merely ensure further customer deflections. The mere fact of competition is going to hold prices in check and prevent them from being increased.

Now in response to this record evidence and in our arguments in our brief about the benefits to consumers, both the general and specific benefits of designating GCC, SDITC again simply alleges that these benefits are simply not reflected with enough specificity. And that's wrong, based on a fair review of the record evidence, and it's wrong based on the law.

The same specificity claim that they raise was rejected by the FCC in their Declaratory Order, and it was rejected by the South Dakota Supreme Court when analyzing the basic criteria for designating GCC as an eligible carrier. It is simply wrong and unreasonable to expect an applicant for ETC status to have fully finalized its business plans before being designated.

And, in fact, when you look today, it's been almost three years since this proceeding began. And any business plans that GCC would have had developed three years ago presumably would have to

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change, given the current market.

The Commission should reject this specificity claim that the SDITC alleges when evaluating the demonstrated benefits to these consumers of having larger local calling areas, lower rates, mobility, avoiding line extension charges and the like.

And don't be afraid to let the consumers decide for themselves what benefits them the most. Because today competition for universal services in South Dakota is nonexistent. Each SDITC company where we're seeking designation is the only designated ETC in their respective exchanges.

And the evidence shows that competition is not only mandated by the Act but also that it's good for consumers and that competition by GCC will provide real, specific, and substantial benefits to these consumers. Granting the designation will also promote the deployment of new telecommunications technology in rural areas of South Dakota.

That's one of the stated goals of the Federal Act. It was highlighted by the South Dakota Supreme Court in its decision. The designation of GCC is simply going to increase the availability of wireless service to the rural consumers. So you

should use this ETC provision to provide for and to encourage the continued deployment of new technologies and services to the rural consumers in the state.

Now let's look at adverse impact. Because I think on balance the record is replete with ample evidence of the general benefits and the specific benefits to the consumers resulting from the designation.

Let's take a look and see if there's any evidence of harm. No SDITC company has demonstrated that the designation of GCC would result in any significant adverse impact to outweigh the showing of the benefits. And the Commission should reject the SDITC claim that a potential loss of revenues might harm the LECs so that the public interest standard could not be met.

If you take guidance from the FCC's decision involving the state of Wyoming, the FCC when evaluating this same sort of balancing test found no merit to any contention that designating an additional ETC in rural areas would create any incentive to reduce infrastructure, investment, or raise rates or otherwise reduce the quality of service to the rural consumers.

In fact, what the FCC required was empirical evidence from the rural LECs that demonstrate any allegation of adverse harm. The end result of the SDITC's arguments on the public interest would preclude granting ETC status to any carrier in any rural service area because the potential loss of revenue from one customer switching to another company might increase the cost of serving the remaining customers.

You would never designate -- under the SDITC's arguments you would never designate an ETC in any area served by any SDITC member, wireless or wire lined, never, ever.

The FCC in its public interest analysis required specific evidence of harm to the consumers or empirical evidence that a particular rural company study area was not capable of sustaining more than one ETC. And when you look at this record evidence there is nothing in this record to meet that standard of any demonstration of potential harm.

There was no evidence by the SDITC introduced that would allow you to determine any adverse impact. It's pure speculation on their part in their arguments.

In fact, you may recall that Mr. Hickman, who was their witness, was an accountant, and their firm served as the accounting firm for most of the SDITC members. Yet despite that role and access to the information, they didn't introduce any financial information as to the current financial capacity of any individual rural LEC.

They didn't introduce any evidence showing revenue sources from other services that they provide. They didn't introduce any evidence to enable you to analyze how they might be able to reduce their expenses if they were put into a competitive situation.

In fact, when you look at the SDITC brief, they don't even argue or allege that there's any -- that there would be any adverse harm to any of the 26 rural LECs. Rather, their primary basis for opposing a public interest determination in this case really goes back to their same old claim dealing with the certainty as to the amount of federal universal service support as provided under the FCC's funding mechanism. And the Commission has to reject their claim that the current federal USF support mechanisms are not sufficient to allow for competition in a rural company service area.

They want you to second guess the FCC on how to provide federal universal service support in rural areas. They want you to wait until the FCC takes further action to disaggregate the level of federal universal service support. And they've actually encouraged you to rely on a North Dakota Commission decision which found it was not in the public interest to designate an additional ETC based on the sufficiency of federal universal service support that's currently available to the incumbents.

But the North Dakota decision that they're asking to rely upon, that decision was reversed on appeal as being an unlawful basis to consider as part of the public interest decision and that was reversed by a decision dated November 13 of 2000.

In fact, the North Dakota court specifically addressed and rejected the exact same public interest argument that the SDITC is now making. And the North Dakota court indicated that federal case law indicates that when it comes to federal universal service funding mechanisms the State Commission cannot determine or rely on its own determination that the FCC's universal service mechanisms are not sufficient to provide for

competition among universal service providers.

The decision makes it clear that this Commission cannot lawfully use or assess the FCC's decisions as to the amount of federal universal service support, the method of providing that funding, how they decide to target that funding in rural areas.

You can't consider the lack of a state universal service fund in this state as a basis to deny GCC's request. It's merely an argument for a delay, to wait a little bit more, to delay, and if you adopt that analysis, it will never be in the public interest and you will never have competition in rural areas in South Dakota.

So the starting point for your analysis should be that South Dakota's rural areas can support competition from GCC and that South Dakota's rural consumers are entitled to the benefits of that competition. It's simply not credible to conclude that no rural area anywhere in South Dakota can support a competitive telecommunications market. That flies in the face of technological sophistication of these carriers.

And there is no record evidence concerning the financial condition of the rural LEC in order for

you to make that determination. That conclusion also flies in the face of the conclusions of numerous other State Commissions and the FCC that have already acted to designate competitive ETC consistent with the public interest in states with very large rural populations. It includes Minnesota, Texas, Nebraska, Oklahoma, Nevada, Colorado, Kansas, Iowa, and the state of Washington.

The SDITC's arguments also fly in the face of the FCC's determination to designate GCC as an additional ETC throughout the entire state of Wyoming, consistent with the public interest. It's also directly contrary to a recent Administrative Law Judge's recommendation to designate GCC as an additional eligible carrier in the state of New Mexico.

In fact, it's directly contrary to a recent discussion and determination by the North Dakota Public Utilities Commission on remand where they determined at their work session on July 17 to grant GCC's designation in the State of North Dakota. There is simply no record evidence to demonstrate that competition by GCC will harm any incumbent LEC where we're seeking ETC

designation.

At this point of all the states that have considered the public interest determination if you were to deny this application, South Dakota would be the cheese standing alone. You would be the only state to have denied to the rural consumers a competitive choice. And the record in this proceeding simply does not support that determination.

Now the SDITC has also raised numerous other miscellaneous claims regarding GCC's regulatory status as a commercial mobile radio services provider which they're encouraging you to take into account as part of a public interest analysis.

I'm not going to address all of their points. I'm sure Mr. Coit will state them much better than I. But let me just comment on a couple of them. And to start with, the Commission cannot and should not try to do indirectly under the guys of the public interest that which it is forbidden from doing directly.

I'll tell you what I mean. One of their arguments is, well, you ought to require a certificate of public convenience and necessity of GCC as part of your public interest analysis.

Well, you can't. The Circuit Court and the Supreme Court earlier on in this proceeding determined and found that GCC's service is a commercial mobile radio service. It's a CMRS service. That is a finding in this case.

And as a result, the federal law of 47 USC Section 332(c)(3)(a) preempts State Commissions from regulating the entry or otherwise requiring a CPCN. Likewise, the Supreme Court's remand directed the Commission to designate GCC as an ETC in the Qwest exchanges. There's no requirement and it's not permissible for the Commission as part of that designation to now require a CPCN.

But yet under the guys of public interest the SDITC is going to tell you that you ought to require that. You simply can't. Simply, the notion or this claim that it's not in the public interest because our rates are not subject to regulation, again, it's not our fault. It's nothing the Commission has done.

The federal law has said rates in entry for CMRS providers are preempted. So you really can't determine it is not in the public interest by virtue of the fact that federal law doesn't allow

the Commission to regulate the rates of a CMRS provider.

Similarly, this affordability claim, this claim that under the guys of public interest you ought to consider whether the service will be affordable, is really somewhat of a red herring.

This notion of affordability that they argue comes from Section 254(b)1 of the Federal Act, and 254(b) sets forth a number of principles of universal service, one of which is that under 254(b)1 that too should be a goal of universal service, that there be quality service available at just, reasonable, and affordable rates. And as a result of that stated principle, one of the six, SDITC says, well, you need to determine that the service would be priced at an affordable level.

A couple of problems with that argument. The first is that we're under 214(e). 254 sets forth numerous principles of universal service, but when you read them in context you will see that all of the universal service principles are stated to be directives to the joint board and to the FCC as principles that they should consider when basing their policies for the preservation and advancement of universal service.

It's, likewise, not appropriate to establish some affordability standard for GCC when the Commission has not established or acted to determine an affordable rate for any of the incumbent LECs when they were designated as ETCs. It would be discriminatory. And the record shows quite clearly, in fact, the SDITC's witness even agreed if GCC prices its service at a level which a customer determines is not affordable, they're not going to subscribe to it. It's as simple as that.

The other interesting thing about this affordability argument really comes from the FCC's Wyoming Order. It's kind of interesting because the end result is that this affordability -- this argument that you ought to make decisions consistent with the affordability principle, promoting quality services at just, reasonable, and affordable rates, you'll actually do that -- you will promote that principle if you designate GCC as an additional ETC.

The FCC in the Wyoming Order recognized and discussed this 254(b)1 principle of affordability, and what they said is consistent with that principle, we will be promoting that principle by providing and promoting competitive services. So

quality service at just, reasonable, and affordable rates is not an obstacle to be overcome as part of the public interest, but rather, it is a policy which is fostered by the designation of a competitive carrier, that the nature of the competition will create incentives to ensure -- this is when the FCC said designating competitive carriers in rural service areas will create incentives to ensure that quality services will be available at just, reasonable, and affordable rates.

But you can't use this abstract claim of affordability as part of a public interest analysis to deny it. In fact, it cuts the other way. It actually preserves and promotes the public interest.

So the time has come for the Commission to join the ranks of a growing number of states and the FCC to conclude that designating GCC as an additional eligible carrier is in the public interest. It will provide the general benefits of competition. It will provide specific benefits to the rural consumers. And promoting competition in the rural areas and advancing universal service are really twin goals and twin mandates of the '96 Act.

You're not being asked to sacrifice one for the other. In fact, the whole universal service program is designed to ensure that we will achieve high subscribership and have available services in high cost rural areas as competition emerges.

The only thing missing at this point is the competition. The benefits of competition with lower rates, quality service when the consumers are given a choice will result in having more customers connected to the network and enjoying the use of telecommunications services in South Dakota. It will preserve and advance universal service, and there is sufficient record evidence before you to support that determination.

So GCC would respectfully request the Commission to find that it is in the public interest and proceed to grant GCC's request for eligible telecommunications carrier status in each of the 26 study areas as applied for.

I thank you, and I'd be available to answer any questions that you might have.

CHAIRMAN BURG: I have a few. You stated early on in your testimony that competition will lower rates. Does it always lower rates?

MR. AYOTTE: Yes.

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CHAIRMAN BURG: Competition always lowers cost?

MR. AYOTTE: An economist will tell you, maybe economics will tell you competition will always lower rates.

CHAIRMAN BURG: Theoretically lowers, I mean, in the LEC side we're not seeing that happen. The states that have broad competition, the rates have moved up.

MR. AYOTTE: Well, Commissioner Burg, I'm out familiar enough with the LEC industry. What I can tell you, however, is that if two competitors are going to be providing similar services to the same group of consumers, that many customers will choose a service that meets their needs but which is priced at a level that also meets their desire when carriers are competing just on the basis of price.

And for a new entrant to come into a market where the incumbent has monopoly control, 100 percent market domination, one of the ways in which they will compete is to offer a lower price and if they're successful in attracting customers through a lower price, that creates an incentive then for the incumbent to lower their price. And

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as long as they're competing --

CHAIRMAN BURG: And if neither one will equal costs, will that be able to be maintained and continued?

MR. AYOTTE: Meaning they won't price below cost?

CHAIRMAN BURG: Well, I mean, if they do price below cost, what do they have to do to stay in business?

MR. AYOTTE: Well, at some point an accountant will tell you if the companies are pricing below cost, they won't stay in business very long.

CHAIRMAN BURG: Or they'll raise their price and the other one raises their price and we'll start back up the ladder. I mean, the problem I have is when you have limited resources, limited customers, if you inject too much competition nobody survives or prices go up in order to make them all be able to be sustained. And they go up equally.

MR. AYOTTE: Commissioner Burg, just a couple of comments in response to your statement.

First of all, I don't think it's accurate to assume that the market is as constant, that you

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have a limited market base. Because what can happen and what will happen is that you will see that consumers -- even though the population remains the same, consumers will still subscribe to more telecommunications services if they're available.

Demand can increase for the telecommunications service by people subscribing to an additional line, even though population might remain the same. And at the same time in the context of universal service if a customer subscribes to the incumbent's local service and, let's say, that they use that service for their voice and they hook up their computer, that creates a problem because whenever they're on the computer they can't make or receive telephone calls.

Customers can subscribe to GCC's service an additional line and still retain service from the incumbent. In that situation the demand has increased. The population has stayed the same.

And under the federal universal service funding both the incumbent and GCC would be eligible for universal service support. The federal fund provides support for all lines.

CHAIRMAN BURG: So you're saying in

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that situation both companies would get federal universal service support?

MR. AYOTTE: That's correct.

CHAIRMAN BURG: At the same level as a person who only took one service?

MR. AYOTTE: That's correct.

CHAIRMAN BURG: Or is the federal universal service split?

MR. AYOTTE: No. Under the FCC funding rules, which would be found in 53.3047 -- they call it the portability role -- the amount of universal service support which is available today to the incumbent LEC, the FCC's funding rule says when you have a competitive ETC the competitive carrier is entitled to receive the same amount that is available to the incumbent LEC.

So there's not a differing amount. And the amount of support on a per line basis is not split in half.

CHAIRMAN BURG: So if that person took both the service from the same provider, would they get two --

MR. AYOTTE: Yes.

CHAIRMAN BURG: -- universal service supports?

MR. AYOTTE: Use a simple number Let's say the incumbent receives $50 a month in universal service support per line. If the customer has one line, the incumbent gets $50. If the customer subscribes to a second line from the incumbent, the incumbent now has two lines. Each line gets $50 per month

CHAIRMAN BURG: I thought universal service support was only for basic service

MR. AYOTTE: Well, it is Let me state it differently It is for basic local service, which includes the nine supportive services that are required to be in a universal service offering.

CHAIRMAN BURG: That would mean that multiple lines -- so if I put in 10 lines, you're going to get 10 times?

MR. AYOTTE: That's correct.

CHAIRMAN BURG: Does that not raise the price for everybody?

MR. AYOTTE: No. Let me tell you why. Because the amount -- the dollars in, if you will, to the federal universal service fund are dollars that are contributed by all carriers nationally, every subscriber.

CHAIRMAN BURG: Absolutely.

MR. AYOTTE: And there are certain states -- and don't hold me to this but to demonstrate the point let's take New York or some state on the east coast which will have a lot of urbanized areas and not a lot of high cost rural areas. All of those subscribers are paying dollars in to the federal universal service fund. The FCC then --

I'm oversimplifying a little. The FCC will take those dollars and distribute them out to the high cost rural areas. So will the fund increase? Yes. Who's paying for the increase? People who live in urbanized areas who otherwise then aren't receiving high cost support.

This is actually a good thing for South Dakota when you think about it, which has a lot of high cost rural areas because you're bringing in more federal universal service support to the state from, you know, contributions from people outside the state. You will not increase the cost to just the residents of South Dakota. But see --

CHAIRMAN BURG: But theirs will go up the same as everybody else's to enhance that fund; correct?

MR. AYOTTE: I believe that's a possibility, but my point is that the FCC in their determinations on how to administer federal universal service support they've decided that's how they're going to do it. They decided to provide support for multiple lines, and they decide where the support gets distributed.

CHAIRMAN BURG: Along this line, if competition always drives prices lower and is thus always beneficial -- is that, in essence, what you said?

MR. AYOTTE: Yes. That's one of the benefits.

CHAIRMAN BURG: Why then did the 1996 Act carve out rural areas for different treatment and require the PUC to find a public interest finding to require competition?

MR. AYOTTE: When you look at the legislative history it's a little bit vague. In fact, it was Senator Dorgan from North Dakota who was one of the sponsoring senators for this amendment to include the public interest standard.

I think it's fleshed out and identified a little bit more in the FCC's decision involving the state of Wyoming. They recognize the possibility

that there may be certain study areas, certain areas in certain parts of the country, that may not be capable of sustaining competition. That's the reason that the public interest standard is in there.

CHAIRMAN BURG: But that's not what you said. You said every area competition's beneficial.

MR. AYOTTE: That's right. I did. Well, your question was whether competition in and of itself will serve to lower rates. And I stand by what I said.

CHAIRMAN BURG: Even in those areas they may find may not sustain it?

MR. AYOTTE: Sure. That's right. That's right. But the standard -- it's a different question as to why do we have this public interest standard, and what the FCC said in the Wyoming Order is they recognized that there may be areas which are not capable of sustaining competition in multiple provider.

But that's why the FCC required the incumbent LECs to come forward and provide empirical evidence to demonstrate their claim, if they want to make the claim, that their particular area may not be

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capable of sustaining competition. You don't have any evidence in the record here from any SDITC member as to whether their particular study area is capable of sustaining competition.

And here's a point that I want to make sure is clear. When we're talking about the public interest determination we have asked for designation in 26 separate study areas of 26 SDITC members. It is not an all for one and one for all determination. The public interest determination needs to be made on a study area by study area basis.

Now our evidence as to the benefits apply to all 26 areas. And that's what the FCC said, that the incumbent LEC would have the burden to provide empirical evidence to demonstrate that competition is not sustainable in their study area.

CHAIRMAN BURG: Is that completely compatible with the law that said it was the ETC requestee's burden of proof to show that it was in the public interest?

MR. AYOTTE: It is compatible. I'm not arguing that we don't have the burden of proof on the public interest. That's not our argument. We are the applicant, and we have the burden of

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proof on the overall question of the public interest.

What the FCC has said and the analysis of numerous other State Commissions, including Minnesota and Kansas, Texas are the ones that come to mind at the moment -- what they have said is once the applicant comes forward with evidence to demonstrate the benefits of their service offerings -- and we've done that in this proceeding -- then the burden of production, not the burden of proof, but the burden then shifts to the incumbent LEC to demonstrate any allegation of potential adverse harm.

And that burden shifts because it makes sense. It makes sense because the incumbent LECs are most familiar with their study areas. The incumbent LECs have access to all of the necessary financial information and expense information and revenue information to show that for whatever reason competition in our area is not going to be sustainable.

And that's why you have this balancing of the benefits and the harms. We have the burden on the benefit. Once we make that showing, the burden should shift to the incumbent LEC to demonstrate

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any allegation or claim of adverse harm.

And on the basis of this record there is no evidence of any harm. The only evidence you have is benefit. And in the end when you do that balancing test as part of the public interest you conclude that the public interest is met.

CHAIRMAN BURG: I mean, you know, I'll put a certain amount of credit to what you say. The problem I have is that you turn around and say that in all cases competition is beneficial and it should be authorized just because it's beneficial. That's what I heard you say.

MR. AYOTTE: Well, with respect to the general and expected and intended benefits of competition, that's right. Competition generally is beneficial.

But in addition, Commissioner, we've offered specific evidence as to specific benefits of our particular service offerings.

CHAIRMAN BURG: You indicated that you had 26 specific areas. Is that all of the rural area?

MR. AYOTTE: Are they all rural areas?

CHAIRMAN BURG: Does that include

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all rural areas of South Dakota?

MR. AYOTTE: No. You may recall that when we submit the stipulation on remand -- let me back up.

When GCC initially filed its application we sought designation in all exchanges of all nonrural carriers, Qwest, throughout the State of South Dakota and all of the study areas of all the rural telephone companies in the State of South Dakota.

Following the Supreme Court's remand we did a stipulation with the SDITC in which we removed some of the study areas and some of the SDITC members. And it was attached as an Attachment A to the stipulation.

So at this point we're only seeking designation in the study areas of 26 rural telephone companies.

CHAIRMAN BURG: Just two more questions. One, to follow up on something I said before, you said competition will drive prices down.

MR. AYOTTE: Yes.

CHAIRMAN BURG: Can it ever drive them below cost?

MR. AYOTTE: Sure.
CHAIRMAN BURG: Is that beneficial?
MR. AYOTTE: Beneficial to the consumers? Absolutely.
CHAIRMAN BURG: Even if service quality deteriorates?
MR. AYOTTE: Well, now we're going to shift and talk about --
CHAIRMAN BURG: Well, what I'm saying is you don't drive prices below cost and not have something that gives.
MR. AYOTTE: I agree with you. I agree with you. If prices go below cost, they will -- the service provider who's providing service below cost is not going to be able to sustain and stay in business for any -- you know, for an extended period of time.
CHAIRMAN BURG: At the same level of service.
MR. AYOTTE: At the same level of service or at all until they run out of money.
CHAIRMAN BURG: If they give up level of service, they may be able to reach into cost. Is that something we should be considering? The fact that --

MR. AYOTTE: The level of service?
CHAIRMAN BURG: The level of service and the danger in these limited markets of driving below cost?
MR. AYOTTE: Yes. But you're looking at it from the wrong perspective, Commissioner, with all due respect. What the FCC said is that when you have competition -- this general economics theory that prices will go below cost and that service quality then could deteriorate and so forth, it actually cuts the other way.
When you have competition prices will be reduced and service quality will increase. Consumers now have a choice and they can be motivated by price alone or they can be motivated by the quality of the service that they receive They could be motivated in their purchasing decision by the variety of services that are available.
Everyone is different. Everyone makes purchasing decisions based on different factors. But for those customers who choose to subscribe to the server, if service quality is important to them in their purchasing decision, competition will

require that the two service providers, two or more service providers, increase the quality of their service, not decrease it.
CHAIRMAN BURG: I don't think that's a given. Because sometimes they both decrease or all decrease because of competition. You have no choice except poor service. I mean, I think that's the result we've seen especially, I think, in the electricity as well as telecoms
One more question. You know, you talk about just answer to this one. And it appears to me that the technology is more available in some of the noncompetitive rural areas than it is in those areas where you've been able to compete in for three years and some of the rural -- nonrural areas where there isn't this requirement.
I mean, that is the experience that we're seeing in numerous exchanges
MR. AYOTTE: Commissioner Burg, I didn't understand your --
CHAIRMAN BURG: Well, you made a point it will bring new technology to the table, competition will.
MR. AYOTTE: Yes.
CHAIRMAN BURG: Right now the areas

that have the most competition do not necessarily have the best technology in South Dakota, in my estimation.
MR. AYOTTE: You're talking about the urbanized areas?
CHAIRMAN BURG: Right. Because we've got broad band services available in a lot of areas where there's no competition, and we've got some areas that there can be competition where they've been told they can't get broad band service.
MR. AYOTTE: I accept what you say, and, as you know, the market has taken a big hit and venture capitol money is also tough to come by, some of the new entrants to even roll out service in some of the urbanized areas. But when you look at the rural areas there is no competition today.
In the absence of being designated as an ETC and being eligible to receive federal universal service support on an equal level as the incumbent, you're not going to see any competition in the rural areas either.
CHAIRMAN BURG: Well, and I agree, but that's the part of the premise about competition that I don't buy, that competition

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always brings better service at a lower price. I just don't think the evidence proves that in what I've seen.

The marketplace will always fix is the problem -- that's a theory I have a real big problem with because the market will abandon a lot of people. And that's why this is so important to a rural state like South Dakota.

You're arguing that the market will drive to the best service, and I don't think that proves to be true in many cases.

That's all the questions I have.

COMMISSIONER NELSON: It also seemed to me that what the Wyoming Commission did or what the Minnesota Commission did is not necessarily relevant to what we do in South Dakota because every state is a little bit unique and their situation may not be our situation, may not be the same in Minneapolis as it is in Pukwana or Stickney, South Dakota.

So the public interest in those three different examples I gave you may be very different. Would you agree?

MR. AYOTTE: Well, there would be no public interest determination applicable to

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Minneapolis. That's not a rural area, Commissioner.

The reason that I referenced in our brief where we provided discussion and example of the public interest determinations of these other State Commissions was really intended as a tool and to provide assistance to you as you determine these factors for the public interest.

And when we're talking about rural areas of states, and that's really where the public interest factor in Minnesota, for example, was applied, there are rural areas in Minnesota which are not dissimilar to the rural areas of South Dakota and these high cost rural areas generally share the same characteristics; low density, big areas, they're costly to serve.

And to that extent when looking at the public interest analysis and the factors considered, I think that the other State Commission decisions are very relevant and can be useful in helping the Commission understand and consider and weigh some of the very same factors that we're talking about here.

COMMISSIONER NELSON: The Act was pretty specific about, I think, balancing promotion

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of competition and securing and protecting universal service. Just by the fact that we did have a rural protection provided for in the 1996 Act seems to me to say that they at least left the door open for the possibility that competition may not work everywhere.

And so we also have the public interest standard. The Act also left that decision and determination of public interest in ETC status to local Commissions. Would you not, agree?

MR. AYOTTE: I would agree.

COMMISSIONER NELSON: I think that if you look at the public interest, although I can say Minnesota and Montana and Wyoming and some other states that you might choose to pick might have some similar characteristics of ruralness, but they might not all be exactly the same.

For instance, I think it makes a different if people are more spread out versus people in more contiguous groups, and I'd say in Montana, yeah, they have some rural areas, it's pretty rural, but they also tend to be clustered in valleys and close-knit areas versus in South Dakota things are more spread out.

So I think that would require a different kind

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of decision-making process when you looked at the public interest there versus the public interest here. It seems that when you look at -- you said that SDITC didn't have any evidence in the record that would demonstrate that there would be harm or they'd be adversely effected or the public interest would. Well, I want to see if you could show me in the record where you demonstrated anything but economic theory about what competition may or may not do.

Where is the evidence that I can put on my paper today that says here is the concrete black and white evidence that says that other than economic theory what can you show me that it is in the best interest for competition in these rural areas?

MR. AYOTTE: Well, Commissioner, in our brief we sought to undertake to cite specific record evidence relative to -- it would be the testimony from Mr. DeJordy primarily, his testimony relative to the general benefits of competition to the consumers as well as the specific benefits that I touched on earlier, the expanded local calling areas, the mobility component, ability to provide additional lines without any changes to the network

and deploy it much more quickly, the GCC's commitment to provide service at that competitive rates and at an equal to or better service quality.

I didn't make those things up. Those were all --

COMMISSIONER NELSON: No. I read those things. I'm saying that's more theory in my opinion because I don't see any hard evidence that shows your rates, A, are going to be competitive. I don't know that they will or will not be.

I don't know what the expanded area will be. I don't see any real -- I mean, you're kind of saying that they don't have a very strong case because they don't have any hard evidence in terms of numbers or whatever that shows they're going to be harmed. I don't think you have any either to show me to show it's going to be benefited.

MR. AYOTTE: Commissioner, two things there. The second one first. SDITC did not introduce any evidence of harm. There is no record evidence of any potential harm. And that much you can't cite to anything in the record because there's nothing there.

And when you're going to put the benefits and the harms on the public interest balancing scale

you've got nothing in the record relative to any potential harm collectively or individually, which is the way the analysis should be.

And with respect to the benefits, it sounds to me like you're getting hoodwinked or persuaded by the SDITC's specificity. We weren't specific enough to terms of what are the expanded local calling areas, show us what the expanded local calling areas will be.

The evidence of the record said our local calling areas will be larger than the incumbent LECs. And the SDITC says show me, tell me, what it is, tell me what your prices are going to be.

I suppose most potential competitors would like a three-year jump knowing other people's business plans, but it almost goes back, Commissioner, to the issue that Ms. Wiest and Mr. Coit and I argued up at the Supreme Court, sort of this chicken and the egg thing, you know, do you have to first be offering and providing the service so that we know where you're offering it and how you're pricing it and so forth in order to be eligible to be designated as an ETC.

The Supreme Court and the FCC now have been very clear that an applicant for ETC designation

does not need to have finalized its business plans, does not need to introduce complete business plans because it doesn't make any sense. It's unreasonable to expect that.

The commitment and the evidence is the local calling areas will be larger. They will be tailored to meet the consumer's needs because GCC is going to have to do that if they want to succeed. If they're not going to offer something at a better price, a better service over a larger local calling area, then customers are not going to subscribe to the service. They can get the service from the incumbent LEC.

And we're the ones who won't succeed. So we're going to have to provide a better quality service at a more advantageous price with larger local calling areas, all of which Mr. DeJordy said that the company would do. We're going to have to do that in order to succeed.

And when we do that consumers -- those consumers who choose to subscribe to the service, those consumers are going to be benefited.

COMMISSIONER NELSON: You're asking me to buy the economic theory, which I maybe don't, that competition's always good, it's always going

to make prices lower and it's always going to provide better technology and better quality.

What if, on the other hand, competition brings prices that end up below cost and the choices between the price that you both have to price your services at a price that nobody can afford, what happens to universal service then?

My choice is you have two companies out there. Yeah. I had a choice. There's competition there, but I can't afford either one of them. And right now we don't have that problem. We have a provider, and we have reasonable prices.

MR. AYOTTE: You have a provider who today generally has no incentive to operate more efficiently, has no incentive to act to expand their local calling areas, has no incentive to reduce prices, has no incentive to do anything to meet the consumers' needs. And you have consumers who don't have a choice.

COMMISSIONER NELSON: Well, I think consumers still have a choice. I mean, they can choose to have a wireless line right now today, whether I say you're an ETC or not an ETC.

MR. AYOTTE: Commissioner Nelson, in the absence of ETC status and the eligibility for

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federal universal service support it would be unreasonable to expect GCC to go to market with their wireless local loop offering as we were talking about and try to compete with the incumbent LEC for the service.

COMMISSIONER NELSON: Now we're talking fixed wireless; right?

MR. AYOTTE: I'm talking the wireless local loop service.

CHAIRMAN BURG: A couple more that come to my attention. You said that, you know, people are going to have to feel there's a benefit in order to get it from you. That could also end up with cherry picking.

Do you feel an obligation to serve as is required by the incumbent companies, in other words, that any --

MR. AYOTTE: Absolutely.

CHAIRMAN BURG: So that any customer that comes to you in those 26 study areas you will give equal service to what you give every other customer?

MR. AYOTTE: Commissioner Burg, it is the obligation of all ETC's, including GCC, if we are designated, it is inherent in the

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requirement an obligation of an ETC to provide the service to those who request within the area in which you are designated.

CHAIRMAN BURG: Can you do that now? I presume it probably can in every case right now.

MR. AYOTTE: Can we do that now? I believe the record evidence was -- the record evidence is that GCC is licensed and authorized to provide service throughout the entire State of South Dakota. And the record evidence -- there was a signal coverage map that showed currently the signal coverage for Western Wireless to approximately 98 percent of the State of South Dakota.

And one of the issues that we have taken up on appeal to the Supreme Court was the obligation of the ETC to extend its network to build facilities to a requesting customer if you don't have facilities there today or if you don't have the ability in our case to serve that other 2 percent.

That is not a disqualifying factor or consideration for ETC status. What the FCC has said, Supreme Court affirmed, and Mr. DeJordy testified to, is if there is a request for service to a customer that we cannot currently serve with

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the existing signal coverage, we have an obligation, we recognize that obligation, to extend service within a reasonable period of time to that customer.

See, the first fact or the first criteria to be an ETC is you have to be a common carrier. And CMRS providers, cellular providers are common carriers.

The Circuit Court, confirmed by the Supreme Court, said we are a common carrier. And that common carrier obligation does not allow you to do cherry picking. The common carrier obligation requires all ETC's, wireless or land line, to provide service to offer and provide an advised service throughout your designated areas.

CHAIRMAN BURG: Is that going to include the advanced services, broad bands, stuff like that?

MR. AYOTTE: The advanced services and the broad bands, Commissioner Burg, are not part of the package of supportive services that are required as part of the universal service offering.

CHAIRMAN BURG: But that's becoming what's expected of the current providers, I mean, very much so. That's probably where the concern

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I also made the example awhile ago the person may decide to take your service and somebody else's service. If they already have good voice service, could they take your service for advanced service as they can in some of the current companies? Do you offer broad band?

MR. AYOTTE: Well, when you say broad band are you including video? Are you talking about high speed data services?

CHAIRMAN BURG: Probably high speed principally, but it's probably going to lead to video.

MR. AYOTTE: Yeah. The current technology that can provide data services over a wireless network is currently somewhat limited.

There is, you know, 3G, third generation technology, that's being developed and discussed and so forth, which depending upon what you read and who you believe will indicate that wireless Internet access will be many, many times faster than over the copper wire.

But I want to bring it back to universal service because the federal universal service support today is not intended -- it is not calculated to provide support for the advanced

services.

The FCC was very clear from day one that access to advanced services is not part of the nine supportive services that the support is intended to provide. In fact, an expressed statute, I think it's 254(e) or (f), one of those, which requires carriers to use federal universal service support as it's intended, the FCC has said the universal service support is intended to be used to provide and maintain the nine supportive services.

So access to advanced services and broad band is, again, really wholly outside universal service support, and, you know, unless and until the FCC decides that advanced services will be part of the supportive services, there's no funding for it.

CHAIRMAN BURG: It's kind of hard to convince the people that sometimes.

MR. AYOTTE: Well, I would say if the incumbent has the ability using land line technology to provide not only the basic mobile services that we're talking about here but in addition can offer their customers access to advanced services at a greater data speed than can wireless, good for them. They have a competitive advantage.

CHAIRMAN BURG: But then you don't have competition for those services.

MR. AYOTTE: We're not talking about competition for advanced services. That's my point. We're talking about competition for universal services, for basic local service, for basic voice service.

CHAIRMAN BURG: Just one last question. If we would grant ETC status, would GCC agree to certain service quality, affordability, complaints, that type of thing, at least similar to what you've done in other states?

MR. AYOTTE: Let me answer the question this way. What we have done in numerous other states is we have -- our terms and conditions of service are set forth in a service agreement with the customer, in a contract. And the service agreement, customer service agreement, sets forth our service quality standards, sets forth the pricing, sets forth, you know, our requirements, the terms and conditions of our service.

What we have done in other states and what we're prepared to do in South Dakota is agree to keep a copy of that service agreement on file with the Commission. By virtue of you designating us as

an ETC you have jurisdiction over us, right, because you have the ultimate club and the ultimate weapon.

What the Commission can giveth, the Commission can taketh away. You have the inherent right for GCC, as well as any other ETC, to -- if you determine that they're not meeting the obligations and requirements of being an ETC, you have the inherent right to initiate a proceeding, show cause order, conduct an investigation, and seek to revoke the ETC status.

CHAIRMAN BURG: Do you think that's the only recourse we'd have?

MR. AYOTTE: Under your current regulations and statutes, yes.

CHAIRMAN BURG: So as difficult a time we've had trying to ferret out this issue, whether it's beneficial, the only alternative we're going to have is to jerk it, again, to remove your status.

MR. AYOTTE: Pretty powerful weapon.

CHAIRMAN BURG: Not given the decisions that's come down so far.

MR. AYOTTE: Well, Commissioner Burg, here's the problem. When you talk about

service quality and SDITC referenced that in their brief, service quality can oftentimes be broken into two subsets, what I would say consumer protection type quality as well as the more technical type of service quality standard.

Our consumer protection service quality issues are all set forth in our standard service agreement which we use in other cities. We have to comply with those.

CHAIRMAN BURG: Who enforces that? That's what I'm getting at. Do we have any authority to enforce your service quality standards? We do for the incumbent companies.

MR. AYOTTE: Yes. I think you would have authority to enforce the customer service standards in our contract.

CHAIRMAN BURG: Are you willing to sign an agreement to that extent if it's at all questionable?

MR. AYOTTE: Sign an agreement with the Commission or --

MS. AILTS WIEST: Well, I guess the point is we do have actually service quality standards for telecommunications companies, and there's nothing that exempts you from those

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I mean, you are a telecommunications company already under our definition of a telecommunication company. The only exception is from rates and market entry. So I don't understand why you would think you'd be exempt from our rules that would apply to any other telecommunications company as a wireless company.

MR. AYOTTE: I guess the answer is this. It really doesn't matter what I think. This is actually what the Minnesota Commission said. We had this great debate and argument in Minnesota relative to whether we are or are not subject to service quality standards that were promulgated for the incumbent LEC.

And I thought the Minnesota Commission -- not because I'm from Minnesota, but I thought they said it best which is, you know, we don't really care what you think, Western Wireless, we don't need your agreement, we don't need your acknowledgment, we don't need your disagreement as to whether or not you're subject to our jurisdiction because our jurisdiction is what it is.

And at such time as we think -- and we know we have the ultimate club and, Western Wireless or GCC, you can disagree with us until you're blue in

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the face as to whether you think we're subject to these or not, but it really doesn't matter to us. If we want to exercise our jurisdiction, if we want to enforce a particular service, we're going to do it.

MS. AILTS WIEST: What's your theory under South Dakota that you're not subject to our service quality as a telecommunications company for rules that actually apply to a telecommunications company as defined by South Dakota statute?

MR. AYOTTE: If the rules apply, then they apply. If they don't apply, the theory would be as is recognized in a certain case entitled AT&T Wireless versus (/PWAGS), that service quality and standards under state law are a form of entry regulation for wireless carriers. And as a result they're preempted.

We don't need to decide that issue today. The fact of the matter is if the rules apply, they do apply. And if they don't, then they don't.

CHAIRMAN BURG: I don't think it's that simple, though, unless you agree that they apply. Because the minute we try to apply them and you don't agree, I know where you go. We're going to be in court.

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And that's why I'd like to reach some agreement here that you feel they do apply and that you accept a stipulation that you will adhere to the service quality standards as every other telephone company must in South Dakota with our jurisdiction.

MR. AYOTTE: Commissioner Burg, I don't wish to respond to the question with a question so I won't ask my question.

CHAIRMAN BURG: Good.

MR. AYOTTE: Let me state it this way. We would be happy to sit down with Commission staff and Commission counsel to review these service quality standards that we're talking about generally, to review them specifically as we have done in other states, to incorporate those service quality standards into our standard service agreement.

At the same time, we'd like the Commission staff and the Commission counsel to consider and review our standard terms and conditions, including service quality and the like and, ultimately, we'll have that filed with the Commission.

In fact, in Minnesota -- at the risk of Ms. Kelsch kicking me in the back here, the

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Minnesota Commission, which we did this very same thing, the Minnesota Commission asked us at the end of our standard service agreement if we would include a provision that says any disputes -- not verbatim but any disputes or claims arising under this service agreement are subject to the Commission's jurisdiction.

CHAIRMAN BURG: That's simply what I was asking you, if you would do that same kind of stipulation or agreement in South Dakota.

MR. AYOTTE: Yes.

CHAIRMAN BURG: Okay.

MR. AYOTTE: We'd be willing to make that part of our service agreement. In fact, I don't want to go all the way through Minnesota, but Minnesota Commission wanted us to put the address of the Commission on the service agreement for the purposes of complaints.

All right. There haven't been any complaints -- knock on wood -- but it's there. And as a result -- and this is actually more beneficial, I think, than tariffs.

Because customers don't read tariffs. People like us in this room are the ones who read tariffs. The service agreement is a multi-part form. The

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customer gets a copy of it. They can keep it. They have it. They have that information available to them, and it's really written in pretty plain English so that they can understand it.

All of this stuff is not part of the record, but I am authorized on the part of the company to say we would be more than willing to sit down with staff and Commission counsel and to address some of these service quality issues with respect to our customer service agreement as I've described.

CHAIRMAN BURG: Anybody else?

COMMISSIONER NELSON: I have one question. I guess, at least it's my understanding you've made agreements your ETC status was based on stipulations that you were willing to make in a variety of areas, not only service quality.

So are you willing to make those kinds of agreements in South Dakota?

MR. AYOTTE: Those kinds being what other -- it's really --

COMMISSIONER NELSON: I'm just saying that your ETC status are contingent upon meeting certain criteria. They may or may not have been service quality. So you have been willing to stipulate or agree to -- in order to get ETC status

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to do certain things. That's not true. Is that true?

My understanding is you've been willing to stipulate to --

MR. AYOTTE: Sure --

COMMISSIONER NELSON: -- different things in order to get ETC status.

MR. AYOTTE: In numerous other states we did have prior to the hearing during the hearing and the like there were oftentimes requests made by staff or some of the interveners primarily from Commission staffers -- I don't want to call them conditions, but will you agree to this, will you agree to that, et cetera, et cetera.

And in some respects we said yes and other respects we said no, but in those where we have said yes, you know, it was done through dialogue and discussion that incorporated into the Order. Now maybe it's just --

COMMISSIONER NELSON: Well, you can describe them how you want. I described them as terms and conditions. And that was what was contingent upon your ETC status.

MR. AYOTTE: Sure. And one of the difficulties here, Commissioner, the more we do

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this, the more states we have, the smarter we become. South Dakota was the second straight where we went to hearing.

This is coming up now almost on three years when we filed the petition, and, you know, a lot has changed since that time in a number of other states. There have been other states that haven't required any conditions. And it really sort of varies.

But we would, again, be more than happy to sit down and review with Commission staff and Commission counsel any of the types of conditions and requirements that we were asked to make in other states. We'd be happy to engage in that dialogue here in South Dakota.

CHAIRMAN BURG: I think we'll take a 10-minute break.

(A short recess is taken)

CHAIRMAN BURG: I'll turn it over to SDITC.

MR. COIT: Thank you, Commissioner Burg, Commissioner Nelson, Commission staff. For the record, my name is Richard Coit, and I'm here today as Executive Director and General Counsel for the South Dakota Independent Telephone Coalition

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and here today to argue the remaining issue in this docket on behalf of all of those member companies that are listed in the stipulation for procedure on remand that are still subject to GCC License Corporation's competition for an ETC designation and also on behalf of those other SDITC member companies that certainly have the potential to be impacted by the decision that is made in this case concerning the public interest standard under the federal and state law.

As is clear to all of us, the only issue that we're here to address today is the public interest issue and whether it is in the public interest to designate GCC as an additional ETC in those rural service areas that are listed in the stipulation between the parties. So we have an application now that is limited to only certain designated rural telephone company service areas.

Initially that was not the case. This was a statewide application. Before commenting and providing some clarification on the arguments that we set forth in our brief I think I would like to note what the issue is not today. And the issue is not whether GCC can compete or has the right to compete in those areas.

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The issue is whether they should receive universal service funding that in a sense, I guess, pump starts competition in those areas. We have a public interest standard in the federal law that is an additional standard for designation. And it's important to understand, I guess, you know, looking at all the other state decisions and everything else that this Commission is not required to designate more than one ETC in a rural service area.

If you look at this entire case and in large part it seems based on some presumption or thought on the part of GCC that competition is always in the public interest and that as a result of that there is no valid public interest argument not to designate more than one. And we would disagree with that position.

The public interest standard was put in there for a reason. There are some very valid reasons behind that public interest standard in the legislation. And I think it's wrong to approach this case as being nothing more than showing competition and showing that through the promotion of competition, you know, you can assume certain benefits and as a result this thing is in the

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public interest.

It's a much more complex analysis than that. The Supreme Court stated in its decision that based on record evidence if the PUC finds the public interest test has been satisfied in rural areas where GCC is seeking ETC status, then the PUC must award such designation in those areas. So GCC in its brief has generally argued that when you consider the record evidence in light of the purpose, it's stated purpose of 214(e), other State Commission decisions and the FCC decisions, it is abundantly clear that the public interest standard is met in this case.

We strongly disagree with that. If you look at the record, the evidence presented is insufficient to establish that it would be in the public interest to grant ETC designation in any rural service areas, obviously including all the rural service areas in the -- stated in the stipulation remand. GCC's case fails because essentially what they've tried to do is build their case on a policy preference for competition and that presumption that competition will benefit consumers.

If we take a look at the actual evidence of

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record and we have testimony in the record that was submitted by a couple of witnesses that didn't appear, Mr. DeJordy adopted their testimony, incorporated that into his testimony at the hearing. But their witness at the hearing, Mr. James DeJordy, most of the hearing actually involved his testimony, but if you look at that testimony he testified to a lot of different things. And he made a lot of conflicting statements.

I think if you read the record as a whole, he didn't go much beyond talking about the general benefits of competition and what can be presumed if competition is allowed or what can be assumed if competition is allowed. Statements made as to specific benefits in a lot of ways were very conflicting. So we have a situation where we feel the record is clearly insufficient.

If you look at the GCC's brief, some of the decisions they referenced, they referenced the FCC's Memorandum Opinion and Order in the Wyoming case which we've all referred to generally as the Wyoming Order. And they've also referenced a lot of different State Commission decisions where GCC has been designated in the rural service areas.

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I would remind the Commission although these decisions resulted in an affirmative public interest findings, the decisions were made under different state laws and different administrative records. And also with respect to those decisions, they do clearly indicate that the Commission could consider more in this case than just the promotion of competition and that more has to be addressed in the required public interest analysis.

Now we've set forth in our brief basically six different arguments to why the public interest standard has not been met. I'm not going to spend a lot of time on each argument. There's some that I would like to emphasize more than others.

The first that I would like to stress and like to try to clarify is the burden of proof in this matter. Clearly GCC's the applicant in this case and as the applicant it has the burden of proof to show that it meets all of the ETC requirements in the federal and state law, those requirements that are conditioned for designation.

And, obviously, this also includes the addition of public interest criteria that applies to rural service areas. We believe that really what GCC has attempted to do in arguing this case

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and through its brief is to minimize that burden. It's basically suggesting that it can satisfy the public interest standard by simply showing that an additional designation would promote competition and that competition should result in benefits to rural consumers. It's really suggested that it may simply be presumed the competition will bring benefits to all service areas.

There's some arguments about specific benefits, and I'm going to respond to those in a little bit. In support of its position as to what's required under the burden of proof, they cite the South Dakota Supreme Court decision and also the Wyoming Order. Contrary to what they -- neither the Supreme Court's decision nor the FCC's Wyoming were to require this Commission to make a finding that GCC's request for designation is in the public interest.

Certainly the Supreme Court emphasized the goal of competition in its decision, but also the Supreme Court did not even address what that public interest standard means under the federal law. They did not engage in any analysis regarding that standard.

And given that, its decision should not be

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construed to prevent a fair consideration of universal service concerns in this public interest review process. The Supreme Court decision speaks to administrative -- or competitive goals but this Commission understands that there are other equally important goals stated in the federal law.

I've cited in my brief some of the provisions that include or are based on special universal service concerns presented by competition in high cost areas. That includes Section 214(e)2, which is a public interest standard, Section 214(e)3, 214(e)5, 251(f), 253(b), 253(f), and Section 259. There's a laundry list of provisions that were inserted into that Act for a purpose.

And they recognize that there's a different situation in rural service areas that needs to be addressed in the process of introducing competition into local services. And what are these provisions founded on? They're founded on concerns that expanding competition in certain areas of the country, particularly high cost areas, at least has a potential to adversely affect rather than improve universal service.

Mr. Ayotte commented a little bit on competition, universal service, and suggested that

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they're compatible. There was some discussion as to whether they're compatible in all cases. Clearly they're not. If they would be compatible in all cases, those provisions would have never been inserted into the federal law or our state law.

So it's important to understand, I think, in looking at the burden of proof just what the purpose of the public interest provisions are. And clearly Congress understood that there are certain areas that may not be capable of sustaining multiple providers.

Congress understood the competition for telecommunications services in certain areas, rather than benefitting consumers, could have the obvious effect, and it was this that led to the adoption of public language.

Senator Dorgan was one of the sponsors of the additional public interest standard, and he very clearly indicated in the Congressional record what the purpose of the public interest standard was. And at least referencing a portion of his comments, he stated as follows: "A protection of universal service is the most important provision in this legislation. This bill contains provisions that

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make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunication services as everyone else. This legislation also contains provisions that will ensure that competition in rural areas will be deployed carefully and thoughtfully, ensuring that competition benefits consumers rather than hurts them."

And I think that statement and the other comments made by Dorgan on the record make it very clear what the intent of the public interest standard is.

GCC argues really that the standard should be focused around promoting competition and thus takes the position that it's satisfying the public interest standard by showing its designation is consistent with competition and certain competitive benefits that its alleged. What it hasn't done is talk about the possible harm to consumers or the potential harm to consumers, which is really the purpose of those public interest provisions. GCC has really completely ignored that aspect of the public interest test.

Mr. Ayotte made some comments as to what their

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burden was, indicating that they had the burden to show benefit. Once they show benefit, the burden shifts. I don't agree with that at all. We do not agree with that. They've got more of a burden under that public interest standard than that.

If that's all it took, then there's no reason to have the public interest standard in there at all. Essentially their position rests on an assumption that competition will benefit all areas, which is contrary to the very purpose of the provisions.

So despite recognition in the federal law that competition in high cost areas has the potential to adversely affect services and/or quality, GCC has presented no evidence to address the concern. Instead it takes the position to the SDITC or member LECs carry the burden to demonstrate harm, and absent that showing the Commission really has no choice but to grant ETC designation under the public interest standard.

It's our position that the Commission cannot merely rely on a general policy preference for competition. It has to look to the specific purpose behind Section 214(e)2, the public interest requirement in that section, and it also has to

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look at the provisions in Section 254 of the Act, which relates to universal service.

And if you look at Section 214(e) and Section 254 of the Act, nowhere in those sections is competition referenced as a guiding principle. Each section is expressly concerned with the preservation and advancement of universal service.

Given that, it seems to me when you apply and interpret those provisions it's preserving universal service, not promoting competition, that needs to be the primary concern in applying and interpreting the standard.

So it's our position that for an applicant such as GCC to make a prima facia case it is necessary to make some showing related to universal service concerns that universal service will be preserved and not harmed by the additional designation. It's not sufficient to rest one's case merely on the promotion of competition, an assumption that competition will always benefit consumers.

In its argument on the burden of proof GCC is effectively asking this Commission to close its eyes to the universal service concerns that are expressed and addressed by Congress in the federal

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law.

Specifically, we don't view it as our burden to prove that the additional designation is not in the public interest. GCC carries an affirmative burden to show under the public interest standard and this includes the burden to make an initial or threshold showing that rural area consumers would not be harmed by its additional designation.

That position is supported by a couple of the State Commission decisions that GCC relies upon in making its case, and I've referenced those in a footnote too in my brief on Page 8.

First, there's a Nebraska decision. The Nebraska Public Service Commission, at least in part in its decision, stated, "We acknowledge that the mere provision of additional competition by the entry of another ETC into a rural area is not sufficient in and of itself as a demonstration of the public interest."

"We accept the argument made by the interveners that competition is not tantamount to public interest. If that were the case, no public interest test review would be necessary since any and all new competitors would represent additional benefit to the public."

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Also in the Minnesota case, the Minnesota Commission states on Page 16 of its Decision, "In gathering with the rural LECs in Minnesota and commenting on the burden of proof, Minnesota Cellular had the burden of making an initial showing that subsidy fueled competition would not harm consumers." Going back to the Wyoming Order, GCC cites to the Wyoming Order on numerous cases to support its position in this case.

I've commented as to why we don't feel that is binding. I think there are a number of reasons as to why we don't feel it is binding. First, it is a decision by FCC under Section 214(e)6. It takes place in those cases where the State doesn't have jurisdiction to make the designation. For that reason I don't think this Commission should feel it is bound to take necessarily the exact same interpretation of the public interest standard.

The FCC has indicated, in other orders, that it's the State Commissions that have the primary responsibility to make those public interest determinations. That's the intent of the federal law, to give the State Commissions the primary responsibility to do that.

If that's the case, I think you have a little

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more leeway than what's suggested by GCC today. The FCC's Wyoming Order does not restrict this Commission in the task at hand, and we would urge the Commission to interpret and apply the public interest standard in a manner that's consistent with strong universal service principles established in the Federal Act and also the true purpose of the public interest standard.

While the promotion of competition we would admit is one factor, it's obviously one factor, it's neither the most important factor nor the only factor. So in addition to showing competitive benefits, GCC must also show that its additional ETC designation in the identified universal service areas would be consistent with preserving and advancing universal service and not harm consumers. So, essentially, we have, in our view, a two-part showing that's required, not a one, as in their view.

If we go to the benefits that are alleged, GCC indicates that they've shown by their testimony specific benefits and that really, you know, we're just throwing a red herring out there with respect to them not offering specific enough testimony. And we don't agree with that at all.

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I would refer the Commission specifically to the brief. We've commented extensively as to why we feel it hasn't -- those claims of benefits are not supported by the record. We believe that there's insufficient evidence to fairly conclude that the affected consumers would actually see any real or significant benefits from the designation and offering a showing of consumer benefits requires a greater showing than GCC has presented.

If you go to the written testimony that was submitted that was adopted by Mr. DeJordy, there's statements made about benefits, but all of those benefit statements are so general and really all they indicate are things that you would normally say would be associated with competition.

The general references and testimony of Christopher Johnson and Mr. Kirkpatrick indicating that -- or suggesting that its provision of competitive fixed wireless service would bring benefits of a type generally associated with competition increased choices, higher quality, lower rates. There's very little specific evidence in that testimony.

And the same goes for the testimony presented by Mr. DeJordy. When he did indicate some

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specificity with his answers on a lot of occasions there were other answers that were conflicting.

If we go through each of those, alleged pricing benefits. All GCC really said was that its fixed wiring service offering, the pricing for that would be comparable. They were asked to provide specific rate information. They indicated at the time they really didn't have the ability to do that. There's evidence in the record, though, that indicates that they did have the ability to do that. They could have gone to the evidence -- or the information that rests with NECA and determined what sort of USF each carrier was getting and determine their rates based on that.

And also there's evidence in the record that would indicate that even with respect to the claim of priced comparability that they may not have been in a position to offer that. And I would refer the Commission to the evidence that was offered regarding the rates being charged in the Reese River in Antelope Valley, Nevada. There was evident on the record indicating that the offerings of Western Wireless in that state were substantially subsidized by Qwest and that there was some additional usage charges once -- permanent

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charges once usage got over a certain amount per month, permanent charges that were fairly high, as I remember.

So we believe that there's substantial evidence in the record contradicting the claims that it could offer its fixed wireless service at comparable rates and that without additional information identifying the actual rate to be charged, the Commission has insufficient evidence to conclude that GCC's designation will result in any rate-related benefit.

With respect to the alleged local calling area benefit, again the information is not specific enough, we believe. You know, it's easy to sit here and say, well, we're asking for too much when we ask for specific evidence. But, you know, if you don't have specific evidence, how can you determine or how can you make a judgment as to the credibility or reliability of that evidence?

It's awfully easy to sit up there and make general statements about what you're going to do, what you're going to provide, but if you cannot, as a company, indicate with any specificity what you're going to do, how much credibility are they entitled in this process? How much reliability

should you attach to that evidence? And we don't believe they've provided near enough in terms of specificity to determine what the true benefit is.

On the alleged local calling, here they say they're going to offer a larger local calling area. Well, what's that? It doesn't mean a lot unless you go to each of those service areas and each of those service areas has an idea or customers in those service areas or those of us who are reviewing and looking at it have an idea of what the calling scope was going to be.

There wasn't an indication of what it was going to be across the state, identical to maybe their current cellular offerings or maybe it was going to be something more limited. If you go to some of the other State Commission decisions, there's a little more specificity.

There was an indication in one of the decisions they were going to try to tie it to the community of interest. They didn't make that statement in this Docket. There's nothing in the record giving that sort of assurance to the Commission.

It's just not specific enough. And the other thing there is how do you know if the larger local

calling area is a benefit if you don't know what the rates are going to be? If you don't know what they're going to charge, no idea, it's easier to sit there and say the larger local calling area is going to be a benefit. But is it truly going to be a benefit if they have to pay three times what they pay to make toll calls outside the area? It's certainly not going to be a benefit.

On the alleged service mobility it's interesting that there's a lot of talk about the service mobility being an additional benefit, but, yet, if you go to the written testimony that was submitted that was adopted by Mr. Johnson or the Christopher Johnson testimony, there's an indication in it that mobility wasn't going to be a part of the initial offering. He stated specifically, "Over time GCC intends to expand its universal service offering to introduce a mobility component."

So I think there's reason to question whether truly the mobility aspect is going to be a benefit, when it's going to be added to the service, or whether it's going to be part of the initial service. There's conflicting evidence on that.

Increased subscribership. There's this talk

that there's a benefit -- or claim that there's a benefit because they'll bring universal service to consumers who do not currently have phone service. An example of that, there was a reference to the Reese River and Antelope Valley situation in Nevada, but we don't have any evidence in this record that we have any areas in South Dakota similar to the situation in Nevada. We don't have any evidence at all indicating that we have any unserved areas in South Dakota.

So how can you claim that there's a benefit there? There's a claim that they would be in a position to more quickly provide their services to certain customers. We have no evidence that that's a problem today with the existing carriers. And we certainly have no evidence indicating that they can more quickly provide it.

In fact, there's facts indicating that in order to improve the service, in order to really provide the service statewide, they've got to construct additional cellular towers and everything else. Under those facts how can you reasonably claim you are going to more quickly provide the service?

Obviously, it's based on assumption, it's

easier to provide wire than wireless. Well, that depends on the wiring networks that are already there.

On service quality they argue that it would lead to a higher level of service quality if they're designated. But, you know, there were questions asked at the hearing regarding the service quality of this fixed wireless service.

And Western Wireless Service, specific requests were asked Mr. DeJordy on the point of service quality. He wasn't able to answer any of them. He was questioned by SDITC regarding whether they're subject to the service quality rules. He didn't give any definite answer. He kind of implied he didn't feel they were.

He was questioned by Qwest counsel regarding GCC's fixed wireless service offering in the state of Nevada, specifically asked whether there were any service quality problems with the loops in that state. In response he indicated he did not have enough information to answer the question.

Commission staff, counsel, questioned him on service quality related to 911 redundancy. He was asked how the company's 911 service was configured and whether it had any redundant figure to it. In

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response Mr. DeJordy stated he didn't know. Staff also asked him what the data capability of the service would be. He did give an answer, 9.6 kilobits per second.

So I think if you look at the actual record, and that's what we've all directed to look at, if you look at the actual record, there's not enough evidence here of benefits. It's just they can get on as all they want about no evidence of any harm, but you know what, there's very little evidence of any benefits other than general statements that are associated with competition and what competition normally as an economic model brings.

The other thing that I think is important -- and this gets again to the test, the public interest standard, and what the burden of proof requires. We've indicated that we feel it is really a two-part test.

First is the benefits, and second is the showing that it will actually work, that this designation will actually work to preserve an advanced universal service. An important aspect of that is affordability. And all through the hearing and through the briefing it's been argued that they have no obligation to show that their service is

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going to be affordable.

And, you know, with respect to the 214(e)1 requirements, which is the service capability requirements, you know, providing those basic services, and that's the first thing they needed to show, arguably there's a better argument there that affordability may not be pertinent. But certainly when it comes down to addressing the public interest standard it's pertinent.

It's very pertinent. You should want to know whether they're going to offer affordable service when they get designation. If they're not doing that, how is your designation consistent with the federal law, consistent with the whole process of designating ETCs and what it's all supposed to be about?

And, in any event, you've got a Circuit Court decision now that says that you can add other criteria. I don't think that's necessary, though. We argued at the hearing that public interest was a -- or the affordability was a valid consideration and it is and it always has been.

If you look at -- again, this gets to the purpose of the public interest test and you've got to interpret that public interest test consistent

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with universal service goals that are in the federal law. And you've got to look at it and apply it in light of Section 254. Both 214, Section 214, dealing with designations and Section 254 dealing with universal service, you can't say that those are unrelated. You have to look at those together.

And if you look at the principles that are stated for universal service under Section 254(b)), it is stated that policies for the preservation and advancement of universal service should be based on the principle that quality services should be available at just, reasonable, and affordable rates.

Going to Section 254(i), it states that the Commission, that is the FCC and the states, should ensure that universal service is available at rates that are just, reasonable, and affordable. The FCC's interpreted this Section of the law, Section 254(i) and has taken the view that states should exercise initial responsibility and have a primary responsibility for determining affordability of rates.

Affordability goes to the core purpose of the federal universal service support mechanisms. What

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is that core purpose? To ensure that consumers everywhere have access to basic telecommunications services at affordable rates. So affordability is certainly a pertinent and appropriate factor, and the fact is it's not addressed at all in this Docket.

There's no evidence on the record as to what the rates are going to be. There's an indication that they'll be comparable. But, again, as I mentioned earlier, there's evidence indicating that they may not be comparable.

Now I've referenced in my brief some paragraphs, some statements, made by the Minnesota Commission. They address the specific issue in the Order because there was arguments on the Minnesota side of the corporation that the State Commission should not consider affordability in the process and these arguments were specifically rejected.

I'm just going to repeat a couple of those. The Commission agrees with the Department that the Federal Telecommunications Act of 1996, which authorized it to make ETC designations, authorize it to apply the public interest goals articulated in the Act in making those designations. The universal service goals of the Act include a

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statement that quality services should be available at just, reasonable, and affordable rates.

Minnesota Cellular claimed that federal law preempted the Commission from requiring that its universal service offering be affordable. The Commission disagrees. While 47 USC Section 353, which is -- that generally talks with state regulation over wireless CMS providers.

While that section clearly bars states from regulating wireless entry or rates except in carefully defined circumstances requiring the carrier's showing affordability, qualification for eligibility is not rate regulation. And, finally, if states cannot require a showing of affordability of wireless carriers, they cannot fulfill their responsibility shared with the FCC to ensure that universal service is available at rates that are just, reasonable, and affordable. The Commission concludes that it is not preempted from considering affordability and acting on Minnesota Cellular's application.

So we urge the Commission in this case to take into account affordability concerns. We've talked about -- argued in our brief and it was discussed here earlier during Mr. Ayotte's comments

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the issue of service quality, certification, and so forth and whether Western Wireless is subject to the Commission's Complaint procedures.

We argued early on in this case that Western Wireless was subject to Commission certification provisions, and that's still an open issue in our view. It's an issue that needs to be decided at some point to determine specifically the degree to which Western Wireless is subject to the Commission's regulation. Certification is one part of it.

Very clearly the FCC's indicated in cases where you're dealing with a fixed wireless service rather than a CMRS service or mobile service it's really a decision -- the extent of State Commission authority is a decision that should be made on an individual case basis, on a case-by-case basis, and that decision has not been made.

But I think in this public interest review process clearly the extent to which the Commission has the ability to ensure adequacy of service and that there are certain consumer protections is relevant. That is a relevant determination, and I think if you go to the very State Commission decisions hard addressing this, from what I could

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see there's not one state that wasn't concerned about it and tried to address it in some way.

And with respect to addressing that, there's been talk here about what they might be willing -- what Western Wireless might be willing to agree to in that area of service quality regulation and so forth. And I just think that it's important that if there are other things that are agreed to, that that be made part of the record in this case.

What we have today is we have a record that really doesn't allow the Commission or indicate that the Commission has the ability to ensure adequacy of service after designation is -- after designation. It can't be determined from the existing record. And that being the case, we feel that offers another reason to reject the designation in this case.

Finally, and I'm not going to go through these, time is getting short, we've referenced some things that are pending at the federal level yet that we feel are relevant to this process and the public interest review process. And one is this disaggregation process.

The FCC has in previous decisions indicated some concern about arbitrage opportunities that are

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available for competitors if universal service support isn't disaggregated and more specifically targeted to rural lines, say, versus town lines. And those concerns are there until disaggregation is completed.

We have a process now that's going to allow that process to -- the disaggregation process to be completed, and we think the Commission needs to consider that also in this process of designation. Certainly absent some disaggregation the competitive ETC, if designated, has the ability to collect USF maybe on certain lines that is out of line with the actual cost.

Because we've got a situation today where it's averaged across the study area. It's important to disaggregate and target that support. And that concern is indicated specifically, I think, in the Colorado case.

With that, I'm going to rely on the brief for the rest of my argument and would just open it up to any questions you may have.

CHAIRMAN BURG: I have a couple. Which companies in your organization are not in the stipulation for applications for ETC?

MR. COIT: You would ask it that

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way.

CHAIRMAN BURG: I saw the ones that aren't.

MR. COIT: Let me see. I think it's Golden West, Vivian, Sully Buttes. I used to know these. James Valley, Faith Municipal, Split Rock Properties, Tri-county Telecom, and West River out of Hayes, I think, and CRST.

CHAIRMAN BURG: Okay. Thank you. I'm sorry. Is there competition in the SDITC areas now?

MR. COIT: Well, I think that's a good question because we certainly believe there is. You know -- and we mentioned that this case is not about allowing competition or not allowing competition, and there's really nothing in this record that indicates that Western --

You know, Western Wireless indicates there's no way they can compete in these areas without USF support. There's nothing in the record that clearly indicates that. There's statements that that's the case. But, again, they provide their cellular service in our areas, and we've got customers today that are turning off their land lines, at least a few. And we've certainly got

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customers that are using their cellular phones for a lot of long distance calls.

So I guess in terms of competition, yeah, we've got competition. We believe we've got competition. And, you know, when you talk about allowing competition or not, it's also important to keep in mind we're talking about just local service competition here. We're not talking about competition from a lot of other things.

CHAIRMAN BURG: Can you identify any harm done in those areas where you indicate any competition?

MR. COIT: Can I identify harm? I don't have any specific data.

CHAIRMAN BURG: The ability of SDITC members to do universal service.

MR. COIT: I don't have any specific data. I know there's bypass going on. And I assume, you know, you have bypass, you have other places that you've got to go to make up lost revenue.

CHAIRMAN BURG: Do quite a few of the SDITC companies have customers with multiple line services?

MR. COIT: Oh, yeah. I certainly

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think so, yeah. There's a lot of Internet. You know, there's -- I mean, going to DSL now and, I mean, that cuts down on some of the second lines.

CHAIRMAN BURG: Well, are they drawing universal service for each of those multiple lines?

MR. COIT: Yeah. On every loop, as far as I know.

CHAIRMAN BURG: Every loop gets universal service now?

MR. COIT: Yeah. It's capped, you know. Currently, I guess, it's capped. That's not going to be the case.

CHAIRMAN BURG: Capped per customer or per company?

MR. COIT: As far as the cap goes, obviously, we have a new USF Order that's going to at least adjust that cap, but, yeah, I think we're receiving USF on the multiple lines, and that brings up this question of portability and, you know, support being paid to multiple lines.

And, as far as I know, that question is still being looked at by the federal state joint board that I think there's certainly a possibility that we're going to see some different rules in that

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area in terms of what lines are supported and what are not.

You know, it's -- that's an open question, I think. You know, right now we have a situation where the rural LEC and the wireless carrier if both are ETCs could receive USF. You know, if one is providing basic service through a fixed wireless loop and the other providing service through a land line loop and the customer has both, it's my understanding the way the current rules work, both those carriers could receive USF. Is that right?

But I also understand that all of these issues on portability and, you know, when support is ported to a competitive carrier, all of that stuff is really up for decision.

CHAIRMAN BURG: Anybody else? Any rebuttal, Mr. Ayotte?

MR. AYOTTE: Thank you, Commissioner. Just a couple of brief remarks starting with where Mr. Coit ended.

He's correct that the FCC's funding rules provide support for multiple lines, for all lines for loops of a customer, but to my knowledge portability is not being looked at. There is an FCC rule on the portability of the support to the

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incumbent like being paid to a competitive ETC.

CHAIRMAN BURG: Has that always been the case?

MR. AYOTTE: Yes.

CHAIRMAN BURG: That multiple lines or all providers -- I was under the impression that it could only be a basic line that received universal service at one time.

MR. COIT: Can I clarify, Mark?

MR. AYOTTE: Sure.

MR. COIT: The way the rule reads today is that the rural -- in order for the support to be ported, the rural LEC line has to be captured. That's the way it reads. You've got to capture the customer or capture the line.

Well, that would mean to me that you've got to have a situation where the LEC line, the land line line, is disconnected. Then, obviously, they wouldn't receive any support. It's captured.

But, you know, what happens a lot with wireless and land line is the customers want both So we've got a situation --

CHAIRMAN BURG: So there's no captured line, then the other one's eligible?

MR. AYOTTE: But that's where

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Mr. Coit is a little mistaken. And granted these FCC universal service funding rules are like reading ancient Greek sometimes, but it's somewhat of an oversimplification.

There's really a couple of steps that are involved in the process. Based on the cost information of the incumbent LEC, the FCC determines a total amount of high cost support, not on a per line basis but a total amount of high cost support for the incumbent LEC based on their cost

When there is a competitive ETC designated is when the portability rule 54.307 comes into play Then you have to take the total amount of high cost support to the incumbent LEC and divide it out by the number of access lines for the LEC all lines, to get to a per line amount of support. And it is that amount which the competitive ETC then is eligible to get.

And there is reference in the FCC's rules about capturing a line, but in the FCC's orders they struggled, frankly, with the question are we going to provide support for all lines or just provide support for a primary line, the effect of which is if you're only going to provide support for a primary line, one line per customer, then the

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size of the fund is quite a bit less

And the FCC determined, however, that at this time they will provide support for all lines because all lines go into calculating the per line support because you include all the costs of the incumbent LEC And it is not a requirement, and it is very clear in the FCC's orders it is not a requirement for a competitive ETC to have to capture a line and meaning the land line customer has to disconnect You can capture the line by providing an additional line and support will be then available to both

CHAIRMAN BURG: But because there is a total cap for that study area, the bucks per line would decrease if lines were added?

MR. COIT: That's correct

CHAIRMAN BURG: Is that correct, in order for me to understand it? If I understood you right, for a study area there is one pot. It's determined by the cost of the incumbent LEC the size of that pot; is that correct?

MR. AYOTTE: In the case of an additional line being captured by the competitive ETC, the amount of support on a per line basis to the incumbent LEC will not change because the

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incumbent LEC has not lost a line and their costs are still the same.

CHAIRMAN BURG: No But wouldn't you add a local line to be divisible into the total pot?

MR. AYOTTE: No

MR. COIT: Again, on that there is some language -- I think there's -- I'm not very clear on this, but there is some language in the recent USF Order that talks about the capped, you know, whether competitive LEC lines --

Is your question basically whether competitive LEC lines are out or in the cap?

CHAIRMAN BURG: I guess I'm looking for harm or damage or reduction of income based on that, whether it be from reduced support per line or loss of line, either one.

MR. COIT: I guess I'd say the loss comes in when you have a situation where the fixed wireless product, which is intended to be a substitute, results in the customer losing the line or dropping the land line. I think that's where the loss comes in.

MR. AYOTTE: Ultimately, the point to be made here and this is good -- but I think

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Mr. Coit and I try to do our best to answer questions on some very complex subject matter.

The ultimate point to be made here, however, is that you're stepping down the same path that the North Dakota Commission did when they initially determined to deny the application as not being in the public interest based upon the level of universal service support and what might happen to the incumbent LECs based on the level of universal service support that would otherwise be lost in a competitive situation.

That is simply unlawful. It is the FCC's prerogative, responsibility solely to determine the amount, the method, the targeting, and how they're going to administer their federal universal service fund.

Hopefully South Dakota will get to a day where there is a state fund created and presumably this Commission will be involved in the administration and establishing the requirements and amount of funding and eligibility and how that's paid out. But for the purposes of this public interest determination as it relates to our request for federal ETC status, questions concerning how the FCC runs its high cost funds are really unlawful to

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consider as part of public interest.

Mr. Coit referenced a number of other provisions, a number of provisions of the Act which he would ask for you to consider. And ultimately that comes down to his position of you ought to prefer monopolies over competition. And our view is the exact opposite, the '96 Act and everything that Congress sought to do through the '96 Act was intended to promote competition.

So maybe we'll just disagree on really what Congressional intent was. But I think pretty clear from the mandate the realm of the Act, it was an Act to promote competition, to reduce rates, to promote the rapid deployment of new telecommunications, to promote lower rates and better qualities for consumers, and that's pretty much a direct quote.

Simply, Mr. Coit urged you to consider as part of the public interest he indicated there may not be areas in South Dakota that are capable of sustaining competition from GCC. We agree. We agree. And I mentioned that in my first remarks that as part of the public interest determination you should consider whether there are areas of South Dakota that may not be able to sustain

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competition.

However, the point is where are they? There was nothing introduced in the record by any of these companies to demonstrate that their area would not be capable of sustaining competition.

Mr. Coit urged you not to rely on just a general policy preference for competition. Again, as I said, I agree. But he's presenting to you that false choice that I gave you a heads-up on. He's asking you to choose from preserving and advancing universal service or promoting competition.

And the FCC was very clear and common sense tells you those are not mutually exclusive. You are not sacrificing one in favor of the other. And that's what the whole universal service program is about. It's about promoting competition and at the same time increasing subscribership, making available services to consumers in high cost rural areas, and you can and should act to promote competition and at the same time preserve an advanced universal service.

He urged you to look at the -- look at and follow the Nebraska and Minnesota decisions as it relates to the burden of proof and how to assess

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the public interest. I too would encourage you to follow Nebraska and Minnesota and all of the other states that we indicated. Because if you follow Nebraska and Minnesota, you will conclude it is in the public interest.

He mentioned the Wyoming Order of the FCC and how that's really not -- you really don't need to give deference to the FCC's public interest analysis. The South Dakota Supreme Court has disagreed with you.

The South Dakota Supreme Court decision in this case was quite clear when they stated -- very clear when they stated that if there was any doubt in terms of giving deference to the FCC's construction and interpretation of 214, that if they retained any doubt on the proper construction of Section 214 -- South Dakota Supreme Court, we give a federal agency's interpretation of the statutes that it administers highly deferential review. And you should follow the FCC's analysis in the Wyoming Order because I think the Supreme Court has said you should give deference to it.

Finally, a couple of comments on -- closing to finally, on affordability, Mr. Coit's remarks. This whole affordability claim that he talks about

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as part is flawed because it's really intended to be an indirect way to regulate the rates of a wireless provider, and you can't do that. But more important, this affordability notion that he speaks to or not -- has not been a defined standard by the Commission.

What rate is affordable has not been a determination that this Commission has made. I believe it would constitute unlawful rulemaking for you to attempt to make an affordability determination here in South Dakota and make it applicable to FCC. He suggested the Commission is free to adopt additional criteria, and that's really what he's asking to you do.

Separate and apart from public interest, he's asking you to adopt an additional criteria that our service has to be affordable. And, again, that's not in your state statutes. You haven't promulgated a rule requiring the showing of affordability.

The Supreme Court in its decision commented on -- we had an argument upstairs as to whether the Commission could or could not adopt additional criteria or additional requirements or ETC designations. The Supreme Court after listening to

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all our eloquence said it really didn't matter because the Commission hasn't adopted any additional criteria or any additional requirements. That to me means there is no separate affordability requirement that has to be met.

And a clarification point. He read some excerpts from the Minnesota Commission's Order discussing affordability. And I'm pretty familiar with that decision. But if you read that decision, affordability and the battle we had on affordability in Minnesota was not a consideration of the Commission as part of whether it was in the public interest.

If you read the Order, the Commission had already determined it was in the public interest, you know, to grant ETC status to Minnesota Cellular in the areas of the rural telephone companies. Separate and apart and wholly unrelated to the public interest was this debate about whether or not our service offering had to be priced at an affordable level.

We lost the argument but in the end it really didn't matter because when Minnesota Cellular filed its price list as part of its service agreement the Minnesota Commission approved it and found it to be

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affordable. How they did it is still news. But I think they were wrong in their analysis.

The last point that I would make is something that Commissioner Burg -- we were talking about before the first break regarding the service quality and some of the actions and some of the other State Commissions who were concerned about service quality. And it's important to note that the other State Commissions who addressed service quality did not do so in the context of determining whether it was in the public interest.

Again, they had already determined it was in the public interest before separately addressing the question of service quality. And what I might recommend if the Commission were to find that it is in the public interest and to grant the requested designation, that as part of a compliance filing might be an appropriate way to address any concerns you have regarding the consumer protection or service quality standards.

This is kind of what Minnesota did. They granted the designation, asked us as part of a compliance filing to file a copy of our service agreement. They did not require us to meet the Minnesota service quality regulations that were

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applicable to the incumbent LECs, but rather what they said was we're going to review your customer protection and service quality standards in your service agreement in the context of a compliance filing. We will use our land line service quality reg as sort of a benchmark or touchstone for evaluating them and gave all parties an opportunity to comment on our terms and conditions, our service quality and consumer protection requirements in our service agreement.

So if the Commission were inclined and we, again, would ask you to grant the application, you know, we would be willing to proceed as part of a compliance docket or a compliance to get the Commission comfortable and satisfied relative to the service agreement and the service quality standards that are contained in it.

With that, thank you, and I'd be happy to answer any questions you may have.

CHAIRMAN BURG: Rich, any rebuttal?

MR. COIT: Just a couple of comments.

With respect to the North Dakota Commission decision, I would just like to note that it was -- I don't know what has happened in North Dakota

since the decision but with respect to the decision, there were other aspects of the decision and it was at least indicated in the decision that the State Commission's decision up there, initial decision, and their denial rested on more than just some indications that support might not be sufficient given the lack of a state USF

With respect to the Wyoming Order, I pointed out in my brief that Wyoming Order is being challenged. It's subject to some petitions for reconsideration right now that have not yet been ruled upon. And the FCC's interpretation of the public interest standard is being challenged.

Finally, I would just like to clarify Mr. Ayotte indicated that by asking you to consider affordability we're asking you to impose some additional criteria. That's not what we're trying to do. It's our point on affordability that their burden of proof, again, requires more than just showing benefit. It requires that they make some initial showing that consumers -- that their offering is actually going to work to preserve an advanced universal service and not going to harm consumers, and a part of that is showing affordability.

That's all I have, and I thank you for listening today.

CHAIRMAN BURG: Does anybody have anything else?

If not, that will close the hearing.

(The hearing concluded at 3:45 p.m.)

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

I, CHERI MCCOMSEY MITTLER, a Registered Professional Reporter and Notary Public duly for the State of South Dakota

DO HEREBY CERTIFY that as the duly appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 30th day of July 2003, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 25th day of August 2003.

Cheri McComsey Mittler,
Notary Public and
Registered Professional Reporter

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STATE OF SOUTH DAKOTA)

:SS CERTIFICATE

COUNTY OF HUGHES)

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

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 26th day of July 2001, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 27th day of August 2001.

Cheri M. Wittler

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

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BRIGGS AND MORGAN

PROFESSIONAL ASSOCIATION

August 30, 2001

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UTILITIES COMMISSION

FAX (605) 773-3809 AND U.S. MAIL

Ms. Rolayne Ailts Wiest
Special Assistant Attorney General
South Dakota Public Utilities Commission
State Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

FAX Received AUG 30 2001

Re: In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier
Docket No. TC ~~96-160~~ 98-146

Dear Rolayne:

As we discussed following the oral arguments on July 26, 2001, I am enclosing a proposed "Order Designating GCC License Corporation an ETC in Non-Rural Telephone Company Exchanges." Essentially, this proposed Order would be issued consistent with the Supreme Court's decision. Attachment A to the proposed Order sets forth a listing of the Qwest exchanges within which GCC would be designated as an ETC. The listing of Qwest exchanges was derived from publicly available information. Nevertheless, I recommend that you independently review the list of exchanges consistent with the Commission's records.

If you should have any further questions or comments relating to the proposed Order, please feel free to contact me.

Very truly yours,

Mark J. Ayotte

MJA/sjc
Enclosure

cc: GCC License Corporation (w/enclosure)
Richard Coit – SDITC (w/enclosure)

DRAFT

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF

THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))	DOCKET NO. TC ~~96-160~~ 98-146

ORDER DESIGNATING GCC LICENSE CORPORATION AN ETC IN NON-RURAL TELEPHONE COMPANY EXCHANGES

In accordance with the Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, IT IS ORDERED:

1. GCC License Corporation is designated as an eligible telecommunications carrier ("ETC") pursuant to 47 U.S.C. § 214(e)(2) in the exchanges listed on Attachment A hereto, which exchanges constitute all non-rural telephone company exchanges in the State of South Dakota.

2. In providing services in South Dakota as an ETC, GCC shall comply with all federal and state requirements applicable to all ETCs.

3. The Commission retains jurisdiction over this docket and GCC for the purpose of ensuring that GCC's provision of services as an ETC complies with federal and state requirements applicable to all ETCs.

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UTILITIES COMMISSION

FAX Received AUG 3 0 2001

Dated:

4. Commission Staff is directed to prepare and send a letter, in the form of Attachment B hereto, notifying the Universal Service Administrative Company of GCC's designation as an ETC in South Dakota.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the _____ day of August, 2001. 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 ____ day of August, 2001.

BY ORDER OF THE COMMISSION:

_____
Jim Burg, Chairman

_____
Pam Nelson

ATTACHMENT A

Qwest Wire Centers

South Dakota

Locality	Wire Center Code	Telephone Company
ABERDEEN	ABRDSDCO	Qwest
ARLINGTON	ARTNSDCO	Qwest
BELLE FOURCHE	BLFRSDCO	Qwest
RAPID CITY	BLHKSDCE	Qwest
CAVOUR	CAVRSDCO	Qwest
CHAMBERLAIN	CHBLSDCO	Qwest
COLMAN	CLMNSDCO	Qwest
CANTON-FAIRVI	CNTNSDCO	Qwest
DEADWOOD	DDWDSDCO	Qwest
DESMET	DESMSDCO	Qwest
ELK POINT	ELPNSDCO	Qwest
FLANDREAU	FLNDSDCO	Qwest
PIERRE-FT PIERI	FTPRSDCE	Qwest
HILL CITY	HLCYSDCO	Qwest
HARRISBURG	HRBGSDCO	Qwest
HURON	HURNSDCO	Qwest
IROQUOIS	IRQSSDCO	Qwest
LEAD	LEADSDCO	Qwest
LAKE PRESTON	LKPRSDCO	Qwest
MCINTOSH	MCINSDCO	Qwest
MADISON	MDSNSDCE	Qwest
MILBANK	MLBNSDCO	Qwest
MILLER	MLLRSDCO	Qwest
MORRISTOWN	MRTWSDCO	Qwest
MITCHELL	MTCHSDCO	Qwest
ORTONVILLE	ORVLMNOR	Qwest
PIERRE-FT PIERI	PIRRSDCO	Qwest
REDFIELD	RDFDSDCO	Qwest
RAPID CITY	RPCYSDCO	Qwest
RAPID CITY	RPVYSDCO	Qwest
SPEARFISH	SPRFSDCO	Qwest
STURGIS	STRGSDCO	Qwest
SIOUX CITY	SXCYIADT	Qwest
SIOUX FALLS	SXFLSDCO	Qwest
SIOUX FALLS	SXFLSDSE	Qwest
SIOUX FALLS	SXFLSDSW	Qwest
TEA	TEA SDCO	Qwest
TIMBER LAKE	TMLKSDCO	Qwest
VALENTINE	VLNTNENW	Qwest
VOLGA-BRUCE	VOLGSDCO	Qwest
VERMILLION	VRMLSDCO	Qwest
WHITEWOOD	WHWDSDCO	Qwest
RAPID CITY	WRWKSDCO	Qwest
WATERTOWN	WTTWSDCO	Qwest
YANKTON	YNTNSDCO	Qwest

September ____, 2001

ATTACHMENT B

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Cheryl Parrino
Chief Executive Officer
Universal Service Administrative Company
2120 L. Street, N.W. Suite 600
Washington, D.C. 20037

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45.

Dear Ms. Salas and Ms. Parrino:

Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the "Act"), and 47 C.F.R. Sections 54.201 – 54.203, the Public Utilities Commission of the State of South Dakota ("Commission") has designated GCC License Corporation an Eligible Telecommunications Carrier ("ETC").

The Federal Communications Commission ("Commission") has adopted rules providing that an ETC may receive certain types of federal universal service funding only if the state commission files a certification that all federal high-cost support provided to the carrier will be used as required in Section 254(e) of the Act. 47 C.F.R. §§ 54.313 and .314. *Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45, FCC 99-306, ¶ 97 (rel. Nov. 2, 1999); *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, CC Docket No. 96-45, FCC 01-157, ¶ 187 (rel. May 23, 2001).

GCC was designated an ETC in South Dakota in non-rural telephone company exchanges in South Dakota on September __, 2001, in Docket No. TC 96-160. A copy of this Order is enclosed. Attachment A to the Order identifies GCC's designated service areas in South Dakota.

In light of OKC's ETC designation, please note that the Company is eligible to receive federal universal service funding and that this letter fulfills this State's requirement to provide certification under 47 C.F.R. § 54.313.

If additional information is required, please do not hesitate to call.

Sincerely,

2500 FIRST NATIONAL BANK BUILDING
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September 13, 2001

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received SEP 12 2001

FAX [illegible] AND U.S. MAIL

Mr. Brigan Ada West
Special Assistant Attorney General
South Dakota Public Utilities Commission
State Capitol Building, 1st Floor
[illegible] East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: **In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier**
Docket No. TC ~~96-160~~
98-146

Dear Brigan:

To assist you in the preparation of the Commission's Order relating to GCC License Corporation's designation as an eligible telecommunications carrier, I am enclosing a listing of the rural telephone companies and study areas for your review. As we discussed, most state commissions will set forth the designated service areas as an attachment to the Order. The enclosed listing of the rural telephone companies is consistent with the Stipulation on Remand and their respective study areas were derived from publicly available information. I recommend that you independently review the list of exchanges consistent with the Commission's records.

By copy of this letter to Richard Coit, I am advising him of this submission.

If you should have any further questions, please feel free to contact me.

Very truly yours,

Mark J. Ayotte

Mark J. Ayotte

MJA/ajc
Enclosure

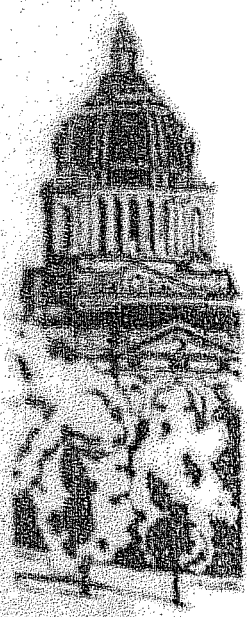
cc: GCC License Corporation (w/enclosure)
Richard Coit – SDITC (w/enclosure)

ETC Designated Service Areas
Rural Telephone Company Wire Centers
GCC License Corporation's ETC Designation

Telephone Company	Wire Center Code	Locality
ARMOUR INDEPENDENT TELEPHONE CO	ARMOSDXA	ARMOUR
BALTIC TELECOM COOP	BLTCSDXA	BALTIC
	CRKSSDXA	CROOKS
BERESFORD MUNICIPAL TELEPHONE CO	BRFRSDXA	BERESFORD
BRIDGEWATER-CANISTOTA (Armour Independent Tel. Co.)	BRWRSDXA	BRIDGEWATER
	CNSTSDXA	CANISTOTA
CITY OF BROOKINGS MUNICIPAL TEL DEPT/SWIFTEL	BKNGSDXC	SIOUX CITY
	BKNGSDXE	BROOKINGS
DAKOTA TELECOMMUNICATIONS GROUP, INC.	IRENSDXA	IRENE
	LNNXSDXA	LENNOX
	PRKRSDXA	PARKER
	VBRGSDAA	VIBORG
	WKNDSDXA	WAKONDA
EAST PLAINS TELECOM, INC.	ALCSSDXA	ALCESTER
	HDSNSDXA	HUDSON
FORT RANDALL TELEPHONE COMPANY	CNVLSDXA	CENTERVILLE
	HRMSSDXA	HERMOSA
	LKANSDXA	LAKE ANDES
	TABRSDXA	TABOR
	TYNDSDXA	TYNDALL
	VBRGSDXA	VIBORG
	WGNRSDXA	WAGNER
INTERSTATE TELECOM COOP INC - SD	ASTRSDXA	ASTORIA
	BKNGSDXB	BROOKINGS
	BRDLSDXA	BRADLEY
	BRNTSDXA	BRANDT
	BRYNSD01	BRYANT
	CHESSDXA	CHESTER
	CLLKSDXA	CLEAR LAKE
	CLRKSDXA	CLARK
	CSWDSDXA	CASTLEWOOD
	EKTNSDXA	ELKTON
	ESTLSDXA	ESTELLINE
	FLRNSDXA	FLORENCE
	GARYSDXA	GARY
	GDWNSDXA	GOODWIN
	HAYTSDXA	HAYTI
	LKNRSD01	LAKE NORDEN

Telephone Company	Wire Center Code	Locality
	NUNDSDXA	NUNDA
	SINASDXA	SINAI
	TOROSDXA	TORONTO
	WABYSDXA	WAUBAY
	WBSTSDXA	WEBSTER
	WHTESDXA	WHITE
	WLLKSDXA	WILLOW LAKE
	WNWOSDXA	WENTWORTH
JEFFERSON TELEPHONE CO	JFSNSDXA	JEFFERSON
KADOKA TELEPHONE CO	KADKSDXA	KADOKA
KENNEBEC TELEPHONE CO	KNBCSDXA	KENNEBEC
	PRESSDXA	PIERRE
MCCOOK COOP TELEPHONE CO	ALXNSDXA	ALEXANDRIA
	CANVSDXA	CANOVA
	CNTRSDXA	CENTER
	SALMSDXA	SALEM
	SPNCSDXA	SPENCER
	WNFRSDXA	WINFRED
MIDSTATE COMMUNICATIONS CO	ACDMSDXA	ACADEMY
	DLMTSDXA	DELMONT
	FTTHSDXA	FORT THOMPSON
	GNVYSDXA	GAYVILLE
	KMBLSDXA	KIMBALL
	NHLDSDXA	NEW HOLLAND
	PKWNSDXA	PLANKINTON
	PLTTSDXA	PLATTE
	STKNSDXA	STICKNEY
	WHLKSDXA	WHITE LAKE
MOUNT RUSHMORE TELEPHONE CO	KYSTSDXA	KEYSTONE
RC COMMUNICATIONS, INC.	PEVRSDXA	PEEVER
	SMMTSDXA	SUMMIT
	VBLNSDXA	VEBLEN
	WLMTSDXA	WILMOT
ROBERTS COUNTY TELEPHONE COOP ASSN	CLCYSDXA	CLAIRE CITY
	NWEBSDXA	NEW EFFINGTON
SANBORN TELEPHONE COOP	ALPESDXA	ALPENA
	ARTSSDXA	ARTESIAN
	ETHNSDXA	ETHAN
	FSBGSDXA	FORESTBURG
	LTCHSDXA	LETCHER
	MTVRSDXA	MOUNT VERNON
	WNSCSDXA	WOONSOCKET

Telephone Company	Wire Center Code	Locality
[illegible] INC	PRTNSDXA	PARKSTON
	TRPPSDXA	TRIPP
	WLSYSDXA	WOLSEY
[illegible] VALLEY TELEPHONE CO	COTNSDXA	COLTON
	CRSCSDXA	CORSICA
	DLRPSDXA	DELL RAPID
	HMBLSDXA	HUMBOLDT
	PLTNSDXA	PLANKINTON
	VYSPSDXA	VALLEY SPRINGS
[illegible] ROCK TELECOM COOP INC	BRNDSDXA	BRANDON
	GRSNSDXA	GARRETSON
[illegible] HOLM-STRANDBURG TELEPHONE CO	RVLLSDXA	REVILLO
	SSHRSDXA	SOUTH SHORE
	STKHSDXA	STOCKHOLM
[illegible] ON TELEPHONE CO	HRFRSDXA	HARTFORD
	HRFRSDXS	SOUTH HARTFORD
VALLEY TELECOMMUNICATIONS COOPERATIVE	EURKSDXA	EUREKA
	GLHMSDXA	GLENHAM
	HRRDSDXA	HERREID
	HSMRSDXA	HOSMER
	IPSWSDXA	IPSWICH
	LEOLSDXA	LEOLA
	LGLKSDXA	LONG LAKE
	MDCYSDXA	MOUND CITY
	PLLCSDXA	POLLOCK
WESTERN TELEPHONE CO	CRSBSDXA	CRESBARD
	FKTNSDXA	FAULKTON
	ORNTSDXA	ORIENT
WEST RIVER COOPERATIVE TELEPHONE CO	BFLOSDXA	BUFFALO
	BISNSDXA	BISON
	CMCRSDXA	CAMP CROOK
	LMMNSDXA	LEMMON
	MEDWSDXA	MEADOW
	NSLDSDXA	NISLAND
	NWLLSDXA	NEWELL
	SORMSDXA	SORUM



South Dakota Public Utilities Commission

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Rolayne Ailts Wiest

October 19, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Cheryl Parrino
Chief Executive Officer
Universal Service Administrative Company
2120 L. Street, N.W. Suite 600
Washington, D.C. 20037

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Salas and Ms. Parrino:

Pursuant to section 214(e)(2) of the Communications Act of 1934, as amended, and 47 C.F.R. sections 54.201 - 54.203, the South Dakota Public Utilities Commission (SDPUC) has designated GCC License Corporation as an Eligible Telecommunications Carrier (ETC). GCC was designated an ETC in South Dakota in non-rural telephone company exchanges on October 18, 2001, in Docket TC98-146, *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*. A copy of this Order is enclosed. Also enclosed is Attachment A to the Order which identifies GCC's designated service areas in South Dakota.

If additional information is required, please do not hesitate to call.

Sincerely,

Rolayne Ailts Wiest
by Karen E. Cremer

ROLAYNE AILTS WIEST
General Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	ORDER DESIGNATING GCC LICENSE CORPORATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN NON-RURAL TELEPHONE COMPANY EXCHANGES TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

GCC appealed the Commission's decision to circuit court. The circuit court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the circuit court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the circuit court's decision.

On August 30, 2001, the Commission received a proposed order from GCC along with a list of the Qwest exchanges within which GCC would be designated as an ETC.

In accordance with the Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, IT IS ORDERED:

1. GCC is designated as an ETC pursuant to 47 U.S.C. section 214(e)(2) in the exchanges listed on Attachment A, which is incorporated by reference. These exchanges constitute all non-rural telephone company exchanges in the state of South Dakota;

2. In providing service in South Dakota as an ETC, GCC shall comply with all applicable federal and state requirements;

3. The Commission retains jurisdiction over this docket and GCC for the purpose of ensuring that GCC's provision of services as an ETC complies with all applicable federal and state requirements;

4. The Commission shall send a letter, in the form of Attachment B hereto, notifying the Federal Communications Commission and the Universal Service Administrative Company of GCC's designation as an ETC in all non-rural telephone company exchanges in the state of South Dakota.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18th day of October, 2001.

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: Delaine Kolbo

Date: 10/19/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

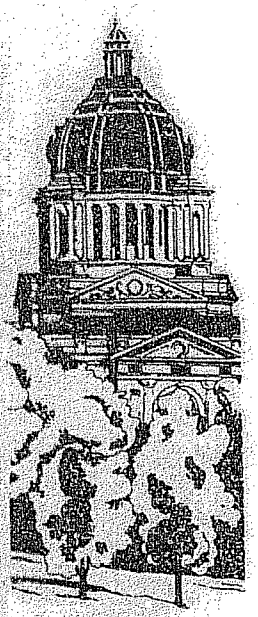
JAMES A. BURG, Chairman

PAM NELSON, Commissioner

Qwest Wire Centers

South Dakota

Locality	Wire Center Code	Telephone Company
ABERDEEN	ABRDSDCO	Qwest
ARLINGTON	ARTNSDCO	Qwest
BELLE FOURCHE	BLFRSDCO	Qwest
BLACK HAWK	BLHKSDCE	Qwest
CAVOUR	CAVRSDCO	Qwest
CHAMBERLAIN	CHBLSDCO	Qwest
COLMAN	CLMNSDCO	Qwest
CANTON-FAIRVIEW	CNTNSDCO	Qwest
DEADWOOD	DDWDSDCO	Qwest
DESMET	DESMSDCO	Qwest
ELK POINT	ELPNSDCO	Qwest
FLANDREAU	FLNDSDCO	Qwest
FORT PIERRE	FTPRSDCE	Qwest
HILL CITY	HLCYSDCO	Qwest
HARRISBURG	HRBGSDCO	Qwest
HURON	HURNSDCO	Qwest
IROQUOIS	IRQSSDCO	Qwest
LEAD	LEADSDCO	Qwest
LAKE PRESTON	LKPRSDCO	Qwest
MCINTOSH	MCINSDCO	Qwest
MADISON	MDSNSDCE	Qwest
MILBANK	MLBNSDCO	Qwest
MILLER	MLLRSDCO	Qwest
MORRISTOWN	MRTWSDCO	Qwest
MITCHELL	MTCHSDCO	Qwest
ORTONVILLE	ORVLMNOR	Qwest
PIERRE	PIRRSDCO	Qwest
REDFIELD	RDFDSDCO	Qwest
RAPID CITY	RPCYSDCO	Qwest
RAPID VALLEY	RPVYSDCO	Qwest
SPEARFISH	SPRFSDCO	Qwest
STURGIS	STRGSDCO	Qwest
N. SIOUX CITY	SXCYIADT	Qwest
SIOUX FALLS	SXFLSDCO	Qwest
S.E. SIOUX FALLS	SXFLSDSE	Qwest
S.W. SIOUX FALLS	SXFLSDSW	Qwest
TEA	TEA SDCO	Qwest
TIMBER LAKE	TMLKSDCO	Qwest
VALENTINE	VLNTNENW	Qwest
VOLGA-BRUCE	VOLGSDCO	Qwest
VERMILLION	VRMLSDCO	Qwest
WHITEWOOD	WHWDSDCO	Qwest
WARWICK	WRWKSDCO	Qwest
WATERTOWN	WTTWSDCO	Qwest
YANKTON	YNTNSDCO	Qwest



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Charlene Lund
Gregory A. Rislov
Keith Senger
Rolayne Ailts Wiest

South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

ATTACHMENT B

October 19, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Cheryl Parrino
Chief Executive Officer
Universal Service Administrative Company
2120 L. Street, N.W. Suite 600
Washington, D.C. 20037

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Salas and Ms. Parrino:

Pursuant to section 214(e)(2) of the Communications Act of 1934, as amended, and 47 C.F.R. sections 54.201 - 54.203, the South Dakota Public Utilities Commission (SDPUC) has designated GCC License Corporation as an Eligible Telecommunications Carrier (ETC). GCC was designated an ETC in South Dakota in non-rural telephone company exchanges on October 18, 2001, in Docket TC01-146, *In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*. A copy of this Order is enclosed. Also enclosed is Attachment A to the Order which identifies GCC's designated service areas in South Dakota.

If additional information is required, please do not hesitate to call.

Sincerely,

Rolayne Ailts Wiest
by Karen E. Cremer

ROLAYNE AILTS WIEST
General Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))))	FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provides customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

> On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest.
>
> On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

At its September 7, 2001, meeting, the Commission considered this matter. The Commission voted to find that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On August 25, 1998, the Commission received a request from GCC requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

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 eligible telecommunications carrier (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 Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST). Following the hearing and briefing by the parties, the Commission unanimously voted to deny the application.

5. The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

6. GCC appealed the Commission's decision to the Circuit Court. The Circuit Court reversed the Commission's decision. See Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235. For areas served by rural telephone companies, the court found that GCC meets all applicable criteria for ETC designation except the public interest factor, which was not addressed by the Commission. The court remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision. The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, 2001 SD 32, 623 N.W.2d 474.

7. Consistent with the court's decision, the matter came back to the Commission on remand, on the record, for the purpose of deciding whether it was in the public interest to designate GCC as an ETC in areas served by rural telephone areas. On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC.

8. The Stipulation listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies. See Attachment A. The Commission approved the Stipulation for Procedure on Remand. GCC and SDITC then provided supplemental briefing and the Commission heard oral arguments on July 26, 2001.

9. 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.

10. One of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. An expanded local calling area will allow consumers to make more local calls, thus avoiding some toll charges. Id. In addition, GCC has pledged to offer unlimited local usage as part of one its universal service offerings. GCC Exhibit 4 at 9. For a monthly charge, GCC will offer consumers the supported services "with unlimited local usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling." GCC Exhibit 4 at 13. Further, GCC will offer local service at a rate similar to the incumbent telephone company. GCC testified that "if the incumbent is offering

service at $15 a month, we'll offer service at a similarly $15 a month." TR. at 117. The Commission finds that GCC's ability to offer an expanded local calling area along with its other offerings will benefit the public.

11. GCC also cites as a benefit a mobility component to its universal service offering that it intends to offer in the future. According to its testimony, GCC would not introduce a mobility component right away but intended to, over time, "expand its universal service offering to introduce a mobility component." GCC Exhibit 4 at 8. The Commission finds that a mobility component to local telephone service is also a benefit to the public.

12. GCC claimed that another benefit would be to bring "universal service to some consumers who currently do not have telephone service." GCC Supplemental Brief at 11. However, GCC failed to show that consumers located in areas served by the rural telephone companies were unable to receive service from the rural telephone companies. Thus, the Commission declines to find that the provision of service by GCC will result in universal service being provided to more consumers.

13. As stated above, the second part of the public interest analysis is whether the introduction of competition in these rural areas will ultimately prove detrimental to universal service. SDITC's witness' testimony as to whether designation was in the public interest focused on the uncertainties with respect to the level of universal support for rural telephone companies. Exhibit 6 at 10-11. He did not offer evidence that the rural telephone companies would be unable to continue to provide universal service to its customers if another carrier were granted ETC designation.

14. Since the Commission's hearing held on December 17, 1998, the FCC has issued new rulings related to universal service funding. As SDITC noted in its supplemental brief, the FCC has recently found that universal service support should be disaggregated and targeted below the study area level for rural telephone companies in order to ensure that the per-line level of support is more closely related to the cost of providing the service. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256 (rel. May 23, 2001) at ¶¶ 144-45. Pursuant to the FCC's order, rural companies are not required to select a disaggregation option until next year. Id. at ¶ 147. SDITC states that "[i]t would not be in the public interest to designate GCC as an ETC in rural service areas and allow it to receive portable universal service support before the disaggregation process has been completed and support is more closely targeted to the actual cost of serving each line." SDITC Supplemental Rebuttal Brief at 30. However, the Commission does not believe it would be in the public interest to delay the designation of additional ETCs until such time as the deadline for filing a plan has passed. If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible. The Commission further notes that an ETC, if it intends to retain its ETC designation, is obligated to offer its services throughout the service area and may not discriminate in favor of serving only the lowest cost lines.

15. In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate-of return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

16. The Commission further finds that the fact that GCC will be providing a wireless service will likely lessen the loss of the incumbent carriers' universal service support. Wireless or cellular telephone service is often used as an additional, as opposed to a substitute, telephone service. Significantly, the FCC has decided that federal universal support will be extended to all lines served by ETCs in high-cost areas. Thus, if consumers subscribe to GCC's service but retain their landline service from the incumbent carrier, the incumbent carrier will still receive the same amount of universal service support for that line. See In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order, CC Docket No. 96-45, (rel. October 5, 2001) at ¶ 15.

17. Based on the record presented at the December 17, 1998, hearing, the Commission is unable to find that the addition of GCC as a second ETC will detrimentally affect the incumbent carriers' ability to provide universal service to their customers.

18. Another concern raised by SDITC related to the Commission's ability to regulate GCC. SDITC stated that it did not believe that it was in the public interest to designate GCC as an ETC if the Commission "has no ability after such designation to ensure that the service actually offered by GCC is consistent with the Commission's service quality rules and no ability to address consumer complaints concerning the service." SDITC Supplemental Rebuttal Brief at 24. However, the Commission finds that GCC is a telecommunications company as defined by SDCL 49-31-1(25), and thus is subject to the Commission's statutes and rules.

19. Based on these findings, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, subject to the conditions listed in findings of fact 20-24. The Commission finds that GCC's provisioning of a basic universal service throughout the study areas will be beneficial to the public. Further, the Commission finds that the evidence presented at the hearing does not support a finding that the incumbent rural telephone companies will be unable to continue to provide the supported services to their customers.

20. With respect to the advertising of its universal service offering, GCC states that it "currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. GCC's current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market. GCC will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings." Exhibit 3 at 9. Consistent with these commitments, GCC shall file its plan for advertising its universal service offering throughout its service areas.

21. As stated earlier, one of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. At the time of the hearing, GCC did not have a list of local calling areas. Therefore, once GCC determines its local calling areas, it shall file a list of areas with the Commission.

22. 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. In order to inform customers of these services, GCC's service agreement shall advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply.

23. In addition, GCC has agreed to file with the Commission its service agreement it intends to offer to universal service customers. The Commission finds that this service agreement must be consistent with the Commission's service quality rules. The Commission further notes that as a telecommunications company, GCC is subject to SDCL chapter 49-13 which allows consumers to file complaints with the Commission. Thus, the Commission finds that the service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction

24. At the time of the hearing, GCC had not yet finalized a universal service offering. Thus, GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

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, 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 the Circuit Court's Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, decision, GCC meets all applicable criteria for ETC designation. Based on the evidence presented at the December 17, 1998, hearing, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

It is therefore

ORDERED, that the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18th day of October, 2001.

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: Delaine Kolbo

Date: 10/19/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ATTACHMENT A

[redacted] Telephone Company
[redacted] Telecom Cooperative
[redacted] Municipal Telephone Company
[redacted] Consolidated Independent Telephone
[redacted] Municipal Telephone/Swiftel Communications
[redacted] Cooperative Telecommunications, Inc.
[redacted] Telecom, Inc.
[redacted] Telephone Company
[redacted] Telecommunications Cooperative, Inc.
[redacted] Telephone Company
[redacted] Telephone Company
[redacted] Telephone Company
[redacted] Cooperative Telephone Company
[redacted] Communications, Inc.
[redacted] Telephone Company
[redacted] Communications, Inc.
[redacted] County Telephone Cooperative Assn.
[redacted] Telephone Cooperative
[redacted], Inc.
[redacted] Valley Telephone Company
[redacted] Telecom Cooperative, Inc.
[redacted] Stratsburg Telephone Co.
[redacted] Telephone Company
[redacted] Telecommunications Cooperative
[redacted] Telephone Company
[redacted] Cooperative Telephone Company

Western Wireless.

RECEIVED
AUG 2 9 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

August 28, 2002

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Ms. Elofson:

Pursuant to the order of the South Dakota Public Utilities Commission ("Commission") in Application No. TC98-146 dated October 18, 2001, which designated WWC License LLC, a subsidiary of Western Wireless Corporation ("Western Wireless"), as an ETC in South Dakota, Western Wireless submits the enclosed compliance filing.

Please call me if you have questions.

Sincerely,

Suzie Rao

Suzie Rao
Regulatory Counsel

cc: Talbot J. Wieczorek, Gunderson, Palmer, Goodsell & Nelson, LLP

RECEIVED
AUG 29 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

WESTERN WIRELESS CORPORATION
COMPLIANCE FILING

This Compliance Filing governs the universal service offerings by Western Wireless in the state of South Dakota, and is filed with the Public Utilities Commission ("Commission") pursuant to the order of the Commission in Application No. TC98-146 dated October 18, 2001.

This Compliance Filing consists of the following sections:

Appendix A: Advertising Plan

Appendix B: Unlimited Local Calling
Universal Service Offering
Terms and Conditions of Service

Appendix C: Measured Rate Calling
Universal Service Offering
Terms and Conditions of Service

Appendix A

ADVERTISING PLAN

APPENDIX A

ADVERTISING PLAN

WWC License LLC, doing business as CellularOne® ("Western Wireless") in the state of South Dakota, submits the following advertising plan as required by the Order of the South Dakota Public Utilities Commission (Commission), granting Western Wireless the status of an Eligible Telecommunications Carrier ("ETC"), dated October 18, 2001 in Application No. TC98-146.

Pursuant to 47 U.S.C. § 214(e)(1), Western Wireless will advertise its universal service offering in each ETC designated service area in which it offers service. Western Wireless will advertise the availability of the service and the corresponding charges in a manner that fully informs the general public.

Western Wireless will advertise its universal service offerings in newspapers of general circulation in each county in which it provides service. Western Wireless will also advertise the availability of its universal service offerings in its various retail stores located throughout its authorized service area.

Western Wireless will also comply with all form and content requirements, if any, adopted by the Federal Communications Commission (FCC) or the Commission in the future and required of all ETCs.

Description of Universal Service Offerings and Rates

Western Wireless' universal service offerings include the following services and functionalities:

- Voice grade access to the public switched telephone network;
- Local usage;
- Dual tone multi-frequency signal or its functional equivalent;
- Single party service or its functional equivalent;
- Access to emergency service;
- Access to operator services;
- Access to interexchange service;
- Access to directory assistance; and
- Toll blocking without charge.

Western Wireless will provide universal service under either: (1) an unlimited local calling universal service rate plan described in Appendix B; and/or (2) a measured rate universal service plan described in Appendix C.

Appendix B

UNLIMITED LOCAL CALLING
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

CONTINUATION

[4]

Scan ~ 7633 ~ # Pgs [ ]

TC98-146

APPENDIX B
UNLIMITED LOCAL CALLING
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

(The following Terms and Conditions are in a form of an agreement between the Company and the Customer and will be provided to all Customers choosing the Company's unlimited local calling plan universal service offerings.)

These Terms and Conditions govern unlimited local calling plan universal service offerings by the Company (referred to herein as "CellularoOne®, or "Company") for wireless (commercial mobile radio service or "CMRS") and related services and features that the Customer may select from time to time, including for example, but not limited to: data, messaging, paging, and internet services (together, "Service"), and for the purchase and use of wireless equipment and/or other receiving and transmitting equipment, including any additional or replacement equipment (together, your "Equipment"), for use with the Service. If you have any questions regarding your CellularOne® Service, please call the Company at (800) 635-0304 or write a letter to the correspondence address printed on Customer's most recent CellularOne® billing statement.

SECTION 1– COMPANY RESPONSIBILITIES

1.1 Services -- General

1.1.1 The Company provides wireless services to Customers for voice, data and other types of services capable of transmission over the Company's network.

1.1.2 The Company will provide basic local telecommunications service to applicants within the Company's designated service area.

1.1.3 The Company provides telecommunications services in accordance with applicable law and, for purposes of universal service, the Terms and Conditions set forth herein.

1.1.4 The local calling for the Company's universal service offering will typically be as large or larger than the calling area of the incumbent local exchange carrier.

1.1.5 The Company's services are provided on a monthly basis, unless otherwise stated herein. Services are available twenty-four (24) hours per day, seven (7) days per week. Company will make reasonable arrangements to resolve emergencies resulting from failures of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and instruct its employees as to procedures to be followed in the event of such emergencies in order to prevent or minimize interruptions or impairment of telecommunications service.

1.1.6 The Company will provide notice in customer bills informing customers of the availability of its service offerings and will also advertise its services through media of general distribution.

1.1.7 The Company will provide continuous and adequate service in compliance with the quality of service standards defined in Chapters §§ 20:10:33 and 20:10:34, as required by SDCL Chapter 49-31, to the extent that the terms of the rules are applicable to the Company.

1.1.8 The Company will provide Customers basic information about reduced rate telecommunications services under the federal Lifeline and Link Up programs. The Company will provide Lifeline and Link Up service to customers who request such service and who meet the eligibility requirements to qualify for such service. The Company will comply with all current and future requirements related to Lifeline and Link Up.

1.2 Service Offerings

The Company will provide those services and features selected by Customers as identified on the Customer Preference Page.

1.3 Customer Service Policies

1.3.1 Customer Care service personnel will be available 24 hours per day, 7 days per week. Customer Care can be reached by dialing 611 on the Company's network, or by dialing 1-800-635-0304 from another network. A Customer can also speak with Company representatives located at its retail store outlets, who can provide information relating to services and rates, explain charges on Customers' bills, adjust charges made in error, and generally act as the Company's representatives.

1.3.2 Customer Care service personnel will attempt to answer any questions a Customer has, and will strive to resolve complaints or disputes during the initial Customer call. If a complaint or dispute is not resolved on the initial customer call, the Company will, at the request of the Customer, investigate the matter further.

1.4 Limitations of Service

1.4.1 Service is offered subject to the availability of facilities and the provisions contained herein.

1.4.2 Service is furnished to the Customer for any lawful purpose. Service shall not be used for any unlawful purpose, nor used in such a manner as to interfere unreasonably with the use of service by any other users of Company's network.

1.4.3 The use of the Company's services without payment for service, or an attempt to avoid payment for service by fraudulent means or devices, false or invalid numbers, or false calling or credit cards is prohibited.

1.4.4 The use of the Company's services to make calls that might reasonably be expected to frighten, abuse, torment, or harass another person is prohibited.

1.5 Limitations of Liability

1.5.1 Because the Company has no control of the content of communications transmitted over its network, and because of the possibility of errors incident to the provision and use of its services, services furnished by the Company are subject to the terms, conditions and limitations specified herein.

1.5.2 The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been disconnected, to a refund of the amount erroneously billed.

1.5.3 The Customer agrees, except where the events, incidents or eventualities set forth in this section are the result of the Company's gross negligence or willful misconduct, to release, indemnify and hold harmless the Company against any and all loss, claims, demands, suits or other action or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss of or damage to any property, whether owned by the Customer or others.

1.5.4 The Company assumes no responsibility for the availability or performance of any facilities under the control of other entities that are used to provide services to Customer.

1.5.5 The Company makes no express representations or warranties regarding the services or equipment provided, except as set forth herein, and disclaims any implied warranties, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The Company does not authorize anyone to make a warranty of any kind on its behalf and Customer should not rely on any such warranty.

1.5.6 The Company makes no express or implied representations or warranties on the availability of service, including 911 service, and the ability to complete calls.

1.6 Interruptions of Service

1.6.1 General

1.6.1.1 Service is interrupted when it becomes unusable to the Customer or when the Customer is unable to transmit or receive calls due to the failure of a component of the network furnished by the Company under these Terms and Conditions.

1.6.1.2 An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

1.6.1.2 If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service facility or circuit considered by the Company to be impaired.

1.6.2 Reestablishing Service

The Company will make all reasonable efforts to prevent interruptions of service and, when interruptions do occur, reestablish service with the shortest possible delay. Company will make attempts to resolve emergencies at all hours, consistent with the bona fide needs of customers and the personal safety of Company's employees. In almost all cases, Company will be able to reestablish service within 24 hours. If unusual repairs are required, or other factors will prevent the prompt reestablishment of service, the Company will make reasonable efforts to contact Customer.

1.6.3 Network Maintenance

The Company will make every reasonable effort to provide notice to Customers of any network unavailability due to regularly scheduled maintenance.

1.6.4 Application of Credits for Interrupted Services

In the event a Customer's service is interrupted and remains out of order for 24 hours after being reported to the Company, adjustments will be made to Customer's monthly bill based on the pro rata part of any charge due and payable from Customer. A refund will be accomplished by a credit on a subsequent bill, or if service has been terminated, by refund check issued to Customer. If service is restored on or before the day after it is reported, no allowance will be made. No adjustments will be earned by accumulating non-continuous periods of interruption.

1.6.5 Limitations on Allowances

No credit allowance will be made for any interruption of service due to the failure of power, equipment, systems or services not provided by the Company; during any period in which the Company is not given full and free access to the Customer's or Company's facilities and equipment for the purpose of investigating and correcting the interruption; during any period in which the Customer continues to use the service on an impaired basis; during any period in which the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements; or that was not reported to the Company within thirty (30) days of the date that service was affected.

SECTION 2 – CUSTOMER RESPONSIBILITIES

2.1 The Customer is responsible for placing any necessary orders, complying with the terms and conditions specified herein and assuring that all users of the services provided by Company comply with the same. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements of any governmental entity relating to services provided by the Company to the Customer or made available by the Customer to another user. The Customer also is responsible for the payment of charges for all calls originated at the Customer's telephone number which are not collect, third party, calling card, or credit card calls.

2.2 The Customer is responsible for charges incurred for special construction and/or special facilities, which the Customer requests and which are ordered by the Company on the Customer's behalf, except as noted on the Customer Preference Page.

2.3 If required for the provisioning of the Company's services, the Customer must provide the Company, free of charge, with any necessary equipment space, supporting structure, conduit and electrical power.

2.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to the Company and the Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.

2.5 The Customer must pay the Company for replacement or repair of damage to the Company's equipment or facilities caused by negligent or improper use on the part of the Customer or others.

2.6 The Customer shall be responsible for the theft, damage to, or loss of, any Company equipment or facilities, including the wireless access unit located or installed at the Customer's premises.

SECTION 3 – TERMINATION OF SERVICE

3.1 The Customer may terminate service, with or without cause, by giving the Company three days' notice. Service will be disconnected on the requested termination day, and customer will not be responsible for services rendered after that day.

3.2 The Company may terminate service with notice to Customer, for failure of the Customer to pay a bill when due, for failure of the Customer to permit the Company to have reasonable access to its equipment, or for failure of the Customer to otherwise adhere to these Terms and Conditions. The notice provided to Customer will state the reasons for and the date of scheduled discontinuance of service, and actions that Customer may take to avoid discontinuance of service.

3.3 The Company may terminate service without notice in the event of any of the following occurrences: hazardous or unsafe conditions on the Customer's premises; the Customer's maintaining and/or operating its own equipment in such a manner as to adversely affect the Company's equipment, network or service to others; Customer intentionally using the service in a manner that causes wrongful billing charges to another person; Customer intentionally using the service to transmit messages or to locate a person to give or obtain information without payment of appropriate charges; Customer's use of the service with fraudulent intent by impersonating someone else; use of the service for unlawful purposes; abandonment of the service; Customer tampering with the Company's equipment; Customer's provision of false information in applying for Company's service; or the Customer's unauthorized, fraudulent, or illegal use of the Company's service or equipment. The Company may also terminate service when necessary to comply with any order or request of any governmental authority.

3.4 Upon termination of service, the Customer shall return in good working order, any and all equipment that the Company owns. If the Customer does not return equipment to the Company within a reasonable time period, the Company will charge the amount of the equipment to the Customer on a final bill.

SECTION 4 -- RATES AND CHARGES

4.1 Payment of Charges

4.1.1 The Customer is responsible for payment of all charges for service furnished to the Customer, and for all charges incurred to the Customer's telephone number regardless of which party terminates the service.

4.1.2 The Company will provide bills to Customer that are typed or machine-printed, and which contain an itemized listing of all charges and the period of time covered by the billing.

4.1.3 The Company reserves the right to assess late payment charges for a Customer whose account(s) carries principal owing from the prior billing period. Any charges not paid in full within 15 days after the due date indicated on the billing statement may be subject to a late fee of 1.5% of the total of the bill. At the end

of the initial subsequent billing period, an additional charge of 1.5% of any remaining unpaid amount may be assessed on the Customer. Thereafter, a further additional charge of 2% of any portion of the original unpaid amount may be assessed.

4.1.4 Recurring monthly charges may be invoiced one month in advance. Invoicing cycles are approximately 30 days in length. Customer will have at least 20 days from the bill date to pay the new balance.

4.1.5 Customers must notify the Company either verbally or in writing of any disputed charges, otherwise all charges on the invoice will be deemed accepted. All charges remain due and payable at the due date.

4.2 Deposits

The Company may collect a deposit for Company-provided equipment used by the Customer and for long distance service.

4.3 Contested Charges

All bills are presumed accurate and shall be binding on the Customer unless the Company receives objection. In the event that a billing dispute between the Customer and the Company for service furnished to the Customer cannot be settled with mutual satisfaction, the Customer may request, and the Company will provide, an in-depth review of the disputed amount. The undisputed portion of any bill and any subsequent bills must be paid on a timely basis or the service may be subject to disconnect. If it is determined that any amount previously paid was incorrectly billed, Company will reduce Customer's subsequent bill accordingly, or, at the request of the Customer, will issue a refund.

4.4 Taxes

State and local sales, use and similar taxes and fees, and governmental assessments, including gross receipts taxes, are billed as separate items and are not included in the quoted rates for telecommunications services listed on the Customer Preference Page.

4.5 Start of Billing

For billing purposes, the start of service is the day shown on the Customer Preference Page, or the day following acceptance by the Customer of the Company's service or equipment. The end of service date is the last day of the minimum notification of cancellation, or any portion of the last day after receipt by the Company of notification of cancellation as described in Paragraphs 4.1 through 4.3 of this Agreement.

4.6 Promotions

From time to time, the Company may offer services or waive or vary service rates for promotional, market research or other similar business purposes.

4.7 **Bad Check Charge**

If payment for services is made by a check, draft, or similar instrument (collectively "Check") that is returned to the Company unpaid by a bank or another financial institution for any reason, the Company will bill the Customer a $20.00 service charge. In addition, the Customer may be required to replace the returned Check with a payment in cash or equivalent to cash, such as cashier's check, certified check or money order.

4.8 **Reconnect Charge**

If service has been discontinued for proper cause, the Company will charge a fee of $50.00 to defray the cost of restoring service to the Customer.

SECTION 5- ADDITIONAL TERMS

5.1 **Amendment of this Agreement**

Company will provide Customer with written notice of any amendments to this Agreement. By use of the service on or after the effective date of the Amendment, Customer acknowledges acceptance of all such amendments. Customer may add or delete services reflected on the Customer Preference Page by giving the Company verbal or written notice of the intent to do so.

5.2 **Assignment**

Customer may not sell, assign, or transfer rights and obligations contained in this Agreement without the consent of the Company, which may be withheld at its sole discretion.

5.3 **Notices**

All written notices required or allowed under this Agreement shall be given to Company at the Following address: ATTN: Regulatory Department, Western Wireless Corporation, 3650 131st Avenue S.E., Suite 400, Bellevue, WA 98006. All written notices required or allowed under this Agreement shall be given to Customer at the billing address listed on the Customer Preference Page.

5.4 **Entire Agreement**

This Agreement contains the entire Agreement between Company and Customer and supersedes and cancels all prior understandings, agreements, contracts or arrangements between them concerning the subject matter hereof. No statements or representations not included herein shall not be binding upon the parties.

From time to time, the Company may offer services or waive or vary service rates for promotional, market research or other similar business purposes.

4.7 **Bad Check Charge**

If payment for services is made by a check, draft, or similar instrument (collectively "Check") that is returned to the Company unpaid by a bank or another financial institution for any reason, the Company will bill the Customer a $20.00 service charge. In addition, the Customer may be required to replace the returned Check with a payment in cash or equivalent to cash, such as cashier's check, certified check or money order.

4.8 **Reconnect Charge**

If service has been discontinued for proper cause, the Company will charge a fee of $30.00 to defray the cost of restoring service to the Customer.

SECTION 5- ADDITIONAL TERMS

5.1 **Amendment of this Agreement**

Company will provide Customer with written notice of any amendments to this Agreement. By use of the service on or after the effective date of the Amendment, Customer acknowledges acceptance of all such amendments. Customer may add or delete services reflected on the Customer Preference Page by giving the Company verbal or written notice of the intent to do so.

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5.4 **Entire Agreement**

This Agreement contains the entire Agreement between Company and Customer and supersedes and cancels all prior understandings, agreements, contracts or arrangements between them concerning the subject matter hereof. No statements or representations not included herein shall not be binding upon the parties.

5.5 **Governing Law**

This agreement shall be governed by applicable federal law, the regulations of the FCC, and the laws of the State of South Dakota, to the extent applicable, and applicable orders of the Commission. Jurisdiction to resolve any dispute arising out of this Agreement lies solely with the Commission. The address of the Commission is: Public Utilities Commission of South Dakota, Capitol Building, First Floor, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. The telephone number is: 1 -800-332-1782

5.6 **Waiver**

Failure by either party to strictly enforce any provision of this Agreement shall not be construed as a waiver thereof, or as excusing the other party from future performance.

5.7 **Savings Clause**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, such provision shall be deemed not to be a part of this Agreement, except in the case of a state or local prohibition, in which event it shall be eliminated only for such state or locality, but no such elimination shall invalidate any other provision.

Local Calling Areas South Carolina Unlimited Local Calling Plan

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Irene	Beresford	Canton	Center Point	Centerville	Chancellor	(605) Area Code	201	221	231	238	241	251
	Lennoox	Davis	Harrisburg	Hurley	Irene	Lennox	252	253	254	265	267	274	295
	Parker	Marion	Monroe	Parker	Pearson Corner	Shindler	297	301	306	310	321	322	329
	Viborg	Sioux Falls	Tea	Turkey Ridge	Viborg	Wakonda	326	327	328	330	331	332	333
	Wakonda	Worthing					334	335	336	338	339	351	357
							359	360	361	362	366	367	368
							370	371	372	373	376	444	477
							498	509	521	552	558	563	575
							595	609	610	647	648	686	728
							731	743	759	763	764	766	767
							782	929	940	941	957	965	977
							978	987	988				

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Jefferson	Burbank	Elk Point	Jefferson	Junction City	McCook	(605) Area Code	217	242	356	422	624	638
		North Sioux City	Richland	Vermillion			659	670	672	677	679	741	761
							780	966					

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Kennebec	Chamberlain	Kennebec	Oacoma	Presho	Reliance	(605) Area Code	473	683	730	734	869	895
	Presho	Vivian											

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Alexandria	Alexandria	Artesian	Bridgewater	Canistota	Canova	(605) Area Code	227	239	246	247	296	421
	Canova	Center	Corner	Emery	Epiphany	Ethan	425	449	465	471	485	523	527
	Center	Fedora	Fulton	Howard	Junius	Mitchell	587	630	729	770	772	836	995
	Salem	Montrose	Orland	Roswell	Rumbus Ridge	Salem	996	998	999				
	Spencer	Spencer	Stanley	Unityville	Winfred								
	Winfred												

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Kevin	Alice	Chamine	Bonne	Big Stone City	Corinna	(605) Area Code	237	432	737	821	879	733
	South Shore	Crooksville	Kranzburg	Lesbo	Nunn	Milbank	756	864	880	881	882	884	898
	Strandburg	Morris	Roanoke	Reeve	Stockholm	Strandburg	940	979					
		Kimball	South Shore	Tonsina	Twin Brooks	Wilmotown							
		Monroe											

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Eureka	Artas	Bowdle	Eureka	Glenham	Greenway	(605) Area Code	241	282	293	294	295	437
	Glenham	Herreid	Hillsview	Hosmer	Java	Mobridge	581	649	762	820	845	848	850
	Herreid	Mound City	Pollock	Selby			858	889	955				
	Hosmer												
	Mound City												
	Pollock												

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Hosmer	Aberdeen	Barnard	Craven	Deerfield Colony	Frederick	(605) Area Code	207	216	225	226	228	229
	Ipswich	Hosmer	Ipswich	Leola	Long Lake	Long Lake Colony	240	250	283	287	290	329	377
	Leola	Pambrook Colony	Plainview Colony	Roscoe	Westport	Wefonka	378	380	426	439	577	622	629
	Long Lake						725	790	898				

Appendix C

MEASURED RATE UNIVERSAL SERVICE OFFERING TERMS AND CONDITIONS OF SERVICE

APPENDIX C
MEASURED RATE CALLING PLAN
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

(The following Terms and Conditions are in a form of an agreement between the Company and the Customer and will be provided to all Customers choosing the Company's measured rate plan universal service offerings.)

WWC License LLC, Inc., a wholly-owned subsidiary of Western Wireless Corporation, doing business in South Dakota as CellularOne®, (the "Company") offers universal service consistent with all applicable state and federal requirements and the purposes and intent of the Telecommunications Act of 1996, the implementing regulations of the Federal Communications Commission ("FCC"), and applicable rules and orders of the South Dakota Public Utilities Commission (the "Commission").

These terms and conditions of service vary depending upon the applicable rate plan. For unlimited local calling rate plans, the applicable terms and conditions of service are contained in Appendix A of this Informational Tariff. For all other rate plans, the applicable terms and conditions of service are contained in Appendix B of this Informational Tariff.

This is an agreement between you and Western Wireless Corporation and its affiliates that do business as Cellular One ("Cellular One," "we" or "us") for wireless (commercial mobile radio) service and related services and features that you may select from time to time, including for example data, messaging, paging, and internet services (together, "Service"), and for the purchase and use of wireless equipment and/or other receiving and transmitting equipment, including any additional or replacement equipment, for use with the Service (together, your "Equipment").

If you have any questions regarding your Cellular One Service, please call us at (800) 635-0304 or write to us at the correspondence address printed on your last Cellular One billing statement.

1. Agreements Governing Use of Service. These Cellular One Terms and Conditions, the Cellular One Service Agreement you signed or otherwise agreed to, and the Cellular One materials that describe the price plan, features and services you selected (together, this "Agreement"), govern the use of the Service and your Equipment. This Agreement supersedes any earlier agreement between you and us. Please read this Agreement carefully before activating Service with us or making any changes to your existing Service.

2. Acceptance of Agreement by Activation or Changes to Service. BY ACTIVATING SERVICE WITH US YOU AGREE TO BE BOUND BY THIS AGREEMENT. If you do not agree to the terms of this Agreement, do not activate Service. Instead, return your Equipment as provided in Paragraph 29. You must activate Service within thirty (30) days after purchase of your Equipment (unless you return your Equipment). If you fail to do so, you will not be able to return your Equipment and we will bill you monthly service charges at the rate in your Service Agreement and you will be deemed to have accepted this Agreement. IF YOU ARE AN EXISTING CUSTOMER, YOU ACCEPT THIS AGREEMENT IN LIEU OF ANY PRIOR AGREEMENT BETWEEN YOU AND US BY (1) REQUESTING AND RECEIVING A NEW PRICE PLAN, ADDITIONAL FEATURES, SPECIAL OFFERS, NEW SERVICE, OR COURTESY CREDITS OF VALID CHARGES; AND (2) CONTINUING TO USE THE SERVICE AFTER WE FULFILL YOUR REQUEST. If you do not want to accept this Agreement, do not request any

changes or additional Service: your Service will continue under the existing agreement between you and us.

3. Mandatory Arbitration; Governing Law. EXCEPT FOR ACTIONS SOLELY TO COLLECT UNPAID CHARGES DUE BY YOU UNDER THIS AGREEMENT OR CLAIMS THAT QUALIFY FOR RESOLUTION IN SMALL CLAIMS COURT, ANY CONTROVERSY, CLAIM OR DISPUTE ARISING UNDER OR IN ANY WAY RELATED TO OR CONCERNING THIS AGREEMENT AND/OR OUR PROVISION TO YOU OF GOODS, SERVICES, OR EQUIPMENT SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION UNDER THE AUSPICES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS PUBLISHED WIRELESS INDUSTRY ARBITRATION RULES, AS SUPPLEMENTED BY ITS SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, AND ANY OTHER AAA RULES OR POLICIES THAT MAY BE APPLICABLE FROM TIME TO TIME, ALL INCORPORATED HEREIN BY THIS REFERENCE AND AVAILABLE BY CALLING THE AAA AT (800) 778-7879 OR VISITING ITS WEB SITE AT http://www.adr.org. Additional information may be obtained by contacting the AAA directly, as set forth above. Any such arbitration proceeding shall be subject to the choice of law provision in Paragraph 13. Judgment on an award rendered by an arbitrator may be entered in any court having jurisdiction thereof. Any arbitration shall remain confidential. Neither you nor Cellular One may disclose the existence, content or results of any arbitration or award, except as may be required by law, or to confirm and enforce an award. Notice of an arbitration commenced by you must be served on our registered agent. Two or more individual disputes may not be consolidated or otherwise determined in one proceeding without the prior consent of all parties. No party may act as a representative of other claimants or potential claimants in any dispute without the prior consent of all parties. An arbitrator may not award relief in excess of or inconsistent with the provisions of this Agreement, order consolidation or arbitration on a classwide basis, or award punitive, incidental, or consequential damages or any other damages other than the prevailing party's actual damages, except that the arbitrator may award damages required or authorized by statute on an individual basis and may order injunctive or declaratory relief pursuant to applicable law. All administrative fees and costs of an arbitration will be equally divided between you and us, except that for claims of less than one thousand dollars ($1,000), at your request, you may initially pay only twenty five ($25) and we will initially advance to the AAA all other administrative fees and costs. The arbitrator may, however, reallocate these and other AAA fees and costs in any arbitration award made. Each party agrees to pay the expenses and costs of its own counsel, experts, and witnesses at the arbitration.
YOU ACKNOWLEDGE AND AGREE THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PARTICIPATION AS A PLAINTIFF OR AS A CLASS MEMBER IN A CLASS ACTION. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, YOU AND WE BOTH WAIVE ANY CLAIMS TO RECOVER PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES AND ANY RIGHT TO PURSUE, OR PARTICIPATE AS A PLAINTIFF OR AS A CLASS MEMBER IN, CLAIMS ON A CLASSWIDE, CONSOLIDATED, OR REPRESENTATIVE BASIS.

4. Use of Equipment; Service Availability. Service is available to your Equipment only when it is within the operating range of our system or the system of an operator with which we have an applicable roaming agreement. Coverage maps that you may have received or viewed are only estimates; actual service coverage, quality and availability may vary. Service is subject to unavailability or transmission limits caused by network problems or limitations, the model

condition and functioning of your Equipment, or atmospheric or topographical conditions, and may temporarily be interrupted, dropped, refused, limited, or curtailed. We are not liable for any service limits, failures or outages, including without limitation the failure of a 9-1-1 emergency call to be connected or completed (see Paragraph 24). "Digital" service is only available within our digital service area; certain digital features may not function outside of our local digital service area or while roaming. We reserve the right to block or impose safeguards for calls to certain categories of calls (e.g., international, country, 900, 976) if we determine that such calls pose an increased billing, collection, or fraud risk. You may not transfer Service to another geographic area unless we consent. If we allow you to transfer Service, we may charge you a transfer fee of up to $200, we may require you to select a new price plan, and we may limit the areas that you may transfer to.

5. Use of Service; Appropriate Conduct. You will not resell any aspect of the Service, whether for profit or otherwise, modify your Equipment, or use the Service or your Equipment for any unlawful, harassing or abusive purpose, or in such a way as to create damage or risk to our business, reputation, employees, subscribers, customers, facilities, third parties or to the public generally. You will not use the Service or your Equipment to send any unsolicited commercial text or e-mail messages or any harassing, threatening, or obscene text or e-mail messages. If your contact with us is threatening or offensive or interferes with our ability to conduct our business, we may immediately suspend, restrict or cancel Service without notifying you.

6. Number. Except as otherwise provided by law, you have no proprietary or ownership rights to or interests in a specific telephone number, IP address, or E-mail address assigned to you or your Equipment (collectively and individually, your "Number"). We may change your Number at any time. You will not use or assign your Number to any other equipment without our prior consent, nor will you program any other Number into your Equipment.

7. Credit Verification. You authorize Cellular One to verify your creditworthiness with a credit reporting agency from time to time to determine your initial and continuing eligibility for Service.

8. Deposits. We may require a deposit in which you grant us a security interest to secure your payment of charges. Unless prohibited by law, deposits received by us may be commingled with our other funds, and will not earn interest. The amount of your deposit may be increased by us at any time upon notice to you upon reevaluation of your usage, credit, or payment history. You may either provide us with the required deposit or terminate Service within seven (7) days after we notify you of an increase in your deposit, in which case any cancellation fee will be waived. In our discretion, we may allow you to receive Service with a lower deposit in exchange for your agreement to limit charges to your account and comply with certain Service restrictions. A deposit may not be used to pay any amounts owed to us (unless it is used to pay a final invoice) or to delay payment. You must promptly pay your bills even if you have given us a deposit. If Service is terminated for any reason, any deposit will be applied to pay any charges due by you to us. Any remaining deposit or other credit balance will be returned without interest (to the extent allowed by law) to you. It may take ninety (90) days or longer after Service termination to process any refund due to you. Unless prohibited by law, (a) any balances of five dollars ($5.00) or less will not be returned but will automatically remain our property, and (b) if the Postal Service is not able to deliver the funds to you and returns them to us, title to such funds will be conclusively deemed to remain ours, and you will have no further right to them.

9. Price Plans. Cellular One offers a variety of Service price plans, features, programs and promotions ("Plans"). Each Plan may have its own eligibility requirements, terms and conditions in addition to these Terms and Conditions, as described in the written Plan

materials available at each Cellular One store or by request from Customer Relations.

10. Changes to this Agreement or Charges by Us. We may change the terms of this Agreement, including the charges for Service, from time to time upon thirty (30) days' notice to you. If a change to this Agreement is materially adverse to you, you may, upon receipt of notice of the change, terminate Service without incurring a cancellation fee (if any) by following the termination instructions set forth in the notice or, if no instructions are provided, by writing to Customer Relations at the correspondence address printed on your last Cellular One billing statement. Termination of service without being charged a cancellation fee is your sole remedy for any material adverse change. Failure to properly terminate Service within fourteen (14) days after the date of the notice of a change will mean that you agree to such change, and you must pay us any additional charges that may be due as a result, even if you paid for Service in advance. Changes to the rates, terms, or availability of ancillary features and services such as voicemail, call forwarding, Internet, long distance and roaming services will not be considered material. You acknowledge that no Cellular One dealer or other agent is authorized to make any representation or warranty with respect to this Agreement, the Service or the Equipment, or to waive or alter any provisions of this Agreement between you and us.

11. Changes to Service by You. By request and if we agree by entering the change into our billing system, you may add additional lines of Service to your account or change to a different Plan at the beginning of your next billing cycle. Any person that you list on your account as an "authorized user" may make changes to the Service and your account, and you will pay any additional charges that may be due as a result. We may from time to time restrict the type of changes that an authorized user may make to the Service or your account. Changes to your account are subject to credit verification, payment of any applicable activation or transfer fees, and provision of any additional deposit required by us. All Service provided to you by us is subject to this Agreement. If you have agreed to a Service Commitment (defined in Paragraph 21), your choice of Plans may be limited during the Service Commitment. If we allow you to change to a different Plan, you agree to a new Service Commitment beginning on the date of the change and continuing for the number of full months applicable to the Service Commitment that applies to the new Plan, subject to this Agreement.

12. Roaming. If permitted under your Plan, you may use Service ("roam") outside of your Cellular One home calling area, or within your Cellular One home calling area but on a different Service provider's system (by resetting your Equipment). Your use of Service while roaming on a system that is not operated by us is subject to the same limitations of liability that the Service provider imposes on its own customers, in addition to the terms and conditions of this Agreement. WE DISCLAIM ALL LIABILITY FOR SERVICE ON A SYSTEM THAT IS NOT OPERATED BY US. Charges you are billed while roaming will include charges billed by the Service provider according to its billing practices, which may be different than our billing practices. If you have any questions about another Service provider's service or billing practices, you should contact that service provider directly. Roaming charges also include a surcharge billed by us and, in some areas, a minimum daily service fee that is charged regardless of Service usage.

13. Payment of Charges. You agree to pay in full each month all charges for Service under this Agreement, including regular monthly Service access charges and additional usage charges for all calls processed (placed and received) through your Equipment, if you accepted Service on your own behalf, or on behalf of a business or other customer without authorization. Usage charges may include, for example, charges for calls, messages, and data that are processed through your Equipment or through any Number assigned to you, toll charges, long distance charges for calls placed to or received from outside the local calling area, which may be more extensive than your

designated home calling area), charges for busy or unanswered calls, roaming charges, any applicable landline access charges (including, for example, directory assistance charges), and additional calling services or other features or services offered by us which you use. An activation fee may apply to new or suspended Service. Except as otherwise provided by the Plan that you have selected, airtime minutes apply only to calls placed within your home calling area. Additional charges apply for calls placed outside of your home calling area ("roaming"). You will be charged for Service and other features on a monthly billing cycle basis, which may vary from the calendar month. Unused minutes or other allocated Services (e.g., text messages, call forwarding, and data transmission) from any Plan do not carry over to the next billing cycle. We may change your billing cycle at any time. Charges for both roaming and long distance vary and will be billed at the then-current rates, which are subject to change without notice to you. Please contact us for current roaming or long distance rates in a particular area. Depending on system configuration, certain calls may incur charges at the rates of the area in which the call was initiated, even if the call continues or is terminated in a different billing area, while charges for other calls may be adjusted according to each billing area that Service for the call was provided in. Billing of some charges such as roaming charges may be delayed or applied against allocated minutes or Services in a subsequent billing cycle, which may cause you to exceed your allocated minutes or Services in that particular billing cycle. Incoming and outgoing calls are billed in full minute increments from the time the wireless network begins to process the call (before the call rings or is answered) through its termination of the call; any fraction of a minute of usage is rounded up and charged, or deducted from any allocated minutes, as a full minute. As a result, you should not rely upon any function or time counter in your Equipment to determine the number of minutes that you have used. Any taxes, fees, costs or charges imposed on us as a result of providing the Service or the Equipment to you will be added to your charges as provided in Paragraph 14.

14. Taxes. Any applicable sales, use, excise, public utility or other taxes, fees or regulatory costs, including, for example, E911-related fees or costs, or charges imposed on you or us as a result of providing the Service or your Equipment to you will be added to your charges as permitted or required by law. If you are exempt from payment of such taxes, you may provide us with an original Tax Exempt Document. Tax exemption will only apply to charges incurred after the date we receive the Tax Exempt Document from you. The address you have provided to us is used to bill federal, state and local taxes and fees that we are required to collect from you. In some cases this address may indicate that you live in one local jurisdiction (for example, a particular city or county) when you actually live in another. This could result in an incorrect charge for certain taxes and fees. If you have been incorrectly billed for any tax or fee, please contact Customer Care so that any incorrect charges may be removed from your account. You must notify us within ninety (90) days from the date of the first bill that contains the incorrectly billed taxes or fees or you waive your right to dispute those charges.

15. Automatic Debit Payments. If we have agreed that you may pay for charges with a credit or debit card or through automatic bank account withdrawal ("Electronic Funds Transfer"), we will process an Electronic Funds Transfer after we bill for the charges, for current charges and/or all other charges or obligations incurred. You also authorize us to process an Electronic Funds Transfer at or after termination of Service to pay what you then owe (including, but not limited to, payment of any cancellation fee). If for any reason your bank or card issuer declines to pay us, we may suspend or terminate your Service without notifying you, and we may require that all further payments be made by an alternate payment method. Charges that are not paid through Electronic Funds Transfer must be promptly paid by an alternate payment method.

16. Late Payments. Charges, including disputed amounts, must be paid by the date shown on the monthly billing statement. You agree that (a) time is of the essence; (b) it would be impractical to fix the exact amount of our damages if you fail to pay promptly; and (c) in the event we do not receive your payment by the due date shown on your monthly billing statement, your payment is past due and you will pay us default interest of the lower of 1.5% per month (or any portion thereof) of any past due amount until paid, or a different amount if required by law.

17. Service Problems; Disputed Charges. If you have a Service problem that is not caused by inherent transmission or system limitations, you should promptly report it to us by contacting Customer Care. If you believe your bill contains any incorrect charges, you should promptly call us and report the incorrect charges so that we may investigate and limit any possible fraud losses. If incorrect charges are the result of unlawful conduct by a third party, you agree to reasonably cooperate with us in investigating such unlawful conduct. To receive credit for any incorrect charges, you must notify us in writing of such disputed charges within sixty (60) days (except as provided in Paragraph 14) from the date of the first bill that contains the disputed charges or you waive your right to dispute those charges. Written notification of disputed charges should be sent to Customer Relations at the correspondence address printed on your last Cellular One billing statement. You may also call us for assistance in resolving any disputed charges, however, calling may not preserve your rights.

18. Check Notations; Returned Checks. If we accept late or partial payments or payments marked "Paid in Full" or similar notations, it will not waive any of our rights to collect all amounts that you owe us nor will it constitute an accord and satisfaction. We may immediately disconnect Service for breach of this Agreement and charge you a fee of up to $50 (or a different amount if required by law) for any check that is returned as non-negotiable or for insufficient funds, stop-payment order, or other deficiency.

19. Lost or Stolen Equipment. If your Equipment is lost or stolen and (1) you notify Customer Care within 72 hours that your Equipment has been lost or stolen, (2) you authorize us to immediately deactivate the Lost or Stolen Equipment, and (3) within fourteen (14) days you provide us with a copy of the filed police report, you will not be required to pay any unauthorized airtime charges incurred on the lost or stolen Equipment. Even if your Equipment is lost or stolen, you must fulfill the remainder of your Service Commitment by promptly purchasing and activating replacement Equipment, or you will be charged a $200 cancellation fee per line of Service. We will deactivate Service to any Number without notifying you if we suspect the Number or Service is being used in any unlawful manner or in breach of this Agreement. You agree to reasonably cooperate with us in investigating suspected unlawful use.

20. Term; Termination. This Agreement begins on the date Service is activated (or this Agreement is otherwise deemed to have been accepted as provided in Paragraph 2) and will continue until terminated by you or us in the manner provided in this Agreement. Even if this Agreement is terminated by you or us, you must still pay any charges due or satisfy any other obligations incurred before or upon termination. You may terminate this Agreement for any reason by providing thirty (30) days advance notice to us, or as otherwise provided in Paragraph 10. We may terminate this Agreement for any reason upon three (3) days notice to you, or as otherwise provided in this Agreement.

21. Cancellation Fee. Except as provided in Paragraph 10, if you select a Plan with a service commitment longer than one month, you agree to continue Service under the Plan for the number of full months applicable to the term selected (the "Service Commitment"). If Service is temporarily disconnected for any reason, the Service Commitment will be extended by the length

of the temporary suspension. At the end of the Service Commitment, this Agreement will continue on a month-to-month basis until terminated by you or us. If you terminate Service before the end of the Service Commitment or if you otherwise breach this Agreement, you agree to pay us, as a reasonable estimate of our damages and in addition to other amounts owed, a $200 fee per line of Service (which you agree may be deducted from your deposit or automatically billed to your account). In addition, we may apply your deposit or other prepayment towards any charges that are due by you to us.

22. Termination for Default. You will be in default under this Agreement if you do not pay any sum when due, breach this Agreement or any other agreement between you and us, fail to perform your obligations under this Agreement or in any other agreement between you and us, become the subject of any proceeding under the Bankruptcy Code or become insolvent. In any such case, you will remain responsible for payment of all charges and fees (including any cancellation fee) due to us under this Agreement (including any charges after a bankruptcy filing), which charges will be immediately due and payable. We may suspend, restrict, or cancel Service without notice to you if you are in default under this Agreement. If we agree to restore Service to you after discontinuing Service because of your default, you agree to pay a reinstatement fee. Our remedies in this Agreement are not exclusive but are in addition to all other remedies provided by law.

23. Disclaimer of Warranties. ALL SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE OR EQUIPMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. ANY STATEMENTS MADE IN PACKAGING, MANUALS OR OTHER DOCUMENTATION, OR BY ANY OF OUR AGENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS WARRANTIES BY US OF ANY KIND. NEITHER CELLULAR ONE NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUPPLIERS, AGENTS, DEALERS, PARENTS, SUBSIDIARIES OR AFFILIATES ("CELLULAR ONE AFFILIATES") WARRANT THAT THE INFORMATION, PRODUCTS, PROCESSES, AND/OR SERVICES AVAILABLE THROUGH THE SERVICE OR EQUIPMENT WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL OR ERROR FREE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART.

24. Limitation of Liability. We shall not be liable for any delay or failure of performance caused in whole or in part by act or omission of an underlying carrier or service provider, equipment or facility failure, Equipment failure, network problems, lack of coverage or network capacity, equipment or facility upgrade or modification, acts of God, strikes, fire, war, riot, government actions, equipment or facility shortage or relocation, or causes beyond our reasonable control, including without limitation the failure of an incoming or outgoing call, including a 9-1-1 emergency call, to be connected or completed. EVEN IF CELLULAR ONE OR ANY OF ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES, THEY WILL NOT BE LIABLE TO YOU OR ANY OF YOUR EMPLOYEES, AGENTS, CUSTOMERS OR ANY THIRD PARTIES FOR ANY DAMAGES ARISING FROM USE OF THE SERVICE OR ANY EQUIPMENT, INCLUDING WITHOUT LIMITATION, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR LOSS OF PRIVACY DAMAGES.

PERSONAL INJURY OR PROPERTY DAMAGES; OR ANY DAMAGES WHATSOEVER RESULTING FROM INTERRUPTION OR FAILURE OF SERVICE, LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA, COST OF REPLACEMENT PRODUCTS AND SERVICES, THE INABILITY TO USE THE SERVICE, THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION OR MESSAGE TRANSMITTED TO OR RECEIVED BY YOUR EQUIPMENT, OR LOSSES RESULTING FROM ANY GOODS OR SERVICE PURCHASED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART. THE MAXIMUM AGGREGATE LIABILITY OF CELLULAR ONE AND ANY OF ITS AFFILIATES TO YOU, AND THE EXCLUSIVE REMEDY AVAILABLE IN CONNECTION WITH THIS AGREEMENT FOR ANY AND ALL DAMAGES, INJURY, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION RELATED TO THE SERVICE OR EQUIPMENT, SHALL BE TO RECOVER THE PRORATED MONTHLY OR OTHER CHARGES TO YOU FOR THE APPLICABLE SERVICE OR EQUIPMENT. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES. YOU AGREE THAT OTHER PARTS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS PARAGRAPH. THE LIMITATIONS SET FORTH IN THE PRECEDING TWO PARAGRAPHS ARE INDEPENDENT OF EACH OTHER AND BOTH THE LIMITATION OF DAMAGES AND LIMITATION OF REMEDY SET FORTH ABOVE WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY OR ALL PARTS OF THE LIMITED REMEDY SET FORTH IN THE PARAGRAPH IMMEDIATELY ABOVE.

25. Indemnification. You agree to defend, indemnify and hold us, any underlying carrier, and any Cellular One affiliates harmless from and against any and all claims, demands, actions, liabilities, costs or damages arising out of your use of the Service or Equipment or your violation of this Agreement. You further agree to pay our reasonable attorneys' and expert witnesses' fees and costs arising from any actions or claims hereunder and those incurred in establishing the applicability of this paragraph.

26. Equipment Insurance or Extended Warranty. Any available insurance and/or extended warranty program is provided by a third party. We may provide you with the provider's coverage information, and permit the provider to bill premiums through us, however, we are otherwise unconnected with any such insurance or extended warranty program. You should contact the program provider directly at the contact number printed in program materials for complete information regarding the service or any related claims that you may have.

27. Privacy of Calls. Wireless systems use radio channels to transmit voice and data communications over a complex network. Although monitoring calls may be illegal, it is possible. As a result, call privacy cannot be guaranteed, and we will not be liable to you for any lack of privacy you experience while using your Equipment or the Service. In addition, we may intercept and disclose any transmissions over or using our facilities, and may provide to third parties billing, account, or calling records, and related information under certain circumstances (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect our rights or property). Calls to Cellular One may be monitored or recorded by us for quality, training, safety or assistance purposes; you may not record calls to Cellular One. Your telephone number and "Cellular One" may be disclosed to persons that you call who use caller identification; your location may also be disclosed to emergency or public safety officials. By

contacting emergency or public safety officials, you consent to the disclosure of information by Cellular One to them in connection with such contact.

28. Privacy of Information. We may share information we obtain from you with credit reporting agencies, collection agencies, sub-contractors, affiliates, or other third parties as may be either required by law or necessary or advisable to provide Service or to protect our rights or a third party's safety. In addition, anyone who is listed as an authorized user on your account may access your account information. If you ask us in writing not to otherwise share your information, we will not. Otherwise, we may share your information under other circumstances to the extent permitted by law.

29. Return Policy. Unless we otherwise agree in writing, you may return your Equipment with proof of purchase if the Equipment is in its original packaging with original contents, undamaged and in good working condition with fewer than ninety (90) minutes of use, within 72 hours of activation for a full refund of your purchase price. You may be required to pay a restocking fee. Please note that for purchases made by phone or via the internet, you may return your Equipment for a full refund of your purchase price if the Equipment is returned within 30 days of activation, provided that all other requirements set forth above have been met. With such returned Equipment, you may simultaneously cancel Service to the Equipment and any otherwise applicable cancellation fee will be waived if Service was initially activated in connection with the returned Equipment. In no event will you be eligible for a refund if you return your Equipment more than thirty (30) days after your purchase date. You are responsible for the payment of any Service or usage charges incurred by you before you return the Equipment.

30. Assignment. We may assign all or part of our rights or duties under the Agreement without notifying you. Upon an assignment, we will have no further obligations to you. You may not assign this Agreement without our prior written consent. Subject to the foregoing, this Agreement will inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective parties.

31. Notices. Written notices to you will be considered given on the date deposited in the U.S. Mail addressed to you at the billing address shown in our billing records or immediately upon delivery using electronic means such as e-mail or text messaging. Written notice to us will be considered given when received by our registered agent or by Customer Relations at the correspondence address listed on your last Cellular One billing statement. You agree that we may contact you through your Equipment to notify you of changes to or information about your account, the Service, or this Agreement.

32. Severability. If any provision of these Terms and Conditions is held to be contrary to law, then such provision will be construed, as nearly as possible, to reflect the intentions of the parties, and the balance of the provisions will remain enforced and in full force and effect, unless our obligations hereunder are materially impaired, in which event we reserve the right to terminate this Agreement.

33. Governing Law; Venue and Statute of Limitations. This Agreement, its validity, construction and performance, will be governed by and interpreted in accordance with applicable federal laws and the laws of the state in which Service is primarily provided by us to you, without regard to that state's conflicts of laws rules, except that the arbitration provisions in this Agreement will be governed by the Federal Arbitration Act. ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN

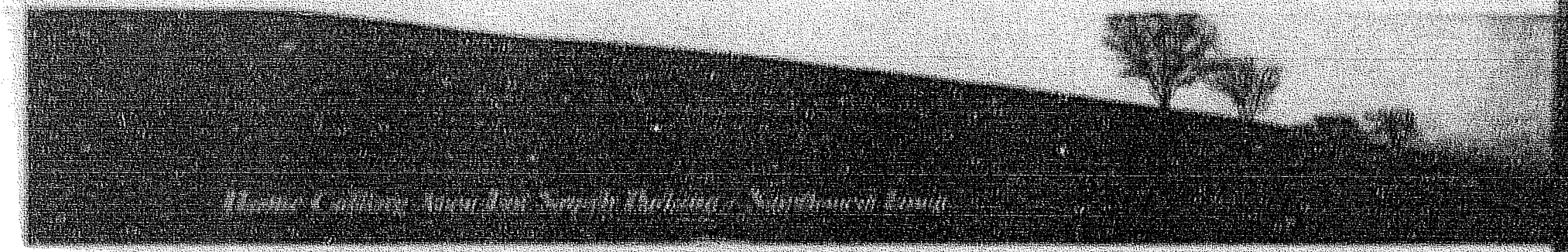
TWO (2) YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES.

34. Entire Agreement. This Agreement, consisting of (a) the Cellular One Service Agreement, (b) these Cellular One Terms and Conditions, and (c) the terms and conditions of the related Plan as described in related Cellular One printed materials, represents the final and entire agreement between you and us regarding the Service and your Equipment. Except as otherwise provided in this Agreement, no prior or subsequent handwritten, typed, or oral statement, advertisement, or change to this Agreement will be valid unless we accept it in writing. Our failure at any time to require strict performance by you or any other customer of any of the provisions of this Agreement will not waive or reduce our right to thereafter require strict compliance with any provisions of this Agreement.

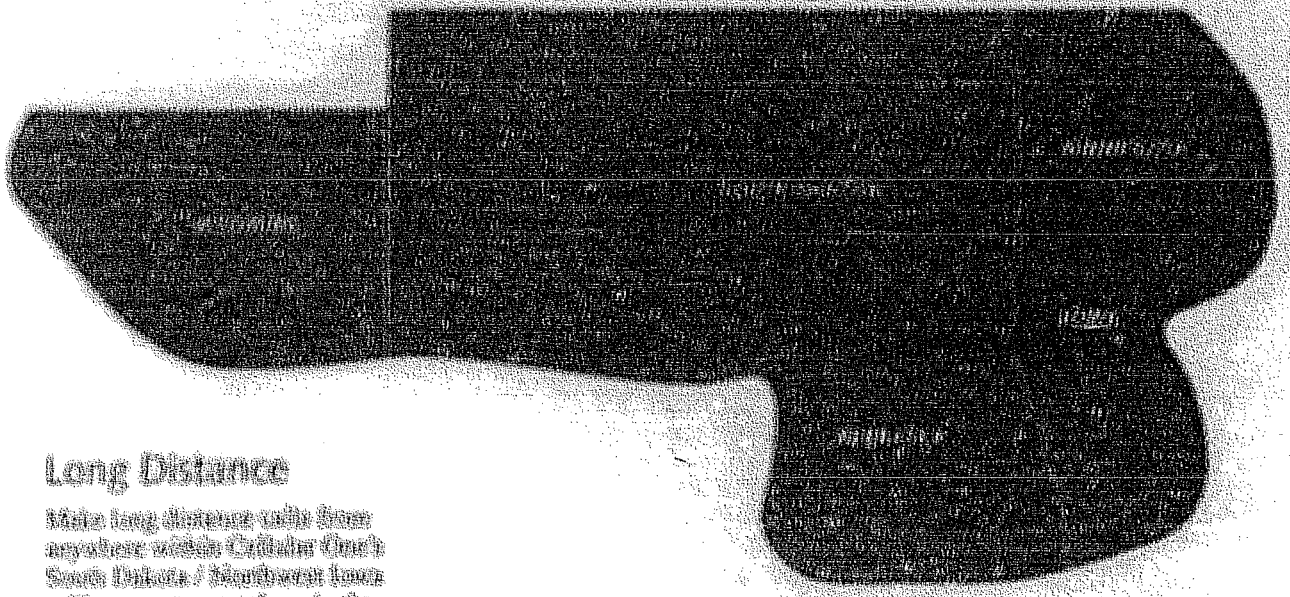
35. Signing Authority/Authorized User. You acknowledge that you are of legal age, have received a true copy of this Agreement and have read and clearly understood the terms of this Agreement and, if activating on behalf of a business or other entity, are fully authorized to legally bind such entity. You acknowledge that you are responsible for all charges incurred by any person with access to your Cellular One account, Equipment or Service.

36. Survival. Paragraphs 2, 8, 13 - 19, 21, 23 - 25, 28, 30 - 34, and 37 shall survive any termination of this Agreement for any reason.

37. Prepaid Customers. If you purchase prepaid Service of any kind, these Terms and Conditions apply to you except as follows. When purchasing prepaid Service, you are responsible for prepaying all charges for using the Service. The balance in your prepaid account is reduced by the charges attributable to your use of the Service. You must keep a positive balance in your prepaid account to continue using the Service. The prepaid Service you purchase will expire within a certain time period. The expiration period will be disclosed to you prior to the time of your purchase of prepaid Service. If you have any questions regarding the expiration date, the balance remaining on your prepaid Service, or any other questions regarding your prepaid Service, please contact Cellular One. Prior to expiration, you may extend the expiration period by purchasing additional prepaid Service. You will not receive a monthly billing statement or activity record for use of prepaid Service except in limited cases where it is available for an additional fee and you specifically request this feature. Prepaid Service is non-refundable, and no refunds or other compensation will be given. Unused prepaid account balances become our property upon expiration or termination of the Service purchased, and will not be refunded, even if we modify Service without your consent. Any applicable sales, use, excise, public utility or other taxes, fees or regulatory costs, including, for example, E911-related fees or costs, or charges imposed on you or us as a result of providing the Service or your Equipment to you may be included in your prepaid charges.



Home Calling Area for South Dakota - Northwest Iowa



- Digital Home Calling Area
- Cellular One Home Calling Area
- Roaming at 35¢/minute
- Store Locations

Long Distance

Make long distance calls from anywhere within Cellular One's South Dakota / Northwest Iowa calling area to anywhere in the U.S. without incurring long distance charges.*

Roaming

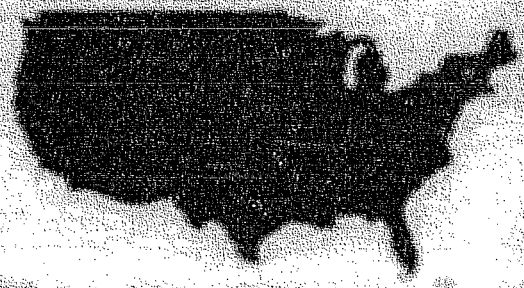
Your roaming rate is only 35¢† per minute plus 10¢ a minute long distance when traveling anywhere in the U.S. outside of the Home Calling Areas.

*Does not apply to all plans.

†A $0.39 roaming rate applies to some price plans.

Expanded Home Calling Area

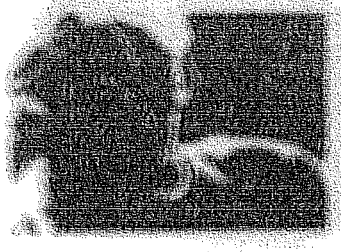
Be able to place or receive calls anywhere in the Cellular One 1st main calling area and map without paying roaming fees. This feature is available for $2.99 a month.



- Expanded Home Calling Area*
- Preferred Roaming at 35¢/min†

*Even though your ROAMING indicator may be on, you are charged only the HOME 1st's charge.

Coverage maps are provided for informational purposes only based on use of 3-watt wireless phone. Actual service coverage, quality, and availability may vary based factors such as system limitations, weather, topography, and phone model. Information provided here is not a guarantee of service availability. Outside the digital coverage area, service may be analog and certain digital features may not function. Please see your Cellular One Service Agreement for details. Digital service is not compatible with TTY.



North American Cellular Network

Coast-to-coast wireless coverage

Cellular One service is available in over 7,000 cities throughout our North American Cellular Network. So you can make and receive calls automatically in many cities across the nation.

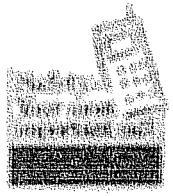
Nebraska

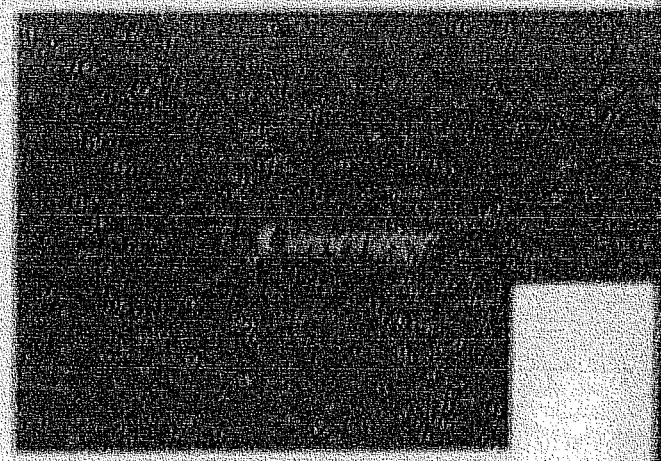
South Dakota

Customer Services

1-800-633-0004 or dial 611 (0)(0) from your wireless phone it's always a free call.

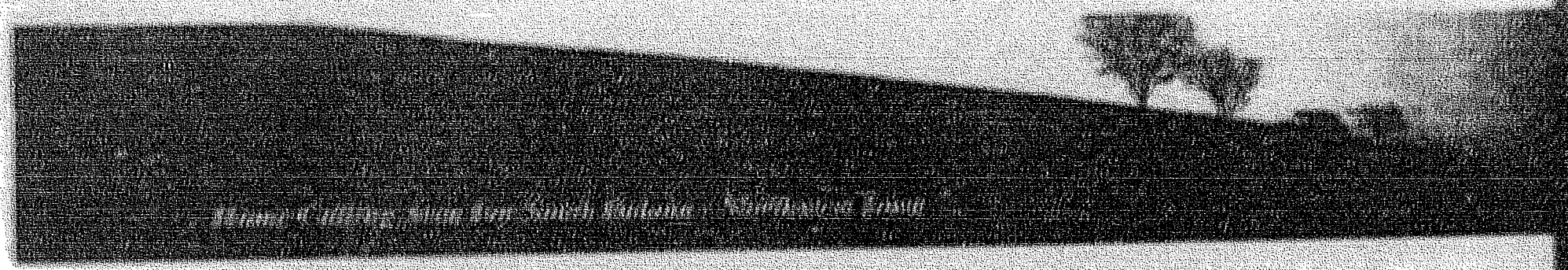
www.cellularonewest.com



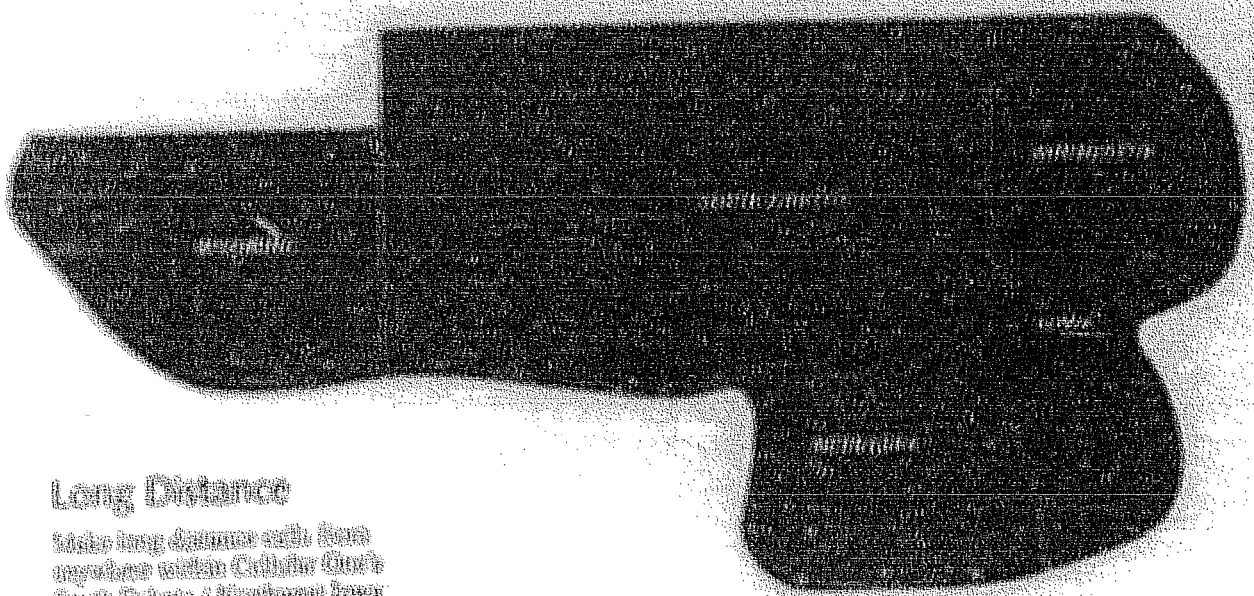


South Dakota's Northwest Tower

CELLULARONE



Home Calling Area for South Dakota / Northwest Iowa



- Digital Home Calling Area
- Cellular One Home Calling Area
- Roaming at 35¢/minute
- Store Locations

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Make long distance calls from anywhere within Cellular One's South Dakota / Northwest Iowa calling area to anywhere in the U.S. without incurring long distance charges.*

Roaming

Your roaming rate is only 35¢† per minute plus 10¢ a minute long distance when traveling anywhere in the U.S. outside of the Home Calling Areas.

*Does not apply to all plans.

†A $0.39 roaming rate applies to some price plans.

Expanded Home Calling Area

[illegible]



- Expanded Home Calling Area*
- Preferred Roaming at 35¢/min.†

*Even though your [illegible] may be on, you are charged only the [illegible] charge.

Coverage maps are provided for informational purposes only. Based on use of 5 watt wireless phone, actual service coverage, quality and availability may vary based factors such as system limitations, weather, topography, and phone model. Information provided here is not a guarantee of service availability. Outside the digital coverage area, service may be analog and certain digital features may not function. Please see your Cellular One Service Agreement for details. Digital service is not compatible with TTY.

North American Cellular Network

Coast-to-coast wireless coverage

Cellular One services is available in over 7,800 cities throughout our North American Cellular Network. So you can make and receive calls automatically in many cities across the nation.

Iowa

[illegible]

Nebraska

[illegible]

South Dakota

[illegible]

Wyoming

[illegible]

Kansas

[illegible]

North Dakota

[illegible]

Texas

[illegible]

Kansas City

[illegible]

Oklahoma

[illegible]

Wyoming

[illegible]

Surgo

[illegible]

Waterdown

[illegible]

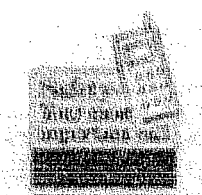
Houston

[illegible]

Customer Services

1-800-[illegible] or dial 611 [illegible] from your wireless phone. It's always a free call.

www.cellularonewest.com



Cellular One is a registered service mark of The Cellular One Group.
© 2002 Western Wireless Corporation [illegible]



CELLULARONE

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of August 29, 2002 through September 4, 2002

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this report. Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT02-035 **In the Matter of the Complaint filed by Sharon and Robert Herrick, Emery, South Dakota, against Sprint Communications Company L.P. Regarding Unauthorized Switching of Services.**

Complainants state that their service was switched without their authorization. Sprint has indicated in its informal response to the complaint that the switch was made over the internet by Robert. Complainants state that they did not switch service over the internet and that the social security number and date of birth for Robert are incorrect. Complainants request $1,000.00 allowed under South Dakota law.

Staff Analyst: Mary Healy
Staff Attorney: Kelly Frazier
Date Docketed: 09/03/02
Intervention Deadline: N/A

TELECOMMUNICATIONS

TC98-146 **In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier.**

On October 18, 2001, the Public Utilities Commission (Commission) granted eligible telecommunications carrier (ETC) designation to GCC License Corporation (GCC) in select study areas of rural telephone companies upon GCC's compliance with certain conditions as stated in the Commission's order. By letter dated January 20, 2000, the Commission was notified that GCC License L.L.C. had changed its name to WWC License L.L.C. Pursuant to the Commission's order which designated WWC License LLC, a subsidiary of Western Wireless Corporation (Western Wireless), as an ETC in South Dakota, Western Wireless on August 29, 2002, submitted its compliance filing with the Commission.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 08/25/98
Intervention Deadline: N/A

Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than September 23, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 09/03/02
Initial Comments Due: 09/23/02

TC02-116 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and Level 3 Communications, LLC.

On September 3, 2002, the Commission received for approval a Filing of Single Point of Presence (SPOP) Amendment to the Interconnection Agreement between Level 3 Communications, LLC (Level 3) and Qwest Corporation (Qwest). According to the parties, this is an Amendment to the negotiated Interconnection Agreement between Level 3 and Qwest which was approved by the Commission on June 17, 2002, in Docket No. TC02-060. The Amendment is made in order to add terms and conditions for SPOP in the LATA as set forth in Attachment 1 and Exhibit A, attached to the Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than September 23, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 09/03/02
Initial Comments Due: 09/23/02

TC02-117 In the Matter of the Request of Dickey Rural Telephone Cooperative for Certification Regarding its Use of Federal Universal Service Support.

On September 3, 2002, Dickey Rural Telephone Cooperative (Dickey Rural Cooperative) provided information constituting Dickey Rural Cooperative's plan for the use of its federal universal service support and to otherwise verify that Dickey Rural Cooperative will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. Section 254.

Staff Analyst: Harlan Best
Staff Attorney: Karen E. Cremer
Date Docketed: 09/03/02
Intervention Deadline: 09/13/02

TC02-118 In the Matter of the Request of Dickey Rural Communications, Inc. for Certification Regarding its Use of Federal Universal Service Support.

On September 3, 2002, Dickey Rural Communications, Inc. (Dickey Rural Communications) provided information constituting Dickey Rural Communications's plan for the use of its federal

SDTA

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

September 19, 2002

RECEIVED
SEP 19 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Deb Elofson, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501

RE: PUC Docket TC02-156 (State Certification of Western Wireless Corporation for Federal Universal Service Funds); and PUC Docket TC98-146 (In the Matter of the Filing by GCC License Corp. for Designation as an ETC)

Dear Ms. Elofson:

With regard to the request filed by Western Wireless Corporation (WWC) in Docket TC02-156, which seeks certification from this Commission regarding WWC's use of federal universal service funding, SDTA urges the Commission to reject the filing. The filing does not include any of the cost information that has been required of other ETCs requesting universal service funding certification, and further, WWC has not yet met all of the conditions relating to its designation as an ETC, imposed as part of this Commission's Order in Docket TC98-146 dated October 18, 2001.

Last year, in issuing certifications pursuant to 47 C.F.R. § 54.314, this Commission required as a condition to granting any certification that applying carriers provide some baseline data regarding expected universal service fund payments and the anticipated costs of providing all telecommunications services supported by the federal universal service mechanisms. Based on recent discussions with Commission Staff, SDTA believed that the same process would be followed this year and accordingly, all of the filings submitted by SDTA member companies contain universal service fund payment and cost information. In comparison, the WWC filing requesting certification includes no data, whatsoever.

SDTA feels strongly that Western Wireless should have to follow the same process and should be subject to the same standard of review in this Commission's review process conducted for purposes of granting the state certification required by 47 C.F.R. § 54.314. It is our position that WWC, as an ETC, should have to meet the same telecommunications service obligations imposed on all other ETCs. Along the same lines, it should also be held to an equal standard when it comes to the state certification required under FCC rules. There is absolutely no justification for treating WWC differently in the state certification process. Thus, until WWC

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

presents universal service fund payment and cost information similar to that presented by the other ETCs its request for certification should be denied.

Further, as mentioned above, it would not be appropriate at this time to grant WWC's requested certification because the company has not yet established that it has met all of the conditions imposed on its ETC designation pursuant to the Commission's Order in TC98-146. That Order requires, in part, that this Commission make a determination as to whether WWC's service agreement for its universal service offering is consistent with the Commission's service quality rules. The Order contemplates that WWC would make a compliance filing and this compliance filing would be subject to a formal Commission review process. It is SDTA's position that before making any Commission determination is made regarding WWC's compliance filing, all parties to the Docket, including SDTA, must be given an opportunity to provide input as to whether the filing, in fact, meets the conditions imposed under the ETC designation Order. Docket TC98-146 is a contested case proceeding and it would be improper and a violation of due process for this Commission to take final action on WWC's compliance filing outside of a formal process that permits fair participation by other parties to the Docket.

SDTA is aware that WWC's compliance filing in Docket TC98-146 has been placed on the Commission's September 24th meeting agenda. SDTA urges the Commission to defer any action on that filing until after some formal process has been held allowing fair input by SDTA on the issues that are presented. Brian Meyer of Meyer and Rogers will be attending the Commission meeting on September 24th on SDTA's behalf and will provide further comment at that time concern SDTA's position in these matters.

Thank you for taking into consideration these comments.

A copy of this letter has been FAXED to WWC and all of the other parties to Docket TC98-146.

Sincerely,

Richard D. Coit
Executive Director and General Counsel

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

ATTORNEYS AT LAW

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

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

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

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

October 11, 2002

RECEIVED
OCT 11 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

HAND DELIVERY
Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No. TC98-146
Western Wireless Corporation

Dear Ms. Elofson:

Enclosed please find the original plus ten copies of the Compliance filing consisting of a cover letter from Suzie Rao of Western Wireless and Appendixes A through H. Also enclosed is a copy of the Certificate of Service showing that copies were provided via fax and U.S. mail to Brian Meyers and Richard Coit.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Client

RECEIVED
OCT 11 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DESIGNATION OF COMMON CARRIERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS (ETC) TO RECEIVE FEDERAL UNIVERSAL SERVICE FUNDS PURSUANT TO THE FEDERAL COMMUNICATIONS COMMISSION'S FOURTEENTH REPORT AND ORDER ADOPTING A STATE CERTIFICATION PROCESS	)))))))	SOUTH DAKOTA PUBLIC UTILITIES COMMISSION **DOCKET NO: TC98-146** **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that I served a true and correct copy of the Compliance filing and Appendixes A through H upon the following persons on the 11th day of October 2002, by faxing and U.S. mail, postage prepaid, to said addresses, to wit:

FAX: 1-605-224-9060
Brian Meyers
Meyers and Rogers
PO Box 1117
Pierre, SD 57501

FAX: 1-605-224-1637
Richard D. Coit
Executive Director and General Counsel
SD Telecommunications Association
PO Box 57
Pierre SD 57501

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP

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

RECEIVED
OCT 11 2002
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DESIGNATION OF COMMON CARRIERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS (ETC) TO RECEIVE FEDERAL UNIVERSAL SERVICE FUNDS PURSUANT TO THE FEDERAL COMMUNICATIONS COMMISSION'S FOURTEENTH REPORT AND ORDER ADOPTING A STATE CERTIFICATION PROCESS	))))))))	SOUTH DAKOTA PUBLIC UTILITIES COMMISSION **DOCKET NO: TC98-146** **CERTIFICATE OF SERVICE**

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FAX: 1-605-224-9060
Brian Meyers
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PO Box 1117
Pierre, SD 57501

FAX: 1-605-224-1637
Richard D. Coit
Executive Director and General Counsel
SD Telecommunications Association
PO Box 57
Pierre SD 57501

GUNDERSON, PALMER, GOODSELL
& NELSON, LLP

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

October 11, 2002

Western Wireless.

[VIA FACSIMILE 1-605-773-3809]
Deb Hudson
Executive Director
[illegible]
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No.TC98-146
Western Wireless Corporation
CPUN File No. 000362

Dear Ms. Hudson:

Enclosed please find enclosed the revised Compliance Filing of WWC License LLC, a subsidiary of Western Wireless Corporation, d/b/a CellularOne® ("Western Wireless"). These compliance documents modify and update the previous filings and address questions raised by staff and the Commission at the September 24, 2002 hearing on this matter.

Appendixes A, B and C replace Appendixes A, B and C that were previously provided. To assist in the review of the documents, I have set forth below the changes that were made on Appendixes A, B and C.

Appendix A: Appendix A was modified to include references to both Lifeline and Link-up advertising in the second and third paragraphs.

Appendix B: Appendix B was modified to confirm that the service would be provided to both residential and business customers. Additionally modifications were made in paragraph 4.3 clarifying that disputed charges may be withheld pending resolution. Finally, the language in Section 5.5 concerning governing law was modified to reflect the language set forth in the Commission's Order of October 18, 2001, specifically in reference to paragraph 23 of the Findings of Fact. In addition to those changes, various style and format changes have been made, such as making various references consistent and correcting some grammatical errors.

Appendix C: Appendix C was modified to confirm that both residential and business applicants may make requests for service under this agreement. This is Western Wireless's standard cellular contract. Appendix C now also clarifies that, on a going-forward basis, the terms in this contract would be provided to new customers. This plan would be provided with the rate plan that is chosen by the customer. Additional changes made include in paragraph 3 of the first page, eliminating references to Appendixes that were being submitted with the Appendix C as it caused confusion. Rather, the plan names were typed out rather than causing confusion by referencing Appendices.

Paragraph 3 of Appendix C was changed to clarify that the South Dakota Public Utilities had jurisdiction over certain issues and that paragraph 3 would not apply to those issues.

Paragraphs 16 and 22 of Appendix C were changed to clarify that disputed charges could be withheld. Also, paragraph 33 was clarified to reflect that the South Dakota Public Utilities Commission has jurisdiction over certain issues arising under the agreement. The language was drafted to reflect the Commission's Order of October 18, 2001, specifically the language contained in Finding of Fact 23 in that order. Again, various other changes to make references to the company consistent throughout the document and to correct some minor grammar errors were also made.

Appendix D: Provides (1) notice informing existing customers that the Commission's service quality rules are applicable to the Measured Rate Terms and Conditions Agreement; (2) also notifies Customer that the terms and conditions of the Agreement with the Company will be governed by applicable federal law, the regulations of the Federal Communications Commission ("FCC"), the laws of the state of South Dakota, to the extent applicable, and applicable orders of the Commission. The notice also states that any dispute or claims arising under the terms and conditions agreements may be subject to the Commission's jurisdiction; and

(3) Western Wireless d/b/a Cellular One will provide written notice to customers about federal Lifeline/Link Up programs and eligibility requirements.

Appendix E: Customer Preference Page, which states that the service is available to both residential and business customers.

Appendix F: The Company's Lifeline/Link Up Application form, with spelling changes made.

Appendix G_1 and G_2: Local Calling Areas for the Unlimited Local Calling Areas Plan and the Measured Rate Calling Plans, respectively.

Appendix H: A copy of the letter that will be sent to the Commission pursuant to the order of October 18, 2001, paragraph 24, to provide notice when Western Wireless begins offering universal service in a study area(s).

Sincerely,

Suzie Rao

Suzie Rao

Regulatory Counsel

Enclosures
cc: Talbot Wieczorek

Appendix A

ADVERTISING PLAN

APPENDIX A

ADVERTISING PLAN

WWC License LLC, doing business as CellularOne® ("Western Wireless") in the state of South Dakota, submits the following advertising plan as required by the Order of the South Dakota Public Utilities Commission (Commission), granting Western Wireless the status of an Eligible Telecommunications Carrier ("ETC"), dated October 18, 2001 in Application No. TC98-146.

Pursuant to 47 U.S.C. § 214(e)(1), Western Wireless will advertise its universal service offering, including Lifeline and Link Up programs, in each ETC designated service area in which it offers service. Western Wireless will advertise the availability of the service and the corresponding charges in a manner that fully informs the general public.

Western Wireless will advertise its universal service offerings in newspapers of general circulation in each county in which it provides service. Western Wireless will also advertise the availability of its universal service offerings, including Lifeline and Link Up programs, in its various retail stores located throughout its authorized service area.

Western Wireless will also comply with all form and content requirements, if any, adopted by the Federal Communications Commission (FCC) or the Commission in the future and required of all ETCs.

Description of Universal Service Offerings and Rates

Western Wireless' universal service offerings include the following services and functionalities:

- Voice grade access to the public switched telephone network;
- Local usage;
- Dual tone multi-frequency signal or its functional equivalent;
- Single party service or its functional equivalent;
- Access to emergency service;
- Access to operator services;
- Access to interexchange service;
- Access to directory assistance; and
- Toll blocking without charge.

Western Wireless will provide universal service under either: (1) an unlimited local calling universal service rate plan described in Appendix B; and/or (2) a measured rate universal service plan described in Appendix C.

Appendix B

UNLIMITED LOCAL CALLING
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

APPENDIX B
UNLIMITED LOCAL CALLING
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

(The following Terms and Conditions are in a form of an agreement between the Company and the Customer and will be provided to all Customers, both residential and business, choosing the Company's unlimited local calling plan universal service offerings.)

These Terms and Conditions govern unlimited local calling plan universal service offerings by the Company (referred to herein as "CellularOne®, or "Company") for wireless commercial mobile radio service or "CMRS") and related services and features that the Customer may select from time to time, including for example, but not limited to: data, messaging, paging, and internet services (together, "Service"), and for the purchase and use of wireless equipment and/or other receiving and transmitting equipment, including any additional or replacement equipment (together, your "Equipment"), for use with the Service. If you have any questions regarding your CellularOne® Service, please call the Company at (800) 635-0303 or write a letter to the correspondence address printed on Customer's most recent CellularOne® billing statement.

SECTION 1– COMPANY RESPONSIBILITIES

1.1 Services – General

1.1.1 The Company provides wireless services to Customers for voice, data and other types of services capable of transmission over the Company's network.

1.1.2 The Company will provide basic local telecommunications service to applicants within the Company's designated service area.

1.1.3 The Company provides telecommunications services in accordance with applicable law and, for purposes of universal service, the Terms and Conditions set forth herein.

1.1.4 The local calling for the Company's universal service offering will typically be as large or larger than the calling area of the incumbent local exchange carrier.

1.1.5 The Company's services are provided on a monthly basis, unless otherwise stated herein. Services are available twenty-four (24) hours per day, seven (7) days per week. Company will make reasonable arrangements to handle emergencies resulting from failure of service, unusual and prolonged increases in traffic, illness of personnel, fire, storm or other acts of God, and inform its employees as to procedures to be followed in the event of such emergencies in order to prevent or minimize interruptions or impairment of telecommunications service.

1.1.6 The Company will provide notice to customers billing statements of the availability of its service offerings and will also advertise its services through media of general distribution.

1.1.7 The Company will provide continuous and adequate service in compliance with the quality of service standards defined in Chapters §§ 20:10:33 and 20:10:34, as required by SDCL Chapter 49-31, to the extent that the terms of the rules are applicable to the Company.

1.1.8 The Company will provide Customers basic information about reduced rate telecommunications services under the federal Lifeline and Link Up programs. The Company will provide Lifeline and Link Up service to customers who request such service and who meet the eligibility requirements to qualify for such service. The Company will comply with all current and future requirements related to Lifeline and Link Up.

1.2 Service Offerings

The Company will provide those services and features selected by Customers as identified on the Customer Preference Page.

1.3 Customer Service Policies

1.3.1 Customer Care service personnel will be available 24 hours per day, 7 days per week. Customer Care can be reached by dialing 611 on the Company's network, or by dialing 1-800-635-0304 from another network. A Customer can also speak with Company representatives located at its retail store outlets, who can provide information relating to services and rates, explain charges on Customers' bills, adjust charges made in error, and generally act as the Company's representatives.

1.3.2 Customer Care service personnel will attempt to answer any questions a Customer has, and will strive to resolve complaints or disputes during the initial Customer call. If a complaint or dispute is not resolved on the initial customer call, the Company will, at the request of the Customer, investigate the matter further.

1.4 Limitations of Service

1.4.1 Service is offered subject to the availability of facilities and the provisions contained herein.

1.4.2 Service is furnished to the Customer for any lawful purpose. Service shall not be used for any unlawful purpose, nor used in such a manner as to interfere unreasonably with the use of service by any other users of Company's network.

1.4.3 The use of the Company's services without payment for service, or an attempt to avoid payment for service by fraudulent means or devices, false or invalid numbers, or false calling or credit cards is prohibited.

1.4.4 The use of the Company's services to make calls that might reasonably be expected to frighten, abuse, torment, or harass another person is prohibited.

1.5 Limitations of Liability

1.5.1 Because the Company has no control of the content of communications transmitted over its network, and because of the possibility of errors incident to the provision and use of its services, services furnished by the Company are subject to the terms, conditions and limitations specified herein.

1.5.2 The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been disconnected, to a refund of the amount erroneously billed.

1.5.3 The Customer agrees, except where the events, incidents or eventualities set forth in this section are the result of the Company's gross negligence or willful misconduct, to release, indemnify and hold harmless the Company against any and all loss, claims, demands, suits or other action or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss of or damage to any property, whether owned by the Customer or others.

1.5.4 The Company assumes no responsibility for the availability or performance of any facilities under the control of other entities that are used to provide services to Customer.

1.5.5 The Company makes no express representations or warranties regarding the services or equipment provided, except as set forth herein, and disclaims any implied warranties, including, but not limited to, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The Company does not authorize anyone to make a warranty of any kind on its behalf and Customer should not rely on any such warranty.

1.5.6 The Company makes no express or implied representations or warranties on the availability of service, including 911 service, and the ability to complete calls.

1.6 Interruptions of Service

1.6.1 General

1.6.1.1 Service is interrupted when it becomes unusable to the Customer or when the Customer is unable to transmit or receive calls due to the failure of a

component of the network furnished by the Company under these Terms and Conditions.

1.6.1.2 An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

1.6.1.2 If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowance will be made for a service facility or circuit considered by the Company to be impaired.

1.6.2 Reestablishing Service

The Company will make all reasonable efforts to prevent interruptions of service and, when interruptions do occur, reestablish service with the shortest possible delay. Company will make attempts to resolve emergencies at all hours, consistent with the bona fide needs of customers and the personal safety of Company's employees. In almost all cases, Company will be able to reestablish service within 24 hours. If unusual repairs are required, or other factors will prevent the prompt reestablishment of service, the Company will make reasonable efforts to contact Customer.

1.6.3 Network Maintenance

The Company will make every reasonable effort to provide notice to Customers of any network unavailability due to regularly scheduled maintenance.

1.6.4 Application of Credits for Interrupted Services

In the event a Customer's service is interrupted and remains out of order for 24 hours after being reported to the Company, adjustments will be made to Customer's monthly bill based on the pro rata part of any charge due and payable from Customer. A refund will be accomplished by a credit on a subsequent bill, or if service has been terminated, by refund check issued to Customer. If service is restored on or before the day after it is reported, no allowance will be made. No adjustments will be earned by accumulating non-continuous periods of interruption.

1.6.5 Limitations on Allowances

No credit allowance will be made for any interruption of service due to the failure of power, equipment, systems or services not provided by the Company, during any period in which the Company is not given full and free access to the

Customer's or Company's facilities and equipment for the purpose of investigating and correcting the interruption; during any period in which the Customer continues to use the service on an impaired basis; during any period in which the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements; or that was not reported to the Company within thirty (30) days of the date that service was affected.

SECTION 2 – CUSTOMER RESPONSIBILITIES

2.1 The Customer is responsible for placing any necessary orders, complying with the terms and conditions specified herein and assuring that all users of the services provided by Company comply with the same. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements of any governmental entity relating to services provided by the Company to the Customer or made available by the Customer to another user. The Customer also is responsible for the payment of charges for all calls originated at the Customer's telephone number which are not collect, third party, calling card, or credit card calls.

2.2 The Customer is responsible for charges incurred for special construction and/or special facilities, which the Customer requests and which are ordered by the Company on the Customer's behalf, except as noted on the Customer Preference Page.

2.3 If required for the provisioning of the Company's services, the Customer must provide the Company, free of charge, with any necessary equipment space, supporting structure, conduit and electrical power.

2.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to the Company and the Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.

2.5 The Customer must pay the Company for replacement or repair of damage to the Company's equipment or facilities caused by negligent or improper use on the part of the Customer or others.

2.6 The Customer shall be responsible for the theft, damage to, or loss of, any Company equipment or facilities, including the wireless access unit located or installed at the Customer's premises.

SECTION 3 – TERMINATION OF SERVICE

3.1 The Customer may terminate service, with or without cause, by giving the Company three days' notice. Service will be disconnected on the requested termination day, and customer will not be responsible for services rendered after that day.

3.2 The Company may terminate service with notice to Customer, for failure of the Customer to pay a bill when due, for failure of the Customer to permit the Company to have reasonable access to its equipment, or for failure of the Customer to otherwise adhere to these Terms and Conditions. The notice provided to Customer will state the reasons for and the date of scheduled discontinuance of service, and actions that Customer may take to avoid discontinuance of service.

3.3 The Company may terminate service without notice in the event of any of the following occurrences: hazardous or unsafe conditions on the Customer's premises; the Customer's maintaining and/or operating its own equipment in such a manner as to adversely affect the Company's equipment, network or service to others; Customer intentionally using the service in a manner that causes wrongful billing charges to another person; Customer intentionally using the service to transmit messages or to locate a person to give or obtain information without payment of appropriate charges; Customer's use of the service with fraudulent intent by impersonating someone else; use of the service for unlawful purposes; abandonment of the service; Customer tampering with the Company's equipment; Customer's provision of false information in applying for Company's service; or the Customer's unauthorized, fraudulent, or illegal use of the Company's service or equipment. The Company may also terminate service when necessary to comply with any order or request of any governmental authority.

3.4 Upon termination of service, the Customer shall return in good working order, any and all equipment that the Company owns. If the Customer does not return equipment to the Company within a reasonable time period, the Company will charge the amount of the equipment to the Customer on a final bill.

SECTION 4 -- RATES AND CHARGES

4.1 Payment of Charges

4.1.1 The Customer is responsible for payment of all charges for service furnished to the Customer, and for all charges incurred to the Customer's telephone number regardless of which party terminates the service.

4.1.2 The Company will provide bills to Customer that are typed or machine-printed, and which contain an itemized listing of all charges and the period of time covered by the billing.

4.1.3 The Company reserves the right to assess late payment charges for a Customer whose account(s) carries principal owing from the prior billing period. Any charges not paid in full within 15 days after the due date indicated on the billing statement may be subject to a late fee of 1.5% of the total of the bill. At the end of the initial subsequent billing period, an additional charge of 1.5% of the remaining unpaid amount may be assessed on the Customer. Thereafter, a further

additional charge of 2% of any portion of the original unpaid amount may be assessed.

4.1.4 Recurring monthly charges may be invoiced one month in advance. Invoicing cycles are approximately 30 days in length. Customer will have at least 30 days from the bill date to pay the new balance.

4.1.5 Customers must notify the Company either verbally or in writing of any disputed charges, otherwise all charges on the invoice will be deemed accepted. All charges remain due and payable at the due date.

4.2 Deposits

The Company may collect a deposit for Company-provided equipment used by the Customer and for long distance service.

4.3 Contested Charges

All bills are presumed accurate and shall be binding on the Customer unless the Company receives objection. In the event that a billing dispute between the Customer and the Company for service furnished to the Customer cannot be settled with mutual satisfaction, the Customer may request, and the Company will provide, an in-depth review of the disputed amount. The undisputed portion of any bill and any subsequent bills must be paid on a timely basis or the service may be subject to disconnect. Disputed charges may be withheld by the Customer. The Company will treat all charges as undisputed unless notified otherwise by the Customer. If it is determined that any amount previously paid was incorrectly billed, the Company will reduce Customer's subsequent bill accordingly, or, at the request of the Customer, will issue a refund.

4.4 Taxes

State and local sales, use and similar taxes and fees, and governmental assessments, including gross receipts taxes, are billed as separate items and are not included in the quoted rates for telecommunications services listed on the Customer Preference Page.

4.5 Start of Billing

For billing purposes, the start of service is the day shown on the Customer Preference Page, or the day following acceptance by the Customer of the Company's service or equipment. The end of service date is the last day of the minimum notification of cancellation, or any portion of the last day after receipt by the Company of notification of cancellation as described in Paragraphs 4.1 through 4.3 of this Agreement.

4.6 **Promotions**

From time to time, the Company may offer services or waive or vary service rates for promotional, market research or other similar business purposes.

4.7 **Bad Check Charge**

If payment for services is made by a check, draft, or similar instrument (collectively "Check") that is returned to the Company unpaid by a bank or similar financial institution for any reason, the Company will bill the Customer a $20.00 service charge. In addition, the Customer may be required to replace the returned Check with a payment in cash or equivalent to cash, such as cashier's check, certified check or money order.

4.8 **Reconnect Charge**

If service has been discontinued for proper cause, the Company will charge a fee of $30.00 to defray the cost of restoring service to the Customer.

SECTION 5- ADDITIONAL TERMS

5.1 **Amendment of this Agreement**

Company will provide Customer with written notice of any amendments to this Agreement. By use of the service on or after the effective date of the Amendment, Customer acknowledges acceptance of all such amendments. Customer may add or delete services reflected on the Customer Preference Page by giving the Company verbal or written notice of the intent to do so.

5.2 **Assignment**

Customer may not sell, assign, or transfer rights and obligations pursuant to this Agreement without the consent of the Company, which may be withheld in its sole discretion.

5.3 **Notices**

All written notices required or allowed under this Agreement shall be given to Company at the Following address: ATTN: Regulatory Department, Beacon Wireless Corporation, 3650 131st Avenue S.E., Suite 400, Bellevue, WA 98006. All notices required or allowed under this Agreement shall be given to Customer at the billing address listed on the Customer Preference Page.

5.4 **Entire Agreement**

This Agreement contains the entire Agreement between Company and Customer and supersedes and cancels all prior understandings, agreements, terms or arrangements

between them concerning the subject matter hereof. No statements or representations not included herein shall not be binding upon the parties.

5.5 **Governing Law**

This agreement shall be governed by applicable federal law, the regulations of the FCC, and the laws of the State of South Dakota, to the extent applicable, and applicable orders of the Commission. Any disputes or claims arising under this Agreement may be subject to the Commission's jurisdiction. The address of the Commission is: Public Utilities Commission of South Dakota, Capitol Building, First Floor, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. The telephone number is: 1-800-332-1782.

5.6 **Waiver**

Failure by either party to strictly enforce any provision of this Agreement shall not be construed as a waiver thereof, or as excusing the other party from future performance.

5.7 **Savings Clause**

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, such provision shall be deemed not to be a part of this Agreement, except in the case of a state or local prohibition, in which event it shall be eliminated only for such state or locality, but no such elimination shall invalidate any other provision.

Appendix C

MEASURED RATE UNIVERSAL SERVICE OFFERING TERMS AND CONDITIONS OF SERVICE

APPENDIX C
MEASURED RATE CALLING PLAN
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

The following Terms and Conditions are in a form of an agreement between the Company and the Customer and will be provided to all Customers, residential and business, choosing the Company's measured rate plan universal service offerings. The Company will, on a prospective basis, substitute this Agreement with any Measured Rate Terms and Conditions Agreements that are currently being used between the Company and the Customer and in the interim will provide the notice, appendix D in these submissions, modifying existing contracts.)

WWC License LLC, Inc., a wholly-owned subsidiary of Western Wireless Corporation, doing business in South Dakota as Cellular One®, (the "Company") offers universal service consistent with all applicable state and federal requirements and the purposes and intent of the Telecommunications Act of 1996, the implementing regulations of the Federal Communications Commission ("FCC"), and applicable rules and orders of the South Dakota Public Utilities Commission (the "Commission").

These terms and conditions of service vary depending upon the applicable rate plan. For unlimited local calling rate plans, the applicable terms and conditions of service are contained in the "Unlimited Local Calling Plan Terms and Conditions" document. For all other rate plans, the applicable terms and conditions of service are contained herein.

This is an agreement between you and Western Wireless Corporation and its affiliates that do business as Cellular One ("Cellular One," "we" or "us") for wireless (commercial mobile radio) service and related services and features that you may select from time to time, including for example data, messaging, paging, and internet services (together, "Service"), and for the purchase and use of wireless equipment and/or other receiving and transmitting equipment, including any additional or replacement equipment, for use with the Service (together, your "Equipment").

If you have any questions regarding your Cellular One Service, please call us at (800) 635-0304 or write to us at the correspondence address printed on your last Cellular One billing statement.

1. Agreements Governing Use of Service. These Cellular One Terms and Conditions, the Cellular One Service Agreement you signed or otherwise agreed to, and the Cellular One materials that describe the price plan, features and services you selected (together, this "Agreement"), govern the use of the Service and your Equipment. This Agreement supersedes any earlier agreement between you and us. Please read this Agreement carefully before activating Service with us or making any changes to your existing Service.

2. Acceptance of Agreement by Activation or Changes to Service. BY ACTIVATING SERVICE WITH US YOU AGREE TO BE BOUND BY THIS AGREEMENT. If you do not agree to the terms of this Agreement, do not activate Service. Instead, return your Equipment as provided in Paragraph 29. You must activate Service within thirty (30) days after purchase of your Equipment (unless you return your Equipment). If you fail to do so, you will not be able to return your Equipment and we will bill you monthly service charges at the rate in your Service Agreement and you will be deemed to have accepted this Agreement. IF YOU ARE AN EXISTING CUSTOMER, YOU ACCEPT THIS AGREEMENT IN LIEU OF ANY PRIOR AGREEMENT BETWEEN YOU AND US BY (1) REQUESTING AND RECEIVING A NEW PRICE PLAN,

ADDITIONAL FEATURES, SPECIAL OFFERS, NEW SERVICE, OR COURTESY CREDITS OR WAIVED CHARGES, AND (3) CONTINUING TO USE THE SERVICE AFTER WE INSTALL YOUR REQUEST. If you do not want to accept this Agreement, do not request any changes or additional Service; your Service will continue under the existing agreement between you and us.

33. Binding Arbitration; Governing Law. EXCEPT FOR ACTIONS SOLELY TO COLLECT UNPAID CHARGES DUE BY YOU UNDER THIS AGREEMENT, CLAIMS THAT QUALIFY FOR RESOLUTION IN SMALL CLAIMS COURT OR DISPUTES WHERE THE SOUTH DAKOTA UTILITIES COMMISSION HAS JURISDICTION (SEE PARAGRAPH 33 BELOW), ANY CONTROVERSY, CLAIM OR DISPUTE ARISING UNDER OR IN ANY WAY RELATED TO OR CONCERNING THIS AGREEMENT AND/OR OUR PROVISION TO YOU OF GOODS, SERVICES, OR EQUIPMENT SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION UNDER THE AUSPICES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS PUBLISHED WIRELESS INDUSTRY ARBITRATION RULES, AS SUPPLEMENTED BY ITS SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, AND ANY OTHER AAA RULES OR POLICIES THAT MAY BE APPLICABLE FROM TIME TO TIME, ALL INCORPORATED HEREIN BY THIS REFERENCE AND AVAILABLE BY CALLING THE AAA AT (800) 778-7879 OR VISITING ITS WEB SITE AT http://www.adr.org. Additional information may be obtained by contacting the AAA directly, as set forth above. Any such arbitration proceeding shall be subject to the choice of law provision in Paragraph 33. Judgment on all awards rendered by an arbitrator may be entered in any court having jurisdiction thereof. Any arbitration shall remain confidential. Neither you nor Cellular One may disclose the existence, content or results of any arbitration or award, except as may be required by law, or to confirm and enforce an award. Notice of an arbitration commenced by you must be served on our registered agent. Two or more individual disputes may not be consolidated or otherwise determined in one proceeding without the prior consent of all parties. No party may act as a representative of other claimants or potential claimants in any dispute without the prior consent of all parties. An arbitrator may not award relief in excess of or inconsistent with the provisions of this Agreement, order consolidation or arbitration on a classwide basis, or award punitive, incidental, or consequential damages or any other damages other than the prevailing party's actual damages, except that the arbitrator may award damages required or authorized by statute on an individual basis and may order injunctive or declaratory relief pursuant to applicable law. All administrative fees and costs of an arbitration will be equally divided between you and us, except that for claims of less than one thousand dollars ($1,000), at your request, you may initially pay only twenty five ($25) and we will initially advance to the AAA all other administrative fees and costs. The arbitrator may, however, reallocate these and other AAA fees and costs in any arbitration award made. Each party agrees to pay the expenses and costs of its own counsel, experts, and witnesses at the arbitration.
YOU ACKNOWLEDGE AND AGREE THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PARTICIPATION AS A PLAINTIFF OR AS A CLASS MEMBER IN A CLASS ACTION. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, YOU AND WE BOTH WAIVE ANY CLAIMS TO RECOVER PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES AND ANY RIGHT TO PURSUE, OR PARTICIPATE AS A PLAINTIFF OR AS A CLASS MEMBER IN, CLAIMS ON A CLASSWIDE, CONSOLIDATED, OR REPRESENTATIVE BASIS.

4. Use of Equipment; Service Availability. Service is available to your Equipment only when it is within the operating range of our system or the system of an operator with which we have an applicable roaming agreement. Coverage maps that you may have received or viewed are only estimates; actual service coverage, quality and availability may vary. Service is subject to unavailability or transmission limits caused by network problems or limitations, the model, condition and functioning of your Equipment, or atmospheric or topographical conditions, and may temporarily be interrupted, dropped, refused, limited, or curtailed. We are not liable for any Service faults, failures or outages, including without limitation the failure of a 9-1-1 emergency call to be connected or completed (see Paragraph 24). "Digital" service is only available within our digital service area; certain digital features may not function outside of our local digital service area or while roaming. We reserve the right to block or impose safeguards for calls to certain categories of calls (e.g., international, country, 900, 976) if we determine that such calls pose an increased billing, collection, or fraud risk. You may not transfer Service to another geographic area unless we consent. If we allow you to transfer Service, we may charge you a transfer fee of up to $200, we may require you to select a new price plan, and we may limit the areas that you may transfer to.

5. Use of Service; Appropriate Conduct. You will not resell any aspect of the Service, whether for profit or otherwise, modify your Equipment, or use the Service or your Equipment for any unlawful, harassing or abusive purpose, or in such a way as to create damage or risk to our business, reputation, employees, subscribers, customers, facilities, third parties or to the public generally. You will not use the Service or your Equipment to send any unsolicited commercial text or e-mail messages or any harassing, threatening, or obscene text or e-mail messages. If your contact with us is threatening or offensive or interferes with our ability to conduct our business, we may immediately suspend, restrict or cancel Service without notifying you.

6. Number. Except as otherwise provided by law, you have no proprietary or ownership rights to or interests in a specific telephone number, IP address, or E-mail address assigned to you or your Equipment (collectively and individually, your "Number"). We may change your Number at any time. You will not use or assign your Number to any other equipment without our prior consent, nor will you program any other Number into your Equipment.

7. Credit Verification. You authorize Cellular One to verify your creditworthiness with a credit reporting agency from time to time to determine your initial and continuing eligibility for Service.

8. Deposits. We may require a deposit in which you grant us a security interest to secure your payment of charges. Unless prohibited by law, deposits received by us may be commingled with our other funds, and will not earn interest. The amount of your deposit may be increased by us at any time upon notice to you upon reevaluation of your usage, credit, or payment history. You may either provide us with the required deposit or terminate Service within seven (7) days after we notify you of an increase in your deposit, in which case any cancellation fee will be waived. In our discretion, we may allow you to receive Service with a lower deposit in exchange for your agreement to limit charges to your account and comply with certain Service restrictions. A deposit may not be used to pay any amounts owed to us (unless it is used to pay a final invoice) or to delay payment. You must promptly pay your bills even if you have given us a deposit. If Service is terminated for any reason, any deposit will be applied to pay any charges due by you to us. Any remaining deposit or other credit balance will be returned without interest (to the extent allowed by law) to you. It may take ninety (90) days or longer after Service termination to process any refund due to you. Unless prohibited by law, (a) any balances of five dollars ($5.00) or less will not be returned but will automatically remain our property, and (b) if the Postal

Service is not able to deliver the funds to you and returns them to us, title to such funds will be conclusively deemed to remain ours, and you will have no further right to them.

9. Price Plans. Cellular One offers a variety of Service price plans, features, programs and promotions ("Plans"). Each Plan may have its own eligibility requirements, terms and conditions in addition to these Terms and Conditions, as described in the written Plan materials available at each Cellular One store or by request from Customer Relations.

10. Changes to this Agreement or Charges by Us. We may change the terms of this Agreement, including the charges for Service, from time to time upon thirty (30) days' notice to you. If a change to this Agreement is materially adverse to you, you may, upon receipt of notice of the change, terminate Service without incurring a cancellation fee (if any) by following the termination instructions set forth in the notice or, if no instructions are provided, by writing to Customer Relations at the correspondence address printed on your last Cellular One billing statement. Termination of service without being charged a cancellation fee is your sole remedy for any material adverse change. Failure to properly terminate Service within fourteen (14) days after the date of the notice of a change will mean that you agree to such change, and you must pay us any additional charges that may be due as a result, even if you paid for Service in advance. Changes to the rates, terms, or availability of ancillary features and services such as voicemail, call forwarding, Internet, long distance and roaming services will not be considered material. You acknowledge that no Cellular One dealer or other agent is authorized to make any representation or warranty with respect to this Agreement, the Service or the Equipment, or to waive or alter any provisions of this Agreement between you and us.

11. Changes to Service by You. By request and if we agree by entering the change into our billing system, you may add additional lines of Service to your account or change to a different Plan at the beginning of your next billing cycle. Any person that you list on your account as an "authorized user" may make changes to the Service and your account, and you will pay any additional charges that may be due as a result. We may from time to time restrict the type of changes that an authorized user may make to the Service or your account. Changes to your account are subject to credit verification, payment of any applicable activation or transfer fees, and provision of any additional deposit required by us. All Service provided to you by us is subject to this Agreement. If you have agreed to a Service Commitment (defined in Paragraph 21), your choice of Plans may be limited during the Service Commitment. If we allow you to change to a different Plan, you agree to a new Service Commitment beginning on the date of the change and continuing for the number of full months applicable to the Service Commitment that applies to the new Plan, subject to this Agreement.

12. Roaming. If permitted under your Plan, you may use Service ("roam") outside of your Cellular One home calling area, or within your Cellular One home calling area but on a different Service provider's system (by resetting your Equipment). Your use of Service while roaming on a system that is not operated by us is subject to the same limitations of liability that the Service provider imposes on its own customers, in addition to the terms and conditions of this Agreement. WE DISCLAIM ALL LIABILITY FOR SERVICE ON A SYSTEM THAT IS NOT OPERATED BY US. Charges you are billed while roaming will include charges billed by the Service provider according to its billing practices, which may be different than our billing practices. If you have any questions about another Service provider's service or billing practices, you should contact that service provider directly. Roaming charges also include a surcharge billed by us and, in some areas, a minimum daily service fee that is charged regardless of Service usage.

13. Payment of Charges. You agree to pay in full each month all charges for Service under this Agreement, including regular monthly Service access charges and additional usage charges for all calls processed (placed and received) through your Equipment, if you accepted Service on your own behalf, or on behalf of a business or other customer without authorization. Usage charges may include, for example, charges for calls, messages, and data that are processed through your Equipment or through any Number assigned to you, toll charges, long distance charges (for calls placed to or received from outside the local calling area, which may be more restrictive than your designated home calling area), charges for busy or unanswered calls, roaming charges, any applicable landline access charges (including, for example, directory assistance charges), and additional calling services or other features or services offered by us which you use. An activation fee may apply to new or suspended Service. Except as otherwise provided by the Plan that you have selected, airtime minutes apply only to calls placed within your home calling area. Additional charges apply for calls placed outside of your home calling area ("roaming"). You will be charged for Service and other features on a monthly billing cycle basis, which may vary from the calendar month. Unused minutes or other allocated Services (e.g., text messages, call forwarding, and data transmission) from any Plan do not carry over to the next billing cycle. We may change your billing cycle at any time. Charges for both roaming and long distance vary and will be billed at the then-current rates, which are subject to change without notice to you. Please contact us for current roaming or long distance rates in a particular area. Depending on system configuration, certain calls may incur charges at the rates of the area in which the call was initiated, even if the call continues or is terminated in a different billing area, while charges for other calls may be adjusted according to each billing area that Service for the call was provided in. Billing of some charges such as roaming charges may be delayed or applied against allocated minutes or Services in a subsequent billing cycle, which may cause you to exceed your allocated minutes or Services in that particular billing cycle. Incoming and outgoing calls are billed in full minute increments from the time the wireless network begins to process the call (before the call rings or is answered) through its termination of the call; any fraction of a minute of usage is rounded up and charged, or deducted from any allocated minutes, as a full minute. As a result, you should not rely upon any function or time counter in your Equipment to determine the number of minutes that you have used. Any taxes, fees, costs or charges imposed on us as a result of providing the Service or the Equipment to you will be added to your charges as provided in Paragraph 14.

14. Taxes. Any applicable sales, use, excise, public utility or other taxes, fees or regulatory costs, including, for example, E911-related fees or costs, or charges imposed on you or us as a result of providing the Service or your Equipment to you will be added to your charges as permitted or required by law. If you are exempt from payment of such taxes, you may provide us with an original Tax Exempt Document. Tax exemption will only apply to charges incurred after the date we receive the Tax Exempt Document from you. The address you have provided to us is used to bill federal, state and local taxes and fees that we are required to collect from you. In some cases this address may indicate that you live in one local jurisdiction (for example, a particular city or county) when you actually live in another. This could result in an incorrect charge for certain taxes and fees. If you have been incorrectly billed for any tax or fee, please contact Customer Care so that any incorrect charges may be removed from your account. You must notify us within ninety (90) days from the date of the first bill that contains the incorrectly billed taxes or fees or you waive your right to dispute those charges.

15. Automatic Debit Payments. If we have agreed that you may pay for charges with a credit or debit card or through automatic bank account withdrawal ("Electronic Funds Transfer"), we will process an Electronic Funds Transfer after we bill for the charges, for current charges and/or all other charges or obligations incurred. You also authorize us to process an Electronic Funds

Transfer at or after termination of Service to pay what you then owe (including, but not limited to, payment of any cancellation fee). If for any reason your bank or card issuer declines to pay us, we may suspend or terminate your Service without notifying you, and we may require that all further payments be made by an alternate payment method. Charges that are not paid through Electronic Funds Transfer must be promptly paid by an alternate payment method.

16. Late Payments. Charges, not including disputed amounts, must be paid by the date shown on the monthly billing statement. You agree that (a) time is of the essence; (b) it would be impractical to fix the exact amount of our damages if you fail to pay promptly; and (c) in the event we do not receive your payment by the due date shown on your monthly billing statement, your payment is past due and you will pay us default interest of the lower of 1.5% per month (or any portion thereof) of any past due amount until paid, or a different amount if required by law.

17. Service Problems; Disputed Charges. If you have a Service problem that is not caused by inherent transmission or system limitations, you should promptly report it to us by contacting Customer Care. If you believe your bill contains any incorrect charges, you should promptly call us and report the incorrect charges so that we may investigate and limit any possible fraud losses. If incorrect charges are the result of unlawful conduct by a third party, you agree to reasonably cooperate with us in investigating such unlawful conduct. To receive credit for any incorrect charges, you must notify us in writing of such disputed charges within sixty (60) days (except as provided in Paragraph 14) from the date of the first bill that contains the disputed charges or you waive your right to dispute those charges. Written notification of disputed charges should be sent to Customer Relations at the correspondence address printed on your last Cellular One billing statement. You may also call us for assistance in resolving any disputed charges, however, calling may not preserve your rights.

18. Check Notations; Returned Checks. If we accept late or partial payments or payments marked "Paid in Full" or similar notations, it will not waive any of our rights to collect all amounts that you owe us nor will it constitute an accord and satisfaction. We may immediately disconnect Service for breach of this Agreement and charge you a fee of up to $50 (or a different amount if required by law) for any check that is returned as non-negotiable or for insufficient funds, stop-payment order, or other deficiency.

19. Lost or Stolen Equipment. If your Equipment is lost or stolen and (1) you notify Customer Care within 72 hours that your Equipment has been lost or stolen, (2) you authorize us to immediately deactivate the Lost or Stolen Equipment, and (3) within fourteen (14) days you provide us with a copy of the filed police report, you will not be required to pay any unauthorized airtime charges incurred on the lost or stolen Equipment. Even if your Equipment is lost or stolen, you must fulfill the remainder of your Service Commitment by promptly purchasing and activating replacement Equipment, or you will be charged a $200 cancellation fee per line of Service. We will deactivate Service to any Number without notifying you if we suspect the Number or Service is being used in any unlawful manner or in breach of this Agreement. You agree to reasonably cooperate with us in investigating suspected unlawful use.

20. Term; Termination. This Agreement begins on the date Service is activated (or this Agreement is otherwise deemed to have been accepted as provided in Paragraph 2) and will continue until terminated by you or us in the manner provided in this Agreement. Even if this Agreement is terminated by you or us, you must still pay any charges due or satisfy any other obligations incurred before or upon termination. You may terminate this Agreement for any reason by providing thirty (30) days advance notice to us, or as otherwise provided in Paragraph

19. We may terminate this Agreement for any reason upon three (3) days notice to you, or as otherwise provided in this Agreement.

21. Cancellation Fee. Except as provided in Paragraph 10, if you select a Plan with a service commitment longer than one month, you agree to continue Service under the Plan for the number of full months applicable to the term selected (the "Service Commitment"). If Service is temporarily disconnected for any reason, the Service Commitment will be extended by the length of the temporary suspension. At the end of the Service Commitment, this Agreement will continue on a month-to-month basis until terminated by you or us. If you terminate Service before the end of the Service Commitment or if you otherwise breach this Agreement, you agree to pay us, as a reasonable estimate of our damages and in addition to other amounts owed, a $200 fee per line of Service (which you agree may be deducted from your deposit or automatically billed to your account). In addition, we may apply your deposit or other prepayment towards any charges that are due by you to us.

22. Termination for Default. You will be in default under this Agreement if you do not pay any sum when due, breach this Agreement or any other agreement between you and us, fail to perform your obligations under this Agreement or in any other agreement between you and us, become the subject of any proceeding under the Bankruptcy Code or become insolvent. In any such case, you will remain responsible for payment of all charges and fees (including any cancellation fee) due to us under this Agreement (including any charges after a bankruptcy filing), which charges will be immediately due and payable. We may suspend, restrict, or cancel Service without notice to you if you are in default under this Agreement. However, disputed charges may be withheld by the Customer. We will treat all charges as undisputed unless notified otherwise by the Customer. If we agree to renew Service to you after discontinuing Service because of your default, you agree to pay a reactivation fee. Our remedies in this Agreement are not exclusive but are in addition to all other remedies provided by law.

23. Disclaimer of Warranties. ALL SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE OR EQUIPMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. ANY STATEMENTS MADE IN PACKAGING, MANUALS OR OTHER DOCUMENTATION, OR BY ANY OF OUR AGENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS WARRANTIES BY US OF ANY KIND. NEITHER CELLULAR ONE NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUPPLIERS, AGENTS, DEALERS, PARENTS, SUBSIDIARIES OR AFFILIATES ("CELLULAR ONE AFFILIATES") WARRANT THAT THE INFORMATION, PRODUCTS, PROCESSES, AND/OR SERVICES AVAILABLE THROUGH THE SERVICE OR EQUIPMENT WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL OR ERROR FREE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART.

24. Limitation of Liability. We shall not be liable for any deficiency in performance caused in whole or in part by act or omission of an underlying carrier or service provider, equipment or facility failure, Equipment failure, network problems, lack of coverage or network capacity,

equipment or facility upgrade or modification, acts of God, strikes, fire, war, riot, government actions, equipment or facility shortage or relocation, or causes beyond our reasonable control, including without limitation the failure of an incoming or outgoing call, including a 9-1-1 emergency call, to be connected or completed. EVEN IF CELLULAR ONE OR ANY OF ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES, THEY WILL NOT BE LIABLE TO YOU OR ANY OF YOUR EMPLOYEES, AGENTS, CUSTOMERS OR ANY THIRD PARTIES FOR ANY DAMAGES ARISING FROM USE OF THE SERVICE OR ANY EQUIPMENT, INCLUDING WITHOUT LIMITATION: SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR LOSS OF PRIVACY DAMAGES; PERSONAL INJURY OR PROPERTY DAMAGES; OR ANY DAMAGES WHATSOEVER RESULTING FROM INTERRUPTION OR FAILURE OF SERVICE, LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA, COST OF REPLACEMENT PRODUCTS AND SERVICES, THE INABILITY TO USE THE SERVICE, THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION OR MESSAGE TRANSMITTED TO OR RECEIVED BY YOUR EQUIPMENT, OR LOSSES RESULTING FROM ANY GOODS OR SERVICE PURCHASED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART. THE MAXIMUM AGGREGATE LIABILITY OF CELLULAR ONE AND ANY OF ITS AFFILIATES TO YOU, AND THE EXCLUSIVE REMEDY AVAILABLE IN CONNECTION WITH THIS AGREEMENT FOR ANY AND ALL DAMAGES, INJURY, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION RELATED TO THE SERVICE OR EQUIPMENT, SHALL BE TO RECOVER THE PRORATED MONTHLY OR OTHER CHARGES TO YOU FOR THE APPLICABLE SERVICE OR EQUIPMENT. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES. YOU AGREE THAT OTHER PARTS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS PARAGRAPH. THE LIMITATIONS SET FORTH IN THE PRECEDING TWO PARAGRAPHS ARE INDEPENDENT OF EACH OTHER AND BOTH THE LIMITATION OF DAMAGES AND LIMITATION OF REMEDY SET FORTH ABOVE WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY OR ALL PARTS OF THE LIMITED REMEDY SET FORTH IN THE PARAGRAPH IMMEDIATELY ABOVE.

25. Indemnification. You agree to defend, indemnify and hold us, any underlying carrier, and any Cellular One affiliates harmless from and against any and all claims, demands, actions, liabilities, costs or damages arising out of your use of the Service or Equipment or your violation of this Agreement. You further agree to pay our reasonable attorneys' and expert witnesses' fees and costs arising from any actions or claims hereunder and those incurred in establishing the applicability of this paragraph.

26. Equipment Insurance or Extended Warranty. Any available insurance and/or extended warranty program is provided by a third party. We may provide you with the provider's coverage information, and permit the provider to bill premiums through us, however, we are otherwise unconnected with any such insurance or extended warranty program. You should contact the program provider directly at the contact number printed in program materials for complete information regarding the service or any related claims that you may have.

27. Privacy of Calls. Wireless systems use radio channels to transmit voice and data communications over a complex network. Although monitoring calls may be illegal, it is

possible. As a result, call privacy cannot be guaranteed, and we will not be liable to you for any lack of privacy you experience while using your Equipment or the Service. In addition, we may intercept and disclose any transmissions over or using our facilities, and may provide to third parties billing, account, or calling records, and related information under certain circumstances (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect our rights or property). Calls to Cellular One may be monitored or recorded by us for quality, training, safety or assistance purposes; you may not record calls to Cellular One. Your telephone number and "Cellular One" may be disclosed to persons that you call who use caller identification; your location may also be disclosed to emergency or public safety officials. By contacting emergency or public safety officials, you consent to the disclosure of information by Cellular One to them in connection with such contact.

28. Privacy of Information. We may share information we obtain from you with credit reporting agencies, collection agencies, sub-contractors, affiliates, or other third parties as may be either required by law or necessary or advisable to provide Service or to protect our rights or a third party's safety. In addition, anyone who is listed as an authorized user on your account may access your account information. If you ask us in writing not to otherwise share your information, we will not. Otherwise, we may share your information under other circumstances to the extent permitted by law.

29. Return Policy. Unless we otherwise agree in writing, you may return your Equipment with proof of purchase if the Equipment is in its original packaging with original contents, undamaged and in good working condition with fewer than twenty (20) minutes of use, within 72 hours of activation for a full refund of your purchase price. You may be required to pay a restocking fee. Please note that for purchases made by phone or via the internet, you may return your Equipment for a full refund of your purchase price if the Equipment is returned within 10 days of activation, provided that all other requirements set forth above have been met. With such returned Equipment, you may simultaneously cancel Service to the Equipment and any otherwise-applicable cancellation fee will be waived if Service was initially activated in connection with the returned Equipment. In no event will you be eligible for a refund if you return your Equipment more than thirty (30) days after your purchase date. You are responsible for the payment of any Service or usage charges incurred by you before you return the Equipment.

30. Assignment. We may assign all or part of our rights or duties under this Agreement without notifying you. Upon an assignment, we will have no further obligations to you. You may not assign this Agreement without our prior written consent. Subject to this restriction, this Agreement will inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective parties.

31. Notices. Written notices to you will be considered given on the date deposited in the U.S. Mail addressed to you at the billing address shown in our billing records or immediately upon delivery using electronic means such as e-mail or text messaging. Written notice to us will be considered given when received by our registered agent or by Customer Relations at the correspondence address listed on your last Cellular One billing statement. You agree that we may contact you through your Equipment to notify you of changes to or information about your account, the Service, or this Agreement.

32. Severability. If any provision of these Terms and Conditions is held to be contrary to law, then such provision will be construed, as nearly as possible, to reflect the intentions of the parties, and the balance of the provisions will remain unaffected and in full force and effect, unless our

obligations hereunder are materially impaired, in which event we reserve the right to terminate this Agreement.

33. Governing Law; Venue and Statute of Limitations. This Agreement, its validity, construction and performance, will be governed by and interpreted in accordance with applicable federal laws and the laws of the state in which Service is primarily provided by us to you, without regard to that state's conflicts of laws rules, except that the arbitration provisions in this Agreement will be governed by the Federal Arbitration Act. ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO (2) YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES. The South Dakota Public Utilities Commission ("Commission") may assert jurisdiction over disputes or claims arising under this Agreement, specifically those disputes or claims regarding quality of service standards as defined in Chapters §§ 20:10:33 and 20:10:34, as required by SDCL Chapter 49-31, to the extent that the terms of the rules are applicable to Cellular One.

34. Entire Agreement. This Agreement consisting of (a) the Cellular One Service Agreement, (b) these Cellular One Terms and Conditions, and (c) the terms and conditions of the selected Plan as described in related Cellular One printed materials, represents the final and entire agreement between you and us regarding the Service and your Equipment. Except as otherwise provided in this Agreement, no prior or subsequent handwritten, typed, or oral statement, advertisement, or change to this Agreement will be valid unless we accept it in writing. Our failure at any time to require strict performance by you or any other customer of any of the provisions of this Agreement will not waive or reduce our right to thereafter require strict compliance with any provisions of this Agreement.

35. Signing Authority/Authorized User. You acknowledge that you are of legal age, have received a true copy of this Agreement and have read and clearly understand the terms of this Agreement and, if activating on behalf of a business or other entity, are fully authorized to legally bind such entity. You acknowledge that you are responsible for all charges incurred by any person with access to your Cellular One account, Equipment or Service.

36. Survival. Paragraphs 3, 8, 13 – 19, 21, 23 – 25, 28, 30 – 34, and 37 shall survive any termination of this Agreement for any reason.

37. Prepaid Customers: If you purchase prepaid Service of any kind, these Terms and Conditions apply to you except as follows. When purchasing prepaid Service, you are responsible for prepaying all charges for using the Service. The balance in your prepaid account is reduced by the charges attributable to your use of the Service. You must keep a positive balance in your prepaid account to continue using the Service. The prepaid Service you purchase will expire within a certain time period. The expiration period will be disclosed on the material you receive at the time of your purchase of prepaid Service. If you have any questions regarding the expiration date, the balance remaining on your prepaid Service, or any other questions regarding your prepaid Service, please contact Customer Care. Prior to expiration, you may extend the expiration period by purchasing additional prepaid Service. You will not receive a monthly billing statement or activity record for use of prepaid Service except in limited areas where it is available for an additional fee and you specifically request this feature. Prepaid Service is non-refundable, and no refunds or other compensation will be given. Unused prepaid account balances become our property upon expiration or termination of the Service purchased, and will not be refunded, even

if we modify Service without your consent. Any applicable sales, use, excise, public utility or other taxes, fees or regulatory costs, including, for example, E911-related fees or costs, or charges imposed on you or us as a result of providing the Service or your Equipment to you may be included in your prepaid charges.

Appendix D

NOTICE TO CUSTOMERS

APPENDIX D

(The following Notice will be sent to existing traditional cellular customers and modify their existing contracts.)

NOTICE TO CUSTOMERS MEASURED RATE CALLING PLAN TERMS AND CONDITIONS OF SERVICE

WWC License LLC, a subsidiary of Western Wireless Corporation, and doing business as CellularOne® in the state of South Dakota, notifies you ("Customer") that CellularOne® will provide continuous and adequate telecommunications service in compliance with the South Dakota Public Utilities Commission's ("Commission") quality of service standards defined in Chapters §§ 20:10:33 and 20:10:34, as required by SDCL Chapter 49-31, to the extent that these terms of the rules are applicable to CellularOne®.

CellularOne® also notifies Customer that the terms and conditions of your agreement with the Company shall be governed by applicable federal law, the regulations of the Federal Communications Commission ("FCC"), the laws of the state of South Dakota, to the extent applicable, and applicable orders of the Commission. Any dispute or claims arising under the terms and conditions agreements may be subject to the Commission's jurisdiction. The Commission's address is: South Dakota Public Utilities Commission , Capitol Building, First Floor 500 East Capitol Avenue, Pierre, South Dakota 57501-5070.

Customers may be eligible to receive monthly reduced rate telecommunications service if they satisfy federal income eligibility criteria. If you think you may qualify, please contact your local CellularOne® retail sales outlet for an application and further information.

The amendatory language that appears in this document supersedes that which was agreed upon in prior agreements between Customer and CellularOne®.

Appendix E

CUSTOMER PREFERENCE PAGE

APPENDIX E

RESIDENTIAL PHONE SERVICE

BY CELLULARONE

Customer Preference Page

Universal Service Offerings Provided by Western Wireless

ACCOUNT NUMBER	STATUS ☐ PERSONAL	☐ GOVERNMENT ☐ BUSINESS	AUTHORIZATION
DEALER	DEALER PHONE NO.		LOCATION CODE
TAX EXEMPT NO.	DEALER FAX NO.		SALES REP NO.

☐ NEW ☐ PREVIOUS CELLULAR ONE CUSTOMER

Accounts Management Services

CUSTOMER NAME/BUSINESS NAME	HOME PHONE	**Military Service**
HOME/BUSINESS STREET ADDRESS	BUS. PHONE	BRANCH OF SERVICE
CITY/STATE/ZIP	EMERGENCY CONTACT NAME/PHONE	RANK
For Identification Check Purposes Only		COMMANDING OFFICER
[illegible]	PHONE	PERMANENT HOME ADDRESS
[illegible]	DRIVER'S LICENSE	PERMANENT HOME PHONE
[illegible]	FORMER ADDRESS - IF LESS THAN 2 YEARS	ETS

Phone Information		Location of Primary Use	Customer Information
BUS. PHONE	CELLULAR NO. ( )	ADDRESS	PREVIOUS/CURRENT LANDLINE CARRIER
ESN			
USER NAME		CITY / STATE / ZIP	PREVIOUS/CURRENT LANDLINE PHONE NO.
LOCAL CALLING AREA			

Phone Charges

- ☐ CALL FORWARDING $_____
- ☐ CALL WAITING $_____
- ☐ 3-WAY CALLING $_____
- ☐ VOICE MAIL $_____
- ☐ VOICE MAIL DELUXE $_____
- ☐ INTERNATIONAL CALLING $_____

Total Charges For Features

per month $_____

per minute for non-local calls $_____

Directory Listing

Do you wish to have your number listed in 411 Directory Assistance? ☐ Yes ☐ No

Do you wish to have your number published in a local telephone directory? ☐ Yes ☐ No

If yes, indicate exactly how listing should appear:

Name_____

Address (optional) _____

Customer has verified that information above is accurate and complete.

Customer Signature_____

Phone Desc	SKU	Installation Charge
1 WIRELESS ACCESS UNIT		$

Accessory/Desc	SKU	Price
	Subtotal	
	Sales Tax	
	Total Price	

Additional Services

Is customer eligible to participate in Lifeline or Tel-Assistance? ____

If yes, complete and attach form ____

Is customer eligible to participate in Link-Up? ____

If yes, attach form ____

Does customer want non-local calls blocked? ____

Form of Payment

☐ Cash ☐ Check _____ CHECK NUMBER

☐ Auto Pay ___ ___ ___ ___ ___ ___ ___ ___ ___ BANK ROUTING NUMBER

_____ ACCOUNT NUMBER

☐ Credit Card

_____ TYPE NO. EXP. AUTH. NO.

_____ SIGNATURE

New Customer Checklist (Initial)

____ There will be a $_____one time activation charge on the first monthly bi

____ The monthly local calling charge will be prorated for the number of days yo are actually on service with Cellular One for your first month.

____ Service is provided on an at-will basis and may be terminated by Customer any time.

By signature, Customer confirms the truth and completeness of the information contained herein and confirms that he/she has read the Universal Service Terms an Conditions attached hereto. Customer also authorizes Company to obtain from anyone information about Customers or his/her agents credit history. Customer als expressly consents that this document is a request to receive the products & servic referred to herein and to have the associated charges appear on his or her bill.

_____ PRINTED NAME DATE

_____ SIGNATURE

Appendix F

LIFELINE/LINK UP APPLICATION

Federal Lifeline and/or Link Up Assistance Certification
South Dakota

RESIDENTIAL PHONE SERVICE
BY CELLULARONE

Link Up: If you have no telephone, check here _____

Telephone Number _____ SSN _____ - _____ - _____

Last Name _____ First Name _____ Middle Initial ____

Street/PO Box _____

City _____ State _____ Zip _____

Are you currently participating in one or more of these programs?

I am currently participating in:

____ Medicaid (e.g. Title XIX/Medical State Supplemental Assistance)

____ Low-Income Home Energy Assistance

____ Food Stamps

____ Aid to Families with Dependent Children

____ Supplemental Security Income (SSI)

If you are not participating in one of the above programs, is your total monthly gross household income within the federal guidelines listed below? (These figures are 150% of the federally established poverty levels).

Family of 1:	$1,107.50 gross monthly income	Family of 5:	$2,647.50 gross monthly income
Family of 2:	$1,492.50 gross monthly income	Family of 6:	$3,032.50 gross monthly income
Family of 3:	$1,877.50 gross monthly income	Family of 7:	$3,417.50 gross monthly income
Family of 4:	$2,262.50 gross monthly income	Family of 8:	$3,802.50 gross monthly income

Yes _____ **No** _____ (If yes, circle qualifying family household income)

I certify under penalty of perjury that:

- I am eligible to receive and do receive benefits from the program(s) identified herein;
- The information contained on this form is true and correct to the best of my information and belief;
- I will notify Western Wireless Corporation, doing business as Cellular One, when I no longer participate in any of the qualifying public assistance programs identified herein; and
- I have or will receive telecommunications service at my principal place of residence as listed above.

I have read the information on this application and understand that I must meet the above qualifications to receive Lifeline Assistance on my primary residential line.

Print Applicant Name _____ Date _____

Applicant Signature _____

RPS ALSO 10-02

3/29/02 2:11 PM Page 1

Federal Lifeline and/or Link Up Assistance Certification

South Dakota

RESIDENTIAL PHONE SERVICE
BY CELLULARONE

Link Up: If you have no telephone, check here _____

Telephone Number _____ SSN _____ – _____ – _____

Last Name _____ First Name _____ Middle Initial ____

Street/PO Box _____

City _____ State _____ Zip _____

Are you currently participating in one or more of these programs?

I am currently participating in:

_____ Medicaid (e.g. Title XIX/Medical State Supplemental Assistance)

_____ Low-Income Home Energy Assistance

_____ Food Stamps

_____ Aid to Families with Dependent Children

_____ Supplemental Security Income (SSI)

If you are not participating in one of the above programs, is your total monthly gross household income within the federal guidelines listed below? (These figures are 150% of the federally established poverty levels).

Family of 1:	$1,107.50 gross monthly income	Family of 5:	$2,647.50 gross monthly income
Family of 2:	$1,492.50 gross monthly income	Family of 6:	$3,032.50 gross monthly income
Family of 3:	$1,877.50 gross monthly income	Family of 7:	$3,417.50 gross monthly income
Family of 4:	$2,262.50 gross monthly income	Family of 8:	$3,802.50 gross monthly income

Yes _____ **No** _____ (If yes, circle qualifying family household income)

I certify under penalty of perjury that:

- I am eligible to receive and do receive benefits from the program(s) identified herein;
- The information contained on this form is true and correct to the best of my information and belief;
- I will notify Western Wireless Corporation, doing business as Cellular One, when I no longer participate in any of the qualifying public assistance programs identified herein; and
- I have or will receive telecommunications service at my principal place of residence as listed above.

I have read the information on this application and understand that I must meet the above qualifications to receive Lifeline Assistance on my primary residential line.

Print Applicant Name _____ Date _____

Applicant Signature _____

RPS 4.SD 10-02

Appendix G_1

LOCAL CALLING AREAS
UNLIMITED LOCAL CALLING PLAN
UNIVERSAL SERVICE OFFERING

Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Irene	Beresford	Canton	Center Point	Centerville	Chancellor	(605) Area Code	201	221	231	238	241	251
	Lennoox	Davis	Harrisburg	Hurley	Irene	Lennox	252	253	254	263	267	274	295
	Parker	Marion	Monroe	Parker	Pearson Corner	Shindler	297	301	308	319	321	322	323
	Viborg	Sioux Falls	Tea	Turkey Ridge	Viborg	Wakonda	326	327	328	330	331	332	333
	Wakonda	Worthing					334	335	336	338	339	351	357
							359	360	361	362	366	367	368
							370	371	372	373	376	444	477
							498	509	521	552	558	563	575
							595	609	610	647	648	686	728
							731	743	759	763	764	766	767
							782	929	940	941	957	985	977
							978	987	988				
Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Jefferson	Burbank	Elk Point	Jefferson	Junction City	McCook	(605) Area Code	217	242	356	422	624	638
		North Sioux City	Richland	Vermillion			659	670	672	677	679	741	761
							780	966					
Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Kennebec	Chamberlain	Kennebec	Oacoma	Presho	Reliance	(605) Area Code	473	683	730	734	869	895
	Presho	Vivian											
Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Alexandria	Alexandria	Artesian	Bridgewater	Canistota	Canova	(605) Area Code	227	239	246	247	296	421
	Canova	Center	Corner	Emery	Epiphany	Ethan	425	449	465	471	485	523	527
	Center	Fedora	Fulton	Howard	Junius	Mitchell	587	630	729	770	772	836	995
	Salem	Montrose	Orland	Roswell	Rumpus Ridge	Salem	996	998	999				
	Spencer	Spencer	Stanley	Unityville	Winfred								
	Winfred												
Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers					ECA NPA/NXXs						
	Revillo	Albee	Altamont	Bemis	Big Stone City	Corona	(605) Area Code	237	432	520	623	676	753
	South Shore	Goodwin	Kranzburg	LaBolt	Marvin	Milbank	756	868	880	881	882	884	886
	Stockholm	Moritz	Reuville	Revillo	Stockholm	Strandburg	949	970					
		Summit	South Shore	Tuneville	Twin Brooks	Watertown							
		Waverly											

Includes both residence and single-line business customers

APPENDIX G-1

Local Calling Areas South Dakota Unlimited Local Calling Plan

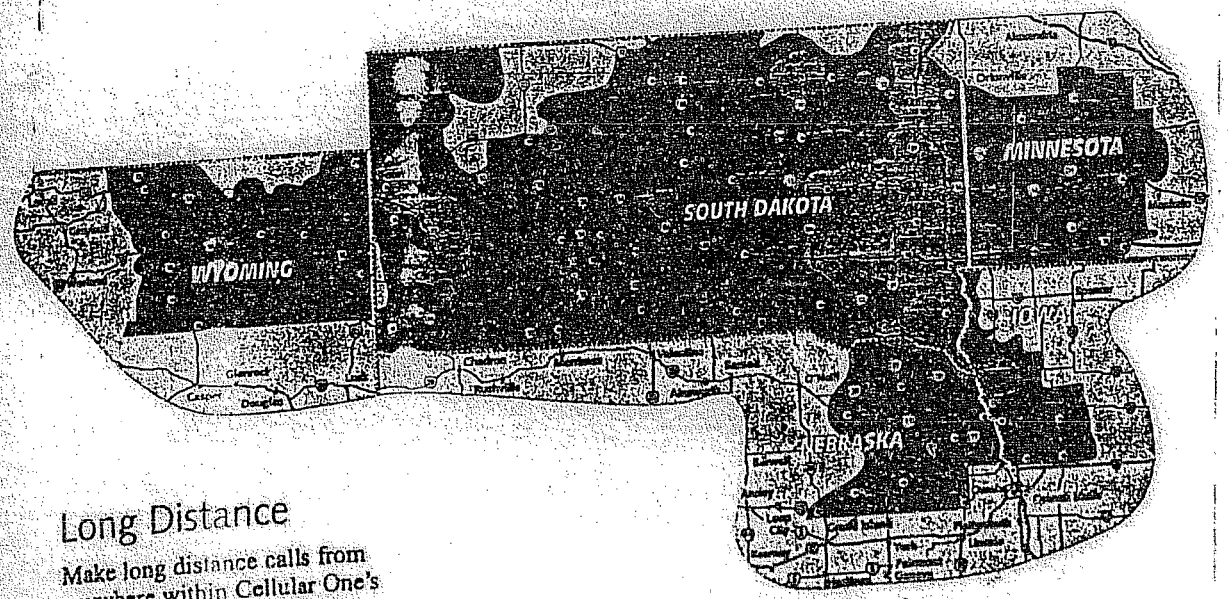
Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Eureka	Artas	Bowdle	Eureka	Glenham	Greenway	(605) Area Code	281	282	283	284	285	437
	Glenham	Herreid	Hillsview	Hosmer	Java	Mobridge	581	649	762	820	845	848	850
	Herreid	Mound City	Pollock	Selby			658	689	955				
	Hosmer												
	Mound City												
	Pollock												
Launch	Market	The following cities/towns are a local call for Residential Phone Service subscribers:					ECA NPA/NXXs						
	Hosmer	Aberdeen	Barnard	Craven	Deerfield Colony	Frederick	(605) Area Code	207	216	225	226	228	229
	Ipswich	Hosmer	Ipswich	Leola	Long Lake	Long Lake Colony	240	250	283	287	290	329	377
	Leola	Pambrook Colony	Plainview Colony	Roscoe	Westport	Wetonka	378	380	426	439	677	622	626
	Long Lake						725	790	896				

Appendix G_2

LOCAL CALLING AREAS
MEASURED RATE PLAN
UNIVERSAL SERVICE OFFERING



Home Calling Area For South Dakota / Northwest Iowa



Long Distance

Make long distance calls from anywhere within Cellular One's South Dakota / Northwest Iowa calling area to anywhere in the U.S. without incurring long distance charges.*

Roaming

Your roaming rate is only 35¢† per minute plus 10¢ a minute long distance when traveling anywhere in the U.S. outside of the Home Calling Areas.

*Does not apply to all plans

Digital Home Calling Area

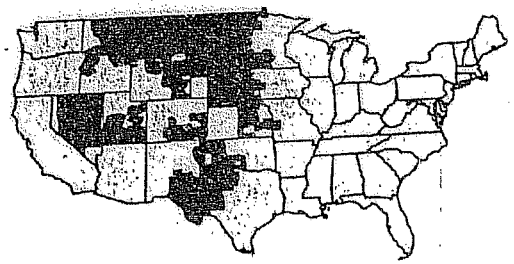
Cellular One Home Calling Area

Roaming at 35¢/minute

Store Locations

Expanded Home Calling Area

Be able to place or receive calls anywhere in the Cellular One 16-state calling area (see map) without paying roaming fees! This feature is available for $2.99 a month.



*Expanded Home Calling Area**

Preferred Roaming at 35¢/min.†

**Even though your ROAMING indicator may be on, you are charged only the HOME RATE charge.*

Coverage maps are provided for informational purposes only based on use of 3-watt wireless phone; actual service coverage, quality, and availability may vary based factors such as system limitations, weather, topography, and phone model. Information provided here is not a guarantee of service availability. Outside the digital coverage area, service may be analog and certain digital features may not function. Please see your Cellular One Service Agreement for details. Digital service is not compatible with TTY.

Appendix H

DRAFT LETTER TO NOTIFY OF BEGINNING OF UNIVERSAL OFFERINGS

[Western Wireless Letterhead]

DRAFT LETTER

(A letter in substantially this form will be sent to the Commission when beginning to offer Universal service in a study area)

[Date]

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

Dear Ms. Elofson:

Pursuant to the South Dakota Public Utilities Commission ("Commission") Order in Docket TC98-146 dated October 18, 2001, paragraph 24, Western Wireless Corporation ("Western Wireless") notifies the Commission that on _____, 2002, Western Wireless will begin to offer one of the Company's universal service plans in the following study area(s): _____.

The following is a detailed list of the local calling areas that Western Wireless proposes in the Company's ETC designated service area:

Xxxxxxx
Xxxxxxx
Xxxxxxx
Xxxxxxx
Xxxxxxxx

Please contact me if you have any questions.

Sincerely,

Suzie Rao
Regulatory Counsel

cc: Talbot Wieczorek

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

ATTORNEYS AT LAW

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

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

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G. VERNE GOODSELL
JAMES S. NELSON
DANIEL E. ASHMORE
TERENCE R. QUINN
DONALD P. KNUDSEN
PATRICK G. GOETZINGER
TALBOT J. WIECZOREK

December 2, 2002

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DEC - 3 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received DEC 02 2002

VIA FACSIMILE 1-605-773-3809
Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No. TC98-146
GPGN File No. 000362 Western Wireless Corporation

Dear Ms. Elofson:

Pursuant to issues raised by Rolayne A. Wiest at the Commission's meeting on November 20, 2002, this is to serve as a filing of amended Compliance Documents. The enclosed compliance documents replace various documents filed as part of the compliance filing on October 11, 2002. Not all of the documents filed on October 11, 2002 have been amended. I am only filing those documents that have been changed pursuant to the discussions and requests made during the meeting of November 20, 2002.

Attached for filing is a new Appendix C. This Appendix C replaces the Appendix C filed on October 11, 2002. At the November 20, 2002, meeting, Commission Counsel requested that Western Wireless, d/b/a Cellular One, submit changes to Appendix C (Measured Rate Universal Service Offering Terms and Conditions of Service) that reference the Federal Lifeline and Link Up programs. Changes have been made to Appendix C, Paragraph 9. This language was copied from Appendix B (Lifeline and Link Up language in the Unlimited Local Calling Plan Universal Service Offering Terms and Conditions of Service), section 1.1.8.

In addition, as requested in this Appendix, Western Wireless has modified language in Paragraph 33 of Appendix C to mirror language in Appendix B relating to the Commission's jurisdiction of consumer complaints.

Also enclosed is a new Appendix F. This Appendix replaces Appendix F filed on October 11, 2002. This Appendix F consists of two documents. One form will be used to determine whether tribal members living on reservations in South Dakota can qualify for reduced rate telecommunications service. A separate form will be used to determine whether other

consumers are eligible to receive Lifeline and Link Up reduced rate telecommunications service in South Dakota. A copy of the latter form has already been provided to the Commission and Commission Staff, as evidenced in Western Wireless' October 11, 2002 compliance filing submitted to the Commission. However, pursuant to Commission Counsel's request, the originally filed Appendix F has been revised to delete references to income eligibility requirements.

The original Appendix F was also modified to delete reference to the "Aid to Families with Dependent Children" program and replaced it with the "federal housing assistance program" as the program that consumers may participate in order to receive the Lifeline reduced rate.

Appendices A, B, D, E, G-1,G-2 and H filed on October 11, 2002, remain unchanged and, therefore, those documents have not been resubmitted for filing. If the Commission needs something further from us, please let me know.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Client

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APPENDIX C
MEASURED RATE CALLING PLAN
UNIVERSAL SERVICE OFFERING
TERMS AND CONDITIONS OF SERVICE

(The following Terms and Conditions are in a form of an agreement between the Company and the Customer and will be provided to all Customers, residential and business, choosing the Company's measured rate plan universal service offerings. The Company will, on a prospective basis, substitute this Agreement with any Measured Rate Terms and Conditions Agreements that are currently being used between the Company and the Customer and in the interim will provide the notice, appendix D in these submissions, modifying existing contracts.)

WWC License LLC, Inc., a wholly-owned subsidiary of Western Wireless Corporation, doing business in South Dakota as Cellular One®, (the "Company") offers universal service consistent with all applicable state and federal requirements and the purposes and intent of the Telecommunications Act of 1996, the implementing regulations of the Federal Communications Commission ("FCC"), and applicable rules and orders of the South Dakota Public Utilities Commission (the "Commission").

These terms and conditions of service vary depending upon the applicable rate plan. For unlimited local calling rate plans, the applicable terms and conditions of service are contained in the "Unlimited Local Calling Plan Terms and Conditions" document. For all other rate plans, the applicable terms and conditions of service are contained herein.

This is an agreement between you and Western Wireless Corporation and its affiliates that do business as Cellular One ("Cellular One," "we" or "us") for wireless (commercial mobile radio) service and related services and features that you may select from time to time, including for example data, messaging, paging, and internet services (together, "Service"), and for the purchase and use of wireless equipment and/or other receiving and transmitting equipment, including any additional or replacement equipment, for use with the Service (together, your "Equipment").

If you have any questions regarding your Cellular One Service, please call us at (800) 635-6886 or write to us at the correspondence address printed on your last Cellular One billing statement.

1. Agreements Governing Use of Service. These Cellular One Terms and Conditions, the Cellular One Service Agreement you signed or otherwise agreed to, and the Cellular One materials that describe the price plan, features and services you selected (together, this "Agreement"), govern the use of the Service and your Equipment. This Agreement supersedes any earlier agreement between you and us. Please read this Agreement carefully before activating Service with us or making any changes to your existing Service.

2. Acceptance of Agreement by Activation or Changes to Service. BY ACTIVATING SERVICE WITH US YOU AGREE TO BE BOUND BY THIS AGREEMENT. If you do not agree to the terms of this Agreement, do not activate Service. Instead, return your Equipment as provided in Paragraph 29. You must activate Service within thirty (30) days after purchase of your Equipment (unless you return your Equipment). If you fail to do so, you will not be able to return your Equipment and we will bill you monthly service charges at the rate in your Service Agreement and you will be deemed to have accepted this Agreement. IF YOU ARE AN EXISTING CUSTOMER, YOU ACCEPT THIS AGREEMENT IN LIEU OF ANY PRIOR AGREEMENT BETWEEN YOU AND US BY (1) REQUESTING AND RECEIVING A NEW PRICE PLAN,

ADDITIONAL FEATURES, SPECIAL OFFERS, NEW SERVICE, OR COURTESY CREDIT OF VALID CHARGES; AND (2) CONTINUING TO USE THE SERVICE AFTER WE FULFILL YOUR REQUEST. If you do not want to accept this Agreement, do not request any changes or additional Service; your Service will continue under the existing agreement between you and us.

3. Mandatory Arbitration; Governing Law. EXCEPT FOR ACTIONS SOLELY TO COLLECT UNPAID CHARGES DUE BY YOU UNDER THIS AGREEMENT, CLAIMS THAT QUALIFY FOR RESOLUTION IN SMALL CLAIMS COURT OR DISPUTES WHERE THE SOUTH DAKOTA UTILITIES COMMISSION HAS JURISDICTION (SEE PARAGRAPH 11 BELOW), ANY CONTROVERSY, CLAIM OR DISPUTE ARISING UNDER OR BY ANY WAY RELATED TO OR CONCERNING THIS AGREEMENT AND/OR OUR PROVISION TO YOU OF GOODS, SERVICES, OR EQUIPMENT SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION UNDER THE AUSPICES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS PUBLISHED WIRELESS INDUSTRY ARBITRATION RULES, AS SUPPLEMENTED BY ITS SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, AND ANY OTHER AAA RULES OR POLICIES THAT MAY BE APPLICABLE FROM TIME TO TIME, ALL INCORPORATED HEREIN BY THIS REFERENCE AND AVAILABLE BY CALLING THE AAA AT (800) 778-7879 OR VISITING ITS WEB SITE AT http://www.adr.org. Additional information may be obtained by contacting the AAA directly, as set forth above. Any such arbitration proceeding shall be subject to the choice of law provision in Paragraph 13. Judgment on an award rendered by an arbitrator may be entered in any court having jurisdiction thereof. Any arbitration shall remain confidential. Neither you nor Cellular One may disclose the existence, content or results of any arbitration or award, except as may be required by law, or to confirm and enforce an award. Notice of an arbitration commenced by you must be served on our registered agent. Two or more individual disputes may not be consolidated or otherwise determined in one proceeding without the prior consent of all parties. No party may act as a representative of other claimants or potential claimants in any dispute without the prior consent of all parties. An arbitrator may not award relief in excess of or inconsistent with the provisions of this Agreement, order consolidation or arbitration on a classwide basis, or award punitive, incidental, or consequential damages or any other damages other than the prevailing party's actual damages, except that the arbitrator may award damages required or authorized by statute on an individual basis and may order injunctive or declaratory relief pursuant to applicable law. All administrative fees and costs of an arbitration will be equally divided between you and us, except that for claims of less than one thousand dollars ($1,000), at your request, you may initially pay only twenty five ($25) and we will initially advance to the AAA all other administrative fees and costs. The arbitrator may, however, reallocate these and other AAA fees and costs in any arbitration award made. Each party agrees to pay the expenses and costs of its own counsel, experts, and witnesses at the arbitration.
YOU ACKNOWLEDGE AND AGREE THAT THIS ARBITRATION PROVISION CONSTITUTES A WAIVER OF ANY RIGHT TO A JURY TRIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR PARTICIPATION AS A PLAINTIFF OR AS A CLASS MEMBER IN A CLASS ACTION. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, YOU AND WE BOTH WAIVE ANY CLAIMS TO RECOVER PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES AND ANY RIGHT TO PURSUE, OR PARTICIPATE AS A PLAINTIFF OR AS A CLASS MEMBER IN, CLAIMS ON A CLASSWIDE, CONSOLIDATED, OR REPRESENTATIVE BASIS.

4. Use of Equipment; Service Availability. Service is available to your Equipment only when it is within the operating range of our system or the system of an operator with which we have an applicable roaming agreement. Coverage maps that you may have received or viewed are only estimates; actual service coverage, quality and availability may vary. Service is subject to unavailability or transmission limits caused by network problems or limitations, the model, condition and functioning of your Equipment, or atmospheric or topographical conditions, and may temporarily be interrupted, dropped, refused, limited, or curtailed. We are not liable for any Service limits, failures or outages, including without limitation the failure of a 9-1-1 emergency call to be connected or completed (see Paragraph 24). "Digital" service is only available within our digital service area; certain digital features may not function outside of our local digital service area or while roaming. We reserve the right to block or impose safeguards for calls to certain categories of calls (e.g., international, country, 900, 976) if we determine that such calls pose an increased billing, collection, or fraud risk. You may not transfer Service to another geographic area unless we consent. If we allow you to transfer Service, we may charge you a transfer fee of up to $200, we may require you to select a new price plan, and we may limit the areas that you may transfer to.

5. Use of Service; Appropriate Conduct. You will not resell any aspect of the Service, whether for profit or otherwise, modify your Equipment, or use the Service or your Equipment for any unlawful, harassing or abusive purpose, or in such a way as to create damage or risk to our business, reputation, employees, subscribers, customers, facilities, third parties or to the public generally. You will not use the Service or your Equipment to send any unsolicited commercial text or e-mail messages or any harassing, threatening, or obscene text or e-mail messages. If your contact with us is threatening or offensive or interferes with our ability to conduct our business, we may immediately suspend, restrict or cancel Service without notifying you.

6. Number. Except as otherwise provided by law, you have no proprietary or ownership rights to or interests in a specific telephone number, IP address, or E-mail address assigned to you or your Equipment (collectively and individually, your "Number"). We may change your Number at any time. You will not use or assign your Number to any other equipment without our prior consent, nor will you program any other Number into your Equipment.

7. Credit Verification. You authorize Cellular One to verify your creditworthiness with a credit reporting agency from time to time to determine your initial and continuing eligibility for Service.

8. Deposits. We may require a deposit in which you grant us a security interest to secure your payment of charges. Unless prohibited by law, deposits received by us may be commingled with our other funds, and will not earn interest. The amount of your deposit may be increased by us at any time upon notice to you upon reevaluation of your usage, credit, or payment history. You may either provide us with the required deposit or terminate Service within seven (7) days after we notify you of an increase in your deposit, in which case any cancellation fee will be waived. In our discretion, we may allow you to receive Service with a lower deposit in exchange for your agreement to limit charges to your account and comply with certain Service restrictions. A deposit may not be used to pay any amounts owed to us (unless it is used to pay a final invoice) or to delay payment. You must promptly pay your bills even if you have given us a deposit. If Service is terminated for any reason, any deposit will be applied to pay any charges due by you to us. Any remaining deposit or other credit balance will be returned without interest (to the extent allowed by law) to you. It may take ninety (90) days or longer after Service termination to process any refund due to you. Unless prohibited by law, (a) any balances of five dollars ($5.00) or less will not be returned but will automatically remain our property, and (b) if the Postal

Service is not able to deliver the funds to you and returns them to us, title to such funds will be conclusively deemed to remain ours, and you will have no further right to them.

9. Price Plans. Cellular One offers a variety of Service price plans, features, programs and promotions ("Plans"). Each Plan may have its own eligibility requirements, terms and conditions in addition to these Terms and Conditions, as described in the written Plan materials available at each Cellular One store or by request from Customer Relations. Cellular One will provide basic information about reduced rate telecommunications services under the federal Lifeline and Link Up programs. Cellular One will provide Lifeline and Link Up service to customers who request such service and who meet the eligibility requirements to qualify for such service. Cellular One will comply with all current and future requirements related to Lifeline and Link Up.

10. Changes to this Agreement or Charges by Us. We may change the terms of this Agreement, including the charges for Service, from time to time upon thirty (30) days' notice to you. If a change to this Agreement is materially adverse to you, you may, upon receipt of notice of the change, terminate Service without incurring a cancellation fee (if any) by following the termination instructions set forth in the notice or, if no instructions are provided, by writing to Customer Relations at the correspondence address printed on your last Cellular One billing statement. Termination of service without being charged a cancellation fee is your sole remedy for any material adverse change. Failure to properly terminate Service within fourteen (14) days after the date of the notice of a change will mean that you agree to such change, and you must pay us any additional charges that may be due as a result, even if you paid for Service in advance. Changes to the rates, terms, or availability of ancillary features and services such as voicemail, call forwarding, Internet, long distance and roaming services will not be considered material. You acknowledge that no Cellular One dealer or other agent is authorized to make any representation or warranty with respect to this Agreement, the Service or the Equipment, or to waive or alter any provisions of this Agreement between you and us.

11. Changes to Service by You. By request and if we agree by entering the change into our billing system, you may add additional lines of Service to your account or change to a different Plan at the beginning of your next billing cycle. Any person that you list on your account as an "authorized user" may make changes to the Service and your account, and you will pay any additional charges that may be due as a result. We may from time to time restrict the type of changes that an authorized user may make to the Service or your account. Changes to your account are subject to credit verification, payment of any applicable activation or transfer fees, and provision of any additional deposit required by us. All Service provided to you by us is subject to this Agreement. If you have agreed to a Service Commitment (defined in Paragraph 21), your choice of Plans may be limited during the Service Commitment. If we allow you to change to a different Plan, you agree to a new Service Commitment beginning on the date of the change and continuing for the number of full months applicable to the Service Commitment that applies to the new Plan, subject to this Agreement.

12. Roaming. If permitted under your Plan, you may use Service ("roam") outside of your Cellular One home calling area, or within your Cellular One home calling area but on a different Service provider's system (by resetting your Equipment). Your use of Service while roaming on a system that is not operated by us is subject to the same limitations of liability that the Service provider imposes on its own customers, in addition to the terms and conditions of this Agreement. WE DISCLAIM ALL LIABILITY FOR SERVICE ON A SYSTEM THAT IS NOT OPERATED BY US. Charges you are billed while roaming will include charges billed by the Service provider according to its billing practices, which may be different than our billing practices. If you have any questions about another Service provider's service or billing practices,

you should contact that service provider directly. Roaming charges also include a surcharge billed by us and, in some areas, a minimum daily service fee that is charged regardless of Service usage.

13. Payment of Charges. You agree to pay in full each month all charges for Service under this Agreement, including regular monthly Service access charges and additional usage charges for all calls processed (placed and received) through your Equipment, if you accepted Service on your own behalf, or on behalf of a business or other customer without authorization. Usage charges may include, for example, charges for calls, messages, and data that are processed through your Equipment or through any Number assigned to you, toll charges, long distance charges (for calls placed to or received from outside the local calling area, which may be more restrictive than your designated home calling area), charges for busy or unanswered calls, roaming charges, any applicable landline access charges (including, for example, directory assistance charges), and additional calling services or other features or services offered by us which you use. An activation fee may apply to new or suspended Service. Except as otherwise provided by the Plan that you have selected, airtime minutes apply only to calls placed within your home calling area. Additional charges apply for calls placed outside of your home calling area ("roaming"). You will be charged for Service and other features on a monthly billing cycle basis, which may vary from the calendar month. Unused minutes or other allocated Services (e.g., text messages, call forwarding, and data transmission) from any Plan do not carry over to the next billing cycle. We may change your billing cycle at any time. Charges for both roaming and long distance vary and will be billed at the then-current rates, which are subject to change without notice to you. Please contact us for current roaming or long distance rates in a particular area. Depending on system configuration, certain calls may incur charges at the rates of the area in which the call was initiated, even if the call continues or is terminated in a different billing area, while charges for other calls may be adjusted according to each billing area that Service for the call was provided in. Billing of some charges such as roaming charges may be delayed or applied against allocated minutes or Services in a subsequent billing cycle, which may cause you to exceed your allocated minutes or Services in that particular billing cycle. Incoming and outgoing calls are billed in full minute increments from the time the wireless network begins to process the call (before the call rings or is answered) through its termination of the call; any fraction of a minute of usage is rounded up and charged, or deducted from any allocated minutes, as a full minute. As a result, you should not rely upon any function or time counter in your Equipment to determine the number of minutes that you have used. Any taxes, fees, costs or charges imposed on us as a result of providing the Service or the Equipment to you will be added to your charges as provided in Paragraph 14.

14. Taxes. Any applicable sales, use, excise, public utility or other taxes, fees or regulatory costs, including, for example, E911-related fees or costs, or charges imposed on you or us as a result of providing the Service or your Equipment to you will be added to your charges as permitted or required by law. If you are exempt from payment of such taxes, you may provide us with an original Tax Exempt Document. Tax exemption will only apply to charges incurred after the date we receive the Tax Exempt Document from you. The address you have provided to us is used to bill federal, state and local taxes and fees that we are required to collect from you. In some cases this address may indicate that you live in one local jurisdiction (for example, a particular city or county) when you actually live in another. This could result in an incorrect charge for certain taxes and fees. If you have been incorrectly billed for any tax or fee, please contact Customer Care so that any incorrect charges may be removed from your account. You must notify us within ninety (90) days from the date of the first bill that contains the incorrectly billed taxes or fees or you waive your right to dispute those charges.

15. Automatic Debit Payments. If we have agreed that you may pay for charges with a credit or debit card or through automatic bank account withdrawal ("Electronic Funds Transfer"), we will process an Electronic Funds Transfer after we bill for the charges, for current charges and/or all other charges or obligations incurred. You also authorize us to process an Electronic Funds Transfer at or after termination of Service to pay what you then owe (including, but not limited to, payment of any cancellation fee). If for any reason your bank or card issuer declines to pay us, we may suspend or terminate your Service without notifying you, and we may require that all further payments be made by an alternate payment method. Charges that are not paid through Electronic Funds Transfer must be promptly paid by an alternate payment method.

16. Late Payments. Charges, not including disputed amounts, must be paid by the date shown on the monthly billing statement. You agree that (a) time is of the essence; (b) it would be impractical to fix the exact amount of our damages if you fail to pay promptly; and (c) in the event we do not receive your payment by the due date shown on your monthly billing statement, your payment is past due and you will pay us default interest of the lower of 1.5% per month (or any portion thereof) of any past due amount until paid, or a different amount if required by law.

17. Service Problems; Disputed Charges. If you have a Service problem that is not caused by inherent transmission or system limitations, you should promptly report it to us by contacting Customer Care. If you believe your bill contains any incorrect charges, you should promptly call us and report the incorrect charges so that we may investigate and limit any possible fraud losses. If incorrect charges are the result of unlawful conduct by a third party, you agree to reasonably cooperate with us in investigating such unlawful conduct. To receive credit for any incorrect charges, you must notify us in writing of such disputed charges within sixty (60) days (except as provided in Paragraph 14) from the date of the first bill that contains the disputed charges or you waive your right to dispute those charges. Written notification of disputed charges should be sent to Customer Relations at the correspondence address printed on your last Cellular One billing statement. You may also call us for assistance in resolving any disputed charges, however, calling may not preserve your rights.

18. Check Notations; Returned Checks. If we accept late or partial payments or payments marked "Paid in Full" or similar notations, it will not waive any of our rights to collect all amounts that you owe us nor will it constitute an accord and satisfaction. We may immediately disconnect Service for breach of this Agreement and charge you a fee of up to $30 (or a different amount if required by law) for any check that is returned as non-negotiable or for insufficient funds, stop-payment order, or other deficiency.

19. Lost or Stolen Equipment. If your Equipment is lost or stolen and (1) you notify Customer Care within 72 hours that your Equipment has been lost or stolen, (2) you authorize us to immediately deactivate the Lost or Stolen Equipment, and (3) within fourteen (14) days you provide us with a copy of the filed police report, you will not be required to pay any unauthorized airtime charges incurred on the lost or stolen Equipment. Even if your Equipment is lost or stolen, you must fulfill the remainder of your Service Commitment by promptly purchasing and activating replacement Equipment, or you will be charged a $200 cancellation fee per line of Service. We will deactivate Service to any Number without notifying you if we suspect the Number or Service is being used in any unlawful manner or in breach of this Agreement. You agree to reasonably cooperate with us in investigating suspected unlawful use.

20. Term; Termination. This Agreement begins on the date Service is activated (or this Agreement is otherwise deemed to have been accepted as provided in Paragraph 2) and will continue until terminated by you or us in the manner provided in this Agreement. Even if this

Agreement is terminated by you or us, you must still pay any charges due or satisfy any other obligations incurred before or upon termination. You may terminate this Agreement for any reason by providing thirty (30) days advance notice to us, or as otherwise provided in Paragraph 10. We may terminate this Agreement for any reason upon three (3) days notice to you, or as otherwise provided in this Agreement.

21. Cancellation Fee. Except as provided in Paragraph 10, if you select a Plan with a service commitment longer than one month, you agree to continue Service under the Plan for the number of full months applicable to the term selected (the "Service Commitment"). If Service is temporarily disconnected for any reason, the Service Commitment will be extended by the length of the temporary suspension. At the end of the Service Commitment, this Agreement will continue on a month-to-month basis until terminated by you or us. If you terminate Service before the end of the Service Commitment or if you otherwise breach this Agreement, you agree to pay us, as a reasonable estimate of our damages and in addition to other amounts owed, a $200 fee per line of Service (which you agree may be deducted from your deposit or automatically billed to your account). In addition, we may apply your deposit or other prepayment towards any charges that are due by you to us.

22. Termination for Default. You will be in default under this Agreement if you do not pay any sum when due, breach this Agreement or any other agreement between you and us, fail to perform your obligations under this Agreement or in any other agreement between you and us, become the subject of any proceeding under the Bankruptcy Code or become insolvent. In any such case, you will remain responsible for payment of all charges and fees (including any cancellation fee) due to us under this Agreement (including any charges after a bankruptcy filing), which charges will be immediately due and payable. We may suspend, restrict, or cancel Service without notice to you if you are in default under this Agreement. However, disputed charges may be withheld by the Customer. We will treat all charges as undisputed unless notified otherwise by the Customer. If we agree to renew Service to you after discontinuing Service because of your default, you agree to pay a reactivation fee. Our remedies in this Agreement are not exclusive but are in addition to all other remedies provided by law.

23. Disclaimer of Warranties. ALL SERVICES AND EQUIPMENT ARE PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS, AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME ALL RESPONSIBILITY AND RISK FOR USE OF THE SERVICE OR EQUIPMENT. WE DO NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON OUR BEHALF AND YOU SHOULD NOT RELY ON ANY SUCH STATEMENT. ANY STATEMENTS MADE IN PACKAGING, MANUALS OR OTHER DOCUMENTATION, OR BY ANY OF OUR AGENTS, ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND NOT AS WARRANTIES BY US OF ANY KIND. NEITHER CELLULAR ONE NOR ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUPPLIERS, AGENTS, DEALERS, PARENTS, SUBSIDIARIES OR AFFILIATES ("CELLULAR ONE AFFILIATES") WARRANT THAT THE INFORMATION, PRODUCTS, PROCESSES, AND/OR SERVICES AVAILABLE THROUGH THE SERVICE OR EQUIPMENT WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, USEFUL, FUNCTIONAL OR ERROR FREE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART.

24. Limitation of Liability. We shall not be liable for any deficiency in performance caused in whole or in part by act or omission of an underlying carrier or service provider, equipment or facility failure, Equipment failure, network problems, lack of coverage or network capacity, equipment or facility upgrade or modification, acts of God, strikes, fire, war, riot, government actions, equipment or facility shortage or relocation, or causes beyond our reasonable control, including without limitation the failure of an incoming or outgoing call, including a 9-1-1 emergency call, to be connected or completed. EVEN IF CELLULAR ONE OR ANY OF ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES, THEY WILL NOT BE LIABLE TO YOU OR ANY OF YOUR EMPLOYEES, AGENTS, CUSTOMERS OR ANY THIRD PARTIES FOR ANY DAMAGES ARISING FROM USE OF THE SERVICE OR ANY EQUIPMENT, INCLUDING WITHOUT LIMITATION: SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR LOSS OF PRIVACY DAMAGES; PERSONAL INJURY OR PROPERTY DAMAGES; OR ANY DAMAGES WHATSOEVER RESULTING FROM INTERRUPTION OR FAILURE OF SERVICE, LOST PROFITS, LOSS OF BUSINESS, LOSS OF DATA, COST OF REPLACEMENT PRODUCTS AND SERVICES, THE INABILITY TO USE THE SERVICE, THE CONTENT OF ANY DATA TRANSMISSION, COMMUNICATION OR MESSAGE TRANSMITTED TO OR RECEIVED BY YOUR EQUIPMENT, OR LOSSES RESULTING FROM ANY GOODS OR SERVICE PURCHASED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR OTHER MODIFICATIONS OF OR LIMITATIONS TO CERTAIN REMEDIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU, IN WHOLE OR IN PART. THE MAXIMUM AGGREGATE LIABILITY OF CELLULAR ONE AND ANY OF ITS AFFILIATES TO YOU, AND THE EXCLUSIVE REMEDY AVAILABLE IN CONNECTION WITH THIS AGREEMENT FOR ANY AND ALL DAMAGES, INJURY, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND/OR CAUSES OF ACTION RELATED TO THE SERVICE OR EQUIPMENT, SHALL BE TO RECOVER THE PRORATED MONTHLY OR OTHER CHARGES TO YOU FOR THE APPLICABLE SERVICE OR EQUIPMENT. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES. YOU AGREE THAT OTHER PARTS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS PARAGRAPH. THE LIMITATIONS SET FORTH IN THE PRECEDING TWO PARAGRAPHS ARE INDEPENDENT OF EACH OTHER AND BOTH THE LIMITATION OF DAMAGES AND LIMITATION OF REMEDY SET FORTH ABOVE WILL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY OR ALL PARTS OF THE LIMITED REMEDY SET FORTH IN THE PARAGRAPH IMMEDIATELY ABOVE.

25. Indemnification. You agree to defend, indemnify and hold us, any underlying carrier, and any Cellular One affiliates harmless from and against any and all claims, demands, actions, liabilities, costs or damages arising out of your use of the Service or Equipment or your violation of this Agreement. You further agree to pay our reasonable attorneys' and expert witnesses' fees and costs arising from any actions or claims hereunder and those incurred in establishing the applicability of this paragraph.

26. Equipment Insurance or Extended Warranty. Any available insurance and/or extended warranty program is provided by a third party. We may provide you with the provider's coverage information, and permit the provider to bill premiums through us, however, we are otherwise unconnected with any such insurance or extended warranty program. You should contact the program provider directly at the contact number printed in program materials for complete information regarding the service or any related claims that you may have.

27. Privacy of Calls. Wireless systems use radio channels to transmit voice and data communications over a complex network. Although monitoring calls may be illegal, it is possible. As a result, call privacy cannot be guaranteed, and we will not be liable to you for any lack of privacy you experience while using your Equipment or the Service. In addition, we may intercept and disclose any transmissions over or using our facilities, and may provide to third parties billing, account, or calling records, and related information under certain circumstances (for example, in response to lawful process, orders, subpoenas, or warrants, or to protect our rights or property). Calls to Cellular One may be monitored or recorded by us for quality, training, safety or assistance purposes; you may not record calls to Cellular One. Your telephone number and "Cellular One" may be disclosed to persons that you call who use caller identification; your location may also be disclosed to emergency or public safety officials. By contacting emergency or public safety officials, you consent to the disclosure of information by Cellular One to them in connection with such contact.

28. Privacy of Information. We may share information we obtain from you with credit reporting agencies, collection agencies, sub-contractors, affiliates, or other third parties as may be either required by law or necessary or advisable to provide Service or to protect our rights or a third party's safety. In addition, anyone who is listed as an authorized user on your account may access your account information. If you ask us in writing not to otherwise share your information, we will not. Otherwise, we may share your information under other circumstances to the extent permitted by law.

29. Return Policy. Unless we otherwise agree in writing, you may return your Equipment with proof of purchase if the Equipment is in its original packaging with original contents, undamaged and in good working condition with fewer than twenty (20) minutes of use, within 72 hours of activation for a full refund of your purchase price. You may be required to pay a restocking fee. Please note that for purchases made by phone or via the internet, you may return your Equipment for a full refund of your purchase price if the Equipment is returned within 10 days of activation, provided that all other requirements set forth above have been met. With such returned Equipment, you may simultaneously cancel Service to the Equipment and any otherwise-applicable cancellation fee will be waived if Service was initially activated in connection with the returned Equipment. In no event will you be eligible for a refund if you return your Equipment more than thirty (30) days after your purchase date. You are responsible for the payment of any Service or usage charges incurred by you before you return the Equipment.

30. Assignment. We may assign all or part of our rights or duties under this Agreement without notifying you. Upon an assignment, we will have no further obligations to you. You may not assign this Agreement without our prior written consent. Subject to this restriction, this Agreement will inure to the benefit of and be binding upon the heirs, successors, subcontractors, and assigns of the respective parties.

31. Notices. Written notices to you will be considered given on the date deposited in the U.S. Mail addressed to you at the billing address shown in our billing records or immediately upon delivery using electronic means such as e-mail or text messaging. Written notice to us will be considered given when received by our registered agent or by Customer Relations at the correspondence address listed on your last Cellular One billing statement. You agree that we may contact you through your Equipment to notify you of changes to or information about your account, the Service, or this Agreement.

32. Severability. If any provision of these Terms and Conditions is held to be contrary to law, then such provision will be construed, as nearly as possible, to reflect the intentions of the parties, and the balance of the provisions will remain unaffected and in full force and effect, unless our obligations hereunder are materially impaired, in which event we reserve the right to terminate this Agreement.

33. Governing Law; Venue and Statute of Limitations. This Agreement, its validity, construction and performance, will be governed by and interpreted in accordance with applicable federal laws and the laws of the state in which Service is primarily provided by us to you, without regard to that state's conflicts of laws rules, except that the arbitration provisions in this Agreement will be governed by the Federal Arbitration Act. ANY CONTROVERSY, CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN TWO (2) YEARS AFTER THE DATE THE BASIS FOR THE CLAIM OR DISPUTE FIRST ARISES. Any disputes or claims arising under this Agreement may be subject to the Commission's jurisdiction. The address of the Commission is: Public Utilities Commission of South Dakota, Capitol Building, First Floor, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070. The telephone number is: 1-800-332-1782.

34. Entire Agreement. This Agreement consisting of (a) the Cellular One Service Agreement, (b) these Cellular One Terms and Conditions, and (c) the terms and conditions of the selected Plan as described in related Cellular One printed materials, represents the final and entire agreement between you and us regarding the Service and your Equipment. Except as otherwise provided in this Agreement, no prior or subsequent handwritten, typed, or oral statement, advertisement, or change to this Agreement will be valid unless we accept it in writing. Our failure at any time to require strict performance by you or any other customer of any of the provisions of this Agreement will not waive or reduce our right to thereafter require strict compliance with any provisions of this Agreement.

35. Signing Authority/Authorized User. You acknowledge that you are of legal age, have received a true copy of this Agreement and have read and clearly understand the terms of this Agreement and, if activating on behalf of a business or other entity, are fully authorized to legally bind such entity. You acknowledge that you are responsible for all charges incurred by any person with access to your Cellular One account, Equipment or Service.

36. Survival. Paragraphs 3, 8, 13 – 19, 21, 23 – 25, 28, 30 – 34, and 37 shall survive any termination of this Agreement for any reason.

37. Prepaid Customers: If you purchase prepaid Service of any kind, these Terms and Conditions apply to you except as follows. When purchasing prepaid Service, you are responsible for prepaying all charges for using the Service. The balance in your prepaid account is reduced by the charges attributable to your use of the Service. You must keep a positive balance in your prepaid account to continue using the Service. The prepaid Service you purchase will expire within a certain time period. The expiration period will be disclosed on the material you receive at the time of your purchase of prepaid Service. If you have any questions regarding the expiration date, the balance remaining on your prepaid Service, or any other questions regarding your prepaid Service, please contact Customer Care. Prior to expiration, you may extend the expiration period by purchasing additional prepaid Service. You will not receive a monthly billing statement or activity record for use of prepaid Service except in limited areas where it is available for an additional fee and you specifically request this feature. Prepaid Service is non-refundable, and no refunds or other compensation will be given. Unused prepaid account balances become our property upon expiration or termination of the Service purchased, and will not be refunded, even if we modify Service without your consent. Any applicable sales, use, excise, public utility or

other taxes, fees or regulatory costs, including, for example, E911-related fees or costs, or charges imposed on you or us as a result of providing the Service or your Equipment to you may be included in your prepaid charges.

APPENDIX F

Enhanced Lifeline and Link Up Assistance Certification

For Individuals Living on Reservations

Western Wireless.

Telephone Number _____ SSN _____

Last Name _____ First Name _____ Middle Initial ____

Street/PO Box _____ City _____ State _____ Zip _____

Link Up: If you have no telephone, check here: _____

I am applying for Enhanced Lifeline monthly telephone service.

I reside on the following reservation: _____

My Tribal Enrollment Number is (Required): _____

I am currently participating in the following program(s) (Check all that apply)

____ Medicaid (e.g. Title XIX Medical State Supplemental Assistance)

____ Food Stamps

____ Supplemental Security Income (SSI)

____ Federal Public Housing Assistance Program

____ Low-Income Home Energy Assistance

____ Bureau of Indian Affairs (BIA) / General Assistance

____ Tribally administered Temporary Assistance for Needy Families

____ Head Start (meeting income qualifying standards)

____ National School Free Lunch Program

I certify under penalty of perjury that I am eligible to receive and do receive benefits from the program(s) identified herein. I further certify that the information contained on this form is true.

I agree to notify Western Wireless Corporation, doing business as Cellular One, when I no longer participate in any of the qualifying public assistance programs identified above.

I have or will receive telecommunications service at my principal place of residence as listed above.

Print Name _____ Signature _____

Date _____

APPENDIX F

Federal Lifeline and/or Link-Up Assistance Certification
South Dakota

RESIDENTIAL PHONE SERVICE

Telephone Number _____ SSN _____

Last Name _____ First Name _____ Middle Initial _____

Street/PO Box _____ City _____ State _____ Zip _____

Link Up: If you have no telephone, check here: _____

Are you currently participating in one or more of these programs?

_____ Medicaid (e.g. Title XIX Medical State Supplemental Assistance)

_____ Food Stamps

_____ Supplemental Security Income (SSI)

_____ Federal Public Housing Assistance Program

_____ Low-Income Home Energy Assistance

I certify under penalty of perjury that:

- I am eligible to receive and do receive benefits from the program(s) identified herein;
- The information contained on this form is true and correct to the best of my information and belief;
- I will notify Western Wireless Corporation, doing business as Cellular One, when I no longer participate in any of the qualifying public assistance programs identified herein; and
- I have or will receive telecommunications service at my principal place of residence as listed above.

I have read the information on this application and understand that I must meet the above qualifications to receive Lifeline Assistance on my primary residential line.

Print Applicant Name _____ Date _____

Applicant Signature _____

RECEIVED
DEC - 3 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE SOUTH DAKOTA

FAX Received DEC 3 2002

IN THE MATTER OF

THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

DOCKET NO: TC03-146

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of December, 2002, I served a true and correct copy of the new Appendix C and the new Appendix F to the Compliance Document and letter to Deb Elofson, Executive Director of the SD Public Utilities Commission explaining changes to Appendices C and F by first class U.S. Mail to the following persons:

Brian B. Meyer
Meyer and Rogers
PO Box 1117
320 E. Capitol Ave
Pierre SD 57501-1117

Richard D. Coit
PO Box 57
320 E Capitol Ave
Pierre SD 57501-0057

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

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

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

ATTORNEYS AT LAW

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

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

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

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

December 2, 2002

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RECEIVED
DEC -3 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Docket No. TC02-176
Western Wireless Corporation
GPGN File No. 020812

Dear Ms. Elofson:

Enclosed please find the certified original and ten copies of the Order on the Admission of Attorney Philip Schenkenberg, Pro Hac Vice and the Admission of Attorney Mark Ayotte, Pro Hac Vice.

If you have any questions, please call me.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Client
Philip Schenkenberg
Mark Ayotte
Richard D. Coit
Brian B. Meyer
Matthew S. McCaulley

RECEIVED

NOV 13 2002

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA)
)SS.
COUNTY OF HUGHES)

IN CIRCUIT COURT

6TH JUDICIAL COURT

ADMISSION OF ATTORNEY MARK AYOTTE, PRO HAC VICE

ORDER

It is hereby ORDERED that the Motion for Admission for Mark Ayotte, a non-resident attorney to appear on behalf of Western Wireless Corporation, before the Public Utilities Commission and this Court relating to the matter currently filed before the Public Utilities Commission, TC02-176, is granted.

This 22 day of November, 2002.

BY THE COURT:

Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

BY: Christal L. Espeland
Clerk

(SEAL) by Shaun McEntaffer
Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
NOV 22 2002
Christal L. Espeland Clerk
By _____ Deputy

RECEIVED

[illegible] 2002

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Cir. 02-6

STATE OF SOUTH DAKOTA)
) SS CIRCUIT COURT
COUNTY OF HUGHES)

SIXTH JUDICIAL CIRCUIT

Bar # 02-34

ADMISSION OF ATTORNEY PHILIP SCHENKENBERG, PRO HAC VICE

ORDER

It is hereby ORDERED that the Motion for Admission for Philip Schenkenberg, a non-resident attorney to appear on behalf of Western Wireless Corporation, before the Public Utilities Commission and this Court relating to the matter currently filed before the Public Utilities Commission, TC02-176, is granted.

This 22 day of November, 2002

BY THE COURT:

Circuit Court Judge
Sixth Judicial Circuit

ATTEST:

BY: Christal L. Espeland
Clerk

by Sharon McEntaffer
Deputy

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.
FILED
NOV 22 2002
Christal L. Espeland Clerk
By [illegible] Deputy

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

RECEIVED
DEC 12 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

December 12, 2002

Deb Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: SD-PUC Docket TC98-146 In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier

Dear Ms. Elofson:

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

Please distribute these as needed to Commissioners and Staff.

Thank you for your assistance.

Sincerely,

Richard D. Coit,
Executive Director
and General Counsel

CLEAR connections

RECEIVED
DEC 1 2 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))	DOCKET TC98-146

COMMENTS OF SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

The South Dakota Telecommunications Association ("SDTA"), on behalf of its member local exchange companies, hereby submits the following comments regarding the recent compliance filing made by Western Wireless Corporation ("WWC"). These comments are filed with the Commission pursuant to the procedural schedule set by the Commission during its meeting on November 20, 2002.

For all of the reasons explained below, SDTA is opposed to this Commission's approval of the WWC compliance filing and urges this Commission to conduct a further investigation into WWC's "universal service offering":

1. First, there is good reason to believe that WWC is currently in violation of this Commission's recent "Order Denying Certification" issued in Docket TC02-156, In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support. Pursuant to 47 C.F.R. § 54.314, on or about September 11, 2002, WWC made a request to this Commission requesting that the Commission notify the Universal Service Administration Company ("USAC") and the FCC that WWC, as an eligible telecommunications carrier ("ETC"), would be eligible to receive federal high cost support in accordance with 47 U.S.C. § 254(e). Specifically, WWC was seeking a certification from this Commission that any high cost support to be received by WWC in 2003 would be used "only for the provision,

maintenance and upgrading of facilities and services for which such support is intended." Under the FCC rules, this certification must be provided to USAC in accord with certain filing deadlines in order for a carrier to lawfully receive USF distributions. Section 54.315 of the rules prescribes these deadlines and states that "[c]arriers for which certifications are filed on or before October 1 shall receive support . . . in the first, second, third, and fourth quarters of the succeeding year." If the October 1 deadline is not met, however, support distributions are delayed and can only begin, at the earliest, in the second quarter of the succeeding year. 47 C.F.R. § 54.315(d)(1)-(5). WWC made its request for certification from this Commission prior to the October 1 deadline, but no certification was granted. On September 27, 2002, this Commission issued an Order denying the requested certification because: (1) WWC had not yet officially received ETC designation in any rural service areas because the compliance filing at issue in this matter was still not approved; and (2) WWC failed to provide sufficient data regarding its use of federal universal service funding.

2. Despite the Commission's Order denying certification, SDTA has discovered that WWC may be seeking federal high cost funding for lines or customers in rural service areas for first quarter 2003. USAC prepares and publishes quarterly reports projecting universal service fund distributions, including "high cost loop support" distributions. These projections for high cost loop support are prepared based on line count submittals by incumbent and competitive ETCs. The line counts presented by competitive ETCs must be presented to USAC on a quarterly basis, on July 31st, September 30th, January 31st, and April 30th. SDTA has reviewed USAC's "Federal Universal Service Support Mechanisms Fund Size Projection for the First Quarter 2003," dated November 1, 2002, which is available on the USAC website at www.universalservice.org. In that document, on Page 26 of Appendix HC04, USAC indicates

that 30,108 "working loops" have been reported for the "Western Wireless (Pine Ridge Reservation)" "study area" in South Dakota (SAC 39901). On that same page, USAC projects that WWC, for these lines, will receive High Cost Loop Monthly Support in the amount of $227,197 during the First Quarter of 2003 (an annualized amount of $2,726,364). (a copy of pages 1, 25 and 26 of Appendix HC04 including the South Dakota information is attached). This information supplied by USAC is troubling and raises questions as to the validity of WWC's current claims for universal service support.

3. WWC also filed line count information with USAC for the Pine Ridge Reservation study area for the third and fourth quarters of this year. The USAC projection reports for each of these quarters shows that for third quarter 2002 WWC submitted only 1,440 lines or customers for high cost loop support. For the fourth quarter, the lines or customers submitted was also 1440. (copies of Appendices HC04 from each of these USAC quarterly reports are also attached). A comparison of these reports with the recent first quarter 2003 report indicates that WWC is claiming a twenty-fold increase in supportable lines on the Pine Ridge Reservation over a three-month period. This sort of increase has no basis in reality and cannot be correct as it relates to WWC's service on the Pine Ridge Reservation.

4. Information provided by the 2000 U.S. Census indicates that at the time of the census Pine Ridge Reservation had a total population of 14,068, and that it included 3,922 housing units.[1] Given these population numbers, it is not possible that WWC is serving anywhere near 30,108 "working loops" or wireless phones on the Pine Ridge Reservation. Golden West Communications Cooperative, which provides landline telephone service over most of the Reservation area, currently serves approximately 5,000 total lines in such area. These population

[1] *U.S. Census Bureau, Census 2000 Summary File 1, Table GCT-PH1.*

numbers and current landline subscriber numbers make it very clear that the 30,000-plus line count submitted by WWC cannot be attributable to just the Pine Ridge Reservation.

5. After becoming aware of this new USAC information, SDTA inquired with USAC staff as to whether the 30,108 "working loops" number contained in the first quarter 2003 report might be a typographical error. The response given was that the 30,108 figure may not apply just to WWC's service on the Pine Ridge Reservation, but may instead encompass the "working loops" for all of the WWC's operations in South Dakota. It is SDTA's understanding that a similar explanation was given to this Commission's Staff by a representative of WWC. It was indicated that the 30,000-plus line count submittal did not relate just to the Pine Ridge Reservation, but also to other service areas in South Dakota. If this is in fact the case, why at this point has there been no effort on the part of WWC to clarify matters with USAC and correct the situation? Currently, it would appear that WWC is set to receive high cost loop support on all of these reported lines beginning first quarter 2003. The payment of any federal universal service funding to WWC for service provided in the first quarter of 2003, for any rural service areas (other than the Pine Ridge study area), would be in direct violation of this Commission's Order denying WWC the state certification required under 47 C.F.R. § 54.314. At this point, under the current FCC rules, even assuming WWC obtained the required state certification prior to January 1, 2003, it would not be eligible to receive any federal USF distributions until second quarter 2003. WWC, at the present time, appears to be ignoring the Commission's Order in Docket TC02-156. To our knowledge, nothing has been done to correct the 30,000-plus line count filing made with USAC.

6. WWC's claim for universal service funding on 30,000-plus loops also raises questions relating to WWC's universal service offering. At the time of the initial hearing in this matter and

In the court proceedings following that hearing, WWC maintained that its universal service offering would be made available using "fixed wireless local loops." (Administrative Record "AR" p. 34). WWC made it clear through various statements that it was not seeking universal service support for its traditional mobile cellular services. It was specifically stated in its prefiled testimony that WWC "will use available universal service support for the provision of a wireless local loop service." (AR p. 32). WWC was specifically asked whether it was seeking universal service funding for the conventional cellular service it provides today. In response, WWC replied "no" and indicated that its "universal service offering will not look like conventional local exchange service, or conventional cellular service, but will have attributes of both types of service." (AR 52). Mr. Gene DeJordy testified that he didn't understand how his company could realistically get universal service customers if the service was provisioned as a cellular service offering. (Hrg. Trans. P. 39). He also very clearly indicated that customers would want a fixed wireless service – that without such service WWC would not be able to give consumers "dialtone." (Hrg. Trans. Pp. 97, 101, 115, 116). The "fixed wireless local loop service" was described as being able to provide customers "dialtone" by giving them "the ability to connect existing telephones to the wireless network." (AR 35). With respect to its proposed universal service offering, WWC further stated that it would be offering a "highly reliable and top quality universal service offering that will be equal to or better than the quality and reliability of the wireline system." (AR 39). It was also indicated that it "would be inappropriate to compare the voice quality using a handheld mobile phone with the voice quality of a fixed wireline service."

7. The recent line count submittal by WWC reporting over 30,000 lines and recent statements made by WWC representatives cause SDTA to believe that WWC no longer intends to provide universal service through a "fixed wireless" or "wireless local loop" offering, but

instead intends to rely merely on its existing mobile cellular services. As noted above, it appears that many of the lines included in the 30,108 line count submittal made by WWC to USAC do not relate to service provided on the Pine Ridge Reservation. If we assume that WWC would not submit line counts for Qwest service areas in South Dakota (given the fact that Qwest does not currently receive any federal high cost funding), a large share of the 30,108 lines reported to USAC for high cost funding would have to be attributable to service being provided by WWC to other rural service areas in the State. If these lines are attributable to other rural service areas, how is it that WWC could report at this time thousands of supportable lines in these areas? SDTA believes that the most likely explanation is that WWC has now changed its plans for providing universal service and that it now intends to submit mobile cellular service for universal service support. The Commission in its Order of October 18, 2002, in this docket ruled that WWC must "notify the Commission when it begins to offer its universal service package and in what study areas." (Findings of Fact and Conclusions of Law; Notice of Entry of Order, par. 24). To date, WWC has not given any notice that it has begun offering its universal service package in any the rural service areas listed in the Commission's Order. Further, SDTA has received no information, from any other source, indicating that WWC has started offering its universal service product in any of these areas. Under the circumstances, it is reasonable to conclude that WWC now considers it's offering of mobile cellular service to be sufficient for universal service purposes. This conclusion is reinforced by the attached e-mail dated October 17, 2002, sent by Mr. DeJordy to Karen Cremer of the Commission Staff. It appears from this e-mail message that WWC is abandoning its plan of making universal service available through the sort of "Telular" technology described during the earlier ETC application process and that WWC

[illegible] [illegible] [illegible] [

and (3) Correct termination of 98 percent of properly dialed calls when the call is routed entirely over the network of the local exchange company." In addition, all telecommunications companies are directed under ARSD 20:10:33:15 to "keep plant and equipment in a good state of repair consistent with safe and adequate service performance . . ." Further, it is stated therein that "[t]he presence of inductive interference, cut-offs, intelligible cross-talk, and excessive noise generation by communications system facilities during the provisioning of telecommunications services by the company are symptomatic of inadequate service. .."

9. Given the new facts presented in this matter, indicating that WWC has changed its plans for offering universal service in South Dakota, SDTA urges the Commission at this time to examine more closely whether WWC will provide a universal service offering that is consistent with these and other applicable service quality standards. In the earlier proceedings in this matter, WWC made much of the fact that its "fixed wireless local loop product" would provide an improved service quality over its existing mobile cellular service, stating that the service quality would be "equal to or even better than the reliability of the wireline system." (AR 39). This improved service quality was claimed to be possible through the use of higher powered customer premise equipment, additional WWC antenna towers, and through fixed wireless network equipment (antennas and transmitters) installed at customer locations. (AR 39). WWC portrayed its wireless local loop service as being a substitute to existing landline telephone service that would provide a "dialtone" to the end user by allowing even existing telephones to be plugged into the wireless network. WWC's "universal service offering" now appears to be significantly different than it was described earlier in these proceedings. Apparently now, based on the e-mail message of Mr. DeJordy, WWC may not view the wireless local loop equipment as being necessary at all. If this is in fact the case, how can this Commission fairly conclude based

on the scant compliance documents provided thus far that service quality concerns are sufficiently addressed? As WWC indicated itself in the earlier proceedings herein, there is a significant difference between the service quality that can be provided by wireless local loop equipment versus that provided by a handheld mobile phone. (AR 39). The Commission at this time should give recognition to these differences, and if WWC now intends to make its universal service offering available through merely mobile cellular service, service quality issues should be more closely examined.

10. If WWC intends only to use its existing mobile cellular service for its universal service offering, there are also new concerns regarding affordability that should be addressed. At the initial hearing in this matter, WWC presented testimony indicating that the price of its universal service offering in the various service areas would be "comparable" to that offered by the incumbent LEC. (Hrg. Trans. Pp. 90, 95). Questions were asked by the Commission regarding the pricing of WWC's universal service offering based on the obvious concern that any universal service offering should be priced in an affordable manner. Very clearly, universal service objectives would not be achieved if the distribution of universal service funds does not result in an affordable offering of basic telecommunication services. In regards to the compliance filing made by WWC, language in the proposed "Measured Rate Calling Plan – Universal Service Offering" references that the company's "universal service offerings" may be subject to different "rate plans." (APPENDIX C, par. 3). In addition, paragraph 9 of the Measured Rate Calling Plan states that "Cellular One [WWC] offers a variety of Service price plans, features, programs and promotions ("Plans"). Each Plan may have its own eligibility requirements, terms and conditions in addition to these terms and conditions . . ." Viewing these statements along with Mr. DeJordy's e-mail message to Staff, questions are presented as to

which mobile pricing plans WWC considers eligible for universal service support. If WWC will be submitting any of its existing cellular mobile customers for universal service support, which cellular mobile customers or cellular mobile rate plans will qualify? To this point, no information has been provided by WWC indicating which of its existing services or rate plans will be considered universal service offerings.

11. State Commissions, along with the FCC, are charged under 47 U.S.C. § 254(f) with the responsibility to "ensure that universal service is available at rates that are just, reasonable, and affordable." In addition, states share the responsibility with the FCC to enforce the provisions of 47 U.S.C. § 254(e) requiring that universal service support is used only "for the provision, maintenance, and upgrading of facilities and services for which the support is intended." How can the Commission stay true to these provisions without additional information from WWC as to which of its existing mobile offerings are to be treated as universal service offerings? It is well known that wireless mobile pricing plans are constantly changing. This being the case, it is likely that there are many different mobile rate plans being offered by WWC throughout South Dakota. Which of these rate plans does WWC intend to submit for federal universal service support? Will only those plans offering essential telecommunications services at affordable prices be submitted? Or will WWC be submitting any of its higher priced plans that include more premium type services? SDTA believes these and other questions relating to the make up and affordability of WWC's universal service offering must be answered as part of this compliance process, before WWC begins to receive universal service funding for the designated rural service areas. This is necessary to ensure that universal service funding is not misused, for purposes unrelated to established universal service objectives.

12. The new facts presented indicating that WWC is now planning to submit traditional mobile cellular phones for universal service also give rise to questions regarding the applicability of Lifeline and Link Up discounts. The existing federal Lifeline rules provide monthly discounts for basic telephone services under several different "tiers" of support. "Tier One" support described in 47 C.F.R. § 54.403 has been made equal to the "tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area. .." In other words, the Tier One discount is structured so that it is equal to the amount of the federal "Subscriber Line Charge" or "SLC" on "primary" lines. This language in the Lifeline rules suggest that the monthly Lifeline discount should only be paid on primary lines within a household. The existing rural ILECs in South Dakota have interpreted the rules in this fashion and have extended Lifeline discounts to only the primary line within a residence, not secondary lines. In a situation where a customer retains his or her primary landline service and also signs up for WWC's "universal service offering," is that same person entitled to a second Lifeline discount on the wireless phone? The documents that are currently part of WWC's compliance filing do not offer any answer to this question and indicate that a customer of WWC's universal service offering, who is income eligible, is otherwise, in all cases, eligible for the prescribed Lifeline discount. APPENDIX D, WWC's "Notice to Customers Measured Rate Calling Plan Terms and Conditions of Service" states merely that "[c]ustomers may be eligible to receive monthly reduced rate telecommunications service if they satisfy federal income eligibility criteria." It is SDTA's position that payment of a second wireless Lifeline discount to an individual already receiving a Lifeline discount on his or her primary landline connection is contrary to the intent of the Lifeline rules and also contrary to the provisions of 47 C.F.R. § 54.307(a). That section of the FCC rules states that "a competitive

12. The new facts presented indicating that WWC is now planning to submit traditional mobile cellular phones for universal service also give rise to questions regarding the applicability of Lifeline and Link Up discounts. The existing federal Lifeline rules provide monthly discounts for basic telephone services under several different "tiers" of support. "Tier One" support described in 47 C.F.R. § 54.403 has been made equal to the "tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area. .." In other words, the Tier One discount is structured so that it is equal to the amount of the federal "Subscriber Line Charge" or "SLC" on "primary" lines. This language in the Lifeline rules suggest that the monthly Lifeline discount should only be paid on primary lines within a household. The existing rural ILECs in South Dakota have interpreted the rules in this fashion and have extended Lifeline discounts to only the primary line within a residence, not secondary lines. In a situation where a customer retains his or her primary landline service and also signs up for WWC's "universal service offering," is that same person entitled to a second Lifeline discount on the wireless phone? The documents that are currently part of WWC's compliance filing do not offer any answer to this question and indicate that a customer of WWC's universal service offering, who is income eligible, is otherwise, in all cases, eligible for the prescribed Lifeline discount. APPENDIX D, WWC's "Notice to Customers Measured Rate Calling Plan Terms and Conditions of Service" states merely that "[c]ustomers may be eligible to receive monthly reduced rate telecommunications service if they satisfy federal income eligibility criteria." It is SDTA's position that payment of a second wireless Lifeline discount to an individual already receiving a Lifeline discount on his or her primary landline connection is contrary to the intent of the Lifeline rules and also contrary to the provisions of 47 C.F.R. § 54.307(a). That section of the FCC rules states that "a competitive

eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area." Accordingly, a wireless ETC should only receive Lifeline support on an income eligible customer if that customer either has no landline service or has disconnected their landline service and the wireless ETC has effectively "captured" the customer's line.

13. The "Link Up" rules are even more direct in indicating that the support should only be paid for a primary connection. Under 47 C.F.R. § 54.411, the "Link Up program" is defined as "[a] reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at the customer's principal place of residence. . . ." *Emphasis added.* This language indicates very clearly that it would not be proper to claim Link Up support on a competitive ETC's secondary wireless service. The present compliance documents offered by WWC fail to properly explain to customers when Lifeline and Link Up discounts are or are not applicable. Further investigation into these applicability issues is needed and the compliance filing documents should be revised so they are in accord with the FCC's rules.

14. WWC's reliance now on cellular mobile services to provide universal service also gives good cause to question whether the company has any real commitment to meet its universal service obligations. The South Dakota Supreme Court, in its decision issued on WWC's ETC designation concluded that this Commission had erred in its initial decision denying WWC ETC designation for failing to meet the federal universal service requirements. In re GCC License Corp, 2001 SD 32, 173 (Mar. 14, 2001). The Court affirmed the State Circuit Court's finding that a carrier need not be presently offering all of the required services before

qualifying as an eligible telecommunications carrier and, further, concluded that "inability to provide service immediately upon designation is not a basis for denying ETC status." Id. at 178. The Court, however, also emphasized in its decision that "obtaining ETC status is only the first step in receiving support. Within § 214(e) Congress specifically provided that once ETC status is obtained, federal subsidies are not automatic. Id. 177. Instead, a carrier so designated shall be *eligible* to receive universal service support. Id. "If a carrier wishes to receive subsidies it must follow through with its intentions." Id. The thrust of the Supreme Court decision, as well as the FCC's Declaratory Ruling in CC Docket No. 96-45, In the Matter of the Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, FCC 00-248, released August 10, 2000, was to give competitive carriers a reasonable or "fair opportunity to provide service to consumers living in high-cost areas." FCC 00-248, par. 2. While concluding that this Commission erred in its interpretation of Section 214(e) of the Federal Communications Act, both of the decisions also recognized the authority of state commissions to revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria. Id., par. 13. At this time, given the changed circumstances presented surrounding WWC's universal service offering, SDTA believes the Commission should seek additional information from WWC as to how the company intends to meet its universal service obligations within a reasonable period of time. It was SDTA's understanding that the wireless local loop offering, because of the different equipment used, would give WWC a better ability to extend its wireless telecommunications services throughout all of the designated rural service areas. If this equipment will no longer be used and the company intends, instead, to rely only on handheld mobile equipment, how will it within any reasonable amount of time offer its universal service product throughout the designated service areas?

15. Concerns regarding WWC's commitment to provide universal service are also raised by certain language contained in the proposed service agreements offered by WWC. Section 1.4 of the "Unlimited Local Calling – Universal Service Offering" agreement proposed by WWC states that "[s]ervice is offered subject to the availability of facilities and the provisions contained therein." (APPENDIX B). Similar service availability limitations are found in paragraph 4 of the "Measured Rate Calling Plan." Language of this sort has no place in an agreement that is intended to apply to a universal service offering. The obligation of universal service assumes that the carrier is willing to offer service to any customer, regardless of location, upon request.

Based on all of the foregoing, SDTA strongly urges the Commission to withhold approval of the WWC compliance filing and to schedule further proceedings in this matter for the purpose of examining all of the above stated concerns surrounding WWC's universal service offering. The changed circumstances that are presented by the recent line count submittal to USAC by WWC and by the recent statements of WWC's representatives give good, solid reasons to further investigate WWC's plans for providing universal service. WWC should not receive federal universal support for the provisioning of inferior quality services and should be held to providing universal service in a manner that is consistent with actually meeting its universal service obligations.

Dated this 12th day of December, 2002.

Respectfully submitted,



Richard D. Coit
Executive Director and General Counsel
South Dakota Telecommunications Association

Attachment

UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
High Cost Loop Monthly Support Projected by State by Study Area
First Quarter 2003

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Monthly Support Amounts Jan- Mar	Apr-Jun	Jul-Sep	Oct-Dec	Annual Total Support Amounts
AK	613000	ACS OF ANCHORAGE	N	C	N	180,407	$0	$0	$0	$0	$0
AK	613001	ARCTIC SLOPE TEL	R	C	Y	2,806	$75,262	$75,262	$75,262	$75,262	$903,144
AK	613002	BETTLES TEL CO INC	R	C	Y	199	$4,276	$4,276	$4,276	$4,276	$51,312
AK	613003	BRISTOL BAY TEL COOP	R	C	Y	1,891	$37,901	$37,901	$37,901	$37,901	$454,812
AK	613004	BUSH-TELL INC.	R	C	Y	1,009	$25,300	$25,300	$25,300	$25,300	$303,600
AK	613005	CIRCLE UTILITIES	R	A	Y	41	$771	$771	$771	$771	$9,252
AK	613006	COPPER VALLEY TEL	R	C	Y	6,519	$326,312	$326,312	$326,312	$326,312	$3,915,744
AK	613007	CORDOVA TEL COOP	R	C	Y	2,094	$23,006	$23,006	$23,006	$23,006	$276,072
AK	613008	ACS-FAIRBANKS, INC.	R	C	Y	44,825	$114,463	$114,463	$114,463	$114,463	$1,373,556
AK	613010	ACS-N GLACIER STATE	R	C	Y	54,355	$988,410	$988,410	$988,410	$988,410	$11,860,920
AK	613011	INTERIOR TEL CO INC	R	C	Y	5,207	$241,265	$241,265	$241,265	$241,265	$2,895,180
AK	613012	ACS-AK JUNEAU	R	C	N	27,502	$0	$0	$0	$0	$0
AK	613013	KETCHIKAN PUBLIC UT	R	C	Y	11,241	$102,799	$102,799	$102,799	$102,799	$1,233,588
AK	613015	MATANUSKA TEL ASSOC	R	C	Y	60,131	$1,130,762	$1,130,762	$1,130,762	$1,130,762	$13,569,144
AK	613016	MUKLUK TEL CO INC	R	C	Y	1,478	$70,461	$70,461	$70,461	$70,461	$845,532
AK	613017	ALASKA TEL CO	R	C	Y	4,946	$70,893	$70,893	$70,893	$70,893	$850,716
AK	613018	NUSHAGAK ELEC & TEL	R	C	Y	2,630	$48,395	$48,395	$48,395	$48,395	$580,740
AK	613019	OTZ TEL COOPERATIVE	R	C	Y	3,921	$63,356	$63,356	$63,356	$63,356	$760,272
AK	613020	ACS-N SITKA	R	C	Y	14,803	$164,831	$164,831	$164,831	$164,831	$1,977,972
AK	613022	ACS-AK GREATLAND	R	C	N	5,317	$0	$0	$0	$0	$0
AK	613023	UNITED UTILITIES INC	R	C	Y	7,371	$140,627	$140,627	$140,627	$140,627	$1,687,524
AK	613025	YUKON TEL CO INC	R	C	Y	559	$12,366	$12,366	$12,366	$12,366	$148,392
AK	613026	NORTH COUNTRY TEL CO	R	A	Y	205	$1,964	$1,964	$1,964	$1,964	$23,568
AK	613028	SUMMIT TEL & TEL -AK	R	C	Y	224	$27,839	$27,839	$27,839	$27,839	$334,068
AK	619001	GCI - Disaggregated	R	X	Y	3,457	$9,818	$9,818	$9,818	$9,818	$117,816
AL	250282	BLOUNTSVILLE TEL CO	R	C	Y	4,526	$40,994	$40,994	$40,994	$40,994	$491,928
AL	250283	BRINDLEE MOUNTAIN	R	A	N	14,012	$0	$0	$0	$0	$0
AL	250284	BUTLER TEL CO	R	C	Y	8,855	$90,775	$90,775	$90,775	$90,775	$1,089,300
AL	250285	CASTLEBERRY TEL CO	R	A	Y	1,018	$3,431	$3,431	$3,431	$3,431	$41,172
AL	250286	NATIONAL OF ALABAMA	R	A	Y	2,374	$9,462	$9,462	$9,462	$9,462	$113,544
AL	250290	FARMERS TEL COOP -AL	R	C	Y	19,858	$97,671	$97,671	$97,671	$97,671	$1,172,052
AL	250295	GRACEBA TOTAL COMM	R	C	Y	4,681	$57,187	$57,187	$57,187	$57,187	$686,244
AL	250298	GULF TEL CO - AL	R	C	N	57,253	$0	$0	$0	$0	$0
AL	250299	HAYNEVILLE TEL CO	R	C	Y	2,621	$39,887	$39,887	$39,887	$39,887	$478,644
AL	250300	HOPPER TELECOMM. CO.	R	C	Y	3,943	$190,139	$190,139	$190,139	$190,139	$2,281,668
AL	250301	FRONTIER-LAMAR CNTY	R	A	Y	2,441	$6,859	$6,859	$6,859	$6,859	$82,308
AL	250302	ALLTEL ALABAMA	R	C	Y	28,370	$227,881	$227,881	$227,881	$227,881	$2,734,572
AL	250304	MILLRY TEL CO	R	C	Y	3,263	$75,756	$75,756	$75,756	$75,756	$909,072
AL	250305	MON-CRE TEL COOP	R	C	Y	9,477	$53,748	$53,748	$53,748	$53,748	$644,976
AL	250306	FRONTIER COMM-AL	R	C	Y	13,728	$16,180	$16,180	$16,180	$16,180	$194,160
AL	250307	BROADWATER TEL CO	R	C	Y	1,903	$38,362	$38,362	$38,362	$38,362	$460,344
AL	250308	NEW HOPE TEL COOP	R	C	Y	8,291	$93,150	$93,150	$93,150	$93,150	$1,117,800
AL	250311	CAHABA TEL CO (TDS)	R	A	N	2,964	$11,279	$11,279	$11,279	$11,279	$135,348
AL	250312	CITIZENS TELEPHONE LLC	R	A	N	8,286	$0	$0	$0	$0	$0
AL	250314	PEOPLES TEL CO	R	C	Y	17,001	$176,946	$176,946	$176,946	$176,946	$2,123,352
AL	250315	PINE BELT TEL CO	R	C	Y	5,051	$31,734	$31,734	$31,734	$31,734	$380,808
AL	250316	PINE KNOT TEL CO	R	C	Y	1,465	$27,809	$27,809	$27,809	$27,809	$333,708
AL	250317	ARDMORE TEL CO	R	A	N	3,052	$0	$0	$0	$0	$0

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Monthly Support Amounts				Annual Total
							Jan- Mar	Apr-Jun	Jul-Sep	Oct-Dec	Support Amounts
PA	170204	SOUTH CANAAN TEL CO	R	A	Y	3,324	$4,739	$4,739	$4,739	$4,739	$56,868
PA	170206	SUGAR VALLEY TEL CO	R	C	Y	1,290	$5,321	$5,321	$5,321	$5,321	$63,852
PA	170209	UTC OF PENNSYLVANIA	R	C	N	401,740	$0	$0	$0	$0	$0
PA	170210	VENUS TEL CORP	R	A	Y	1,428	$3,084	$3,084	$3,084	$3,084	$37,008
PA	170215	YUKON - WALTZ TEL CO	R	A	Y	1,103	$3,462	$3,462	$3,462	$3,462	$41,544
PA	170277	WEST SIDE TEL CO-PA	R	A	Y	46	$826	$826	$826	$826	$9,912
PA	175000	VERIZON PENNSYLVANIA	N	C	N	6,283,372	$0	$0	$0	$0	$0
PR	633200	P R T C - CENTRAL	N	C	N	179,843	$0	$0	$0	$0	$0
PR	633201	PUERTO RICO TEL CO	N	C	N	1,153,813	$0	$0	$0	$0	$0
PR	639001	Centennial PR Operations Corp.	N	X	N	0	$0	$0	$0	$0	$0
RI	585114	VERIZON RHODE ISLAND	N	C	N	641,977	$0	$0	$0	$0	$0
SC	240479	VERIZON SOUTH-SC	N	C	N	190,612	$0	$0	$0	$0	$0
SC	240506	UTC OF THE CAROLINAS	R	C	N	102,686	$0	$0	$0	$0	$0
SC	240512	BLUFFTON TEL. CO.	R	C	Y	17,665	$324,958	$324,958	$324,958	$324,958	$3,899,496
SC	240515	CHESNEE TEL CO	R	A	N	5,640	$0	$0	$0	$0	$0
SC	240516	CHESTER TEL CO - SC	R	A	N	19,023	$0	$0	$0	$0	$0
SC	240517	ALLTEL SO CAROLINA	R	C	Y	61,064	$51,839	$51,839	$51,839	$51,839	$622,068
SC	240520	FARMERS TEL COOP	R	C	Y	60,598	$587,571	$587,571	$587,571	$587,571	$7,050,852
SC	240521	FORT MILL TEL CO	R	C	Y	21,587	$189,223	$189,223	$189,223	$189,223	$2,270,676
SC	240523	HARGRAY TEL CO	R	C	Y	57,900	$114,826	$114,826	$114,826	$114,826	$1,377,912
SC	240524	HEATH SPRINGS TEL CO	R	A	Y	1,430	$3,079	$3,079	$3,079	$3,079	$36,948
SC	240526	VERIZON S-SC(CONTEL)	R	C	N	26,765	$0	$0	$0	$0	$0
SC	240527	HOME TEL CO	R	C	Y	23,255	$150,241	$150,241	$150,241	$150,241	$1,802,892
SC	240528	HORRY TEL COOP	R	C	N	1	$0	$0	$0	$0	$0
SC	240531	LANCASTER TEL CO	R	C	Y	26,902	$68,871	$68,871	$68,871	$68,871	$826,452
SC	240532	LOCKHART TEL CO INC	R	A	Y	713	$2,994	$2,994	$2,994	$2,994	$35,928
SC	240533	MCCLELLANVILLE TEL	R	C	Y	1,962	$41,995	$41,995	$41,995	$41,995	$503,940
SC	240535	NORWAY TEL CO	R	A	Y	876	$3,290	$3,290	$3,290	$3,290	$39,480
SC	240536	PALMETTO RURAL COOP	R	A	N	14,653	$0	$0	$0	$0	$0
SC	240538	PIEDMONT RURAL COOP	R	C	Y	14,609	$204,927	$204,927	$204,927	$204,927	$2,459,124
SC	240539	PBT TELECOM, INC.	R	C	Y	17,749	$210,913	$210,913	$210,913	$210,913	$2,530,956
SC	240541	RIDGEWAY TEL CO	R	A	N	2,410	$0	$0	$0	$0	$0
SC	240542	ROCK HILL TEL CO	R	C	Y	58,348	$15,147	$15,147	$15,147	$15,147	$181,764
SC	240544	ST STEPHEN TEL CO	R	C	Y	5,573	$51,898	$51,898	$51,898	$51,898	$622,776
SC	240546	SANDHILL TEL COOP	R	A	N	15,523	$0	$0	$0	$0	$0
SC	240550	WEST CAROLINA RURAL	R	C	Y	17,684	$215,211	$215,211	$215,211	$215,211	$2,582,532
SC	240551	WILLISTON TEL CO	R	C	Y	5,731	$54,141	$54,141	$54,141	$54,141	$649,692
SC	240554	SOUTHERN BELL SC	N	C	N	1,973,088	$0	$0	$0	$0	$0
SC	240555	HARGRAY WIRELESS	R	C	N	0	$0	$0	$0	$0	$0
SC	240556	KINGS MT-NEW PROSPECT	R	A	Y	1,019	$9,348	$9,348	$9,348	$9,348	$112,176
SC	240557	LEE TEL TELEPHONE COOP	R	A	Y	1,123	$11,883	$11,883	$11,883	$11,883	$142,596
SC	240558	CHARTER-SPRINT SOUTH	R	C	Y	1,125	$54,139	$54,139	$54,139	$54,139	$649,668
SC	240559	HILTON HEAD BLUFFTON	R	A	N	1,424	$1,089	$1,089	$1,089	$1,089	$13,068
SC	240560	CITY OF ORANGEBURG	R	A	N	10,147	$0	$0	$0	$0	$0
SC	240561	CAROLINA COMM CO	R	C	Y	7,508	$74,453	$74,453	$74,453	$74,453	$893,436
SC	240562	CITY OF FT MILL SC	R	A	Y	300	$2,300	$2,300	$2,300	$2,300	$27,600
SC	240564	HARGRAY WIRELESS, LLC	R	C	Y	11,191	$71,558	$71,558	$71,558	$71,558	$858,696
SC	240565	WILLISTON TEL CO	R	C	Y	3,668	$31,083	$31,083	$31,083	$31,083	$372,996

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Monthly Support Amounts Jan-Mar	Apr-Jun	Jul-Sep	Oct-Dec	Annual Total Support Amounts
SD	391659	GOLDEN WEST TELECOMM	R	C	Y	16,304	$232,168	$232,168	$232,168	$232,168	$2,786,016
SD	391660	MT RUSHMORE TEL	R	A	Y	6,626	$25,745	$25,745	$25,745	$25,745	$308,940
SD	391664	JAMES VALLEY COOP	R	A	Y	4,208	$35,066	$35,066	$35,066	$35,066	$420,792
SD	391666	JEFFERSON TEL CO -SD	R	C	Y	586	$30,734	$30,734	$30,734	$30,734	$368,808
SD	391667	KADOKA TELEPHONE CO	R	C	Y	615	$4,992	$4,992	$4,992	$4,992	$59,904
SD	391668	KENNEBEC TEL CO	R	C	Y	793	$27,994	$27,994	$27,994	$27,994	$335,928
SD	391669	MCCOOK COOP TEL CO	R	A	Y	2,288	$16,651	$16,651	$16,651	$16,651	$199,812
SD	391670	MIDSTATE COMM., INC.	R	A	Y	4,785	$28,749	$28,749	$28,749	$28,749	$344,988
SD	391671	WEST RIVER(MOBRIDGE)	R	A	N	2,680	$0	$0	$0	$0	$0
SD	391674	ROBERTS COUNTY COOP	R	A	Y	2,171	$18,919	$18,919	$18,919	$18,919	$227,028
SD	391676	SANTEL COMM. COOP.	R	C	Y	5,161	$72,718	$72,718	$72,718	$72,718	$872,616
SD	391677	SIOUX VALLEY TEL. CO	R	A	Y	5,881	$24,338	$24,338	$24,338	$24,338	$292,056
SD	391679	STOCKHOLM-STRANDBURG	R	C	Y	763	$9,368	$9,368	$9,368	$9,368	$112,416
SD	391680	SULLY BUTTES TEL	R	C	Y	11,359	$158,905	$158,905	$158,905	$158,905	$1,906,860
SD	391682	TRI-COUNTY TELCOM	R	A	Y	454	$4,220	$4,220	$4,220	$4,220	$50,640
SD	391684	UNION TEL CO.	R	A	Y	1,801	$6,645	$6,645	$6,645	$6,645	$79,740
SD	391685	VALLEY TELECOMM.	R	C	Y	3,747	$88,645	$88,645	$88,645	$88,645	$1,063,740
SD	391686	VIVIAN TELEPHONE CO	R	C	Y	18,945	$200,982	$200,982	$200,982	$200,982	$2,411,784
SD	391688	WESTERN TEL CO.	R	A	Y	1,142	$8,321	$8,321	$8,321	$8,321	$99,852
SD	391689	WEST RIVER COOP	R	C	Y	4,024	$59,439	$59,439	$59,439	$59,439	$713,268
SD	395145	QWEST CORP-SD	N	C	N	257,651	$0	$0	$0	$0	$0
SD	399001	Western Wireless (Pine Ridge Reser	R	X	Y	30,108	$227,197	$227,197	$227,197	$227,197	$2,726,364
TN	290260	ARDMORE TEL CO	R	C	Y	10,695	$72,612	$72,612	$72,612	$72,612	$871,344
TN	290552	CENTURYTEL-ADAMSVILL	R	C	Y	8,565	$190,394	$190,394	$190,394	$190,394	$2,284,728
TN	290553	BEN LOMAND RURAL	R	A	N	37,464	$0	$0	$0	$0	$0
TN	290554	BLEDSOE TEL COOP	R	A	N	12,290	$0	$0	$0	$0	$0
TN	290557	CENTURY-CLAIBORNE	R	C	Y	9,768	$151,990	$151,990	$151,990	$151,990	$1,823,880
TN	290559	CONCORD TEL EXCHANGE	R	A	N	26,511	$0	$0	$0	$0	$0
TN	290561	CROCKETT TEL CO	R	A	Y	4,608	$8,392	$8,392	$8,392	$8,392	$100,704
TN	290562	DEKALB TEL COOP	R	C	Y	20,697	$190,693	$190,693	$190,693	$190,693	$2,288,316
TN	290565	HIGHLAND TEL COOP-TN	R	A	N	27,248	$0	$0	$0	$0	$0
TN	290566	HUMPHREYS COUNTY	R	C	Y	2,014	$16,177	$16,177	$16,177	$16,177	$194,124
TN	290567	UNITED INTER-MT-TN	R	C	N	241,645	$0	$0	$0	$0	$0
TN	290570	LORETTO TEL CO	R	A	Y	5,345	$16,869	$16,869	$16,869	$16,869	$202,428
TN	290571	MILLINGTON TEL CO	R	C	Y	27,895	$56,498	$56,498	$56,498	$56,498	$677,976
TN	290573	NORTH CENTRAL COOP	R	C	Y	22,279	$129,106	$129,106	$129,106	$129,106	$1,549,272
TN	290574	CENTURYTEL-CHESTMAN	R	C	Y	9,183	$65,997	$65,997	$65,997	$65,997	$791,964
TN	290575	STANDARD TEL CO	R	C	Y	17,573	$136,487	$136,487	$136,487	$136,487	$1,637,844
TN	290576	TELLICO TEL CO	R	A	Y	2,442	$5,163	$5,163	$5,163	$5,163	$61,956
TN	290578	TELLICO TEL CO	R	C	Y	5,790	$40,360	$40,360	$40,360	$40,360	$484,320
TN	290579	[illegible]	R	C	Y	34,524	$60,647	$60,647	$60,647	$60,647	$727,764
TN	290580	[illegible]	R	C	Y	23,903	$371	$371	$371	$371	$4,453
TN	290582	[illegible]	R	C	Y	55,998	$140,309	$140,309	$140,309	$140,309	$1,683,708
TN	290583	[illegible]	R	A	Y	5,644	$11,536	$11,536	$11,536	$11,536	$138,432
TN	290584	[illegible]	R	A	Y	2,998	$10,947	$10,947	$10,947	$10,947	$131,364
TN	290585	[illegible]	R	C	Y	24,000	$217,824	$217,824	$217,824	$217,824	$2,613,888
TN	290586	[illegible]	R	C	N	214,000	$0	$0	$0	$0	$0
TN	290587	[illegible]	R	A	Y	8,565	$27,301	$27,301	$27,301	$27,301	$327,612

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Monthly Support Amounts				Annual Total Support Amounts
							Jan- Mar	Apr-Jun	Jul-Sep	Oct-Dec	
AK	613000	ACS OF ANCHORAGE	N	C	N	183,484	$0	$0	$0	$0	$0
AK	613001	ARCTIC SLOPE TEL	R	C	Y	2,465	$66,003	$66,003	$66,003	$66,003	$792,036
AK	613002	BETTLES TEL CO INC	R	C	Y	177	$3,126	$3,126	$3,126	$3,126	$37,512
AK	613003	BRISTOL BAY TEL COOP	R	C	Y	1,902	$25,856	$25,856	$25,856	$25,856	$310,272
AK	613004	BUSH-TELL INC.	R	C	Y	940	$22,301	$22,301	$22,301	$22,301	$267,612
AK	613005	CIRCLE UTILITIES	R	A	Y	38	$804	$804	$804	$804	$9,648
AK	613006	COPPER VALLEY TEL	R	C	Y	6,346	$288,464	$288,464	$288,464	$288,464	$3,461,568
AK	613007	CORDOVA TEL COOP	R	C	Y	2,044	$20,795	$20,795	$20,795	$20,795	$249,540
AK	613008	ACS-FAIRBANKS, INC.	R	C	Y	42,811	$227,957	$227,957	$227,957	$227,957	$2,735,484
AK	613010	ACS-N GLACIER STATE	R	C	Y	52,996	$934,736	$934,736	$934,736	$934,736	$11,216,832
AK	613011	INTERIOR TEL CO INC	R	C	Y	4,755	$209,641	$209,641	$209,641	$209,641	$2,515,692
AK	613012	ACS-AK JUNEAU	R	C	N	27,344	$0	$0	$0	$0	$0
AK	613013	KETCHIKAN PUBLIC UT	R	C	Y	11,686	$62,583	$62,583	$62,583	$62,583	$750,996
AK	613015	MATANUSKA TEL ASSOC	R	C	Y	58,397	$1,050,729	$1,050,729	$1,050,729	$1,050,729	$12,608,748
AK	613016	MUKLUK TEL CO INC	R	C	Y	1,436	$48,574	$48,574	$48,574	$48,574	$582,888
AK	613017	ALASKA TEL CO	R	C	Y	4,926	$43,871	$43,871	$43,871	$43,871	$526,452
AK	613018	NUSHAGAK TEL COOP	R	C	Y	2,523	$47,440	$47,440	$47,440	$47,440	$569,280
AK	613019	OTZ TEL COOPERATIVE	R	C	Y	3,747	$75,129	$75,129	$75,129	$75,129	$901,548
AK	613020	ACS-N SITKA	R	C	Y	13,742	$197,546	$197,546	$197,546	$197,546	$2,370,552
AK	613022	ACS-AK GREATLAND	R	C	N	5,516	$0	$0	$0	$0	$0
AK	613023	UNITED UTILITIES INC	R	C	Y	6,935	$133,683	$133,683	$133,683	$133,683	$1,604,196
AK	613025	YUKON TEL CO INC	R	C	Y	585	$11,357	$11,357	$11,357	$11,357	$136,284
AK	613026	NORTH COUNTRY TEL CO	R	A	Y	199	$1,395	$1,395	$1,395	$1,395	$16,740
AK	613029	SUMMIT TEL & TEL -AK	R	C	Y	191	$26,189	$26,189	$26,189	$26,189	$314,268
AK	613061	GCI	R	X	Y	1,484	$0	$7,459	$7,902	$7,902	$69,789
AK	613062	ALASKA DIGITEL	R	X	Y	814	$0	$0	$2,126	$2,126	$12,756
AL	250251	VERIZON S-AL(CONTEL)	W	C	N	725,812	$0	$0	$0	$0	$0
AL	250252	BLOUNTSVILLE TEL CO	R	C	Y	4,394	$54,641	$54,641	$54,641	$54,641	$655,692
AL	250253	BRIGHT'S MEADOW	R	A	N	14,325	$0	$0	$0	$0	$0
AL	250254	BUTLER TEL CO	R	C	Y	8,771	$90,871	$90,871	$90,871	$90,871	$1,090,452
AL	250255	CAST TELEPHONY TEL CO	R	A	Y	1,068	$1,214	$1,214	$1,214	$1,214	$14,568
AL	250256	CENTRAL OF ALABAMA	R	A	Y	2,370	$4,519	$4,519	$4,519	$4,519	$54,228
AL	250257	FARMERS TEL COOP -AL	R	C	Y	15,797	$84,112	$84,112	$84,112	$84,112	$1,009,340
AL	250258	FRONTIER COMM-AL	W	C	N	371,305	$0	$0	$0	$0	$0
AL	250259	GERALDINE TEL CO-AL	R	A	Y	4,067	$346	$346	$346	$346	$4,152
AL	250260	GULF TEL CO - AL	W	C	N	61,799	$0	$0	$0	$0	$0
AL	250261	HAYNEVILLE TEL CO	R	C	Y	3,851	$44,711	$44,711	$44,711	$44,711	$536,532
AL	250262	HOPPER TELECOMM CO	R	C	Y	3,000	$1,000,304	$1,000,304	$1,000,304	$1,000,304	$12,003,648
AL	250263	INTERSTATE TELECOMM CO	R	C	Y	1,470	$1,727	$1,727	$1,727	$1,727	$20,724
AL	250264	MILLRY TEL CO-AL	R	C	Y	2,470	$28,672	$28,672	$28,672	$28,672	$344,064
AL	250265	NEW HOPE TEL CO	R	C	Y	2,000	$23,213	$23,213	$23,213	$23,213	$278,556
AL	250266	ONTELECOM	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250267	PEOPLES TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250268	PINE TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250269	ROME TEL CO-AL	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250270	SOUTH CENTRAL TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250271	SOUTHERN TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250272	TALLAPOOSA RIVER TEL	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250273	TENNESSEE TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250274	UNITED TEL CO-AL	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250275	VERNON TEL EXCHANGE	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250276	WORTHVILLE TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250277	ZONE TEL CO	R	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250278	ALLTEL AL-ARKANSAS	W	C	Y	24,000	$278,568	$278,568	$278,568	$278,568	$3,342,816
AL	250279	BELL SOUTH TEL CO	W	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284
AL	250280	ALLTEL AL-MIDSTATE TEL	W	C	Y	1,000	$11,607	$11,607	$11,607	$11,607	$139,284

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Monthly Support Amounts Jan- Mar	Apr-Jun	Jul-Sep	Oct-Dec	Annual Total Support Amounts
SC	240542	ROCK HILL TEL CO	R	C	Y	58,748	$9,847	$9,847	$83,843	$83,843	$562,140
SC	240544	ST STEPHEN TEL CO	R	C	Y	5,569	$48,414	$48,414	$48,414	$48,414	$580,968
SC	240546	SANDHILL TEL COOP	R	A	N	16,246	$0	$0	$0	$0	$0
SC	240550	WEST CAROLINA RURAL	R	C	Y	13,175	$106,171	$106,171	$137,791	$137,791	$1,463,772
SC	240551	WILLISTON TEL CO	R	C	Y	5,629	$55,916	$55,916	$55,916	$55,916	$670,992
SC	245194	SOUTHERN BELL-SC	N	C	N	1,528,085	$0	$0	$0	$0	$0
SC	249001	HARGRAY WIRELESS	R	X	Y	17,011	$0	$0	$57,854	$57,854	$347,124
SD	391640	ARMOUR INDEPENDENT	R	A	Y	1,694	$4,460	$4,460	$4,460	$4,460	$53,520
SD	391642	BALTIC TELECOM COOP.	R	A	Y	3,129	$7,563	$7,563	$7,563	$7,563	$90,756
SD	391647	CHEYENNE RIVER SIOUX	R	C	Y	3,332	$58,542	$58,542	$58,542	$58,542	$702,504
SD	391649	BERESFORD MUNICIPAL	R	A	Y	1,432	$328	$328	$328	$328	$3,936
SD	391650	CITY OF BROOKINGS	R	A	N	16,597	$0	$0	$0	$0	$0
SD	391652	DAKOTA COMM TEL.	R	C	Y	7,155	$84,526	$84,526	$84,526	$84,526	$1,014,312
SD	391653	CITY OF FAITH MUNIC	R	A	Y	393	$1,206	$1,206	$1,206	$1,206	$14,472
SD	391654	INTERSTATE TELECOMM.	R	A	Y	15,365	$37,713	$37,713	$37,713	$37,713	$452,556
SD	391657	SPLITROCK TELECOM	R	A	Y	6,863	$1,880	$1,880	$1,880	$1,880	$22,560
SD	391659	GOLDEN WEST TELECOMM	R	C	Y	16,682	$264,906	$264,906	$264,906	$264,906	$3,178,872
SD	391660	MT RUSHMORE TEL	R	A	Y	6,543	$12,053	$12,053	$12,053	$12,053	$144,636
SD	391664	JAMES VALLEY COOP	R	A	Y	4,242	$14,529	$14,529	$14,529	$14,529	$174,348
SD	391666	JEFFERSON TEL CO -SD	R	C	Y	587	$27,314	$27,314	$27,314	$27,314	$327,768
SD	391667	KADOKA TELEPHONE CO	R	C	Y	653	$4,399	$4,399	$4,399	$4,399	$52,788
SD	391668	KENNEBEC TEL CO	R	C	Y	816	$16,140	$16,140	$16,140	$16,140	$193,680
SD	391669	MIDCOOK COOP TEL CO	R	A	Y	676	$8,732	$8,732	$8,732	$8,732	$104,784
SD	391670	MIDSTATE COMM., INC.	R	A	Y	4,848	$13,852	$13,852	$13,852	$13,852	$166,224
SD	391671	WEST RIVER/MOBRIDGE	R	A	N	2,666	$0	$0	$0	$0	$0
SD	391674	ROBERTS COUNTY COOP	R	A	Y	2,157	$9,280	$9,280	$9,280	$9,280	$111,360
SD	391676	SANTEL COMM. COOP.	R	C	Y	5,227	$46,617	$46,617	$46,617	$46,617	$559,404
SD	391677	SIOUX VALLEY TEL CO	R	A	Y	6,529	$12,238	$12,238	$12,238	$12,238	$146,856
SD	391679	STOCKHOLM/STRANDBURG	R	C	Y	772	$11,160	$11,160	$11,160	$11,160	$133,920
SD	391682	VALLY QUTTES TEL	R	C	Y	11,544	$80,105	$80,105	$80,105	$80,105	$961,260
SD	391683	TRI-COUNTY TELCOM	R	A	Y	490	$2,571	$2,571	$2,571	$2,571	$30,852
SD	391684	VENTURE TEL CO	R	A	Y	1,853	$2,871	$2,871	$2,871	$2,871	$34,452
SD	391685	VIBURG TELEPHONE	R	C	Y	3,794	$69,462	$69,462	$69,462	$69,462	$833,544
SD	391686	VISION COMMUNICATIONS	R	C	Y	28,140	$183,779	$183,779	$183,779	$183,779	$2,205,348
SD	391687	WESSINGTON TEL CO	R	A	Y	1,331	$3,750	$3,750	$3,750	$3,750	$45,000
SD	391688	WEST RIVER COOP	R	C	Y	4,940	$54,913	$54,913	$54,913	$54,913	$658,956
SD	391689	QWEST CORP SD	S	C	N	231,760	$0	$0	$0	$0	$0
SD	391690	WEST RIVER/HAZELTON	R	C	Y	2,440	$0	$0	$27,750	$27,750	$166,500
SD	391691	GOLDEN WEST TEL CO	R	C	Y	11,181	$37,438	$37,438	$37,438	$37,438	$449,256
SD	391692	[illegible]	R	C	Y	3,166	$47,114	$47,114	$47,114	$47,114	$565,368
SD	391693	[illegible]	R	C	N	1,229	$0	$0	$0	$0	$0
SD	391694	[illegible]	R	C	N	1,961	$0	$0	$0	$0	$0

[illegible]
High Cost Loop Support to Rate-of-Return Area
Fourth Quarter 2002

[illegible]
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State	SAC	Study Area Name	Rural	Type	HCL	Working Lines	Jan - Mar	Monthly Support Amounts Apr - Jun	Jul - Sep	Oct - Dec	Annual Total Support Amounts
AK	613000	ACS OF ANCHORAGE	R	C	N	143,644	$0	$0	$0	$0	$0
AK	613001	ARCTIC SLOPE TEL	R	C	Y	2,662	$67,906	$67,906	$67,906	$67,906	$815,472
AK	613002	BETTLES TEL CO INC	R	C	Y	177	$5,263	$5,263	$5,263	$5,263	$63,156
AK	613003	BRISTOL BAY TEL COOP	R	C	Y	5,902	$27,395	$27,395	$27,395	$27,395	$328,740
AK	613004	BUSH TELL INC	R	C	Y	943	$21,061	$21,061	$21,061	$21,061	$252,732
AK	613005	CIRCLE UTILITIES	R	A	Y	95	$804	$804	$804	$804	$9,648
AK	613006	COPPER VALLEY TEL	R	C	Y	6,346	$293,599	$293,599	$293,599	$293,599	$3,523,188
AK	613007	CORDOVA TEL COOP	R	C	Y	2,044	$22,449	$22,449	$22,449	$22,449	$269,388
AK	613008	ACS FAIRBANKS, INC.	R	C	Y	42,811	$262,802	$262,802	$262,802	$262,802	$3,153,624
AK	613010	ACS N GLACIER STATE	R	C	Y	52,996	$977,623	$977,623	$977,623	$977,623	$11,731,476
AK	613011	INTERIOR TEL CO INC	R	C	Y	4,755	$213,469	$213,469	$213,469	$213,469	$2,561,628
AK	613012	ACS-AK JUNEAU	R	C	N	27,344	$0	$0	$0	$0	$0
AK	613013	KETCHIKAN PUBLIC UT	R	C	Y	11,686	$72,040	$72,040	$72,040	$72,040	$864,480
AK	613015	MATANUSKA TEL ASSOC	R	C	Y	58,197	$1,097,987	$1,097,987	$1,097,987	$1,097,987	$13,175,844
AK	613016	MUKLUK TEL CO INC	R	C	Y	1,436	$49,736	$49,736	$49,736	$49,736	$596,832
AK	613017	ALASKA TEL CO	R	C	Y	4,026	$47,857	$47,857	$47,857	$47,857	$574,284
AK	613018	NUSHAGAK TEL COOP	R	C	Y	2,523	$49,481	$49,481	$49,481	$49,481	$593,772
AK	613019	OTZ TEL COOPERATIVE	R	C	Y	3,747	$78,161	$78,161	$78,161	$78,161	$937,932
AK	613020	ACS-N SITKA	R	C	Y	13,742	$208,667	$208,667	$208,667	$208,667	$2,504,004
AK	613022	ACS-AK GREATLAND	R	C	N	5,516	$0	$0	$0	$0	$0
AK	613023	UNITED UTILITIES INC	R	C	Y	6,035	$139,295	$139,295	$139,295	$139,295	$1,671,540
AK	613025	YUKON TEL CO INC	R	C	Y	585	$11,830	$11,830	$11,830	$11,830	$141,960
AK	613026	NORTH COUNTRY TEL CO	R	A	Y	198	$1,395	$1,395	$1,395	$1,395	$16,740
AK	613028	SUMMIT TEL & TEL -AK	R	C	Y	191	$26,343	$26,343	$26,343	$26,343	$316,116
AK	619001	GCI	R	X	Y	1,484	$0	$7,459	$9,103	$9,103	$76,995
AK	619002	ALASKA DIGITEL	R	X	Y	814	$0	$0	$15,305	$15,305	$91,830
AL	250281	VERIZON S-AL(CONTEL)	N	C	N	125,812	$0	$0	$0	$0	$0
AL	250282	BLOUNTSVILLE TEL CO	R	C	Y	4,394	$58,197	$58,197	$58,197	$58,197	$698,364
AL	250283	BRINDLEE MOUNTAIN	R	A	N	14,300	$0	$0	$0	$0	$0
AL	250284	BUTLER TEL CO	R	C	Y	8,771	$97,969	$97,969	$97,969	$97,969	$1,175,628
AL	250285	CASTLEBERRY TEL CO	R	A	Y	1,010	$1,214	$1,214	$1,214	$1,214	$14,568
AL	250286	NATIONAL OF ALABAMA	R	A	Y	2,372	$4,519	$4,519	$4,519	$4,519	$54,228
AL	250290	FARMERS TEL COOP -AL	R	C	Y	19,797	$97,984	$97,984	$102,281	$102,281	$1,201,590
AL	250293	VERIZON SOUTH-AL	N	C	N	167,869	$0	$0	$0	$0	$0
AL	250295	GRACEBA TOTAL COMM	R	A	Y	4,681	$590	$590	$590	$590	$7,080
AL	250298	GULF TEL CO - AL	R	C	N	51,169	$0	$0	$0	$0	$0
AL	250299	HAYNEVILLE TEL CO	R	C	Y	2,611	$36,816	$36,816	$36,816	$36,816	$441,792
AL	250300	HOPPER TELECOMM. CO.	R	C	Y	3,934	$168,461	$168,461	$170,412	$170,412	$2,033,238
AL	250301	FRONTIER-LAMAR CNTY	R	A	Y	2,469	$1,741	$1,741	$1,741	$1,741	$20,892
AL	250302	ALLTEL ALABAMA	R	C	Y	28,436	$238,667	$238,667	$250,901	$250,901	$2,937,408
AL	250304	MILLRY TEL CO	R	C	Y	7,127	$87,579	$87,579	$87,579	$87,579	$1,050,948
AL	250305	MON-CRE TEL COOP	R	C	Y	3,492	$32,215	$32,215	$32,215	$32,215	$386,580
AL	250306	FRONTIER COMM.-AL	R	C	Y	14,341	$28,781	$28,781	$28,781	$28,781	$345,372
AL	250307	MOUNDVILLE TEL CO	R	C	Y	1,871	$35,422	$35,422	$35,422	$35,422	$425,064
AL	250308	NEW HOPE TEL COOP	R	A	N	6,291	$0	$0	$0	$0	$0
AL	250311	OAKMAN TEL CO (TDS)	R	A	Y	2,630	$6,127	$6,127	$6,127	$6,127	$73,524
AL	250312	OTELCO TELEPHONE LLC	R	A	N	6,173	$0	$0	$0	$0	$0
AL	250314	PEOPLES TEL CO	R	C	Y	17,007	$197,199	$197,199	$206,278	$206,278	$2,420,862
AL	250315	PINE BELT TEL CO	R	C	Y	2,674	$51,970	$51,970	$51,970	$51,970	$623,640
AL	250316	RAGLAND TEL CO	R	C	Y	1,415	$29,380	$29,380	$29,380	$29,380	$352,560

[illegible] High Cost Support Mechanism

August 2, 2002

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Jan - Mar	Apr - Jun	Jul - Sep	Oct - Dec	Annual Amount
							Monthly Support Amounts				Annual Total Support Amounts
PA	172000	VERIZON PENNSYLVANIA	N	C	N	6,395,835	$0	$0	$0	$0	$0
PR	633200	P.R.T.C. - CENTRAL	N	C	Y	177,850	$210,474	$193,152	$193,752	$193,752	$1,181,477
PR	633201	PUERTO RICO TEL CO	N	C	N	1,154,251	$0	$0	$0	$0	$0
PR	639001	CENTENNIAL PCS OPER	N	X	Y	218,438	$12,066	$10,344	$11,197	$11,197	$116,613
RI	585114	VERIZON RHODE ISLAND	N	C	N	660,645	$0	$0	$0	$0	$0
SC	240479	VERIZON SOUTH SC	N	C	N	193,463	$0	$0	$0	$0	$0
SC	240506	UTC OF THE CAROLINAS	R	C	Y	100,006	$90,610	$90,610	$90,610	$90,610	$1,087,320
SC	240512	BLUFFTON TEL. CO.	R	C	Y	17,505	$229,278	$229,278	$229,766	$229,766	$2,174,264
SC	240515	CHESNEE TEL CO	R	A	N	5,805	$0	$0	$0	$0	$0
SC	240516	CHESTER TEL CO - SC	R	A	N	18,652	$0	$0	$0	$0	$0
SC	240517	ALLTEL SO CAROLINA	R	C	Y	60,062	$99,017	$99,017	$104,976	$104,976	$1,223,934
SC	240520	FARMERS TEL COOP	R	C	Y	60,140	$552,469	$552,469	$620,433	$620,433	$7,037,412
SC	240521	FORT MILL TEL CO	R	C	Y	21,244	$176,147	$176,147	$205,647	$205,647	$2,200,764
SC	240523	HARGRAY TEL CO	R	C	Y	58,461	$0	$0	$126,414	$126,414	$758,484
SC	240524	HEATH SPRINGS TEL CO	R	A	Y	1,456	$315	$315	$315	$315	$1,760
SC	240526	VERIZON S-SC(CONTEL)	R	C	Y	26,263	$37,372	$37,372	$37,372	$37,372	$448,464
SC	240527	HOME TEL CO	R	C	Y	23,033	$141,144	$141,144	$142,666	$142,666	$1,702,660
SC	240528	HORRY TEL COOP	R	C	Y	98,018	$161,693	$161,693	$224,480	$224,480	$2,317,036
SC	240531	LANCASTER TEL CO	R	C	Y	26,594	$66,347	$66,347	$88,650	$88,650	$929,982
SC	240532	LOCKHART TEL CO INC	R	A	Y	709	$1,534	$1,534	$1,534	$1,534	$18,408
SC	240533	MCCLELLANVILLE TEL	R	C	Y	1,934	$41,391	$41,391	$42,011	$42,011	$500,412
SC	240535	NORWAY TEL CO	R	A	Y	855	$1,467	$1,467	$1,467	$1,467	$17,604
SC	240536	PALMETTO RURAL COOP	R	A	N	14,132	$0	$0	$0	$0	$0
SC	240538	PIEDMONT RURAL COOP	R	C	Y	14,672	$200,634	$200,634	$200,634	$200,634	$2,407,608
SC	240539	PBT TELECOM, INC.	R	C	Y	19,612	$169,150	$169,150	$178,756	$178,756	$2,087,436
SC	240541	RIDGEWAY TEL CO	R	A	N	2,362	$0	$0	$0	$0	$0
SC	240542	ROCK HILL TEL CO	R	C	Y	58,748	$49,406	$49,406	$123,438	$123,438	$1,037,064
SC	240544	ST STEPHEN TEL CO	R	C	Y	5,569	$52,921	$52,921	$52,921	$52,921	$635,052
SC	240546	SANDHILL TEL COOP	R	A	N	16,246	$0	$0	$0	$0	$0
SC	240550	WEST CAROLINA RURAL	R	C	Y	13,175	$116,863	$116,863	$148,452	$148,452	$1,591,890
SC	240551	WILLISTON TEL CO	R	C	Y	5,629	$60,471	$60,471	$60,471	$60,471	$725,652
SC	245194	SOUTHERN BELL-SC	N	C	N	1,528,085	$0	$0	$0	$0	$0
SC	249001	HARGRAY WIRELESS	R	X	Y	17,011	$0	$0	$69,905	$69,905	$419,430
SD	391640	ARMOUR INDEPENDENT	R	A	Y	1,694	$4,460	$4,460	$4,460	$4,460	$53,520
SD	391642	BALTIC TELECOM COOP.	R	A	Y	3,129	$7,563	$7,563	$7,563	$7,563	$90,756
SD	391647	CHEYENNE RIVER SIOUX	R	C	Y	3,332	$61,239	$61,239	$61,239	$61,239	$734,868
SD	391649	BERESFORD MUNICIPAL	R	A	Y	1,432	$328	$328	$328	$328	$3,936
SD	391650	CITY OF BROOKINGS	R	A	N	16,597	$0	$0	$0	$0	$0
SD	391652	DAKOTA COMM TEL.	R	C	Y	7,155	$91,027	$91,027	$91,027	$91,027	$1,092,324
SD	391653	CITY OF FAITH MUNIC	R	A	Y	393	$1,206	$1,206	$1,206	$1,206	$14,472
SD	391654	INTERSTATE TELECOMM.	R	A	Y	15,365	$37,713	$37,713	$37,713	$37,713	$452,556
SD	391657	SPLITROCK TELECOM	R	A	Y	6,863	$1,880	$1,880	$1,880	$1,880	$22,560
SD	391659	GOLDEN WEST TELECOMM	R	C	Y	16,682	$278,406	$278,406	$278,406	$278,406	$3,340,872
SD	391660	MT RUSHMORE TEL	R	A	Y	6,543	$12,053	$12,053	$12,053	$12,053	$144,636
SD	391664	JAMES VALLEY COOP	R	A	Y	4,242	$14,529	$14,529	$14,529	$14,529	$174,348
SD	391666	JEFFERSON TEL CO -SD	R	C	Y	587	$27,789	$27,789	$27,789	$27,789	$333,468
SD	391667	KADOKA TELEPHONE CO	R	C	Y	653	$4,927	$4,927	$4,927	$4,927	$59,124
SD	391668	KENNEBEC TEL CO	R	C	Y	816	$16,800	$16,800	$16,800	$16,800	$201,600
SD	391669	MCCOOK COOP TEL CO	R	A	Y	676	$8,732	$8,732	$8,732	$8,732	$104,784
SD	391670	MIDSTATE COMM., INC	R	A	Y	4,946	$13,852	$13,852	$13,852	$13,852	$166,224

[illegible]
High Cost Loop Support to Rate-of-Return Areas
Fourth Quarter 2002

State	SAC	Study Area Name	Rural	Type	HCL	Working Loops	Jan - Mar	Apr - Jun	Jul - Sep	Oct - Dec	Annual Total Support Amount
SD	[illegible]	[illegible]	R	A	N	[illegible]	$0	$0	$0	$0	$0
SD	[illegible]	[illegible]	R	A	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	C	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	A	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	C	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	C	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	A	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	A	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	C	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	C	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	A	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	[illegible]	[illegible]	R	C	Y	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
SD	355145	QWEST CORP SD	N	C	N	226,180	$0	$0	$0	$0	$0
SD	399001	WESTERN WIRELESS	R	X	Y	1,440	$0	$32,598	$32,598	$32,598	$197,532
TN	290280	ARDMORE TEL CO	R	C	Y	10,567	$44,560	$44,560	$44,560	$44,560	$534,720
TN	290552	CENTURYTEL-ADAMSVILL	R	C	Y	8,666	$166,153	$166,153	$166,448	$166,448	$2,329,609
TN	290553	BEN LOMAND RURAL	R	A	N	37,229	$0	$0	$0	$0	$0
TN	290554	BLEDSOE TEL COOP	R	A	N	11,945	$0	$0	$0	$0	$0
TN	290557	CENTURY-CLAIBORNE	R	C	Y	9,749	$148,016	$148,016	$150,454	$150,454	$1,790,820
TN	290559	CONCORD TEL EXCHANGE	R	A	N	26,398	$0	$0	$0	$0	$0
TN	290561	CROCKETT TEL CO	R	A	Y	4,722	$575	$575	$575	$575	$6,900
TN	290562	DEKALB TEL COOP	R	C	Y	20,443	$182,637	$182,637	$182,637	$182,637	$2,191,644
TN	290565	HIGHLAND TEL COOP-TN	R	A	N	26,417	$0	$0	$0	$0	$0
TN	290566	HUMPHREY'S COUNTY	R	C	Y	1,989	$18,758	$18,758	$18,758	$18,758	$225,096
TN	290567	UNITED INTER-MT-TN	R	C	N	254,563	$0	$0	$0	$0	$0
TN	290570	LORETTO TEL CO	R	A	Y	6,316	$4,336	$4,336	$4,336	$4,336	$52,032
TN	290571	MILLINGTON TEL CO	R	C	Y	27,673	$23,689	$23,689	$36,236	$36,236	$359,550
TN	290573	NORTH CENTRAL COOP	R	C	Y	21,934	$121,843	$121,843	$132,761	$132,761	$1,527,624
TN	290574	CENTURYTEL-OOLTEWAH	R	A	Y	9,665	$48,956	$48,956	$48,956	$48,956	$587,472
TN	290575	TENNESSEE TEL CO	R	C	Y	66,698	$151,487	$151,487	$151,487	$151,487	$1,817,844
TN	290576	PEOPLES TEL CO	R	A	Y	5,314	$195	$195	$195	$195	$2,340
TN	290578	TELLICO TEL CO	R	C	Y	9,557	$38,215	$38,215	$38,215	$38,215	$458,580
TN	290579	TWIN LAKES TEL COOP	R	C	Y	37,744	$50,745	$50,745	$50,745	$50,745	$608,940
TN	290580	CITIZENS-VOLUNTEER	R	C	Y	23,254	$32,586	$32,586	$32,586	$32,586	$391,032
TN	290581	UTC OF TN	R	C	Y	14,390	$121,509	$121,509	$121,509	$121,509	$1,458,108
TN	290583	WEST TENNESSEE TEL	R	A	Y	5,120	$3,293	$3,293	$3,293	$3,293	$39,516
TN	290584	YORKVILLE TEL COOP	R	A	Y	2,123	$5,768	$5,768	$5,768	$5,768	$69,216
TN	294336	CUC DBA CITIZENS-TN	R	C	Y	78,288	$257,279	$257,279	$257,279	$257,279	$3,087,348
TN	295185	SO. CENTRAL BELL -TN	N	C	N	2,754,858	$0	$0	$0	$0	$0
TN	299001	BEN LOMAND COMM	R	X	Y	5,559	$11,700	$14,213	$18,269	$18,269	$187,353
TX	440425	CAMERON TEL CO TEXAS	R	C	Y	1,371	$41,279	$41,279	$41,279	$41,279	$495,348
TX	441163	VALOR-TX	R	C	Y	322,546	$71,120	$71,120	$71,120	$71,120	$853,440
TX	442038	BLOSSOM TEL CO	R	A	Y	1,473	$283	$283	$283	$283	$3,396
TX	442039	BIG BEND TEL CO INC	R	C	Y	5,799	$260,579	$260,579	$260,579	$260,579	$3,126,948
TX	442040	BRAZORIA TEL CO	R	C	Y	6,895	$138,139	$138,139	$138,139	$138,139	$1,657,668
TX	442041	BRAZOS TEL COOP INC	R	C	Y	6,050	$59,847	$59,847	$61,515	$61,515	$728,172
TX	442043	NORTH TEXAS TEL. CO.	R	A	Y	972	$2,748	$2,748	$2,748	$2,748	$32,976
TX	442046	CAP ROCK TEL COOP	R	C	Y	5,166	$31,155	$31,155	$31,155	$31,155	$373,860
TX	442052	CENTRAL TEXAS CO-OP	R	C	Y	7,610	$353,910	$353,910	$353,910	$353,910	$4,246,920
TX	442057	COLEMAN COUNTY CO-OP	R	C	Y	2,533	$106,687	$106,687	$106,687	$106,687	$1,280,244

USAC - High Cost Support Mechanism

August 2, 2002

Main Identity

From: "Dejordy, Gene" <Gene.Dejordy@wwireless.com>
To: <Karen.Cremer@state.sd.us>; <tjw@gpgnlaw.com>; <Harlan.Best@state.sd.us>; "Rao, Suzie" <Suzie.Rao@wwireless.com>
Cc: <richcoit@sditc.org>
Sent: Thursday, October 17, 2002 9:15 AM
Subject: RE: TC98-146

Karen, I was involved in the original ETC filing and hearing in 1998, as was Rich Coit, and there has never been a limitation imposed on what type of equipment -- so called "fixed mobile" or mobile -- used to provide service to customers. Furthermore, and most importantly, the 1996 Act, the FCC rules, and the ETC Order issued by the South Dakota Public Utilities Commission do not limit ETC eligibility to a certain type of customer equipment (I am out of the office on travel today, but Suzie and Talbot can provide you with the citations to these controlling precedents).

I believe your reference to "fixed mobile" is to a type of customer equipment manufactured by Telular Corporation. Since 1998, when we first had our ETC hearing, there have been significant changes in the type of customer equipment used by cellular carriers, as you may well know. Our intent, reflected in the Compliance Filing, is to offer universal service through different types of customer equipment and different service options, consistent with the 1996 Act, the FCC rules and the ETC Order by the South Dakota Utilities Commission. I believe that our Compliance Filing does just that. The FCC recently ruled that the different types of customer equipment offered by Western Wireless for its universal service offering are all Commerical Mobile Radio Service (CMRS) and regulated as such (again, Suzie and Talbot can provide the citation for this order).

To the extent that we include any existing customers as our universal service customers, we will apply the terms and conditions of the ETC Order and the Compliance Filing to these existing customers, which the "notice" insert would accomplish. As for whether Lifeline support is available only for primary lines, I do not have a copy of the FCC rules, but I am fairly certain that there is no such limitation imposed by the rules. Suzie may be able to provide you with a citation.

Western Wireless has fully complied with the terms and conditions of the ETC Order and has incorporated all required provisions, and more, in its Compliance Filing. I would hope that the Commission recognizes that we have complied with the ETC Order and will approve the Compliance Filing today. Please coordinate with Suzie and Talbot on any follow-up questions, since I am on travel today. I appreciate your efforts, and the efforts of the Commission, to finalize matters prior to the meeting today.

Gene DeJordy
Vice President of Regulatory Affairs
Western Wireless Corporation
3650 131st Ave., SE
Bellevue, Washington 98006
425-586-8055 (tel)

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the foregoing document were hand delivered on the 12th day of December 2002 to:

Deb Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

A copy was sent by First Class Mail via U.S. Postal Service to:

Suzie Rao
Regulatory Counsel
Western Wireless Corporation
3650 – 131st Ave. SE, Suite 400
Bellevue, WA 98006

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Richard D. Coit
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ATTORNEYS LICENSED TO PRACTICE IN
SOUTH DAKOTA, NORTH DAKOTA, NEBRASKA,
MONTANA, WYOMING, MINNESOTA & CALIFORNIA

December 27, 2002

Date Docketed DEC 31 2002

VIA FACSIMILE 1-605-773-3809
And U.S. MAIL
Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RECEIVED
DEC 30 2002
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

RE: Docket No. TC98-146 - In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier
GPGN File No. 000362

Dear Ms. Elofson:

Enclosed for filing please find Western Wireless' Response to Comments of South Dakota Telecommunications Association with the attached Affidavit of Suzie Rao. The original and ten copies of the Response will be sent today by U.S. mail to your office. The original Affidavit of Suzie Rao will be sent directly to the Commission via Federal Express by Ms. Rao.

If you have any questions, please contact me.

Sincerely,

Talbot J. Wieczorek

TJW:klw
c: Richard Coit via fax 1-605-224-1637
Brian Meyer via fax 1-605-224-9607
Mark Ayotte via fax 1-651-223-6450
James Blundell via fax 1-425-586-8118

Date Docketed DEC 17 2002

RECEIVED
DEC 16 2002
SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))	DOCKET TC02-146

RESPONSE TO COMMENTS OF SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

WWC License LLC ("Western Wireless") hereby responds to the Comments filed by the South Dakota Telecommunications Association ("SDTA") in the above matter. As demonstrated below, Western Wireless has satisfied the conditions set forth in the Commission's October 18, 2001 Order designating Western Wireless as an eligible telecommunications carrier ("ETC") in the SDTA areas ("October 18 Designation Order"). Commission Staff has filed no comments or raised any objection to Western Wireless' Compliance Filing. In fact, SDTA's comments do not raise any issue or objection relating to the Compliance Filing. The Commission should reject the attempts by SDTA to delay or thwart Western Wireless' competitive universal service offerings under the guise of opposing the Western Wireless Compliance Filing. Since Western Wireless has satisfied the conditions of the October 18 Designation Order, the Commission should not allow SDTA to attempt to relitigate settled issues or attempt to raise federal funding issues under the exclusive jurisdiction and control of the FCC and the Universal Service Administration Company ("USAC").

I. THE COMMISSION'S OCTOBER 18 DESIGNATION ORDER ESTABLISHED SPECIFIC AND LIMITED REQUIREMENTS FOR A COMPLIANCE FILING.

Western Wireless' designation as an ETC in South Dakota has been before the Commission since August 25, 1998. Evidentiary hearings were held on December 17 and 18, 1998. Although the Commission initially denied Western Wireless' ETC application, the

decision was reversed on appeal. The Circuit Court ordered the adoption of new findings of fact in this case, including that:

> GCC currently provides all of the supported services required by the FCC through the existing mobile cellular services.
>
> . . .
>
> For areas served by rural telephone companies, GCC meets all applicable criteria for ETC designation except the public interest factor, which was not reached by the Commission and not addressed herein. GCC is entitled to be designated as an ETC in these areas served by rural telephone companies so long as the Commission determines that the designation is in the public interest under 47 U.S.C. § 214(e)(2).

Findings of Fact, Conclusions of Law, and Order, pp. 4, 10 (emphasis added). The Supreme Court affirmed the Circuit Court's Order, and further directed the Commission to act promptly, based on the record evidence, to determine the remaining public interest issue:

> Although we do not wish to hamstring the PUC by unreasonably limiting its oversight of the telecommunications industry, we think it vital that there be as little delay as possible in allowing GCC to begin operations in South Dakota. This matter has been delayed for years. Evidence was submitted in 1998 on the public interest question and the issue would have been reached then if the inquiry had not been aborted due primarily to an erroneous application of federal law. Therefore, if, based on the record evidence the PUC finds that the public interest test has been satisfied in the rural areas where GCC is seeking ETC status, then the PUC must award such designation in those areas.

In re GCC License Corp., 623 N.W.2d 474, 483-84 (S.D. 2001) (emphasis added).

After additional briefing and argument, this Commission determined the sole remaining issue before it, and ruled that designating Western Wireless as an ETC served the public interest in accordance with 47 U.S.C. § 214(e)(2). As directed by the Supreme Court, Western Wireless was designated an ETC. October 18 Designation Order, p. 7. The only conditions stated in the Commission's grant of ETC designation were as follows:

> 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the

> Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

October 18 Designation Order, p. 2. Nothing in the Commission's Order contemplated further proceedings or required approval of the filing.

Western Wireless filed its initial Compliance Filing with the Commission on August 28, 2002 as directed by the October 18 Designation Order. After certain questions were raised, Western Wireless filed amendments to its Compliance Filing on October 11, 2002 and December 2, 2002. These amendments resolved all questions and comments expressed by the Commission and Staff. As amended, Western Wireless' Compliance Filing fully meets the conditions imposed by the Commission as follows:

REQUIREMENT	HOW WESTERN WIRELESS HAS MET THE REQUIREMENT
1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers.	Appendixes B and C of Western Wireless' Compliance Filing are the Service Agreements Western Wireless intends to offer to universal service customers. The Service Agreements have been filed with the Commission.
2) The service agreement will be consistent with the Commission's service quality rules.	Commission Staff agrees that the attached Service Agreements (Appendixes B and C of the Compliance Filing) are consistent with the Commission's service quality rules.
3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction.	Paragraph 5 of Appendix B and paragraph 13 of Appendix C, the Service Agreements to the Compliance Filing, state "Any disputes or claims arising under this agreement may be subject to the Commission's jurisdiction."

4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas.	Appendix A of Western Wireless' Compliance Filing is Western Wireless' advertising plan. Exhibit G_1 and G_2 list local calling areas for its rate plans. The advertising plan has been filed with the Commission.
5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply.	Appendix F contains Western Wireless' Lifeline/Link Up Application forms. Paragraph 1.1.8 of Appendix B and paragraph 9 of Appendix C, the Service Agreements provided with the Compliance Filing, state "[Western Wireless] will provide basic information about reduced rate telecommunications services under the federal Lifeline and Link Up programs. [Western Wireless] will provide Lifeline and Link Up service to customers who request such service and who meet eligibility requirements to qualify for such service. [Western Wireless] will comply with all current and future requirements related to Lifeline and Link Up." Further, the Customer Preference page (Appendix E to the Compliance Filing) asks whether a new customer may be eligible for Lifeline or Link-Up.
6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.	Appendix H is the letter that will be sent to the Commission stating that Western Wireless has commenced offering universal service in certain South Dakota study areas.

Staff now agrees that Western Wireless' amended Compliance Filing meets all of the conditions established by the Commission in its October 18 Designation Order. Staff has not submitted any further questions, issues or comments. The Commission should recognize this fact and not allow SDTA to attempt to further litigate settled issues or attempt to raise federal universal service funding issues under the exclusive jurisdiction of the FCC and USAC.

While SDTA's comments purport to relate to the Compliance Filing, SDTA fails to identify any reason the Compliance Filing does not meet any of the six enumerated conditions in the October 18 Designation Order. There is not a single meritorious claim in the SDTA

comments that the Compliance Filing fails to adequately address any specific item. Instead, SDTA seeks to raise new issues, re-argue old issues, and would ultimately have the Commission re-open the record in violation of the Supreme Court's decision. The Commission should reject SDTA's dilatory tactics.

Once the Commission issued its October 18 Designation Order, Western Wireless was an ETC subject only to making a Compliance Filing addressing the six items above. Accordingly, Western Wireless has performed this task to the satisfaction of Staff and the Commission.

II. SDTA'S COMMENTS RELATING TO WESTERN WIRELESS' REPORTING OF LINES TO USAC SHOULD BE DISMISSED BY THE COMMISSION

Most of SDTA's Comments address Western Wireless' reporting of lines to USAC, including blatant and unfounded allegations that Western Wireless has somehow violated the law and misrepresented facts in its federal support filings submitted to USAC. (SDTA Comments, pp. 1-7.) This issue should be rejected as beyond the scope of the Commission's jurisdiction and this proceeding. This issue has nothing to do with Western Wireless' Compliance Filing meeting the terms of the Commission's October 18 Designation Order, and thus cannot bear on whether the Compliance Filing is sufficient. Moreover, SDTA has now raised its concerns directly with USAC, which is the proper forum with authority to address federal universal services funding issues.

Nonetheless, Western Wireless responds to SDTA's allegations because they are patently false and demonstrate SDTA's fundamental misunderstandings of federal universal service funding. All ETCs are allowed – and encouraged – to begin filing line counts with USAC upon filing an ETC petition. Western Wireless was simply following this federal protocol. Moreover, Western Wireless reported its South Dakota lines accurately, by study area, not solely as "Pine Ridge" lines. SDTA's concerns are baseless and should be dismissed by this Commission.

A. Western Wireless Properly Reported Lines as Directed by the FCC and USAC

Four things must happen for a carrier to receive federal universal service funding: 1) reporting of lines, 2) certification, 3) ETC designation, and 4) provision of service. Reporting of lines by a carrier is addressed to 47 C.F.R. §§ 54.307 and 54.802, and is a separate process from certification, designation and provision of service. Because there is a mandatory lag between line count reporting and receipt of funding, USAC's practice is to allow and encourage any carrier, once it has filed an ETC petition and before designation, to begin reporting lines. Affidavit of Sarah Rae, ¶ 4 ("Rae Aff"). This process allows USAC to begin to organize the information and plan ahead in the administration of federal universal service funding. Prior to [illegible] funding, USAC still must independently determine whether the certification and designation requirements have also been met. Nothing in the FCC's regulations or USAC's [illegible] prevents a carrier from filing line counts prior to its roll-out of universal service. In [illegible], Western Wireless merely reported its South Dakota lines as directed and allowed by [illegible] Rae Aff ¶ 4-5.

[illegible] comments spring from a fundamental misunderstanding of how USAC manages [illegible] federal universal service funds administrator. Western Wireless' reporting of lines [illegible] with industry practice and USAC's direction. In any case, SDTA has now raised [illegible] directly with USAC by letter (SDTA Comments, Letter to Cheryl L. Parrino, USAC, [illegible] December 12, 2003). USAC is the only entity in a position to properly address SDTA's [illegible]. Accordingly, SDTA's comments relating to Western Wireless' reporting of lines to [illegible] are not an issue related to Western Wireless' Compliance Filing and therefore should be [illegible] by the Commission.

B. Western Wireless Properly Reported its Lines By Study Area

SDTA also alleges that Western Wireless has been dishonest with USAC and the Commission, claiming Western Wireless has reported all of its South Dakota lines as "Pine Ridge" lines. (SDTA Comments, pp. 2-4.) To the contrary, Western Wireless properly reported its lines to USAC as specific to each ETC service area as required by FCC Rules. Rao Aff. ¶ 5. Western Wireless has also contacted USAC, and USAC has confirmed that Western Wireless properly reported its lines by service area. It was USAC that categorized all of Western Wireless' lines under the "Western Wireless (Pine Ridge Reservation)" study area in its report, and USAC indicated that it will take any remedial measures needed. Rao Aff. ¶¶ 6-7. Accordingly, this issue raised by SDTA is without substance, and should be dismissed.

III. THE COMMISSION CANNOT REOPEN THE RECORD OR UNDO ITS OCTOBER 18, 2001, DESIGNATION ORDER

In what appears to be part of its perennial campaign to delay or prevent Western Wireless' competition in the universal service market, SDTA now objects to the Compliance Filing. It does so not by addressing the merits of Western Wireless' compliance with the conditions of the October 18 Designation Order, but by re-raising issues that have already been addressed and by raising purely federal funding issues. The Commission should not – and cannot – reopen the record at this stage of the proceeding.

A. The Commission Cannot Reopen the Record in This Docket

The Commission should reject SDTA's request to schedule further proceedings and investigate Western Wireless' universal service offerings. (SDTA Comments, p. 14.) The Supreme Court clearly directed the Commission to consider the public interest issue on the record evidence, and to designate Western Wireless as an ETC so long as such a finding was made. In re GCC, 623 N.W.2d 474, 484 (S.D. 2001). The Commission made a public interest

finding based on the record evidence and designated Western Wireless as an ETC subject to a simple compliance filing. Now SDTA raises the specter of new hearings and new evidence far beyond the scope of the Supreme Court's mandate and the Commission's October 18 Designation Order. It has long been the law that a lower court (or administrative body) must comply with the directives of a reviewing court:

> However wise a man may be, however sound his judgment, however accurate his knowledge and understanding; nevertheless he is bound to subordinate these to the wisdom, judgment, knowledge, and understanding of the Superior Court, whose Order is the law of the case until modified, or until reversed by higher authority.

Kelsch v. Dickenson, 1 N.W.2d 347, 349 (N.D. 1941). Accordingly, the Commission must reject SDTA's request to further condition Western Wireless' ETC designation on further hearings and additional delay.

B. Western Wireless is Not Prohibited From Providing Universal Service Using Alternative Kinds of Customer Equipment

SDTA's attempt to limit Western Wireless' offerings to a certain type of customer equipment, e.g. wireless local loop equipment, does not raise any issue concerning its provision of universal services. (SDTA Comments, pp. 6-7.) Western Wireless explained to the Commission at the initial hearing that it intended to provide universal service offerings using its existing network infrastructure, and demonstrated its current ability to provide all of the FCC's supported services to customers using conventional mobile cellular handsets. The District Court entered findings of fact consistent with this record evidence. Findings of Fact, Conclusions of Law, and Order, ¶¶ 7, 10. Western Wireless also explained that one potential service offering may use a different type of customer equipment – a wireless access unit – to provide additional features that it believed would be valued by customers. Id. ¶ 8. The Court further found that:

> The undisputed record evidence demonstrates that the provision of the supported services is the same whether the customer uses a wireless access unit or a

> conventional cellular handset. GCC's network infrastructure used to provide the services – the antennae, cell sites, switch, trunk and radio frequency spectrum – is the same. The nature of the services does not change simply because the customer equipment used to transmit and receive the services (*i.e.* cellular handset vs. wireless access unit) is different. GCC's network infrastructure does not distinguish between calls originated or terminated using a cellular handset or a wireless loop access unit.

¶ 10 (emphasis added).

Because Western Wireless' network supports the use of various kinds of customer equipment, Western Wireless explained that it would, "over time, 'expand its universal service offering to introduce a mobility component'." October 18 Designation Order, p. 4. Four years after the testimony was taken, this is exactly what Western Wireless is implementing. Western Wireless' actions are fortunate for consumers in South Dakota, as the Commission has made a specific finding that "a mobility component to local telephone service is also a benefit to the public." October 18 Designation Order, p. 4 (emphasis added). This recognized benefit of mobility was a significant factor in the Commission's public interest analysis. Id. Western Wireless is excited to provide this mobility benefit to consumers in South Dakota consistent with the prior orders entered in this docket.

Contrary to what is suggested by SDTA, there is nothing in federal law or the Commission's October 18 Designation Order preventing Western Wireless from offering universal services using any kind of customer equipment that can be used to deliver the FCC's supported services. To the contrary, FCC Rule 54.201(h) is clear in its mandate for a state commission to "designate a common carrier . . . as an eligible telecommunications carrier irrespective of the technology used by such carrier." 47 C.F.R. § 54.201(h). Moreover, it is abundantly clear that the FCC endorses the provision of universal service through wireless technology, and has rejected attempts to prevent wireless carriers from being full participants in the federal universal service program:

> We also reject the contention that Western Wireless has not sufficiently specified whether it intends to use its fixed or mobile service to fulfill its ETC obligations. In so doing, we reject the implication that service offered by CMRS providers is ineligible for universal service support. In the *Universal Service Order*, the Commission concluded that universal service support mechanisms and rules should be competitively neutral. The Commission concluded that the principle of competitive neutrality includes technological neutrality. Thus, a common carrier using any technology, including CMRS, may qualify for designation so long as it complies with the section 214(e) eligibility criteria. Western Wireless indicates that it has the ability to offer the supported services using its existing facilities.

Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896 (rel. Dec. 26, 2000), ¶ 11 (emphasis added); Western Wireless Corporation Petition for Designation as an ETC for the Pine Ridge Reservation in South Dakota, CC Docket 96-45, Memorandum Opinion and Order, FCC 01-283, ¶ 9 (rel. Oct. 5, 2001) (Western Wireless will provide service using existing cellular network); see also Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3317 (rel. Dec. 4, 2002) (designating wireless carrier in rural and non-rural areas without limiting customer equipment used).

Accordingly, SDTA's suggestion that Western Wireless is somehow prohibited from providing the supported services using certain customer equipment is contrary to prior orders entered in this docket and FCC directives. The Commission should again reject SDTA's arguments and deny their request to re-litigate these issues yet again.

C. Western Wireless' Universal Service Offerings Are Not Subject to an Affordability Determination

The Commission should outwardly reject SDTA's further attempts to impose an affordability requirement on Western Wireless. SDTA raises a new question about the "affordability" of Western Wireless' universal service offerings. (SDTA Comments, pp. 9-10)

The Commission's October 18 Designation Order does not provide that Western Wireless' individual service offerings will be subject to an undefined "affordability" determination. SDTA is essentially seeking reconsideration of the Commission's October 18 Designation Order to add such a requirement, but a motion for reconsideration is long past due. Moreover, the absence of any additional requirements for ETC designation (such as affordability) has been addressed and resolved by the South Dakota Supreme Court. On appeal, SDTA sought review of whether the Commission had any authority to impose requirements for ETC designation beyond those enumerated in 47 U.S.C. § 214(e)(1)-(2). In re GCC, 623 N.W.2d at 478, fn. 7. The Supreme Court recognized, "... the circuit court took the PUC at its word that there were no additional requirements." Id. at 482-83. This Commission should not go back on its representations to the Court.

In any event, an affordability requirement would also be preempted by 47 U.S.C. § 332(c)(3)(A), which expressly prohibits a state commission from regulating Western Wireless' rates. Moreover, the SDTA companies did not undergo any affordability evaluation as to their universal service offerings. Finally, to the extent SDTA is asking the Commission to reopen the record, that plainly violates the Supreme Court's prior directive. Accordingly, SDTA's arguments should be rejected.

D. Any "Investigation" into Western Wireless' Compliance With ETC Requirements is Premature

As noted above, it is undisputed that Western Wireless' Compliance Filing meets the conditions contained in the Commission's October 18 Designation Order. Yet, SDTA asks the Commission to nevertheless "conduct a further investigation" into its universal service offerings. No such investigation was contemplated or can be reasonably required pursuant to the terms of the prior orders entered in this docket.

SDTA's attempt to raise "serious concerns" regarding Western Wireless' compliance with applicable service quality requirements is without merit. (SDTA Comments, pp. 7-9.) SDTA does nothing more than quote various service quality regulations applicable to landline carriers and suggest a groundless need to "examine more closely" whether Western Wireless' service is "consistent with these and other applicable service quality standards." (Id. at 8.) At this state of the proceeding, it is neither the time nor place for SDTA to attempt to relitigate service quality issues. In fact, SDTA's Comments on service quality smack of its earlier claims of the "chicken and egg" seeking to require compliance with applicable ETC criteria before being designated.

What SDTA also ignores is that Western Wireless' compliance with service quality issues is fully addressed in the Compliance Filing. The Service Agreements now fully addresses how Western Wireless' universal service offerings will be consistent with the Commission's service quality rules and vests the Commission with jurisdiction over claims or disputes.

The Supreme Court directed the Commission that if it made an affirmative public interest finding it was to designate Western Wireless as an ETC and allow it to provide the service. In re GCC, 623 N.W.2d at 483-84. The law is abundantly clear – especially in South Dakota – that an ETC must be given a reasonable opportunity to provide universal services once designated. In re GCC, 623 N.W.2d at 481. See also Western Wireless Corporation's Petition for Preemption of an Order of the South Dakota Commission, CC Docket No. 96-45, Declaratory Ruling, FCC 00-248 (rel. Aug. 10, 2000). SDTA's call for an investigation into Western Wireless' provision of universal services is predictable, since SDTA has taken every opportunity to try to obstruct competition from Western Wireless.

The Commission has already addressed and rejected these delay tactics of SDTA. In its October 18 Designation Order, the Commission stated:

> In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate of return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

October 18 Designation Order, p. 4 (emphasis added). Consistent with prior orders in this docket and without a shred of evidence to support any non-compliance with Western Wireless' ETC designation, the Commission should reject SDTA's attempt to investigate Western Wireless' universal service offerings.

CONCLUSION

The time has come for South Dakota's consumers to enjoy the benefits of Western Wireless' competitive universal service offerings. Western Wireless has fully complied with the conditions established in the October 18 Designation Order. Its Service Agreement and advertising plan have been filed and amended to address questions of the Commission and Staff. SDTA's recent comments do not raise issues or objections relating to the Compliance Filing. Rather, SDTA merely seeks to raise new federal universal service funding issues beyond the prerogative of this Commission and to re-argue old issues beyond the scope of this proceeding. SDTA's comments should be dismissed.

Respectfully submitted,

Dated: December 27, 2002

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Attorneys for WWC License L.L.C.

14482152v1

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))	**DOCKET TC98-146**

AFFIDAVIT OF SUZIE RAO

RECEIVED
DEC 30 2002
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

1. My name is Suzie Rao. I am Regulatory Counsel, External Affairs for Western Wireless Corporation. I make this Affidavit in Support of Western Wireless' Response to Comments of South Dakota Telecommunications Association.

2. I was involved in preparing Western Wireless' Compliance Filing dated August 28, 2002 and the amendments filed on October 11 and December 2.

3. To my knowledge, the South Dakota Public Utilities Commission and Staff believe Western Wireless' Compliance Filing, as amended, satisfactorily addresses the six issues listed on the Commission's October 18, 2001 Order designating Western Wireless as an ETC in rural telephone company exchanges.

4. Western Wireless filed its South Dakota line counts with the Universal Service Administration Company ("USAC") anticipating those lines would become eligible universal service lines. Because there is a lag between line count reporting and receipt of funding, USAC encourages any carrier to begin reporting its lines as soon as an ETC petition is filed. This is industry practice and fully consistent with how USAC administers the universal service program.

5. Western Wireless reported its lines in SDTA company areas by study area and separately reported its lines on the Pine Ridge Reservation.

6. Because a USAC report shows all South Dakota lines under a "Pine Ridge" study area code, I contacted USAC to inquire whether Western Wireless' reporting was correct and appropriate.

7. A USAC representative confirmed to me that Western Wireless had reported its lines properly, and that USAC had combined all of those lines for its reporting purposes. This person also indicated that USAC will correct its report if it deems that to be necessary.

AFFIANT SAYS NOTHING FURTHER.

Suzie Reed

Subscribed and sworn to before me this 27th day of December, 2002.

Notary Public

LORI L. DIRST
NOTARY PUBLIC
STATE OF WASHINGTON

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	DOCKET NO. TC06-088 CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of December, 2006, I served a true and correct copy of the Response to Comments of South Dakota Telecommunications Association by fax and by U.S. Mail, postage prepaid, to:

FAX 1-605-224-9060
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Meyer and Rogers
PO Box 1117
320 E. Capitol Ave
Pierre SD 57501-1117

FAX 1-605-224-1637
Richard D. Coit
Executive Director and General Counsel
SDTA
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GUNDERSON, PALMER, GOODSELL & NELSON, LLP

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ATTORNEYS LICENSED TO PRACTICE IN
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MONTANA, WYOMING, MINNESOTA & CALIFORNIA

December 13, 2002

RECEIVED
DEC 16 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No. TC98-146
Western Wireless Corporation

Dear Ms. Elofson:

Enclosed please find the original plus ten copies of Western Wireless' written request for an extension to respond to South Dakota Telecommunications Association's comments and request the South Dakota Public Utilities Commission defer action in the above matter.

Sincerely,

Talbot J. Wieczorek

TJW:klw
Enclosures
c: Richard Coit
Karen Cremer
Mark Ayotte
James Blundell

GUNDERSON, PALMER, GOODSELL & NELSON, LLP

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December 13, 2002

RECEIVED
DEC 16 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received DEC 13 2002

VIA FACSIMILE 1-605-773-3809
Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No. TC98-146
Western Wireless Corporation

Dear Ms. Elofson:

This is to inform you that WWC License LLC, Inc., subsidiary of Western Wireless Corporation, d/b/a CellularOne ("Western Wireless"), requests an extension to file its response to South Dakota Telecommunications Association's comments and the Commission to defer action on TC98-146 until the next regularly scheduled Commission hearing, January 16, 2003, to give Western Wireless adequate time to fully respond and the Commission adequate time to review all submissions. Currently, Western Wireless is scheduled to provide responses to South Dakota Telecommunications Association's comments on December 17, 2002 and this matter is on the Commission's Agenda for December 19, 2002.

Western Wireless proposes filing its responses no later than January 3, 2003 and the Commission deferring any action on this matter until the next regularly scheduled Commission hearing January 16, 2003. I have spoken directly to Richard Coit with the South Dakota Telecommunications Association and he has no objections to allowing Western Wireless to file its responses to the South Dakota Telecommunications Association's comments by January 3, 2003 and no objections to the Commission deferring any action on December 19, 2002 until the next regularly scheduled Commission hearing. I further discussed this with the staff attorney, Karen Cremer, and she has informed me that she has no objections to such an extension and deferral. Ms. Cremer recommended that rather than filing a formal motion, I simply inform you by letter that all parties are in agreement to this deferral and extension. It is my understanding that with agreement of all parties the Commission will defer the matter when it comes up at the December 19, 2002 regularly scheduled hearing.

If the Commission desires that I file a formal motion to receive the deferral and extension, please call me and I will file a motion immediately. If you have any questions, please feel free to call me.

Sincerely,

Talbot J. Wieczorek

TJW:klw
c: Richard Coit via fax 1-605-224-1637
Karen Cremer via fax 1-605-773-3809
Mark Ayotte via fax 1-651-223-6450
James Blundell via fax 1-425-586-8118

Western Wireless

VIA OVERNIGHT MAIL

December 27, 2002

RECEIVED
DEC 30 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Deborah Elofson
South Dakota Public Utilities Commission
Capital Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Ms. Elofson,

Please find enclosed the affidavit of Suzie Rao for docket TC02-146. Should you have any questions you may contact Ms. Rao directly at 425-586-8287.

Sincerely,

Marcia Gerdes

Marcia Gerdes
Executive Assistant
Western Wireless
3650 131st Ave. SE, Suite 400
Bellevue, WA 98006
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Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))	DOCKET TC02-146

AFFIDAVIT OF SUZIE RAO

RECEIVED
DEC 11 2002
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

1. My name is Suzie Rao. I am Regulatory Counsel, External Affairs for Western Wireless Corporation. I make this Affidavit in Support of Western Wireless' Response to Comments of South Dakota Telecommunications Association.

2. I was involved in preparing Western Wireless' Compliance Filing dated August 28, 2002 and the amendments filed on October 11 and December 2.

3. To my knowledge, the South Dakota Public Utilities Commission and Staff believe Western Wireless' Compliance Filing, as amended, satisfactorily addresses the six items listed on the Commission's October 18, 2001 Order designating Western Wireless as an ETC in rural telephone company exchanges.

4. Western Wireless filed its South Dakota line counts with the Universal Service Administration Company ("USAC") anticipating these lines would become eligible universal service lines. Because there is a lag between line count reporting and receipt of funding, USAC encourages any carrier to begin reporting its lines as soon as an ETC petition is filed. This is industry practice and fully consistent with how USAC administers the universal service program.

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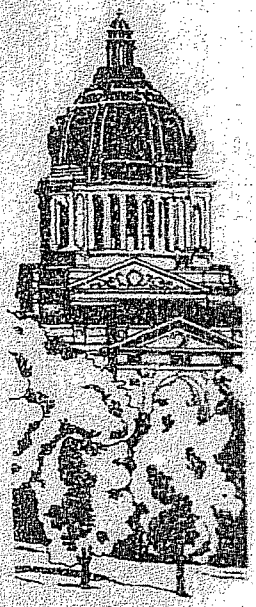
AFFIANT SAYS NOTHING FURTHER.

Suzie Eid

Subscribed and sworn to before me
this 27th day of December, 2002.

Notary Public

LORI L. DIERKS
NOTARY PUBLIC
STATE OF WASHINGTON



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

January 6, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Cheryl Parrino
Chief Executive Officer
Universal Service Administrative Company
2120 L Street, N.W. Suite 600
Washington, D.C. 20037

Irene Flannery
Universal Service Administrative Company
2120 L Street, NW - Suite 600
Washington, DC 20037

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch, Ms. Parrino, and Ms. Flannery:

Pursuant to section 214(e)(2) of the Communications Act of 1934, as amended, and 47 C.F.R. sections 54.201 - 54.205, the South Dakota Public Utilities Commission (SDPUC) has designated Western Wireless LLC, a subsidiary of Western Wireless Corporation, d/b/a CellularOne (formerly known as OCC Licensee Corporation) as an Eligible Telecommunications Carrier (ETC). Western Wireless was designated as an ETC in South Dakota for certain rural telephone companies study areas on January 6, 2003, in Docket TC98-148, *In the Matter of the Filing by OCC Licensee Corporation for Designation as an Eligible Telecommunications Carrier*. A copy of this Order is enclosed as well as a copy of the Order requiring Western Wireless to meet certain conditions in order to receive ETC designation. Also enclosed is Attachment A to the Order which identifies the rural telephone companies.

If additional information is required, please do not hesitate to call.

Sincerely,

ROLAYNE AILTS WIEST
Commission Attorney

Capitol Office
Telephone (605)773-3201
FAX (605)773-3809

Transportation/
Warehouse Division
Telephone (605)773-5280
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Lisa Hull
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Gregory A. Rislov
Keith Senger
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Rolayne Ailts Wiest

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	ORDER DESIGNATING WESTERN WIRELESS AS AN ETC FOR AREAS SERVED BY CERTAIN RURAL TELEPHONE COMPANIES TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

> On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest.

On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

Pursuant to its October 18, 2001, order, the Commission found that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

On August 29, 2002, GCC, now known as WWC License LLC d/b/a CellularOne, [hereafter referred to as Western Wireless] filed a compliance filing. By letter dated September 19, 2002, SDTA (formerly known as SDITC), filed a letter asking that the Commission "defer any action on that filing until after some formal process has been held allowing fair input by SDTA on the issues that are presented." The compliance filing was reviewed at the Commission's September 24, 2002, meeting. Based on the discussion at that meeting, Western Wireless filed a revised compliance filing on October 11, 2002. At its November 20, 2002, meeting, additional concerns regarding the compliance filing were noted by the Commission, including the listing of the wrong eligibility criteria on Western Wireless' Lifeline form. In addition, the Commission set a procedural schedule to allow SDTA an opportunity to comment on the filing. The Commission requested that Western Wireless submit its revisions by December 2, 2002; SDTA and Staff could file written comments by December 12, 2002; and Western Wireless could file reply comments by December 17, 2002, and the Commission would consider the filing at its December 19, 2002, meeting.

The Commission received Western Wireless' revisions on December 2, 2002, and SDTA's comments on December 12, 2002. On December 13, 2002, Western Wireless submitted a letter requesting an extension of the time to file its response. Western Wireless requested that it be allowed to file its response by January 3, 2003, and that the matter be heard at the Commission's January 16, 2003, meeting. The Commission granted a shorter extension and allowed Western Wireless until December 27, 2002, to file its response, with the Commission holding an ad hoc meeting on January 2, 2003, to consider this matter. Western Wireless filed its response on December 27, 2002.

At its January 2, 2003, meeting, the Commission considered this matter. 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, and 47 U.S.C. § 214(e)(1) through (5). After considering the arguments of the parties, the Commission voted to find that Western Wireless' revised compliance filing meets the conditions as specified in the Commission's October 18, 2001, order. As stated in that order, the Commission found that it was in the public interest to designate Western Wireless as an ETC for the study areas of the rural telephone companies listed in the attached Attachment A, upon Western Wireless' compliance with the conditions. It is therefore

ORDERED, that Western Wireless' revised compliance filing meets the conditions as specified in the Commission's October 18, 2001, order, and, therefore, Western Wireless is designated as an ETC for the areas served by the rural telephone companies listed on Attachment A.

Dated at Pierre, South Dakota, this 6th day of January, 2003.

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: Delaine Kolbo

Date: 1/6/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

Pam Nelson by JAB

PAM NELSON, Commissioner

ROBERT K. SAHR, Commissioner

ATTACHMENT A

Armour Independent Telephone Company

Baltic Telecom Cooperative

Beresford Municipal Telephone Company

Bridgewater-Canistota Independent Telephone

Brookings Municipal Telephone/Swiftel Communications

Dakota Cooperative Telecommunications, Inc.

East Plains Telecom, Inc.

Fort Randall Telephone Company

Interstate Telecommunications Cooperative, Inc.

Jefferson Telephone Company

Kadoka Telephone Company

Kennebec Telephone Company

McCook Cooperative Telephone Company

Midstate Communications, Inc.

Mount Rushmore Telephone Company

RC Communications, Inc.

Roberts County Telephone Cooperative Assn.

Sanborn Telephone Cooperative

Sancom, Inc.

Sioux Valley Telephone Company

Splitrock Telecom Cooperative, Inc.

Stockholm-Strandburg Telephone Co.

Union Telephone Company

Valley Telecommunications Cooperative

Western Telephone Company

West River Cooperative Telephone Company

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)))))	FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest;

On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

At its September 7, 2001, meeting, the Commission considered this matter. The Commission voted to find that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On August 25, 1998, the Commission received a request from GCC requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

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 eligible telecommunications carrier (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 Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST). Following the hearing and briefing by the parties, the Commission unanimously voted to deny the application.

5. The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

6. GCC appealed the Commission's decision to the Circuit Court. The Circuit Court reversed the Commission's decision. See Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235. For areas served by rural telephone companies, the court found that GCC meets all applicable criteria for ETC designation except the public interest factor, which was not addressed by the Commission. The court remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision. The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, 2001 SD 32, 623 N.W.2d 474.

7. Consistent with the court's decision, the matter came back to the Commission on remand, on the record, for the purpose of deciding whether it was in the public interest to designate GCC as an ETC in areas served by rural telephone areas. On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC.

8. The Stipulation listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies. See Attachment A. The Commission approved the Stipulation for Procedure on Remand. GCC and SDITC then provided supplemental briefing and the Commission heard oral arguments on July 26, 2001.

9. 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.

10. One of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. An expanded local calling area will allow consumers to make more local calls, thus avoiding some toll charges. Id. In addition, GCC has pledged to offer unlimited local usage as part of one its universal service offerings. GCC Exhibit 4 at 9. For a monthly charge, GCC will offer consumers the supported services "with unlimited local usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling." GCC Exhibit 4 at 13. Further, GCC will offer local service at a rate similar to the incumbent telephone company. GCC testified that "if the incumbent is offering

service at $15 a month, we'll offer service at a similarly $15 a month." TR. at 117. The Commission finds that GCC's ability to offer an expanded local calling area along with its other offerings will benefit the public.

11. GCC also cites as a benefit a mobility component to its universal service offering that it intends to offer in the future. According to its testimony, GCC would not introduce a mobility component right away but intended to, over time, "expand its universal service offering to introduce a mobility component." GCC Exhibit 4 at 8. The Commission finds that a mobility component to local telephone service is also a benefit to the public.

12. GCC claimed that another benefit would be to bring "universal service to some consumers who currently do not have telephone service." GCC Supplemental Brief at 11. However, GCC failed to show that consumers located in areas served by the rural telephone companies were unable to receive service from the rural telephone companies. Thus, the Commission declines to find that the provision of service by GCC will result in universal service being provided to more consumers.

13. As stated above, the second part of the public interest analysis is whether the introduction of competition in these rural areas will ultimately prove detrimental to universal service. SDITC's witness' testimony as to whether designation was in the public interest focused on the uncertainties with respect to the level of universal support for rural telephone companies. Exhibit 6 at 10-11. He did not offer evidence that the rural telephone companies would be unable to continue to provide universal service to its customers if another carrier were granted ETC designation.

14. Since the Commission's hearing held on December 17, 1998, the FCC has issued new rulings related to universal service funding. As SDITC noted in its supplemental brief, the FCC has recently found that universal service support should be disaggregated and targeted below the study area level for rural telephone companies in order to ensure that the per-line level of support is more closely related to the cost of providing the service. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256 (rel. May 23, 2001) at ¶¶ 144-45. Pursuant to the FCC's order, rural companies are not required to select a disaggregation option until next year. Id. at ¶ 147. SDITC states that "[i]t would not be in the public interest to designate GCC as an ETC in rural service areas and allow it to receive portable universal service support before the disaggregation process has been completed and support is more closely targeted to the actual cost of serving each line." SDITC Supplemental Rebuttal Brief at 30. However, the Commission does not believe it would be in the public interest to delay the designation of additional ETCs until such time as the deadline for filing a plan has passed. If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible. The Commission further notes that an ETC, if it intends to retain its ETC designation, is obligated to offer its services throughout the service area and may not discriminate in favor of serving only the lowest cost lines.

15. In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate-of-return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

16. The Commission further finds that the fact that GCC will be providing a wireless service will likely lessen the loss of the incumbent carriers' universal service support. Wireless or cellular telephone service is often used as an additional, as opposed to a substitute, telephone service. Significantly, the FCC has decided that federal universal support will be extended to all lines served by ETCs in high-cost areas. Thus, if consumers subscribe to GCC's service but retain their landline service from the incumbent carrier, the incumbent carrier will still receive the same amount of universal service support for that line. See In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order, CC Docket No. 96-45, (rel. October 5, 2001) at ¶ 15.

17. Based on the record presented at the December 17, 1998, hearing, the Commission is unable to find that the addition of GCC as a second ETC will detrimentally affect the incumbent carriers' ability to provide universal service to their customers.

18. Another concern raised by SDITC related to the Commission's ability to regulate GCC. SDITC stated that it did not believe that it was in the public interest to designate GCC as an ETC if the Commission "has no ability after such designation to ensure that the service actually offered by GCC is consistent with the Commission's service quality rules and no ability to address consumer complaints concerning the service." SDITC Supplemental Rebuttal Brief at 24. However, the Commission finds that GCC is a telecommunications company as defined by SDCL 49-31-1.26, and thus is subject to the Commission's statutes and rules.

19. Based on these findings, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, subject to the conditions listed in findings of fact 20-24. The Commission finds that GCC's provisioning of a basic universal service throughout the study areas will be beneficial to the public. Further, the Commission finds that the evidence presented at the hearing does not support a finding that the incumbent rural telephone companies will be unable to continue to provide the supported services to their customers.

20. With respect to the advertising of its universal service offering, GCC states that it "currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. GCC's current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market. GCC will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings." Exhibit 3 at 9. Consistent with these commitments, GCC shall file its plan for advertising its universal service offering throughout its service areas.

21. As stated earlier, one of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. At the time of the hearing, GCC did not have a list of local calling areas. Therefore, once GCC determines its local calling areas, it shall file a list of areas with the Commission.

22. 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. In order to inform customers of these services, GCC's service agreement shall advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply.

23. In addition, GCC has agreed to file with the Commission its service agreement it intends to offer to universal service customers. The Commission finds that this service agreement must be consistent with the Commission's service quality rules. The Commission further notes that as a telecommunications company, GCC is subject to SDCL chapter 49-13 which allows consumers to file complaints with the Commission. Thus, the Commission finds that the service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction

24. At the time of the hearing, GCC had not yet finalized a universal service offering. Thus, GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

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, 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 the Circuit Court's Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, decision, GCC meets all applicable criteria for ETC designation. Based on the evidence presented at the December 17, 1998, hearing, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

It is therefore

ORDERED, that the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18th day of October, 2001.

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: Delaine Kolbo

Date: 10/19/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ATTACHMENT A

Armour Independent Telephone Company

Baltic Telecom Cooperative

Beresford Municipal Telephone Company

Bridgewater-Canistota Independent Telephone

Brookings Municipal Telephone/Swiftel Communications

Dakota Cooperative Telecommunications, Inc.

East Plains Telecom, Inc.

Fort Randall Telephone Company

Interstate Telecommunications Cooperative, Inc.

Jefferson Telephone Company

Kadoka Telephone Company

Kennebec Telephone Company

McCook Cooperative Telephone Company

Midstate Communications, Inc.

Mount Rushmore Telephone Company

RC Communications, Inc.

Roberts County Telephone Cooperative Assn.

Sanborn Telephone Cooperative

Sancom, Inc.

Sioux Valley Telephone Company

Splitrock Telecom Cooperative, Inc.

Stockholm-Strandburg Telephone Co.

Union Telephone Company

Valley Telecommunications Cooperative

Western Telephone Company

West River Cooperative Telephone Company

TC 98-146



Universal Service Administrative Company

Cheryl L. Parrino
Chief Executive Officer

January 3, 2003

RECEIVED
JAN 10 2003
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

The Honorable James A. Burg
South Dakota Public Utilities Commission
State Capitol
500 East Capitol
Pierre, SD 57501-5070

RE: USAC's response to letter from South Dakota Telecommunications Association

Dear Chairman Burg:

Please find enclosed a copy of a letter dated December 30, 2002, that USAC sent to the attorneys representing the South Dakota Telecommunications Association (SDTA). USAC sent this letter in response to a letter written on behalf of the SDTA raising certain concerns about recent high cost line count filings made by Western Wireless on the Pine Ridge Reservation in South Dakota.

Please do not hesitate to contact me if you have any questions. Thank you very much.

Sincerely,

Cheryl L. Parrino
Chief Executive Officer

CP:sgl

Enclosure

USAC

Universal Service Administrative Company
High Cost & Low Income Division
Irene M. Flannery
Vice President
iflannery@universalservice.org

December 30, 2002

BY HAND DELIVERY
Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W.
Washington, D.C. 20037

Gerard J. Duffy
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W.
Washington, D.C. 20037

RE: Letter on behalf of the South Dakota Telecommunications Association

Dear Mr. Dickens and Mr. Duffy:

I received your letter dated December 12, 2002, concerning Western Wireless's line count filing for the Pine Ridge Reservation that will be reflected in first quarter 2003 high cost universal service support. USAC is reviewing both the data you submitted and the line count information filed by Western Wireless. We will fully investigate the issues you raise and, in consultation with the Federal Communications Commission, will take any and all appropriate action as a result of the investigation.

If you have any additional questions, please do not hesitate to call me.

Sincerely,

Irene M. Flannery

Irene M. Flannery
Vice President

cc: Ms. Cheryl Parrino

April 24, 2003

Western Wireless

RECEIVED
APR 28 2003
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Rolayne Wiest
General Counsel
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

Dear Ms. Wiest:

Pursuant to the requirements of the Western Wireless Corporation ("Western Wireless") ETC Order in Docket No. TC98-146 dated October 18, 2001, paragraph 24, and as a supplement to the notice that was submitted in the Western Wireless compliance filing on October 11, 2002 (Appendix H), Western Wireless notifies the South Dakota Public Utilities Commission ("Commission") that Western Wireless is currently offering the Company's universal service plans in the following rural telephone company study areas in South Dakota:

Armour Independent Telephone Company
Baltic Telecom Cooperative
City of Beresford Telephone Department
Bridgewater-Canistota Independent Telephone
City of Brookings Municipal
Dakota Telecommunications Group, Inc.
East Plains Telecommunications, Inc. (former Qwest exchanges)
Fort Randal Telephone Company
Interstate Telecommunications Cooperative, Inc. (SD)
Jefferson Telephone Company
Kadoka Telephone Company
Kennebec Telephone Company
McCook Telephone Cooperative
Midstate Telephone Company
Mt. Rushmore Telephone Company
RC Communications, Inc.
Roberts County Telephone Cooperative Association
Sanborn Telephone Cooperative
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecommunications Cooperative
Stockholm-Strandurg Telephone Company
Union Telephone Company
Valley Telecommunications Cooperative Association, Inc.
Western Telephone Company
West River Cooperative

The following is a detailed list of the local calling areas that Western Wireless provides in the Company's ETC designated service area:

Home Calling Area:
State of South Dakota

Please contact me if you have any questions.

Sincerely,

Suzie Rao

Suzie Rao
Regulatory Counsel

cc: Talbot Wieczorek