

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of)
WWC Holding Co., Inc. d/b/a)
CellularOne© for Designation)
as an Eligible Telecommunications)
Carrier)

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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

VERIFIED PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER AND REQUEST TO EXPEDITE PROCEEDINGS

1. COMES NOW, WWC Holding Co., Inc., d/b/a CellularOne® (“Western Wireless” or the “Company”) and hereby applies to be designated as an eligible telecommunications carrier (“ETC”) for purposes of qualifying to obtain federal universal service support in the study areas of certain rural telephone companies. The Commission has previously designated Western Wireless as an ETC in study areas of other rural telephone companies. *In the Matter of the Filing By GCC License Corporation For Designation As An Eligible Telecommunications Carrier*, Docket No. TC 98-146, Findings of Fact and Conclusions of Law; Notice of Filing of Entry of Order (Oct. 18, 2001) (“*Western Wireless ETC Order*”). This Petition seeks an order immediately designating Western Wireless as an ETC in the study areas of other rural telephone companies listed on Attachment A pursuant to 47 U.S.C. § 214(e) and S.D. Codified Laws §49-31-78. This Petition is made pursuant to and based upon 47 U.S.C. § 214(e), S.D. Codified Laws §49-31-78 and A.R.S.D. 20:10:32:43

2. Section 214(e) of the federal Telecommunications Act of 1996 (“Act”), the rules and regulations of the FCC, specifically 47 C.F.R. § 54.101(a), and S.D. Codified Laws §49-31-78 establish the mandatory and exclusive criteria for designation as a federal ETC in South Dakota. This Petition affirms and demonstrates that Western Wireless meets all applicable requirements and is entitled to be designated an ETC. *See The Filing by GCC License*

EXHIBIT

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Corporation for Designation as an Eligible Telecommunications Carrier, 2001 SD 32, 623 N.W.2d 474 (2001).

I. GENERAL BACKGROUND

3. Since 1992, Western Wireless, through its subsidiaries (including WWC Holding Co., Inc.), has provided telecommunications services to rural communities in the western United States. Western Wireless currently provides commercial mobile radio service ("CMRS") under the CellularOne© national brand name in 19 states west of the Mississippi River. The Company owns cellular licenses covering about 25 percent of the land and two percent of the population of the continental United States.

4. The FCC has regulatory jurisdiction over Western Wireless' provision of CMRS services in all states in which it provides services. The services provided by Western Wireless in South Dakota include mobile telephony, data/facsimile, 911, voice mail, and other features and services. WWC Holding Co., Inc. is the non-wireline FCC licensee in all of the cellular license areas in South Dakota.

II. ETC REQUIREMENTS

5. Under 47 U.S.C. § 214(e)(2) and S.D. Codified Laws §49-31-78, the Commission has the authority to designate Western Wireless as an ETC in its requested designated areas. The requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2), 47 C.F.R. § 54.101, and incorporated by reference in S.D. Codified Laws §49-31-78.

A. Western Wireless is a Common Carrier

6. The first requirement for ETC designation is that the applicant is a common carrier. 47 U.S.C. §§ 153(10) and 214(e)(1). Western Wireless is a CMRS provider and, as such, is a common carrier. *See Western Wireless ETC Order*, Conclusions of Law, ¶ 6. *See also* 47 C.F.R. § 20.9(a)(7).

B. Western Wireless Offers the Supported Services

7. The second requirement for ETC designation is that the applicant provide the services set forth in 47 C.F.R. § 54.101(a)(1)-(9) throughout the requested designated service areas. 47 U.S.C. § 214(e)(1)(A). Western Wireless currently offers and is able to provide the services and functionalities identified by the FCC in 47 C.F.R. § 54.101(a)(1)-(9). See *Western Wireless ETC Order*, Conclusions of Law, ¶ 6. In implementing Sections 214(e) and 254, the FCC identified the specific services that a carrier must provide to be designated as an ETC and receive universal service support. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 Report and Order (rel. May 8, 1997) (“*Universal Service Order*”). The required services are as follows:

<u>Supported Service</u>	<u>Does Western Wireless currently provide the service or function</u>
1. Voice-grade access to the public switched network	Y
2. Local Usage	Y
3. Dual tone multi-frequency (DTMF) signaling or its functional equivalent	Y
4. Single-party service or its functional equivalent	Y
5. Access to emergency services	Y
6. Access to operator services	Y
7. Access to interexchange service	Y
8. Access to directory assistance	Y
9. Toll limitation for qualifying Lifeline customers	Y

8. Western Wireless currently provides the nine supported services set forth in 47 C.F.R. § 54.101(a)(1)-(9) over its existing network infrastructure in South Dakota as follows:

a. Voice-grade access to the public switched telephone network. Voice-grade access means the ability to make and receive phone calls within a voice frequency range of between 300 and 3500 Hertz, a bandwidth of approximately 2700 Hertz. 47 C.F.R. § 54.101(a)(1). All customers of Western Wireless are able to make and receive calls on the public switched network within the prescribed frequency range.

b. Local usage. Western Wireless provides its customers with an amount of local usage, free of charge, as required by 47 C.F.R. § 54.101(a)(2). Unlimited local usage is not required of any ETC. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) (“*July 2003 Order*”). Western Wireless will include local usage in all of its universal service offerings, and intends to offer unlimited local usage as part of at least one of its universal service offerings. In addition, Western Wireless will comply with any and all specific local usage requirements adopted by the FCC in the future and required of federal ETCs.

c. Dual-tone, multi-frequency (“DTMF”) signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). The FCC recognized that “wireless carriers use out-of-band digital signaling mechanisms [I]t is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.” *Universal Service Order*, ¶ 71. Western Wireless currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling and, therefore, the Company meets this requirement.

d. Single-party service or its functional equivalent. “Single party service” means that only one party will be served by each subscriber loop or access line, in contrast to a multi-party line. The FCC determined that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user’s particular transmission. 47 C.F.R. § 54.101(a)(4); *Universal Service Order*, ¶ 162. Western Wireless meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.

e. Access to emergency services. The fifth supported service is the ability to reach the appropriate public service answering point (PSAP) by dialing “911.” 47 C.F.R. § 54.101(a)(5); *Universal Service Order*, ¶ 72. The FCC also requires that a carrier must provide access to enhanced 911, or “E911,” which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), when the PSAP submits a compliant request to the carrier. In order to qualify as a compliant Phase I E911 request under the FCC’s rules, the PSAP must “be capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the Public Safety Answering Point’s costs of the enhanced 911 service [must be] in place.” 47 C.F.R. § 20.18(j). Western Wireless currently provides all of its customers with access to emergency services by dialing 911 and stands ready to provide E911 service to its customers once a PSAP submits a compliant request for E911 service. The Company will work with PSAPs within its designated service areas to make E911 service available according to federal requirements.

f. Access to operator services. Access to operator services means any automatic or live assistance provided to a consumer to arrange for the billing or

completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Western Wireless meets this requirement by providing all of its customers with access to operator services provided by either the Company or other entities.

g. Access to interexchange service. As explained by the FCC, an ETC must offer consumers access to interexchange service for the purposes of making and receiving toll or interexchange calls. 47 C.F.R. § 54.101(a)(7); *Universal Service Order*, ¶ 78; see also 47 U.S.C. § 332(c)(8). Equal access to interexchange service, *i.e.*, the ability of a customer to access a presubscribed long distance carrier by dialing 1+number, is not required. *Universal Service Order*, ¶ 78; *July 2003 Order*, ¶¶ 14-15. Western Wireless presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several interexchange carriers (“IXCs”). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code. Consequently, Western Wireless satisfies this universal service requirement.

h. Access to directory assistance. The eighth supported service is access to directory assistance. 47 C.F.R. § 54.101(a)(8). Western Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

i. Toll limitation for qualifying low-income consumers. The final supported service to be provided by an ETC is either “toll control” or “toll limitation” services to qualifying low-income consumers receiving subsidies pursuant to the federal Lifeline program. 47 C.F.R. § 54.101(a)(9). The FCC no longer requires an ETC to provide both services if the carrier is unable to do so. See *Universal Service Fourth Order on*

Reconsideration, FCC 97-240 (rel. Dec. 30, 1997). The FCC made toll limitation for Lifeline customers a supported service because it determined that uncontrolled toll charges were a significant factor in low subscribership levels among low-income consumers. *Universal Service Order*, ¶ 82. Today, the Company provides toll-blocking services for international calls and customer selected toll calls, as well as for Lifeline customers in states in which it has been designated as an ETC, including South Dakota. Once designated as an ETC in these new South Dakota study areas, Western Wireless will continue to offer toll blocking to Lifeline customers at no additional charge.

C. Western Wireless Advertises the Supported Services

9. The third requirement for ETC designation is that the applicant advertise the availability of the supported services and charges using media of general distribution. 47 U.S.C. § 214(e)(1)(B). The Company currently offers and advertises the federally supported services throughout its requested designated service area, through several different media, including newspaper, television, radio, and billboard advertising. Western Wireless also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. Once designated, Western Wireless will advertise the availability of and charges for its universal service offerings through media of general distribution, in accordance with the requirements of 47 C.F.R. § 54.201(d)(2).

D. Western Wireless Complies With The Service Area Requirements

10. For areas served by a rural telephone company, Section 214(e)(5) of the Act and S.D. Codified Laws §49-31-78 provide that the ETC's designated service area must be equivalent to the rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange area in a given state. *Universal Service Order*, ¶ 172, n. 434. Moreover, the FCC's rules recognize that the

study area is subject to redefinition if the FCC and the Commission establish a different service area in accordance with 47 C.F.R. § 54.207(c)-(d) and 47 U.S.C. § 214(e)(5).

11. Western Wireless seeks designation as an additional ETC in the study areas of the rural telephone companies identified on Attachment A. Western Wireless currently provides signal coverage in these rural telephone company study areas and will offer and advertise its universal service offerings throughout these designated service areas.

E. The Public Interest Determination Applicable to Rural Telephone Company Areas

12. The final requirement for ETC designation relates to the public interest. Section 214(e)(2) of the Act and S.D. Codified Laws §49-31-78 require that the Commission find, before designating an additional ETC in an area served by a rural telephone company, that the designation is in the public interest. The Commission has already determined that it is in the public interest to designate Western Wireless as an additional ETC in study areas of rural telephone companies. *See Western Wireless ETC Order, Conclusions of Law, ¶ 6.*

13. The Commission has determined that the public interest analysis under 47 U.S.C. § 214(e)(2) should balance consumer benefits from increased competition against any proven detrimental impacts on the preservation and advancement of universal service. *Western Wireless ETC Order, Findings of Fact, ¶¶ 9-17.*

14. The public interest determination required under Section 214(e) of the Act depends on whether the proposed universal service offering will promote competition, and if so whether consumers will ultimately realize benefits related to competition and the new services provided. The express purposes of the Act in this regard are as follows:

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.

Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

15. Competition in the telecommunications industry is, as a general matter, in the public interest, and the hallmark of a competitive marketplace is the maximization of consumer choice. It is also clear that the public interest is served where there is a reasonable expectation that competition may have beneficial impacts for consumers.

16. As it applies to the designation of an additional ETC in an area served by a rural telephone company, the public interest necessarily must focus on the benefits of competition to the rural consumer. *Western Wireless ETC Order*, Findings of Fact, ¶¶ 10-11.

17. The Commission must also apply the public interest factor in a way that advances universal service as contemplated by the Act. Congress gave the FCC responsibility to create rules and policies “for the preservation and advancement of universal service.” 47 U.S.C. § 254(b). States must respect and defer to those FCC determinations. States cannot use a public interest standard to affect a result contrary to FCC directives. The FCC, for example, has directed that a state cannot deny an application because a CMRS provider may not meet “the regulatory requirements that govern ILECs, including privacy, marketing, service provisioning, and service quality requirements, as well as carrier of last resort (COLR) obligations.” *Universal Service Order*, ¶ 142. The Commission must always remain consistent with the Act and FCC directives as it makes the public interest determination under Section 214(e)(2).

18. To further these general principles of public interest, the Commission should utilize the following four-part standard to determine whether designating Western Wireless as an additional ETC in the rural telephone company service areas is in the public interest:

- a. Will the ETC designation facilitate competition in the provision of universal services to the benefit of South Dakota’s rural consumers?
- b. Will the ETC designation advance universal service by bringing new telecommunications services to South Dakota’s rural consumers?

- c. Will ETC designation promote the rapid deployment of new technologies in the rural areas of South Dakota?
- d. Will any rural LEC experience any significant adverse impact resulting from ETC designation so significant as to justify denying rural consumers the benefits of competition?

i. **Granting ETC Designation Will Facilitate Competition to the Benefit of Consumers**

19. Granting ETC status to Western Wireless will recognize the importance of allowing rural consumers a choice of providers for their telecommunications needs. Consumers should be able to choose services based on their own needs, and not just the service of the incumbent LEC. When the Commission designates a competing carrier as an additional ETC, rural consumers choose their service provider on the basis of the most advantageous pricing, services, service quality, customer service, and service availability.

20. Having this choice is important to rural consumers because Western Wireless' universal service offerings will provide benefits not otherwise available from the landline LECs. For example, current universal service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Western Wireless provides an expanded local calling area, which is of great benefit to rural consumers who otherwise have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. *See Western Wireless ETC Order*, Findings of Fact, ¶ 10; *Universal Service Order*, ¶ 114. Western Wireless' service also provides the benefits of mobility, which has great appeal to many rural consumers. Western Wireless provides innovative service offerings that will be tailored to consumers' needs.

21. In addition to increased choices, South Dakota's rural consumers can also expect lower rates and better service resulting from competition in the marketplace. Western Wireless provides 24-hour customer service, technical and operational support, which is more responsive

than the support currently available from many LECs. In designating Western Wireless an ETC in Minnesota, the Minnesota Commission found that the designation would provide consumers with benefits of “affordability, reliability, and service quality” and noted that Western Wireless’ “service would include specific features and enhancements not available, or available only at a premium, from the incumbents.” *Order Granting Preliminary Approval and Requiring Further Filings*, Minnesota Public Utilities Commission Docket No. P-5695/M-98-1285, p. 16 (Oct. 27, 1999). The Commission further reasoned that Western Wireless’ designation would further “at least three of the goals underlying federal and state policies favoring competition—customer choice, innovative services, new technologies.” *Id.*

22. The FCC has confirmed that competition and universal service are to be accomplished together, and that rural consumers are entitled to achieve universal service goals through the benefits of competition:

Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers. For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.

Universal Service Order, ¶ 50 (emphasis added).

23. The FCC and other state commissions have considered and rejected speculative claims that competition will hurt rural consumers. The FCC has rejected arguments that the designation of an additional ETC in rural telephone company service areas would reduce

investment in infrastructure, raise local service rates, reduce service quality to consumers, or result in loss of network efficiency:

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.

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, ¶ 22 (rel. Dec. 26, 2000) (“*Wyoming Order*”). Faced with claims that rural LECs could not respond to competition and would go out of business, the Minnesota Commission found it more likely that competition would “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.” *Order Granting Preliminary Approval and Requiring Further Filings*, Minnesota Public Utilities Commission Docket No. P-5695/M-98-1285, p. 17 (Oct. 27, 1999). Similarly, the Washington Commission dismissed as “overly speculative” rural LEC concerns that ETC designation would erode universal service for consumers. *In the Matter of the Petition of United States Cellular Corp., et al. for Designation as Eligible Telecommunications Carriers*, Third Supplemental Order Granting Petition for Designation as Eligible Telecommunications Carrier, Docket No. UT-970345, ¶ 46 (Jan. 2000) (“*US Cellular Order*”).

ii. **Granting ETC Designation Will Advance Universal Service by the Provision of New Telecommunications Services to Rural Consumers**

24. Granting Western Wireless ETC status in rural areas will improve choices for rural consumers, thereby advancing universal service for South Dakotans. Different services, improved quality and lower rates not only give the consumer additional options, but also make it more likely that high cost areas of the state will have affordable phone service as implicit subsidies are phased out. In addition, the designation of Western Wireless as an ETC may allow those consumers who are not currently receiving telephone service of any kind an opportunity to obtain telephone service for the first time. There is simply no question that the designation of Western Wireless as an ETC will advance universal service by increasing consumer choices and bringing new telecommunications services to rural areas consistent with the public interest.

iii. **Granting ETC Designation Will Promote The Deployment of New Telecommunications Technologies.**

25. Designating Western Wireless an ETC will also lead to the further deployment of Western Wireless' cellular network, which will be available to benefit South Dakota's rural consumers. Western Wireless is a facilities-based telecommunications provider serving a substantial portion of the state utilizing state-of-the-art wireless technology.

26. Western Wireless' network will have the capability of providing advanced services that meet or exceed what can be provided on a landline network. The Commission should continue to facilitate the development of the Western Wireless network so that South Dakota's rural consumers will have access to these developing technologies to the same degree as urban consumers. The Washington Commission made a similar determination when it designated a CMRS provider in rural LEC areas:

Cellular providers are offering access to the Internet over wireless hand-held telephones. Consumers now have access to electronic mail over wireless telephones. These two innovations reflect the

rapid deployment of new technology Congress intended to promote with the Act. It is in the public interest that all consumers in Washington should have access to this technology.

US Cellular Order, ¶ 42.

27. Competition also provides an incentive for the incumbent LECs to invest in new technologies and additional infrastructure, which likewise will benefit the consumers. Ultimately, the Commission should apply the public interest factor in a way that will bring providers and new technologies to rural, high cost areas, consistent with the FCC's stated goals:

As noted above, in the *Universal Service Order* the [FCC] sought to adopt rules that would facilitate the entry of new providers and promote competition in the context of universal service We seek comment here on the success of that goal. . . . We also seek comment on whether, in practice, any of our universal service rules discourage wireless service providers or cable service providers from offering supported services to low-income subscribers and rural, insular, and high cost subscribers.

In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278, ¶¶ 44-45 (rel. Oct. 26, 1998).

iv. **No Rural LEC Will Experience Any Significant Adverse Impact from Western Wireless' ETC Designation to Justify Denying Consumers the Benefits of Competition**

28. The designation of Western Wireless as an ETC will not result in any significant adverse impact to any rural telephone company. None of the areas in which Western Wireless is seeking designation is incapable of supporting more than one ETC.

F. Western Wireless already has provided the documentation necessary to comply with the conditions placed on ETC designation previously required by the Commission

29. In the Commission's Findings of Fact and Conclusion of Law providing for ETC designation entered in file number TC 98-146 on October 18, 2001, the Commission conditioned ETC designation on Western Wireless providing the Commission local calling area, revising

service agreements to advise customers who may qualify for assistance under federal link up and lifeline programs and providing information on how to file for such programs, and to file with the Commission a service agreement intended to be offered to universal service customers that would be consistent with the Commission's service quality rules. See Findings of Fact 21 through 23. Western Wireless has complied with those requirements for the areas where the Commission has previously designated Western Wireless as an ETC and will use the same service agreements and procedures as approved by the Commission in its final order designating Western Wireless as an ETC in those areas entered on January 6, 2003.

III. CONCLUSION

30. The Act and the South Dakota Code establish clear, consistent and competitively fair mechanisms for allowing carriers, including a CMRS provider, to be designated as an ETC for the purpose of federal universal service support. Western Wireless provides the supported services, satisfies all applicable requirements, will, subject to the redefinition of the service areas, provide the supported services throughout the entire service area, and can and will meet the obligations of an ETC. For rural customers, designation will bring new technology, lower rates, and better service, and so is clearly in the public interest.

31. Western Wireless respectfully requests the Commission to follow the directives and principles of the Act and to grant its Petition by issuing an order designating Western Wireless as an ETC in the study areas of the rural telephone companies listed on Attachment A pursuant to 47 U.S.C. § 214(e) and S.D. Codified Laws §49-31-78 and, Western Wireless further respectfully requests that the Commission proceed on this Petition in an expedited matter providing for expedited proceedings.

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ATTACHMENT A

Rural Telephone Company Study Areas For Which Western Wireless Seeks ETC Designation

- Golden West Telephone Cooperative Inc.
- James Valley Cooperative Telephone Company
- Splitrock Properties Inc.
- Sully Buttes Telephone Cooperative Inc.
- Tri-County Telecom Inc.
- Vivian Telephone Co.
- West River Telecommunications Coop (Mobridge) – SD
- West River Telecommunications Cooperative – SD