

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

IN THE MATTER OF THE FILING BY WWC	)	ORDER GRANTING IN PART
LICENSE, LLC D/B/A CELLULARONE FOR	)	AND DENYING IN PART
DESIGNATION AS AN ELIGIBLE	)	WESTERN WIRELESS'
TELECOMMUNICATIONS CARRIER IN OTHER	)	PETITION FOR
RURAL AREAS	)	RECONSIDERATION AND
	)	CLARIFICATION; FINDINGS
	)	OF FACT AND
	)	CONCLUSIONS OF LAW;
	)	AND NOTICE OF ENTRY OF
	)	ORDER
	)	TC03-191

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

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

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

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

The hearing was held as scheduled, beginning on May 4, 2004. Following the hearing, the parties submitted briefs. At its August 17, 2004, meeting, the Commission considered this matter. The Commission voted unanimously to grant Western Wireless designation as an ETC in the requested areas, subject to conditions. On September 2, 2004, the Commission issued its Order Designating Western Wireless as an Eligible Telecommunications Carrier; Findings of Fact and Conclusions of Law; Notice of Entry or Order ("Designation Order").

On September 30, 2004, Western Wireless filed a Petition for Reconsideration and Clarification. On October 20, 2004, the Intervenor filed an answer opposing the Petition. On October 20, 2004, James Valley filed a separate objection. At its November 30, 2004, meeting, the Commission listened to arguments regarding the Petition and requested additional information from Western Wireless. On December 10, 2004, Western Wireless supplied the additional information. On December 10, 2004, the Commission received a letter from Staff in which it suggested an additional condition. At its December 14, 2004, meeting, the Commission had additional questions regarding the information submitted by both Western Wireless and Staff. The Commission then took the matter under advisement. At its December 28, 2004, meeting, the Commission voted to amend and clarify condition three to state that Western Wireless does not need to provide capital expenditures or its capital budget for each RLEC service area but that Western Wireless does need to provide material capital expenditure information statewide with the location and cost listed for each material capital expenditure. The Commission further instructed Western Wireless to work with Staff to determine what constitutes material. The Commission also voted to modify condition eight to state that Western Wireless' report regarding unfulfilled requests does not need to include potential customers, but must include consumers who were actual customers of Western Wireless and that the information does not need to be provided on an RLEC service area basis. The Commission further voted to find that Western Wireless' request for confidentiality language is unnecessary and inconsistent with the Commission's rules. Finally, the Commission voted to add Staff's proposed condition nine to the order.

Based on the record in this case, the Commission makes the following Findings of Fact and Conclusions of Law regarding its decision to clarify and modify its Designation Order which granted Western Wireless ETC status in the requested areas:

FINDINGS OF FACT

1. On September 2, 2004, the Commission issued its Designation Order granting Western Wireless ETC status in the areas as requested by Western Wireless. In the Designation Order the Commission listed eight conditions.
2. On September 30, 2004, Western Wireless filed a Petition for Reconsideration and Clarification. On October 20, 2004, the Intervenor filed an answer opposing the petition. On October 20, 2004, James Valley filed a separate objection.
3. In its Petition, Western Wireless requested changes to conditions three and eight. With respect to condition three, Western Wireless requested the following changes:
 3. In conjunction with, but separate from and in addition to its annual certification filings under 47 C.F.R. §§ 54.313 and 54.314, Western Wireless shall submit records and documentation on an annual basis detailing its progress towards meeting the statutory objective of offering service throughout the service area for which the designation is received. At a minimum, such information shall detail the capital

expenditures made by Western Wireless in its designated areas in the State of South Dakota within each RLEC's service area during the preceding annual period and shall include its proposed capital budget for the State of South Dakota each RLEC's service area for the ensuing year. Information filed by Western Wireless in compliance with this obligation shall be deemed confidential for a period of ten (10) years pursuant to SDCL 1-27-1, et seq., and ARSD 20:10:01:39 through 20:10:01:44.

As one of the reasons for the changes, Western Wireless stated that its accounting systems and budgeting processes "do not track capital expenditures with reference to the geographic areas served by the incumbent LECs."

4. Western Wireless requested that the following changes be made to condition eight:

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

Western Wireless stated that these changes are needed because the condition as written in the order is ambiguous. Western Wireless stated that it may receive numerous inquiries per day from what could be considered "potential" customers. Western Wireless noted that many of these inquiries never rise to the level of a service request. In addition, Western Wireless stated that it is unnecessary for Western Wireless to report each request with reference to each RLEC's service area. Western Wireless stated that its complaint tracking system does not automatically correlate the data to the incumbent LEC. If the identity of the incumbent LEC is relevant, Western Wireless stated that information can be independently obtained by the Commission based on the customer's address.

5. The Intervenors opposed Western Wireless' Petition. The Intervenors stated that Western Wireless' arguments that its current record keeping capabilities will have to be changed provided no justification for changing the conditions as set forth in the Commission's order.

6. The Commission finds that Western Wireless' proposal to provide capital expenditures statewide without regard to location or cost of its material capital expenditures is insufficient to provide the Commission with sufficient information to determine whether Western Wireless is meeting its statutory obligation to offer service throughout the service area for which the designation is received. However, the Commission also finds that since Western Wireless will be required to give the location of the capital expenditure, it is unnecessary for Western Wireless to determine the specific RLEC service area for each capital expenditure. The Commission will be able to determine the location of material capital expenditures within RLEC service areas on its own. The Commission further finds that Western Wireless is not required to list its proposed capital budget for each RLEC service area. Finally, the Commission finds that the confidentiality provision as proposed by Western Wireless is unnecessary and conflicts with the Commission's rules regarding how documents are treated when confidential treatment is requested by the filing party. See ARSD 20:10:01:39 through 20:10:01:44, inclusive.

7. Therefore, with respect to condition three, the Commission finds that it will modify and clarify condition three to read as follows:

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

8. With respect to condition eight, the Commission agrees with Western Wireless that it would be too difficult to attempt to distinguish between inquiries from potential customers and actual requests for service from potential customers. Thus, Western Wireless will be required to report actual customers, not potential customers. Actual customers include those who remain customers, as well as those who cancel service, who were unable to receive service at their residences. The report shall also include those customers who decline to purchase or install any equipment, such as antennas, designed to improve service at their residences. The Commission finds that Western Wireless is not required to report customers by RLEC service area but is required to report the location of the customers.

9. Therefore, with respect to condition eight, the Commission finds that it will modify and clarify this condition as follows:

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

10. The Commission would also like to note that although the number of customers that Western Wireless is unable to offer service to is an important factor in determining whether Western Wireless is meeting its obligations as an ETC, the Commission doubts that Western Wireless' report will provide a complete or accurate picture of the number of unfulfilled requests for service. Given the number of people who sell Western Wireless' service throughout the state, the Commission is not convinced that Western Wireless will be able to adequately train all of the people authorized to sell Western Wireless' services to accurately report unfulfilled service requests as required by this condition. However, the Commission hopes that some of this information will be useful in determining where Western Wireless is not yet able to offer its service and may also be useful in analyzing how well Western Wireless' five step process to provide service is working.

11. Commission Staff proposed the following additional condition in exchange for granting Western Wireless' requested changes:

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

At the December 14, 2004 meeting, Staff clarified that its proposed condition should reference the Staff "petitioning" for modification of the order.

12. Having made some of the modifications as requested by Western Wireless, the Commission finds that Staff's proposed condition is acceptable in light of the changes made to the original order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, 49-31-81; ARSD 20:10:01:29, 20:10:01:30.01, and 20:10:32:42 through 20:10:32:46, inclusive; and 47 U.S.C. § 214(e)(1) through (5).

2. Pursuant to ARSD 20:10:01:30.01, the Commission grants in part and denies in part, Western Wireless' Petition for Reconsideration and Clarification.

3. Pursuant to Findings of Fact 6 and 7, the Commission modifies and clarifies condition three as follows:

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

4. Pursuant to Findings of Fact 8 through 10, inclusive, the Commission modifies and clarifies condition eight as follows:

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

5. Pursuant to Findings of Fact 11 and 12, the Commission adds the following condition:

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

It is therefore

ORDERED, that condition three and condition eight shall be modified and clarified and condition nine shall be added to the Designation Order as set forth above.

NOTICE OF ENTRY OF ORDER

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

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

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Adair Kelbo</u>
Date:	<u>1/5/05</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner