

HOGAN & HARTSON  
L.L.P.

MICHELE C. FARQUHAR  
PARTNER  
DIRECT DIAL (202) 637-5663  
INTERNET MF7@DC2.HHLAW.COM

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

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January 11, 1999 JAN 11 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554

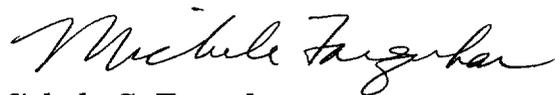
Re: Federal-State Joint Board on Universal Service  
CC Docket No. 96-45

Dear Ms. Salas:

On behalf of Western Wireless Corporation, I am enclosing for filing Comments of Western Wireless Corporation on Further Notice of Proposed Rulemaking in the proceeding referred to above. These Comments are filed in response to the Commission's Further Notice of Proposed Rulemaking, FCC 98-278 (released October 26, 1998).

Please contact me if you have any questions.

Respectfully submitted,



Michele C. Farquhar  
Counsel for Western Wireless Corporation

Enclosures

cc: Parties on attached service list  
ITS, Inc.

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )

Federal-State Joint Board )  
on Universal Service )

) CC Docket No. 96-45

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JAN 11 1999

**COMMENTS OF WESTERN WIRELESS CORPORATION**  
**ON FURTHER NOTICE OF PROPOSED RULEMAKING**

**WESTERN WIRELESS CORPORATION**

Gene DeJordy  
Executive Director of  
Regulatory Affairs  
WESTERN WIRELESS  
CORPORATION  
3650 - 131st Ave., S.E., Suite 400  
Bellevue, WA 98006  
(425) 586-8055

Michele C. Farquhar  
David L. Sieradzki  
Ronnie London  
HOGAN & HARTSON, L.L.P.  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109  
(202) 637-5600

Its Attorneys

January 11, 1999

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**Before the  
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Washington, D.C. 20554**

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	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	

**COMMENTS OF WESTERN WIRELESS CORPORATION  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

Western Wireless Corporation (“Western Wireless”), by its attorneys, hereby submits its Comments in response to the Further Notice of Proposed Rulemaking, FCC 98-278, released October 26, 1998 (“FNPRM”), in the above-captioned proceeding. Western Wireless welcomes the opportunity offered by the FNPRM to contribute to the development of a pro-competitive universal service policy, which should enable consumers in high-cost and rural areas to select from a range of competing service providers, including wireless providers such as Western Wireless. The end result should be a competitive local marketplace in high-cost areas, as envisioned by Congress when it adopted the universal service provisions of the Telecommunications Act of 1996 (“1996 Act”).

**I. INTRODUCTION AND SUMMARY**

Western Wireless intends to enter the universal service market in high-cost and rural areas and offer consumers an alternative to the incumbent local

exchange carriers (“ILECs”). 1/ Western Wireless recently introduced an exciting Wireless Residential Service offering in rural Regent, North Dakota. Appendix A includes press releases describing the offering, as well as a Case Study describing the extent to which the offering is critically dependent on a competitive universal service system. As the Case Study shows, in the absence of the policy changes discussed in these comments, Western Wireless will not be able to recoup the entire cost of providing Wireless Residential Service to consumers.

Although commercial mobile radio service (“CMRS”) providers are able to compete with ILECs cost-effectively in many geographic areas, the prospect for fair competition is discouraging at this point. It is difficult to compete on a level playing field with ILECs, which receive substantial amounts of implicit subsidies that are not available to new entrants. 2/ In these comments, Western Wireless suggests a novel methodology to provide support to prospective new entrants that would replicate the implicit support received by ILECs.

Another competitive difficulty is that ILECs receive substantial amounts of implicit support through interstate access charges paid by interexchange carriers (“IXCs”), but Western Wireless and other CMRS providers do

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1/ Western Wireless provides cellular and broadband PCS service in 23 western states, and has applied for eligible telecommunications carrier (“ETC”) status in Colorado, Kansas, Minnesota, Montana, North Dakota, Nebraska, New Mexico, Nevada, Oklahoma, South Dakota, Texas, Utah and Wyoming.

2/ The Commission intends to replace the existing system with a universal service support system based on forward-looking cost effective on July 1, 1999 with respect to larger ILECs, but smaller rural telephone companies are slated to continue with the existing system until 2001 or later.

not receive any access charges. It is unclear whether they are even permitted to do so. Moreover, FCC rules prohibit CMRS providers from establishing tariffs to enforce their recovery of such charges. Western Wireless submits that the Commission should complete a pending rulemaking proposal to clarify that CMRS carriers are as entitled to access charges in the same manner as ILECs, and should eliminate its rule prohibiting CMRS carriers from filing access tariffs.

As a new entrant, Western Wireless would hope to receive, at a minimum, the same *explicit* universal service support as the ILECs when it enters a high-cost local market. To ensure that explicit support is fully portable, the Commission must fix a quirk in its rules that delays the explicit support received by competitive entrants by as long as two years (unlike ILECs, which receive explicit support immediately), and bases the amount of support to new entrants (but not ILECs) on out-of-date information on the customers they serve.

Even if these problems were fixed, Western Wireless faces a system of universal service support that is designed around wireline telephone networks, and that ignores the cost characteristics of wireless networks like the ones deployed by Western Wireless. Western Wireless plans, on or before January 26, 1999, to introduce a cost model that will demonstrate that the forward-looking cost of wireless technology is substantially less than that of wireline technology in many areas. Providing support to all carriers based on the forward-looking cost of the least costly technology in each area, including wireless, should reduce the overall cost of universal service support for all telecommunications consumers and carriers.

Beyond the changes necessary at the federal level, Western Wireless is also experiencing difficulties in some states in obtaining certification as an eligible telecommunications carrier (“ETC”), which is a prerequisite to receiving federal as well as state universal service support. The FCC should monitor these and other state developments carefully, and where necessary it should preempt anti-competitive state policies under Section 253.

Finally, in keeping with its goal of fostering competitive local markets, the Commission should not, in defining universal service, adopt specific rules regarding minimum local usage offered by ETCs seeking to provide service in areas eligible for universal service support. A more competitively neutral approach would be to rely on consumer choice, not regulatory fiat, to determine how competitive local service offerings develop.

## **II. THE COMMISSION’S UNIVERSAL SERVICE POLICIES MUST PROMOTE COMPETITIVE LOCAL MARKETS IN HIGH-COST AREAS**

Section 254 requires universal service policies to provide “[c]onsumers in rural, insular and high cost areas . . . access to telecommunications . . . services that are *reasonably comparable* to those services provided in urban areas[.]” 3/ This means not just comparability of *rates*, but also reasonably comparable *opportunities to select among a range of telecommunications services from competing providers*. The Commission must ensure, therefore, that federal universal service support is

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3/ 47 U.S.C. § 254(b)(3).

distributed such that new entrants can serve high-cost customers with the same ease as incumbents.

The FNPRM recognizes that universal service reform must be guided by competitive and technological neutrality, and the elimination of barriers to entry, and seeks comment on the extent to which the Commission's rules are contributing to or hindering these goals and any needed policy changes. <sup>4/</sup> We address below the competitive problems created by *implicit* federal subsidies, and certain practical problems that encumber even the supposedly portable *explicit* federal support system. We also address certain barriers to competition arising at the state level.

- A. Competitive ETCs Should Receive the Same Implicit Support as ILECs, Pending the Elimination of Implicit Support**
  - 1. In Addition To Portable Explicit Support, the Commission Should Provide Competitive ETCs Some Measure of Support in Lieu of the Implicit Support Received by the ILECs**

The existing system of implicit subsidies available to ILECs but not competitive entrants poses a significant barrier to entry. ILECs today rely on a complex web of subsidy flows, including some explicit universal service support and a substantial amount of implicit subsidies, to fund their offering of basic telephone service at below-cost prices in rural and high-cost areas. The implicit support flows include both FCC- and state-regulated pricing mechanisms, such as excessive access charges, high intraLATA toll charges, subsidies from over-priced services to

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<sup>4/</sup> FNPRM at ¶¶ 42-45.

business users, subsidies from excessive rates for vertical services offered in combination with monopoly local services, and subsidies from low-cost areas to high-cost areas through rate averaging.

These implicit subsidies are unavailable to competitive entrants, for the most part. New entrants, unlike the ILECs, lack monopoly power and cannot rely on revenues from certain offerings that far exceed the costs of service as the source of cross-subsidies. The Commission has announced an intention to reform its universal service and access charge policies to eliminate implicit subsidies, at least for the ILECs that are not "rural telephone companies," and replace them with explicit universal service support, by July 1999. <sup>5/</sup> We applaud this commitment, but it is possible that it may not be fully implemented -- particularly in the access charge reform context -- by July 1, 1999. In addition, most state commissions will not have finished the important (and we believe mandatory) process of eliminating implicit subsidies from ILECs' intrastate rate structures by that date.

Furthermore, it is virtually certain that rural telephone companies will continue to receive implicit federal and state support for several years in the future, since the Commission has delayed the implementation of forward-looking universal service policy for such carriers until 2001, at the earliest.

Given that non-portable implicit subsidies will continue to be available to ILECs -- in addition to and on top of the explicit universal service high-cost

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<sup>5/</sup> *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 12 C.R. (P&F) 1201 (1998).

support that they receive -- but not to competitive ETCs, a major barrier to entry will continue to exist. The Commission can remedy this problem by ensuring that competitive ETCs, particularly CMRS carriers, have access to a measure of implicit support (in addition to the explicit support that will be portable and, if the reforms discussed above are adopted, available to competitive ETCs).

Specifically, Western Wireless submits that, in rural telephone company service areas, competitive ETCs should receive a measure of support representing the amount of implicit support received by ILECs (in addition to the portable explicit support available). <sup>6/</sup> One way to measure this amount provided to competitive ETCs could be by taking the amount of support that would be derived from forward-looking cost models, and subtracting the (smaller) amount of portable, explicit support that is actually available. In other words, even though rural telephone companies will continue to receive explicit support based on the pre-existing formulas, the forward-looking cost models adopted for non-rural companies could be used to derive the amount that they ultimately will receive. To the extent the amount computed in this manner exceeds the actual amount that rural telephone companies receive, competitive ETCs could simply receive the difference, accounting for the implicit subsidies that rural ILECs continue to receive. (Of course, if the amount of explicit support is equal to or exceeds the amount computed under this formula, then competitive ETCs would receive only the same portable, explicit support as the ILECs).

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<sup>6/</sup> The same rationale should apply in non-rural areas as well to the extent the process of eliminating implicit subsidies is not complete by July 1999.

## **2. The Commission Should Expressly Allow CMRS Providers to Receive Access Charges**

In addition to the mechanism described above to provide competitive ETCs funding equivalent to the implicit support enjoyed by the ILECs, the Commission must remove an additional impediment to full competition that only affects CMRS providers -- the inability of CMRS providers to assess access charges for originating and terminating long distance traffic. Interstate access charges currently include a significant measure of implicit subsidies. ILECs (and wireline CLECs) can establish tariffs to recover these subsidies through access charges, but CMRS carriers are prohibited from doing so. CMRS carriers are thus precluded from receiving the universal service support that other carriers receive. Ultimately, Western Wireless believes that ILECs' (and other carriers') access charges should be reduced to cost-based levels. But even then, CMRS providers must be allowed to collect access charges reflecting the cost of originating and terminating long distance traffic. These steps are necessary to achieve the Commission's pro-competitive goals and to eliminate barriers to competition by CMRS carriers. We described these problems in comments recently filed in the *Access Charge Reform* proceeding. <sup>7/</sup>

Interstate access charges are designed to compensate local exchange carriers ("LECs") for the cost of originating and terminating interstate long distance

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<sup>7/</sup> Comments of Western Wireless Corporation filed in *Access Charge Reform*, CC Docket No. 96-262 (October 26, 1998). A copy of these comments is attached as Appendix B.

calls over their networks. CLECs, as well as ILECs, recover these charges through tariffs, which interexchange carriers (“IXCs”) cannot lawfully evade. CMRS providers, however, generally do not collect interstate access charges, and it is unclear under the Commission’s rules whether they are entitled, or even permitted, to do so. As the CMRS industry has grown, more and more interexchange calls originate and/or terminate on CMRS systems, 8/ and IXCs derive the same benefit from terminating and originating traffic on CMRS systems as they do from relying on ILEC local networks for that function.

The Commission has observed that, despite determining long ago that CMRS carriers cannot be required to pay access charges to ILECs, it has never definitively decided “whether LECs or IXCs should remit any interstate access charges to CMRS providers.” 9/ The Commission proposed in late 1995 to remedy this problem and to make it clear that CMRS providers *are* entitled to receive access charges in certain circumstances. 10/ The Commission should promptly conclude this long-outstanding rulemaking and adopt its pro-competitive proposal.

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8/ *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Third Report, FCC 98-91, released June 11, 1998, at 2-4. In fact, CMRS providers are establishing calling plans and other products and services that allow mobile phones to function (and be priced) more and more similarly to their wireline counterparts.

9/ *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5074, ¶ 115 (1996) (“*LEC/CMRS Interconnection NPRM*”).

10/ The Commission proposed to require that “CMRS providers . . . be entitled to recover access charges from IXCs, as the LECs do, when interstate interexchange traffic passes from CMRS customers to IXCs (or vice versa) via LEC networks . . . and be treated no less favorably than neighboring LECs or CAPs with respect to

Both ILECs and wireline CLECs collect access charges pursuant to binding tariffs filed with the Commission. But CMRS providers are barred from establishing access tariffs under a so-called “mandatory forbearance” policy. <sup>11/</sup> Without tariffs, CMRS carriers cannot induce the IXCs to pay access charges for the long-distance traffic originated and terminated over CMRS networks. To place CMRS carriers in the same position as their ILEC and wireline CLEC competitors, the Commission should revoke its mandatory forbearance policy for CMRS carriers. Instead, like wireline CLECs, CMRS providers should be allowed (but not required) to file tariffs to provide for the collection of access charges from IXCs. This will allow CMRS providers to stand on equal footing with LECs to the extent they provide the same functions to IXCs as do the LECs, and it will advance the Commission’s objectives of technological neutrality and fostering entry of new providers into the market for basic telecommunications services.

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recovery of access charges from IXCs and LECs for interstate interexchange traffic. . . . [A]ny less favorable treatment of CMRS providers would be unreasonably discriminatory . . . .” *Id.*, 11 FCC Rcd at 5075, ¶ 116.

<sup>11/</sup> *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411, 1480, ¶ 179 (1994). It is notable that even when the Commission adopted that policy, it recognized that it may need to modify the policy to allow for permissive tariffing by CMRS providers under certain circumstances, particularly in the context of interconnection developments and interstate access charges. *Id.* (“We recognize, however, that there may be other public interest factors that would make forbearance *with respect to interstate access service* inappropriate.”) (emphasis added). It is also notable that the Commission’s order imposing mandatory forbearance on IXC tariffs has been stayed, meaning that the Commission is not likely to succeed on the merits in that case. *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

**B. All Universal Service Support Should Be Explicit, Fully Portable, And Based Upon The Lower Of Wireless Or Wireline Network Costs**

Ultimately, all universal service support must be made *explicit* in order to achieve the goal of competitive neutrality and to engender a competitive local marketplace. This goal applies to rural telephone companies as well as to carriers in other areas. And of course, support flows must become fully *portable* among all carriers so that each carrier has an equal opportunity to capture customers eligible for support. 12/ Any program that effectively creates incentives for new entrants *not* to serve high-cost customers at all would violate the letter and spirit of the 1996 Act. In our comments on the Joint Board's Second Recommended Decision, Western Wireless showed that certain policy changes recommended by the Joint Board – particularly the recommendation to distribute support based on study areas, rather than wire centers – would create disincentives to competitive entry in high-cost areas. 13/ We show below that several changes must be made to the planned system for distributing explicit universal service support to ensure that the system is fully portable and competitively neutral.

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12/ The Commission has already specifically recognized that high-cost support must be “portable, or transferable, to competing eligible telecommunications carriers when they win customers from ILECs or serve previously unserved customers,” *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8927, ¶ 273 (1996) (“*Universal Service Order*”).

13/ A copy of these comments is attached as Appendix C.

**1. The Commission Must Interpret or Revise Its Rules To Fund Competitive ETCs as Promptly as ILECs**

The Commission's rules include a methodology for distributing high-cost support that places competitive ETCs at a disadvantage vis-à-vis ILECs, as described in a petition recently filed by Western Wireless. <sup>14/</sup> The Part 36 rules that currently govern the distribution of high-cost support to all ILECs (and will continue to govern rural telephone companies' support for some years to come) entitle ILECs to an increased amount of support based on an updated, current count of the lines they serve. By contrast, the Part 54 rules governing the portability of support to competitive ETCs apparently freeze competitive ETCs' support based on data that can be as much as 24 months old. <sup>15/</sup>

This apparent difference would pose a huge competitive disadvantage for competitive ETCs. While ILECs can receive support immediately, new entrants may have to wait as long as two years before they can receive any universal service support. Moreover, while ILECs can receive support based on updated line counts, rapidly growing new entrants, whose customer base may double or triple over a one-

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<sup>14/</sup> Western Wireless has filed a petition requesting an interpretation or revision of this rule, as discussed in the text. Western Wireless Petition for Clarification or Rulemaking, CC Docket No. 96-45 (filed Oct. 15, 1998) ("Western Wireless Petition"). Western Wireless applauds the Commission's decision to seek comment on that petition in the context of this proceeding. Public Notice, "Western Wireless Corporation Petition for Clarification or Rulemaking," CC Docket No. 96-45, DA 98-2138 (released Nov. 3, 1998). A copy of these comments is attached as Appendix D.

<sup>15/</sup> Compare 47 C.F.R. §§ 36.611 & 36.612 with 47 C.F.R. § 54.307(b). It is patently clear that Section 54.307(b) was drafted based on the pre-existing Section 36.611, but there is no analog in the Part 54 rules to Section 36.612, which allows carriers to submit updated information. See Western Wireless Petition.

to two-year period, apparently receive support based on obsolete data. Thus, the Commission's own rules appear not to be competitively neutral, and may have the effect of deterring competitive entry -- the exact opposite of what the Commission apparently intended.

To remedy this, the Commission must either amend or clarify its rules to ensure that new entrants begin receiving high-cost support within a relatively short period after entering a market and becoming certified as ETCs. Competitive ETCs' support must be based on a relatively current count of the number of customers served. In addition, the Commission must enable new entrants to commence receiving universal service high-cost support funding much more frequently -- *e.g.*, at least quarterly. These rule changes are absolutely essential to bring the Commission's commitment to competitive neutrality to fruition.

## **2. The Commission's Forward-Looking Cost Model Must Project the Costs of Wireless as Well as Wireline Networks**

Western Wireless strongly agrees with the Commission's recognition that the goals of universal service can be significantly furthered by expressly ensuring that universal service reform accords CMRS providers the opportunity to provide supported services. <sup>16/</sup> This would ensure that consumers in high-cost areas eligible for universal support have the freedom to select from a range of

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<sup>16/</sup> FNPRM at ¶ 25 (*quoting Universal Service Order*, 12 FCC Rcd at 8802, ¶ 49 ("The Commission anticipated that a policy of technological neutrality 'will foster the development of competition and benefit certain providers, *including wireless* . . . , that may have been excluded from participation in universal service mechanisms if we had interpreted universal service eligibility criteria so as to favor particular technologies.") (emphasis added).

services provided by a variety of telecommunications service providers, including CMRS providers. Furthermore, as the Commission has appropriately chosen to rely on a cost model based on forward-looking costs to determine universal support, it is imperative that the model not overestimate the costs of providing service. This would unnecessarily enlarge the overall size of the fund and would impose excessive burdens on telecommunications consumers and carriers.

In an effort to assist the Commission in avoiding such pitfalls, Western Wireless has argued that the Commission's forward-looking cost model should encompass the costs of wireless as well as wireline networks. <sup>17/</sup> There are numerous high-cost areas where the services supported by the federal universal service program can be provided less expensively using wireless technologies rather than wireline facilities. <sup>18/</sup> Indeed, the Commission has recognized that "to the extent practical, the selected mechanism should estimate the cost of providing the supported services using wireless technology in areas where wireless technology is likely to be the least-cost, most efficient technology." <sup>19/</sup>

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<sup>17/</sup> See Western Wireless Comments on Model Platform Development, CC Docket Nos. 96-45, 97-160, DA 98-1587 (filed August 28, 1998). A copy of this filing is attached as Appendix E.

<sup>18/</sup> *Id.*

<sup>19/</sup> *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45 & 97-160, Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514, 18555, ¶ 99 (1997). At that time, the Commission related that it possessed "almost no information regarding how to estimate such costs," and determined to explore "including an additional component in the mechanism that would compare the cost of providing service via a wireless network with the cost of providing service via a wireline network and would choose the lowest-cost technology to calculate the costs of

Western Wireless has retained HAI Consulting, Inc., to design a wireless cost model that estimates the cost of providing universal service over wireless networks in each ILEC wire center area. This model will make it possible to determine whether it costs less to provide service in that area using wireline technology or wireless technology. The model is designed to be integrated into the model mechanism that the Commission recently selected to estimate the forward-looking cost based on the most cost-effective technology, of providing universal service. <sup>20/</sup> Western Wireless intends to submit the HAI Wireless Cost Model on or before January 26, 1999.

**C. State Barriers To Entry Must Be Eliminated**

The Commission has responsibilities beyond implementing properly pro-competitive *federal* universal service support mechanisms. Universal service reform is a joint undertaking of the FCC and state commissions, and despite good-faith efforts, some state commissions appear to be going off-course and are implementing universal service policies in a way that could pose barriers to competitive entry. Given its responsibilities for ensuring the successful implementation of the 1996 Act, the FCC must monitor these developments closely. To the extent that state policies effectively preclude competitive entry and are

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providing the supported services.” *Id.* The HAI Wireless Model is the first attempt at providing the Commission, in a meaningful, concrete way, the information it seeks.

<sup>20/</sup> *Federal State Board on Universal Service*, CC Docket Nos. 96-45 & 97-160, Fifth Report and Order, FCC 98-279, released October 28, 1998.

neither competitively neutral nor consistent with Section 254, the FCC must exercise its preemption authority under Section 253.

**1. States Must Not Abuse The Designation of ETCs Under Section 214(e) To Impose Unlawful Conditions On CMRS Providers Or Otherwise Retard Competitive Entry**

Western Wireless is experiencing first-hand potential barriers to entry at the state level. We have applied for ETC designation in 13 states, but have not yet received such designation anywhere. The process is lengthy, requiring lengthy proceedings, including hearings, in many states. More substantively, some parties (and state commission staff members) have adopted the following arguments, without basis in the 1996 Act or in sensible, pro-competitive public policy, against Western Wireless's being certified: (1) Notwithstanding its status as a CMRS provider, Western Wireless must subject itself to state rate and entry regulation as a precondition for ETC designation. (2) Western Wireless should be required to satisfy requirements in addition to those provided in the statute and the FCC's rules. (3) The cart (actually providing supported service) must come before the horse (getting ETC certification and qualifying to receive support). The Commission should make it clear that none of these arguments can be countenanced, and that it will not tolerate state commissions' abuse of the ETC designation process to thwart prospective competition.

First, several states have either adopted or are contemplating adopting ETC requirements that would subject CMRS carriers to state commission regulation as a condition for ETC designation, notwithstanding the fact that Section

332(c)(3) of the Act prohibits states from imposing such requirements. The Commission specifically rejected proposals to impose additional obligations, such as certification, price regulation, marketing, service provisioning, service quality and carrier of last resort obligations, as a condition of ETC designation. 21/ Moreover, the FCC determined that imposing additional eligibility criteria would not only violate its principle of competitive neutrality, but also that subjecting ETCs to incumbent LEC responsibilities would chill entry into high cost areas. 22/ The Commission has stated, “Nothing in section 214(e)(1), however, requires that a carrier be subject to the jurisdiction of a state commission in order to be designated an eligible telecommunications carrier. Thus, tribal telephone companies, CMRS providers, and other carriers not subject to the full panoply of state regulation may still be designated as eligible telecommunications carriers.” 23/ The FCC specifically recognized state preemption of wireless carriers under 47 U.S.C. § 332(c)(3)(A) as prohibiting states from denying wireless carriers eligible status. 24/ Notwithstanding the clear direction from the Commission, some states have imposed state certification and other requirements on CMRS carriers as a

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21/ “We reject proposals to impose these additional obligations as a condition of being designated as an eligible telecommunications carrier pursuant to section 214(e) because section 214(e) does not grant the [FCC] authority to impose additional eligibility criteria.” *Universal Service Order*, 12 FCC Rcd at 8855, ¶ 142.

22/ *Id.*, 12 FCC Rcd at 8857, ¶ 144.

23/ *Id.*, 12 FCC Rcd at 8859, ¶ 147.

24/ *Id.*, 12 FCC Rcd at 8858-59, ¶ 145.

condition for designation as an ETC. The Commission should reaffirm that CMRS carriers are not subject to the jurisdiction of a state commission and are not required to obtain state certification or meet other requirements imposed on local exchange carriers in order to be designated an ETC for purposes of federal or state universal service support.

Second, the Commission should make it clear that the only relevant criteria for states to consider in deciding whether to designate a carrier as an ETC are the criteria listed in Section 214(e). <sup>25/</sup> Notwithstanding “[t]he plain language of section 214(e)(1)[, which] does not permit the [FCC] or the states to adopt additional criteria as prerequisites for designating carriers eligible communications carriers[.]” <sup>26/</sup> some states are considering doing just that. For example, in Western

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<sup>25/</sup> “A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received -- (A) offer the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1). Section 214(e)(2) further states that a “state commission *shall* upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the state commission.” 47 U.S.C. § 214(e)(2). (emphasis added). For territories served by rural telephone companies, the designation of an additional ETC must be in the “public interest.” 47 U.S.C. § 214(e)(2).

<sup>26/</sup> *Universal Service Order*, 12 FCC Rcd at 8791, ¶ 24. *See also id.*, 12 FCC Rcd at 8851, ¶ 135 (“[W]e find that these provisions dictate that a state commission *must* designate a common carrier as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1) . . . . *The statute does not*

Wireless' ETC hearings in North Dakota and South Dakota, the ILECs argued that, before designating Western Wireless as an ETC, the state commissions must find that Western Wireless' service offering is "affordable" and "substitutable" for local exchange service offerings by the ILECs. Clearly, this position is simply an attempt by the ILECs to protect their monopolistic position and avoid competition. The Commission should reaffirm that a carrier seeking designation as an ETC is not required to establish that its offering is "affordable" or "substitutable" for local exchange service. 27/

Finally, some ILECs, attempting to protect their entrenched position in the universal service market, have even taken the position that a competitive carrier must *first* offer the services designated for universal service support prior to being designated an ETC. Clearly, this is an attempt to delay and thwart competition. Before providing the supported services to consumers in high-cost areas, a competitive carrier must first obtain designation as an ETC, which then allows the carrier to receive universal service funding to provide the supported

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*permit [the FCC] or a state commission to supplement the section 214(e)(1) criteria that govern a carrier's eligibility to receive federal universal service support."*)

27/ Based upon Western Wireless' experience to date in the 13 pending ETC proceedings, some states have taken the position that the "public interest" standard to be met by competitive carriers seeking designation in territories served by rural telephone companies gives the state commission complete latitude to impose additional criteria for designating ETCs. The Commission should clarify that the public interest standard is not to be used to impose additional criteria/obligations on competitive carriers. The Commission should also reaffirm that the focus of the public interest standard is the consumer and whether the designation of an additional ETC is in the public's (consumer's) interest.

services. Requiring a carrier to provide a highly-subsidized service prior to being designating as an ETC would be putting the cart before the horse. It makes absolutely no sense to read the 1996 Act or the Commission's rules to require a carrier to actually provide a universal service offering to customers and advertise such an offering before being designated as an ETC, which allows the carrier to be eligible to receive universal service funding. The Commission, in fact, has previously found that "a carrier must meet the section 214(e) criteria as a condition of its being designated as an eligible carrier and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support." 28/ To require a carrier to be already performing the obligations of an ETC, including actually offering the supported services and advertising the availability of such services, as a precondition to ETC designation is an inappropriate reading of the statutory requirements.

In sum, the Commission should not countenance abuse of the state commission ETC designation process to create an additional barrier to entry.

**2. The Commission Must Preempt State Mechanisms That Discriminate Against New Entrants In Distributing Support**

In addition to erecting unreasonable hurdles to ETC designation of CMRS carriers and other new entrants, some state commissions have established mechanisms for distributing state universal service support that discriminate against CMRS carriers and other prospective new entrants. For example, Western

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28/ *Universal Service Order*, 12 FCC Rcd at 8853, ¶ 137 (emphasis in original).

Wireless recently brought to the Commission's attention a Kansas "universal service" program that clearly favors ILECs at the expense of competitive ETCs. 29/ This plan makes ILECs eligible to obtain state support throughout the whole of Kansas, whereas competitive carriers are eligible for support in only selected areas of the state. Moreover, the plan is designed to ensure revenue neutrality for ILECs in the context of intrastate access charge reform while having no relationship to either preserving universal service for high-cost areas in the state or the costs of providing universal service.

The Kansas program, therefore, is neither competitively neutral nor consistent with Section 254. The Commission should, as requested by Western Wireless, preempt the offending provisions of the Kansas statutes and regulations. Likewise, the Commission should preempt any other state statute, regulation or legal requirements that stand as non-competitively neutral barriers to the provision of services by new entrants.

### **III. THE COMMISSION SHOULD ALLOW THE MARKET TO DETERMINE THE LOCAL USAGE AND OTHER TERMS OF BASIC SERVICE PACKAGES OFFERED BY ETCs**

In the FNPRM, the Commission sought comment on "how much, if any, local usage [it] should require [ETCs] to provide to customers as part of a 'basic

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29/ Western Wireless Corporation Petition for Preemption, Pursuant to Section 253 of the Communications Act, of Kansas Statutes and Rules that Discriminate Against New Entrants, File No. CWD 98-90, filed July 20, 1998.

service' package" in order to be eligible for universal service support. 30/ Western Wireless' answer to that question is, in short, none.

Neither the FCC nor any of the state commissions should establish any minimum number of minutes, calls, or any other usage criteria of a "basic service package." Promoting a competitive marketplace requires *consumer sovereignty* – that is, even in areas eligible for universal service support, consumers should be empowered to choose the calling plan, technology, and network that best suits their own needs. Competitive forces, not regulatory fiat, should drive ETC design of "basic service" packages. 31/ As such, defining a minimum number of local minutes or calls, or some other usage benchmark, would run counter to the principles of competitive and technological neutrality and therefore violate Section 254 and established public policy favoring competition.

Consumers in rural and high-cost areas should have the same right to select their own local service packages as consumers in urban and low-cost areas have. 32/ Some of these consumers may find it economical to sign up for a package

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30/ FNPRM at ¶ 46.

31/ This presumes, of course, that the goal of competitive neutrality, as set forth above, is largely or wholly achieved -- including the removal of all *implicit* subsidies -- so that all ETCs are competing on equal footing for customers eligible for universal service support.

32/ 47 U.S.C. § 254(b)(3). See, e.g., Bell Atlantic White Pages, District of Columbia Residence Directory at 13 (offering (i) flat-rate Metropolitan Area Service for \$14.15/month which "lets you make as many outgoing calls as you want and talk for as long as you want within the District of Columbia and the Maryland and Virginia suburbs . . . for a flat monthly fee," (ii) District of Columbia Service for \$8.80/month which "lets you make as many outgoing calls as you want and talk for as long as you want within the District of Columbia [with c]alls to the Maryland

that offers a very large local calling area, or long distance calls at the same price as local calls, even if it does not include any free local calls. Other customers may require nothing more than dial tone for emergency calls, while still others may be willing to purchase fewer “free” minutes as long as they can obtain the benefits of mobility on a wireless network.

The point is that there are as many divergent needs for different types of local telecommunications service packages as there are different consumers. This is particularly evident in the extent to which market forces have driven long distance service to converge with local wireline and wireless services – witness the spread of cellular and PCS calling plans that include long-distance calling at the same rates as local, or that include very large local calling areas. Minimum minute, call, or other usage requirements will serve only to lock in old rate structures rather than allowing new ones to evolve in response to market forces.

The FNPRM acknowledges that setting a high level of local usage would give a competitive advantage to wireline carriers. <sup>33/</sup> Indeed, setting *any* minimum local usage requirement would favor carriers like ILECs whose cost structures are largely driven by the cost of facilities that are dedicated to particular

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and Virginia suburbs cost[ing] an additional \$.06 each, (iii) Message Area-Wide Service for \$7.45/month “for customers who make a limited amount of outgoing calls” with a “monthly call allowance of 60 outgoing calls within the District of Columbia and Maryland and Virginia suburbs [with e]ach additional local call cost[ing] \$.06, (iv) Economy I Service for \$4.35/month “for customers who make a small number of outgoing calls” with “no monthly call allowance [and e]ach local call cost[ing] \$.06, and (v) certain additional discount plans available to senior citizens over age 65 and other low-income consumers).

<sup>33/</sup> FNPRM at ¶ 49.

customers. But the converse is incorrect. Refraining from setting any local usage requirement would not favor any class of carriers, but would be competitively neutral. Carriers such as CMRS providers, with substantial usage-sensitive costs, will be at a disadvantage to the extent that *consumers demand* unlimited local usage or large amounts of free usage included in a basic service package. Carriers such as ILECs, with high fixed, dedicated costs would have a competitive advantage if that is what consumers demand. Consumer demand should determine the extent to which local usage is included in basic service packages.

As long as all ETCs receive the same fixed monthly amount of high-cost support, there is no policy justification for establishing a minimum monthly usage requirement. If universal service support were distributed through auctions, and the support were awarded to the carrier offering the lowest monthly rate, then there might be a need to establish minimum monthly local usage that is included. But the Commission has not pursued such a course; indeed, it has rejected it by requiring support to be portable among carriers. Similarly, if carriers were awarded support regardless of whether they actually serve customers, then an unscrupulous carrier could receive support even though it is offering “a basic service package containing local usage that was priced hundreds of dollars higher than options offered by that wireless carrier or competing carriers, so that no one selected it.” <sup>34/</sup> But in a competitively neutral, portable universal service system, a

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<sup>34/</sup> *Id.* at ¶ 50. The Commission also must not lose sight of the chronology of how ETCs will obtain universal service funds. First, the ETC must capture the customer; *then*, the ETC may seek the universal service funds attributable to that

carrier will receive support only to the extent that consumers actually sign up for its local service offerings, and an non-“viable” offering such as that described in the quoted passage would be irrelevant. 35/

In a competitively neutral system, there should be no differences between the amount of support provided to carriers using different technologies. The Commission should therefore reject the notion of adopting “different requirements for different types of carriers[.]” 36/ There is absolutely no rational basis for establishing a minimum usage requirement based on average usage rates that exist today. 37/ The advent of competition, driven in part by the Commission’s universal service policies, as well as the convergence between local wireline, long distance, and wireless telecommunications, and between data and voice, are certain to lead to significant changes in usage patterns in the future. The very fact that the marketplace definitions of what types of usage are included in basic service packages are rapidly changing should give the Commission pause about imposing

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customer. *See supra*, Section II.B.1. It is for this very reason that, in a competitive environment, service providers will be motivated to tailor realistic packages that will attract customers by meeting their needs in a cost-effective manner.

35/ To the extent the Commission fears that such a “parade of horrors” is a realistic concern, it should adopt narrow rules prohibiting the specific problem – or take enforcement action against unscrupulous carriers that attempt to take advantage of the system. Such a course would be far better than adopting broad rules with far-reaching effects that are neither competitively nor technologically neutral.

36/ FNPRM at ¶ 51.

37/ *Id.* at ¶ 52.

any regulatory definition of “what constitutes local usage” in the universal service context. 38/

In sum, the Commission should ensure that its universal service reform adheres to the goals of competitive and technological neutrality, and should reject the notion that *any* minimum amount of free local usage must be included in ETCs’ service offerings.

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38/ *Id.* at ¶ 53. For example, different carriers are offering basic packages including different definitions of the local calling area, including some that have no price differences between local and long-distance calling.

**IV. CONCLUSION**

The Commission should take the actions recommended in these comments, which would ensure a competitively neutral universal service environment that would facilitate competitive entry into high-cost and rural areas by carriers such as Western Wireless and other CMRS providers.

Respectfully submitted,

**WESTERN WIRELESS CORPORATION**

By: *Michele Farquhar*

Gene DeJordy  
Executive Director of  
Regulatory Affairs  
WESTERN WIRELESS  
CORPORATION  
3650 - 131st Ave., S.E., Suite 400  
Bellevue, WA 98006  
(425) 586-8055

Michele C. Farquhar  
David L. Sieradzki  
Ronnie London  
HOGAN & HARTSON, L.L.P.  
Columbia Square  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109  
(202) 637-5600

Counsel for Western Wireless Corporation

Dated: January 11, 1999

APPENDIX A

## Dakota Town Becomes "Unwired"

### Wireless Industry Brings Phone Service Competition; Could Portend Tax Cuts in All American Phone Bills

Washington, DC – The town of Regent, North Dakota becomes the first rural community in the country today where consumers have the opportunity to receive ALL their telephone services wirelessly. Local wireless service provider Cellular One, owned by Western Wireless Corp., has launched its new wireless-based residential telephone service to Regent's 268 residents.

Cellular Telecommunications Industry Association President and CEO Thomas E. Wheeler said, "Western Wireless' exciting work in North Dakota is another indicator of how the wireless industry is delivering competition, innovation and safety to consumers. It has long been said that telecommunications competition would 'never come' to the rural-most portions of America; today that old assumption sailed into the shoals of wireless technology and is sunk forever."

In Regent, North Dakota Governor Edward T. Shafer and Western Wireless CEO John Stanton will place the inaugural calls on Regent's new system to U.S. Sen. Byron Dorgan (N. Dak.) and William Kennard, Chairman of the Federal Communications Commission, in Washington, D.C., this afternoon at approximately 4:30 pm Eastern time.

"Every American pays a hidden tax on their monthly phone bill to subsidize the delivery of phone service to rural communities such as Regent," Wheeler said. "In emerging countries around the globe, wireless technology has been demonstrated to be a less costly means of delivery than wired phones. The Regent experience will determine whether wireless competition can cut the cost of phone service to rural Americans and in the process give every American a tax cut in their monthly phone bill."

The wireless industry is the most competitive sector of telecommunications. Today, over half of all Americans can choose from up to five different wireless carriers in their community. This competition among wireless companies has stimulated the companies to continue their growth by bringing competition into other areas of telecommunications, such as local phone service. Throughout the country, new pricing plans and service offerings have encouraged consumers to "cut the cord."

An interesting sidebar is that because of a move to new facilities, through Monday of next week, there will be no landline connections to the Chairman's office at the FCC. So, not only will Chairman be called from a wireless system in North Dakota, but out of necessity he will also take the call on his wireless phone, further demonstrating how wireless augments landline phone service.

Mr. Stanton is Chairman of the Board of CTIA. CTIA is the international association of the wireless telecommunications industry, representing cellular, PCS and satellite service providers, as well as suppliers to the industry.

## CASE STUDY

### WESTERN WIRELESS' WIRELESS RESIDENTIAL SERVICE IN REGENT, NORTH DAKOTA

On January 7, 1999, Western Wireless' launched its universal service offering in Regent, North Dakota, called Wireless Residential Service. Western Wireless is launching its entry into the universal service market prior to being designated as an ETC and prior to receiving universal service funding in order to underscore its commitment to serving the communication needs of consumers in high-cost areas. Regent, North Dakota falls clearly in the category of a rural, high-cost area. With a population of 268 spread out over a large geographical area and a calculated cost of more than \$200.00 per month for local telephone service, Regent is truly a rural, high-cost area.

Western Wireless' Wireless Residential Service in Regent costs \$14.99 per month for unlimited local usage with a local calling area that includes Regent, Mott, New England, Elgin, Burt, New Leipzig, and Dickinson, North Dakota. This compares with a rate of \$16.00 per month and local calling area of Regent, New England, and Mott offered by the incumbent local exchange carrier. The expanded local calling area offered by Western Wireless is a significant benefit to the Regent consumers because it allows them to place local calls to the only major business/residential community in the area, Dickinson, which is approximately 50 miles from Regent. Clearly, this is precisely the type of local competition envisioned by the Telecommunications Act of 1996 and the Commission's rules.

The ability of Western Wireless to offer its Wireless Residential Service in Regent is dependent upon the establishment of a competitive universal service system that

allows competitive carriers to serve the communications needs of high-cost consumers and receive universal service funding to cover its costs. The FCC and state commissions must, however, take the following steps to enable the competitive offerings of the services supported by universal service.

**Universal Service Funds Must Be Available To Competitive Carriers.**

Under the current universal service rules, competitive carriers have access to only a very limited amount of federal funding to provide the supported services in territories served by the rural telephone companies. A forward-looking cost model for calculating the costs of providing service and determining the level of funding is not slated to go into effect until the year 2001 for territories served by rural telephone companies, like Regent (a forward looking model is slated to go into effect in July 1999 for non-rural telephone companies). The delay in implementing a forward-looking cost model for rural telephone company territories severely disadvantages competitive carriers because incumbents continue to receive various forms of subsidies to cover its costs of providing service in high-cost areas whereas competitive carriers are eligible to receive only a fraction of the cost of providing service. In Regent, for example, the cost of service based upon forward-looking cost models is more than \$200.00, which the incumbent recovers through implicit and explicit funding, but a competitive carrier, like Western Wireless, is eligible to receive less than \$25.00 per month (total support available from the high cost loop fund, long term support, and local switching support). It therefore becomes imperative to make explicit and portable funding that is currently available to incumbents but not competitive carriers. For territories served by rural telephone companies,

a forward looking cost model should be used to determine the level of support available to competitive carriers, even if the model does not apply to incumbents until the year 2001.

**Universal Service Funding Must Be Made Immediately Available To Carriers Providing The Supported Services.** Under Parts 36 and 54 of the Commission's Rules, on July 31, competitive carriers are required to identify the number of high-cost lines served as of December 31 of the previous year, which will determine the level of funding available beginning on January 1 of the following year. In the Regent case, under the current rules, Western Wireless would not identify the number of lines served in Regent until July 31, 2000 and funding would not be available until January 1, 2001 -- two years after Western Wireless began providing service in Regent. The Commission should revise its rules to provide immediate funding for high-cost lines served by a carrier.

**The Commission Should Allow CMRS Carriers To Recover Access Charges From IXCs.** Today, CMRS carriers do not receive access charges from IXCs for terminating long distance calls, unlike incumbent local exchange carriers and competitive local exchange carriers. In Regent, Western Wireless will be originating and terminating long distance calls for IXCs, but is not able to impose access charges for providing this service. The Commission should allow (but not require) CMRS carriers to impose access charges (by filing tariffs) on IXCs for originating and terminating long distance calls.

**The Commission Should Reaffirm The Criteria Designating ETCs By State Commissions.** Unless the Commission reaffirms that the express statutory criteria for designating ETCs is the sole criteria for designating ETCs, competitive carriers, like Western Wireless, will face entrenched incumbents and sympathetic state commissions bent on

foreclosing competitive carriers from entering a previously-foreclosed market. The Commission should reaffirm that the sole criteria for designating ETCs for federal and state universal service support is: (1) the carrier is a common carrier; (2) the carrier is capable of offering the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services; (3) the carrier commits to offering the supported services throughout the service area designated by the state commission; (4) the carrier commits to advertising the availability, and charges for, the services offered; and (5) in territories served by rural telephone companies, the designation is in the public interest.

APPENDIX B

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HOGAN & HARTSON  
L.L.P.

DAVID L. SIERADZKI  
COUNSEL  
DIRECT DIAL (202) 637-6462  
INTERNET DS0@DC2.HHLAW.COM

COLUMBIA SQUARE  
555 THIRTEENTH STREET, NW  
WASHINGTON, DC 20004-1109  
TEL (202) 637-5600  
FAX (202) 637-5910

August 28, 1998

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M St., N.W.  
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service,  
CC Docket No. 96-45;  
Forward-Looking Mechanism for High Cost Support for  
Non-Rural LECs, CC Docket No. 97-160;  
Common Carrier Bureau Seeks Comment on Model  
Platform Development, DA 98-1587**

Dear Ms. Salas:

I am enclosing for filing the original and five copies of Western Wireless Corporation's Comments on Model Platform Development, pursuant to the Public Notice in the above-captioned proceedings, DA 98-1587, released on August 7, 1998. Please contact me if you have any questions regarding this filing.

Respectfully submitted,



David L. Sieradzki  
Counsel for Western Wireless Corp.

Enclosures

cc: Attached service list