

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Western Wireless Corporation Petition for ) CC Docket No. 96-45  
Preemption of an Order of the South Dakota )  
Public Utilities Commission )

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Comments of  
The Minnesota Department of Public Service  
(The Minnesota Department of Commerce)

(To avoid future confusion, it should be noted here that the State of Minnesota's telecommunications regulation unit will be transferred from the Department of Public Service to the Department of Commerce effective September 6, 1999.)

The Minnesota Department of Public Service (MNDPS) files these comments in response to the July 19, 1999, Public Notice in the above referenced docket setting up the comment periods, and the Order released on August 4, 1999, revising the dates for the comment periods.

**Background**

GCC License Corporation (GCC), a mobile cellular carrier in South Dakota, petitioned the Public Utilities Commission of South Dakota (South Dakota PUC) for federal eligible telecommunications carrier ("ETC") status in order to be eligible for federal universal service support, as required by federal law. The South Dakota PUC declined to approve federal ETC status for GCC, in part because GCC was neither providing nor advertising a universal service offering at this time, thus not allowing the South Dakota PUC to determine whether GCC would meet the federal ETC requirements. (South Dakota PUC, Findings of Fact and Conclusions of Law; Notice of Entry of Order, Docket TC98-146, May 19, 1999.)

Western Wireless Corporation ("WW"), the parent of GCC, petitioned the FCC to preempt the South Dakota PUC ruling because it constitutes a barrier to WW's providing

a universal service offering in South Dakota (Petition for Preemption of an Order of the South Dakota Public Utilities Commission, June 23, 1999). WW argues that a state commission must designate a carrier as a federal ETC if that carrier has the capability and commitment to provide universal service once it is designated (WW Petition, p. 9).

**Recommendation of the Minnesota Department of Public Service**

The MNDPS, a state agency charged with investigation, advocacy and enforcement functions, represents the public interest before the Minnesota Public Utilities Commission (“Minnesota PUC”). In this capacity, the MNDPS has recently provided analysis and recommendations to the Commission in response to a petition by Minnesota Cellular Corporation (“MCC”), a wholly owned subsidiary of WW, for federal ETC status in Minnesota. Many of the issues addressed by the Western Wireless petition to the FCC were addressed in the three briefs filed with the Minnesota PUC by the MNDPS in the MCC case. The July 19, 1999 Initial Brief of the MNDPS (“Initial Brief”), the Reply Brief of the MNDPS (“Reply”) filed July 30, 1999, and the August 17, 1999 Supplemental Brief of the MNDPS (“Supplemental Brief”) are attached. The MNDPS recommends that its approach be considered by the FCC in reviewing the decision of the South Dakota Public Utilities Commission (“South Dakota PUC”).

The MNDPS contends that a determination of *eligibility* for ETC funding requires only a finding that an applicant is capable of providing the nine (9) supported services listed under 47 C.F.R. section 54.101 (Initial Brief, pp. 16-19). Going forward, the ETC’s actual receipt of universal service funding is conditional on meeting other general universal service requirements. Moreover, the ETC is subject to continuing state oversight to ensure that it remains in compliance with both federal and state regulatory provisions governing ETCs (Id, pp. 21-2). This phased approach allows a state commission to carry out its mandate to verify that carriers not receive federal universal service support unless they meet federal and state ETC requirements, while, at the same time, facilitating competitive entry. “[T]here is sequential progression – ETC designation, then provision of supported services, then receipt of funding.” (Initial Brief, p. 18.)

The MNDPS believes its approach is consistent with the decision of the Fifth Circuit Court of Appeals in Texas Office of Public Utility Counsel v. FCC, No. 97-60421, \_\_\_ F.3d, 1999 WL 55461 (5<sup>th</sup> Cir. 1999). (Supplemental Brief, pp. 3-8.)

Sincerely,

Edward Fagerlund  
Telecommunications Unit  
Minnesota Department of Public Service

Minnesota Department of Public Service  
September 2, 1999 Comments in CC Docket No. 96-45

EF/jl  
Attachments