

HOGAN & HARTSON
L.L.P.

DOCKET FILE COPY ORIGINAL

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

September 29, 1999

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

RECEIVED
SEP 29 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

**Re: Western Wireless Petition for Designation as an Eligible
Telecommunications Carrier in the State of Wyoming,
CC Docket No. 96-45**

Dear Ms. Salas:

On behalf of Western Wireless Corp. ("Western Wireless"), I am submitting for filing the attached Western Wireless Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, pursuant to Section 214(e)(6) of the Communications Act, as amended.

Please contact me if you have any questions.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for Western Wireless Corp.

Enclosures

ccs: Attached service list

No. of Copies rec'd 074
List ABCDE

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

RECEIVED

SEP 29 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
WESTERN WIRELESS CORPORATION) CC Docket No. 96-45
)
Petition For Designation as an)
Eligible Telecommunications Carrier)
in the State of Wyoming)

PETITION FOR ETC DESIGNATION

Western Wireless Corporation's wholly-owned subsidiary, WWC Holding Co., Inc. ("Western Wireless"), by counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), 1/ and the Commission's *Public Notice on Section 214(e)(6) Procedures*, 2/ hereby seeks designation as an eligible telecommunications carrier ("ETC") for purposes of federal universal service support in Wyoming. Because the Wyoming Public Service Commission ("PSC") lacks jurisdiction to consider Western Wireless' petition under Section 214(e)(1) and (2), 3/ the FCC clearly has jurisdiction under Section 214(e)(6)

1/ 47 U.S.C. § 214(e)(6).

2/ Public Notice, *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, FCC 97-419, 12 FCC Rcd 22497 (1997) ("*Section 214(e)(6) Procedure Public Notice*").

3/ 47 U.S.C. § 332(c)(3); see also *Application of WWC Holding Co., Inc. (Western Wireless) for Authority to be Designated as an Eligible Telecommunications Carrier*,

to grant this petition. As demonstrated herein, Western Wireless meets all the statutory and regulatory prerequisites to ETC jurisdiction, and designating Western Wireless as an ETC will serve the public interest.

I. WESTERN WIRELESS' UNIVERSAL SERVICE OFFERING

Western Wireless is a commercial mobile radio service ("CMRS") provider with operations in 17 western states, including the eastern portion of Wyoming. To expand its telecommunications offerings to consumers within its authorized cellular service area, Western Wireless has sought ETC designation in 13 states to provide universal service. Additionally, Western Wireless has submitted an application to the FCC, pursuant to Section 214(e)(6), for ETC designation on the Crow Indian reservation in Montana.^{4/} As the largest facilities-based rural cellular service provider in the United States, Western Wireless is well positioned to bring the benefits of a competitive universal service market to

Docket No. 70042-TA-98-1, Record No. 4432, Order Granting Motion to Dismiss Amended Application (released August 13, 1999) (attached hereto as Appendix A) ("*Wyoming Order*").

^{4/} The states in which Western Wireless has sought designation as an ETC are Colorado, Kansas, Minnesota, Montana, North Dakota, Nebraska, New Mexico, Nevada, Oklahoma, South Dakota, Texas, Utah and Wyoming. Western Wireless' ETC application was denied by the state commissions in South Dakota, which Western Wireless has appealed to state court and filed a petition with the Commission for preemption. See *Western Wireless Corporation Petitions for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Public Notice, DA 99-1356 (released July 19, 1999).

consumers in rural America. However, without ETC designation, Western Wireless is precluded from entering this market.

Today, Western Wireless provides all of the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission's rules, throughout its cellular service area in Wyoming. Upon ETC designation, Western Wireless will make available to consumers a universal service offering over its existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers. Western Wireless also will provide service to any requesting customer within the designated service areas, and if necessary will deploy any additional facilities necessary to do so. The technical and operational characteristics of its universal service offering, including the wireless local loop customer premises equipment ("WLL CPE") that will be used in connection with the offering, are described in detail in Appendix B. ^{5/}

^{5/} As the Commission has recognized, Western Wireless is at the forefront of deploying wireless equipment to provide service to rural, high-cost and underserved areas. See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Notice of Proposed Rulemaking, FCC 99-205, ¶¶ 8-9 (released August 19, 1999).

II. WESTERN WIRELESS SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Western Wireless satisfies each of the five elements set forth in the Commission's *Section 214(e)(6) Procedure Public Notice*, as shown below.

A. Western Wireless Is Not Subject To The Jurisdiction Of The Wyoming State Commission

Western Wireless is a commercial mobile radio service ("CMRS") provider, and the Commission has previously recognized that a CMRS provider may seek designation as an ETC. ^{6/} Significantly, Section 332(c)(3) of the Act precludes rate and entry regulation of CMRS providers by state public utility commissions. ^{7/} Accordingly, the Commission has jurisdiction, under Section 214(e)(6), to designate CMRS providers as ETCs.

^{6/} See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("*Universal Service First Report and Order*"); *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 at ¶ 72 (released May 28, 1999).

^{7/} 47 U.S.C. § 332(c)(3). State implementation of Section 214(e) is arguably a form of entry regulation (particularly given the overall focus of Section 214 of the Act on authorizing carriers to extend facilities or to provide service). See also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204, ¶¶ 78, 82 (released September 3, 1999) (suggesting that FCC may designate CMRS providers as ETCs under 47 U.S.C. 214(e)(6) and 332(c)(3)).

Consistent with the foregoing, the Wyoming Public Service Commission (“PSC”) recently concluded that Western Wireless is not subject to state jurisdiction and therefore must seek ETC designation from the FCC pursuant to Section 214(e)(6). To be sure, Western Wireless petitioned the PSC for designation as an ETC.^{8/} The PSC, however, dismissed Western Wireless’ petition on the grounds that the Wyoming Telecommunications Act (“Wyoming Act”) denies the PSC authority to act on the petition. ^{9/}

Like Section 332(c)(3) of the federal Act, the Wyoming Act precludes the PSC from regulating “telecommunications services using . . . cellular technology,” except for quality of cellular service. ^{10/} The PSC interpreted this prohibition as preventing it from designating Western Wireless as an ETC because Western Wireless provides telecommunications services using cellular technology. ^{11/} Specifically, the Wyoming PSC read the statutory language of Section 37-15-104(a)(vi) of the Wyoming Act such that the PSC’s “jurisdiction obviously does not encompass the consideration of a petition for federal ETC

^{8/} WWC Holding Co., Inc.’s Amended Petition for Designation as an Eligible Telecommunications Carrier, Docket No. 70042-TA-98-1, Record No. 4432, filed with the Public Service Commission of Wyoming, January 5, 1999 (“Wyoming Petition”). Western Wireless filed its initial ETC application with the PSC on September 1, 1998.

^{9/} *Wyoming Order* at ¶¶ 8, 16, 17.

^{10/} *Id.* § 37-15-104(a)(vi); *see also id.* § 37-15-104(x), (xiii).

status.” 12/ As a result, the Commission found that it lacked jurisdiction regarding the subject matter of Western Wireless’ application for ETC status and dismissed Western Wireless’ application. 13/ In so doing, however, the PSC anticipated the filing of the instant petition with the FCC pursuant to Section 214(e)(6):

It is this Commission’s conclusion that Wyoming law does not provide this Commission with authority to consider [the] amended application of Western Wireless for designation as an eligible telecommunications carrier under Section 214(e)(6) of the federal Act. *Our ruling, however, does not leave Western Wireless without a forum. Section 214(e)(6) of the federal Act expressly provides for FCC jurisdiction in the absence of state commission jurisdiction.* 14/

In view of this ruling, for purposes of designation as an ETC in Wyoming, Western Wireless is clearly “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission,” 15/ and designation of Western Wireless as an ETC for its service territory in the state of Wyoming is left to the FCC under Section 214(e)(6).

11/ See *Wyoming Order* at ¶ 8.

12/ *Id.* at ¶ 12.

13/ *Id.* at ¶¶ 8, 16, 17.

14/ *Id.* at ¶ 16 (emphasis added; citation corrected).

15/ See 47 U.S.C. § 214(e)(6).

B. Western Wireless Offers All Of The Services Supported By The Federal High-Cost Universal Service Program

Western Wireless satisfies the requirement set forth in FCC precedent that an ETC designated pursuant to Section 214(e)(6) “offer, or will be able to offer all of the services designated for support by the Commission.” ^{16/} As described below, Western Wireless currently offers each of the supported services enumerated in Section 54.101(a) of the Commission’s rules. ^{17/} Once designated as an ETC, Western Wireless intends (and commits) to make available a “universal service” offering that includes all of the supported services, for consumers in the designated service areas in Wyoming.

1. Voice-Grade Access To The Public Switched Network. As an existing cellular service provider in Wyoming, Western Wireless provides voice-grade access to the public switched network. Through interconnection agreements

^{16/} *Designation of Fort Mojave Telecommunications, Inc., et al, as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd 4547, 4553, ¶ 11 (CCB 1998) (“*Fort Mojave*”). An affidavit attesting to Western Wireless’ ability and commitment to offer each of the supported services is attached hereto at Appendix C. Western Wireless already provides each of the supported services. Western Wireless intends to make investments, to the extent necessary, to provide service throughout Wyoming once designated. In any event, *Fort Mojave* makes it clear that the Commission will designate carriers as ETCs, pursuant to Section 214(e)(6), upon finding that they “offer or will be able to offer” the supported services throughout the service area.

^{17/} 47 C.F.R. § 54.101(a).

with ILECs such as U S WEST, Western Wireless is able to originate and terminate telephone service for all of its subscribers.

2. Local Usage. Western Wireless currently offers several service options that include varying amounts of local usage in monthly service plans. Western Wireless intends to offer its universal service customers a rate plan that includes unlimited local usage, as described in Appendix C. Thus, even though the FCC has yet to adopt any specific quantity of minimum local usage ETCs must provide for designation, 18/ Western Wireless satisfies the local usage criterion for ETC designation based upon its planned offering of unlimited local usage, or a package of minutes that satisfies any future local usage requirement adopted by the FCC.

3. Functional Equivalent Of Touch-Tone (“DTMF”) Signaling.

Western Wireless currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling. Western Wireless therefore meets the requirement to provide DTMF signaling or its functional equivalent. 19/

18/ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252 (1998) (seeking comment on appropriate number of minutes of “free” local usage, if any, ETCs should be required to provide); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 12 FCC Rcd. 18514 (1997) (same).

19/ *Universal Service First Report and Order*, 12 FCC Rcd at 8815, ¶ 71 (1997).

4. Single Party Service. Western Wireless meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls. 20/

5. Access To Emergency Service. Western Wireless currently offers access to emergency service throughout its cellular service area by dialing 911. Enhanced 911 (“E911”), which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements for the delivery of such information. 21/ To date, no public emergency service provider in Wyoming has made arrangements for the delivery of ANI or ALI from Western Wireless. The Commission has already held that wireless providers may be designated as ETCs despite the current unavailability of E-911. 22/ By providing 911 service and being capable and ready to provide E-911 service upon request, Western Wireless meets the requirement to provide access to emergency service.

6. Access To Operator Services. Western Wireless offers its subscribers access to operator services and will make such services available throughout its designated service area.

20/ *Id.* at 8810, ¶ 62.

21/ *Id.* at 8826-27, ¶ 90.

22/ *Id.*

7. Access To Interexchange Service. 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”). Customers are also able to reach their IXC of choice by dialing the appropriate access code.

8. Access To Directory Assistance. Western Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

9. Toll Limitation For Qualifying Low-Income Customers. Once designated an ETC, Western Wireless will participate in Lifeline as required, and will offer toll blocking in satisfaction of the FCC’s requirement. Today, the Company provides toll blocking services for international calls and customer selected toll calls. Western Wireless will utilize the same toll blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

C. Western Wireless Provides the Supported Services Using Its Own Facilities

Western Wireless provides the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission’s rules using Western Wireless’ existing cellular network infrastructure, consisting of switching,

trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.

D. Western Wireless Will Advertise Its Universal Service Offering

Western Wireless will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution. Currently, Western Wireless employs several advertising mediums to promote its service offerings, including television, radio, newspaper, and billboard advertising, as well as special targeted advertising. Western Wireless will expand upon these media, as necessary, to insure that consumers within its designated service area are fully informed of its universal service offering. Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investments Western Wireless plans to make to enhance its network to fully serve the universal service needs of consumers in Wyoming, Western Wireless will have strong economic incentives, reinforcing its statutory obligations, to vigorously promote its universal service offering in Wyoming.

E. Designating Western Wireless as an ETC in Service Areas Served By Rural Telephone Companies Will Advance the Public Interest

Western Wireless is not a “rural telephone company” (“RTC”) as defined by Section 3(37) of the Act. 23/ Western Wireless requests designation for

23/ 47 U.S.C. § 153(37).

service areas consisting of the study areas of certain local exchange carriers that are RTCs, as well as certain wire centers served by U S WEST and United Telephone Company ("Sprint/United"), which are not RTCs. 24/

The designation of Western Wireless as an additional ETC is clearly in the public interest. 25/ First, designating Western Wireless as an ETC will facilitate competition in the provision of universal services to the benefit of consumers in Wyoming. 26/ Second, designating Western Wireless as an ETC will advance universal service by bringing consumers in Wyoming new telecommunications services, including wireless local loop service. Third, designating Western Wireless as an ETC in rural areas in Wyoming will promote rapid development of new technologies in those areas. This will not only result in Western Wireless

24/ The rural telephone companies in whose study areas Western Wireless seeks ETC designation are indicated in the attachment at Appendix D. Appendix D also includes a list of the wire centers served by U S WEST and Sprint/United for which Western Wireless seeks designation. It should be noted that the Commission recently sought comment on definition of which carriers are "rural telephone companies," which could affect the status of Sprint/United in Wyoming. See *Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High-Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45 and 97-160, Further Notice of Proposed Rulemaking, FCC 99-120, ¶¶ 250-254 (released May 28, 1999).

25/ 47 U.S.C. § 214(e)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.

26/ See *Universal Service First Report and Order*, 12 FCC Rcd at 8781, ¶ 4 (quoting Joint Explanatory Statement recital that goal of 1996 Act is to establish "a pro-competitive . . . framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and

deploying advanced facilities, but will also provide an incentive to the RTCs to improve their networks to stay competitive, resulting in the availability of improved services to Wyoming consumers.

III. ANTI-DRUG ABUSE CERTIFICATION

Western Wireless certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. 27/

services to *all Americans* by opening *all* telecommunications markets to competition”) (emphasis added).

27/ 21 U.S.C. § 862. See attached affidavit at Appendix E.

IV. CONCLUSION

For the foregoing reasons, the Commission should designate Western Wireless as an ETC for its requested designated service in Wyoming.

Respectfully submitted,

**WESTERN WIRELESS
CORPORATION**

By: David Sieradzki

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.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-5600

Counsel for Western Wireless
Corporation

September 29, 1999