

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

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In the Matter of

Self-Certification of VALOR
Telecommunications of New Mexico, LLC and
VALOR Telecommunications of Texas, LP
as Rural Telephone Companies

DA No. 00-1882

Federal-State Joint Board On
Universal Service

CC Docket No. 96-45

**COMMENTS OF VALOR TELECOMMUNICATIONS SOUTHWEST, LLC
IN OPPOSITION TO PETITION TO REJECT
RURAL TELEPHONE COMPANY SELF-CERTIFICATION**

Of Counsel:
Benjamin Dickens
Mary Sisak
Blooston, Mordkofsky, Jackson
& Dickens
2120 L St. N.W., Suite 300
Washington, D.C. 20037

David Cosson
Kraskin, Lesse & Cosson, LLP
2120 L St. N.W., Suite 520
Washington, D.C. 20037

Rocky N. Unruh
MORGENSTEIN & JUBELIRER LLP
One Market Plaza
Spear Street Tower, 32nd Floor
San Francisco, CA 94105

Counsel for
VALOR Telecommunications Southwest, LLC

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EXECUTIVE SUMMARY

VALOR Telecommunications Southwest, LLC, ("VALOR") opposes the petition of Western Wireless Corporation requesting the Commission reject VALOR's certification that its operating companies in New Mexico and Texas are rural telephone companies pursuant to section 3(37)(D) of the Communications Act, as amended, 47 U.S.C. § 153(37)(D). The petition of Western Wireless is without merit and should be dismissed.

VALOR was formed in 1999 to purchase rural exchanges from GTE in New Mexico, Oklahoma, and Texas. VALOR purchased all of GTE's local access lines in New Mexico and Oklahoma, and 197 of GTE's exchanges in Texas. VALOR commenced operations in Oklahoma on July 1, 2000, and in New Mexico and Texas on September 1, 2000. With respect to the Texas property, VALOR and GTE jointly applied for, and the Commission granted, a waiver of the study area freeze, creating a separate study area for the VALOR exchanges in Texas.

The properties that VALOR acquired in Texas and New Mexico are overwhelmingly rural in nature. Of the 197 exchanges acquired in Texas, 112 have fewer than 1,000 access lines; only 10 exchanges have more than 5,000 access lines; and the largest community served is Texarkana, Texas, with a population of approximately 34,000. Similarly, of the 37 exchanges in New Mexico, 22 have fewer than 1,000 access lines; only 6 have more than 5,000 access lines, and the largest community served is Hobbs, New Mexico, with a population of approximately 30,000.

On June 27, 2000, VALOR filed a letter with the Commission certifying that its Texas and New Mexico operating entities would meet the definition of a rural telephone company under section 3(37)(D), because each of the operating entities "has less than 15% of its access lines in communities of more than 50,000 on the date of the enactment of the Telecommunications Act of 1996." VALOR's certification letter contained the required data demonstrating compliance with section 3(37)(D). The data also demonstrated that VALOR's New Mexico operating entity would meet the rural

telephone company definition contained in section 3(37)(C), as it operates in two study areas in New Mexico, each with substantially fewer than 100,000 access lines.

Western Wireless claims, without any support, that section 3(37)(D) is not applicable to companies created after the enactment of the 1996 Act. Western Wireless also claims that the Commission should not recognize VALOR's Texas operating entity as a rural telephone company because it was created from exchanges purchased from a non-rural company. (This argument does not apply to VALOR's New Mexico operating entity because GTE's operations in New Mexico had previously been certified by GTE as a rural telephone company.) Finally, Western Wireless contends that recognizing the rural company status of VALOR's Texas and New Mexico operating entities raises concerns regarding the impact on competing carriers who are applying for designation as an eligible telecommunications carrier ("ETC") in VALOR's service territory. None of Western Wireless' claims has merit.

The plain meaning of section 3(37)(D) demonstrates that eligibility under that section is available to newly-created telephone companies. The statute uses the present tense to describe as rural a carrier that "has" a certain percentage of access lines, rather than one that "had" access lines on a certain date. Moreover, under the statutory interpretation rule known as the "Rule of the Last Antecedent," the phrase, "on the date of enactment" immediately follows and therefore qualifies the phrase "communities of more than 50,000." This means that February 8, 1996, is the date on which a community's population is to be measured, not the date by which a carrier must have been in existence to qualify as a rural telephone company.

Applying section 3(37)(D) to new carriers also is consistent with the legislative purpose of establishing particular regulatory rights and obligations for carriers serving rural areas. Congress recognized that the introduction of competition would have different ramifications for telephone companies whose service areas do not include large urban centers. There is no suggestion in fact, logic, or legislative history that those

considerations are any different depending on whether the company began operations before as opposed to after February 1996.

Nor is there any basis in the law or legislative purpose to preclude rural telephone companies from being formed out of portions of non-rural telephone companies. Once the urban and rural areas of a company have been divested from each other, the rural portion has the same characteristic of any other rural telephone company, and must be treated accordingly. Western Wireless' argument would, if adopted, disqualify all rural companies with access lines purchased after February 1996, regardless of which of the four alternative criteria of section 3(37) they met.

Finally, Western Wireless' allegations of anti-competitive effects on competing ETC carriers are legally irrelevant and factually unjustified. The rural telephone company status of a particular carrier either exists or it doesn't under the four alternative criteria set forth in section 3(37); there is no provision for evaluating competitive impact. Moreover, Western Wireless is actively competing in VALOR's service territories. To the extent there is any impact from rural telephone company designation upon a competing ETC carrier, that carrier has available to it a remedy under section 214(e)(5), pursuant to which it can petition the state commission to modify the service area of the rural telephone company.

In sum, the Western Wireless petition should be dismissed as contrary to the plain meaning of the applicable statute, the legislative intent behind the statute and the Telecommunications Act, and sound public policy. The Commission's failure to dismiss the petition would also have the result of impairing the ability of new, independent telephone companies to purchase rural telephone properties and improve and expand services in those areas.

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**COMMENTS OF VALOR TELECOMMUNICATIONS SOUTHWEST, LLC
IN OPPOSITION TO PETITION TO REJECT
RURAL TELEPHONE COMPANY SELF-CERTIFICATION**

VALOR Telecommunications Southwest, LLC ("VALOR") submits these comments in opposition to the petition of Western Wireless Corporation ("Western Wireless") to reject the rural telephone company self-certification that VALOR filed on behalf of its operating entities in Texas and New Mexico.¹ As described below, Western Wireless' petition is without merit and should be dismissed.

I. BACKGROUND

A. VALOR's Operations in Texas, New Mexico and Oklahoma.

VALOR is a start-up entity formed in 1999 to purchase rural exchanges from GTE Southwest Incorporated ("GTE") in Texas, New Mexico, and Oklahoma.² VALOR is the parent of three separate operating entities that acquired GTE exchanges in their respective states: VALOR Telecommunications of Texas, LP ("VALOR Texas"); VALOR

¹ VALOR is filing these comments in response to *Common Carrier Bureau Seeks Comment On Western Wireless Corporation Petition To Reject Rural Telephone Company Self-Certification Filed By VALOR Telecommunications Southwest, LLC*, Public Notice, DA 00-1882 (released August 17, 2000).

² Although GTE is now doing business as Verizon following its merger with Bell Atlantic, it will be referred to in these comments as GTE.

Telecommunications of New Mexico, LLC ("VALOR New Mexico"); and VALOR Telecommunications of Oklahoma ("VALOR Oklahoma"). A brief summary of the operations of these companies is set forth below.

1. **VALOR Texas**

On June 16, 2000, the Texas Public Utility Commission ("Texas PUC") issued an order (1) approving VALOR Texas' acquisition of 197 telephone exchanges from GTE, (2) granting VALOR Texas its certificate of convenience and necessity ("CCN") to be the incumbent provider of local exchange service in those purchased exchanges, and (3) granting VALOR's applications to be designated as an eligible telecommunications carrier ("ETC") and eligible telecommunications provider ("ETP") in the purchased exchanges.³ Thereafter, on September 1, 2000, VALOR Texas closed its transaction with GTE and commenced operations as the local exchange provider in the 197 purchased exchanges.

Although VALOR Texas acquired approximately 330,000 access lines from GTE, the exchanges in which those access lines are situated are overwhelmingly rural in nature. Of the 197 exchanges, 112 have fewer than 1,000 access lines; 65 exchanges have between 1,000 and 3,000 access lines; and just 10 exchanges have more than 5,000 access lines. The largest city served by VALOR Texas is Texarkana, Texas, with a current population of approximately 34,000. As a result of the rural nature of these exchanges, VALOR Texas advised the Texas PUC when it filed its ETC and ETP applications in December, 1999 that it would be a rural telephone company under

³ See, *Applications of Valor Telecommunications of Texas, LP for Approval of Sale, Transfer or Merger, Issuance of A Certificate of Convenience and Necessity, Designation As An Eligible Telecommunications Provider, and Designation As An Eligible Telecommunications Carrier*, Docket No. 21834, Order (June 15, 2000).

applicable federal law, section 3(37) of the Communications Act ("Act"), as amended, 47 U.S.C. § 153(37) (hereafter cited as "section 153(37)").⁴

VALOR Texas did not acquire all of GTE's local exchange operations in Texas. GTE retained its largely urban exchanges and continues to operate as a local exchange carrier in Texas in those exchanges. As a result of GTE's continued operations in Texas, GTE and VALOR Texas jointly petitioned the Commission for a waiver of the study area freeze so that the exchanges acquired by VALOR Texas could be removed from the GTE study areas and placed in a separate study area established for VALOR Texas.⁵ On August 21, 2000, the Commission, by its Accounting Policy Division, issued its order granting the requested study area waiver.⁶

2. VALOR New Mexico

On June 21, 2000, the New Mexico Public Regulation Commission ("NMPRC") issued an order approving the application of VALOR New Mexico for a certificate of financial and technical competency and a certificate of operating authority to provide local exchange services in New Mexico.⁷ VALOR New Mexico subsequently closed its transaction with GTE and commenced operations on September 1, 2000. Unlike in

⁴ See *Application of Valor Telecommunications of Texas, LP For Designation as an Eligible Telecommunications Provider, and Application of Valor Telecommunications of Texas, LP For Designation as an Eligible Telecommunications Carrier*, Docket No. 21834 (filed December 13, 1999).

⁵ *Valor Telecommunications of Texas, LP and GTE Southwest Incorporated, Joint Petition for Waiver of the Definition of "Study Area" of the Appendix - Glossary of Part 36* (filed April 20, 2000) ("Study Area Waiver Proceeding").

⁶ See Study Area Waiver Proceeding, Order, DA 00-1908 (released August 21, 2000).

⁷ *In The Matter Of The Application of VALOR Telecommunications of New Mexico, LLC, For Certificate of Financial and Technical Competency, And For Certificate of Operating Authority To Provide Local Exchange Services In New Mexico*, Utility Case No. 3217, Final Order, (June 21, 2000).

Texas, however, VALOR New Mexico acquired *all* of GTE's local exchange operations in New Mexico, consisting of 37 exchanges and approximately 95,000 access lines. Consequently, VALOR New Mexico and GTE were not required to obtain a study area waiver in New Mexico, and VALOR New Mexico continues to operate in the same two study areas in which GTE operated.⁸

Similar to the exchanges in Texas, the exchanges acquired by VALOR New Mexico are rural in nature. Of the 37 exchanges, there are only six with more than 5,000 access lines, and the largest community served is Hobbs, New Mexico, with a current population of approximately 30,000. Twenty-two of the 37 exchanges have less than 1,000 access lines each, and in those exchanges, the average teledensity is 2.4 lines per square mile.

3. VALOR Oklahoma

VALOR Oklahoma was the first of the VALOR operating companies to close its transaction with GTE and commence operations, on July 1, 2000. As in New Mexico, VALOR Oklahoma acquired all of GTE's local exchange operations in Oklahoma, consisting of 27 exchanges and approximately 120,000 access lines. While a number of these exchanges are rural in nature, in contrast to Texas and New Mexico, a substantial portion of VALOR Oklahoma's operations is centered in and around Broken Arrow, Oklahoma, a suburb of Tulsa.

B. VALOR Texas And VALOR New Mexico Have Self-Certified As Rural Telephone Companies.

The Commission required carriers claiming rural telephone company status with more than 100,000 access lines to file self-certification letters by July 1, 2000 to

⁸ The GTE study areas have been identified as GTE Southwest Inc.-North, SA

establish their year 2001 status.⁹ Pursuant to this requirement, on June 27, 2000, VALOR filed a letter with the Commission certifying that VALOR Texas and VALOR New Mexico each would qualify as a rural telephone company under section 153(37)(D) because each carrier "has less than 15% of its access lines in communities of more than 50,000 on the date of the enactment of the Telecommunications Act of 1996."¹⁰ After consulting with Commission staff, VALOR filed its certification letter before its Texas and New Mexico subsidiaries had commenced operations, in order to meet the Commission's July 1, 2000 deadline for rural certification and in recognition that its subsidiaries would commence operations shortly after the July 1 deadline. VALOR's certification letter included a list of all communities in which VALOR Texas and VALOR New Mexico provide service, the population of those communities, the number of its access lines serving those communities, and the total number of access lines served. These undisputed facts establish that in both states, none -- zero percent -- of VALOR's access lines are in communities with a population of 50,000 or more.

Although not explicitly stated in the certification letter, VALOR New Mexico also meets the definition of a rural telephone company under section 153(37)(C) because

Code 492080, and Contel West DBA GTE North, SA Code 492177.

⁹ See *Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, Tenth Report and Order, CC Docket Nos. 96-45, 97-160, 14 FCC Rcd 20156, 20353-54 ¶ 449 (1999) ("Tenth Report and Order").

¹⁰ Because of its concentration of lines in Broken Arrow, Oklahoma, VALOR Oklahoma did not meet any of the criteria to be a rural telephone company under section 153(37). Consequently, the self-certification was filed only on behalf of VALOR Texas and VALOR New Mexico.

each of VALOR's two New Mexico study areas has fewer than 100,000 access lines.¹¹ As the Commission has recognized, a carrier claiming rural telephone company status under one criterion in section 153(37) may also qualify under one or more of the other criteria.¹² In addition, GTE previously certified to the Commission that it was a rural telephone company in New Mexico – a certification that was not challenged by Western Wireless (or any other party) – and the Commission has made universal service support calculations based on that status.¹³

C. Western Wireless' Petition.

On July 27, 2000, Western Wireless filed a petition with this Commission to reject VALOR's self-certification as a rural telephone company in New Mexico and Texas. Western Wireless filed this petition because it has applications pending in New Mexico and Texas to be designated an ETC in those states. In order to be designated an ETC, section 214(e) of the Act requires Western Wireless to offer its services throughout an entire "service area." If the service area also is served by a rural telephone company,

¹¹ Under section 153(37)(C), a carrier qualifies as a rural telephone company if it "provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines." 47 U.S.C. § 153 (37)(C). Although VALOR did not identify in its certification letter the number of access lines in each study area, it is clear from the attachment that each study area has fewer than 100,000 lines, as VALOR New Mexico's entire operation has less than 100,000 access lines. The most recent USAC report indicates approximately 45,000 access lines in study area number 492080, and 43,000 access lines in study area number 492177.

¹² See *Federal-State Joint Board on Universal Service, Forward Looking Mechanism for High Cost Support for Non-Rural LECs*, Further Notice of Proposed Rulemaking, CC Doc. Nos. 96-45, 97-160, 18 Com. Reg. 2019, 2057 (1999) ("Inputs Further Notice").

¹³ See *Common Carrier Bureau Sends Updated Lists of Rural and Non-Rural Telephone Companies To The Universal Service Administrative Company and Changes 1999 Self-Certification Filing Deadline*, Public Notice, DA 99-459, CC Docket 96-45 (released March 16, 1999).

both the statute and the Commission's regulations thereunder require that the ETC offer its services throughout the rural telephone company's entire study area.¹⁴

The fact that VALOR Texas and VALOR New Mexico qualify as rural telephone companies in New Mexico and Texas obligates Western Wireless to offer services throughout VALOR's study areas in those two states in order for Western Wireless to qualify as an ETC. Western Wireless' applications for ETC designation, however, indicate that it wants to provide service in selected parts, but not all, of VALOR's study areas in New Mexico and Texas. In Texas, for example, where there is now one study area encompassing VALOR's 197 exchanges, Western Wireless proposes to serve only 119 of the exchanges. In New Mexico, where VALOR operates in two study areas, Western Wireless proposes to serve all of one study area, but only six of the 22 exchanges in the other. Thus, Western Wireless is seeking through this petition a way in which to avoid its statutory obligation to offer service throughout these rural study areas, while nevertheless reaping the benefits of the universal service funding that would result from it being designated as an ETC.

II. ARGUMENT

A. VALOR Texas and VALOR New Mexico Qualify As Rural Telephone Companies Under Section 3(37)(D).

In its petition, Western Wireless does not dispute the factual basis for the rural certification by VALOR Texas and VALOR New Mexico. Thus, Western Wireless does not challenge the number of access lines in Texas and New Mexico; it does not challenge the size of the communities being served by these two VALOR operating companies; and it does not challenge the fact that VALOR New Mexico operates in two

¹⁴ See 47 U.S.C. § 214(e)(1) & (5); 47 C.F.R. § 54.207(b).

study areas, each with less than 100,000 access lines. Instead, without citing any authority whatsoever, Western Wireless argues in its Petition that (1) section 153(37)(D) does not apply to VALOR because VALOR was not in existence when the Telecommunications Act of 1996 was enacted; (2) VALOR cannot claim rural telephone company status because GTE was not a rural carrier; and (3) it would be “profoundly anti-competitive” to permit VALOR to claim status as a rural telephone company. None of these arguments has any merit, for the reasons more fully discussed below.

1. **Section 153(37)(D) On Its Face Includes Carriers Not Yet Established in 1996.**

The Commission is bound to apply the plain meaning of a statute. See *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45, 104 S. Ct. 2778, 2781-83 (1984). By the plain meaning of its terms, section 153(37)(D) clearly applies to carriers that did not exist when the Act was passed in 1996. It provides:

The term “rural telephone company” means a local exchange carrier operating entirely to the extent that such entity --

* * *

has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

The language of this provision cannot be read to apply only to entities in existence as of the date of enactment, as contended by Western Wireless. That is because the provision uses the present tense, describing as rural an entity that “has” a certain percentage of access lines, rather than one that “had” lines on a certain date. Had Congress intended to limit this section only to carriers that “had” access lines upon a certain date, it could easily have said so; indeed, Congress drew just such a distinction

in another portion of the Act when it used the past tense to define an “incumbent local exchange carrier” as a carrier that, “on the date of enactment of the Telecommunications Act of 1996, *provided* telephone exchange service in such area,” or “*was deemed*,” at that time, to be a member of the exchange carrier association. 47 U.S.C. § 251(h). (Emphasis added.)

Moreover, using plain English, the phrase “on the date of enactment of the Telecommunications Act of 1996” was clearly intended to establish the date on which the population of a community was to be measured, because it immediately follows the phrase “communities of more than 50,000.” Courts applying this conventional rule of grammar in statutory interpretation cases refer to it as the “Rule of the Last Antecedent,” holding that “qualifying phrases are to be applied to the words or phrases immediately preceding and are not to be construed as extending to others more remote.” *United States v. Pritchett*, 470 F.2d 455, 459 (D.C. Cir. 1972); *see also Nobleman v. American Savings Bank*, 508 U.S. 324, 330 (1993) (describing rule of the last antecedent as “quite sensible as a matter of grammar.”). Application of that rule to section 153(37)(D) means that the size of a community’s population should be determined as of the date of the Act’s enactment, not whether the carrier seeking rural status was in existence on that date, as claimed by Western Wireless.

Finally, the Commission itself has implicitly confirmed that section 153(37)(D) applies to carriers that came into being after the Telecommunication Act’s passage. In its Tenth Report and Order, the Commission described the showing that a carrier self-certifying under section 153(37)(D) must make, in the *present* tense: “[W]hen a carrier files for rural certification under criterion (D), it must include in its certifying letter a list of all communities of more than 50,000 to which it *provides* service, the population of those

communities, the number of access lines *servicing* those communities, and the total number of access lines the carrier *serves*.¹⁵

2. **The Act's Structure And Legislative History Require That Section 153(37)(D) Be Construed To Include Carriers Established After 1996.**

The legislative history of the Act also indicates that section 153(37)(D) should be interpreted to include telephone companies that meet the population and access line thresholds regardless of when the companies came into existence. In its consideration of the Act, Congress recognized the unique hardships faced by telephone companies that serve rural areas. For example, in describing a proposed amendment to the then-pending Telecommunications Act that would exempt rural telephone companies from certain market-opening measures ultimately imposed on LECs -- which amendment later became section 251(f) of the final Act, in revised form -- Representative Boucher stated that “[r]ural telephone companies were exempted because the . . . requirements . . . would impose stringent technical and economic burdens on rural companies, whose markets are in the near term unlikely to attract competitors.” 141 Cong. Rec. 8454 (1995) (statement of Rep. Boucher).

Congress’ understanding of the special circumstances presented by rural service also is reflected in the Act as it was finally passed. The Act includes several provisions that are protective of rural carriers and their constituents: in addition to section 251(f), the Act requires state commissions to specifically determine that the public interest will be served before designating a carrier as eligible for universal service in the service area of a rural telephone company. See 47 U.S.C. § 214(e)(2). Similarly, competing carriers

¹⁵ 14 FCC Rcd 20156, 20351 ¶ 457 (1999).

seeking ETC status and eligibility for universal service funds must offer service in the entire study area of a rural telephone company. See 47 U.S.C. § 214(e)(5).¹⁶ These provisions reflect Congress' understanding that providing service as a carrier of last resort in high-cost rural areas is a very costly obligation, and that incumbent carriers rely on the universal service subsidy to support their carrier-of-last-resort obligation. By requiring a competing carrier to serve a rural telephone company's entire study area as a condition for eligibility for universal service funds, Congress intended to insure that those funds would not be used by a competing carrier to supplement its bottom line while serving only the most profitable customers in selected rural exchanges.

In sum, Congress' creation in the Act of a special category of "rural telephone company" clearly grew out of a concern over the burdens faced by this group of carriers resulting from the rural nature of the areas they serve, and the challenges in ensuring adequate service to rural constituents. This concern applies equally to carriers no matter whether they were in existence on the date of the Act's passage, or, like VALOR, commenced operations in rural areas after that date.

B. The Fact That GTE's Operations In Texas Did Not Qualify As A Rural Telephone Company Does Not Preclude VALOR Texas From Claiming This Status.

Western Wireless also argues that because GTE's operations in Texas did not qualify as rural under section 153(37)(D), the exchanges it sold to VALOR are disqualified from constituting a rural telephone company.¹⁷ This argument is *unsupported and nonsensical*. There is nothing in the language of section 153(37) that

¹⁶ This is the very statutory requirement that Western Wireless seeks to avoid by requesting that the Commission strip VALOR Texas and VALOR New Mexico of their rural telephone company status.

¹⁷ Western Wireless Petition at 8.

limits its application only to telephone properties that were owned by rural companies when the Act was passed. Moreover, the GAO recently reported that over 800,000 access lines had been sold by major (i.e., non-rural) ILECS during the period January 1996 through April 2000; that sales involving more than one million additional lines were then pending; and that the sales have been concentrated in rural areas -- without any suggestion that there is a "once-non-rural, always non-rural" principle controlling these sales.¹⁸ To the extent that the Commission adopted the study area freeze to preclude carriers from subdividing study areas into high and low cost areas, its grant of a waiver of those rules to VALOR and GTE demonstrates that this particular concern has been fully resolved for VALOR's exchanges in Texas.

Western Wireless' proposed "once non-rural, always non-rural" principle is exceedingly poor policy. It will deprive carriers that are plainly rural under the statute, as VALOR is, from badly needed funds to modernize telephone plants in remote areas that are difficult to serve by any measure. The result, unquestionably, will be harm to the very consumers the statute is intended to help.

Finally, Western Wireless' argument does not even apply to VALOR New Mexico, as GTE previously certified to the Commission that its operations in New Mexico met the definition of a rural telephone company under section 153(37). GTE's certification as a rural telephone company in New Mexico was never challenged at any time by Western Wireless (or any other party), and the Commission has made universal service support calculations to GTE in New Mexico based on that certification. Since VALOR New Mexico acquired all of GTE's local exchange operations in New Mexico, it, too, meets the definition of a rural telephone company under section 153(37).

¹⁸ See U.S. General Accounting Office, *Issues Related to Local Telephone Services*, GAO/RCED-00237, August, 2000 at 8-17.

C. Western Wireless' Allegations of Anti-Competitive Effects Are Irrelevant to the Determination of Whether a Carrier Meets the Statutory Definition of a Rural Telephone Company.

There is no basis to Western Wireless' claim that honoring the rural telephone company status of VALOR Texas and VALOR New Mexico will be "profoundly anti-competitive" and deprive customers of choice between competing carriers. Western Wireless is already actively competing in VALOR's service areas in both Texas and New Mexico, and VALOR's certification as a rural carrier does nothing to interfere with Western Wireless' ability to continue offering competitive services. The fact that Western Wireless' cellular licenses do not cover all of VALOR's study areas does not mean that Western Wireless is unable to serve the entire study area, as required by law. Carriers are not limited to using their own facilities to provide service, but may use other options as well. Western Wireless may *choose* not to utilize any of these options, but it need not be limited by the boundaries of its licenses.

In any event, Western Wireless' allegations are irrelevant to the determination of rural telephone company status under section 153(37). Congress established four alternative criteria that carriers could meet to be designated as rural telephone companies. None of those criteria contain an "effects on competition" test. Thus, there is simply no basis for the Commission to rule that a carrier that meets one of the criteria of section 153(37) should be denied rural telephone company status because of alleged anti-competitive consequences resulting from that designation.

Moreover, the Commission should not—and need not—deny carriers rural telephone company status in order to resolve any concerns that may exist in the designation of competitive ETCs in areas served by rural telephone companies. Congress specifically authorized state commissions and the FCC to determine that a

competitive ETC should be permitted to serve an area that does not encompass the entire study area of a rural telephone company.¹⁹ Thus, the statutes and regulations governing ETC designations provide a remedy that would allow Western Wireless to be designated as an ETC without serving all of VALOR's study areas, if such relief is appropriate.

Finally, to the extent that public policy should have any bearing on the construction of this plainly-worded statute -- and, in VALOR's view, as argued *supra*, it should not -- it favors including new carriers within section 153(37)(D). To do otherwise will impair the ability of telephone companies to provide upgraded services to rural areas. For example, in both Texas and New Mexico, VALOR has made extensive commitments to improve service in the rural areas it serves. Specifically, VALOR will provide CLASS features and advanced services, such as DSL, to exchanges that have not previously had access to these services. These commitments were recognized by the Commission as serving the public interest in its grant of the Texas study area waiver.²⁰ However, if the Commission were to follow Western Wireless' interpretation of the Act and eliminate one of the four alternative criteria for rural telephone company status, that could preclude new carriers such as VALOR from acquiring exchanges from large carriers and expanding service in rural areas.

D. VALOR New Mexico Also Qualifies As A Rural Telephone Company Under Section 153(37)(C).

Western Wireless' petition all but ignores the fact that VALOR New Mexico also qualifies as a rural telephone company under section 153(37)(C). As discussed above,

¹⁹ 47 U.S.C. 214(e)(5).

²⁰ Study Area Waiver Proceeding, Order at ¶ 11.

both of VALOR New Mexico's study areas have fewer than 100,000 access lines; the combined access lines of both study areas total slightly less than 100,000; and its predecessor, GTE, was previously a self-certified rural telephone company.

Western Wireless contends that "Valor has not claimed that it satisfies subsection (C) in New Mexico, nor has it provided the necessary data to demonstrate that it satisfies the standard."²¹ That is simply not true, as there is sufficient information in VALOR's certification letter to determine that VALOR New Mexico meets the requirements of section 153(37)(C). Moreover, in Western Wireless' ETC proceeding in New Mexico, VALOR New Mexico explicitly stated its claim to rural telephone company status on the record and submitted testimony establishing that it meets the requirements of both subsections (C) and (D).²² In any event, Western Wireless' contentions do not have any bearing on whether VALOR New Mexico actually qualifies as a rural telephone company. Rural telephone company status either exists or it doesn't by operation of law, regardless of whether such status is claimed. Here, the facts indisputably establish that VALOR New Mexico meets the requirements of a rural telephone company under section 153(37)(C), as well as under subsection (D).

²¹ Western Wireless Petition at 7.

²² See *In the Matter of GCC License Corporation Petition for Designation as an Eligible Telecommunications Carrier*, Utility Case No. 2921, Docket No. 98-484-TC, Prepared Direct Testimony of D.F. Duffy Swan on behalf of VALOR Telecommunications of New Mexico, LLC (filed July 3, 2000).

III. CONCLUSION

For all the reasons stated above, the Commission should find that (1) VALOR Texas and VALOR New Mexico each qualify as rural telephone companies under section 153(37)(D), and (1) VALOR New Mexico separately qualifies as a rural telephone company under section 153(37)(C) of the Telecommunications Act of 1996.

Respectfully submitted,

September 18, 2000

VALOR Telecommunications Southwest, LLC

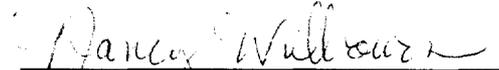
Of Counsel:
Benjamin Dickens
Mary Sisak
Blooston, Mordkofsky, Jackson
& Dickens
2120 L St. N.W., Suite 300
Washington, D.C. 20037

By 
David Cosson
Kraskin, Lesse & Cosson, LLP
2120 L St. N.W., Suite 520
Washington, D.C. 20037

Rocky N. Unruh
Morgenstein & Jubelirer LLP.
One Market Plaza
Spear Street Tower, 32nd Floor
San Francisco, CA 94105

CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of Valor Telecommunications Southwest, LLC to Petition to Reject Rural Telephone Company Self-Certification" was served on this 18th day of September 2000, by first class, U.S. mail, postage prepaid to the following parties:


Nancy Wilbourn

Chairman William E. Kennard *
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Commissioner Susan Ness *
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, DC 20554

Commissioner Michael Powell *
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Harold W Furchtgott-Roth *
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Gloria Tristani *
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Sheryl Todd * (3 copies)
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B540
Washington, DC 20554

Gene DeJordy, Vice President,
Regulatory Affairs
Jim Blundell, Director of External Affairs
Western Wireless Corporation
3650 - 131st Avenue, SE, Suite 400
Bellevue, WA 98006

Michele C. Farquhar
David L. Sieradzki
Ronnie London
Hogan & Hartson, LLP
555 13th Street, NW
Washington, DC 20004
Counsel for Western Wireless Corporation

International Transcription Services *
(diskette)
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

* Via Hand Delivery