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October 27, 2000

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

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

Dear Ms. Salas:

On behalf of the Competitive Universal Service Coalition ("CUSC"), Jim Blundell, Director, External Affairs, of CUSC member Western Wireless Corporation; Rich Blair, Special Assistant to the President of Western Wireless Corporation; Earl Comstock, counsel to CUSC member Nucentrix Broadband Networks, Inc., and/or Rob Hoggarth, of CUSC member Personal Communications Industry Association, joined by Michele Farquhar, counsel for CUSC, made *ex parte* presentations October 25-27, 2000, to Kathy Brown, Chief of Staff for Chairman Kennard; Anna Gomez, Legal Advisor to Chairman Kennard; Jordan Goldstein, Legal Advisor to Commissioner Ness; Kyle Dixon, Legal Advisor to Commissioner Powell; Deena Shetler, Legal Advisor to Commissioner Tristani; Dorothy Attwood, Chief of the Common Carrier Bureau; Carol Matthey, Deputy Bureau Chief of the Common Carrier Bureau; Katherine Schroder, Chief, Accounting Policy Division, Jack Zinman of the Common Carrier Bureau; James Schlichting, Deputy Chief of the Wireless Telecommunications Bureau; and David Furth, Senior Legal Advisor in the Wireless Telecommunications Bureau.

At these meetings, we discussed several proceedings in the docket listed above, including the FCC's proposal to adopt a rule imposing a six-month deadline on federal eligible telecommunications carrier ("ETC") designations, Western Wireless' ETC petitions for the state of Wyoming and the Crow Reservation in Montana, and the current status of state ETC designation efforts. In addition, we circulated the attached written materials during the meetings.

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If you have any questions, please contact me.

Respectfully submitted,



Michele C. Farquhar
Counsel for the Competitive
Universal Service Coalition

Enclosures

cc: Kathy Brown
Anna Gomez
Jordan Goldstein
Kyle Dixon
Deena Shetler
Dorothy Attwood
Carol Matthey
Katherine Schroder
Jack Zinman
James Schlichting
David Furth

Proposed FCC Rule Requiring States to Complete Federal ETC Designations Within Six Months

- **Expeditious ETC Designation is Critical to Rapid Deployment of New Competitive Service in High-Cost Areas.** Absent ETC designation, new entrants cannot enter high-cost markets supported by federal universal service subsidies, as the Commission recently recognized in *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, FCC 00-248 (rel. Aug. 10, 2000). Thus, delays in designating competitive ETCs deprive consumers in high-cost areas of the benefits of competition – additional services, new technologies, and lower prices.
- **An FCC Rule Setting a Six-Month Deadline for Resolution of ETC Designations is Critically Needed.** As the chart on the opposite side of the page shows, many states are taking two years or longer to grant ETC status. Only a small minority of states process competitive ETC applications quickly – but those states prove that ETC designations *can* be done expeditiously.
- **The FCC's Proposed Six-Month Deadline is Sound.** The proposed rule in the *Universal Service Twelfth Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-208 (rel. June 30, 2000), is a necessary and legally sound step to resolve this problem.
 - > **The Comments Filed on the Proposal Reflect Ample Support for FCC Action:**
 - ♦ Three commenters (Western Wireless, WorldCom, and the Competitive Universal Service Coalition, which includes 9 companies and 4 trade associations) favor the proposal.
 - ♦ Two commenters (the Cheyenne River Sioux Tribe Telephone Authority and Salt River Pima-Maricopa Indian Community/Saddleback Communications) object only to the extent that the proposed deadline might inhibit consultation with affected Indian tribes with regard to ETC petitions for tribal lands. However, there is no reason that such consultation cannot be conducted within the allotted six months.
 - ♦ Three state commissions filed comments – Alaska, California, and Florida. Alaska does not oppose the proposal, and Florida and California oppose it largely because, from their perspective, they believe it is unnecessary because states already expeditiously process ETC petitions. However, as the accompanying chart makes clear, while California and Florida may act expeditiously, many other states have not done so.
 - ♦ Three organizations representing ILECs (the United States Telecom Association, the National Telephone Cooperative Association and the South Dakota Independent Telephone Coalition) filed comments opposing the proposal. These parties' interest in slowing competitive entry is well known and not surprising.
 - > **The FCC Has Clear Legal Authority to Adopt the Proposed Rule.** Section 214(e) of the Act requires state PUCs to implement a federal mandate (designating ETCs) pursuant to federal standards. In this regard, Section 214(e) is precisely analogous to Section 252 (interconnection arbitrations). In *AT&T v. Iowa Utilities Board*, 525 U.S. 326 (1999), the Supreme Court confirmed that the FCC possesses general rulemaking authority (under Section 201(b)) to prescribe rules governing how the states must implement Section 252.
 - ♦ In addition, Section 253 charges the FCC with ensuring that no state action or failure to act has the effect of prohibiting any entity from providing telecommunications service, including universal service to high-cost areas supported by federal subsidies.
 - ♦ The rule proposed here is consistent with the substantive and procedural rules that the Commission has already adopted governing designation of ETCs, which were not disturbed by *Texas Office of Pub. Util. Counsel*, 183 F.3d 393 (5th Cir. 1999).

FILING DATES AND STATUS OF WESTERN WIRELESS ETC PETITIONS
 (updated October 25, 2000)

State	Date Filed*	Status	Duration of Process
California	5-17-2000	Granted 7-20-2000 (non-RTC service areas only)	2 months
Colorado	3-28-2000	Pending	6 months +
Iowa	4-28-2000	Pending	5 months +
Kansas	9-2-1998	Granted 1-18-2000 (non-RTC service areas only)	16 months
Minnesota	9-1-1998	Granted 10-27-1999	13 months
Montana	8-17-1998	Voluntarily withdrawn 11-3-1999 due to onerous discovery	15 months until withdrawn
Nebraska	8-31-1998	Pending	25 months +
Nevada	6-2-2000	Granted 8-22-2000	2 months
New Mexico	9-1-1998	Pending	25 months +
North Dakota	8-17-1998	Granted 12-15-1999 (non-RTC service areas only)	16 months
Oklahoma	8-28-1998	Granted 10-4-2000	25 months
South Dakota	8-25-1998	Denied 5-19-1999; appeal granted 3-22-2000 (non-RTC service areas only), further appeal pending	25 months +
Texas	3-15-2000	Granted 10-19-2000	7 months
Utah	8-31-1998	Granted 7-21-2000 (non-RTC service areas only)	23 months
Wyoming	9-1-1998	Dismissed on jurisdictional grounds 8-13-1999; pending before FCC	11 months until dismissal. (WY); 12 months + (FCC)
Crow Reservation	8-4-1999	Pending before FCC	13 months +

* In some states, Western Wireless was compelled to withdraw its first application and refile.

+ Indicates that petition remains pending