

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

In the Matter of)	
)	
Petition for Declaratory Ruling That)	WT Docket No. 00-239
Western Wireless' Basic Universal Service)	
in Kansas Is Subject to Regulation)	
as Local Exchange Service)	
)	
Amendment of the Commission's Rules)	WT Docket No. 96-6
to Permit Flexible Service Offerings)	
in the Commercial Mobile Radio Services)	
_____)	

To: The Wireless Telecommunications Bureau

SPRINT OPPOSITION

Jeffrey M. Pfaff
Sprint PCS
4900 Main, 11th Floor
Kansas City, MO 64112
816-559-1912

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Summary of Opposition

Two telephone company associations representing 37 incumbent LECs in Kansas (the “Independents”) ask the Commission to rule that Western Wireless’s Basic Universal Service (“BUS”) is not a commercial mobile radio service (“CMRS”) and, therefore, state regulation is not preempted by Section 332(c) of the Communications Act. While the Independents want BUS to be regulated as a “LEC service” simply because it has different attributes than most mobile services, they fail to explain how saddling Western with new regulation will promote competition or serve the public interest — namely, the interests of rural Kansans.

One of two results will occur if this Commission were to grant the Independents’ petition. First, Western may decide not to offer its BUS service in Kansas at all, in order to avoid subjecting itself to state regulation. Alternatively, if Western nevertheless decides to introduce its BUS service, the new state regulation will increase its service costs which would serve to decrease Western’s flexibility regarding pricing and feature packages. Rural Kansans would lose in either scenario. The Commission cannot grant the requested relief given the Commission’s statutory mandate— to “promote competition and reduce regulation.”

The Commission should deny the petition even if it were to assume that the Independents are correct that Western’s BUS service is a fixed service. The Commission has repeatedly ruled that a CMRS licensee’s provision of a fixed service on an ancillary basis is a mobile service under the Communications Act and is properly regulated as a CMRS of-

fering. The Commission has consistently dismissed as procedurally deficient declaratory ruling petitions that collaterally attack final orders.

Even without the procedural defects, the Independents advance a position that would have the effect of insulating them from competition and reducing the choices available to the residents of rural Kansas — *and* they would impose new regulation on CMRS providers without explaining how added regulation would either promote competition or serve the interests of rural consumers. The arguments the Independents advance are not only unsupported, they are also inconsistent with Congressional determinations and all prior Commission rulings.

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SPRINT OPPOSITION

Sprint Corporation, on behalf of its local, long distance, and wireless divisions (collectively, "Sprint"), opposes the petition submitted by the State Independent Alliance and the Independent Telecommunications Group (collectively, the "Independents") asking the Commission to declare that Western Wireless's Basic Universal Service ("BUS") is not a commercial mobile radio service ("CMRS") and that as a result, state regulation of BUS is not preempted by Section 332(c) of the Communications Act.¹

I. Background Facts

In September 1998, Sprint PCS and Western Wireless each submitted an application to become an eligible telecommunications carrier ("ETC") in Kansas. Over the objection of the Independents, the Kansas Corporation Commission approved the two applications, on January 18, 2000 for the federal universal service program and on February 29,

2000 for the state universal service program.² Sprint PCS proposed to provide its universal services using its regular mobile services; Western proposed to provide its universal services using a portable transceiver to access its wireless network, known as Basic Universal Service (“BUS”).

These orders permitted Sprint PCS and Western to receive universal service funding only in areas served by non-rural incumbent local exchange carriers (“ILECs”). Because Section 214(e)(2) of the Communications Act requires a state commission to designate additional ETCs in areas served by rural ILECs only upon a finding that such designation “is in the public interest,” the Kansas Commission appropriately decided to seek additional briefing and to conduct a hearing on whether Western Wireless should be designated as an ETC in rural areas. (As a new entrant carrier, Sprint PCS does not yet serve these rural areas).

In May 2000, the Kansas Commission correctly found “as a general principle, that allowing additional ETCs to be designated in rural telephone company areas is in the public interest”:

The clear and unmistakable public policy imperative from both the federal and state legislatures is that competition is a goal, even in rural areas. . . . The Commission does not accept the assertion that designating additional ETCs in rural areas will necessarily threaten universal service.³

¹ See *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling That Western Wireless’ Basic Universal Service in Kansas Is Subject to Regulation as Local Exchange Service,” WT Docket No. 00-239, DA 00-2622 (Nov. 21, 2000).

² See Order Nos. 6 and 7 in Docket Nos. 99-SSLC-173-ETC and 99-GCCA-156-ETC. These orders and the filings made in these dockets may be retrieved from www.kcc.stat.ks.us/docket/cal.html.

³ Order No. 10 at 3 ¶ 7 (May 19, 2000).

The Kansas Commission held that the “general concerns and speculations” raised by the Independents (the petitioners here) were “not sufficient justification for adopting a policy that would result in the benefits and service that are available to other Kansans not also being available to rural telephone customers.”⁴

This Kansas Commission ruling should be put in context. In 1996, as part of its new Telecommunications Act, the Kansas Legislature declared that the public interest is promoted when “consumers throughout the state realize the benefits of competition through increased services and improved telecommunications.”⁵ Four years later, in January 2000, the Kansas Commission reported to its Legislature that the residents of rural Kansas still have not enjoyed the benefits of competitive choice:

[A]s yet no independent rural local exchange carrier is subject to competition for local service Thus, customers in the exchanges of these independent rural local exchange carriers have not been given the opportunity to experience the effects of competition in the provision of local services.⁶

In fact, the Kansas Commission noted that the new environment has had a perverse effect on rural Kansans because they have been required to support universal service without enjoying the benefits of competition:

While these customers . . . have been asked to contribute to maintaining the historical revenue streams of the incumbent local exchange carriers, they

⁴ *Id.*

⁵ K.S.A. 66-2001 provides that it is “declared to be the public policy of the state to: (a) ensure that *every Kansan* will have access to a first class telecommunications infrastructure that provides excellent service at an affordable price; (b) ensure that consumers *throughout the state* realize the benefits of competition through increase services and improved telecommunications facilities and infrastructure at reduced prices; [and] (c) promote consumer access *to a full range of telecommunications services*, including advanced telecommunications services that are *comparable in urban and rural areas throughout the state*” (emphasis added).

⁶ KCC, *Telecommunications Report to the 2000 Kansas Legislature*, at 36-37 (Jan. 3, 2000) (“KCC 2000 Legislative Report”), available at www.kcc.state.ks.us/docket/telecom.htm.

have not had the opportunity to experience benefits that might come from the introduction of competition in terms of price or choice.⁷

The Kansas Commission further advised the Legislature that wireless technology likely offers the most promising alternative for rural Kansans to enjoy the benefit of competition:

Kansans may find that providers of wireless service will enhance the universal availability of telephone service. Wireless carriers provide similar services, and the technology utilized in the provision of this service may be more cost effective in some areas of the state than is wireline service.⁸

The Independents opposed Sprint PCS' and Western's successful effort to become designated as ETCs in the areas served by other ILECs (Southwestern Bell and Sprint Telephone), and they now oppose Western's effort to become an ETC in their own service areas. The Independents unsuccessfully filed reconsideration petitions of the Kansas Commission's January, February, and May 2000 orders. Having enjoyed no success before that Commission, the Independents now ask the FCC to intervene. Unless this Commission is willing to tolerate the dilatory tactics of the Independents, designed to protect themselves from competition, it must act both expeditiously and decisively in denying their petition.

II. The Independents Fail to Discuss the Public Interest

It is understandable that the Independents omit in their petition any mention of the most important public interest— namely, the interests of the residents of rural Kansas. The Independents face no competition today. Western proposes to use an innovative

⁷ *Id.*

⁸ *Id.* at 24.

technology so that rural Kansans can enjoy the opportunity of selecting a carrier other than an ILEC.

Western's BUS service is designed to meet certain consumer needs. For example, the Kansas Commission has noted that "a considerable number of Kansans want free or reduced rate calling for calls to neighboring communities."⁹ This is an especially important subject for rural Kansans because "rural [ILEC] company calling scopes tend to be smaller relative to those offered by the larger, more urban companies," with the result that a "rural customer is likely to face a relatively larger total phone bill."¹⁰ The Independents have chosen not to address this customer need, so Western proposes to give rural Kansans the option of enjoying a much larger local calling area (potentially reducing their overall monthly telephone bills).

The Independents propose to saddle Western with new regulation but they do not articulate how this regulation would benefit consumers. In fact, the Independents have made clear their hope of using state regulation to deprive rural Kansans of such innovations as enlarged local calling areas. For example, while conceding that "some" of their customers would "desire" larger local calling areas, the Independents have nonetheless asserted before the Kansas Commission that "expanded local calling is not in the public interest."¹¹ The Independents thus want to force Western into regulation that potentially

⁹ *Telecommunications Act of 1996*, Docket No. 96-LEGT-670-LEF, at ¶ 11 (April 5, 1999).

¹⁰ *KCC 2000 Legislative Report* at 38.

¹¹ Independent Statement in Opposition, Docket No. 99-GCCA-156-ETC, at 16 and 17-18 (Nov. 6, 2000).

limits Western's ability to offer a larger local calling area and imposes equal access obligations.¹²

The new regulations that the Independents want imposed would not serve the public interest — that is, the interests of rural Kansas. One of two results will occur if this Commission were to grant the Kansas ILEC petition. First, CMRS carriers may decide not to offer competitive services in Kansas at all, in order to avoid subjecting itself to state regulation. Alternatively, even if a carrier were to offer a competitive service, the new state regulation that the Independents seek would reduce the choices available to rural Kansas (*e.g.*, same small local calling areas) and would increase the new entrant's cost of service.

III. The Commission Must Dismiss the Independents' Petition as Procedurally Deficient

The Independents contend that Western's BUS service is "a fixed service rather than a [CMRS] and is subject to regulation as a local exchange carrier service, and that such regulation is not preempted by Section 332(c)(3) or other sections of the Communi-

¹² Although Congress has determined that CMRS providers need not provide "equal access" (47 U.S.C. § 332(c)(8)) and although the FCC has squarely ruled that requiring CMRS carriers to support equal access would "undercut local competition and reduce consumer choice and, thus, would undermine one of Congress's overriding goals in adopting the 1996 Act" (*Universal Service Order*, 12 FCC Rcd 8776, 8820 ¶ 79 (1997)), the Independents nevertheless assert that Western should be required to make additional investment (thereby increasing its service costs) in order to support equal access. *See* Petition at 14-15. The Kansas Commission properly determined that CMRS providers need not provide equal access as a condition to becoming an ETC. *See* Order No. 7 on Reconsideration at 4-5 ¶ 7 (Feb. 29, 2000).

cations Act.”¹³ The simple response is that even if BUS is a fixed service as the Independents assert,¹⁴ it is nonetheless a CMRS and must accordingly be regulated as a CMRS.

The Commission has ruled on three separate occasions that a CMRS licensee’s provision of a fixed service on an ancillary basis is a “mobile service” under the Communications Act and is properly classified and regulated as a CMRS.¹⁵ The Independents do not allege (nor could they credibly demonstrate) that Western’s provision of its BUS service is not provided on an ancillary basis.¹⁶ Accordingly, there is no reason for the Commission to expend its finite resources in determining whether Western’s BUS service is a fixed or mobile service — because even if it is a fixed service, it is nonetheless a CMRS service and “subject to CMRS regulation.”¹⁷

¹³ Independents’ Petition at 1.

¹⁴ Sprint notes that the North Dakota Commission determined that Western’s BUS service is a mobile service. *See Western Wireless. v. Consolidated Telephone Cooperative*, Case No. PU-1564-99-17 (Aug. 31, 1999).

¹⁵ *See Second CMRS Report*, 9 FCC Rcd 1411, 1424 ¶ 36 (1994); *First Flexible CMRS Offerings Order*, 11 FCC Rcd 8965, 8985 ¶ 48 (1996); *Second Flexible CMRS Offerings Order*, WT Docket No. 96-6, FCC 00-246, at ¶ 9 (July 20, 2000). The FCC has further ruled that among the ancillary fixed services that are subject to CMRS/Section 332(c) regulation are wireless local loop services. *See, e.g., Flexible CMRS Offerings NPRM*, 11 FCC Rcd 2445, 2447-48 ¶¶ 11 and 13 (1996).

¹⁶ The FCC has not defined the term “ancillary” in this context, although it has stated that “the basic concept of PCS embodies *primarily* mobile or portable communications.” *Second PCS Order*, 8 FCC Rcd 7712 ¶ 23 (emphasis added). Dictionaries define ancillary as “subordinate,” “subsidiary,” “auxiliary,” and “supplemental.” *See* www.m-w.com/cgi-bin/dictionary. These dictionary definitions are consistent with the FCC’s use of ancillary in other contexts. *See, e.g.,* 47 C.F.R. § 73.624(c)(Digital TV broadcasters may provide telecommunications on “an ancillary or supplementary basis”); at § 76.213(c)(3)(Lotteries are permissible if “clearly occasional and ancillary to the primary business of that organization”).

¹⁷ *First Flexible CMRS Offerings Order*, 11 FCC Rcd at 8985 ¶ 48.

The Commission has consistently dismissed as procedurally flawed petitions challenging decisions made in prior rulemaking decisions. As it stated only last year in denying another petition for declaratory ruling:

[I]ndirect challenges to Commission decisions that were adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied.¹⁸

It similarly has ruled in dismissing as “procedurally deficient” another petition for clarification:

To the extent APCO directly challenges earlier Commission decisions, however, we agree . . . that the [clarification] petition is untimely and as such, is dismissed as defective. Likewise, to the extent it indirectly challenges earlier Commission decisions, . . . the [clarification] petition is also procedurally flawed because it effectively is an impermissible collateral attack on final Commission decisions.¹⁹

The Independent’s petition, insofar as it asks the Commission to rule that the provision of ancillary fixed services may not be regulated as CMRS, constitutes “an impermissible attack on final Commission decisions.” Based on its own precedent, the Commission has no choice but to dismiss the petition as “procedurally deficient.”²⁰

IV. The Independents’ Arguments Lack Merit — and Have Already Been Rejected by Congress and this Commission

¹⁸ *Declaratory Rulings Regarding Frequency Coordination in the Private Land Mobile Radio Services*, 14 FCC Rcd 12752, 12757-58 ¶ 11 (1999).

¹⁹ *APCO Petition for Clarification*, 14 FCC Rcd 4339, 4344 ¶ 10 (1999). See also *Canyon Area Residents*, 14 FCC Rcd 8152, 8155 ¶ 10, 8156-57 ¶¶ 16-17 (1999)(dismissing statutory arguments as constituting a “collateral attack” that is “not timely”); *Rio Grande Broadcasting*, 14 FCC Rcd 17007 (1999)(dismissing petition as an impermissible collateral attack).

²⁰ The Wireless Bureau certainly does not have the delegated authority to grant the requested relief, because grant of the petition would require the Bureau to overturn prior FCC orders. See 47 C.F.R. § 0.331(d). See also *id.* at § 0.331(a)(i).

The Commission must deny the Kansas ILEC petition even if it were willing to entertain a collateral attack on its prior rulings. As demonstrated below, both Congress and this Commission have already considered — and rejected — the very arguments that the Independents make in their petition.

A. Congress Has Already Determined That Fixed Services Provided by CMRS Licensees Should Be Regulated as CMRS

The Independents contend that only those services provided through use of “mobile station” can be deemed a CMRS and that Western’s BUS service cannot be a CMRS because, they assert, the equipment used in the service does not meet the Act’s definition of a “mobile station.”²¹ The Independents are wrong because Congress specifically envisioned that fixed services provided by CMRS carriers would be regulated as CMRS.

The Act does not limit CMRS to those services that use a mobile station as the Independents assert. Rather, the Act defines CMRS as “any mobile service (as defined in section 153 of this title).”²² The phrase, “mobile services,” in turn, is defined in Section 153 to include “*any service* for which a license is required in the personal communications service established pursuant to the proceeding . . . GEN Docket No. 90-314; ET Docket No. 92-100, *or any successor proceeding.*”²³ Congress made clear that the reason it added this clause in 1993 was to broaden the statutory definition of mobile services.²⁴

²¹ See Independent Petition at 5 and 9.

²² 47 U.S.C. § 332(d)(1).

²³ 47 U.S.C. § 153(28)(C)(emphasis added).

²⁴ Prior to 1993, the mobile service definition was limited to radio services “carried on between mobile stations or receivers and land stations, and by mobile stations communications among themselves, and includes both one-way and two-way radio communications services.” 47 U.S.C. § 153(n) (1991). Congress acknowledged that in adding language to the mobile service definition in 1993 it was expanding the definition. See H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 262

The express reference to the PCS docket demonstrates that Congress was well aware of the Commission's then pending proposal to define PCS to include fixed services.²⁵ And finally, by using the phrase, "or any successor proceeding," Congress further made clear that the Commission was empowered to define the statutory term, "mobile services," in a way that best promotes the public interest — which Congress defined as the promotion of competition and the reduction of regulation.²⁶

In fact, in establishing the CMRS regulatory classification in 1993, Congress explicitly rejected the very argument that the Independents make here — namely, a fixed service cannot be a CMRS. The proposed House and Senate amendments to the mobile service definition were similar, except that the Senate proposed to add the clause: "the term does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire."²⁷ However, this clause was deleted by Conference agreement and excluded in the law as enacted. This action thus con-

(1993); H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 496 (1993). Because it was known in 1993 that PCS licensees would be providing mobile cellular services, services already encompassed within the pre-1993 mobile services definition, the inescapable conclusion is that in using the phrase "any PCS," Congress meant just that — any PCS, whether fixed or mobile. Any other reading of the 1993 amendments would mean that Congress amended the mobile services definition for no reason. *See, e.g., Mosquera-Perez v. INS*, 3 F.3d 553, 556 (1st Cir. 1993)("A familiar canon of statutory construction cautions the court to avoid interpreting a statute in such a way as to make part of its meaningless.").

²⁵ *See PCS NPRM*, GEN Docket No. 90-314, ET Docket No. 92-100, 7 FCC Rcd 5676, 5689 ¶ 30 (1992)("We propose that . . . fixed services generally be allowed."); *id.* at 5750-51, Proposed Rules 99.3 and 99.5; *First PCS Order*, GEN Docket No. 90-314, ET Docket No. 92-100, 8 FCC Rcd 7162, 7191-92 (1993)(defining PCS as "flexible radio services that encompass a wide array of mobile and ancillary fixed communications services.").

²⁶ Congress set forth the FCC's mandate in the Preamble to the 1996 Act: "AN ACT To *promote competition and reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996)(emphasis added).

firms that Congress not only anticipated, but also intended fixed services provided by CMRS licensees to be regulated as CMRS, not as a fixed service. Indeed, as discussed more fully below, Congress recognized that CMRS licensees may ultimately provide “basic telephone service,” and further made clear that CMRS licensees should be regulated “only if subscribers have no alternative means of obtaining basic telephone service.”²⁸

In summary, there is no support for the Independents’ argument that CMRS services are limited to those services involving a mobile station.

B. The Independents’ Comparison of BUS to BETRS Is Unavailing

The Independents contend that Western’s BUS service is indistinguishable from Basic Exchange Telephone Radio Service (“BETRS”) and that since BETRS is regulated as a landline service, BUS should be regulated as a landline service as well.²⁹ Sprint cannot comment on the accuracy of the claim that BUS and BETRS are indistinguishable (because it does not know enough about BUS). However, even if this factual assertion is correct, it does not follow that BUS must, or should, be regulated like BETRS.³⁰

Under Commission rules, only LECs are eligible to provide BETRS.³¹ The Commission regulates BETRS as a landline service rather than a CMRS because an ILEC should not be freed from regulation simply because *it* determines that it is cheaper to use

²⁷ H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 497 (1993).

²⁸ See note ... *infra* and accompanying text.

²⁹ Petition at 10-11 and n.29.

³⁰ Indeed, even the Independents concede that Western should not be subject to the same regulations applicable to themselves. They rather contend that Western should be subject “to the same regulation as any other CLEC.” Petition at 16-17. However, it was *Congress* that has decided that CMRS providers should be subject to more streamlined regulation than CLECs. Compare 47 U.C.C. § 251(b) with § 251(a). See also *id.* at § 153(26) and § 332(c).

radio rather than copper in serving a customer.³² Obviously, regulation designed for incumbent LECs is not appropriately applied to new entrant competitive carriers, even if the service is similar to BETRS.

Indeed, Congress has recognized this very point, determining that CMRS providers may be regulated only when consumers have “no alternative means of obtaining basic telephone service”:

[T]he Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service *if subscribers have no alternative means of obtaining basic telephone service*. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, *it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.*³³

The mandate that Congress has established for the Commission is to “*promote competition and reduce regulation* in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”³⁴

³¹ See 47 C.F.R. § 22.702,

³² See, e.g. *BETRS Order*, 3 FCC Rcd 214 (1987).

³³ H.R. Conf. Rep. No. 213, 103rd Cong., 1st Sess. 493 (1993)(emphasis added). The FCC has reached the same result. See, e.g., *Pittencrieff Communications*, 13 FCC Rcd 1735, 1748 ¶ 25 (1997)(CMRS rate regulation is appropriate “only where CMRS has become vital to universal service, such as where it has become a ‘substitute for land line telephone exchange service for a substantial portion of the communications within such state.’”); *Arizona CMRA Rate Petition Reconsideration Order*, 10 FCC Rcd 7824, 7838 ¶ 66 (1995)(CMRS rate regulation is appropriate only “where CMRS is the only available exchange telephone service.”); *Public Notice*, “FCC Announces Procedures Governing State Petitions for Authority to Regulate Commercial Mobile Radio Service Rates,” 10 FCC Rcd 737, 738 n.2 (1994)(CMRS rate regulation is appropriate only if “subscribers in the state or a specified geographic area have no alternative means of obtaining basic telephone service.”).

³⁴ Telecommunications Act of 1996, Pub . L. No. 104-104, 110 Stat. 56 (1996)(emphasis added).

Obviously, this mandate is not served by saddling competitive carriers with need-less regulation (federal or state) as their reward for entering new markets.

C. The Independents' Universal Service Argument Also Lacks Merit

The Independents finally contend (*albeit* in a footnote only) that states may regulate CMRS entry and rates even if the Commission determines that Western's BUS service is a CMRS offering.³⁵ In support, they rely on the second sentence of Section 332(c)(3), which, they say, "indicates that Congress recognized the need for states to ensure the continued provision of universal service" — that is, to permit state rate and entry regulation.³⁶ In other words, the Independents assert (without citing any authority) that a state commission can override the prohibition on CMRS rate and entry regulation simply by declaring that such regulation is necessary to preserve universal service.

The Independents misread the statute on which they rely.³⁷ They also neglect to advise the Commission that it has already considered — *and rejected* — their very argument. Some years ago, the Arizona Commission argued that it needed to regulate CMRS rates to protect universal service objectives because consumers could use CMRS as a substitute for landline services. In rejecting this argument, the FCC declared:

Since the statute permits a state to institute universal service requirements under appropriate circumstances notwithstanding the general statutory pro-

³⁵ See Independent Petition at 18 n.48.

³⁶ *Id.*

³⁷ At minimum, Section 332(c)(3) permits state entry/rate regulation only where the CMRS is "a substitute for land line telephone exchange service *for a substantial portion of the communications within such State*" (emphasis added). The Independents understandably do not assert that this condition exists in Kansas.

scription of CMRS rate regulation, it is not reasonable to conclude that Congress contemplated that a state might demonstrate a need for rate regulation by arguing that such authority is required to ensure universal service. We reject Arizona's attempt to do so here.³⁸

V. Conclusion

This Commission must dismiss the Independent petition because it is an impermissible collateral attack on final Commission orders. Nevertheless, even if the Commission was acting on a blank slate, it has been given two stark choices:

1. Residents of rural Kansas will be able to enjoy choices they do not enjoy today (and the Commission's ruling encourages other carriers to provide additional choices to rural Kansans and residents of rural areas in other states), or
2. Residents of rural Kansas continue to either enjoy no choices (because carriers like Western decide not to offer their competitive alternative given the risk and costs of state regulation) or enjoy a less robust choice (because state regulation requires that competitive offerings look more like the incumbent's own offerings).

The Kansas Commission correctly determined that competitive entry in rural areas promotes both universal services and the interests of the residents of rural Kansas.³⁹ An FCC decision holding that innovative CMRS offerings are subjected to state regulation will stifle, if not undermine entirely, the very policies that Congress, this Commission, the Kansas Legislature, and the Kansas Commission are attempting to achieve for rural America.

³⁸ *Arizona CMRS Rate Petition Reconsideration Order*, 10 FCC Rcd 7824, 7834 ¶ 41 (1995).

³⁹ See note ... *supra* and accompanying text.

For all the foregoing reasons, Sprint respectfully requests that the Commission re-affirm its prior consistent rulings that a CMRS licensee's provision of any fixed service on an ancillary basis is a CMRS offering and should be regulated as a CMRS offering.

Respectfully submitted

Sprint Corporation

By: /s/ Jeffrey M. Pfaff
Jeffrey M. Pfaff
Sprint PCS
4900 Main, 11th Floor
Kansas City, MO 64112
816-559-1912

December 19, 2000

CERTIFICATE OF SERVICE

I, Anthony Traini, hereby certify on that on this 19th day of December 2000, I served a copy of the foregoing Sprint Opposition by U.S. first-class mail, or by hand delivery as indicated with an *, to the following persons:

*ITS
1231 20th Street, N.W.
Washington, D.C. 20036

*Kris Monteith, Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Rose Crellin
Commercial Wireless Division
Federal Communications Commission
445 12th Street, S.W., Room 4A-160
Washington, D.C. 20554

*William W. Kunze, Chief
Commercial Wireless Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Policy and Rules Branch, Room 4A-207
Commercial Wireless Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Public Reference Room
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3C-207
Washington, D.C. 20554

*James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

James R. Hobson
Miller & Van Eaton
1155 Connecticut Ave. N.W., Suite 1000
Washington, D.C. 20036-4306
Counsel for NENA

Robert M. Gurs
Shook Hardy & Bacon
600 14th Street N.W., Suite 800
Washington, D.C. 20005
Counsel for APCO

Eva Powers
Assistant General Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, KS 66604

Gene DeJordy
Western Wireless Corporation
3650 131st Avenue, S.E., Suite 400
Bellevue, WA 98006

Mark E Caplinger
823 West 10th
Topeka, KS 66612
Counsel for State Ind. Alliance

Steven G. Kraskin
Kraskin, Lesse & Cosson
2120 L Street, N.W., Suite 520
Washington, D.C. 20037

Thomas E. Gleason
Gleason & Doty
P.O. Box 6
Lawrence, KA. 66044
Counsel for Independent Telecom. Group

/s/Anthony Traini
Anthony Traini