DOCKET FILE COPY ORIGINAL

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

In the Matter of	)	
	)	
Petition of the State Independent Alliance and Independent Telecommunications Group for Declaratory Ruling that Western Wireless' Basic Universal Service in Kansas is Subject to Regulation as Local Exchange Service	)	WT-00-239

RECEIVED
DEC 21 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)[1] hereby submits its comments in response to the Commission's Public Notice of November 21, 2000 in the above-captioned proceeding.[2] The State Independent Alliance and the Independent Telecommunications Group (collectively the Petitioners), which include all of the independent telephone companies in Kansas, seek a declaratory ruling from the Commission that the Basic Universal Service (BUS) offering of WWC Holding Company, Inc. (Western Wireless) in the State of Kansas is a fixed service, and not a Commercial Mobile Radio Service (CMRS), and is thus subject to regulation by the

[1] The United States Telecom Association, formerly the United States Telephone Association, is the nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities to American and international markets.

[2] DA-00-2622 (Notice).

No. of Copies rec'd 0
List A B C D E

Kansas Corporation Commission (KCC) as a local exchange carrier service, and that such regulation is not preempted by the Communications Act of 1934, as amended (the Act).[3]

According to petitioners, the KCC has granted a petition by Western Wireless for designation as an Eligible Telecommunications Carrier (ETC) for non-rural areas of Kansas. A similar Western Wireless petition for ETC designation in the rural areas is pending with the KCC. Western Wireless is seeking ETC status for purposes of becoming eligible for Universal Service support, both federal and state, but is also seeking to avoid federal and state local exchange carrier regulation on the basis that its BUS is classified as CMRS. In their instant petition, Petitioners are seeking a determination that the Western Wireless fixed wireless local loop BUS offering is a substitute for local exchange service, not CMRS, and that Western Wireless cannot legitimately seek refuge from appropriate common carrier regulation at the state or federal level. USTA fully supports Petitioners' arguments on this issue and urges the Commission to rule that Western Wireless' BUS is not mobile service for purposes of determining appropriate regulatory treatment.

The Commission has found that CMRS licensees are allowed, indeed encouraged, to offer fixed wireless services and that "the public interest is better served by not attempting to limit potential use of CMRS spectrum to specific applications."[4] After concluding that CMRS licensees should have maximum flexibility to provide fixed services, the Commission found it inappropriate to "establish a bright-line test" to

---

[3] 47 U.S.C. §§151 *et seq.*

[4] Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket No. 96-6, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965, 8974 (1996) (*First Report and Order*). *See* WT Docket No. 96-6, *Second Report and Order and Order on Reconsideration*, FCC 00-246, released July 20, 2000, ¶¶1-8 (*Second Report and Order*).

categorize wireless service for purposes of determining the appropriate regulatory approach for such services.[5] Rather, the Commission concluded that it would consider on a case-by-case basis whether to classify a particular service offering as CMRS.[6] It is upon this basis that the Petitioners' request is to be decided.

The controlling factor in determining the category of a service offering is not the technology used, but the nature of the service itself. Petitioners have provided extensive materials and descriptions of the Western Wireless BUS offering that substantiate a finding that the service offered is not CMRS but rather a substitute for wireline telephone service. Petitioners describe the fact that Western Wireless uses its cellular network to connect customers to the public switched telephone network and that it uses a Fixed Wireless Terminal, which takes the place of the Network Interface Device, since a customer's standard telephone sets and inside wire connect to the terminal.

The Western Wireless system has recently been described as consisting of "a laptop-like device...which interfaces with standard communications equipment on one side and with the cellular towers on the other side. No cell-site equipment is placed near the house, and the only mobility the system offers is the ability to use battery power to take the laptop size unit outside the house."[7] It is clear that the purpose of this service is to offer basic service in rural areas that lack wireline service.[8] It is not to provide a competitive commercial mobile service. The controlling factor for applicability of Section 332 of the Act was "to provide that services that provide equivalent mobile

---

[5] *Second Report and Order* at ¶7.

[6] *Id.*

[7] Lois Mentrup, *Pulling Out All of the POTS,* Wireless Review, November 1, 1999, at 66.

[8] *Id.* at 64.

services are regulated in the same manner."[9] The nature of Western Wireless' offering is basic service that is not in competition with a non-fixed mobile service.

In addition, Section 332 specifically recognizes instances where services provided by mobile technology are a substitute for land line telephone exchange service. In those instances, the statute negates the mobile exemption from state regulation and specifically provides that state requirements imposed "on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates" apply to such carriers. That provision also provides that a state can petition the Commission for authority to regulate the rates of commercial mobile service providers if the service "is a replacement for land line telephone exchange service" and certain market conditions exist. The Western Wireless offering clearly falls within the exception from the prohibition against state regulation of mobile service providers.

On a related issue, USTA has repeatedly advocated that the Commission not adopt asymmetric regulatory requirements which apply only to incumbent LECs, but rather establish a level playing field for all participants.[10] By doing otherwise, the Commission handicaps the market, limits competition and reduces consumer benefits.

In conclusion, USTA urges the Commission to find that the Western Wireless Basic Universal Service is a fixed wireless service, akin to local exchange carrier service, and not CMRS for regulatory purposes. Furthermore, USTA advocates that the

---

[9] H.R. Rep. No. 111, 103d Cong., 1st Sess. at 259 (1993).

[10] *See* USTA Petition for Rulemaking, ASD File No. 98-64, filed September 30, 1998.

Commission treat similar providers of like services symmetrically for regulatory purposes.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By _____

Its Attorneys:

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones

1401 H Street, N.W.
Suite 600
Washington, D.C. 20005
(202) 326-7375

December 21, 2000

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on December 21, 2000, Comments Of The United States Telecom Association was either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the attached service list.

Meena Joshi

Gene DeJordy
Christopher Johnson
Western Wireless Corporation
2001 NW Sammamish Road #100
Issaquah, WA 98027

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

Stephen G. Kraskin
David Cosson
John B. Adams
Kraskin, Lesse & Cosson, LLP
2120 L Street, NW, Suite 520
Washington, D.C. 20037

Mark E. Caplinger
James M. Caplinger
James M. Caplinger, Chartered
823 W. 10th
Topeka, KS 66612

Thomas E. Gleason, Jr.
Gleason & Doty, Chartered
P.O. Box 6
Lawrence, KS 66044