RURAL TELECOMMUNICATIONS GROUP

advocate of rural wireless telecommunications providers

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Washington, DC 20005

MEMORANDUM

To: **Magalie Roman Salas, Secretary**
Federal Communications Commission

From: **Caressa D. Bennet, General Counsel**
Kenneth C. Johnson, Director – Legislative and Regulatory Affairs

Date: **January 8, 2001**

Re: ***Ex Parte* Presentation – January 5, 2001**

***In re Wireless Telecommunications Bureau Seeks Comment on Petition for Declaratory Ruling that Western Wireless' Basic Universal Service in Kansas Is Subject to Regulation as a Local Exchange Service*, WT 00-239, Public Notice, DA 00-2622**

On January 5, 2001, Caressa D. Bennet and Kenneth C. Johnson of Bennet & Bennet, PLLC, representing the Rural Telecommunications Group (RTG), participated in a telephone conference meeting with Rose Crellin and Jeff Steinberg of the Federal Communications Commission's (FCC) Wireless Telecommunications Bureau concerning the above-mentioned proceeding. Also participating in the meeting were RTG members Mark Rutherford representing Colorado Valley Telephone Cooperative, and John Smith representing Leaco Rural Telephone Cooperative, Inc.

RTG noted how the comments in the proceeding were divided between rural telephone company-affiliated commenters supporting the Kansas independent telephone companies, and CMRS carriers opposing the precedent of an additional layer of regulation on competitive CMRS operations. RTG emphasized the rural telephone company roots of its members and encouraged the Commission to take a more pro-competitive view in the proceeding as adopted by RTG which opposed the Kansas Petition in its comments. RTG explained that the Kansas Corporation Commission's comments stood out in this proceeding and should serve as the Commission's guide to put an end to the Independent's legally unsupported and unsound request.

RTG also noted that law and FCC precedent regarding the treatment of CMRS carrier's flexible service offerings prohibit regulation of Western Wireless as a local exchange carrier. RTG noted that Western Wireless' BUS, while a substitute for landline service, does not serve a substantial portion of Kansas. Also, the BUS service is a service offered as an incidental, ancillary and/or auxiliary service to Western Wireless' mobile

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service offerings and that both service offerings use the same CMRS network. Regulation of the fixed wireless service would also result in regulation of the mobile service aspect since both use the same facilities.

RTG noted that under Section 332(c)(3) of the Communications Act of 1934, as amended, Kansas can only regulate the rates and entry of Western Wireless "where such services are a substitute for land line telephone exchange service for a *substantial portion* of the communications within" Kansas.[1] RTG pointed out that Western Wireless has only 386 basic universal service customers in Kansas and that according to U.S. Census Bureau data, Kansas has an estimated 1,044,000 households.[2] Western Wireless' 386 BUS customers represent less than one half of one percent of Kansas households. Therefore, RTG suggested that the Commission defer to the state of Kansas' determination that Western Wireless' basic universal service offering, with its minimal percentage of customers, does not serve a substantial portion of the state.

If you have any questions regarding this filing, please contact me at (202) 371-1500.

Sincerely,

_____/s/_____

Caressa D. Bennet
General Counsel, Rural Telecommunications Group

cc: Rose Crellin
Jeff Steinberg

[1] 47 U.S.C. § 332(c)(3) (emphasis added).
[2] *See* (http://www.census.gov/population/estimates/housing/sthuhh2.txt).