

**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.**

In the Matter of)	
)	
Petition of the State Independent Alliance)	WT Docket 00-239
And the Independent Telecommunications Group)	
For a Declaratory Ruling That the Basic)	
Universal Service Offering Provided by Western)	
Wireless in Kansas is Subject to Regulation as)	
Local Exchange Service)	

**REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS &
INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association (“CTIA”)¹, by its attorneys, submits its Reply Comments in the above-captioned proceeding.² As CTIA noted in its comments, the petition fails to raise any legal justifications that would support removing Western Wireless’ (“Western) local service offering from section 332(c)(3)(A) of the Communications Act, as amended. In its Reply Comments, CTIA reaffirms its request that the Commission deny the Petition for Declaratory Ruling and firmly establish that CMRS providers shall not be subject to traditional monopoly-style local exchange regulation.

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *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*, Docket No. 00-239, Public Notice, DA 00-2622 (rel. Nov. 21, 2000).

DISCUSSION

Numerous commenters to this proceeding, including CTIA, urged the Commission that Western's local service offering falls well within the statutory definition of mobile service under the legal standard of Section 332(c)(3)(A).³ CTIA supports commenters arguing that legislative intent favors treatment of Western's service offering as CMRS. The Commission "noted in its *Local Competition Order*, 'Congress recognized that some CMRS providers offer telephone exchange and exchange access services, and concluded that their provision of such services, by itself, did not require CMRS providers to be classified as LECs.'"⁴

CTIA agrees with other commenters that the Petitioners fail to rebut the statutory presumption that PCS service that is both fixed and mobile should be regulated as CMRS.⁵ "[F]ixed service offerings that are provided on an ancillary, auxiliary, or incidental basis fall within the ambit of CMRS and are not to be regulated as CMRS."⁶ The Commission recently "decided to make such decisions on a case-by-case basis."⁷

³ 47 U.S.C. § 332(c)(3)(A). CMRS carriers should be regulated as traditional LECs where "such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State."

⁴ RTG Comments at 6-7.

⁵ Dobson Comments at 4, n. 9.

⁶ Rural Telecommunications Group ("RTG") Comments at 5 (arguing that under Rule Section 22.323, Western's BUS is an incidental service classified as CMRS). See Western Comments at 8-10 (citing *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, 9 FCC Rcd 1411 (1994)).

⁷ Western Comments at 9 (discussing *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, WT Docket No. 96-6, Second Report and Order, FCC 00-246 (rel. July 20, 2000)).

CTIA agrees with Dobson Cellular Systems, Inc. (“Dobson”), which asserts that “[t]he Commission must consider. . . factors, such as the CMRS provider’s network and the customer’s ability to move the CPE between locations without prior Commission approval and carrier coordination. BUS is a mobile service because it does not involve service between two ‘specified points’ but between a specified point and a point of the customer’s choosing.”⁸

The petition to permit the KCC to regulate Western as a wireline LEC should be denied because Petitioners fails to show that the regulations will serve the public interest. CTIA concurs with Sprint and Dobson that the Petitioners “propose to saddle Western with new regulation but they do not articulate how this regulation would benefit consumers.”⁹ Moreover, imposing unnecessary and burdensome regulations would be adverse to the public interest because CMRS carriers may decide not to offer competitive services in order to avoid becoming subject to state regulation.¹⁰ Or, in the alternative, if carriers decide to offer services, the additional regulations may reduce consumer choice and increase the cost of service for new entrants.¹¹ These results conflict with the underlying goals of the CMRS regulatory classification: “the promotion of competition and the reduction of regulation.”¹² In any event, Petitioners have failed to justify

⁸ Dobson Comments at 6.

⁹ Sprint Comments at 5. *See* Dobson Comments at 9.

¹⁰ Sprint Comments at 6.

¹¹ *Id.*

¹² Sprint Comments at 10.

regulating a service that is provided over Western’s cellular frequencies, using Western’s cellular infrastructure.¹³

Additionally, application of traditional wireline regulation on CMRS providers is unnecessary where competition exists. CTIA supports the Rural Telecommunications Group’s comments to the extent that it “would rather see a future of *less* regulation for all competitive carriers, including incumbent LECs subject to competition, rather than *more* regulation based upon a monopoly past.”¹⁴ RTG note that the Petitioners fail to consider “that regulatory parity could be achieved by asking for *less* regulation like their competitor supposedly enjoys, rather than piling *more* regulation on their competitor.”¹⁵ Furthermore, subjecting Western to traditional wireline regulations, i.e. certification, minimum data rates, and equal access to long distance, is impractical and in some aspects physically impossible.¹⁶ CTIA agrees that the Petitioner’s “real agenda . . . [may be] simply to preclude Western Wireless from competing with them.”¹⁷

The petition also should be denied because the carrier’s designation as Eligible Telecommunications Carrier (“ETC”) is irrelevant to its status as a CMRS carrier under section 332. As Dobson notes, “[n]othing in the Communications Act or the Commission’s rules requires that an ETC be regulated as a LEC.”¹⁸ Furthermore, “the

¹³ Western Comments at 1-4.

¹⁴ RTG Comments at 2.

¹⁵ RTG Comments at 7.

¹⁶ Western Comments at 20-24.

¹⁷ Western Comments at 21.

¹⁸ Dobson Comments at 10.

Commission has already determined the fact that a CMRS carrier is not subject to the same regulatory requirements as a LEC is immaterial for purposes of designating a CMRS carrier as an ETC.¹⁹ Thus, the KCC's designation of Western as an ETC should have no effect on its status as a CMRS carrier. The fact that Western was designated as an ETC under Section 214(e)(1)²⁰ does not affect the limitations on the FCC's authority to regulate CMRS as a local exchange service.

Finally, CTIA agrees with the commenters persuaded by the fact that "no state commission that has addressed the issue of whether the BUS offering is fixed or mobile has decided to regulate BUS as anything other than CMRS."²¹ Western urges the Commission to "follow the lead of all other state commissions that have evaluated Western's BUS offering and found that no state entry and rate regulation is permitted under the statute."²²

CONCLUSION

For these reasons, CTIA respectfully requests that the Commission deny the Petition for Declaratory Ruling to avoid imposing traditional monopoly-style wireline regulations upon CMRS providers.

¹⁹ Dobson Comments at 11.

²⁰ *Id.* §214(e)(1). Pursuant to section 214(e) and the Commission's rules, a common carrier designated as an ETC, not just a local exchange carrier, is eligible for universal support.

²¹ Western Comments at 10-12.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dustun Ashton, do hereby certify that on this 8th day of January, 2001, a copy of the foregoing "Reply Comments of the Cellular Telecommunications & Internet Association", were mailed first class, postage prepaid to the individuals listed below.

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