

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

In the Matter of	)	
	)	
Petition of the State Independent	)	
Alliance and the Independent	)	WT Docket No. 00-239
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 JOHN STAURULAKIS, INC.**

John Staurulakis, Inc. (“JSI”) hereby files its reply comments in response to the Commission’s Public Notice of November 21, 2000 in the above captioned proceeding.<sup>1</sup> In these reply comments, JSI responds to several statements made in the comments filed by parties in response to the Commission’s invitation for comments on the petition filed by the State Independent Alliance and Independent Telecommunications Group (collectively, “Independents”) seeking a declaratory ruling that Western Wireless Corp.’s (“WWC’s”) Basic Universal Service (“BUS”) is not a Commercial Mobile Radio Service (“CMRS”) and that Federal law does not preempt or preclude the Kansas Corporation Commission (“KCC”) from applying to WWC’s BUS offering all regulations and universal service requirements applicable to local exchange carriers (“LECs”) and eligible telecommunications carriers (“ETCs”) in Kansas.

As we noted in our initial comments, JSI is a consulting firm specializing in regulatory and financial services to more than two hundred incumbent LECs (“ILECs”) throughout the United States. In addition to ILECs, JSI assists competitive LECs (“CLECs”). JSI’s ILEC and CLEC clients use a variety of technologies to provide local exchange service across the nation.

**1. The Present Proceeding before the Commission is Timely and Appropriate**

Several responding parties claim that this proceeding is not timely or appropriate. For example, the Rural Telecommunications Group (“RTG”) claims that there is presently no controversy warranting a declaratory ruling. Its claim is based on two assumptions that are not supported by the facts in this case. First, the RTG argues that in order to seek a declaratory ruling of the nature filed by the Independents, a party must be a state governmental agency. In supporting this argument, the RTG references the option of a state regulatory authority to seek a ruling from this Commission for rate and entry regulation for commercial mobile service. Second, in arguing for limitation of the filing of such petitions for declaratory rulings to state agencies, the RTG apparently assumes the inapplicability of the broader invitation for filing petitions for declaratory ruling included in the Commission’s *Second Report and Order* in WT Docket No. 96-6.<sup>2</sup>

In response, JSI respectfully states that the RTG apparently misunderstands the nature of this proceeding. This proceeding is not whether the KCC should have authority over rate and entry regulation of a commercial mobile service, a right they may seek

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<sup>1</sup> 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).

<sup>2</sup> RTG Comments, pages 2-4.

under Section 332(c)(3); rather, this proceeding is to determine whether WWC's BUS service is a commercial mobile service. By advancing an argument that the petition falls under Section 332(c)(3) and thereby requires filing by a state regulatory body, the RTG seeks to deter Commission consideration of the important threshold question now before it regarding whether the BUS service is commercial mobile service.

Regarding the second assumption of the RTG, that also serves to limit the parties eligible to seek a declaratory ruling, JSI understands that this proceeding is the outcome of the Commission's invitation to any party that requires a determination to seek a declaratory ruling for a service offered on a co-primary basis and that may have unique regulatory questions.<sup>3</sup> Therefore the RTG assumption that only the KCC or another Kansas governmental agency are eligible parties for purposes of seeking a declaratory ruling appears to be incorrect. Rather, the Independents require a determination in order to respond appropriately to interconnection requests.

Sprint opposes the timeliness of the petition on other grounds. Sprint claims that the issues raised by the petition are settled issues and therefore the petition is deficient. JSI believes that Sprint fails to recognize several key issues that play a fundamental role in this proceeding. According to Sprint, there is no need for this proceeding because it claims that basic local exchange services offered using CMRS spectrum should be considered auxiliary, ancillary or incidental to mobile service.<sup>4</sup> In making this claim, Sprint appears to neglect the *First Report and Order* in WT Docket No. 96-6 in which the Commission clearly recognized the issue of how to regulate services allowed by

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<sup>3</sup> *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, Second Report and Order and Order on Reconsideration, WT Docket 96-6, FCC 00-246 (rel. July 20, 2000) at paragraph 8 (*Second Report and Order* and *Order on Reconsideration*). The

permitting flexible service offerings of CMRS spectrum.<sup>5</sup> Sprint claims that regardless of whether or not the BUS service is classified as fixed, the Commission should declare that this service is auxiliary, ancillary or incidental service.<sup>6</sup> JSI submits that this interpretation is fundamentally flawed and that the Commission should take the opportunity to clarify and resolve this interpretation. JSI believes that WWC, using its CMRS spectrum to deliver BUS (a basic local exchange service) does not qualify as auxiliary, ancillary or incidental service. It is true that the Commission has permitted certain levels of flexibility to CMRS providers to offer fixed services that “complement or support their mobile service offerings.”<sup>7</sup> The service before the Commission in this proceeding is an independent telecommunications service that certainly does not support WWC’s conventional mobile service, and it is questionable whether or not BUS complements existing WWC conventional mobile service offerings.

To further illustrate the error of classifying BUS as an incidental service, JSI notes that the claim that BUS is incidental service disqualifies this service as ETC service. Section 22.323 of the Commission’s rules regarding the provision of incidental services requires that “the quality of the primary public mobile service does not materially deteriorate as a result of provision of incidental services.”<sup>8</sup> Under an incidental classification for BUS, WWC would be required to ensure that its conventional CMRS service is not materially deteriorated as the result of the provision of its BUS.

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Independents’ petition emerges from the *Second Report and Order* that deals with CMRS spectrum services offered on a co-primary basis.

<sup>4</sup> Sprint Opposition, page 7.

<sup>5</sup> *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 (1996), FCC 96-283 (rel. Aug. 1, 1996), (*First Report and Order and Further Notice of Proposed Rulemaking*), para. 39.

<sup>6</sup> Sprint Opposition, page 7.

<sup>7</sup> *First Report and Order*, para. 6.

Since WWC operates in rural areas with guarantees to “build as you go,” JSI believes that the limitations of WWC’s network capacity in rural areas would likely result in WWC having to give priority to conventional mobile service potentially blocking BUS calls periodically until its network is built to match capacity. Under an incidental service designation, WWC’s conventional CMRS customers would be given priority and its BUS customers would not be allowed to place calls until network congestion decreased and circuits or channels became available. Thus, by deliberately opting for incidental service status for BUS, WWC is relegating BUS customers to secondary customer status subject to the risk of service interruption. Such a result is hardly consistent with the principle of a universal service offering. Thus, JSI argues that BUS cannot be both an ETC service and an incidental service.

As JSI stated in its initial comments, basic local exchange service, regardless of the technology used for delivery, is a fundamentally distinct service that should be addressed under flexible co-primary rules permitting fixed services. In this matter the prior decisions regarding the provisioning of basic local exchange service (*e.g.*, BETRS) provides guidance in how this Commission should address BUS regulation.<sup>9</sup>

For these reasons, JSI encourages the Commission to reject the claim that the Independents’ petition is deficient because it has not been filed by the KCC or another Kansas governmental agency. Rather, JSI encourages the Commission to examine the public policy issues dealing with basic local exchange service offered by WWC and require that competitive eligible telecommunications carrier (“CETC”) regulations

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<sup>8</sup> 47 CFR § 22.232.

<sup>9</sup> Contrary to Sprint’s allegation, BETRS is not regulated because it is provided by a LEC, rather it is regulated because of the basic exchange nature of the service. As we cited in our initial comments, the Commission has determined that BETRS is not technology specific. JSI supports the public policy that any

apply.<sup>10</sup> JSI supports the treatment of BUS as co-primary service authorized under the *First Report and Order* and regulated consistent with other CETCs in the state.

## **2. JSI Clarifies its Policy Recommendation**

JSI believes that its proposed policy recommendation is different from the caricature portrayed by the RTG. JSI submits that the public interest to promote fair and sound competition and encourage new technological deployment in rural areas requires that fixed wireless service, such as BUS, be regulated in a manner consistent with regulation of existing or potential wireline CETCs. The RTG incorrectly portrays the policy proposal as one that seeks to impose incumbent local carrier regulations on fixed wireless providers. As mentioned in its comments, JSI seeks to have WWC's BUS service regulated in a manner consistent with other wireline CETCs or CLECs. JSI seeks this policy outcome because it will provide, in areas where competition meets the public interest standard adopted by Congress, for a competitively and technologically neutral marketplace served by a variety of carriers and consumer products responsive to consumer demand. This regulation is best described as service regulation rather than carrier regulation.<sup>11</sup> The only service subject to this minimum level of regulation for

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carrier who provides basic local exchange service, regardless of technology, and seeks ETC designation for such services accept consistent regulation of that service.

<sup>10</sup> Without going into a lengthy discussion on the specific regulations that should apply to BUS, JSI submits that, at minimum, quality of service regulations and carrier interconnection regulations should be the same for all CETCs. We suggest that ETC service is unique in that it is the service that end-user customers rely on for basic local exchange service – therefore there is a public interest to assure minimum quality standards. Equal carrier interconnection rules for all CETCs is also in the public interest because it permits all CLECs who are CETCs to compete for business under equal interconnection rules. Failure to require equal carrier interconnection rules will favor one technology over another and will lead to the deterioration of intra-state and interstate access regimes. At present, this is not in the public interest.

<sup>11</sup> While service regulation is commonplace for wireline providers, the concept is foreign to CMRS providers who have been regulated on a carrier basis (inclusive of all mobile service) until the *First Report and Order* liberalizing the use of spectrum in 1996. Now CMRS providers that use CMRS spectrum on a co-primary basis for fixed and non-mobile services face service specific regulation. To the consternation of

WWC is BUS. WWC's mobile service could receive ETC designation in the manner consistent with the Act and Commission rules.<sup>12</sup>

The RTG seeks to preempt any regulation of services offered under the co-primary rules established in the *First Report and Order*.<sup>13</sup> JSI believes that the Commission has appropriately established the groundwork to examine each service on a case-by-case basis. This framework provides a forum to discuss whether unique regulatory issues arise for a new service offered using CMRS spectrum.<sup>14</sup> The framework that each service is regulated separately is misunderstood by opponents of this petition when they claim that BUS is a mixed service offering and therefore should not be regulated. Moreover, in the *First Report and Order* the Commission rejected the argument that all CMRS provider services be regulated as commercial mobile service.<sup>15</sup> JSI believes that issues raised in this petition are far from settled and that the Commission has adopted a service-based regulatory framework for non-mobile services offered using CMRS spectrum.

While the concept of service specific regulation may be unfamiliar to CMRS providers (comments citing regulatory burdens noted) the public interest for basic local exchange service is best served using the service regulation framework adopted by the

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CMRS providers under this new regulatory regime, CMRS providers seek protection under incidental, ancillary or auxiliary service to avoid service specific regulation.

<sup>12</sup> For an example of the ETC designation process for commercial mobile service, see *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*. Memorandum Opinion and Order, DA 00-2896 (Dec. 26, 2000). JSI notes that while the Common Carrier Bureau granted ETC designation to WWC in Wyoming, the Bureau did not reach the threshold question presented in this petition because of the specific ruling of the Wyoming Commission that it lacks statutory authority to regulate any service using wireless spectrum. Therefore, there is no conflict with the Wyoming ETC designation and the relief sought in the present petition.

<sup>13</sup> RTG Comments, page 9.

<sup>14</sup> The Commission established this framework in the *First Report and Order* when it declined to consider all services provided by CMRS providers using CMRS spectrum as commercial mobile service. It recognized then, and now, that there are unique regulatory issues that arise for each service. Moreover, the regulation of each service must be examined individually.

Commission in the *First Report and Order* and the *Second Report and Order*. WWC's position that BUS cannot be examined in isolation from its overall CMRS offerings<sup>16</sup> belies the distinction made by the Commission between service regulation and carrier regulation.

### **3. The Public Interest is Best Served with Consistent, Competitively and Technologically Neutral Regulations**

Sprint indicates that one of two results will occur were the Commission to grant the Independents' petition: (1) WWC will elect not to provide BUS in Kansas, or (2) WWC's cost of service in Kansas would increase, which would hinder WWC's ability to provide feature packages and competitive pricing of its BUS offering. By applying a competitively neutral regulatory scheme to CETC services, JSI believes that the Commission will advance the long-term goal of promoting a competitive local exchange market in rural markets. As discussed in our initial comments, by favoring one technology over another (wireless over wireline), the Commission would create market distortions that prevent the development of a truly competitive market. If WWC elects not to enter the local exchange market because its costs prevent it from competing on equal regulatory footing with other CLECs, then the long-term goal of a competitive telecommunications market is not harmed because of the lack of entry by an inefficient provider. Likewise, if WWC must alter the pricing and packaging of its BUS offering because the Commission requires regulatory parity between WWC and its competitors, the long-term public interest is not harmed by such policy decisions. To the contrary, the long-term public interest of sustaining a truly competitive local telecommunications

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<sup>15</sup> *Further Notice of Proposed Rulemaking* at para. 46.

market will be enhanced by regulatory policies that do not discriminate between local exchange carriers. However, due to the generally lower cost of wireless technology, in comparison to wireline technology in sparsely populated rural areas, JSI does not believe that granting the regulatory equity requested by the petitioners in this proceeding will prevent WWC from effectively competing with wireline providers.

Sprint states that new regulations imposed upon WWC's BUS will not serve the public interest. What Sprint fails to recognize is that the petitioners do not propose "new regulations" for WWC. Instead, the petitioners propose that WWC should have to comply with the existing regulations applicable to all providers of competitive local exchange services in Kansas. The petitioners appear to recognize that regulating WWC as an ILEC is inappropriate because of the long-standing market position of ILECs. Instead, the petitioners propose that WWC be regulated as any other competing provider of local exchange services under existing CLEC regulations. In essence, what Sprint is saying is that the existing regulatory requirements developed and applied by the KCC to all competitive local exchange providers are not in the public interest. This argument should be rejected by the Commission because Sprint presented no evidence demonstrating that the existing KCC regulatory requirements applied CLECs are contrary to the public interest. As discussed above, the long-term public interest is served by sustaining a competitive local exchange market that is free of artificial regulatory distortions. This can only be achieved by applying regulations equally to competitors.

The artificial difference in the definition of "local" traffic between traffic to and from a CMRS provider's network and that of all other providers of telecommunications services creates an artificial market distortion that cannot be sustained in a competitive

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<sup>16</sup> Opposition of Western Wireless, page 12.

local telecommunications environment. Because CMRS providers have the ability to terminate telecommunications traffic anywhere in Metropolitan Trade Areas (“MTAs”) under local interconnection rules, while all other providers are required to pay originating and/or terminating access rates to terminate similar traffic to and from the same service areas, CMRS providers enjoy a significant competitive advantage over all other types of providers. JSI recognizes that requiring WWC to obtain a state certificate to provide competitive local exchange services in Kansas will prevent WWC from arbitraging the Commission’s and the KCC’s existing access system and may cause WWC to reduce the size of the local calling scopes offered in its retail BUS offering. However, this result is exactly what is necessary to sustain a long-term competitive local exchange market. Applying one set of regulatory standards to all competitors will ensure that the public interest is served by encouraging competition based upon carrier efficiency, rather than regulatory arbitrage.

#### **4. WWC’s BUS Does Not Use Equipment Qualifying as a Mobile Station**

WWC and Sprint attempt to confuse a very simple issue regarding the definition of a mobile service. Sprint misquotes the definition of mobile service in the Act by focusing only on subpart (c) of said definition.<sup>17</sup> By doing so, Sprint fails to recognize that all subparts of this definition, (A), (B) and (C) are predicated on the overarching first clause of Section 153(27). To clarify, we include the complete definition of mobile service.

The term "mobile service" means a radio communication service carried on **between mobile stations** or receivers and land stations, and by mobile stations

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<sup>17</sup> Sprint Opposition, page 9. In its comments Sprint only quotes 47 U.S.C. § 153(27)(c). Sprint’s reference to 47 U.S.C. § 153(28)(c) in footnote 23 is incorrect and should be 47 U.S.C. § 153(27)(c).

communicating among themselves, **and includes** (A) both one-way and two-way radio communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.<sup>18</sup>

It is understandable why Sprint may be attempting to omit the specific reference to mobile stations in the complete mobile service definition. A mobile station, according to Section 153(28) of the Act, is "a radio-communication station capable of being moved and which ordinarily does move."<sup>19</sup> Despite multiple unsupported statements of WWC, the facts in this case show that the ordinary use of WWC's device is stationary.<sup>20</sup>

WWC avoids the statutory definition of mobile station in a different way. WWC seeks refuge under the definition of mobile station in the Commission's rules.<sup>21</sup> The rule in Part 22 only refers to the operational mobility of the station. JSI disagrees with WWC that the definition in Part 22 is consistent with the Act. The definition in the Act clearly refers to two requirements, while the definition in Part 22 refers to only one requirement. JSI urges the Commission to avail itself of the opportunity in this proceeding to amend Part 22, as has been done in prior cases, to conform to the statutory requirement.<sup>22</sup>

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<sup>18</sup> 47 U.S.C. § 153(27) Emphasis added.

<sup>19</sup> 47 U.S.C. § 153(28).

<sup>20</sup> It is noteworthy to explain that stationary service has precedent in other cases before the Commission. The FCC has provided guidance in distinguishing between mobile and fixed service. For example, in its discussion regarding satellite services it states that services provided to or from a transportable platform that cannot move when the communications service is offered should not be included within the definition of mobile service. *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994), FCC 94-31, at para. 38.

<sup>21</sup> Opposition of Western Wireless, page 2, footnote 3.

<sup>22</sup> See *Amendments to Part 22, 90 and 94 of the Commission's Rules to Permit Routine Use of Signal Boosters*, WT Docket No. 95-70, Report and Order, 11 FCC Rcd 16621 (1996) and *Revision of Part 22 and*

JSI welcomes the opportunity for the Commission to judge whether or not the device used with BUS is a mobile station. WWC claims that the Phonocell SX3i is as mobile as a conventional mobile phone and specifically refers to a bag phone as an example supporting its position.<sup>23</sup> JSI respectfully disagrees. There are striking differences between conventional mobile bag phones of comparable wattage and the Phonocell SX3i. These differences clearly show that the ordinary use of the Phonocell SX3i does not satisfy the statutory requirement that a mobile station ordinarily moves. In the first place, a bag phone typically has a handle while the Phonocell SX3i has molded wall mounts on the back of the unit. The power of a bag phone initially was provided using a 12-volt adapter (suitable for car power ports), the Phonocell SX3i has a standard length power cord intended for household electric wall plugs. Finally and most importantly, the bag phone, and every mobile station in today's marketplace, has an ear speaker, a mouthpiece that is able to transmit and receive radio communication service or telecommunication voice messages, and a keypad for dialing. WWC's Phonocell SX3i does not have a speaker or mouthpiece or keypad for dialing. We repeat, the Phonocell SX3i is incapable of independently receiving or delivering radio communication or telecommunications voice messages without the use of a traditional phone that is attached to the Phonocell SX3i with a cord and standard jacks. These differences between conventional mobile stations and the Phonocell SX3i are enormous and significant. JSI submits that the Phonocell SX3i used to provide BUS is more akin to a wireless network

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*Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2744 (1997).

<sup>23</sup> Opposition of Western Wireless, pages 4 and 18.

interface device (“NID”) and it does not satisfy the statutory requirement of a mobile station.<sup>24</sup>

Additionally, as noted in WWC’s Texas ETC compliance filing, WWC only guarantees adequate volume levels and distortion free BUS service, when used at the customer’s premises.<sup>25</sup> This section of WWC’s BUS compliance filing in Texas states, “When using wireless local loop equipment at the customer’s premises in accordance with the Company’s instructions, transmission will be at adequate volume levels and free of excessive distortion.” By including this limitation on service adequacy, WWC is clearly indicating that its BUS is intended for use as a fixed service, “at the customer’s premises,” and that when used away from the customer’s premises, WWC makes no guarantees that its service will work.

The determination that the service is ordinarily used as a mobile station is a judgment that requires an evaluation of the relative mobility of the mobile station (which in this case requires the Phonenumber SX3i and a conventional telephone attached) and whether customers perceive the service to be a fixed service or a mobile service. WWC has failed to provide evidence in its comments as to how its actual customers perceive their service. Thus the Commission must rely on its judgment to determine if a typical customer would perceive as mobile a Phonenumber SX3i box, without a handle and with built-in wall mounts, with a standard length AC power cord,<sup>26</sup> and a conventional

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<sup>24</sup> A radio station is defined as “a separate transmitter or a group of transmitters under simultaneous common control, including the accessory equipment required for carrying on a radio communications.” 47 CFR § 1.907. It is unclear how WWC’s Phonenumber device even qualifies as a radio station because it cannot independently carry on radio communications due to the lack of a dial pad, speaker and mouthpiece.

<sup>25</sup> *Compliance Tariff and Related Materials Pursuant to the Final Order in P.U.C. Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168, Project No. 23107, Attachment 3(a), Company Service Agreement, Under 1.1.1, November 30, 2000.*

<sup>26</sup> JSI notes that a standard length AC power cord, when used herein, is approximately a six foot power cord, as opposed to the mile long power cord that WWC witness James Blundel identified in the

telephone attached to the box with a conventional telephone cord. In our opinion end-user customers do not perceive this octopus-like contraption as mobile. We urge the Commission to reach the same common-sense judgment and declare that WWC's BUS service is non-mobile service offered as a co-primary service on its CMRS spectrum.

**5. North Dakota Commission Decision Should Not Dictate This Commission's Decision**

In its comments, WWC cites a North Dakota Public Service Commission ("North Dakota Commission") case to demonstrate that its service is mobile service, despite the fact that this case is still under court appeal. The Commission should not take direction from the North Dakota Commission ruling. The Commission has not delegated the case-by-case decision process outlined in its *Second Report and Order* to state commissions. Therefore, JSI recommends that this Commission should consider this petition as a first impression case without reliance on the North Dakota Commission ruling. Moreover, the North Dakota Commission decision was made prior to the *Second Report and Order* when confusion still existed regarding whether a rebuttable presumption of CMRS status applied to BUS service as proposed in the *First Report and Order* and *Further Notice of Proposed Rulemaking*. This confusion could easily have influenced the state commission's reasoning. Lastly, the North Dakota Commission concluded that WWC's service had mobile capabilities and therefore was exempt from state entry regulation. The state commission made no affirmative judgment on the ordinary use requirement of a mobile station and therefore apparently, and incorrectly, relied on definition of a mobile

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Texas WWC ETC proceeding as a reasonable length power cord at Transcript Page 679-680 in *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*

station in Part 22 that is inconsistent with the dual requirements of a mobile station in the Act.<sup>27</sup> This apparent misjudgment is confirmed by the state commission's remanded decision that relied solely on the technical capabilities of WWC's equipment.<sup>28</sup>

## 6. Conclusion

The Independents, in their petition, have requested that the Commission address an important threshold issue regarding whether WCC's BUS is basic local exchange service or commercial mobile service. The arguments of the RTG that only a state governmental agency can bring such a petition because of Section 332(c)(3) are misplaced because the issue presented to the Commission is a threshold issue that should be decided by the Commission before a state commission could even consider a Section 332(c)(3) petition. The Commission should also determine the regulatory status of BUS based on the service it represents, basic local exchange service, and not who provides the service as suggested by CMRS providers. The fact that regulation of BUS as a local service might deter, as Sprint suggests, a CMRS provider from entering the local exchange service market should not outweigh application of the important goals of competitively and technologically neutral regulation to providers of similar services. With respect to whether BUS qualifies for regulatory treatment as commercial mobile service, the Commission should not allow parties commenting in this proceeding to

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*Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418, and as an Eligible Telecommunications Provider Pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.417, Consolidated Docket No. 22289.*

<sup>27</sup> *Western Wireless Corp. vs. Consolidated Telephone Cooperative, Inc. Complaint*, State of North Dakota Public Service Commission, Case No. PU-1564-99-17, Findings of Fact, Conclusions of Law and Order (August 31, 1999) at para. 38, aff'd on remand, Findings of Fact, Conclusions of Law and Order on Remand (November 22, 2000) (*North Dakota Remand Order*), appeal pending, South Central Judicial District, County of Burleigh, State of North Dakota, Case. No. 08-99-C-02486/001.

<sup>28</sup> *North Dakota Remand Order* at para. 6.

conveniently overlook the complete definition of mobile service provided by Section 153(27) and the related definition of mobile station provided by Section 153(28). When these definitions are properly applied to the sedentary WWC BUS, the BUS is necessarily excluded from regulation as CMRS. Finally, it is not appropriate, as WWC suggests, for the Commission to base its conclusion regarding whether WWC's BUS is CMRS on a decision made by the North Dakota Commission outside of the framework adopted by the Commission in the *Second Report and Order*. That very framework brought about this proceeding, a proceeding that JSI recommends the Commission resolve by declaring that WWC's BUS, based on its nature and application of the Communications Act and Commission rules and policies, is not commercial mobile service.

Respectfully submitted,

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January 8, 2001

**CERTIFICATE OF SERVICE**

I, Scott Duncan, do hereby certify that on this 8th day of January 2001, a copy of the foregoing "Comments of John Staurulakis, Inc.", were mailed first class, postage prepaid, to the individuals listed below.

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**WT Docket No. 00-239**

**January 8, 2001**

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