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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Federal-State Joint Board on)
Universal Service)
)
Petitions for Reconsideration of)
Western Wireless Corporation's)
Designation as an Eligible)
Telecommunications Carrier)
In the State of Wyoming)

CC Docket No. 96-45

ORDER ON RECONSIDERATION

Adopted: October 16, 2001

Released: October 19, 2001

By the Commission: Commissioner Martin approving in part, concurring in part and issuing a statement.

I. INTRODUCTION

1. In this Order, we deny petitions for reconsideration of the Common Carrier Bureau's (Bureau) designation of Western Wireless Corporation (Western Wireless) as an eligible telecommunications carrier (ETC) for the purpose of receiving federal universal service support in the state of Wyoming.¹ Specifically, we affirm the Bureau's conclusion that the designation of Western Wireless is consistent with the statutory eligibility requirements of section 214(e) of the Communications Act of 1934, as amended (the Act), and Congress' mandate under section 254 to promote the availability of affordable telecommunications service to all consumers.²

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."³ Section 214(e)(1) requires that a common carrier designated as an ETC must

¹ Golden West Telephone Cooperative, Project Telephone Company, and Range Telephone Cooperative, Petition for Reconsideration filed January 25, 2001 (Golden West et al. Petition); Chugwater Telephone Company, Range Telephone Cooperative, Inc. and RT Communications, Inc., Petition for Reconsideration and/or Clarification filed January 25, 2001 (Chugwater et al. Petition).

² 47 U.S.C. §§ 214(e), 254.

³ 47 U.S.C. § 254(e).

offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁴ In the case of an area served by a rural telephone company, section 214(e)(5) provides that “service area” means such company’s “study area” unless and until the Commission and the states, after taking into account the recommendations of a Federal-State Joint Board, establish a different definition of service area for such company.⁵

3. Pursuant to section 214(e)(2), state commissions have the primary responsibility for designating carriers as ETCs.⁶ Section 214(e)(6), however, directs the Commission to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”⁷ Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest.⁸

B. Wyoming ETC Order and Petitions for Reconsideration

4. Wyoming ETC Order. On December 26, 2000, the Bureau designated Western Wireless, pursuant to section 214(e)(6), as an ETC in designated service areas within Wyoming, including areas served by both rural and non-rural telephone companies.⁹ In so doing, the Bureau concluded that Western Wireless satisfied the statutory eligibility requirements of section 214(e) to receive federal universal service support.¹⁰ Specifically, the Bureau concluded that Western Wireless demonstrated that it would offer and advertise the services supported by the federal universal service mechanism throughout the designated service areas.¹¹ In addition, the Bureau concluded that designation of Western Wireless as an ETC in those areas served by rural

⁴ 47 U.S.C. § 214(e)(1). Section 214(e)(5) defines the term “service area” as a “geographic area established by a State commission (or the Commission under [section 214(e)(6)]) for the purpose of determining universal service obligations and support mechanisms.” 47 U.S.C. § 214(e)(5).

⁵ 47 U.S.C. § 214(e)(5). Generally, a study area corresponds to an incumbent local exchange carrier’s entire service territory within a state.

⁶ 47 U.S.C. § 214(e)(2).

⁷ 47 U.S.C. § 214(e)(6). See also *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (rel. Dec. 29, 1997). In this Public Notice, the Commission delegated authority to the Common Carrier Bureau to designate carriers pursuant to section 214(e)(6).

⁸ 47 U.S.C. § 214(e)(6).

⁹ *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 00-2896 (rel. Dec. 26, 2000) (*Wyoming ETC Order*). As part of its petition, Western Wireless provided an affirmative statement from the Wyoming Commission indicating that it did not have jurisdiction to perform the ETC designation.

¹⁰ *Wyoming ETC Order* at para. 7.

¹¹ *Wyoming ETC Order* at paras. 8-15.

telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Wyoming.¹² For those areas served by rural telephone companies, the Bureau designated as Western Wireless' service area the entire study areas of those rural telephone companies to the extent that they are located within the state of Wyoming.¹³ In so doing, the Bureau noted that some of these rural telephone company study areas include exchanges that extend beyond the boundaries of Wyoming.

5. Petitions for Reconsideration. In January 2001, two petitions for reconsideration were filed on behalf of several rural telephone companies operating in Wyoming. Golden West, Project Telephone, and Range Telephone contend in their petition that the Bureau improperly interpreted the statutory provisions of section 214(e)(5) in designating Western Wireless' service area. These petitioners contend that, in the case of an area served by a rural telephone company, section 214(e)(5) requires the designated service area for an additional ETC to be the same as the rural telephone companies' study area, unless and until the Commission and states establish a different definition of service area for such company. These petitioners take issue with the Bureau's conclusion that, where study areas cross state boundaries, the procedures for modification of service area boundaries are inapplicable.¹⁴ These petitioners contend that the statute provides only one exception to this requirement, and that is where the prescribed federal-state process has been followed. Alternatively, these petitioners suggest that Western Wireless could obtain ETC status in each of the surrounding states in which a rural telephone company's study area extends beyond the boundaries of Wyoming.¹⁵ Finally, these petitioners suggest that the designation of service areas that extend beyond the boundaries of a state under section 214(e)(6) is a novel issue that must be resolved by the Commission, rather than the Bureau.¹⁶

6. Chugwater Telephone, Range Telephone, and RT Communications raise several issues for reconsideration in their joint petition. First, these petitioners suggest that the Bureau reconsider and remand Western Wireless' petition to the Wyoming Commission for designation.¹⁷ These petitioners contend that the state commission is better suited to make such designations and that Wyoming has recently enacted legislation that will provide the state commission with jurisdiction to designate wireless carriers as ETCs.¹⁸ Second, these petitioners

¹² *Wyoming ETC Order* at paras. 16-22.

¹³ The Bureau granted Western Wireless ETC designation in areas served by four rural telephone companies in Wyoming including Chugwater Telephone, Golden West Telephone, Range Telephone (including the areas served by its wholly-owned subsidiary RT Communications, Inc.), and United Telephone Company of the West. *See Wyoming ETC Order* at para. 24.

¹⁴ Golden West et al. Petition at 5. *See also* 47 C.F.R. § 54.207

¹⁵ Golden West et al. Petition at 10.

¹⁶ Golden West et al. Petition at 11-12.

¹⁷ Chugwater et al. Petition at 3.

¹⁸ Chugwater et al. Reply to Opposition at 2.

contend that the *Wyoming ETC Order* designates Western Wireless in exchanges that differ from those set forth in Western Wireless' original petition.¹⁹ As a result, petitioners contend there was no opportunity to file comments regarding those exchanges not specifically set forth in the original petition. Finally, these petitioners argue that the rural telephone companies at issue will suffer potential harm in the form of loss of market share from the designation of Western Wireless as an ETC in their respective study areas.²⁰ Petitioners assert that this may result in the loss of service to consumers or reduced investment in rural areas by the rural telephone companies that would not be in the public interest.

III. DISCUSSION

7. We deny the requests for reconsideration of the Bureau's designation of Western Wireless as an ETC in the state of Wyoming. Specifically, we conclude that the Bureau's designation was consistent with the statutory guidelines of section 214(e) and Congress' mandate to promote competition and the availability of affordable telecommunications service to all consumers.²¹

8. Designated Service Area. We deny the petitioners' request to reconsider the Bureau's designation of Western Wireless' service area as the rural telephone companies' study areas to the extent that they are located within the state of Wyoming.²² Under section 214(e)(6), the Commission is effectively authorized to stand in the place of the state commission for purposes of designating carriers over which the state does not have jurisdiction. We believe the Commission's authority to perform the designation is no greater than that of the state that would have otherwise made the designation. Therefore, where a rural telephone company's study area boundaries extend beyond the boundaries of the state, we also believe the Commission has no authority to designate any portion of the study area that extends beyond the state's boundaries. As a result, the Commission does not have the discretion in these circumstances to designate the entire study area as the ETC's service area. The designation performed in the *Wyoming ETC Order* thus encompasses the maximum geographic area for which the Commission has jurisdiction under section 214(e)(6) to do so. In these circumstances, we find no basis for delaying the ETC designation or pursuing additional procedures to consult with neighboring state commissions.

9. Further, the federal-state process cited by petitioners, as set forth in section 214(e) and the Commission's rules, also contemplates situations in which only one entity, either the

¹⁹ Chugwater et al. Petition at 4.

²⁰ Chugwater et al. Petition at 11-23.

²¹ 47 U.S.C. § 254. According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . ." Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d. Sess. at 113.

²² We note that the study area of Chugwater is contained entirely within the boundaries of Wyoming.

state commission or this Commission, has the authority to designate the rural telephone companies' entire study area as the ETC's service area.²³ The statute simply does not address circumstances in which an existing study area for a rural carrier may extend beyond state borders, and in which two or more states might have been involved in establishing the service area. In any event, we do not believe that Congress envisioned that any state commission might need to involve another state, or seek its permission, before designating an ETC for an existing service area otherwise lying wholly within the designating state's borders, or that another state potentially could interfere with a state's authority to designate an additional ETC within its own borders.²⁴ Certainly nothing in the language or policies underlying section 214(e) contemplates such a result.

10. Petitioners' request also appears inconsistent with the statutory policies underlying section 254(e). Under the joint process envisioned by the petitioners, where study area boundaries cross state lines, each adjoining state with little or no incentive to act quickly upon such a request could delay the designation of an ETC in another state indefinitely. In addition, if as suggested by the petitioners, Western Wireless were required to obtain ETC designation in each of the bordering states prior to being designated in Wyoming, this could indefinitely delay the designation process and create an almost insurmountable administrative barrier to competitive entry in Wyoming. For example, we note that designation of Western Wireless' requested service areas would require approval from as many as four different state regulatory bodies to allow this Commission to perform its designation under section 214(e)(6).²⁵

11. Moreover, to the extent that petitioners are concerned that the state commissions be given an opportunity to express any concerns regarding the designated service areas, we note that interested parties have been given ample opportunity to comment upon the designated service areas in this case. A public notice seeking comment on Western Wireless' petition, including the service areas to be designated in areas served by the rural telephone companies, was issued on November 12, 1999, over one year prior to Western Wireless' designation in the *Wyoming ETC Order*.²⁶ None of the state commissions potentially affected by this proceeding filed comments or otherwise objected to the service areas designated by the Bureau, either during

²³ 47 C.F.R. § 54.207. In addition, we note that the Commission adopted the process outlined in this rule prior to the enactment of section 214(e)(6). This rule, therefore, does not contemplate the situation in which the Commission, rather than the state commission, has the responsibility under section 214(e)(6) to perform the designation.

²⁴ The Texas Public Utilities Commission has reached a similar conclusion. *See Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167, Order at 6-7 (Oct. 2000).

²⁵ We note, however, that the vast majority of this area lies within the state of Wyoming.

²⁶ *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier to Provide Services Eligible for Universal Service Support in Wyoming*, Public Notice, CC Docket No. 96-45, DA 99-2511 (rel. Nov. 12, 1999) (*Western Wireless Public Notice*) at 1. In addition, notice of the Commission's intent to act upon Western Wireless' petition was published in the Federal Register. 65 Fed. Reg. 47883, 47899 (Aug. 4, 2000).

this proceeding or on reconsideration following the designation of Western Wireless' service area in the *Wyoming ETC Order*. We believe, therefore, that the state commissions have been provided with a reasonable opportunity to comment and participate in Western Wireless' petition and the designation of service areas in the *Wyoming ETC Order*.

12. In addition, as the Commission concluded in *Universal Service Order*, the primary objective in retaining the rural telephone company's study area as the designated service area of a competitive ETC is to ensure that competitors will not be able to target only the customers that are the least expensive to serve and thus undercut the incumbent carrier's ability to provide service to high-cost customers.²⁷ Rural telephone companies, however, now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service.²⁸ Therefore, any concern regarding "cream-skimming" of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.

13. Finally, we reject petitioners' argument that the designation of service areas that cross state boundaries is a novel issue of first impression that should have been addressed by the Commission, rather than the Bureau.²⁹ The Commission has delegated to the Bureau the authority to designate carriers as ETCs pursuant to section 214(e)(6), including the designation of service areas.³⁰ We therefore conclude that resolution of this issue was within the scope of the Bureau's delegated authority. Nevertheless, the Commission now affirms the conclusions reached by the Bureau in the *Wyoming ETC Order*.

14. Due Process. We deny the petitioners' request to reconsider the Bureau's decision due to an alleged lack of prior notice regarding the service areas at issue. Interested parties were provided with sufficient notice as to the incumbent carriers whose study areas were subject to designation. In its petition for designation as an ETC, Western Wireless requested designation for service areas "consisting of the *study areas* of certain local exchange carriers that are [rural telephone companies]" as well as certain wire centers served by US West (now Qwest).³¹ Moreover, Western Wireless' petition provided sufficient notice that some of the

²⁷ *Federal-State Joint Board on Universal Service Order*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776 at 8881, para. 189 (1997) (*Universal Service Order*) (subsequent history omitted).

²⁸ *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 at paras. 144-164 (rel. May 23, 2001) (*Rural Task Force Order*).

²⁹ Golden West et al. Petition at 11-12.

³⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (rel. Dec. 29, 1997).

³¹ *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming* filed October 25, 1999 (Western Wireless Petition) at 12 [emphasis added].

exchanges for which it requested designation extend beyond Wyoming state boundaries. In its petition, Western Wireless provided a list of exchanges in Wyoming, including exchanges served by Chugwater, Golden West, Range Telephone, and United Telephone, for which it sought designation.³² Although this list of exchanges did not include every individual exchange that constitute the entire study area of these rural telephone companies, we find that the issue is not whether notice of the specific exchanges was provided, but whether the rural telephone companies were given notice as to the request for designation in their study areas, as required by section 214(e)(5).

15. As discussed above and consistent with section 214(e)(5), Western Wireless requested designation in the study areas served by rural telephone companies in Wyoming, including Chugwater, Golden West, Range, and United Telephone. We believe that the rural telephone companies were aware, or reasonably should have been aware, of the exchanges that constitute their own study areas within Wyoming. Indeed, the petitioners were also best positioned to be aware from the outset of this proceeding that a portion of their respective study areas included exchanges that were partially located in states outside of Wyoming. We conclude that interested parties were provided with sufficient prior notice to comment on the service areas in which the Bureau ultimately designated Western Wireless an ETC in Wyoming. Moreover, shortly before the release of the *Wyoming ETC Order*, Western Wireless filed a complete list of the exchanges that constitute the rural telephone company study areas in Wyoming for which it sought designation.³³ We believe, however, that even in the absence of this filing, carriers were made aware in Western Wireless' petition of the study areas in which Western Wireless was seeking designation, and had an opportunity to provide comment in this proceeding.³⁴

16. *State Jurisdiction.* We deny the petitioners' request to reconsider and remand the designation of Western Wireless to the Wyoming Commission. Pursuant to Commission guidelines, the Bureau acted on Western Wireless' petition only after receiving an affirmative statement from the Wyoming Commission that it lacked jurisdiction over Western Wireless.³⁵ The Bureau's designation of Western Wireless as an ETC in Wyoming occurred before Wyoming enacted legislation to allow the Wyoming Commission to perform such designations.

³² Western Wireless Petition at App. D. This list includes some exchanges that overlap Wyoming boundaries.

³³ Letter from David L. Sieradzki, Counsel for Western Wireless, to Magalie Roman Salas, FCC, filed December 20, 2000 (Western Wireless Dec. 20 *ex parte*).

³⁴ We also note that although RT Communications was not specifically identified in Western Wireless' original petition, RT Communications is a wholly-owned subsidiary of Range Telephone. In fact, Range's study area includes those areas served by RT Communications. As a result, section 214(e)(5) requires designation of those areas served by RT Communications in Wyoming as part of Range's study area. In addition, Western Wireless identified the RT Communications exchanges in its December 20, 2000 *ex parte*.

³⁵ *Twelfth Report and Order*, 15 FCC Rcd at 12263-64, paras 112-113. The Wyoming Commission issued an order indicating that it did not have jurisdiction to perform the designation of Western Wireless. See *The Amended Application of WWC Holding Co., Inc. (Western Wireless) For Authority To Be Designated As An Eligible Telecommunications Carrier*, Order Granting Motion to Dismiss Amended Application, Docket No. 70042-TA-98-1 (Record No. 4432) (Aug. 13, 1999).

Contrary to the contention of the petitioners, the Bureau's designation of Western Wireless has no bearing on any future wireless carrier designation proceedings in Wyoming.³⁶ As the Commission stated in the *Twelfth Report and Order*, each carrier serving non-tribal lands is required to receive an affirmative statement from the state commission that it lacks jurisdiction over the carrier, regardless of whether similarly situated carriers have received such affirmative statements.³⁷ Thus, the Bureau's decision to perform the designation of Western Wireless in this case in no way precludes the Wyoming Commission from performing designations involving wireless carriers in the future.

17. *Public Interest.* We deny the petitioners' request to reconsider the Bureau's finding that Western Wireless' designation as an ETC is in the public interest in those areas served by rural telephone companies. We note that none of the rural telephone companies affected by the findings in the *Wyoming ETC Order* presented data in that proceeding.³⁸ On reconsideration, petitioners attempt to introduce new facts and evidence into consideration in an effort to support the contention that rural study areas cannot support competition. We do not find such evidence to be persuasive.

18. At the outset, we note that section 1.106(c) of the Commission's rules provides that new facts may be presented in a petition for reconsideration only if the facts relate to events that occurred or circumstances that changed since the last opportunity to present such matters; the facts were not known to the petitioner, and could not reasonably have been learned prior to such opportunity; or the public interest requires consideration of the facts.³⁹ The facts now presented on reconsideration for the first time, including the number of customers served, size of the service areas, and investment in rural areas served by the petitioners, are facts that were known or, through the exercise of diligence, could have been known and presented prior to the adoption of the *Wyoming ETC Order*. As a result, we conclude that the proper time for presenting such evidence for consideration was prior to the adoption of the *Wyoming ETC Order*.⁴⁰

19. Nevertheless, we find that the petitioners provide no basis to reconsider the Bureau's conclusion that it is in the public interest to designate Western Wireless as an ETC in Wyoming in those designated service areas that are served by rural telephone companies.⁴¹ As the Bureau noted in its prior order, the designation of a qualified ETC promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative

³⁶ Chugwater et al. Petition at 3.

³⁷ *Twelfth Report and Order*, 15 FCC Rcd at 12264, para. 113.

³⁸ The Bureau requested public comment on Western Wireless' petition on November 12, 1999. See *Western Wireless Public Notice*.

³⁹ 47 C.F.R. § 1.106(c).

⁴⁰ Western Wireless Opposition to Reconsideration at 14.

⁴¹ *Wyoming ETC Order* at para. 16.

services, and new technologies.⁴² We find unpersuasive the evidence now provided by the petitioners, such as the number of customers and size of the geographic areas that the rural telephone companies serve, to support the contention that designation of competitive ETCs in rural areas will necessarily result in increased rates or reduced investment in rural areas.⁴³ The evidence submitted regarding the number of customers and geographic areas served by the rural telephone companies is typical of most rural areas.⁴⁴ Although petitioners allege that competition may erode their customer base forcing higher rates to remaining customers, such a result is highly speculative. We have no reason to believe that a significant number of consumers will terminate their wireline service as a result of Western Wireless' designation as an ETC. In fact, the petitioners themselves note the technological advantages of wireline service over cellular service in providing advanced services to consumers.⁴⁵ In addition, the federal universal service mechanisms support all lines served by eligible carriers in high-cost and rural areas. Thus, to the extent that the competitive ETC provides new lines to customers that are currently unserved or second lines to customers that have service, there will be no reduction in support to the incumbent carrier.

20. We conclude that the public interest would not be served by reconsidering the Bureau's earlier finding and beginning the designation process anew. Western Wireless filed its original request for designation with the Wyoming Commission nearly three years ago.⁴⁶ As discussed above, we believe that there are no benefits to be gained by adding any further delay to this proceeding. We should allow Western Wireless to provide a competitive service to consumers in Wyoming on a competitively neutral basis. We therefore deny the petitioners' request for reconsideration of this issue.

IV. ORDERING CLAUSES

21. IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 151, 154(i), 214(e), and 254, section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Chugwater Telephone, Co., Range Telephone Co., and RT

⁴² *Wyoming ETC Order* at para. 17.

⁴³ For example, Chugwater indicates that it serves approximately 290 customers over a 900 square mile area. Although Chugwater concludes that this results in an average of 0.3 customers per square mile, no evidence is provided to support the apparent contention that its customers are uniformly located throughout the study area, rather than in clusters such as small towns. Chugwater et al. Petition at 10-11. Similar evidence is provided for those areas served by RT Communications and Range Telephone. *Id.* at 13, 18.

⁴⁴ Petitioners also contend that the inability of cellular carriers to provide advanced services should be taken into consideration in the public interest analysis. Chugwater et al. Petition at 12,17. We do not find this persuasive. We note that the eligibility criteria of section 214(e) require only the offering of those services that are supported by the federal universal service mechanism. Such services are enumerated in the Commission's rules. *See* 47 C.F.R. § 54.101(a). As discussed *supra*, Western Wireless has satisfied this requirement.

⁴⁵ Chugwater et al. Petition at 17-18.

⁴⁶ *Wyoming ETC Order* at para. 4.

Communications, Inc. filed on January 25, 2001 IS DENIED.

22. IT IS FURTHER ORDERED that the petition for reconsideration filed by Golden West Telephone Coop., Project Telephone Co., and Range Telephone Co. on January 25, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN, APPROVING IN PART AND CONCURRING
IN PART**

Re: Federal-State Joint Board on Universal Service; Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Order on Reconsideration, CC Docket No. 96-45

As I have expressed elsewhere, I have concerns with the Commission's policy of using universal support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund.

I nevertheless agree with the result of this Order, because its statements on universal service policy are unnecessary to its result. As the Order makes clear, none of the affected parties presented data on the effects of designating an additional ETC until reconsideration proceedings. Our rules do not allow such facts to be presented for the first time on reconsideration, absent special circumstances not present here. Accordingly, on that basis, I approve the Order except for the part designated "Public Interest" (¶¶ 17-20), with respect to which I concur only in the result.