

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

**Facilitating the Provision of Spectrum-
Based Services to Rural Areas and
Promoting Opportunities for Rural
Telephone Companies to Provide Spectrum
Based Services**)

WT Docket No. 02-381

TO: The Commission

**EX PARTE RESPONSE OF
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

John A. Prendergast
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830
Its Attorney

Dated: April 11, 2003

SUMMARY

As demonstrated herein, Western Wireless Corp.'s accusations of "scurrilous" and "downright defamatory and malicious" conduct by South Dakota Telecommunications Association (SDTA) and its counsel are without merit and inappropriate. Its accusations are based on (1) an admitted false claim that SDTA and its counsel were served with the January 3 Western Wireless letter to USAC; (2) the submission of an affidavit in a South Dakota proceeding, which did not adequately address the issues raised by SDTA; (3) a false suggestion that counsel for SDTA in this proceeding was served with this affidavit; (4) a false Western Wireless claim that neither it nor its customers had any incentive to inaccurately report billing addresses; (5) an erroneous claim that SDTA violated Section 1.17, when this rule section does not apply; and (6) an erroneous claim that the recital of clearly identified rumors constitutes a misrepresentation of facts. This unfortunate tactic by Western Wireless should not be allowed to obscure the fact that the current system of allowing wireless ETCs to receive portable high-cost support on the basis of claimed "billing addresses" is subject to possible gaming and abuse. That SDTA and other rural telephone representatives have pointed this out is not anti-competitive behavior, but rather an attempt to preserve a scarce resource (the Universal Service Fund) that has enabled millions of rural residents to receive affordable and quality telecommunications service.

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TO: The Commission

**EX PARTE RESPONSE OF
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

The South Dakota Telecommunications Association ("SDTA"), by its attorneys, hereby submits this ex parte response to the false and inappropriate accusations against SDTA and its attorneys contained in the February 19, 2003 reply comments of Western Wireless Corporation ("Western Wireless") and its related March 25, 2003 ex parte letter. Specifically, SDTA denies that it or its attorneys disregarded Western Wireless documents allegedly "served" upon them, and denies that it or its attorneys made "downright defamatory and malicious statements" and "misrepresentations" concerning the reporting of Western Wireless' South Dakota customers for portable Universal Service support purposes. The erroneous accusations of Western Wireless appear designed to distract attention from the valid concerns raised by SDTA that the liberal granting of "eligible telecommunications carrier" ("ETC") status to wireless carriers and the use of easily manipulated "billing addresses" to set the amount of portable Universal Service support available for "rural" wireless customers threatens the viability of the Universal Service Fund ("USF").

**Western Wireless Never Served SDTA and its Counsel
With the January 3, 2003 Letter That Was the Basis for Its False Accusations**

In its February 3, 2003 Comments herein, SDTA stated that the Commission and the Universal Service Administrative Corporation ("USAC") should "investigate situations where it appears that wireless [competitive ETCs] and/or their customers may be 'gaming' the system by obtaining 'billing addresses' in rural telephone company service areas (where portable USF support is available) for customers who use the affected wireless phones predominately in other areas." SDTA Comments at pp. 20-21. SDTA informed the Commission that it had asked USAC in December 2002 to "investigate entries in its Federal Universal Service Support Mechanisms Fund Size Projection for the First Quarter 2003, dated November 1, 2002, indicating that Western Wireless had sought portable USF support for 30,108 'working loops' in South Dakota for the First Quarter of 2003 . . ." ¹ SDTA stated that the Western Wireless request for support for 30,108 South Dakota loops appeared to be excessive, in light of the fact that the 2000 population of the Pine Ridge Reservation (the only portion of South Dakota for which Western Wireless might have been entitled to receive high-cost support for the First Quarter 2003) was only 14,068, according to the 2000 U.S. Census (SDTA Comments at p. 21).

In its February 19, 2003 Reply Comments, Western Wireless mischaracterized the issue as involving only the accuracy of its request for portable high-cost support on the Pine Ridge Reservation rather than for the State of South Dakota as a whole. It blamed an "insignificant administrative error on USAC's part" for causing confusion regarding the number of "working loops" that it was claiming on the Reservation.

¹ SDTA Comments at p. 21. According to the USAC projections, these 30,108 South Dakota loops would have received \$227,197 in portable High Cost Loop Monthly Support during the First Quarter of 2003, or an annualized amount of \$2,726,364.

Western Wireless then made the following attack upon SDTA and its attorneys at pp. 5-6 of its Reply Comments:

... Western Wireless explained this situation in a letter responding to an accusatory letter submitted by SDTA [footnote citing January 3, 2003 letter from Gene DeJordy, Western Wireless, to Cheryl L. Parrino and Irene Flannery, USAC, omitted]. SDTA's attorneys were served a copy of this letter. One would expect that SDTA would have been particularly careful to have its facts straight prior to making such inflammatory charges.

SDTA and its attorneys knew that Western Wireless correctly reported its lines to USAC, and that the anomalous attribution of too many Western Wireless lines on the Pine Ridge Reservation was due to USAC's minor administrative error rather than Western Wireless' malfeasance. Nonetheless, SDTA makes the same unfounded accusation again, now in this public forum.

In fact, SDTA and its attorneys had never received or read the January 3, 2003 Western Wireless letter, and were wholly unaware of its existence until they read about it in the Western Wireless Reply Comments in March 2003. On or about March 10, 2003, SDTA attorney Benjamin Dickens telephoned Gene DeJordy of Western Wireless, and asked for a copy of the January 3, 2003 Western Wireless letter. On March 13, 2003, SDTA attorney John Prendergast telephoned counsel for Western Wireless, to advise that neither he nor his law firm had received a copy of the January 3, 2003 Western Wireless letter, and to ask for a copy. Mr. DeJordy of Western Wireless subsequently responded to the SDTA requests by faxing an affidavit of Western Wireless employee Suzie Rao, dated December 27, 2003, with the notation that it had been "filed with the South Dakota Public Utilities Commission in a proceeding that your client was a party". See Exhibit 1. However, the January 3 DeJordy letter was not furnished. On March 19, 2003, Mr. Prendergast telephoned Mr. DeJordy of Western Wireless, and again asked for a copy of the January 3, 2003 Western Wireless letter that had served as the explicit basis for the foregoing accusations against SDTA and its attorneys. Western Wireless finally faxed SDTA a copy of the January 3, 2003 letter on March 19, 2003 (attached as Exhibit 2).

Western Wireless' reluctance to furnish the January 3, 2003 letter to SDTA appears to be due to the fact **that the January 3, 2003 letter was never served upon SDTA or its attorneys**, contrary to the harsh accusations in its Reply Comments. Rather, although the letter contains a lengthy list of persons upon whom it was served (including all FCC Commissioners, all South Dakota Public Utilities Commission ("SDPUC") Commissioners, and the state representatives on the Federal-State Joint Board for Universal Service), it contains no indication that a copy was served by Western Wireless upon SDTA or its attorneys. As indicated above, neither SDTA nor its attorneys received the January 3, 2003 letter at the time it was sent to USAC and the federal and state officials, and were not aware of its existence at the time they prepared and filed SDTA's comments herein. Hence, assuming arguendo that the January 3, 2003 Western Wireless letter actually answered the questions raised by SDTA (which it did not), SDTA and its counsel did not disregard the letter in order to make "inflammatory charges" or "unfounded accusations" against Western Wireless.²

Realizing that SDTA would bring to the Commission's attention the fact that Western Wireless had falsely accused SDTA and its counsel of having received and disregarded the January 3, 2003 letter that it had never served upon them, Western Wireless sought to make a preemptive filing by ex parte letter dated March 25, 2003. However, rather than admitting the

² Western Wireless also seeks to cast blame on counsel for SDTA for not being aware of the revision of South Dakota customer data reported for Western Wireless, by arguing that USAC "corrected the error in its February 2003 report for the second quarter of 2003 (*issued several days prior to the date SDTA filed its comments*)."² Western Wireless Reply Comments at p. 5 (emphasis added). This claim is specious. USAC has advised counsel for SDTA that the February 2003 report was posted to USAC's website on Saturday, February 1, 2003 (as acknowledged by Western Wireless' Reply Comments at p.3, n.4). Thus, the first business day that this change could have been noticed was Monday, February 3, 2003, the very day that comments in this proceeding were due. In fact, counsel for SDTA had to complete drafting of SDTA's comments on the morning of January 31, 2003, and was travelling to/attending the National Telecommunications Cooperative Association Meeting in Phoenix the first three days of February. SDTA's comments were filed electronically on February 3 by an employee of the law firm. In any event, SDTA and its counsel had filed with USAC a written request for investigation of the Western Wireless data; had received a written acknowledgement of this request from USAC; and could reasonably expect that it would be notified by USAC once the investigation had been completed.

inaccuracy of its previous accusations and using the opportunity to tone down its rhetoric, Western Wireless instead repeated its accusation that SDTA had made false statements, and added the slur that SDTA had engaged in “scurrilous” behavior. March 25, 2003 Western Wireless Ex Parte Letter at p. 1. Western Wireless then tried to bury in a footnote the following critical admission:

In one respect, Western Wireless’ Reply Comments contain a **minor error that does not substantively affect the merits of its position**. Contrary to the statement on page 4 of Western Wireless’ Reply Comments, **SDTA and its attorneys were not served with a copy of Western Wireless’ Jan. 3, 2003 letter to USAC** .

Western Wireless Ex Parte at p.2, n. 1(emphasis added).

At best, the Western Wireless “disclaimer” is disingenuous. Far from being a “minor error that does not substantively affect the merits,” the non-service of the January 3, 2003 letter was very significant, because Western Wireless had emphasized its alleged service of the January 3, 2003 letter as the basis for its serious and false accusations against SDTA and its counsel. Indeed, immediately following the accusation that SDTA and counsel had been served with the letter, Western Wireless touted the importance of this claim, when it chided that “[o]ne would expect that SDTA would have been particularly careful to have its facts straight prior to making such inflammatory charges.” Western Wireless Reply Comments at p. 5. Ironically, it seems that counsel for Western Wireless had not checked to see if the letter had in fact been served on SDTA and its counsel before accusing them. The author of the January 3, 2003 letter, Gene DeJordy of Western Wireless (who appears on the signature page of the Western Wireless Reply Comments) should have known that he had not served it upon SDTA or its counsel.

Moreover, in the very document in which Western Wireless is forced to admit that it had not actually served SDTA or its counsel with the letter that it had accused them of disregarding, Western Wireless *again* makes a false slur against counsel for SDTA. Specifically, Western Wireless proffers the Rao affidavit filed in a South Dakota proceeding as a “substitute” for the non-served January 3, 2003 letter. It then concludes that “[a]lthough **they** knew this information, SDTA **and its attorneys** nevertheless made false statements on the record in comments in the instant proceeding before the FCC.” Western Wireless Ex Parte Letter at p. 2 (emphasis added).

In fact, counsel for SDTA in this proceeding did not represent SDTA in the South Dakota proceeding; and Western Wireless knows that it did not serve the undersigned counsel for SDTA with the Rao affidavit, as evidenced by the certificate of service attached to this document. Western Wireless’ repeated reckless and unfounded accusations against opposing counsel are inexplicable, in a proceeding in which Western Wireless has invoked “the standards that govern the conduct of attorneys and advocates before the Commission” (Western Wireless Reply Comments at p. 7, citing 47 C.F.R. §§ 1.24(a) and 1.52 at n. 12).

**Neither the January 3, 2003 Letter Nor the “Substitute” Rao Affidavit
Answer SDTA’s Questions Regarding
The Reporting of the South Dakota Customers of Western Wireless**

Both in this proceeding and in its request to USAC for an investigation, SDTA has questioned whether the Western Wireless request for “portable USF support for 30,108 ‘working loops’ *in South Dakota* during the First Quarter of 2003” (SDTA Comments at p. 21; emphasis added) was accurate and proper. Put simply, SDTA asked whether Western Wireless was

requesting high-cost support for more "working loops" **in the State of South Dakota as a whole** than it was entitled to receive such support during the First Quarter of 2003. SDTA made reference to the Pine Ridge Reservation because the Reservation was the only portion of South Dakota within which Western Wireless arguably might have received the Section 54.314 certification necessary to receive high-cost support during the First Quarter of 2003.

Neither Western Wireless' January 3, 2003 letter nor its "substitute" Rao amendment address the SDTA questions. Rather, they obfuscate the issue by claiming that Western Wireless had accurately reported the numbers of its "working loops" to USAC by study area, without properly addressing the fact that Western Wireless did not have the requisite Section 54.314 certification to receive portable high-cost support in the non-Pine Ridge Reservation portions of South Dakota during the First Quarter of 2003 (nor during the Second Quarter of 2003). In fact, Western Wireless, on page 3 of the January 3, 2003 letter, erroneously represents to USAC: (1) that the SDPUC had required "information that is only available to incumbent local exchange carriers"; and (2) that the carrier self-certification process established in Section 54.314(b) was appropriate in its situation (even though this Commission had ruled expressly to the contrary that Section 54.314(b) self-certification was inappropriate for service areas where a state commission had designated the carrier as an ETC).³

First, as detailed in the next paragraph, Western Wireless did not receive the FCC Rule Section 54.314 certification required from the SDPUC to receive federal high-cost support in the First and Second Quarters of 2003 for the areas of South Dakota outside the Pine Ridge Reservation. Second, contrary to its representations in the January 3, 2003 letter (page 2) and its Reply Comments herein (note 3), Western Wireless has not been designated by the SDPUC as an

³ Order On Reconsideration (Federal-State Joint Board on Universal Service), CC Docket No. 96-45, FCC 02-171, released June 13, 2002, at para. 16.

Eligible Telecommunications Carrier ("ETC") throughout rural South Dakota. Rather, the January 6, 2003 SDPUC order designating Western Wireless as an ETC was expressly limited to the study areas of twenty-six (26) rural telephone companies.⁴ See Order Designating Western Wireless as an ETC for Areas Served by Certain Rural Telephone Companies (In the Matter of the Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier), TC98-146, dated January 6, 2003 (attached as Exhibit 3).

By Order Denying Certification (In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support), TC02-156, dated September 27, 2002 (attached as Exhibit 4), the SDPUC denied Western Wireless the certification required by Section 54.314 of the Rules that its federal high-cost support would be used only for the intended purposes. The SDPUC found that Western Wireless had failed to furnish the information required by the SDPUC from all carriers seeking Section 54.314 certification -- namely, estimates of the Federal high-cost support to be received during the upcoming year (i.e., 2003) and estimates of the expenditures for the intended facilities and services during the upcoming year (again, 2003). Rather, the SDPUC noted that Western Wireless had submitted only an irrelevant 2001 press release concerning its investment during 2001.

Contrary to the representations on page 3 of its January 3, 2003 letter (Exhibit 2), Western Wireless was not required by the SDPUC "to provide information that is only available to incumbent local exchange carriers." Rather, it was denied Section 54.314 certification because it refused to furnish estimates of support and expenditures that should be available to any and all entities requesting high-cost support, and instead submitted irrelevant two-year-old

⁴ The SDPUC order did not grant Western Wireless ETC status in the study areas of at least nine rural telephone companies.

data . When Western Wireless finally submitted the relevant 2003 estimates on January 31, 2003 (thereby refuting its own "representations" that the data was available only to incumbent local exchange carriers), it was granted Section 54.314 certification by the SDPUC within a reasonable time thereafter. Order Granting Certification (In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support), TC03-045, dated March 7, 2003 (attached as Exhibit 5).

Pursuant to Section 54.314(d)(3) of the Commission's Rules, Western Wireless may receive portable high-cost support for certain portions of South Dakota in the Third and Fourth Quarters of 2003. However, because of its failure to provide timely and appropriate information to the SDPUC, Western Wireless did not receive Section 54.314 certification in time to receive support in the First and Second Quarters of 2003. Western Wireless is well aware of this regulation, and has filed a petition with the Commission for waiver of Section 54.314(d) of the Rules to enable it to receive high-cost support "beginning in the first quarter of 2003 for portions of South Dakota outside the Pine Ridge Reservation." See Public Notice (Wireline Competition Bureau Seeks Comment On Western Wireless Corporation's Petition For waiver Of Section 54.314(D) of the Commission's Rules), DA 03-1064, released April 2, 2003. Thus, SDTA's questions about the accuracy of information relating to Western Wireless' line count remain unanswered.

Assuming, **arguendo**, that Western Wireless was in fact "encouraged" by USAC to submit line counts for lines and service areas for which it had sought but not yet received ETC designation, it knew on September 27, 2002 (see Exhibit 4) that it would not receive Section 54.314 certification from the SDPUC in time to receive portable high-cost support for any of its non-Pine Ridge Reservation lines during the First Quarter of 2003, and knew before January 1, 2003 that it would not receive such certification in time to receive portable high-cost support for

its non-Reservation lines during the Second Quarter of 2003. The submission of line counts **before** a carrier has received the requisite ETC designation and/or Section 54.314 certification is not only inaccurate and confusing, but also may lead to a carrier erroneously receiving portable high-cost support to which it is not entitled. Rural incumbent local exchange carriers do not receive high-cost support until two years **after** they incur the costs upon which such support is based. If USAC is in fact encouraging wireless ETCs like Western Wireless to file line counts in advance of qualifying for high-cost support, the practice should be terminated. Moreover, nothing in the Rao affidavit indicates that USAC instructed Western Wireless to report lines in study areas for which Western Wireless *knew* that it had in fact been denied certification under Rule Section 54.314. Moreover, SDTA has yet to see Western Wireless' report to USAC, and therefore has not been able to determine whether lines were reported for study areas in which Western Wireless does not have ETC status, or for which USF is not available. The mere submission of the Rao affidavit does not mean that SDTA must assume that everything in the affidavit is in fact true, or that it has been approved by the Commission.

**Western Wireless Based Misrepresentation Claims Upon
A Misreading of SDTA's Comments and Western Wireless' Own Inaccurate Claims**

In its initial Comments herein, SDTA noted that there have been persistent rumors in South Dakota that persons (both tribal members and non-members) residing in Rapid City and other areas outside the Pine Ridge Reservation had been encouraged to report "billing addresses" on the Reservation in order to obtain wireless service subsidized by the portable high-cost support available on the Reservation. SDTA clearly identified these matters as "rumors," and made no reference to Western Wireless, tribal authorities, individual customers or any other entity or factor as the source of such encouragement. SDTA's point was that there are serious concerns that "*wireless ETCs and/or their customers* may be 'gaming' the system by obtaining

'billing addresses' in rural telephone company service areas (where portable USF support is available) for customers who use their wireless phones predominately in other areas." SDTA Comments at pp. 20-21 (emphasis added).

Western Wireless elected to interpret SDTA's reference to the "rumors" as an accusation that Western Wireless itself was encouraging its customers to report "billing addresses" on the Reservation in order to obtain wireless service subsidized by the portable support available on the Reservation. It characterized the "rumors" as "downright defamatory and malicious" and as an "outrageous false insinuation" (Reply Comments, p. 6). It then claimed that the proffering of these rumors constituted a "misrepresentation", and claimed that SDTA violated Section 1.17 of the Commission's Rules. *Id.*

The premise underlying the Western Wireless tirade is its claim that:

...SDTA and its counsel have good reason to know this statement [regarding the rumors] is untrue. Western Wireless would have no reason to encourage its South Dakota subscribers to report fraudulent addresses since it has received ETC designation both on and off the Pine Ridge Reservation in South Dakota and is eligible to receive support based on its subscribers' correct addresses outside the reservation

Western Wireless Reply Comments at p. 6, n. 10.

SDTA reiterates that it has not accused Western Wireless of encouraging its customers to falsely report "billing addresses" on the Reservation. SDTA merely indicated its concern that the line count reported for Western Wireless appeared high, and that SDTA had requested an investigation.⁵ However, SDTA cannot help but point out that the Western Wireless "premise" is false and misleading. First, as indicated in Appendix A of the SDPUC's January 6, 2003 ETC

⁵ With regard to SDTA's general expression of concern about possible "gaming" of billing addresses, SDTA never named Western Wireless. And as shown above, SDTA indicated that such gaming could result from actions of "wireless ETCs and/or their customers". Therefore, Western Wireless cannot claim that SDTA inferred that Western Wireless had engaged in wrongful actions. If an investigation were to reveal that incorrect billing addresses are being furnished for South Dakota, it could very well be due to the actions of Western Wireless customers anxious to receive subsidized wireless service. Any gaming by whatever source hurts the future viability of USF.

Designation Order (attached as Exhibit 3), the SDPUC has not designated Western Wireless as an ETC in several rural telephone company service areas, including the Golden West Telecommunications Cooperative, Inc. ("Golden West") service area that borders much of the Pine Ridge Reservation. Second, whereas Western Wireless has been designated by the SDPUC as an ETC in Rapid City and other portions of Qwest Corporation's ("Qwest's") South Dakota study area, Qwest receives no high-cost support for its South Dakota exchanges. Hence, Western Wireless receives portable high-cost support for service it provides to customers with "billing addresses" on the Reservation, but is entitled to no portable high-cost support for customers with "billing addresses" off the Reservation in the nearby service areas of Golden West and Qwest. In fact, because it did not receive timely Section 54.314 certification, Western Wireless is not entitled to portable high-cost support during the First and Second Quarters of 2003 in any portion of South Dakota outside the Pine Ridge Reservation. Therefore, whether or not Western Wireless has encouraged customers to report "billing addresses" on the Reservation, there has certainly been a significant incentive for Western Wireless or its customers to do so. Western Wireless' claim that SDTA and its counsel "have good reason to know" otherwise is false.

Whatever weight or credence the Commission gives them, there have been "rumors" that customers residing outside the Pine Ridge Reservation have been receiving and using subsidized wireless phones and services with "billing addresses" on the Reservation. Evidence of this is provided by the attached declaration under penalty of perjury of Dwight Flatt, Member Services Manager of Golden West Telecommunications Cooperative, Inc. (Exhibit 6 hereto). As indicated therein, there have been "rumors" that children and other relatives of Reservation residents have been using subsidized wireless phones with "billing addresses" on the Reservation

while residing in Rapid City and other non-Reservation areas. Likewise, Western Wireless "box phones" have been spotted in communities off the Reservation, for which Western Wireless does not hold ETC status, and there is suspicion that they have "billing addresses" on the Reservation. *Id.* This suspicion is supported by Western Wireless' apparent belief that any South Dakota billing address given by one of its customers qualifies for high-cost support. Western Wireless Reply Comments at p. 6, n. 10. SDTA is willing to investigate these rumors further, but has no access to Western Wireless billing records, and no legal power to compel individuals to give sworn testimony or sign affidavits. It is appropriate to report these "rumors" to the Commission as clearly-labeled rumors, and to allow the Commission and/or the SDPUC to use their powers to conduct any investigations they deem to be necessary.

Indeed, whereas SDTA has been concerned primarily with the accuracy of the number of "working loops" reported by Western Wireless in the State of South Dakota as a whole, it notes that the alleged "corrected" numbers of "working loops" reported by Western Wireless on the Pine Ridge Reservation also appear to be high, and hence raise questions consistent with the rumors. Specifically, the allegedly "corrected" numbers in USAC's Federal Universal Service Support Mechanisms Fund Size Projection for the Second Quarter 2003, dated January 31, 2003, indicate that Western Wireless requested portable high-cost support for 4,626 "working loops" on the Pine Ridge Reservation for the First and Second Quarters of 2003. The latest U.S. Census figures indicate that there were 3,572 housing units on the Pine Ridge Reservation at the time of the 2000 U.S. Census. U.S. Census Bureau, Census 2000 Summary File 1, Table GCT-PH1 (Population, Housing Units, Area, and Density: 2000). In other words, Western Wireless is requesting portable high-cost support on the Pine Ridge Reservation for approximately 1.180 "working loops" per housing unit. Nationwide, the average number of mobile units per housing

unit is approximately 0.873.⁶ Hence, Western Wireless is reporting wireless "working loops" on the Pine Ridge Reservation in an amount equal to 135 percent of the national average of wireless units per housing unit.⁷ In order to avoid another Western Wireless attack upon its integrity, SDTA emphasizes that it is not here accusing Western Wireless or anyone else of wrongdoing. It is merely stating that the "corrected" number of "working loops" that Western Wireless claims to be serving on the Reservation constitutes a penetration rate much higher than the national average, and is consequently consistent with the "rumors" and "suspicions" that wireless phones with "billing addresses" on the Reservation are being used primarily or predominately off the Reservation.

In any event, SDTA did not violate Rule Section 1.17 by citing to the existence of rumors concerning the use of Reservation billing addresses. The version of Rule Section 1.17 in effect on February 3, 2003 concerned "written statements of fact" that the Commission periodically requests of an "applicant, permittee or licensee". SDTA is none of these; and SDTA did not proffer its recital of the South Dakota rumors as a "statement of fact". Instead, it clearly labeled the sentence as a reporting of "rumors". The term "rumor" is defined as "a story or statement in general circulation without confirmation or certainty as to facts." Random House Unabridged Dictionary, 2nd Edition, p. 1681 (1993). Therefore, Rule Section 1.17 is not applicable to this situation.

⁶ Table 2 of the Commission's Sixth Report (Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993), FCC 01-192, released July 17, 2001, indicated 101,212,054 wireless subscribers as of December 2002. . U.S. Census Bureau, Census 2000 Summary File 1, Table GCT-PH1-R (Population, Housing Units, Area, and Density: 2000) indicated 115,904,631 total U.S. housing units.

⁷ It is noteworthy that the Commission's Universal Service rules have used a loop cost figure equal to 135 percent of the national average loop cost as the boundary for determining which carriers have loop costs that are sufficiently high to warrant provision of high-cost support.

Indeed, Section 1.17 has not traditionally been applied to statements made in rulemaking proceedings; and the Commission recently amended Section 1.17 to make this explicit. *See* Report and Order, GC Docket No. 02-37, released March 10, 2003. While this amendment became effective after the filing of SDTA's Comments, the Commission's discussion of why Rule Section 1.17 should not be applied to rulemaking proceedings is instructive:

We do not see rulemakings of general applicability . . . as raising enforcement issues of the same urgency [as adjudicatory and investigatory proceedings]. Additionally, while we expect parties to be truthful in rulemakings and declaratory ruling proceedings, we are mindful that such proceedings typically involve wide-ranging discussions of general policy rather than specific facts to be weighed in an adjudicatory manner. *We do not wish to hinder full and robust public participation in such policymaking proceedings by encouraging collateral wrangling over the truthfulness of the parties' statements.*

Id., at para. 13(*emphasis added*). Unfortunately, by claiming that a rumor clearly labeled as such is a "misrepresentation", Western Wireless is engaging in the very collateral wrangling that the Commission is trying to prevent.

Moreover, the reporting of suspicions and rumors has long been permitted by the Commission. Sometimes the Commission has even relied on rumors or suspicions to support its decisions. For example, in its *Numbering Order*, the Commission did not defer the decision to centralize Central Office (CO) code administration because of its suspicion of anti-competitive and discriminatory treatment by LECs. *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588 at para. 79 (1995) (*Numbering Order*). *See also Auction of Interactive Video and Data Services (IVDS)* 11 FCC Rcd 20950 Public Notice (DA 96-1958) stating "[w]e are quite concerned by rumors...."; *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, (2000)(Fmr. Commissioner

Harold Furchtgott-Roth, approving in part, dissenting in part stating that the FCC's suspicion led the majority to adopt rules to mandate spectrum efficiency). And the Commission is free to evaluate suspicions raised by carriers. *See, e.g., Joint Application of BellSouth Corp. et al. for Provision of In-Region, InterLATA Services In Georgia and Louisiana*, CC docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018 para.111 (2002).

Conclusion

As demonstrated above, Western Wireless' accusations of "scurrilous" and "downright defamatory and malicious" conduct by SDTA and its counsel are without merit and inappropriate. Its accusations are based on (1) an admitted false claim that SDTA and its counsel were served with the January 3 Western Wireless letter to USAC; (2) the submission of the Suzie Rao affidavit, which did not adequately address the issues raised by SDTA; (3) a false suggestion that counsel for SDTA in this proceeding was served with the Rao affidavit; (4) a false Western Wireless claim that neither it nor its customers had any incentive to inaccurately report billing addresses; (5) an erroneous claim that SDTA violated Section 1.17, when this rule section does not apply; and (6) an erroneous claim that the recital of clearly identified rumors constitutes a misrepresentation of facts. This unfortunate tactic by Western Wireless should not be allowed to obscure the fact that the current system of allowing wireless ETCs to receive portable high-cost support on the basis of claimed "billing addresses" is subject to possible gaming and abuse. That SDTA and other rural telephone representatives have pointed this out is not anti-competitive behavior, but rather an attempt to preserve a scarce resource (the Universal Service Fund) that has enabled millions of rural residents to receive affordable and quality telecommunications service.

Respectfully submitted,

SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

A handwritten signature in black ink, appearing to read "John A. Prendergast", is written over a horizontal line.

John A. Prendergast
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
(202) 659-0830
Its Attorney

Dated: April 11, 2003

EXHIBIT 1

REGULATORY DEPARTMENT
Western Wireless Corporation
3650 131st Avenue, SE - Suite 400
Bellevue, Washington 98006

Western Wireless
d/b/a Cellular One

(serving Arizona, Arkansas,
California, Colorado,
Idaho, Iowa, Kansas,
Minnesota, Missouri, Montana,
Nebraska, Nevada, New Mexico,
North Dakota, Oklahoma,
South Dakota,
Texas, Utah, and Wyoming)

From the Office of:

Gene DeJordy, Esq.
Vice President of Regulatory Affairs

Facsimile Transmittal
Date: March 13, 2002

To: Ben Dickens
202-828-5568

From: Gene DeJordy
425-586-8055 (tel)

Pages: 4 (incl. cover)

Message:

Following-up on my message to you, attached is the Affidavit of Suzie Rao, which was filed with the South Dakota Public Utilities Commission in a proceeding that your client was a party.

Should you wish to discuss this matter further, please do not hesitate to call me at 425-586-8055.

This facsimile message may contain privileged and confidential information intended only for the use of the intended recipient named on this cover sheet.



VIA OVERNIGHT MAIL

December 27, 2002

Ms. Deborah Elofson
South Dakota Public Utilities Commission
Capital Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Ms. Elofson,

Please find enclosed the affidavit of Suzie Rao for docket TC98-146. Should you have any questions you may contact Ms. Rao directly at 425-586-8287.

Sincerely,

A handwritten signature in cursive script that reads 'Marcia Gerdes'.

Marcia Gerdes
Executive Assistant
Western Wireless
3650 131st Ave. SE, Suite 400
Bellevue, WA 98006
ph (425)586-8929
fx (425)586-8100

Enclosures

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE FILING BY GCC LICENSE) DOCKET
CORPORATION FOR DESIGNATION AS AN) TC98-146
ELIGIBLE TELECOMMUNICATIONS CARRIER)**

AFFIDAVIT OF SUZIE RAO

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

1. My name is Suzie Rao. I am Regulatory Counsel, External Affairs for Western Wireless Corporation. I make this Affidavit in Support of Western Wireless' Response to Comments of South Dakota Telecommunications Association.

2. I was involved in preparing Western Wireless' Compliance Filing dated August 28, 2002 and the amendments filed on October 11 and December 2.

3. To my knowledge, the South Dakota Public Utilities Commission and Staff believe Western Wireless' Compliance Filing, as amended, satisfactorily addresses the six items listed on the Commission's October 18, 2001 Order designating Western Wireless as an ETC in rural telephone company exchanges.

4. Western Wireless filed its South Dakota line counts with the Universal Service Administration Company ("USAC") anticipating those lines would become eligible universal service lines. Because there is a lag between line count reporting and receipt of funding, USAC encourages any carrier to begin reporting its lines as soon as an ETC petition is filed. This is industry practice and fully consistent with how USAC administers the universal service program.

5. Western Wireless reported its lines in SDTA company areas by study area, and separately reported its lines on the Pine Ridge Reservation.

6. Because a USAC report shows all South Dakota lines under a "Pine Ridge" study area code, I contacted USAC to inquire whether Western Wireless' reporting was correct and appropriate.

7. A USAC representative confirmed to me that Western Wireless had reported its lines properly, and that USAC had combined all of those lines for its reporting purposes. This person also indicated that USAC will correct its report if it deems that to be necessary.

AFFIANT SAYS NOTHING FURTHER.

Suzie Rao
Suzie Rao

Subscribed and sworn to before me
this 24th day of December, 2002.

Lori L. Dierst
Notary Public



EXHIBIT 2

WESTERN WIRELESS CORPORATION

FACSIMILE TRANSMITTAL SHEET

TO:	John Pendergast	FROM:	Suzie Rao 425.586.8287
COMPANY:		DATE:	3/19/03
FAX NUMBER:	202 828 5568	TOTAL NO. OF PAGES INCLUDING COVER:	
PHONE NUMBER:	202 828 5540	SENDER'S REFERENCE NUMBER:	
RE:		YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Per your your voicemail message to
Evelyn DeJordy

[CLICK HERE AND TYPE RETURN ADDRESS]



January 3, 2003

Via Email and Facsimile

Cheryl L. Parrino, Chief Executive Officer
Irene Flannery, Vice President
Universal Service Administrative Company
2120 L Street, N.W., Suite 600
Washington, D.C. 20037

Re: Western Wireless Corporation's Eligibility for Universal Service Support
in South Dakota

Dear Ms. Parrino and Ms. Flannery:

Western Wireless Corporation ("Western Wireless") hereby responds to the December 12, 2002 letter to you from Benjamin H. Dickens, Jr. and Gerard J. Duffy on behalf of the South Dakota Telecommunications Association ("SDTA"). Contrary to SDTA's anti-competitive and unfounded allegations, Western Wireless' reports to USAC are entirely accurate and consistent with all applicable rules of the Federal Communications Commission ("FCC"). USAC should dismiss SDTA's false accusations and should refuse to be an accessory to SDTA's continuing opposition to Western Wireless' entry into the universal service market in South Dakota.

SDTA requests that USAC "investigate and correct the patently erroneous and excessive" line counts reported by Western Wireless and "reduce accordingly" the universal service support to Western Wireless. With this letter to USAC, the SDTA has taken to new heights its opposition to Western Wireless' entry into the universal service market. It has now been over four years since Western Wireless initially filed its ETC application in South Dakota -- August 25, 1998 to be precise -- and SDTA has not relented in its opposition to competition, even though the South Dakota Supreme Court¹ and the FCC² have found that the South Dakota Public Utilities Commission's ("SD PUC") original order denying ETC status to Western Wireless was unlawful and the SD PUC subsequently concluded that it is in the public interest for Western Wireless to provide competitive universal service in the markets served SDTA's member companies.

After four plus years of legal battles to gain the right to compete in the universal service market, Western Wireless has commenced offering universal service, only to find itself facing renewed efforts by SDTA to prevent Western Wireless' entry into the market.

¹ *The Filing By GCC License Corporation For Designation As An Eligible Telecommunications Carrier*, 2001 SD 32, 623 N.W.2d 474 (2001).

² *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, FCC 00-248, 15 FCC Rcd 15168 (2000).

Without regard to the findings of the South Dakota Supreme Court, the FCC, and the SD PUC, SDTA now turns to USAC to delay or prevent Western Wireless' entry into the universal service market by contesting the Company's Section 254(e) Certification with the SD PUC, objecting to the Company's August 28, 2002 Informational Filing, and claiming that the Company has fraudulently reported lines to USAC.

Western Wireless Has Properly Reported Lines To USAC. SDTA alleges that Western Wireless has fraudulently reported all of its South Dakota lines as "Pine Ridge" lines. To the contrary, Western Wireless properly reported its lines to USAC as specific to each ETC service area as required by FCC rules. Western Wireless has coordinated with USAC on all of its filings and has received confirmation from USAC/NECA that it has properly reported its lines by service area. To be sure, USAC's matrix filed with the FCC (not Western Wireless) erroneously categorized all of Western Wireless' lines under the "Western Wireless (Pine Ridge Reservation)" study area, but that reflects an insignificant administrative error on USAC's part, and not a misrepresentation on Western Wireless' part. Accordingly, this issue raised by SDTA is without merit and should be dismissed.

Western Wireless Is An ETC In South Dakota. SDTA also claims that, even if Western Wireless properly reported its lines to USAC, Western Wireless is not eligible for support for non-Pine Ridge customers because it is not an ETC in the rural areas of South Dakota. Once again, the facts and the law do not support SDTA's claims. Indeed, SDTA is simply wrong when it alleges that the SD PUC has not yet designated Western Wireless as an ETC in the rural areas of South Dakota. To the contrary, the SD PUC designated Western Wireless' wholly owned subsidiary, WWC License Corporation (formerly known as GCC License Corporation), through which Western Wireless provides service in South Dakota, as an ETC in rural telephone company areas on October 18, 2001. The SD PUC stated, "the Commission finds that it is in the public interest to designate GCC as an ETC in the study areas of the rural telephone companies listed in Attachment A, upon GCC's compliance with the conditions listed in findings of fact 20-24."³ Findings of fact 20-24 state as follows:

- Findings of fact 20: "GCC shall file its plan for advertising its universal service offering throughout its service area."
- Findings of fact 21: "Once GCC determines its local calling areas, it shall file a list of areas with the Commission."
- Findings of fact 22: "GCC's service agreement shall advise customers that they may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply."

³ See In the Matter of the Filing by GCC License Corporation For Designation As An Eligible Telecommunications Carrier, *Findings of Fact and Conclusions of Law; Notice of Entry of Order, TC98-146*, entered on October 18, 2001 ("ETC Approval Order") (copy of the order is attached hereto). In a separate order entered on the same day, the SDPUC designated Western Wireless as an ETC in non-rural telephone company (e.g., Qwest) areas. See In the Matter of the Filing By GCC License Corporation For Designation As An Eligible Telecommunications Carrier, *Order Designating GCC License Corporation As An Eligible Telecommunications Carrier In Non-Rural Telephone Company Exchanges, TC98-146*, entered on October 18, 2001.

- Findings of fact 23: “GCC has agreed to file with the Commission its service agreement;” the “service agreement must be consistent with the Commission’s service quality rules;” and “the service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission’s jurisdiction.”

On August 28, 2002, Western Wireless filed its advertising plan, local calling areas, and service agreement consistent with Findings of Fact 20-24 (“Informational Filing”). Western Wireless commenced offering universal service to its customers on or before October 1, 2002, and currently provides universal service to more than 120,000 customers in South Dakota. If there was any dispute as to the status of Western Wireless’ eligibility for universal service support, then it was addressed in an ad hoc meeting on January 2, 2003, at which the SD PUC unanimously agreed that Western Wireless’ August 28, 2002 filing had satisfied the conditions of the *ETC Approval Order*. A written transcript or order of the SD PUC’s action on January 2, 2003 is expected soon and will be forwarded to you.

Western Wireless Properly Certified Its Compliance With Section 254(e). Western Wireless is a Commercial Mobile Radio Service (“CMRS”) provider that is not subject to state commission rate and entry regulation, pursuant to Section 332(c) of the Communications Act of 1934, 47 U.S.C. § 332(c). As such, Western Wireless files its Section 254(e) certifications with the FCC, USAC, and the state commissions. While some state commissions have included Western Wireless in their certification reports to USAC, other state commissions have not included CMRS carriers like Western Wireless.

SDTA erroneously claims that Western Wireless has not met the Section 254(e) certification requirements. The fact of the matter is that Western Wireless filed with the FCC and USAC its Section 254(e) certification on September 27, 2002, similar to certifications filed by Western Wireless with the FCC and USAC for other states. Additionally, Western Wireless timely filed its certification with the SD PUC, which denied certification because Western Wireless failed to provide information that is only available to incumbent local exchange carriers, and the SD PUC would not reconsider its decision during its review of Western Wireless’ Informational Compliance Filing. Western Wireless submits that the carrier self-certification process established in Section 54.314(b) of the FCC’s Rules, 47 C.F.R. § 54.314(b), is intended to address certification issues like this one in South Dakota, where the state commission fails to certify a carrier that is not subject to state jurisdiction. Western Wireless has timely certified its compliance with Section 254(e) to the FCC, USAC and the SD PUC, and its support should not be held hostage because the SD PUC did not act in a timely manner.

Other SDTA Spurious Claims. In a last gasp at protecting its members’ monopoly control over the universal service market, SDTA claims that competitive ETCs are “reaping windfall gains,” “gaming” the system, and causing “rapid growth” in the federal support system. These are the same anti-competitive issues raised by the National Telephone Cooperative Association in a petition filed with the FCC in July 2002, which will be addressed by the Federal-State Universal Service Joint Board (*see* In the Matter of

Federal-State Joint Board on Universal Service, *Order*, FCC 02-307, CC Docket No. 96-45, released November 8, 2002). It is entirely clear that the agenda of SDTA, like NTCA, is to maintain its member companies' stranglehold over the universal service market to the detriment of rural consumers. Notwithstanding the anti-competitive tactics of SDTA and others, Western Wireless is fully committed to implementing the mandate of the Telecommunications Act of 1996 and the implementing decisions of the FCC and state commissions to provide rural consumers with an affordable choice for their telecommunications needs.

Please let me know if Western Wireless can provide you with any further information or explanatory comments to fully address and resolve the unfounded claims made by SDTA.

Respectfully submitted,

Gene DeJordy, Esq.
Vice President of Regulatory Affairs

Enclosure

cc: Chairman Michael K. Powell, Federal Communications Commission
Commissioner Kevin J. Martin
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Chairman James A. Burg, South Dakota PUC
Commissioner Pam Nelson, South Dakota PUC
Commissioner Robert K. Sahr, South Dakota PUC
Commissioner-Elect Gary Hanson, South Dakota PUC
Commissioner Thomas Dunleavy, New York PSC
Chairman Lila Jaber, Florida PSC
Commissioner Bob Rowe, Montana PSC
Chair Nan Thompson, Alaska PUC
Billy Jack Gregg, Director, West Virginia Consumer Advocate

EXHIBIT 3

On or before June 27, 2001, SDITC will file with the Commission a Supplemental Rebuttal Memorandum addressing the same issue; and

On or before July 6, 2001, GCC may file a Reply Memorandum.

The Stipulation also listed the specific rural telephone companies in which GCC is seeking ETC status. The list did not include all of South Dakota's rural telephone companies. This amended GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies.

At its June 4, 2001, meeting, the Commission voted to approve the Stipulation for Procedure on Remand. Briefs were filed pursuant to the Stipulation. The Commission listened to oral arguments on July 26, 2001.

Pursuant to its October 18, 2001, order, the Commission found that it was in the public interest to designate GCC as an ETC in the rural telephone exchanges listed in the Stipulation, subject to the following conditions: 1) GCC shall file with the Commission its service agreement it intends to offer to universal service customers; 2) The service agreement will be consistent with the Commission's service quality rules; 3) The service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction; 4) GCC will file its plan for advertising its universal service offering throughout its service area and a list of its local calling service areas; 5) GCC's service agreement will state that a customer may qualify for financial assistance under the federal Link-Up and Lifeline programs and shall provide basic information on how to apply; and 6) GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

On August 29, 2002, GCC, now known as WWC License LLC d/b/a CellularOne, [hereafter referred to as Western Wireless] filed a compliance filing. By letter dated September 19, 2002, SDTA (formerly known as SDITC), filed a letter asking that the Commission "defer any action on that filing until after some formal process has been held allowing fair input by SDTA on the issues that are presented." The compliance filing was reviewed at the Commission's September 24, 2002, meeting. Based on the discussion at that meeting, Western Wireless filed a revised compliance filing on October 11, 2002. At its November 20, 2002, meeting, additional concerns regarding the compliance filing were noted by the Commission, including the listing of the wrong eligibility criteria on Western Wireless' Lifeline form. In addition, the Commission set a procedural schedule to allow SDTA an opportunity to comment on the filing. The Commission requested that Western Wireless submit its revisions by December 2, 2002; SDTA and Staff could file written comments by December 12, 2002; and Western Wireless could file reply comments by December 17, 2002; and the Commission would consider the filing at its December 19, 2002, meeting.

The Commission received Western Wireless' revisions on December 2, 2002, and SDTA's comments on December 12, 2002. On December 13, 2002, Western Wireless submitted a letter requesting an extension of the time to file its response. Western Wireless requested that it be allowed to file its response by January 3, 2003, and that the matter be heard at the Commission's January 16, 2003, meeting. The Commission granted a shorter extension and allowed Western Wireless until December 27, 2002, to file its response, with the Commission holding an ad hoc meeting on January 2, 2003, to consider this matter. Western Wireless filed its response on December 27, 2002.

At its January 2, 2003, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31, including 1-26-18, 1-26-19, 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, 49-31-78, and 47 U.S.C. § 214(e)(1) through (5). After considering the arguments of the parties, the Commission voted to find that Western Wireless' revised compliance filing meets the conditions as specified in the Commission's October 18, 2001, order. As stated in that order, the Commission found that it was in the public interest to designate Western Wireless as an ETC for the study areas of the rural telephone companies listed in the attached Attachment A, upon Western Wireless' compliance with the conditions. It is therefore

ORDERED, that Western Wireless' revised compliance filing meets the conditions as specified in the Commission's October 18, 2001, order, and, therefore, Western Wireless is designated as an ETC for the areas served by the rural telephone companies listed on Attachment A.

Dated at Pierre, South Dakota, this 6th day of January, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>Delaine Kolbo</i></u>
Date:	<u>1/6/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson *dy RAW*
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

ATTACHMENT A

Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Company
Bridgewater-Canistota Independent Telephone
Brookings Municipal Telephone/Swiftel Communications
Dakota Cooperative Telecommunications, Inc.
East Plains Telecom, Inc.
Fort Randall Telephone Company
Interstate Telecommunications Cooperative, Inc.
Jefferson Telephone Company
Kadoka Telephone Company
Kennebec Telephone Company
McCook Cooperative Telephone Company
Midstate Communications, Inc.
Mount Rushmore Telephone Company
RC Communications, Inc.
Roberts County Telephone Cooperative Assn.
Sanborn Telephone Cooperative
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecom Cooperative, Inc.
Stockholm-Strandburg Telephone Co.
Union Telephone Company
Valley Telecommunications Cooperative
Western Telephone Company
West River Cooperative Telephone Company

EXHIBIT 4

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE REQUEST OF WWC)	ORDER DENYING
LICENSE LLC FOR CERTIFICATION)	CERTIFICATION
REGARDING ITS USE OF FEDERAL)	
UNIVERSAL SERVICE SUPPORT)	TC02-156

On September 11, 2002, WWC License LLC (Western Wireless), a subsidiary of Western Wireless Corporation, submitted a letter requesting that the Public Utilities Commission (Commission) notify the Universal Service Administrative Company (USAC) and the Federal Communications Commission (FCC) that it is eligible to receive federal high-cost support in accordance with 47 U.S.C. section 254(e). Western Wireless attached an affidavit which it stated "shows that Western Wireless self-certifies that it will only use the federal high-cost support it receives for the intended purposes."

On September 23, 2002, the Commission received an additional affidavit from Western Wireless. Attached to the affidavit was Exhibit A which contained responses to questions from Commission Staff regarding its filing. By data request dated September 13, 2002, Commission Staff had requested that Western Wireless "provide estimated year 2003 expenditures for provision, maintenance, and upgrading of facilities and services supported by federal universal service funding for WWC License LLC." In response, Western Wireless stated that its plans for launching universal service had not been finalized so "the expenditures for providing, maintaining, and upgrading facilities and services in 2003 cannot currently be estimated." Western Wireless attached a press release from September of 2001 stating that by the end of 2001, "the company will have invested approximately \$119 million in South Dakota's wireless infrastructure...." The response further stated that "[a]lthough it is impossible to predict the precise amount to be spent in 2003, the investments made in 2001 are (1) capital in nature and, therefore, to be amortized into future years, and (2) suggest similar investments in future years." The response further stated that Western Wireless had not commenced providing universal service pursuant to its designation by the Commission, but had received a total of \$795,347 from the federal Universal Service Fund to serve the Pine Ridge Reservation pursuant to Western Wireless' designation as an ETC by the FCC.

At its September 24, 2002, meeting, the Commission considered this matter. Given the interrelated nature of the dockets, the Commission also considered Western Wireless' compliance filing for Docket TC98-146, In the Matter of the Filing By GCC License Corporation for Designation as an Eligible Telecommunications Carrier. In that docket, Western Wireless had been granted ETC status for non-rural areas in South Dakota, and had been granted ETC status for some rural areas, upon its compliance with certain conditions as stated in the order. Western Wireless did not appeal or ask for reconsideration of the conditions. The Commission points out that although the order regarding the rural areas had been issued on October 18, 2001, Western Wireless did not make a compliance filing until August 29, 2002. The South Dakota Telecommunications Association (SDTA), an original intervenor in Docket TC98-146, objected to the Commission approving Western Wireless' compliance filing, stating Western Wireless has

not shown that it has complied with the Commission's order. In addition, Commission Staff had issued a data request to Western Wireless regarding the compliance filing. However, Western Wireless had not responded to the request until September 24, 2002 (the day of the Commission meeting), and thus, Staff did not have sufficient time to review Western Wireless' responses. However, Commission Staff's initial reaction to Western Wireless' responses was that Staff would have additional questions based on the responses. Thus, the Commission deferred action on the compliance filing in Docket TC98-146, which meant that Western Wireless had not yet met the conditions to become an ETC in the rural areas in South Dakota.

Since Western Wireless is not yet an ETC for the rural areas as stipulated to by Western Wireless and SDTA in Docket TC98-146, the Commission finds it is unable to certify Western Wireless for high-cost support for those areas.¹ The Commission further finds that Western Wireless could have avoided any delay in receiving certification if it had filed its compliance filing in a timely manner, and answered Staff's data request in a timely manner. Instead, Western Wireless waited for almost one year to submit its compliance filing and then failed to promptly respond to Staff's questions in a manner that would have enabled Staff, as well as the Commission, to review any changes to its compliance filing. The Commission was then required to defer action on the compliance filing in Docket TC98-146.

In addition, the Commission points out that pursuant to the FCC's order, the FCC had determined that states must file annual certifications with the FCC in order "to ensure that carriers use universal service support 'only for the provision, maintenance and upgrading of facilities and services for which the support is intended' consistent with section 254(e)." 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, *In the Matter of 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*, FCC 01-157, ¶ 187 (rel. May 23, 2001) (*MAG Order*). Further, in a prior order, the FCC stated that:

For example, a state could adjust intrastate rates, or otherwise direct carriers to use the federal support to replace implicit intrastate universal service support to high-cost rural areas, which was formerly generated by above-cost rates in low-cost urban areas, that has been eroded through competition. A state could also require carriers to use the federal support to upgrade facilities in rural areas to ensure that services provided in those areas are reasonably comparable to services provided in urban areas of the state.

¹ The Commission notes that the areas served by South Dakota's only non rural company, Qwest, are not eligible for high-cost support. The Commission further notes that Western Wireless stated that it had requested certification from the FCC for tribal members living on the Pine Ridge Reservation. The Commission notes that the FCC had previously found that the Tribe has jurisdiction with respect to Western Wireless' service provided to tribal members on the Pine Ridge Reservation. See *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-43, FCC 01-284.

These examples are intended to be illustrative, not exhaustive. As long as the uses prescribed by the state are consistent with section 254(e), we believe that the states should have the flexibility to decide how carriers use support provided by the federal mechanism.

Ninth Report and Order and Eighteenth Order on Reconsideration in CC Docket No. 96-45, *In the Matter of the Federal-State Joint Board on Universal Service*, FCC 99-306, ¶ 96 (rel. Nov. 2, 1999). The FCC stated that it anticipated "that states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254. . . ." *Id.* at ¶ 95. The FCC required local carriers and competitive eligible telecommunications carriers to "formulate plans to ensure compliance with section 254(e), and present those plans to the state, so that the state may make the appropriate certification to the [FCC]." MAG Order, at ¶ 188.

Thus, in order to fulfill its duties under the FCC's order, the Commission has required its carriers to submit estimates of its federal universal service amounts for the upcoming year in addition to its estimated expenditures for provision, maintenance, and upgrading of facilities and services. Western Wireless failed to do so. Instead it submitted a 2001 press release concerning its investment in the year 2001.

It is therefore

ORDERED, that the Commission is unable to provide certification to the FCC that Western Wireless will use federal support in a manner consistent with section 254(e).

Dated at Pierre, South Dakota, this 27th day of September, 2002.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: _____
Date: _____
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

ROBERT K. SAHR, Commissioner

EXHIBIT 5

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE REQUEST OF)	ORDER GRANTING
WESTERN WIRELESS CORPORATION FOR)	CERTIFICATION
CERTIFICATION REGARDING ITS USE OF)	
FEDERAL UNIVERSAL SERVICE SUPPORT)	TC03-045

On May 23, 2001, the Federal Communications Commission (FCC) released an Order concerning the federal universal service support mechanism for rural carriers.¹ This Order (hereafter referenced as the "Fourteenth Report and Order"), in part, codifies at 47 § C.F.R. 54.314, a requirement for States to provide a certification regarding federal universal service support that is received by rural incumbent local exchange carriers and/or eligible telecommunications carriers (ETCs) providing service in rural service areas. Pursuant to such rule, a state that desires rural carriers or ETCs within its jurisdiction to receive future federal universal service support must file an annual certification with the FCC and the Universal Service Administrative Company (USAC) stating that federal high cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This certification requirement applies to various categories of federal universal service support, including support provided pursuant to 47 C.F.R. §§ 54.301, 54.305, and/or 54.307, and/or 47 C.F.R. Part 36, Subpart F (high-cost loop support, local switching support, safety net additive support, and safety valve support). Support provided under these FCC rule provisions will only be made available in the future if the State Commission files the requisite certification pursuant to § 54.314.

On January 31, 2003, the South Dakota Public Utilities Commission (Commission) received a filing from Western Wireless Corporation (Western Wireless) regarding its Request for Certification. The purpose of this filing was to provide information constituting Western Wireless' plan for the use of its federal universal service support and to otherwise verify that Western Wireless will use all federal universal service support received in a manner that is consistent with the federal universal service provisions of 47 U.S.C. § 254. As a part of its plan, Western Wireless listed estimates of the support it expected to receive from USAC as well as its estimated costs for the provision, maintenance, and upgrading of facilities and services. Western Wireless filed confidential information regarding this matter pursuant to Staff's request.

On February 6, 2003, the Commission electronically transmitted notice of the filing and the intervention deadline of February 14, 2003, to interested individuals and entities. On February 14, 2003, the Commission received a Petition for Intervention from South Dakota Telecommunications Association (SDTA). On February 20, 2003, the Commission received Western Wireless' Opposition to SDTA's Motion and Grounds for Intervention. At the meeting

¹CC Docket No. 96-45, CC Docket No. 00-256, 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, Released May 23, 2001.

on February 20, 2003, a representative of SDTA stated that SDTA wished to withdraw SDTA's Petition for Intervention and just make comments on the filing.

At its regularly scheduled meeting of February 20, 2003, the Commission considered this matter.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-31, and 47 U.S.C. § 254. The Commission found that Western Wireless is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission unanimously voted to approve Western Wireless' Request for Certification. It is therefore

ORDERED, that the Western Wireless is eligible to receive federal support as it states it will only use the support for the provision, maintenance, and upgrading of facilities and services for which the support is intended. It is

FURTHER ORDERED, that the Commission approves Western Wireless' Request for Certification.

Dated at Pierre, South Dakota, this 7th day of March, 2003.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: _____
Date: _____
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

ROBERT K. SAHR, Chairman

GARY HANSON, Commissioner

JAMES A. BURG, Commissioner

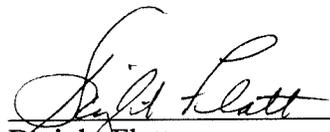
EXHIBIT 6

DECLARATION

I, Dwight Flatt, hereby declare under penalty of perjury as follows:

1. I am the Member Services Manager of Golden West Telecommunications Cooperative, Inc. ("Golden West") in Wall, South Dakota, and have worked for the company for over 27 years.
2. Golden West serves twenty-seven (27) local telephone exchanges in western South Dakota, including several exchanges located on the Pine Ridge Reservation.
3. I am aware that Western Wireless or one of its affiliates was designated as an Eligible Telecommunications Carrier ("ETC") by the FCC on the Pine Ridge Reservation, and that it is eligible to receive Universal Service support for certain wireless services provided to tribal members on the Reservation.
4. It is my understanding, however, that Western Wireless and its affiliates should not be receiving any portable Universal Service support for services they provide in Golden West's service area outside the Pine Ridge Reservation or in Rapid City and other portions of Qwest Communications, Inc.'s ("Qwest's") South Dakota service area. I am aware that neither Western Wireless nor any of its affiliates has been designated as an ETC by the South Dakota Public Utilities Commission ("SDPUC") for the major portion of Golden West's service area that lies outside the Pine Ridge Reservation. I am also aware that Western Wireless has been designated by the SDPUC as an ETC in and around Rapid City and other Qwest Communications service areas, but believe that Qwest does not receive Universal Service support (and, therefore, that no portable Universal Service support is available) for those areas.
5. I am aware of rumors and suspicions that "billing addresses" on the Pine Ridge Reservation are being used to obtain Western Wireless services even though the services are used primarily or predominantly in the non-Reservation portions of Golden West's service area and in the Rapid City area; and that this practice has been encouraged by the availability of federal Universal Service funds.
6. For example, I have been made aware of a situation regarding a mother and her daughter who signed up for Western Wireless "box phones" that reportedly are both being billed to a Pine Ridge Reservation address. Whereas the mother is reportedly using her "box phone" on the Reservation, the daughter is said to be living in Rapid City and primarily using her Western Wireless "box phone" service there.
7. As another example, Golden West employees have reported seeing several of the Western Wireless "box phones" within a non-Reservation community in Golden West's service area. This has raised questions whether those units are being billed to Reservation addresses or otherwise being used to claim portable federal Universal Service Funds.

8. This information has been reported to my manager, and to the South Dakota Telephone Association. Since I am not in a position to obtain Western Wireless' customer billing information, I have not offered this information as "proof" that "billing addresses" on the Pine Ridge Reservation are being used, misused or abused to obtain portable Universal Service support. Instead, I have related these questions and examples merely to identify a potential issue that warrants further investigation.


Dwight Flatt

Dated: April 4, 2003

**Service List for Rural Spectrum NOI
(WT Docket No. 02-381)**

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW – Room 8-B201
Washington, DC 20554

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, SW – Room 8-B115
Washington, DC 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW – Room 8-C302
Washington, DC 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, SW – Room 8-A302
Washington, DC 20554

Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street, SW – Room 8-A204
Washington, DC 20554

John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW – Room 3-C252
Washington, DC 20554

Robert Krinsky (4 copies)
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW – Room 4-B551
Washington, DC 20554

Qualex
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Space Data Corporation
c/o Gerald Knoblach
460 South Benson Lane
Chandler, AZ 85226

AT&T Wireless Services, Inc.
c/o Michelle Mundt
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, NW, Suite 900
Washington, DC 20004

Mark Benton
Midstate Communications
120 East First
P.O. Box 48
Kimball, SD 57355 –0048

Darren Moser
Dickey Rural Telephone Cooperative
9628 Hwy 281
P.O. Box 69
Ellendale, ND 58436

Rod Bowar
Kennebec Telephone Co., Inc.
209 South Main
P.O. Box 209
Kennebec, SD 57544

Doug Eidahl
James Valley Telecommunications
235 East 1st Ave.
P.O. Box 260
Groton, SD 57445

Randy Houdek
Venture Communications Cooperative
218 Commercial Avenue, SE
P.O. Box 157
Highmore, SD 57345

Jerry Reisenauer
West River Cooperative Telephone Co.
801 Coleman Ave.
P.O. Box 39
Bison, SD 57620

Brian Smith
McCook Cooperative Telephone Co.
330 S. Nebraska
P.O. Box 630
Salem, SD 57058

Michelle C. Farquhar
David L. Sieradzki
Counsel to Western Wireless Corporation
Hogan & Hartson L.L.P.
555 13th St, NW
Washington, DC 20004

Gene A. DeJordy
Vice President of Regulatory Affairs
Western Wireless Corporation
3650 131st Ave., S.E., Suite 400
Bellevue, WA 98006

Mark Rubin
Director of Federal Government Affairs
Western Wireless Corporation
401 Ninth St., NW Suite 550
Washington, DC 20004

Lynn Gunwall
Penasco Valley Telephone Cooperative
4011 W. Main
Artesia, NM 88210 -9566

XM Radio Inc. and Sirius Satellite Radio Inc.
c/o Bruce D. Jacobs
Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037 -1128

Mobile Satellite Ventures Subsidiary LLC
c/o Bruce D. Jacobs
Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037 -1128

David G. Richards
Cingular Wireless LLC
5565 Glenridge Connector, Suite 1700
Atlanta, GA 30342

Matthew L. Dosch
Rock Hill, Lancaster, and
Fort Mill Telephone Companies
PO Box 470
Rock Hill, SC 29731 -6470

Cliff LeBoeuf
1162 Barrow Street
Houma, LA 70360

Jennifer M. McCarthy
QUALCOMM Incorporated
5775 Morehouse Dr.
San Diego, CA 92121

Robert Hrbek
15404 Garfield Street
Omaha, NE 68144

L. Marie Guillory
NTCA
4121 Wilson Blvd., 10th Floor
Arlington, VA 22203

Douglas Fingerson
Goodhue County Coopertative Electric
1410 Northstar Drive
P.O. Box 99
Zubbrotta, MN 55992 -0099

Howard Frisch
UTStarcom, Inc.
33 Wood Avenue South, 3rd Floor
Iselin, NJ 08830

Duane O' Neill
Metro Jackson Chamber of Commerce
P.O. Box 22548
201 South President Street
Jackson, MS 39225 -2548

Sean P. Farrell
NTCH, Inc.
703 Pier Avenue, Suite B
PMB 813
Hermosa Beach, CA 90254

Patricia Zarin
1618 Centerton Road
Elmer, NJ 08318

Carolyn Burton
Marion County Chamber of Commerce
200 Second Street
Columbia, MS 39429

Susan Walker
Area Development Partnership Chamber of
Commerce
One Convention Center Plaza
Hattiesburg, MS 39401

Rural Spectrum Alliance
c/o John Kuykendall
Kraskin, Lesse & Cosson LLC
2120 L. Street, N.W. Suite 520
Washington, DC 20037

NRTC
c/o Jack Richards
Keller and Heckman LLP
1001 G Street, NW, Suite 500 West
Washington, DC 20001

Larry E. Yunker II
Cyber Broadcasting, L.L.C.
P.O. Box 978
Minooka, IL 60447

PDQLink
P.O. Box 157
North Aurora, IL 60542 -0157

Caressa D. Bennet
Counsel to OPASTCO & RTG
1000 Vermont Avenue, NW, 10th Floor
Washington, DC 20005

Rodney W. Applegate
2821 Lackland Road, Suite 316
Fort Worth, TX 76116

Michael F. Altschul
Cellular Telecommunications & Internet
Association
1250 Connecticut Avenue, NW, Ste 800
Washington, DC 20036

C. Crowley
5312 Keswick Avenue
Fort Worth, TX 76133

Dennis Hillen
6295 East Illinois Hwy 15
Woodlawn, IL 62898

Monet Mobile Networks, Inc.
c/o Cheryl Tritt
Morrison & Foerster, LLP
2000 Pennsylvania Ave, NW Suite 5500
Washington, DC 20006

Smith Bagley, Inc.
c/o David A. LaFuria
Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th St., N.W. Suite 1200
Washington, DC 20036

WaveRider Communications Inc.
255 Consumers Road, Suite 500
Toronto, Ontario
M2J 1R4

Andrew Kreig
Wireless Communications Association
International, Inc.
1140 Connecticut Avenue, N.W., Suite 810
Washington, DC 20036

Ronald L. Ripley
Dobson Communications Corporation
14201 Wireless Way
Oklahoma City, OK 73134

Representative Bart Stupak
2352 Rayburn House Office Building
Washington, DC 20515 –2201

Itron, Inc.
c/o Goldberg Godles Wiener & Wright
1229 19th Street NW
Washington, DC 20036 –2413

Douglas Campbell
AMA Wireless L.L.C.
Amarillo, TX 79110 –2329

License-Exempt Alliance
c/o Doug Keeney
745 W. Main Street, Suite 100
Louisville, KY 40402

Jill Canfield
National Telecommunications Cooperative
Association
4121 Wilson Blvd, 10th Floor
Arlington, VA 22203

United States Cellular Corporation
c/o George Y. Wheeler
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, DC 20006

TCA, Inc.
1465 Kelly Johnson Blvd., Suite 200
Colorado Springs, CO 80920

Microsoft Corporation
c/o Scott Blake Harris
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW
Washington, DC 20036

Fred R. Goldstein
Ionary Consulting
PO Box 610251
Newton Hlds., MA 02461

Corr Wireless Communications, LLC
c/o Donald J. Evans
Fletcher, Heald & Hildreth
1300 N. 17th St. 11th FL
Arlington, VA 22209

Rural Cellular Association
c/o David L. Nace
Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th St., N.W. Suite 1200
Washington, DC 20036

Tom Williams
3324 White Chimneys Court
Glen Allen, VA 23060

Mr. Lynn R. Merrill
Monte R. Lee & Company
100 N. W. 63rd - Suite 100
Oklahoma City, OK 73116

Robert Johansen
108 State Rd.
West Bath, ME 04530

Mitch Vine
Redline Communications Inc.
90 Tiverton Court, Suite 102
Markham, Ontario, Canada
L3R 9V2

John Scrivner
PO Box 1582
#1 Dr. Park Road Suite H1
Mt. Vernon, IL 62864

David Hughes
6 N 24th Street
Colorado Springs, CO 80904

Alexander H Grennor
235-A Spruce St.
Audubon, NJ 08106

John Hokenson
Virtual Networking Services, Inc.
P. O. Box 8500
Covington, WA 98042 –0052

Joseph Sullivan
Alyrica Networks, Inc.
521B N. 19th ST
Philomath, OR 97370

Joe Hyde
Broadband Unwired, LLC d/b/a DelRio.com
PO Box 421206
Del Rio, TX 78842 –1206

Barry Buchholz
319 N. Clinton St.
St. Johns, MI 48879

Norm Young
Applegate Broadband LLC
P.O. Box 3254
Applegate, OR 97530 –3254

NewGenWireless Inc.
1272 HWY 199 #101
Springtown, TX 76082

PART-15.ORG
P.O. Box 157
North Aurora, IL 60542 –0157

David Boreham
91 Mountain Brook Rd
Livingston, MT 59047

Wallace Walcher
2604 Rosewood Ln
Edmond, OK 73013

Steve Dietzel
1693 S. Deer Park Dr
Peru, IN 46970

James Randall
Pulsar Communications
521 S Plumas
Willows, CA 95988

The Nebraska Rural Independent Companies
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508

Jessica Halsey
108 Abingdon Place
Abingdon, VA 24211

NextWeb, Inc.
48890 Milmont Drive
Suite 106D
Fremont, CA 94538

Keith Schmidt
390 Broadway
Office #3
Monticello, NY 12701

Nicholas Heath
7816-104 Arboretum Dr.
Charlotte, NC 28270

Chase 3000
PO Box 760
Imperial, NE 69033

Patti Jones
14102 State Highway T
Senath, MO 63876

City of Viburnum
c/o Lance Mayfield
P.O. Box 596
Viburnum, MO 65566

Eje Gustafsson
Family Entertainment Network
1121 S Broadway
Pittsburg, KS 66762

Sam Coyl
1621 Savanna Drive
Pontiac, MI 48340

Airzip Internet Inc
c/o Kent Andersen.
136 N Main
Richfield, UT 84701

Roger Hartley
307 W Morgan Ave
Pennington Gap, VA 24277

Garth Nicholas
RR 1 Box 434A
Heyworth, IL 61745

Kevin W. Rice
7608 IL HWY 16
Paris, IL 61944

Jason Hunt
935 Washington Street
Franklinton, LA 70438

Satyanarayana (Chau) Jasty
121 East 11th Street
Tracy, CA 95376

Dave Cates
813 E Llano Estacado
Clovis, NM 88101

Donald Beckman
1272 HWY 199 #101
Springtown, TX 76082

Mark Ackaway
28902 101st Drive East
Myakka City, FL 34251

Phillip Hogue
42 Rosewood Dr.
Beebe, AR 72012

Alvarion
c/o Patrick Leary
5858 Edison Place
Carlsbad, CA 92008

Michael L. Hays
15634 Mountain Track Rd
Orange, VA 22960

Dan Albrich
2065 Alder St
Eugene, OR 97405

Michelle Matheson
130 Front St
Dunellen, NJ 08812

Ralph Campbell
4201 Monnett-Chapel Rd.
Bucyrus, OH 44820 -9556

David Covert
PO Box 1288
Kemah, TX 77565

William Hazel
17913 123rd PL NE
Arlington, WA 98223 -7103

Neal Rauhauser
WispAir, LLC
9411 F Street
Omaha, NE 68127

Mark Udin
5113 S. Chatsworth Av
Springfield, MO 65810

Roy Preston
709 S. Oneida Street, Ste 2& 3
Green Bay, WI 54304

Peggy Townsend
237 Hubbard Street
Allegan, MI 49010

Nathan K Hopper
PO Box 7031
Pierre, SD 57501 -7031

Marlon K. Schafer
Box 489
Odessa, WA 99159