

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

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Western Wireless Corporation)	
Petition for Waiver of)	
Section 54.314(d) of the Commission's Rules)	

May 1, 2003

COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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To: Wireline Competition Bureau

**COMMENTS OF THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
PRELIMINARY STATEMENT**

On March 13, 2003, Western Wireless Corporation ("Western Wireless") filed with the Federal Communications Commission ("Commission") a Petition for Waiver of Section 54.314(D) of the Commission's Rules ("Waiver Petition"). In its Waiver Petition, Western Wireless requested a waiver of the deadline as set forth in section 54.314(d)(1) "of the rules for the filing of an annual certification regarding the proper usage of high-cost universal service support, to enable it to receive support beginning in the first quarter of 2003 for portions of South Dakota outside the Pine Ridge Reservation."¹ Western Wireless stated that a waiver was appropriate for the following reasons:

The requested waiver is appropriate due to the extraordinary delays in processing Western Wireless' compliance filing and certification of Western Wireless' proper use of high-cost support. Moreover, grant of the requested waiver will advance the public interest and will benefit consumers in rural

¹ Waiver Petition at 1.

areas of South Dakota by promoting the provision of universal service and adhering to the principle of competitive neutrality.²

On April 2, 2003, the Commission issued a public notice establishing a pleading cycle. The deadline for comments was set for May 2, 2003. Pursuant to that public notice, the South Dakota Public Utilities Commission ("SDPUC") submits these comments.

SUMMARY

The intent of the SDPUC in submitting these comments is to provide a factual record regarding Western Wireless' first reason as to why the waiver is appropriate. As stated above, the first reason given by Western Wireless as to why the waiver should be granted is because of "extraordinary delays in processing Western Wireless' compliance filing and certification of Western Wireless' proper use of high-cost support."³ Given that both the compliance filing and certification filing were dockets handled by the SDPUC, the SDPUC is compelled to provide the Commission with the complete record and refute Western Wireless accusation that the SDPUC subjected Western Wireless to "extraordinary delays." A review of the proceedings before the SDPUC regarding Western Wireless' compliance filing and certification filings demonstrates that it was Western Wireless' actions prior to their filings and during the pendency of their filings which prevented the SDPUC from being able to certify to the Commission by the October 1, 2002

² *Id.* at 2.

³ *Id.*

deadline that Western Wireless would use federal support in a manner consistent with section 254(e).

COMPLIANCE FILING

In its Waiver Petition, Western Wireless states that the SDPUC designated Western Wireless as an Eligible Telecommunications Carrier ("ETC") in October 2001.⁴ A more accurate statement is that the SDPUC 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 Attachment A, *upon [Western Wireless'] compliance with the conditions listed in findings of fact 20-24.*⁵ Thus, the SDPUC's *Conditional ETC Order*, made it clear that Western Wireless would not become an ETC until it complied with the listed conditions. The conditions were as follows:

- 1) Western Wireless was required to file its plan for advertising its universal service offering throughout its service areas;
- 2) At the time of the hearing, Western Wireless did not have a list of local calling areas. Therefore, once Western Wireless determines its local calling areas, it was required to file a list of areas with the SDPUC;
- 3) Western Wireless was required to include in its service agreement information on how customers may qualify for financial assistance under the federal Link-Up and Lifeline programs and provide basic information on how to apply;

⁴ *Id.* at 1-2.

⁵ *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, Docket TC98-146, issued October 18, 2001 ("*Conditional ETC Order*") (attached as Appendix A).

4) Western Wireless agreed to file with the SDPUC its service agreement that it intended to offer to universal service customers. The SDPUC stated that this service agreement must be consistent with the SDPUC's service quality rules. The SDPUC further noted that as a telecommunications company, Western Wireless is subject to SDCL chapter 49-13 which allows consumers to file complaints with the SDPUC. Thus, the SDPUC required that the service agreement must state that any disputes or claims arising under the service agreement may be subject to the SDPUC's jurisdiction; and

5) At the time of the hearing, Western Wireless had not yet finalized a universal service offering. Thus, the SDPUC required Western Wireless to notify the SDPUC when it begins to offer its universal service package and in what study areas.

The SDPUC fully expected that Western Wireless would file its compliance filing within a very short time frame. However, Western Wireless did not file its compliance filing until August 29, 2002, *over ten months later*. The SDPUC further notes that this was only *one month* prior to the Commission's October 1, 2002, certification deadline. On September 13, 2002, the Staff of the SDPUC faxed a list of questions to Western Wireless regarding its compliance filing. The SDPUC Staff did not receive a response from Western Wireless until September 24, 2002, the day the SDPUC was scheduled to consider the filing.

With respect to Western Wireless' certification filing, Western Wireless filed its request for certification on September 11, 2002.⁶ SDPUC Staff faxed their questions regarding the filing on September 13, 2002. In the letter containing the questions, the

⁶ *In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support*, Docket TC02-156, docketed September 11, 2002.

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SDPUC staff specifically requested that Western Wireless respond as soon as possible since Staff intended to place the docket on the SDPUC's agenda for its September 24, 2002, meeting. Western Wireless e-mailed a response the afternoon of September 23, 2002.

At its September 24, 2002, meeting, the SDPUC considered both the compliance filing and the certification filing. Having just received Western Wireless' responses that morning, SDPUC staff stated they did not have time to fully review the responses to the compliance filing. Moreover, Staff stated that its initial reaction to Western Wireless' responses was that Staff would have additional questions based on the responses. In addition, the South Dakota Telephone Association ("SDTA"), an intervenor in the ETC docket, raised questions regarding the compliance filing and requested an opportunity to present comments or evidence. The SDPUC deferred any ruling on the compliance filing. The SDPUC then considered the certification filing. Since the SDPUC had been unable to find Western Wireless in compliance with the conditions listed in its *Conditional ETC Order*, the SDPUC found Western Wireless was not yet an ETC for those rural areas. In addition, the SDPUC found that Western Wireless had not submitted the correct documentation in order to obtain certification.⁷ Given that this was the last SDPUC meeting, prior to the October 1, 2002, certification deadline, the SDPUC notes that, at this

⁷ See *In the Matter of the Request of WWC License LLC for Certification Regarding its Use of Federal Universal Service Support*, Order Denying Certification, Docket TC02-156, dated September 27, 2002 (attached as Appendix B).

point, Western Wireless had already missed its opportunity to receive funds for the first quarter of 2003.

In its Waiver Petition, Western Wireless makes the following statement:

Although Western Wireless believed based upon the *Rural ETC Order* and standard state commission practice that its compliance filing was effective upon filing, the SD PUC continued to debate the issue and, on January 6, 2003, it issued an order concluding that Western Wireless' compliance filing satisfied the conditions specified in the *Rural ETC Order* and confirmed that Western Wireless is designated as an ETC for specified rural telephone company study areas in South Dakota.⁸

This statement is quite remarkable in what it manages to leave out and its erroneous implication that, with its August 29, 2002, compliance filing, Western Wireless fully complied with the SDPUC's conditions. Western Wireless' August 29, 2002, filing, did not, in fact, comply with the conditions set forth in the SDPUC's October 18, 2001, order.⁹

The extent of Western Wireless' failure to comply is evidenced by its two, subsequent revised compliance filing. Its first revised compliance filing was submitted on October 11, 2002.¹⁰ This filing was in response to the questions raised by Staff and the

⁸ Waiver Petition at 5.

⁹ It is hardly conceivable that Western Wireless believes that a compliance filing that failed to comply "was effective upon filing[.]"

¹⁰ Western Wireless' Cover Letter of First Revised Compliance Filing (attached as Appendix C). The SDPUC attaches only the cover letter which explains all of the revisions. If the Commission would like the entire filing, the SDPUC would be happy to provide it.

SDPUC at its September 24, 2002, meeting. In this revision, Western Wireless made the following revisions:

- 1) The advertising plan was modified to include references to both Lifeline and Link-Up;
- 2) The terms and conditions of Western Wireless' Unlimited Local Calling Universal Service Offering was revised to confirm that services would be provided to both residential and business customers;
- 3) Paragraph 4.3 of Western Wireless' Unlimited Local Calling Universal Service Offering was revised to provide that disputed charges may be withheld pending resolution;
- 4) The language in section 5.5 of Western Wireless' Unlimited Local Calling Universal Service Offering was modified to reflect the language contained in the *Conditional ETC Order* and now provided that any disputes may be subject to the SDPUC's jurisdiction;
- 5) The terms and conditions of Western Wireless' Measured Rate Calling Plan Universal Service Offering was revised to confirm that both residential and business applicants may request service;
- 6) The terms and conditions of Western Wireless' Measured Rate Calling Plan Universal Service Offering was clarified to state that the terms would be provided to new customers on a going-forward basis;
- 7) The language in paragraph three of Western Wireless' Measured Rate Calling Plan Universal Service Offering was revised to clarify that this paragraph, which regarded arbitration, would not apply to issues where the SDPUC had jurisdiction and paragraph 33 was also clarified regarding the jurisdiction of the SDPUC;
- 8) The language in paragraphs 16 and 22 of Western Wireless' Measured Rate Calling Plan Universal Service Offering was revised to provide that disputed charges could be withheld;
- 9) A notice was provided which was to be given to existing customers informing those customers that the SDPUC's service quality rules are

applicable; that the service agreement would be governed by applicable federal law, Commission regulations, South Dakota law, and SDPUC orders, to the extent applicable; that disputes may be subject to the SDPUC's jurisdiction; and that customers may qualify for reduced monthly rates;

10) A customer preference page was provided;

11) Western Wireless' Lifeline/Link-Up application form was provided;

12) A copy of the letter was provided that Western Wireless asserted would be sent to the SDPUC to provide notice to the SDPUC as to when Western Wireless begins offering universal service in a study area.

After reviewing this revised filing, the SDPUC noted further deficiencies at its November 20, 2002, meeting. The SDPUC pointed out that the terms and conditions of Western Wireless' Measured Rate Calling Plan Universal Service Offering *continued to fail* to inform customers of the Lifeline/Link Up Plan as required by the SDPUC's *Conditional ETC Order*. The SDPUC further noted that the two plans contained different language regarding the SDPUC's jurisdiction. In addition, the SDPUC pointed out that the application form for Lifeline/Link Up contained the *wrong* eligibility criteria. Further, the SDPUC allowed SDTA to file written comments on the filing and allowed Western Wireless an opportunity to respond to those comments. Based on the additional deficiencies noted at the November 20th meeting, Western Wireless filed further revisions on December 2, 2002.¹¹ These revisions included the following:

¹¹ Western Wireless' Cover Letter of Second Revised Filing (attached as Appendix D).

- 1) A new version of the terms and conditions of Western Wireless' Measured Rate Calling Plan Universal Service Offering was provided. As required by the *Conditional ETC Order*, the service agreement was revised to include language that informs customers of the Lifeline/Link-Up programs;
- 2) Paragraph 33 of Western Wireless' Measured Rate Calling Plan Universal Service Offering was modified to mirror the jurisdictional language in Western Wireless' Unlimited Local Calling Universal Service Offering;
- 3) The application form for the Lifeline/Link-Up programs was corrected to include the correct eligibility requirements.

On December 12, 2002, SDTA filed its comments. On December 13, 2002, Western Wireless filed a letter requesting an extension of time to respond to SDTA's comments.¹² Western Wireless' response was due December 17, 2002, and the SDPUC intended to take final action on the filing at its December 19, 2002, meeting. Western Wireless proposed filing a response on January 3, 2003, and then have the SDPUC consider the matter at its next meeting, which was scheduled for January 16, 2003. The SDPUC gave Western Wireless additional time to file a response but not as much time as it had requested. The SDPUC then heard the matter at an ad hoc meeting on January 2, 2003. At that meeting, the SDPUC found Western Wireless was in compliance with the SDPUC's ETC order and issued its order on January 6, 2003.

As demonstrated by these facts, Western Wireless' August 29, 2002, compliance filing was not compliant and Western Wireless was required to file two, separate revised filings in order to become compliant. Further, the SDPUC would also point out that the fifth

¹² Western Wireless' Request for Extension of Time (attached as Appendix E).

condition of the SDPUC's *Conditional ETC Order* required Western Wireless to notify the SDPUC when it began to offer its universal service package and in what study areas. Thus, the SDPUC was surprised by Western Wireless' request for a waiver because it had not informed the SDPUC that Western Wireless had actually started to provide universal services in rural areas in South Dakota. It was only after being notified by the SDPUC last week that the SDPUC had yet to receive notification that Western Wireless finally submitted a letter stating that it had begun to offer universal service in certain rural telephone company study areas in South Dakota.¹³ However, absent from the letter and from the Waiver Petition is any actual date on which Western Wireless began to offer universal service. As the SDPUC notes below, as late as September of 2002, Western Wireless was stating that it had not yet finalized its plans for offering universal service in South Dakota.

CERTIFICATION FILINGS

As with its compliance filing, Western Wireless fails to inform the Commission that its first request for certification filed with the SDPUC on September 11, 2002, also failed to comply with SDPUC certification requirements. The SDPUC has always required ETCs which file for certification to submit estimates of their federal universal service amounts for

¹³ Western Wireless' Notification Letter (attached as Appendix F). Although Western Wireless refers to the letter "as a supplement to the notice that was submitted in the Western Wireless compliance filing on October 11, 2002[,]" the SDPUC is compelled to point out that the notice submitted in October was merely the *form* of the letter Western Wireless stated it would submit when it actually began to provide universal service. *See* Form Notification Letter (attached as Appendix G). The form letter contained no actual information.

the upcoming year and their estimated expenditures for provision, maintenance, and upgrading of facilities and services.¹⁴ As the SDPUC explained in its order denying

¹⁴ The SDPUC noted its reasons for this requirement in its order denying certification. The SDPUC stated the following:

In addition, the [SDPUC] points out that pursuant to the [Commission's] order, the [Commission] had determined that states must file annual certifications with the [Commission] 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 [Commission] 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. 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 [Commission] 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 [Commission] 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 Commission." *MAG Order*, at ¶ 188.

certification, Western Wireless failed to do so.¹⁵ The SDPUC Staff had specifically requested that Western Wireless provide "estimated year 2003 expenditures for provision, maintenance, and upgrading of facilities and services supported by federal universal service funding" in Staff's data request sent on September 13, 2002.¹⁶ In its September 23, 2002, response, Western Wireless stated that "*because plans for launching universal service have not been finalized*, the expenditures for providing, maintaining, and upgrading facilities and services in 2003 cannot currently be estimated." Western Wireless instead relied on a 2001 press release regarding investments made in 2001. Staff also requested Western Wireless to provide "estimated year 2003 federal universal support receipts. . . ." In its response, Western Wireless provided estimated amounts that it might receive for the Pine Ridge Reservation. However, Western Wireless stated that it could not provide estimates for the amount of federal universal service funding for universal service markets other than the Pine Ridge Reservation "*because plans for launching universal service in our markets have not been finalized*. Without a history of service or a finalized plan for launching the service, any additional estimates would be guess work."¹⁷

See Appendix B.

¹⁵ See Appendix B.

¹⁶ As stated earlier, in its data request, the SDPUC staff specifically requested that Western Wireless respond as soon as possible since Staff intended to place the docket on the SDPUC's agenda for its September 24, 2002, meeting. However, Western Wireless did not provide a response until the afternoon of September 23, 2002.

¹⁷ The SDPUC also notes that although Western Wireless was telling the SDPUC that it had not finalized its plans and could not provide estimates, one month later Western Wireless had

Thus, the SDPUC denied certification based on two grounds: Western Wireless' failure to comply with the *Conditional ETC Order* and Western Wireless' failure to provide the information required for certification. With respect to its failure to comply with the ETC conditions, the SDPUC stated the following:

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 [SDPUC] finds it is unable to certify Western Wireless for high-cost support for those areas. The [SDPUC] 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 [SDPUC], to review any changes to its compliance filing. The [SDPUC] was then required to defer action on the compliance filing in Docket TC98-146.

With respect to its failure to comply with the certification requirements, the SDPUC stated in its order:

Thus, in order to fulfill its duties under the FCC's order, the [SDPUC] 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.

Thus, the SDPUC was unable to provide certification to the FCC that Western Wireless would use federal support in a manner consistent with section 254(e).

reported to USAC that it estimated that Western Wireless would be serving 30,108 lines in South Dakota, a number that included the rural service areas.

Western Wireless filed its second request for certification three weeks after the SDPUC issued its order finding Western Wireless in compliance with the ETC conditions.¹⁸ With this filing, Western Wireless included the information as requested by the SDPUC Staff when Western Wireless filed its first request for certification -- projected federal universal service receipts for year 2003 and estimated expenditures for provision, maintenance, and upgrading of facilities and services in South Dakota supported by federal universal service funding for year 2003. Based on this information and the fact that Western Wireless had been found in compliance with the *Conditional ETC Order*, the SDPUC granted certification at its February 20, 2003, meeting and issued its written order and letter to USAC and the Commission on March 7, 2003.¹⁹

CONCLUSION

With these comments, the SDPUC would like to make it clear that it is not opposing Western Wireless' Waiver Petition. In fact, we support the steps taken by Western Wireless to provide benefits to South Dakota telecommunications customers. We think it is important for Western Wireless, and all other carriers, to understand and, hopefully,

¹⁸ *In the Matter of the Request of Western Wireless Corporation for Certification Regarding Its Use of Federal Universal Service Support*, Docket TC03-045, (docketed January 31, 2003).

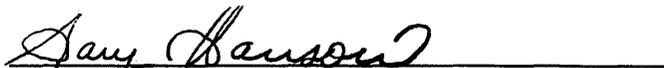
¹⁹ *In the Matter of the Request of Western Wireless Corporation for Certification Regarding Its Use of Federal Universal Service Support*, Order Granting Certification, Docket TC03-045, (issued March 7, 2003).

embrace the intent and responsibilities underlying ETC status, the costs and benefits of receiving ETC status, and the state commissions' role in the ETC process.

We were therefore extremely disappointed to see that the primary basis for Western Wireless' Petition for Waiver was that the SDPUC subjected it to "extraordinary delays," when in fact Western Wireless made no effort whatsoever for over ten months to comply with a relatively simple set of general conditions. We are concerned about the message being sent by the Commission if it chooses to reward Western Wireless for both the delay and the misstating of such obviously provable facts. However, Western Wireless is a key South Dakota wireless service provider and the SDPUC wants South Dakotans to have access to improved wireless service made possible by additional universal service support. Thus, if, under the Commission's rules and precedents, the Waiver Petition may be granted for good cause other than Western Wireless' wholly unsupported "extraordinary delays" argument, the SDPUC has no objection to the granting of the waiver.

Dated this 1st day of May, 2003.


ROBERT K. SAHR, Chairman


GARY HANSON, Commissioner


JAMES A. BURG, Commissioner

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

IN THE MATTER OF THE FILING BY GCC)	FINDINGS OF FACT AND
LICENSE CORPORATION FOR DESIGNATION)	CONCLUSIONS OF LAW;
AS AN ELIGIBLE TELECOMMUNICATIONS)	NOTICE OF ENTRY OF
CARRIER)	ORDER
)	TC98-146

On August 25, 1998, the South Dakota Public Utilities Commission (Commission) received a request from GCC License Corporation (GCC) requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.

On August 26, 1998, the Commission electronically transmitted notice of the filing and the intervention deadline of September 11, 1998, to interested individuals and entities. At its September 23, 1998, meeting, the Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST).

The Commission set the hearing for December 17 and 18, 1998, in Room 412, State Capitol, Pierre, South Dakota. The issue at the hearing was whether GCC should be granted designation as an eligible telecommunications carrier for all the exchanges contained within all of the counties in South Dakota. The hearing was held as scheduled and briefs were filed following the hearing. At its April 26, 1999, meeting, the Commission unanimously voted to deny the application.

The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

GCC appealed the Commission's decision to Circuit Court. The Circuit Court reversed the Commission's decision and remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision.

On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC. The Stipulation set the following procedural schedule:

On or before June 8, 2001, GCC shall file a Supplemental Memorandum with the Commission addressing whether designating GCC as an additional ETC for areas served by certain SDITC companies is in the public interest;

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.

At its September 7, 2001, meeting, the Commission considered this matter. The Commission voted to find 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.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On August 25, 1998, the Commission received a request from GCC requesting designation as an eligible telecommunications carrier (ETC) for all the exchanges contained within all of the counties in South Dakota.
2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an eligible telecommunications carrier (ETC) for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, 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. 47 U.S.C. § 214(e)(2).
3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.
4. The Commission granted intervention to Dakota Telecommunications Group, Inc. (DTG), South Dakota Independent Telephone Coalition (SDITC), and U S WEST Communications, Inc. (U S WEST). Following the hearing and briefing by the parties, the Commission unanimously voted to deny the application.

5. The Commission denied the application on a number of grounds. First, the Commission determined that 47 U.S.C. § 214(e) requires an applicant for designation as an ETC to be actually offering or providing services supported by universal support mechanisms prior to obtaining the necessary designation. The Commission further found that GCC did not prove that it provided customers with all of the supported services as required by 47 C.F.R. § 54.101(a). In addition, the Commission found that GCC failed to prove that it could provide a universal service offering throughout its requested designated service area in satisfaction of the requirement for ETC designation under 47 U.S.C. § 214(e)(1).

6. GCC appealed the Commission's decision to the Circuit Court. The Circuit Court reversed the Commission's decision. See Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235. For areas served by rural telephone companies, the court found that GCC meets all applicable criteria for ETC designation except the public interest factor, which was not addressed by the Commission. The court remanded the case to the Commission for findings on whether it is in the public interest to grant ETC status to GCC in areas served by rural telephone companies. The Commission, SDITC, and U S WEST appealed the Circuit Court's decision to the Supreme Court. On March 14, 2001, the Supreme Court affirmed the Circuit Court's decision. The Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier, 2001 SD 32, 623 N.W.2d 474.

7. Consistent with the court's decision, the matter came back to the Commission on remand, on the record, for the purpose of deciding whether it was in the public interest to designate GCC as an ETC in areas served by rural telephone areas. On May 31, 2001, the Commission received a Stipulation for Procedure on Remand entered into between GCC and SDITC.

8. The Stipulation listed the specific rural telephone companies in which GCC is seeking ETC status. The list does not include all of South Dakota's rural telephone companies. This amends GCC's original application by withdrawing GCC's request for ETC status in the areas served by certain South Dakota rural telephone companies. See Attachment A. The Commission approved the Stipulation for Procedure on Remand. GCC and SDITC then provided supplemental briefing and the Commission heard oral arguments on July 26, 2001.

9. The question of whether it is in the public interest to designate an additional ETC in an area served by a rural telephone company necessarily requires a two-part analysis. The first part of the analysis is whether consumers will realize benefits from increased competition. The fact that the area in question involves a rural area leads to the second part of the public interest analysis: whether the rural area is capable of supporting competition. Or, in other words, will the introduction of competition in rural telephone company areas have detrimental effects on the provisioning of universal service by the incumbent carriers. As evidenced by 47 U.S.C. § 254(b)(3), Congress was concerned with the advancement and preservation of universal service in rural areas.

10. One of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. An expanded local calling area will allow consumers to make more local calls, thus avoiding some toll charges. Id. In addition, GCC has pledged to offer unlimited local usage as part of one its universal service offerings. GCC Exhibit 4 at 9. For a monthly charge, GCC will offer consumers the supported services "with unlimited local usage, an expanded local calling area larger than offered by the incumbent LEC, a per minute charge for long distance calls, and optional features and services, such as voice mail, caller-ID, call waiting, call forwarding, and conference calling." GCC Exhibit 4 at 13. Further, GCC will offer local service at a rate similar to the incumbent telephone company. GCC testified that "if the incumbent is offering

service at \$15 a month, we'll offer service at a similar \$15 a month." TR. at 117. The Commission finds that GCC's ability to offer an expanded local calling area along with its other offerings will benefit the public.

11. GCC also cites as a benefit a mobility component to its universal service offering that it intends to offer in the future. According to its testimony, GCC would not introduce a mobility component right away but intended to, over time, "expand its universal service offering to introduce a mobility component." GCC Exhibit 4 at 8. The Commission finds that a mobility component to local telephone service is also a benefit to the public.

12. GCC claimed that another benefit would be to bring "universal service to some consumers who currently do not have telephone service." GCC Supplemental Brief at 11. However, GCC failed to show that consumers located in areas served by the rural telephone companies were unable to receive service from the rural telephone companies. Thus, the Commission declines to find that the provision of service by GCC will result in universal service being provided to more consumers.

13. As stated above, the second part of the public interest analysis is whether the introduction of competition in these rural areas will ultimately prove detrimental to universal service. SDITC's witness' testimony as to whether designation was in the public interest focused on the uncertainties with respect to the level of universal support for rural telephone companies. Exhibit 6 at 10-11. He did not offer evidence that the rural telephone companies would be unable to continue to provide universal service to its customers if another carrier were granted ETC designation.

14. Since the Commission's hearing held on December 17, 1998, the FCC has issued new rulings related to universal service funding. As SDITC noted in its supplemental brief, the FCC has recently found that universal service support should be disaggregated and targeted below the study area level for rural telephone companies in order to ensure that the per-line level of support is more closely related to the cost of providing the service. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, and Multi-Association Group (MAG) Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256 (rel. May 23, 2001) at ¶¶ 144-45. Pursuant to the FCC's order, rural companies are not required to select a disaggregation option until next year. Id. at ¶ 147. SDITC states that "[i]t would not be in the public interest to designate GCC as an ETC in rural service areas and allow it to receive portable universal service support before the disaggregation process has been completed and support is more closely targeted to the actual cost of serving each line." SDITC Supplemental Rebuttal Brief at 30. However, the Commission does not believe it would be in the public interest to delay the designation of additional ETCs until such time as the deadline for filing a plan has passed. If a rural telephone company is concerned about the possibility of GCC attempting to serve only the lower cost lines contained in a high cost area, the rural telephone company should select a disaggregation option as soon as possible. The Commission further notes that an ETC, if it intends to retain its ETC designation, is obligated to offer its services throughout the service area and may not discriminate in favor of serving only the lowest cost lines.

15. In a similar argument, SDITC points out that the FCC is currently addressing the issues of interstate access reform for rate-of-return carriers and is considering further changes in the universal service support for rural telephone companies. SDITC states that the outcome of these proceedings will have a "significant impact on whether designating GCC as an additional ETC would be in the public interest." SDITC Supplemental Rebuttal Brief at 32. Again, the Commission does not believe that it can delay, or indefinitely postpone, the designation of additional ETCs due to the lack of finality or the fact that future changes could affect universal service funding.

16. The Commission further finds that the fact that GCC will be providing a wireless service will likely lessen the loss of the incumbent carriers' universal service support. Wireless or cellular telephone service is often used as an additional, as opposed to a substitute, telephone service. Significantly, the FCC has decided that federal universal support will be extended to all lines served by ETCs in high-cost areas. Thus, if consumers subscribe to GCC's service but retain their landline service from the incumbent carrier, the incumbent carrier will still receive the same amount of universal service support for that line. See In the Matter of Federal-State Joint Board on Universal Service 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. 96-45, (rel. October 5, 2001) at ¶ 15.

17. Based on the record presented at the December 17, 1998, hearing, the Commission is unable to find that the addition of GCC as a second ETC will detrimentally affect the incumbent carriers' ability to provide universal service to their customers.

18. Another concern raised by SDITC related to the Commission's ability to regulate GCC. SDITC stated that it did not believe that it was in the public interest to designate GCC as an ETC if the Commission "has no ability after such designation to ensure that the service actually offered by GCC is consistent with the Commission's service quality rules and no ability to address consumer complaints concerning the service." SDITC Supplemental Rebuttal Brief at 24. However, the Commission finds that GCC is a telecommunications company as defined by SDCL 49-31-1(26), and thus is subject to the Commission's statutes and rules.

19. Based on these findings, the Commission finds that it is in the public interest to designate GCC as an ETC for the study areas of the rural telephone companies listed in Attachment A, subject to the conditions listed in findings of fact 20-24. The Commission finds that GCC's provisioning of a basic universal service throughout the study areas will be beneficial to the public. Further, the Commission finds that the evidence presented at the hearing does not support a finding that the incumbent rural telephone companies will be unable to continue to provide the supported services to their customers.

20. With respect to the advertising of its universal service offering, GCC states that it "currently advertises its wireless services through several different media, including newspaper, television, radio, and billboard advertising. GCC also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. GCC's current advertising is not limited to advertising in business publications alone, but rather includes publications targeted to the general residential market. GCC will use the same media of general distribution that it currently employs throughout the areas served to advertise its universal service offerings." Exhibit 3 at 9. Consistent with these commitments, GCC shall file its plan for advertising its universal service offering throughout its service areas.

21. As stated earlier, one of the benefits to the public cited by GCC is that GCC will provide consumers with an expanded local calling area. TR. at 131-32. At the time of the hearing, GCC did not have a list of local calling areas. Therefore, once GCC determines its local calling areas, it shall file a list of areas with the Commission.

22. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link-Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411. In order to inform customers of these services, 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.

23. In addition, GCC has agreed to file with the Commission its service agreement it intends to offer to universal service customers. The Commission finds that this service agreement must be consistent with the Commission's service quality rules. The Commission further notes that as a telecommunications company, GCC is subject to SDCL chapter 49-13 which allows consumers to file complaints with the Commission. Thus, the Commission finds that the service agreement will state that any disputes or claims arising under the service agreement may be subject to the Commission's jurisdiction

24. At the time of the hearing, GCC had not yet finalized a universal service offering. Thus, GCC shall notify the Commission when it begins to offer its universal service package and in what study areas.

CONCLUSIONS OF LAW

1. 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).
2. Pursuant to 47 U.S.C. § 214(e)(2), the Commission is required to designate a common carrier that meets the requirements of section 214(e)(1) as an ETC for a service area designated by the Commission. The Commission may designate more than one ETC if the additional requesting carrier meets the requirements of section 214(e)(1). However, 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. 47 U.S.C. § 214(e)(2).
3. Pursuant to 47 U.S.C. § 214(e)(1), a common carrier that is designated as an ETC is eligible to receive universal service support and shall, throughout its service area, offer the services that are supported by federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. The carrier must also advertise the availability of such services and the rates for the services using media of general distribution.
4. The FCC has designated the following services or functionalities as those supported by federal universal service support mechanisms: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equal; (4) single party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).
5. As part of its obligations as an ETC, an ETC is required to make available Lifeline and Link Up services to qualifying low-income consumers. 47 C.F.R. § 54.405; 47 C.F.R. § 54.411.
6. Pursuant to the Circuit Court's Findings of Fact, Conclusions of Law, and Order dated March 22, 2000, in Civil Case No. 99-235, decision, GCC meets all applicable criteria for ETC designation. Based on the evidence presented at the December 17, 1998, hearing, the Commission finds that it is in the public interest to designate GCC as an ETC for 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.

It is therefore

ORDERED, that the Commission finds that it is in the public interest to designate GCC as an ETC for 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.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 18th day of October, 2001. Pursuant to SDCL 1-26-32, this Order will take effect ten days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 18th day of October, 2001.

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>Melaine Kalbs</u>
Date:	<u>10/19/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, 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

**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

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.

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. 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:	<u>Hilaine Kalbo</u>
Date:	<u>9/27/02</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

October 11, 2002



Western Wireless.

[VIA FACSIMILE 1-605-773-3809]

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

RE: Docket No. TC98-146
Western Wireless Corporation
GPGN File No. 000362

Dear Ms. Elofson:

Enclosed please find enclosed the revised Compliance Filing of WWC License LLC, a subsidiary of Western Wireless Corporation, d/b/a CellularOne® ("Western Wireless"). These compliance documents modify and update the previous filings and address questions raised by staff and the Commission at the September 24, 2002 hearing on this matter.

~~Appendixes A, B and C~~ replace ~~Appendixes A, B and C~~ that were previously provided. To assist in the review of the documents, I have set forth below the changes that were made on Appendixes A, B and C.

Appendix A: Appendix A was modified to include references to both Lifeline and Link-up advertising in the second and third paragraphs.

Appendix B: Appendix B was modified to confirm that the service would be provided to both residential and business customers. Additionally modifications were made in paragraph 4.3 clarifying that disputed charges may be withheld pending resolution. Finally, the language in Section 5.5 concerning governing law was modified to reflect the language set forth in the Commission's Order of October 18, 2001, specifically in reference to paragraph 23 of the Findings of Fact. In addition to those changes, various style and format changes have been made, such as making various references consistent and correcting some grammatical errors.

Appendix C: Appendix C was modified to confirm that both residential and business applicants may make requests for service under this agreement. This is Western Wireless's standard cellular contract. Appendix C now also clarifies that, on a going-forward basis, the terms in this contract would be provided to new customers. This plan would be provided with the rate plan that is chosen by the customer. Additional changes made include in paragraph 3 of the first page, eliminating references to Appendixes that were being submitted with the Appendix C as it caused confusion. Rather, the plan names were typed out rather than causing confusion by referencing Appendixes.

Paragraph 3 of Appendix C was changed to clarify that the South Dakota Public Utilities had jurisdiction over certain issues and that paragraph 3 would not apply to those issues.

Paragraphs 16 and 22 of Appendix C were changed to clarify that disputed charges could be withheld. Also, paragraph 33 was clarified to reflect that the South Dakota Public Utilities Commission has jurisdiction over certain issues arising under the agreement. The language was drafted to reflect the Commission's Order of October 18, 2001, specifically the language contained in Finding of Fact 23 in that order. Again, various other changes to make references to the company consistent throughout the document and to correct some minor grammar errors were also made.

Appendix D: Provides (1) notice informing existing customers that the Commission's service quality rules are applicable to the Measured Rate Terms and Conditions Agreement; (2) also notifies Customer that the terms and conditions of the Agreement with the Company will be governed by applicable federal law, the regulations of the Federal Communications Commission ("FCC"), the laws of the state of South Dakota, to the extent applicable, and applicable orders of the Commission. The notice also states that any dispute or claims arising under the terms and conditions agreements may be subject to the Commission's jurisdiction; and
(3) Western Wireless d/b/a Cellular One will provide written notice to customers about federal Lifeline/Link Up programs and eligibility requirements.

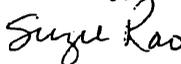
Appendix E: Customer Preference Page, which states that the service is available to both residential and business customers.

Appendix F: The Company's Lifeline/Link Up Application form, with spelling changes made.

Appendix G₁ and G₂: Local Calling Areas for the Unlimited Local Calling Areas Plan and the Measured Rate Calling Plans, respectively.

Appendix H: A copy of the letter that will be sent to the Commission pursuant to the order of October 18, 2001, paragraph 24, to provide notice when Western Wireless begins offering universal service in a study area(s).

Sincerely,



Suzie Rao

Regulatory Counsel

Enclosures
cc: Talbot Wiczorek

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

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December 2, 2002

RECEIVED

DEC - 3 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

VIA FACSIMILE 1-605-773-3809

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

FAX Received DEC 02 2002

RE: Docket No. TC98-146
GPGN File No. 000362 Western Wireless Corporation

Dear Ms. Elofson:

Pursuant to issues raised by Rolayne A. Wiest at the Commission's meeting on November 20, 2002, this is to serve as a filing of amended Compliance Documents. The enclosed compliance documents replace various documents filed as part of the compliance filing on October 11, 2002. Not all of the documents filed on October 11, 2002 have been amended. I am only filing those documents that have been changed pursuant to the discussions and requests made during the meeting of November 20, 2002.

Attached for filing is a new Appendix C. This Appendix C replaces the Appendix C filed on October 11, 2002. At the November 20, 2002, meeting, Commission Counsel requested that Western Wireless, d/b/a Cellular One, submit changes to Appendix C (Measured Rate Universal Service Offering Terms and Conditions of Service) that reference the Federal Lifeline and Link Up programs. Changes have been made to Appendix C, Paragraph 9. This language was copied from Appendix B (Lifeline and Link Up language in the Unlimited Local Calling Plan Universal Service Offering Terms and Conditions of Service), section 1.1.8.

In addition, as requested in this Appendix, Western Wireless has modified language in Paragraph 33 of Appendix C to mirror language in Appendix B relating to the Commission's jurisdiction of consumer complaints.

Also enclosed is a new Appendix F. This Appendix replaces Appendix F filed on October 11, 2002. This Appendix F consists of two documents. One form will be used to determine whether tribal members living on reservations in South Dakota can qualify for reduced rate telecommunications service. A separate form will be used to determine whether other

APPENDIX D

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

Deb Elofson
December 2, 2002
Page 2

consumers are eligible to receive Lifeline and Link Up reduced rate telecommunications service in South Dakota. A copy of the latter form has already been provided to the Commission and Commission Staff, as evidenced in Western Wireless' October 11, 2002 compliance filing submitted to the Commission. However, pursuant to Commission Counsel's request, the originally filed Appendix F has been revised to delete references to income eligibility requirements.

The original Appendix F was also modified to delete reference to the "Aid to Families with Dependent Children" program and replaced it with the "federal housing assistance program" as the program that consumers may participate in order to receive the Lifeline reduced rate.

Appendices A, B, D, E, G-1, G-2 and H filed on October 11, 2002, remain unchanged and, therefore, those documents have not been resubmitted for filing. If the Commission needs something further from us, please let me know.

Sincerely,



Talbot J. Wieczorek

TJW:klw
Enclosures
c: Client

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

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ATTORNEYS LICENSED TO PRACTICE IN
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MONTANA, WYOMING, MINNESOTA & CALIFORNIA

December 13, 2002

RECEIVED

DEC 16 2002

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

VIA FACSIMILE 1-605-773-3809

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

FAX Received DEC 13 2002

RE: Docket No. TC98-146
Western Wireless Corporation

Dear Ms. Elofson:

This is to inform you that WWC License LLC, Inc., subsidiary of Western Wireless Corporation, d/b/a CellularOne ("Western Wireless"), requests an extension to file its response to South Dakota Telecommunications Association's comments and the Commission to defer action on TC98-146 until the next regularly scheduled Commission hearing, January 16, 2003, to give Western Wireless adequate time to fully respond and the Commission adequate time to review all submissions. Currently, Western Wireless is scheduled to provide responses to South Dakota Telecommunications Association's comments on December 17, 2002 and this matter is on the Commission's Agenda for December 19, 2002.

Western Wireless proposes filing its responses no later than January 3, 2003 and the Commission deferring any action on this matter until the next regularly scheduled Commission hearing January 16, 2003. I have spoken directly to Richard Coit with the South Dakota Telecommunications Association and he has no objections to allowing Western Wireless to file its responses to the South Dakota Telecommunications Association's comments by January 3, 2003 and no objections to the Commission deferring any action on December 19, 2002, until the next regularly scheduled Commission hearing. I further discussed this with the staff attorney, Karen Cremer, and she has informed me that she has no objections to such an extension and deferral. Ms. Cremer recommended that rather than filing a formal motion, I simply inform you by letter that all parties are in agreement to this deferral and extension. It is my understanding that with agreement of all parties the Commission will defer the matter when it comes up at the December 19, 2002 regularly scheduled hearing.

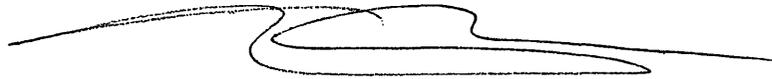
APPENDIX E

GUNDERSON, PALMER, GOODSSELL & NELSON, LLP

Ms. Elofson
December 13, 2002
Page 2

If the Commission desires that I file a formal motion to receive the deferral and extension, please call me and I will file a motion immediately. If you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Talbot J. Wiczorek'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Talbot J. Wiczorek

TJW:klw

c: Richard Coit via fax 1-605-224-1637
Karen Cremer via fax 1-605-773-3809
Mark Ayotte via fax 1-651-223-6450
James Blundell via fax 1-425-586-8118

April 24, 2003



Ms. Rolayne Wiest
General Counsel
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

RECEIVED

APR 28 2003

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Dear Ms. Wiest:

Pursuant to the requirements of the Western Wireless Corporation ("Western Wireless") ETC Order in Docket No. TC98-146 dated October 18, 2001, paragraph 24, and as a supplement to the notice that was submitted in the Western Wireless compliance filing on October 11, 2002 (Appendix H), Western Wireless notifies the South Dakota Public Utilities Commission ("Commission") that Western Wireless is currently offering the Company's universal service plans in the following rural telephone company study areas in South Dakota:

Armour Independent Telephone Company
Baltic Telecom Cooperative
City of Beresford Telephone Department
Bridgewater-Canistota Independent Telephone
City of Brookings Municipal
Dakota Telecommunications Group, Inc.
East Plains Telecommunications, Inc. (former Qwest exchanges)
Fort Randal Telephone Company
Interstate Telecommunications Cooperative, Inc. (SD)
Jefferson Telephone Company
Kadoka Telephone Company
Kennebec Telephone Company
McCook Telephone Cooperative
Midstate Telephone Company
Mt. Rushmore Telephone Company
RC Communications, Inc.
Roberts County Telephone Cooperative Association
Sanborn Telephone Cooperative
Sancom, Inc.
Sioux Valley Telephone Company
Splitrock Telecommunications Cooperative
Stockholm-Strandurg Telephone Company
Union Telephone Company
Valley Telecommunications Cooperative Association, Inc.
Western Telephone Company
West River Cooperative

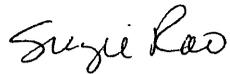
APPENDIX F

The following is a detailed list of the local calling areas that Western Wireless proposes in the Company's ETC designated service area:

Home Calling Area:
State of South Dakota

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Suzie Rao".

Suzie Rao
Regulatory Counsel

cc: Talbot Wiczorek

[Western Wireless Letterhead]

DRAFT LETTER

(A letter in substantially this form will be sent to the Commission when beginning to offer Universal service in a study area)

[Date]

Deb Elofson
Executive Director
SD PUC
500 E Capitol Avenue
Pierre SD 57501

Dear Ms. Elofson:

Pursuant to the South Dakota Public Utilities Commission (“Commission”) Order in Docket TC98-146 dated October 18, 2001, paragraph 24, Western Wireless Corporation (“Western Wireless”) notifies the Commission that on _____, 2002, Western Wireless will begin to offer one of the Company’s universal service plans in the following study area(s): _____.

The following is a detailed list of the local calling areas that Western Wireless proposes in the Company’s ETC designated service area:

XXXXXXX
XXXXXXX
XXXXXXX
XXXXXXX
XXXXXXX

Please contact me if you have any questions.

Sincerely,

Suzie Rao
Regulatory Counsel

cc: Talbot Wieczorek