

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

In the Matter of:

Federal-State Joint Board on Universal
Service

Western Wireless Corporation Petition for
Waiver of Section 54.314(d) of the
Commission's Rules

CC Docket No. 96-45

**COMMENTS OF THE RURAL IOWA INDEPENDENT TELEPHONE ASSOCIATION
IN OPPOSITION TO THE PETITION OF WESTERN WIRELESS CORPORATION**

By Public Notice released April 2, 2003, the Commission sought comments on the Petition for Waiver of Section 54.314(d) of the Commission's Rules filed by Western Wireless Corporation.

RIITA is a non-profit association of rural independent telephone companies, representing approximately one hundred and thirty Iowa incumbent local exchange carriers. All of RIITA's members actually serve fewer than 20,000 access lines, many serve fewer than 1000 lines. Most members are exempt rural telephone companies pursuant to section 251(f)(1)(A) of the Telecommunications Act of 1996. 47 U.S.C. § 251(f)(1)(A).

The core complaint of Western Wireless is that the State of South Dakota has delayed a request for ETC status by not immediately certifying that Western Wireless will use high-cost support for the purpose intended by high-cost support. On the surface, it appears that Western Wireless has a simple claim: it claims that it should be able to self-certify its use and that South

Dakota is interfering with that certification. Based on that certification, Western Wireless claims entitlement to high-cost support for the first quarter of 2003.

The apparent simplicity of the Western Wireless complaint is misleading. South Dakota refused to certify Western Wireless because the state had not finalized approval of the required compliance filing made by Western Wireless. Western Wireless claims that South Dakota did not state that approval of the compliance plan was required and noted that some states—including Iowa—have not required approval. Though technically true in Iowa, the requirement of compliance has been controversial here, as well as in other states. By a narrow ruling, the Iowa Utilities Board did not require a separate compliance and approval mechanism. However, one board member separately concurred to note the confusion surrounding the issue of the jurisdiction of state utility commissions over wireless carriers. This confusion results from concerns over the traditional lack of jurisdiction over wireless carriers until the wireless carrier submits to jurisdiction and requests ETC status.

As a consequence of that confusion, and the clear lack of regulatory parity in the treatment of wireless carriers and landline carriers, RIITA filed comments supporting the State Rural Alliance of Kansas in Docket number 00-239.

Western Wireless does not confront those issues in its present petition because it merely requests a waiver of a certification requirement. However, its real, underlying request is not that it be allowed to self-certify compliance with FCC rules. Its real claim is it be allowed to self-certify compliance with conditions placed on it by the South Dakota Public Utility Commission. Granting this request would be a clear invasion of the right of the South Dakota PUC to set its

own procedures and to determine compliance with important conditions placed on Western Wireless when it sought ETC status.

The request for waiver filed by Western Wireless should be denied. The South Dakota PUC must be allowed to condition grants of ETC status in the public interest and further be allowed to investigate and approve whether those conditions were met. Rhetorical complaints about “full-blown hearings,” “arduous process,” and “Western Wireless’ surprise” are just complaints. The rhetoric is not reasoning that justifies taking away jurisdiction from state PUCs. State PUCs are clearly charged with acting in the public interest in determining ETC status. This end-run around the states should be stopped. Western Wireless’s Petition should be denied.

Respectfully Submitted,



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