

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

**To: Wireline Competition Bureau**

**WESTERN WIRELESS REPLY COMMENTS  
ON ITS PETITION FOR WAIVER OF  
SECTION 54.314(D) OF THE COMMISSION'S RULES**

Western Wireless Corporation ("Western Wireless"), by counsel, hereby submits its reply to comments on its petition for waiver of the certification filing deadline set forth in Section 54.314(d)(1) of the rules with regard to portions of South Dakota outside the Pine Ridge Reservation. 1/

Western Wireless is grateful for the support of the South Dakota Public Utilities Commission ("SD PUC") in granting its petitions for eligible telecommunications carrier ("ETC") status in rural and non-rural parts of the state, and in deciding to issue a certification pursuant to Section 54.314 of the FCC's rules.

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1/ 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*, CC Docket No. 96-45, DA 03-1064 (rel. Apr. 2, 2003); *Western Wireless Corp. Petition for Waiver of Section 54.314(d) of the Commission's Rules*, CC Docket No. 96-45 (filed Mar. 14, 2003) ("Waiver Petition").

Western Wireless particularly welcomes the SD PUC’s statement that it has no objection to the granting of the waiver, given Western Wireless’ status as “a key South Dakota wireless service provider” and its role in bringing “South Dakotans . . . access to improved wireless service made possible by additional universal service support,” so long as the good cause justifying the waiver is something other than “extraordinary delays.” 2/

Ample good cause exists to grant Western Wireless’ waiver petition, regardless of how one interprets the history of Western Wireless’ quest for ETC status and universal service support in South Dakota. Therefore, there is no need for the Wireline Competition Bureau (“Bureau”) to reach any conclusions on the question of whether extraordinary delays occurred and who is responsible for them. In numerous cases presenting virtually identical circumstances – including one order released since the time that Western Wireless filed its petition 3/ – the Bureau (or its predecessor) has granted waivers of the certification deadlines or other procedural deadlines to newly designated ETCs. 4/ In some of these cases it

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2/ SD PUC Comments at 15.

3/ *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, CC Docket No. 96-45, DA 03-1169 (Wireline Comp. Bur., Telecom. Access Policy Div., released April 17, 2003) (“*Guamcell*”).

4/ *See, e.g., id; RFB Cellular, Inc. Petition for Waiver of Sections 54.314(d) and 54.307(c) of the Commission’s Rules and Regulations*, 17 FCC Rcd 24387 (Wireline Comp. Bur. 2002) (“*RFB Cellular*”); *Connecticut Department of Public Utility Control Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Rural Carriers*, 17 FCC Rcd 24804 (Wireline Comp. Bur. 2002); *Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, 16 FCC Rcd 15275 (Com. Car. Bur. 2001) (“*Smith Bagley, Inc.*”); *Petition of the Public Service Commission of the District of Columbia for Waiver; Petition for Waiver Filed By the New*

was clear that the delays *were* the fault of the petitioning party. <sup>5/</sup> In several other cases, the Bureau granted waivers of the certification deadlines where the carriers had filed their own self-certifications, given doubt about whether or not the state commission had jurisdiction to do so, even though the state later filed certifications as well. <sup>6/</sup>

The good cause cited in each of these cases is based on the mismatch between the circumstances of newly designated ETCs and the Commission's rules, which assume that a carrier's ETC status is already in place to enable either the carrier or the state commission to provide the required certification to the Universal Service Administrative Co. ("USAC") well in advance of the beginning of the funding cycle:

The certification filing schedule set out in the Commission's rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission. It would be onerous, however, to deny an ETC receipt of universal service support for almost two quarters as a result of a particular ETC designation having occurred after the certification filing deadline. . . . In this instance, these special circumstances

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*Jersey Board of Public Utilities*, 15 FCC Rcd 21996 (Com. Car. Bur. 2000) ("D.C./New Jersey"); *American Samoa Government and the American Samoa Telecommunications Authority Petition for Waivers and Declaratory Rulings*, 14 FCC Rcd 9974 (Accounting Policy Div., Com. Car. Bur., 1999); *Centennial Cellular Corp. Request for Waiver of Section 54.307(b) of the Commission's Rules*, DA 99-453, CC Docket No. 96-45, 1999 WL 111461 (Accounting Policy Div., Com. Car. Bur., 1999); *Sandwich Isles Communications, Inc. Petition for Waiver of Section 36.611 of the Commission's Rules*, 13 FCC Rcd 2407 (Accounting and Audits Div., Com. Car. Bur., 1998); *South Park Tel. Co., Petition for Waiver of Sections 36.611 and 36.612 of the Commission's Rules*, 13 FCC Rcd 198 (Accounting and Audits Div., Com. Car. Bur., 1997).

<sup>5/</sup> See, e.g., *D.C./New Jersey*.

<sup>6/</sup> See Waiver Petition at 8 n.17 (citing *RFB Cellular; Smith Bagley, Inc.*).

outweigh any processing difficulties that USAC may face as a result of the late-filed certification. 7/

The Bureau therefore may grant the requested waiver for good cause without resolving the differences among the parties over the history of Western Wireless' quest for ETC status in South Dakota. The Bureau's decision can be made without assigning blame to anyone. Western Wireless looks forward to maintaining the positive working relationship it has with the SD PUC into the future. Grant of the requested waiver will benefit consumers in rural parts of South Dakota, many of whom have been purchasing universal service from Western Wireless since the time Western Wireless received its ETC designation. The waiver also will promote universal service while avoiding interference with emerging competition, consistent with the established policies of both the SD PUC and the FCC.

The Bureau should reject the unsupportable arguments against the waiver petition proffered by the incumbent local exchange carrier ("ILEC") representatives – the South Dakota Telecommunications Association ("SDTA"), Fred Williamson & Associates ("Williamson"), and the Rural Iowa Independent Telephone Association ("RIITA"). SDTA, for example, argues that the waiver petition should be denied because Western Wireless "should not be rewarded for or excused from its own failure to promptly meet the SDPUC's ETC conditions." 8/ SDTA's argument is not only irrelevant, as discussed above; it also blatantly mischaracterizes what Western Wireless is seeking here. Western Wireless seeks a

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7/ *Guamcell*, ¶ 6; *see also RFB Cellular*, ¶ 8.

8/ SDTA Comments at 5; *accord*, Williamson at 1.

waiver so that it may receive federal universal service support beginning on January 6, 2003, when it received ETC designation for rural ILEC areas, *not* retroactive to the date when the SD PUC required a compliance filing in its October 2001 *Rural ETC Order*. <sup>9/</sup> The amount of time Western Wireless took to submit its compliance filing is therefore completely beside the point. The Bureau should disregard suggestions by the ILECs that this proceeding be used to address disputes that have no relevance to the petition or to the requested relief. <sup>10/</sup>

The Bureau should also reject the ILECs' argument that the petition should be denied because they contend Western Wireless is at fault for the time that elapsed between Western Wireless' August 28, 2002 compliance filing and the dates on which the SD PUC granted ETC status and decided to certify Western Wireless under Section 54.314. <sup>11/</sup> Although the requested waiver can and should be granted regardless of how one interprets the timing of this process, as discussed above, it must be noted that much of the extraordinarily detailed, and in many respects unprecedented, information that was requested from Western Wireless during this period (and that Western Wireless provided) went far beyond the

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<sup>9/</sup> *Filing by GCC License Corp. for Designation as an Eligible Telecommunications Carrier*, TC98-146, Findings of Fact and Conclusions of Law; Notice of Entry of Order (SD PUC Oct. 18, 2001) (available at <http://www.state.sd.us/puc/2001/Telecom01/TC98-146fof.pdf>) ("*Rural ETC Order*").

<sup>10/</sup> *See, e.g.*, RIITA Comments at 1-3. Contrary to RIITA's apparent claim, there is a real lack of clarity in the rules regarding whether state commissions or wireless ETCs are responsible for issuing certifications. *See* Western Wireless Waiver Petition at 4-6 and 8 n.17. Nonetheless, this issue need not be resolved here.

<sup>11/</sup> SDTA Comments at 4-9; Williamson Comments at 2-3.

information that is ever requested of ILECs. 12/ Other information demanded of Western Wireless was of a nature that no competitive ETC could possibly produce. 13/ Moreover, additional information was requested from Western Wireless during this period that had no basis in the *Rural ETC Order* that required the compliance filing. 14/ Thus, contrary to the ILECs' contentions, Western Wireless *cannot* reasonably be blamed for the difficulties experienced in responding to these extraordinary data requests. 15/

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12/ For example, Western Wireless was required to provide details of its advertising and Lifeline plans and its Lifeline Certification forms, the actual forms that Lifeline applicants would fill out. *See* SD PUC Comments at 7-8 (items #1 and #11). Western Wireless believes that no ILEC has ever been required to submit such information.

13/ For example, Western Wireless was asked to provide a specific projection of the amounts of universal service support that it would receive in the future, "broken down into High Cost Loop Support, Local Switching Support, Safety Net Additive Support, Safety Valve Loop Cost Adjustment, and Interstate Common Line Support." *See* SD PUC Staff Sept. 13, 2002 Data Request #2. But competitive ETCs, particularly carriers newly entering the universal service support process, have no way to predict these amounts because the amounts depend largely on calculations conducted by USAC and NECA, which in turn are derived from confidential and proprietary data submitted by the ILECs.

14/ For example, Western Wireless was directed to provide details about the universal service plans available to business customers, the specific means to inform new customers of the applicable terms and conditions, and customers' right to withhold payment of disputed charges. None of these matters was included in the SD PUC's order as conditions to be covered in compliance filing. *Compare* SD PUC Comments at 7-8 (specific information requested from Western Wireless) *with Rural ETC Order*, ¶¶ 20-24.

15/ The audacity of SDTA's accusations against Western Wireless regarding the delays experienced here is particularly galling, given that SDTA itself was a principal factor in the delays that occurred from Western Wireless' initial ETC applications in 1998 through the present. At every single step along the way and in every hearing, SDTA was an officious intermeddler, casting unfounded aspersions on the validity of Western Wireless' filings. SDTA was the prime source of the anti-competitive arguments that ultimately were rejected not only by the FCC and the South Dakota Supreme Court but also, ultimately, by the SD PUC as well. Nonetheless, to SDTA, each day of delay interposed represented a small victory, in that more time passed during which a competitive entrant could not access the federal universal service fund in order to compete on a level playing field against SDTA's members.

In sum, good cause exists for the Bureau to grant the requested waiver, as in numerous other waivers granted in the past, given the “special circumstances” presented by the mismatch between the certification deadlines in the FCC’s rules and the circumstances facing any newly designated ETC. Moreover, grant of the waiver will advance the public interest and will benefit consumers in rural areas of South Dakota by promoting the provision of universal service and adhering to the principle of competitive neutrality. Accordingly, the Wireline Competition Bureau should follow its well-established precedent and issue a waiver of the certification deadline in the rules to enable Western Wireless to receive high-cost support, effective as of its January 2003 receipt of ETC designation for the rural ILEC study areas in South Dakota.

For the reasons stated above and in the waiver petition, Western Wireless respectfully submits that the requested waiver should be granted expeditiously.

Respectfully submitted,

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