

**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 )  
Sections 54.307(c) and 54.314(d) of the )  
Commission's Rules )

**To: Wireline Competition Bureau**

**WESTERN WIRELESS PETITION FOR WAIVER OF  
SECTIONS 54.307(c) AND 54.314(d) OF THE COMMISSION'S RULES**

Western Wireless Corporation ("Western Wireless"), by counsel and pursuant to Section 1.3 of the Commission's rules, hereby petitions for a waiver of the deadlines set forth in Sections 54.307(c) and 54.314(d)(4) of the rules for the filing of line counts and of annual certifications regarding the proper usage of high-cost universal service support. Grant of the waiver will enable Western Wireless to receive support for the service it provided as an eligible telecommunications carrier ("ETC") during the period from November 27, 2002 through June 30, 2003 for certain areas served by CenturyTel of Eagle, Inc. ("CenturyTel") in Colorado.

The Colorado Public Utilities Commission ("COPUC") recently issued a decision finding that Western Wireless had obtained ETC status in the specified CenturyTel service areas effective as of November 27, 2002. 1/ Western Wireless

---

1/ *Application of WWC Holding Co., Inc. for Designation as an Eligible Telecommunications Carrier*, Docket Nos. 00K-255T and 00A-174T, Decision Granting Motion for Clarification, Dec. No. C03-0975 (rel. Sept. 2, 2003) ("*Clarification Order*"). A copy is attached as Exhibit 1.

had already commenced providing universal service in these rural, high-cost areas that are eligible for universal service support prior to this date. Grant of the requested waiver would be consistent with well-established Commission precedent relating to waivers of these rules, and will advance the public interest and benefit consumers in rural areas of Colorado by promoting the provision of universal service and adhering to the principle of competitive neutrality.

### **Background**

On March 28, 2000, Western Wireless filed an application for designation as an ETC in both rural and non-rural study areas in Colorado. On November 14, 2000, Western Wireless entered into a Stipulation and Settlement Agreement with the Colorado Office of Consumer Counsel and COPUC Staff which provided that Western Wireless would be granted ETC status: (1) immediately for the Qwest service areas; (2) as of September 1, 2001 in certain rural exchanges, and (3) after approval by the FCC of service area redefinitions for the CenturyTel exchanges. In its *Initial ETC Decision* released May 4, 2001, the COPUC approved the Stipulation in part, but denied Western Wireless' request for ETC status in the rural service areas, including those of CenturyTel, where Western Wireless would not be providing service to the entire study area. <sup>2/</sup> Shortly thereafter, on June 19, 2001, the COPUC issued a decision on reconsideration in which it stated that its earlier decision "deferred" designation of Western Wireless as an ETC in the

---

<sup>2/</sup> *Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Carrier*, Docket Nos. 00K-255T and 00A-174T, Decision on Exceptions, Dec. No. C01-476 (COPUC rel. May 4, 2001). A copy is attached as Exhibit 2.

CenturyTel and other rural service areas, given that FCC approval would be required to permit such designation. <sup>3/</sup>

More than a year later, on August 1, 2002, the COPUC filed a petition seeking this Commission's agreement to a redefinition of the service areas of CenturyTel. A public notice seeking comment on the petition was released on August 26, 2002. <sup>4/</sup> Because the Commission did not act on the petition within 90 days of the public notice, the redefinition proposed by the COPUC was deemed approved as of November 27, 2002, pursuant to Section 54.207(c)(3)(ii) of the Commission's rules. <sup>5/</sup>

In response to a subsequent Motion for Clarification filed by Western Wireless, <sup>6/</sup> the COPUC on September 2, 2003 released a decision clarifying that Western Wireless' ETC designation with regard to the CenturyTel service areas had merely been "deferred" by the COPUC's earlier orders and that its ETC status with

---

<sup>3/</sup> *Western Wireless Holding Co., Inc.'s Application for Designation as an Eligible Telecommunications Carrier*, Docket Nos. 00K-255T and 00A-174T, Decision Denying Applications for Rehearing, Reargument or Reconsideration, Dec. No. C01-629 (COPUC rel. June 19, 2001) at 3 ("*Decision on Rehearing*").

<sup>4/</sup> *The Colorado Public Utilities Commission Petitions to Redefine the Service Area of CenturyTel of Eagle, Inc. in the State of Colorado*, Public Notice, DA 02-2087 (rel. Aug. 26, 2002).

<sup>5/</sup> See 47 C.F.R. § 54.207(c)(3)(ii) (providing that the service area definitions proposed by the state will be "deemed approved" and will take effect if the Commission does not act on the petition within 90 days of the public notice date).

<sup>6/</sup> Given the then-unconfirmed status of Western Wireless' ETC designation in the CenturyTel service areas, Western Wireless also filed a new application for ETC designation. In addition to the four CenturyTel wire centers originally requested by Western Wireless, the new application (COPUC Docket No. 03A-061T) also requested ETC designation in five additional CenturyTel wire centers. A decision with regard to these five newly-requested service areas is still pending and was not affected by the *Clarification Order*. See *Clarification Order* at 3-4.

respect to the pertinent portions of those areas automatically became effective as of November 27, 2002, the same date on which the service area redefinition was deemed approved. [7/](#)

Western Wireless first filed a certification pursuant to Section 54.314(d) for Colorado in September 2002, which made Western Wireless eligible for support in Colorado beginning January 1, 2003. Moreover, the line count data Western Wireless has filed did not include lines in the CenturyTel areas until the March 30, 2003 filing. Thus, in order to obtain universal service support from November 27, 2002 through June 30, 2003 for the CenturyTel areas, Western Wireless will need a waiver of the July 1, 2002 certification filing deadline contained in Section 54.314(d), and a waiver of the July 31, September 30, and December 30, 2002 line count filing deadlines. [8/](#)

---

[7/](#) *Clarification Order* at 5. In an earlier order, the COPUC made an identical determination with regard to the ETC status of N.E. Colorado Cellular, another CMRS provider, finding that its ETC designation for the CenturyTel areas became effective on November 27, 2003. *See Clarification Order* at 2.

[8/](#) The lines served by Western Wireless in the CenturyTel areas were reported on Western Wireless's March 30 and July 31, 2003 line count filings, but were characterized as "ineligible" because Western Wireless's ETC status for those areas had not yet been clarified. Accordingly, Western Wireless has not yet received support for those lines. Because these lines were reported by the deadline provided in the rules, however, Western Wireless believes that USAC may change the status of the lines to "eligible," without a need for a waiver of these filing deadlines. Nevertheless, to the extent the Commission believes that a waiver *is* needed to change the status of these lines, Western Wireless hereby requests such a waiver be granted for these filing dates as well.

## Request for Waiver

Under Section 1.3 of the Commission's rules, the Commission grants waivers of its rules when an applicant demonstrates that "special circumstances warrant a deviation from the general rule and such a deviation would serve the public interest." <sup>9/</sup> In general, the rules presume that a carrier has already been designated as an ETC, and require advance notice to enable USAC to calculate support for a quarter with sufficient advance notice. The rules are not designed for the case of a carrier receiving its initial ETC designation for a particular area, and certainly do not contemplate situations, such as here, where the carrier's ETC status is ambiguous and is not confirmed until *after* ETC designation became effective.

The Commission has recognized on numerous occasions involving both competitive ETCs and ILECs that that, under circumstances where a carrier first receives ETC designation for a particular area, delaying the disbursement of universal service support funds beyond the date of ETC designation would be inequitable and would frustrate the underlying purposes of the Commission's universal service rules. <sup>10/</sup> For example, in a recent case the Bureau held:

---

<sup>9/</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); 47 C.F.R. § 1.3. The Commission's rules provide, "The Wireline Competition Bureau . . . will, among other things . . . [a]ct on requests for interpretation or waiver of rules." 47 C.F.R. § 0.91(b); *see also* 47 C.F.R. § 0.291.

<sup>10/</sup> *N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission's Rules and Regulations*, 2003 WL 21729936 (Telecom. Access Pol. Div., Wireline Comp. Bur. 2003); *Western Wireless Corp., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations*, 2003 WL 21688132 (Telecom. Access Pol. Div., Wireline Comp. Bur. 2003); *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules*

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 an entire quarter*, as a result of a particular ETC designation having occurred after the certification filing deadline. We therefore find that RFB Cellular has demonstrated special circumstances that justify a waiver of section 54.314. In this instance, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certification. 11/

The situation here is even more compelling with regard to the length of time for which Western Wireless would be denied support. Without a grant of the instant waiver request, Western Wireless would be unable to obtain support for *more than seven months* in the CenturyTel areas. 12/

---

*and Regulations*, 18 FCC Rcd 7138 (Telecom. Access Pol. Div., Wireline Comp. Bur. 2003); *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); *West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Non-Rural Carriers*, 16 FCC Rcd 5784 (2001); *Petition of the Public Service Commission of the District of Columbia for Waiver*; *Petition for Waiver Filed By the New Jersey Board of Public Utilities*, 15 FCC Rcd 21996 (Com. Car. Bur. 2000); *American Samoa Government and the American Samoa Telecommunications Authority Petition for Waivers and Declaratory Rulings*, 14 FCC Rcd 9974 (Acctg. Policy Div., Com. Car. Bur., 1999); *Centennial Cellular Corp. Request for Waiver of Section 54.307(b) of the Commission's Rules*, 14 FCC Rcd 4350 (Acctg. Policy Div., Com. Car. Bur., 1999) ("*Centennial Cellular*"); *Sandwich Isles Communications, Inc. Petition for Waiver of Section 36.611 of the Commission's Rules*, 13 FCC Rcd 2407 (Acct'g 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 (Acct'g and Audits Div., Com. Car. Bur., 1997). Notably, all but one of these orders were adopted by the Bureau acting on delegated authority.

11/ *RFB Cellular*, 17 FCC Rcd at ¶ 8 (emphasis added). Importantly, the Commission also granted RFB's request for waiver of Section 54.307. *Id.* at ¶ 10.

12/ Specifically, Western Wireless would lose funding for the period from November 27, 2002 through June 30, 2003.

Grant of the waiver request would be in the public interest. As the Commission has repeatedly recognized in other cases, denying Western Wireless support for these extended time periods would frustrate the statutory goal of promoting the availability of universal service at affordable rates to consumers in high-cost, rural, and insular areas, and would undermine the Commission's established principle of competitive neutrality. <sup>13/</sup> The Commission's commitment to this principle is so strong that it has a policy of granting waivers not only where – as here – the carrier learned of its ETC status *after* the relevant filing deadlines, but even in cases where the carrier “overlooked” the filing deadline,<sup>14/</sup> and where the carrier and state commission were simply “unaware” of the filing requirements. <sup>15/</sup> Indeed, the Commission has never issued an order denying a request for waiver of Section 54.307 or 54.314(c).

---

<sup>13/</sup> See, e.g., *RFB Cellular* at ¶ 9.

<sup>14/</sup> See *Centennial Cellular* at ¶ 2.

<sup>15/</sup> See *Connecticut Department of Public Utility Control Request for Waiver*, 17 FCC Rcd 24,804 (Telecom. Access Pol. Div., Wireline Comp. Bur. 2002) at ¶ 4.

For the reasons stated above, Western Wireless respectfully requests that the Commission proceed consistent with existing precedent and waive the relevant line count and certification filing deadlines as requested herein so that Western Wireless may obtain the universal service support to which it otherwise would be entitled.

Respectfully submitted,

WESTERN WIRELESS CORPORATION

Gene A. DeJordy,  
Vice President of Regulatory Affairs  
James Blundell  
Director of External Affairs  
WESTERN WIRELESS CORP.  
3650 131st Ave., S.E., Ste. 400  
Bellevue, WA 98006  
(425) 586-8700

By: /s/ David L. Sieradzki  
Michele C. Farquhar  
David L. Sieradzki  
David L. Martin  
HOGAN & HARTSON L.L.P.  
555 Thirteenth St., N.W.  
Washington, D.C. 20554  
(202) 637-5600

Its Counsel

Mark Rubin  
Director of Federal Government  
Affairs  
WESTERN WIRELESS CORP.  
401 Ninth St., N.W., Ste. 550  
Washington, D.C. 20004  
(202) 654-5903

December 16, 2003