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Arizona Corporation Commission
DOCKETED

FEB 18 2005

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Docket No. T-04248A-04-0239

IN THE MATTER OF THE APPLICATION OF
WWC LICENSE LLC ("WESTERN WIRELESS
CORPORATION") FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
AND REDEFINITION OF RURAL TELEPHONE
COMPANY SERVICE AREA.

**WWC LICENSE LLC'S
RESPONSE TO STAFF REPORT**

Pursuant to the January 27, 2005 Procedural Order, WWC License LLC ("Western Wireless") submits its comments on the December 30, 2004 Staff Report.

EXECUTIVE SUMMARY

On December 30, 2004, Commission Staff submitted a Staff Report analyzing whether Western Wireless meets the requirements for designation as an eligible telecommunications carrier ("ETC") in accordance with 47 U.S.C. § 214(e)(2). Staff recommended that Western Wireless be designated as an ETC, subject to ten conditions. Western Wireless agrees with most of the Staff Report and believes that it is generally thoughtful, legally sound, and reasonable. Western Wireless is in full agreement with the Staff Report's analysis of Western Wireless' provision of the supported services, its ability to meet the service obligations of an ETC, its requested redefinition of the Verizon California service area, and that Western Wireless' designation serves the public interest.

1 Western Wireless does not entirely agree with the Staff that its proposed ten conditions
2 are necessary for the designation to serve the public interest. Western Wireless will, however,
3 accept these conditions, subject to several modifications consistent with how Western Wireless,
4 and the wireless industry generally, does business. Attached hereto is a "red-line" showing those
5 proposed modifications to the ten conditions. Western Wireless commits to serve as an ETC
6 under the ten conditions, as modified by the red-line. Finally, in order to preserve legal
7 arguments should the Commission not accept Western Wireless' modifications to the conditions,
8 this Response presents an analysis showing why it would be legally improper to impose tariffing
9 requirements and customer service rules on Western Wireless.
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1 **I. THE STAFF REPORT ACCURATELY DETERMINES THAT WESTERN**
2 **WIRELESS MEETS THE BASIC ETC DESIGNATION REQUIREMENTS.**

3 The Staff Report begins by accurately reciting the Procedural History and Background of
4 this Docket. The Staff Report presents an accurate and comprehensive summary of the basic
5 requirements for designation as a federal ETC. The applicant must be a common carrier, offer the
6 nine supported services throughout the service area, and advertise the availability of the services
7 using media of general distribution.

8 The Staff Report accurately concludes that Western Wireless has committed to offer and
9 advertise the nine supported services (and Lifeline and Link-Up) and that it already provides
10 "nearly complete service in its requested service area." The Staff Report reviews the substantial
11 commitments that Western Wireless has made regarding requests for service that arise outside of
12 its existing coverage, and finds that those commitments are sufficiently specific for it to conclude
13 that Western Wireless meets the requirement to offer the supported services throughout the
14 requested service area. The Staff Report likewise reviews Western Wireless' advertising
15 methods, finding that Western Wireless meets the advertising requirement.

16 Western Wireless appreciates Staff's detailed and accurate analysis of how Western
17 Wireless meets the basic ETC designation requirements. Western Wireless anticipates that this
18 analysis will help the parties and the Commission by showing that the issues presented by these
19 basic requirements are not significantly at issue in this docket.¹

20
21 **II. THE STAFF REPORT ACCURATELY DETERMINES THAT THE SERVICE**
22 **AREA REQUIREMENT FOR THE VERIZON CALIFORNIA, INC. STUDY**
23 **AREA SHOULD BE REDEFINED.**

24 Western Wireless has sought redefinition of the service area requirement of the rural
25 telephone company study area of Verizon California, Inc. ("Verizon"). On this issue, as well, the
26 Staff Report provides a useful and thorough discussion of the legal requirements, including the

27 ¹ Western Wireless notes that there appears to be a typographical error on Exhibit C to the Staff
28 Report. The Wire Center Code for the Salome wire center in the Southwestern Telephone Co.
study area is "SALMAZXC."

1 three Joint Board factors, that apply to Western Wireless' redefinition request. Significantly, the
2 Staff Report determines that because the Parker Dam wire center (the only wire center Western
3 Wireless is seeking to exclude from its ETC service area) has a higher population density than the
4 majority of the rural wire centers included in Western Wireless' service area, Western Wireless'
5 redefinition request does not present significant potential for cream-skimming. The Staff Report
6 correctly finds that Western Wireless' redefinition request should be granted because doing so is
7 not only appropriate in the context of the three Joint Board factors, but because doing so would be
8 consistent with past precedent of the Commission.
9

10 Western Wireless values the precise analysis that the Staff Report has brought to the
11 often-confusing issue of redefinition, and anticipates that as a result of Staff's conclusion, no
12 additional time need be spent addressing it.
13

14 **III. WESTERN WIRELESS PROPOSES MINOR MODIFICATIONS TO THE**
15 **CONDITIONS RECOMMENDED IN THE CONTEXT OF THE STAFF**
16 **REPORT'S PUBLIC INTEREST ANALYSIS.**

17 As with the basic ETC requirements and the redefinition issue, the Staff Report presents a
18 thorough and generally accurate analysis of the public interest analysis appropriate for the
19 designation of Western Wireless as a competitive ETC in a rural telephone company study area.
20 The Staff Report notes several public interest benefits attendant upon Western Wireless'
21 designation, including expanded local calling areas, the convenience, safety, and security
22 advantages of mobile service, advanced data services, and innovative bundled services. It further
23 accurately notes that although the FCC has expressed concern about growth in the size of the
24 universal service fund, Western Wireless' estimated funding levels would be de minimis, and that
25 growth in the size of the fund is a uniquely federal issue anyway. The Staff Report emphasizes
26 Western Wireless' voluntary commitment to the Cellular Telecommunications and Internet
27 Association ("CTIA") Consumer Code. In sum, the Staff Report recommends that Western
28

1 Wireless' ETC designation be granted, as doing so will be in the public interest. Western
2 Wireless agrees with this discussion of the public interest issues.

3 The Staff Report recommends, though, that Western Wireless' designation be subject to
4 ten conditions. Although, as addressed below, Western Wireless generally believes that the
5 imposition of these conditions is unnecessary and, in certain respects, improper, Western Wireless
6 has analyzed these conditions to determine whether it will be able to comply with them. Western
7 Wireless has determined that although it is prepared to accede to the vast majority of the
8 conditions, certain aspects present problems. Western Wireless respectfully recommends limited
9 minor modifications to the conditions. These modifications will make the conditions more
10 closely compatible with Western Wireless' business practices and the technological and market
11 realities of the wireless industry, while at the same time retaining the goals that Staff
12 contemplated when formulating them. If the modifications are accepted by the Commission,
13 Western Wireless will comply with the modified conditions upon designation as an ETC in
14 Arizona.
15

16
17 A "red-line" of the Staff Report, showing the proposed modifications, is attached as
18 **Exhibit A** hereto. Each modification to the redline proposed by Western Wireless is presented
19 herein with a short explanation of the rationale underlying Western Wireless' proposed
20 modification.
21

22 **A. The Formal Tariff-filing Process Contemplated in Condition 1 is Unnecessary**
23 **and Impracticable.**

24 1. Proposed Modification

- 25 1. Western Wireless shall docket an informational tariff with the Commission, setting
26 forth the rates, terms and conditions for its general services (including, but not
27 limited to, its Life Line and Link Up service) and other services for which it
28 receives Federal Universal Service Fund support in its ETC service area approved
herein within thirty (30) days of an Order in this matter. On ~~an ongoing~~ a
quarterly basis, or upon Commission Staff request, Western Wireless shall docket

1 its then-current rates, terms and conditions for its general services in the form of an
2 informational tariff, comply with ARS 40-367 in amending its tariffs.

3 2. Reasons for Modification

4 Western Wireless does not object to the general requirement that it keep the Commission
5 apprised of the rates, terms, and conditions of its service offerings. In fact, Western Wireless has
6 agreed to the submission of an informational Lifeline tariff as part of its ETC designation in other
7 states, and in the course of discovery in this case, it agreed to submit an informational tariff in this
8 case.² Western Wireless' chief concern with Condition 1 is with the reference to A.R.S. § 40-367.
9 This reference would arguably require thirty days notice to the Commission and the public before
10 any updated tariff can become effective. This thirty-day waiting period and the other formal
11 tariff-filing procedures set forth in A.R.S. § 40-367 serve no public interest purpose in the context
12 of Western Wireless' ETC designation, and are inconsistent with the concept of an "informational
13 tariff." Western Wireless understands that it was not Staff's intent in referencing A.R.S. § 40-367
14 to require such a 30-day waiting period.
15

16 The FCC has prohibited wireless carriers from filing tariffs, 47 C.F.R. § 20.15(c), and
17 determined that a tariff-filing requirement adversely impacts consumers:
18

19 In a competitive environment, requiring tariff filings can (1) take away carriers'
20 ability to make rapid, efficient responses to changes in demand and cost, and
21 remove incentives for carriers to introduce new offerings; (2) impede and remove
22 incentives for competitive price discounting, since all price changes are public,
23 which can therefore be quickly matched by competitors; and (3) impose costs on
24 carriers that attempt to make new offerings. . . . In light of the social costs of
25 tariffing, the current state of competition, and the impending arrival of additional
26 competition, particularly for cellular licensees, forbearance from requiring tariff
27 filings from cellular carriers, as well as other CMRS providers, is in the public
28 interest.

27 ² *Western Wireless Corporation's Objections and Responses to Arizona Corporation Commission*
28 *Staff's First Set of Data Requests, Response to STF 1-29.*

1 *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act Regulatory*
2 *Treatment of Mobile Services, GN Docket No. 93-252, 9 F.C.C.R. 1411, Second Report and*
3 *Order, FCC 94-31, ¶ 177 (rel. Mar. 7, 1994) ("Second Report and Order") (emphasis added).*

4 Subjecting Western Wireless to formal tariffing requirements would create the kinds of
5 administrative costs and consumer harm recognized by the FCC. Western Wireless does not
6 today file tariffs in Arizona, and is able to respond quickly to shifts in this highly competitive
7 market. If Western Wireless were to be required to prepare, file and await approval of any
8 modifications of service offerings, its regulatory costs will increase, and its flexibility to respond
9 to consumers will be diminished.

10
11 Staff has recommended that Western Wireless file an "informational tariff" that will
12 advise the Commission and Staff of its current offerings. An "informational" tariff by definition
13 should not be subject to all substantive requirements of a "formal" tariff. Consistent with Staff's
14 concerns that the Commission have access to information regarding Western Wireless' offerings,
15 Western Wireless proposes that it file an updated informational tariff each quarter, or upon
16 request of the Commission Staff. This will allow the Commission to be aware of its then-current
17 rate plans, terms and conditions but will not impose unnecessary administrative burdens on the
18 Commission and Western Wireless.

19
20 Accordingly, Western Wireless respectfully recommends that Staff Report Condition 1 be
21 amended as set forth above.

22
23 **B. The Advertising Plan Required by Condition 3 Can Encompass Both the**
24 **Lifeline Advertising Requirement and the Overall ETC Advertising**
25 **Commitment.**

26 1. Proposed Modification

- 27 3. Western Wireless shall docket its advertising plan for Lifeline and Link Up
28 services, for Staff's review, within sixty (60) days of a decision in this
29 matter or prior to commencing service, whichever occurs first. The
30 ~~Company must also~~ Western Wireless advertising plan shall demonstrate

1 its intention to advertise the supported services, including Lifeline and Link
2 Up, throughout its entire service area.

3 2. Reasons for Modification

4 This proposed modification is a clarification to Condition 3. In its original form, it was
5 not clear whether Condition 3 required a single filing or two separate filings. As modified,
6 Western Wireless would file a single advertising plan that would encompass advertising generally
7 and Lifeline and Link Up specifically.

8 Western Wireless believes that the most efficient and useful tool for Staff and the
9 Commission will be a single comprehensive advertising plan that will include advertising for
10 Lifeline and Link Up. Although Western Wireless will likely produce and use some advertising
11 and marketing materials that are specific to Lifeline and Link Up, its advertising of the
12 availability of Lifeline and Link Up could well also include many efforts that might not be strictly
13 limited to Lifeline and Link Up. Western Wireless thus respectfully requests that Condition 3 be
14 modified as set forth above.

15
16 C. Western Wireless' Current Maps Are Sufficient to Show Coverage as
17 Required by Condition 4.

18 1. Proposed Modification

19 4. Western Wireless shall publicly file, with its informational tariff, accurate
20 coverage area maps of the portions of its service areas for which this
21 Decision designates it an ETC within thirty (30) days of this Decision.
22 Western Wireless shall docket, by April 1 of each year, commencing with
23 2005, the most accurate coverage-area maps available in a form like that
24 attached hereto. Western Wireless shall also provide updated coverage-
25 maps upon request by the Commission. On an ongoing basis, prior to
26 entering into any service contract with a potential customer, Western
27 Wireless shall provide make available to that potential customer with
28 copies of the most accurate coverage-area maps available in a form like
that attached hereto, in order to enable the potential customer to ascertain
determine where, within the ETC designation areas, Western Wireless
predicts service availability for ~~can actually provide service to~~ that
customer.

1 2. Reasons for Modification

2 Western Wireless does not object to the general principle of keeping coverage maps on
3 file with the Commission or of ensuring that customers understand the extent of service coverage
4 at the time they initiate service. In fact, as Staff noted, Western Wireless is a signatory to the
5 CTIA Consumer Code, which includes a detailed provision requiring it to make maps available to
6 consumers.³

7
8 The minor modifications proposed by Western Wireless are intended to achieve two goals.
9 First, Western Wireless' would like to confirm that the maps it provides to consumers today –
10 consistent with the CTIA Code – are sufficient to meet Condition 4. Second, Western Wireless
11 has proposed modifying Condition 4 to reflect that due to the nature of wireless technology, maps
12 can show predicted signal availability, but cannot guarantee actual receipt of service at all times.

13
14 Western Wireless has developed a set of maps that it uses to demonstrate to consumers
15 and potential consumers the extent of its coverage in Arizona. Examples of these maps are
16 attached hereto as **Exhibit B**. In developing these maps, Western Wireless has struck a balance
17 between convenience to the consumer and detail. A larger map might provide more detail, but
18 would be impracticable to use at retail stores, on a website, or to mail to consumers, and thus
19 would be an inconvenience to consumers. If the modification to Condition 4 is accepted, the

20
21 ³ **"Make Available Maps Showing Where Service Is Generally Available.** Wireless carriers
22 will make available at point of sale and on their web sites maps depicting approximate voice
23 service coverage applicable to each of their rate plans currently offered to consumers. To enable
24 consumers to make comparisons among carriers, these maps will be generated using generally
25 accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps
26 will contain an appropriate legend concerning limitations and/or variations in wireless coverage
27 and map usage, including any geographic limitations on the availability of any services included
28 in the rate plan. Wireless carriers will periodically update such maps as necessary to keep them
reasonably current. If necessary to show the extent of service coverage available to customers
from carriers' roaming partners, carriers will request and incorporate coverage maps from
roaming partners that are generated using similar industry-accepted criteria, or if such information
is not available, incorporate publicly available information regarding roaming partners' coverage
areas." *CTIA Consumer Code*, Item 2.

1 Commission should attach maps like those in **Exhibit B** to the ETC designation order, making
2 clear to all parties what level of detail the Commission, Staff, and the public can expect.

3 Second, Western Wireless suggests that its maps should accurately predict service
4 availability rather than demonstrate where actual service can be received. Any wireless coverage
5 map predicts signal propagation based on technical information, topography, and the expected
6 customer equipment. Actual receipt of signal at a specific location and at a specific time may be
7 affected by weather conditions, buildings, and interference from other radio frequency signals,
8 foliage, a problem with the customer's handset, and other things. As a result, Western Wireless
9 (as other wireless providers) is careful to inform its customers that actual coverage may vary from
10 what is shown on predictive maps. This is consistent with industry standards, and it is fully
11 appropriate to tell customers about limitations that are inherent in the technology. Western
12 Wireless' proposed clarification to Condition 4 ensures that this practice is not compromised by
13 Western Wireless' ETC designation.

14 For these reasons, Western Wireless respectfully requests that Condition 4 be modified as
15 set forth above.

16 **D. Western Wireless' Current Business Records Are Sufficient to Comply with**
17 **Condition 5, and Certain Data Should Be Submitted Confidentially.**

18 1. Proposed Modification

- 19 5. Western Wireless shall be required to provide service quality data from
20 records kept in the Company's regular course of business following a
21 request by Commission Staff. Western Wireless shall provide such data
22 within the timeframe given in Staff's request to the Company. To the
23 extent any such data is confidential and proprietary, such data shall be
submitted to the Utilities Division as confidential pursuant to the Protective
Agreement in this docket.

24 2. Reasons for Modification

25 a. Western Wireless Keeps Records Concerning Service Quality

26 Western Wireless is willing to provide Commission Staff with service quality data in a
27 timely manner. The first proposed minor modification clarifies that Western Wireless' obligation
28

1 would be to provide information kept within the Company's regular course of business, and
2 would not be required to develop new mechanisms for recording service quality data solely to
3 meet Staff's requests for information. Western Wireless does not believe this modification will
4 prevent Staff from obtaining the information it would find relevant and necessary. For example,
5 should Staff request service quality information by "exchange" or "wire center," Western
6 Wireless is not likely to be able to provide that information. Western Wireless' network is not
7 engineered around the concept of a "wire center," as a single cell tower might serve multiple wire
8 centers. Rather than providing information by wire center, Western Wireless would expect to
9 provide information on a market, state, or region-wide basis. This meets the goals of Staff's
10 proposed condition without creating unnecessary administrative mechanisms associated with
11 Western Wireless' Arizona operations.

12 Accordingly, Western Wireless respectfully requests that Condition 5 be clarified to
13 ensure that the service quality data that Staff requests be information that Western Wireless
14 actually keeps in its regular course of business.

15 b. Certain Data Should be Submitted Confidentially
16

17 Western Wireless also proposes that Condition 5 be modified to provide for the
18 submission of confidential data. In the highly competitive CMRS arena, disclosure of certain
19 data, including service quality data, would provide an unfair competitive edge to Western
20 Wireless' competitors. This information is not generally available and is protected from
21 disclosure from competitors. Western Wireless requests the opportunity to submit such
22 information on a confidential basis. It is a simple matter to continue to use the Protective
23 Agreement (a copy of which is attached as Exhibit C) as a means to protect the confidentiality of
24 certain information that may be requested as part of the Commission's ongoing compliance
25 review of Western Wireless' ETC status. There is no harm to the public interest resulting from a
26 reservation of the rights of Western Wireless to maintain certain information as confidential.
27 Accordingly, Western Wireless respectfully requests that Condition 5 be modified to allow this
28 option.

1 E. The Rules In Condition 6 Should Be Specifically Identified, and Certain of
2 Them Should Not Be Imposed.

3 1. Proposed Modification

4 6. Western Wireless shall submit any consumer complaints that may arise
5 from its ETC service offerings to the Commission's Customer Service
6 Division, provide a regulatory contact, and comply with the following
7 provisions of the Commission's customer service rules, ~~including~~
8 ~~establishment of service, minimum customer information requirements,~~
9 ~~service connection and establishment, provision of service billing and~~
10 ~~collection, and termination of service.:~~

R14-2-503	<u>Establishment of Service</u>
R14-2-504	<u>Minimum Customer Information Requirements</u>
RI 4-2-505.A	<u>Service Connection and Establishment</u>
R14-2-507.A,C,D	<u>Provision of Service</u>
RI 4-2-508	<u>Billing and Collection</u>
R14-2-509*	<u>Termination of Service</u>
R14-2-510	<u>Customer Complaints</u>
	* <u>Except for R 14-2-509.A(2)</u>

11 Western Wireless shall include the Commission's Consumer Service Division's
12 telephone number on all bills issued to customers in its ETC service area.

13 2. Reasons for Modification

14 The Commission rules referenced in Condition 6 are generally inapplicable to Western
15 Wireless. They were developed for incumbent wireline providers who have monopolies in their
16 service areas; Western Wireless has no such monopoly power. In many respects, these rules do
17 not make sense as applied to Western Wireless' standard business practices. Further, like other
18 wireless providers, Western Wireless develops operational procedures on a multi-state basis, and
19 its operational efficiency is put at risk if it is required to adhere to different procedures in certain
20 portions of its Arizona service territory.

21 Nevertheless, after a close review of these rules, Western Wireless requests a limited
22 modification of Condition 6 to address only certain provisions that are especially burdensome or
23 that are inapplicable to Western Wireless.

24 Western Wireless seeks first to have Condition 6 clarified to specify that it is not subject
25 to the provisions of Rule R14-2-505.B. This provision, headed "Access line connection," clearly
26

1 has no applicability to Western Wireless' service, as Western Wireless does not provide or use
2 physical access lines to consumers. R-14-2-505.B(1) relates to provision of services beyond the
3 service access point and the cost of new construction and wiring inside consumers' residences.
4 There is no service access point for Western Wireless' service and Western Wireless' service does
5 not require the addition of wiring. R-14-2-505.B(2) relates to instances where the carrier must
6 provide additional facilities, such as underground wiring, to serve a customer. No such facilities
7 or underground wiring is needed as part of Western Wireless' service. R-14-2-505.B(3) relates to
8 easements and rights-of-way used by carriers to connect service. Western Wireless' service does
9 not involve the construction or installation of physical equipment on consumers' property, and so
10 no easements or rights-of-way are needed.
11

12 Western Wireless also seeks to have Condition 6 clarified to specify that it is not subject
13 to the provisions of Rule R14-2-507.B and E. It is evident from the heading of Rule R14-2-
14 507.B, "Customer responsibility," that it addresses obligations of consumers with regard to carrier
15 equipment located on or near their premises. Western Wireless will have no equipment located
16 on or near consumers' premises, and so these requirements are inapplicable to its service. Rule
17 R14-2-507.E requires that carriers construct their facilities in accordance with certain National
18 Electrical Safety Code provisions, and it is intended to protect consumers from faulty installation
19 of carrier equipment on or near their premises. Again, this provision is inapplicable in the case of
20 Western Wireless, because it does not have equipment on or near customers' premises.⁴
21
22

23 Finally, Western Wireless seeks to have Condition 6 clarified to specify that it is not
24 subject to Rule R14-2-509A.2, which would prohibit the Company from disconnecting service to
25 a customer for failure to pay for "services and equipment not regulated by the Commission." As
26

27 ⁴ In addition, standards for cell site construction are already set forth in FCC Rules, and are also
28 generally addressed in site lease agreements that Western Wireless enters into with landowners.

1 is standard in the wireless industry, Western Wireless often provides cellular handsets to
2 customers as part of its overall service package. In some cases, the handset is sold to the
3 consumer, with the consumer making monthly payments for the handset. In addition, consumer
4 demand has required the wireless industry to provide service packages that bundle local minutes,
5 long distance minutes, data services, and advanced non-voice features. As a result, there is no
6 way to distinguish local services from other services as contemplated by the Rule.
7

8 For example, a Western Wireless customer may subscribe to a plan priced at \$45 per
9 month that includes 450 anytime minutes, free night and weekend minutes, free long distance,
10 free roaming, voice mail, and text messaging capability. If this customer stops paying his or her
11 bill, Western Wireless would have the right, under its service contract, to disconnect service.
12 Rule R14-2-509A.2 prohibits disconnection for failure to pay for unregulated services. While it
13 is clear what that means in the landline context, it is unclear how that standard would apply to the
14 above example. Because Western Wireless does not sell service packages that are limited to
15 "local" services, and does not separately price "local" features, the rule simply does not apply.
16 This is an example of a rule that was developed to meet the needs of a specific monopoly market,
17 and cannot be applied to the way in which a market forces have required a regional wireless
18 carrier like Western Wireless to do business.
19

20 Western Wireless requests that Condition 6 be modified to exclude Rule R14-2-509.A.2,
21 and the other Rules discussed herein, as these Rules are inapplicable in the context of the wireless
22 industry.
23

24 **F. Condition 8 Should Be Clarified To Reflect the Records That Western**
25 **Wireless Must Keep.**

26 1. Proposed Modification

- 27 8. Western Wireless shall maintain and retain auditable records of all
28 expenditures made for the provision, maintenance, and upgrading of
facilities and services, pursuant to Section 254(e) of the 1996 Act of

1 ~~universal service funds received as a result of the ETC designation granted~~
2 ~~herein, and. Western Wireless shall be required to submit to an audit of its~~
3 ~~such expenditures, and a reconciliation of such expenditures with its~~
4 ~~federal universal service funds received, of its universal service funds upon~~
5 ~~a request by Commission Staff. Any such records provided to Commission~~
6 ~~Staff in connection with the audit will be submitted to the Utilities Division~~
7 ~~as confidential pursuant to the Protective Agreement in this docket.~~

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2. Reasons for Modification

a. The Records Required By Condition 8 Should Be More Specifically Identified.

Western Wireless does not object to the general goal of Condition 8 – to allow the Commission Staff to relate the federal universal support Western Wireless receives to the universal-service related expenditures it makes. Western Wireless can and will keep auditable records of those expenditures which are made for the provision, maintenance, and upgrading of facilities and services, pursuant to Section 254(e) of the 1996 Act. Those records will show that qualified expenses exceed support received. However, Western Wireless does not and cannot keep records that specifically correlate each universal service dollar to a specific expenditure. This is not required by the FCC, and not something that other state commissions require. Nor is it a requirement imposed on all ETCs equally. It is an unnecessary administrative burden that does not serve the public interest. Should Staff decide that an audit is necessary, it can use Western Wireless' existing records to reconcile the receipt of funds against total expenditures, which meets the needs of 47 U.S.C. § 254(e). Western Wireless therefore respectfully requests that Condition 8 be modified to reflect that should an audit occur, Western Wireless will provide the records that it keeps to allow the Staff to perform the audit.

b. Confidentiality

The information that could result from the audit required by Condition 8 will likely include information about Western Wireless' network costs, network upgrade plans, technical capabilities, subscriber lists, and other similar competitively sensitive information. For the

1 reasons stated in Section III.D.2.b above, Western Wireless requests that Condition 8 be amended
2 to provide for the confidential submission of certain information.

3 **G. Condition 9 Should Be Modified.**

4 1. Proposed Modification

- 5 9. Western Wireless shall ~~docket~~ submit to the Utilities Division a plan that
6 details proposed projects to be supported by the Federal Universal Service
7 Fund within ninety (90) days after an Order in this matter. This plan may
8 be submitted as confidential pursuant to the Protective Agreement in this
9 docket.

10 2. Reasons for Modification

- 11 a. Western Wireless' plan should be submitted confidentially to the
12 Commission, not formally docketed with the Commission

13 The use of the term "docket" in Condition 9 suggests that the required plan will be
14 publicly filed with the Commission. Western Wireless does not object to providing the plan for
15 the Commission Utilities Division to review.

16 However, the plan to be submitted under Condition 9 will likely include information about
17 Western Wireless' cell tower locations, technical capabilities, costs, and buildout plans. Because
18 it will detail proposed projects, it may include information that is even more competitively
19 sensitive than information about the Company's existing facilities. For the reasons stated in
20 Section III.D.2.b above, Western Wireless requests that Condition 8 be amended to provide for
21 the confidential submission of certain information.

22 **H. Condition 10 Should Be Modified.**

23 1. Proposed Modification

- 24 10. Western Wireless shall be required to ~~docket~~ submit to the Utilities
25 Division an annual filing detailing how it is utilizing its federal high-cost
26 support for its Arizona exchanges, service quality performance data, and
27 consumer complaint data. This annual ~~filing~~ submission should reflect the
28 calendar year and should be due by April 1 of the first four years following
ETC approval, beginning with April 1, 2006, and ending on April 1, 2009.

1 This filing may be submitted as confidential pursuant to the Protective
2 Agreement in this docket.

3 2. Reasons for Modification

4 a. Confidential submission of filing

5 For the reasons stated in Section III.G.2.a above, Western Wireless requests that
6 Condition 10 be amended to clarify that Western Wireless will be submitting, not docketing, the
7 required annual filing.

8 The annual filing contemplated in Condition 10 will likely include information about
9 Western Wireless' cell tower locations, technical capabilities, and subscriber base. For the
10 reasons stated in Section III.D.2.b above, Western Wireless requests that Condition 10 be
11 amended to allow the annual filing to be submitted confidentially.
12

13 IV. THE COMMISSION SHOULD NOT IMPOSE TARIFFING AND CUSTOMER
14 SERVICE RULES ON WESTERN WIRELESS.

15 Although Western Wireless is willing to provide service as an ETC under the conditions
16 proposed in the Staff Report, as modified, Western Wireless respectfully maintains that the
17 tariffing requirement in Condition 1, and the imposition of customer service rules in Condition 6
18 are unnecessary and legally improper. In order to preserve its rights should the Commission find
19 its proposed modifications to the conditions unacceptable, Western Wireless presents the
20 following brief summary of why the Commission should not impose these conditions on Western
21 Wireless.

22 A. The Conditions Are Unnecessary.

23 1. Nothing in the Staff Report Demonstrates that the Conditions Are
24 Necessary.

25 As noted above, the Staff Report comprehensively sets forth the law applicable to Western
26 Wireless' ETC designation and the facts that Western Wireless has presented in support of its
27 application. The Staff Report notes that Western Wireless, the applicant in this matter, has the
28

1 burden of proof to demonstrate that its designation would be in the public interest. It also states a
2 number of reasons why designating Western Wireless as an ETC would be in the public interest,
3 including increased competitive choice, the mobility of Western Wireless' service, and a number
4 of service features, such as increased local calling area and data services. In other words,
5 Western Wireless has met its burden of proof – there are affirmative public interest reasons in
6 favor of its designation.
7

8 In contrast, there are no facts presented in the Staff Report that support a finding that
9 Western Wireless' designation is only in the public interest if Western Wireless provides service
10 under tariff and in compliance with the Commission's LEC-based service quality rules. There is
11 no evidence presented in the Staff Report that without the conditions Western Wireless'
12 designation would cause harm to consumers, competition, or other carriers. Without such
13 evidence, the Staff's ultimate determination, that Western Wireless' designation is only in the
14 public interest subject to these conditions is without support.
15

16 Although the Staff Report does not present any evidence for a finding that designation is
17 only in the public interest if accompanied by tariff and customer service standards, it does present
18 three distinct rationales for the imposition of the conditions. It notes that Western Wireless has
19 not made any specific commitments with respect to service quality, that there should be
20 consequences in case Western Wireless fails to keep its ETC commitments, and that there is no
21 formal body that monitors its compliance with the CTIA Consumer Code. These rationales do
22 not support the conclusion that the conditions should be imposed.
23

24 First, Western Wireless *has* made commitments with regard to service quality. It has
25 committed to provide the nine supported services consistent with the obligations of an ETC. In
26 addition, Western Wireless is a voluntary signatory to the CTIA Code, which includes service
27 quality commitments that the FCC has endorsed as sufficient to demonstrate a wireless carrier's
28

1 commitment to high quality service. *Virginia Cellular, LLC Petition for Designation as an*
2 *Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45,
3 *Memorandum Opinion and Order*, FCC 03-338, ¶ 30 & n. 94 (rel. Jan. 22, 2004) ("*Virginia*
4 *Cellular*").

5
6 Second, Western Wireless is *already* subject to consequences if it fails to maintain its
7 ETC commitments. If the Commission finds that Western Wireless has somehow failed to
8 provide the nine supported services, it can rescind the Company's ETC designation. Moreover, if
9 Western Wireless fails to provide high-quality service in a competitive market, it will be subject
10 to perhaps the most important competitive consequence: it will lose customers. Because a
11 competitive ETC receives support only for those customers that choose its service, this will be the
12 ultimate sanction for the failure to provide high-quality services.

13
14 In sum, the three rationales presented in the Staff Report for the imposition of the
15 conditions either already are being addressed, or will be addressed by a highly competitive
16 market. Since there are no facts showing that designation would harm the public interest, and
17 there is no rationale that compels the imposition of these conditions, should not be imposed by the
18 Commission in this proceeding.

19
20 2. Tariff and Customer Service Standards Conflict with the FCC's Decisions
Regarding the Best Way to Regulate Wireless Markets.

21 Congress recognized in the Communications Act of 1934 that radio waves by nature do
22 not conform to geographic boundary lines, and thus it sought to implement a "unified and
23 comprehensive regulatory system" for radio transmissions. *National Broadcasting Co. v. United*
24 *States*, 319 U.S. 190, 214 (1943). Congress accordingly gave the FCC exclusive authority to
25 "prescribe such rules and regulations as may be necessary in the public interest to carry out the
26 provisions of [the Communications Act]." 47 U.S.C. § 201(b). Radio communications, e.g.,
27 CMRS, are specifically included within the scope of the Act. 47 U.S.C. § 201(a). The purpose of
28

1 the FCC's exclusive authority over CMRS carriers was "to establish a national regulatory policy
2 for [wireless telephone service], not a policy that is balkanized state-by-state." *In the Matter of*
3 *Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of*
4 *the Rates of Wholesale Cellular Service Providers in the State of Connecticut*, PR Docket No. 94-
5 106, *Report and Order*, FCC 95-199, ¶ 14 (rel. May 19, 1995), *aff'd sub nom. Conn. Dept. of Pub.*
6 *Util. Control v. FCC*, 78 F.3d 842 (2nd Cir. 1996).

8 Congress directed the FCC to monitor wireless markets and establish appropriate levels of
9 regulation to ensure maximized competition. 47 U.S.C. § 332(c)(1)(C). The FCC has followed
10 this directive, frequently reviewing the wireless market and making policy decisions regarding
11 how it should be regulated. *See, e.g., Second Report and Order*. The FCC has consistently based
12 its regulatory and policy decisions on the proven premise that market conditions, not regulatory
13 requirements, should govern the provision of CMRS. As one court put it, the FCC's regulatory
14 policy regarding CMRS is that "[a] carrier's success 'should be driven by technological
15 innovation, service quality, competition-based pricing decisions, and responsiveness to consumer
16 needs – and not by strategies in the regulatory areas.'" *Orloff v. FCC*, 352 F.3d 415, 419 (D.C.
17 Cir. 2003) (quoting the *Second Report and Order*).

19 The FCC followed this policy ten years ago when it declined this Commission's request to
20 regulate intrastate CMRS. *In the Matter of Petition of Arizona Corporation Commission*, 10 FCC
21 Rcd 7424 ¶ 69 (1995). Even then, in a must less competitive market than we have today, the FCC
22 determined that:

24 [I]n implementing the preemption provisions of the new statute, we have provided that
25 states must, consistent with the statute, clear substantial hurdles if they seek to
26 continue or initiate rate regulation of CMRS providers. While we recognize that states
27 have a legitimate interest in protecting the interests of telecommunications users in
28 their jurisdictions, we also believe that competition is a strong protector of these
interests and that state regulation in this context could inadvertently become as [sic] a
burden to the development of this competition. Our preemption rules will help
promote investment in the wireless infrastructure by preventing burdensome and

1 unnecessary state regulatory practices that impede our Federal mandate for regulatory
2 parity.

3 *Id.* ¶ 4.

4 The FCC's pro-competitive policies have proven successful. CMRS service has grown
5 rapidly, the wireless industry is vigorously competitive, and rates for service have gone down as
6 competition has grown. *In the Matter of Implementation of Section 6002(b) of the Omnibus*
7 *Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market*
8 *Conditions With Respect to Commercial Mobile Services*, WT Docket 04-111, Ninth Report, FCC
9 04-216, ¶¶ 2, 3, 168-171 (rel. Sept. 28, 2004) ("*2004 Competition Report*").
10

11 When it began implementing the 1996 Act, the FCC made clear that its regulatory
12 treatment of the wireless industry would not change as wireless carriers began participating in
13 universal service programs:

14 Treatment of Particular Classes of Carriers. We agree with the Joint Board's
15 analysis and recommendation that any telecommunications carrier using any
16 technology, including wireless technology, is eligible to receive universal service
17 support if it meets the criteria under section 214(e)(1). We agree with the Joint
18 Board that any wholesale exclusion of a class of carriers by the Commission would
19 be inconsistent with the language of the statute and the pro-competitive goals of
20 the 1996 Act. The treatment granted to certain wireless carriers under section
21 332(c)(3)(A) does not allow states to deny wireless carriers eligible status.

22 *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report*
23 *and Order*, ¶ 145 (rel. May 8, 1997) ("*Universal Service Order*") (emphases added). The FCC
24 reaffirmed this policy in a subsequent order:

25 We also reaffirm that under section 214(e), a state commission must designate a
26 common carrier, including carriers that use wireless technologies, as an eligible
27 carrier if it determines that the carrier has met the requirements of section
28 214(e)(1). We re-emphasize that the limitation on a state's ability to regulate rates
and entry by wireless service carriers under section 332(c)(3) does not allow the
states to deny wireless carriers ETC status.

Seventh Report and Order, ¶ 72 (emphases added).

1 Furthermore, as it implemented the universal service provisions of the Act, the FCC
2 considered and rejected assertions by some commenters that all ETCs should be subject to
3 comparable regulatory treatment, i.e., that incumbent ETCs, competitive landline ETCs, and
4 wireless ETCs should be subject to the same set of regulatory requirements:

5
6 142. Several commenters maintain that, in order to create an equitable and
7 sustainable federal universal service system and to prevent competitive carriers
8 from attracting only those customers that order the most profitable services, the
9 Commission must subject all eligible carriers to the regulatory requirements that
10 govern ILECs, including pricing, marketing, service provisioning, and service
11 quality requirements, as well as carrier of last resort (COLR) obligations. We
reject proposals to impose these additional obligations as a condition of being
designated an eligible telecommunications carrier pursuant to section 214(e)
because section 214(e) does not grant the Commission authority to impose
additional eligibility criteria.

12 143. We emphasize that, even if we had the legal authority to impose additional
13 obligations as a condition of being designated an eligible telecommunications
14 carrier, we agree with the Joint Board that these additional criteria are unnecessary
to protect against unreasonable practices by other carriers.

15 *Universal Service Order*, ¶¶ 142-143 (emphases added).⁵

16 The imposition of tariff and LEC customer service standards is based on a
17 recommendation that comparable regulatory treatment is necessary to serve the public interest,
18 when the FCC has specifically determined that not to be the case. The Commission should honor
19 the regulatory decisions of the FCC regarding the wireless industry, and decline to impose LEC-
20 rules on Western Wireless as a condition of ETC designation.

21
22 3. The Commission Should Follow the FCC's Guidance in *Virginia Cellular*
and Reject the Imposition of Condition 6

23 The Staff Report relies heavily on *Virginia Cellular*, which is appropriate as that is the
24 leading recent case concerning ETC designation. *Virginia Cellular* illustrates how the FCC's pro-
25

26
27 ⁵ In drawing this conclusion the FCC specifically noted that some carriers argued that
28 "irrespective of the obligations of ILECs, all eligible carriers should assume quality of service
obligations" *Id.* ¶ 142 n. 347.

1 competitive viewpoint with regard to wireless carriers applies in the context of ETC designations.
2 In that case, the FCC was confronted with the exact concern noted in the Staff Report: that
3 wireless carriers are often not subject to mandatory service quality standards. *Virginia Cellular*, ¶
4 30. The FCC rejected the claim that mandatory service quality standards were required to serve
5 the public interest. Instead, it found that the applicant's commitments to comply with the CTIA
6 Code and to provide the Commission with the number of complaints per 1,000 handsets
7 illustrated its "commitment to high service quality" consistent with the public interest, and
8 "adequately address[ed] any concerns about the quality of its wireless service." *Id.* Western
9 Wireless has made nearly identical commitments, yet the Staff Report recommends the
10 imposition of additional conditions, many of which will impose administrative burdens while
11 yielding little benefit to consumers. Instead of imposing the conditions, the Commission should
12 follow the lead of the FCC, which is, after all, the agency ultimately responsible for establishing
13 universal service rules and policies. The imposition of LEC-based service standards are not
14 necessary to serve the public interest in *Virginia Cellular*, and so are not necessary in this case.

17 **B. The Imposition of Tariffing Requirements is Preempted by 47 U.S.C.**
18 **§ 332(c)(3)(A).**

19 Section 332(c)(3)(A) broadly preempts states from regulating CMRS rates. As was stated
20 by the Seventh Circuit Court of Appeals stated:

21 There can be no doubt that Congress intended complete preemption when it said 'no
22 State or local government shall have any authority to regulate the entry of or the rates
23 charged by an commercial mobile service.' (emphasis added by Court).

24 *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983, 986-87 (7th Cir. 2000). As noted above,
25 this Commission requested, and was denied, permission to regulate CMRS rates in Arizona. *See*
26 *In the Matter of Petition of Arizona Corporation Commission*, 10 FCC Rcd 7424 (1995).

27 If the Commission were to require Western Wireless to price its offerings out of tariffs, to
28 comply with formal tariff requirements, or to hold implement pricing changes only upon notice to

1 the Commission, this would be a clear regulation of CMRS rates in violation of 47 U.S.C. §
2 332(c)(3)(A).

3 **C. The Staff Report Proposes that the Commission Regulate Interstate Services.**

4 Conditions 1 and 6 of the Staff Report would require Western Wireless to comply
5 generally with the Commission's tariffing and customer service rules. This would require the
6 Commission to take regulatory authority over interstate services that are within the sole
7 regulatory jurisdiction of the FCC. For this reason, these conditions should not be imposed.

8
9 When it enacted 47 U.S.C. § 151, Congress assumed federal authority over "all interstate
10 and foreign commerce in communication by wire and radio." 47 U.S.C. § 151. Congress also
11 enacted Section 152(b), which is a savings clause that reserved to the states authority to regulate
12 only "intrastate communications service." *See* 47 U.S.C. § 152(b).⁶ This regulatory distinction
13 has been enforced aggressively for decades:

14
15 [Q]uestions concerning the duties, charges and liabilities of telegraph or telephone
16 companies with respect to interstate communications service are to be governed
solely by federal law . . . and states are precluded from acting in this area.

17 *Ivy Broad. Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968). *See also AT&T*
18 *Communications of the Mountain States, Inc v. Pub. Serv. Comm'n*, 625 F. Supp. 1204, 1208 (D.
19 Wyo. 1985) ("It is beyond dispute that interstate telecommunications service is normally outside
20 the reach of state commissions and within the exclusive jurisdiction of the FCC. . . . Exclusive
21 FCC jurisdiction over interstate matters is well-established, absent a clear, express deferral.").

22
23 The FCC has recently recognized that similar state regulation cannot be allowed to apply
24 to interstate services. *In the Matter of Vonage Holdings Corporation Petition for Declaratory*

25
26 ⁶ It should be noted that Congress amended the Communications Act to exclude wireless phone
27 services from the general prohibition on FCC regulation of intrastate telecommunications
28 services.

1 *Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-
2 211, 2004 WL 2601194, FCC 04-267 (rel. Nov. 12, 2004) ("*Vonage Order*"). In the *Vonage*
3 *Order*, the FCC addressed Minnesota's attempt to regulate internet voice service offerings
4 (referred to as "DigitalVoice Service"), which by their nature include both interstate and intrastate
5 services. *Vonage Order*, ¶ 18. The FCC began by recognizing that Congress has given the FCC
6 "exclusive" jurisdiction over interstate communications, i.e., communications that begin and end
7 in different states. *Vonage Order*, ¶¶ 16-17. Because DigitalVoice Service "enables interstate
8 communications," it is a "jurisdictionally mixed" service, and the FCC "has exclusive jurisdiction
9 under the Act to determine the policies and rules, that govern the interstate aspect of DigitalVoice
10 service." *Vonage Order*, ¶ 18.

11
12 The FCC then recognized that a state commission must separate out and regulate only the
13 intrastate services, and that any regulation that fails to respect that boundary "produces a direct
14 conflict with our federal law and policies, and impermissibly encroaches on our exclusive
15 jurisdiction over interstate services." *Vonage Order*, ¶ 22. The FCC provided some examples of
16 how Minnesota's proposed regulation of DigitalVoice Service would unlawfully extend to
17 interstate services:
18

19 26. . . . For example, assume Minnesota were to use DigitalVoice subscribers'
20 NPA/NXXs as a proxy for those subscribers' geographic locations when making or
21 receiving calls. If a subscriber's NPA/NXX were associated with Minnesota under
22 the NANP, Minnesota's telephone company regulations would attach to every
23 DigitalVoice communication that occurred between that subscriber and any other
24 party having a Minnesota NPA/NXX. But because subscribers residing anywhere
could obtain a Minnesota NPA/NXX, a subscriber may never be present in
Minnesota when communicating with another party that is, yet Minnesota would
treat those calls as subject to its jurisdiction.

25 27. Similarly, if a Minnesota NPA/NXX subscriber residing in Minnesota used its
26 service outside the state to call someone in Minnesota, that call would appear to be
an intrastate call when it is actually interstate. . . .

27 28. We further consider whether Minnesota could assert jurisdiction over
28 DigitalVoice communications based on whether the subscriber's billing address or

1 address of residence are in Minnesota. This too fails. When a subscriber with a
2 Minnesota billing address or address of residence uses DigitalVoice from any
3 location outside the state to call a party located in Minnesota, Minnesota would
4 treat that communication as "intrastate" based on the address proxy for that
5 subscriber's location, yet in actuality it would be an interstate call.

6 *Vonage Order*, ¶ 26-28 (footnotes omitted) (emphases added). The FCC's conclusion was clear –
7 state regulation that extends to and regulates interstate services is unlawful.

8 As a result, even if a state were to seek to take regulatory control over a wireless ETC's
9 service offerings, that regulation could concern only those aspects of the service that can be
10 specifically identified as wholly intrastate in nature. This is a near impossibility, though, because
11 most wireless carriers, including Western Wireless, bundle intrastate and interstate services
12 together in service packages. Western Wireless' service offerings do not distinguish or separately
13 bill interstate versus intrastate calls. The conditions recommended in the Staff Report would
14 apply to calls made between Arizona and other states, so long as the end user customer is a
15 universal service customer of Western Wireless. Thus, Conditions 1 and 6 in the Staff Report
16 would directly regulate interstate services. Because the proposed tariffing and customer service
17 regulations will impermissibly intrude into interstate communications, they should not be
18 imposed.

19 **V. CONCLUSION**

20 For the above reasons, Western Wireless respectfully requests that the Commission accept
21 the Staff Report, as modified, and designate Western Wireless as an ETC.
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RESPECTFULLY SUBMITTED this 18th day of February, 2005.

WWC LICENSE LLC

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Exhibit "A"

1. Western Wireless shall docket an informational tariff with the Commission, setting forth the rates, terms and conditions for its general services (including, but not limited to, its Life Line and Link Up service) and other services for which it receives Federal Universal Service Fund support in its ETC service area approved herein within thirty (30) days of an Order in this matter. On an ongoing a quarterly basis, or upon Commission Staff request, Western Wireless shall docket its then-current rates, terms and conditions for its general services in the form of an informational tariff, comply with ARS 40-367 in amending its tariffs.
2. Western Wireless shall make available Lifeline and Link Up services to qualifying low-income applicants in its ETC service area no later than ninety (90) days after a Commission Decision. Western Wireless shall docket a letter providing notification of the commencement date for the service within one hundred (100) days of a Commission decision.
3. Western Wireless shall docket its advertising plan for Lifeline and Link Up services, for Staff's review, within sixty (60) days of a decision in this matter or prior to commencing service, whichever occurs first. The Company must also Western Wireless advertising plan shall demonstrate its intention to advertise the supported services, including Lifeline and Link Up, throughout its entire service area.
4. Western Wireless shall publicly file, with its informational tariff, accurate coverage area maps of the portions of its service areas for which this Decision designates it an ETC within thirty (30) days of this Decision. Western Wireless shall docket, by April 1 of each year, commencing with 2005, the most accurate coverage-area maps available in a form like that attached hereto. Western Wireless shall also provide updated coverage-maps upon request by the Commission. On an ongoing basis, prior to entering into any service contract with a potential customer, Western Wireless shall provide make available to that potential customer with copies of the most accurate coverage-area maps available in a form like that attached hereto, in order to enable the potential customer to ascertain determine where, within the ETC designation areas, Western Wireless predicts service availability for can actually provide service to that customer.
5. Western Wireless shall be required to provide service quality data from records kept in the Company's regular course of business following a request by Commission Staff. Western Wireless shall provide such data within the timeframe given in Staff's request to the Company. To the extent any such data is confidential and proprietary, such data shall be submitted to the Utilities Division as confidential pursuant to the Protective Agreement in this docket.
6. Western Wireless shall submit any consumer complaints that may arise from its ETC service offerings to the Commission's Customer Service Division, provide a regulatory contact, and comply with the following provisions of the Commission's customer service rules, including establishment of service, minimum customer information requirements, service connection and establishment, provision of service billing and collection, and termination of service.;

<u>R14-2-503</u>	<u>Establishment of Service</u>
<u>R14-2-504</u>	<u>Minimum Customer Information Requirements</u>
<u>RI 4-2-505.A</u>	<u>Service Connection and Establishment</u>
<u>R14-2-507.A,C,D</u>	<u>Provision of Service</u>
<u>RI 4-2-508</u>	<u>Billing and Collection</u>
<u>R14-2-509*</u>	<u>Termination of Service</u>
<u>R14-2-510</u>	<u>Customer Complaints</u>
	<u>* Except for R 14-2-509.A(2)</u>

Western Wireless shall include the Commission's Consumer Service Division's telephone number on all bills issued to customers in its ETC service area.

7. Western Wireless shall be required to utilize all federal high-cost support for its rural ETC service area within the State of Arizona. Western Wireless shall docket an affidavit confirming that all federal high-cost support for its Arizona exchanges will only be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with Section 254(e) of the 1996 Act. This affidavit shall reflect the calendar year and be due by April 1 of each year following ETC approval, beginning with April 1, 2006.
8. Western Wireless shall maintain and retain auditable records of all expenditures made for the provision, maintenance, and upgrading of facilities and services, pursuant to Section 254(e) of the 1996 Act of universal service funds received as a result of the ETC designation granted herein, and. Western Wireless shall be required to submit to an audit of its such expenditures, and a reconciliation of such expenditures with its federal universal service funds received, of its universal service funds upon a request by Commission Staff. Any such records provided to Commission Staff in connection with the audit will be submitted to the Utilities Division as confidential pursuant to the Protective Agreement in this docket.
9. Western Wireless shall ~~docket~~ submit to the Utilities Division a plan that details proposed projects to be supported by the Federal Universal Service Fund within ninety (90) days after an Order in this matter. This plan may be submitted as confidential pursuant to the Protective Agreement in this docket.
10. Western Wireless shall be required to ~~docket~~ submit to the Utilities Division an annual filing detailing how it is utilizing its federal high-cost support for its Arizona exchanges, service quality performance data, and consumer complaint data. This annual ~~filing~~ submission should reflect the calendar year and should be due by April 1 of the first four years following ETC approval, beginning with April 1, 2006, and ending on April 1, 2009. This filing may be submitted as confidential pursuant to the Protective Agreement in this docket.

Exhibit "B"

Exhibit B
Map 1

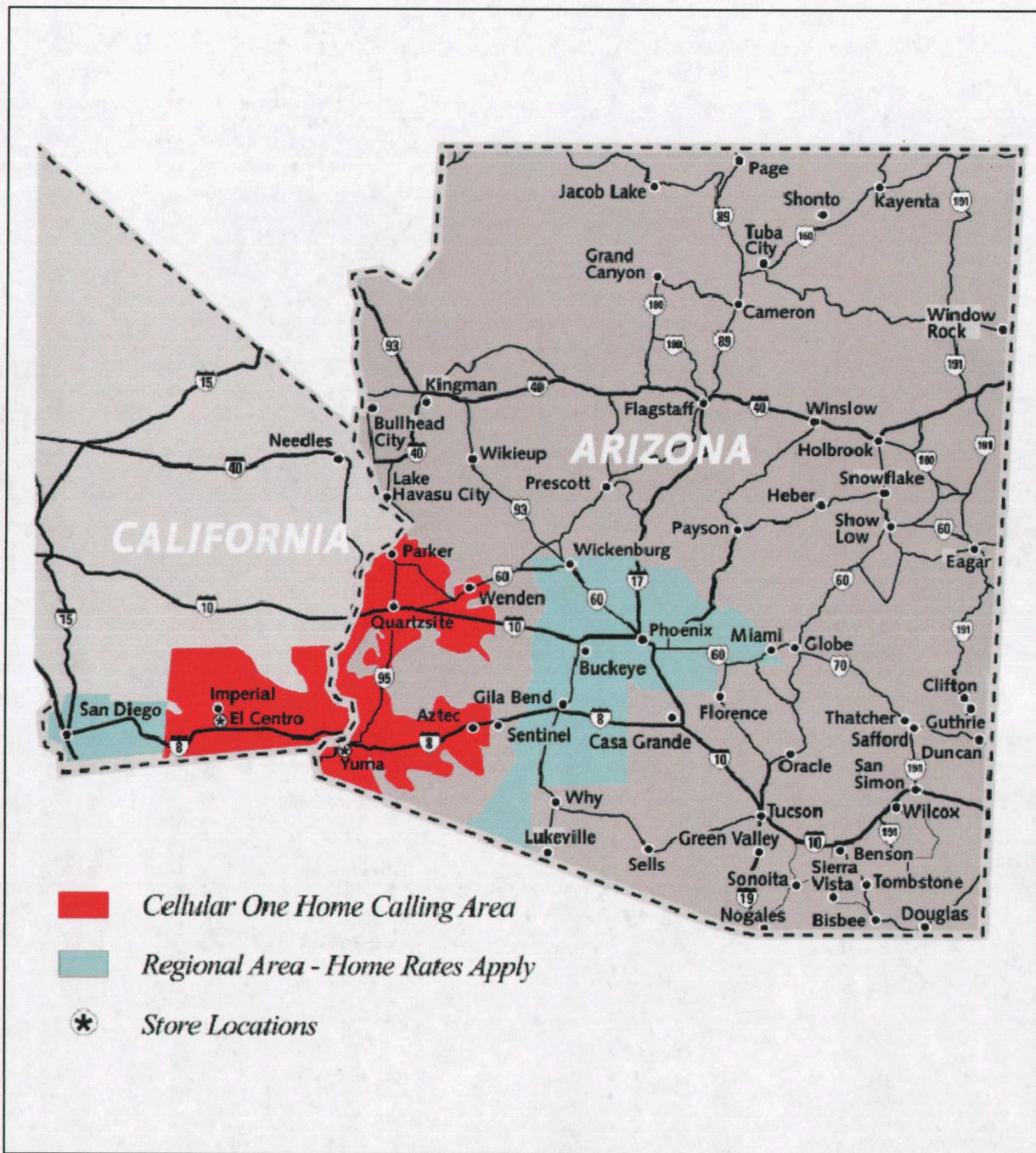


Exhibit B
Map 2



Exhibit B
Map 3



Exhibit B
Map 4

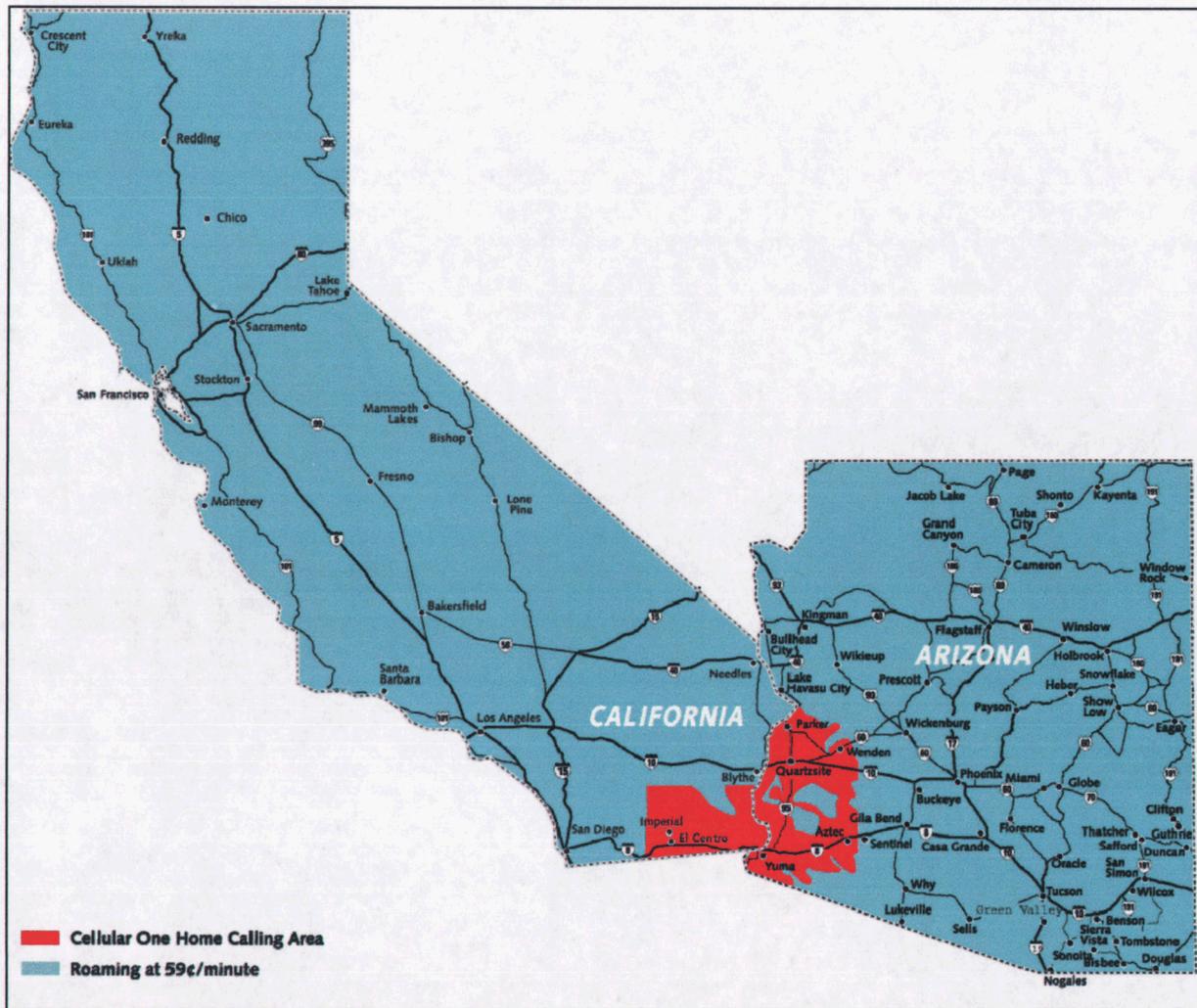


Exhibit "C"

1 Confidential information provided by Company is confidential solely as a result of either disclosing
2 individual customer information, or disclosing specific prices, this Agreement shall not prohibit Staff
3 from the public disclosure of such information in an aggregated form, where no individual customer
4 or specific individual price can be ascertained.

5 **§2. Designation of Confidential Information.** For purposes of this Agreement, all
6 documents, data, information, studies and all other written, printed, transcribed, audio-taped or video-
7 taped materials furnished to Staff that Company claims to be a trade secret, or of a proprietary,
8 confidential, or legally protected nature, shall be designated and referred to herein as "Confidential
9 Information". Access to and review of Confidential Information shall be strictly controlled by the
10 terms of this Agreement.

11 All Confidential Information provided to Staff pursuant to this Agreement shall be so marked
12 by Company with a designation indicating its alleged trade secret, proprietary, confidential or legally
13 protected nature. The Company shall memorialize any Confidential Information disclosed verbally
14 by Company in writing within five (5) business days of its verbal disclosure, and the writing shall be
15 marked by the Company with the appropriate designation. Any Confidential Information disclosed
16 verbally by Company shall be safeguarded by Staff and its contracting consultants only during the
17 five (5) business day period during which memorialization may be provided. Company agrees that it
18 will carefully consider the basis upon which any information is claimed to be trade secret,
19 proprietary, confidential, or otherwise legally protected. Company shall designate as Confidential
20 Information, only such information as it has a good faith basis for claiming to be legally protected.
21 Where a part of a document, or only a part of an informational submittal may reasonably be
22 considered to be trade secret, proprietary, confidential, or otherwise legally protected, Company shall
23 only designate that part of such information submittal as Confidential Information under this
24 Agreement. Information that is publicly available from any other source, shall not be claimed as
25 Confidential Information under this Agreement.

26 **§3. Performance Under Agreement Does Not Result in Waiver or Disclosure.**
27 Execution of this Agreement by the parties and performance of their obligations hereunder shall not
28 result in waiver of any claim, issue or dispute concerning the trade secret, proprietary, confidential or

1 legally protected nature of the Confidential Information provided. Neither shall the limited provision
2 of Confidential Information by Company pursuant to this Agreement, nor the limited provision by
3 Staff of Confidential Information pursuant to Section 6 of this Agreement constitute public disclosure
4 of it.

5 **§4. Access to Confidential Information.** Prior to reviewing any Confidential
6 Information, any Commission Staff members or independent contracting consultants shall first be
7 required to read a copy of this Protective Agreement, and to certify by their signatures on Exhibit A
8 of this Agreement, that they have reviewed the same and have consented to be bound by its terms.
9 Exhibit A of this Agreement shall contain the signatory's full name, business address and employer,
10 and the signatory's position with, or relationship to the Arizona Corporation Commission
11 ("Commission"). Upon their execution, any and all Exhibits shall be promptly provided to counsel
12 for Company.

13 **§5. Use of Confidential Information.** All persons who are signatories to this Agreement
14 shall neither use nor disclose the Confidential Information for purposes of business or competition, or
15 for any purposes other than those necessary for the disposition of this docket, including preparation
16 for and the conduct of any administrative or legal proceeding. All persons entitled to review or
17 afforded access to Confidential Information shall keep it secure as trade secret, confidential, or
18 legally protected information in accordance with the purposes and intent of this Agreement.

19 **§6. Non-Signatories Entitled to Review.** The information provided pursuant to this
20 Protective Agreement may be disclosed to other members of the Staff and to the Commission by any
21 Commission signatory to this Agreement only to the extent that disclosure is necessary to the
22 disposition of this docket. Such disclosure may be made only if the non-signatory is provided with a
23 copy of this Agreement and agrees to be bound by its terms.

24 **§7. Disclosure of Information to the Public.** The Confidential Information provided
25 pursuant to this Agreement shall not be disclosed, nor shall it be made a part of the public record in
26 this docket, or in any other administrative or legal proceeding unless: Staff provides Company five
27 (5) business days written notice that information designated by Company as Confidential Information
28 shall be subject to disclosure as a public record. Upon the expiration of five (5) business days from

1 the date written notice is received by Company, any Confidential Information identified in the notice
2 as subject to disclosure shall become part of the public record in this docket, unless Company
3 initiates a protective proceeding under the terms of this Agreement.

4 **§8. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
5 Company seeks to prevent public disclosure of Confidential Information pursuant to Paragraph 7
6 above, Company shall file within five (5) business days of receipt of Staff's written notice, a motion
7 presenting the specific grounds upon which it claims that the Confidential Information should not be
8 disclosed or should not be made a part of the public record. Staff shall have an opportunity to respond
9 to the motion. Company's motion may be ruled upon by either the Commission or an assigned
10 Commission Administrative Law Judge ("ALJ"). Company may provide to the Commission or the
11 ALJ, the Confidential Information referenced in the motion without waiver that the information
12 should remain confidential under the terms of this Agreement. Any Confidential Information so
13 provided shall be kept under seal for the purpose of permitting inspection by the Commission or the
14 ALJ prior to ruling on the motion.

15 Notwithstanding any determination by the ALJ or the Commission that any Confidential
16 Information provided pursuant to this Agreement should be made a part of the public record or
17 otherwise disclosed, public disclosure shall not occur for a period of five (5) calendar days so that
18 Company may seek judicial relief from the ALJ or the Commission's decision. Upon expiration of
19 the five (5) day period, the Commission shall release the information to the public unless Company
20 has received a stay or determination from a court of competent jurisdiction that the records, data,
21 information or study are proprietary and are not public records subject to disclosure under A.R.S. §
22 39-101 et seq.

23 **§9. Judicial Proceedings Related to NonParty's Request for Disclosure.** Where the
24 Commission, ALJ or Staff determine that disclosure is not appropriate, in any judicial action against
25 the Commission and/or Commissioners by the party seeking disclosure of the information, unless
26 specifically named, Company as the real party in interest, shall join in the action as a co-defendant.

27 In the event that the Commission becomes legally compelled (by deposition, interrogatory,
28 request for documents, subpoena, civil investigative demand or similar process) to disclose any of the

1 Confidential Information, the Commission shall provide Company with prompt written notice of such
2 requirement so that Company may seek an appropriate remedy and/or waive compliance. Company
3 agrees that upon receipt of such notice, Company will either undertake to oppose disclosure of the
4 Confidential Information or waive compliance with this Agreement. In the event that disclosure of
5 the Confidential Information is ordered, the Commission agrees to furnish only that portion of the
6 Confidential Information that is legally required.

7 **§10. No Preclusion of Evidentiary Objections.** In the event that disclosure of
8 Confidential Information occurs, the provision of such information by Company pursuant to this
9 Agreement shall not limit the right of Company to object to its relevance or admissibility in
10 proceedings before the Commission.

11 **§11. Return of Confidential Information.** Upon the final disposition of any
12 administrative or legal proceeding arising in or from this docket, within 90 days Company shall
13 submit a written request for the return of all Confidential Information, copies thereof, and notes made
14 by signatories to this Agreement. If such a request is not received within the stated 90 days, Staff
15 shall destroy all Confidential Information, copies thereof, and notes made by signatories to this
16 Agreement, or return to Company all Confidential Information, copies thereof, and notes made by
17 signatories to this Agreement, following written notice to Company of Staff's intent to return.

18 **§12. No Admission of Privileged or Confidential Status.** By participating in this
19 Agreement, Staff and its contracting consultants are neither admitting nor agreeing with Company
20 that any of the materials or communications designated as Confidential Information are, either in fact
21 or as a matter of law, a trade secret or of a proprietary, confidential or legally protected nature.

22 **§13. Breach of Agreement.** Company, in any legal action or complaint it files in any court
23 alleging breach of this Agreement shall, at the written request of the Commission, name the Arizona
24 Corporation Commission as a Defendant therein.

25 ...
26 ...
27 ...
28 ...

