



BEFORE THE ARIZONA CORPORATION RECEIVED

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Arizona Corporation Commission
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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

DOCKET NO. T-04248A-04-0239

ALECA'S RESPONSE TO STAFF'S SUPPLEMENTAL REPORT IN THE WESTERN WIRELESS ETC DOCKET

The Arizona Local Exchange Carriers Association ("ALECA"), by and through its counsel undersigned, submits the following comments to the Supplemental Staff Report dated April 15, 2005, in the above-captioned docket.

BACKGROUND

ALECA is a non-profit trade association whose members includes the following rural incumbent local exchange carriers ("ILECs") regulated by the Arizona Corporation Commission: Arizona Telephone Company, CenturyTel, Copper Valley Telephone, Frontier Communications, Midvale Telephone Exchange, Navajo Communications, South Central Communications, Southwestern Telephone Company, Table Top Telephone Company and Valley Telephone Cooperative.1 ALECA was granted intervention in this docket on October 14, 2004.

In comments filed by ALECA on October 29, 2004, ALECA stated that it would not request a hearing in this docket, but reserved the right to request a hearing if ALLTEL Communications, Inc., an affiliate of applicant WWC License, LLC ("Western Wireless"), sought rehearing and appeal of Decision 67403 (Docket T-03887A-03-0316) which approved, with multiple conditions, the application of ALLTEL for designation as an eligible

1 ALECA also includes the following tribally-owned ILECs which are not subject to Commission jurisdiction but which support this response: Fort Mojave Telephone Company, Gila River Telecommunications, San Carlos Apache Telecom Utility and Tohono O'Odham Utility Authority.

1 telecommunications carrier ("ETC"). ALLTEL did not seek rehearing on Decision 67403, and  
2 subsequently submitted a letter to the Commission dated December 15, 2004, declining  
3 designation as an ETC in Arizona.

4 Utilities Division Staff issued a Staff Report in this docket on December 30, 2004.  
5 ALECA submitted its response to the Staff Report on February 18, 2005. On March 17, 2005, the  
6 Federal Communications Commission ("FCC") released a Report and Order in the Matter of  
7 Federal-State Joint Board on Universal Service (FCC Docket No. FCC 05-46) adopted February  
8 25, 2005 (the "FCC Report and Order"). The FCC Report and Order establishes additional  
9 minimum requirements for designation as an ETC in cases where the FCC has jurisdiction. FCC  
10 05-46 ¶¶ 20-57. Moreover, the FCC encouraged state commissions to adopt the FCC's eligibility  
11 criteria, rigorous public interest analysis, and reporting requirements in approving ETCs. *Id.* at  
12 ¶ 58.

13 On April 15, 2005, Utilities Division Staff issued a Supplemental Staff Report addressing  
14 the FCC Report and Order and incorporating additional eligibility requirements applicable to  
15 Western Wireless. In a procedural order dated April 22, 2005, the Commission's administrative  
16 law judge ordered that the parties submit responsive comments to the Supplemental Staff Report  
17 by May 13, 2005.

18 **COMMENTS ON THE SUPPLEMENTAL STAFF REPORT**

19 ALECA opposed the application of ALLTEL Communications, Inc., for designation as an  
20 ETC in Docket No. T-03887A-03-0316 on the grounds that (i) ALLTEL failed to show the  
21 capability and commitment to provide the ETC-supported services throughout the requested ETC  
22 service area; and (ii) ALLTEL failed to show that its designation as an ETC is in the public  
23 interest. The bases for ALECA's opposition to the ALLTEL designation were set forth in detail  
24 in the comments, pre-filed testimony, briefs and exceptions filed by ALECA in the ALLTEL  
25 docket. While ALECA will not repeat in this response the arguments it put forth in the ALLTEL  
26 docket, ALECA opposes the designation of Western Wireless as an ETC for substantially the  
27 same reasons. However, ALECA acknowledges that the additional eligibility conditions and  
28 reporting requirements recommended by Staff in the Supplemental Staff Report are a significant

1 and important step forward in addressing the concerns of ALECA regarding the designation of  
2 wireless carriers as ETCs. Thus, if the Commission approves the ETC request of Western  
3 Wireless, Staff's recommended eligibility conditions and reporting requirements (summarized on  
4 pages 5-7 of the Supplemental Staff Report) are absolutely essential, and should be adopted.  
5 Furthermore, those recommendations are fully consistent with the FCC Report and Order.

6 While ALECA supports the revised Staff recommendations, ALECA believes that the  
7 Supplemental Staff Report requires some additional clarification and supplementation in several  
8 areas as discussed below. Specifically, ALECA believes that certain recommendations contained  
9 in the original Staff Report but omitted from the Supplemental Staff Report should be included in  
10 any order approving Western Wireless' request for designation as an ETC.

11 **Five-Year Network Improvement Plan and Annual Progress Reports.**

12 Staff recommends that Western Wireless submit an initial five-year network improvement  
13 plan (with annual progress reports thereafter) prior to a hearing or decision in this docket.  
14 Supplemental Staff Report at p. 5, ¶ 1. ALECA fully supports this recommendation as a  
15 necessary safeguard to ensure that federal high-cost support obtained by Western Wireless for its  
16 rural ETC service area is used to deploy telecommunications infrastructure in rural Arizona. In  
17 the original Staff Report, Staff recommended as follows:

- 18 7. Western Wireless shall be required to utilize all federal high-cost support  
19 for its rural ETC service area within the State of Arizona. Western  
20 Wireless shall docket an affidavit confirming that all federal high-cost  
21 support for its Arizona exchanges will only be used for the provision,  
22 maintenance, and upgrading of facilities and services for which the  
23 support is intended, consistent with Section 254(e) of the 1996 Act. This  
24 affidavit shall reflect the calendar year and be due by April 1 of each year  
25 following ETC approval, beginning with April 1, 2006. Staff Report at  
26 page 14, ¶ 7.

27 Similarly, in Decision 67403 approving the request of ALLTEL Communications for designation  
28 as an ETC, the Commission adopted the following requirement:

7. Alltel shall utilize all federal high-cost support that it receives based on the  
amount of per-line support received by the rural ILECs listed on Exhibit  
A, attached hereto and incorporated herein, only in those study areas  
described in Exhibit A [the rural ILEC areas served by Alltel in the State

1 of Arizona], as they are redefined as a result of this Decision. Decision  
2 67403 (Docket T-03887A-03-0316) at page 23, ¶ 72(7).

3 It may be Staff's intention to enforce compliance with recommendation 7 of the original Staff  
4 Report through Staff's review of the five-year network improvement plan that must be submitted  
5 by Western Wireless prior to a hearing or decision in this docket as set forth in the Supplemental  
6 Staff Report. However, ALECA believes that the Commission must include specific language  
7 restricting Western Wireless' use of federal high-cost support from its rural ETC service area in  
8 Arizona to the deployment of telecommunications infrastructure in rural Arizona. Moreover,  
9 ALECA believes that this restriction on the use of federal high-cost support should continue as  
10 long as Western Wireless is receiving high cost support, and that any implication that the  
11 restriction applies only to the initial five-year network improvement plan should be eliminated.  
12 Thus, ALECA urges that the Commission include in its order some combination of the language  
13 contained in Recommendation 7 of the original Staff Report and ¶ 72(7) of Decision 67403 in the  
14 ALLTEL docket.

15 Recommendation 1.a on page 5 of the Supplemental Staff Report references an "initial"  
16 five-year network improvement plan, which suggests that Staff may envision the filing of  
17 successive network improvement plans by Western Wireless in the future. ALECA believes that  
18 the filing of additional network improvement plans would be valuable to the Commission in  
19 assessing Western Wireless' compliance with the requirement that federal high-cost support from  
20 the company's rural ETC service area be used in rural Arizona.

21 Staff recommends at page 5, ¶ 1.b of the Supplemental Staff Report that Western Wireless  
22 file with the Compliance Section of the Utilities Division an annual progress report on the five-  
23 year network improvement plan. However, the Supplemental Staff Report does not state how  
24 long such reports are to be filed. Certainly, such annual reports should continue during the five  
25 year period covered by the initial five-year network improvement plan. In the event that the  
26 Commission requires Western Wireless to file successive five-year network improvement plans  
27 following the initial plan, then the annual reporting requirement should continue as long as the  
28 five-year plans are in place.

1 Finally, Staff intends to make a supplemental filing in response to the initial five-year  
2 network improvement plan filed by Western Wireless within 60 days after Western Wireless files  
3 its plan. However, the Supplemental Staff Report does not make clear that the plan should be  
4 filed with docket control. ALECA would request the opportunity to review the plan submitted by  
5 Western Wireless, and to file comments on the plan before a hearing or decision in this docket.

6 **Consumer Complaints.**

7 ALECA supports the recommendation contained at pages 6-7, ¶ 6 in the Supplemental  
8 Staff Report that Western Wireless file an annual certification evidencing the company's  
9 compliance with the Cellular Telecom and Internet Association's Consumer Code for Wireless  
10 Service (the "CTIA Code"). However, ALECA is concerned that the CTIA Code lacks a  
11 mechanism to address and resolve consumer complaints. The only section of the CTIA Code that  
12 addresses consumer complaints is Section 9 which states that wireless carriers must "respond in  
13 writing to state or federal administrative agencies within 30 days" of receiving written consumer  
14 complaints. This lack of an enforcement mechanism is problematic.

15 In the original Staff Report, Staff recommended as follows:

- 16 6. Western Wireless shall submit any consumer complaints that may arise  
17 from its ETC service offerings to the Commission's customer Service  
18 Division, provide a regulatory contact, and comply with the provisions of  
19 the Commission's customer service rules, including establishment of  
20 service, minimum customer information requirements, service connection  
21 and establishment, provision of service, billing and collection, and  
22 termination of service. Western Wireless shall include the Commission's  
23 Consumer Service Division's telephone number on all bills issued to  
24 customers in its ETC service area. Staff Report at page 14, ¶ 6.

25 ALECA believes that all of Recommendation 6 of the original Staff Report should be  
26 included in any order approving Western Wireless' request for ETC designation. By submitting  
27 consumer complaints to the Commission, consumers will have an effective enforcement  
28 mechanism to address deficiencies in service and billing. This requirement, combined with  
Western Wireless' compliance with the CTIA Code, will help ensure that consumer complaints  
regarding the services of Western Wireless are properly addressed.

1 **Service Quality Standards and Unfilled Requests for Service.**

2 ALECA supports the additional recommendation contained at page 6, ¶ 5 of the  
3 Supplemental Staff Report that Western Wireless file annual outage reports and annual reports of  
4 unfilled requests for service. This additional recommendation is consistent with the existing  
5 requirements applicable to ALECA members. However, the Staff recommendation stops short of  
6 the requirement set forth in the FCC's Report and Order. In its Report and Order, the FCC stated  
7 that ETC applicants must demonstrate a commitment and ability to provide supported services  
8 throughout the ETC service area. With regard to potential customers located outside the ETC's  
9 network coverage, the FCC stated as follows:

10 In those instances where a request comes from a potential customer within the  
11 applicant's licensed service area but outside its existing network coverage, the  
12 ETC applicant should provide service within a reasonable period of time if service  
13 can be provided at reasonable cost by: (1) modifying or replacing the requesting  
14 customer's equipment; (2) deploying a roof-mounted antenna or other equipment;  
15 (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities;  
16 (5) reselling services from another carrier's facilities to provide service; or  
17 (6) employing, leasing, or constructing an additional cell site, cell extender,  
18 repeater, or other similar equipment. We believe that these requirements will  
19 ensure that an ETC applicant is committed to serving customers within the entire  
20 area for which it is designated. If the ETC applicant determines that it cannot  
21 serve the customer using one or more of these methods, then the ETC must report  
22 the unfilled request to the Commission within 30 days after making such  
23 determination. Report and Order at p. 11, ¶ 22.

24 This is precisely the type of requirement that ALECA proposed in the ALLTEL ETC  
25 docket to ensure that ALLTEL provided the supported services throughout its ETC-designated  
26 service area, as required by the Telecommunications Act of 1996. While Staff referenced the  
27 FCC's requirement at page 8 of the Supplemental Staff Report, Staff has not incorporated the  
28 requirement as part of its recommendations in this docket. ALECA urges the Commission to  
adopt the requirement set forth at page 11, ¶ 22 of the FCC's Report and Order.

29 **Demonstrate the Ability to Remain Functional in Emergency Situations.**

30 ALECA supports the additional recommendation contained at page 6, ¶ 4, in the  
31 Supplemental Staff Report that Western Wireless demonstrate the ability to remain functional in  
32 emergency situations.

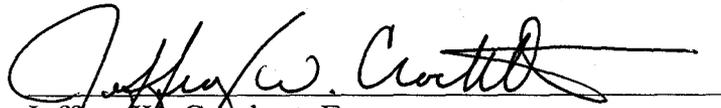
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CONCLUSION

ALECA supports the recommendations contained in the Supplemental Staff Report as (1) necessary to ensure that Western Wireless meets all of its duties as an ETC; and (2) consistent with the FCC's recent pronouncements in the Report and Order. Further, ALECA submits that those additional recommendations discussed herein that were contained in the original Staff Report and/or the Report and Order should also be included in any order approving Western Wireless' request for designation as an ETC.

RESPECTFULLY submitted this 13th day of May, 2005.

SNELL & WILMER



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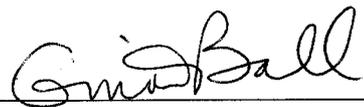
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