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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

MAY 27 2005

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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 REPLY TO WWC  
LICENSE LLC'S RESPONSE TO  
SUPPLEMENTAL STAFF REPORT

The Arizona Local Exchange Carriers Association ("ALECA"),<sup>1</sup> by and through its counsel undersigned, submits its reply to WWC License LLC's ("Western Wireless") Response to Supplemental Staff Report dated May 12, 2005, in the above-captioned docket. As set forth below, ALECA supports the recommendations set forth in the Supplemental Staff Report dated April 15, 2005, as modified by the proposed revisions submitted by ALECA in its response filed May 13, 2005. Specifically, ALECA supports the recommendation that Western Wireless submit a five-year network improvement plan prior to designation as an eligible telecommunications carrier ("ETC").

COMMENTS ON WESTERN WIRELESS' RESPONSE

In its Response to Supplemental Staff Report, Western Wireless strenuously objects to the Staff recommendation that it provide a five-year network improvement plan before the company

<sup>1</sup> 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. ALECA was granted intervention in this docket on October 14, 2004. 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.

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1 is designated an ETC. Western Wireless makes a number of statements that it cannot produce  
2 such a plan, or at least not prior to designation:

- 3 • "Western Wireless is unable to provide a five-year service improvement plan now,  
4 as a precondition to designation."<sup>2</sup>
- 5 • "By modifying its recommendation to require the Five-Year Plan Precondition,  
6 Staff has created a significantly more onerous requirement with which Western  
7 Wireless is unable to comply."<sup>3</sup>
- 8 • "Western Wireless does not plan this far ahead, and cannot do so with any degree  
9 of confidence."<sup>4</sup>
- 10 • "Western Wireless' plans for network improvement are generally developed the  
11 year prior to their implementation."<sup>5</sup>
- 12 • "This is not something that can be done immediately as would be required by  
13 Staff's recommendation."<sup>6</sup>
- 14 • "Western Wireless does not track capital investment, coverage, or demand on a  
15 wire center basis."<sup>7</sup>

16 Each of these statements serves to heighten ALECA's concerns in this docket. The great  
17 resistance of Western Wireless to provide a five-year network improvement plan raises legitimate  
18 questions regarding the depth of the commitment of Western Wireless to use federal high cost  
19 support from rural Arizona communities to fund new infrastructure in rural Arizona. The recent  
20 pronouncement of the Federal Communications Commission ("FCC") regarding the five-year  
21 plan requirement is clear and unequivocal:

22 Specifically, in considering whether a common carrier *has satisfied its burden of*  
23 *proof necessary to obtain ETC designation*, we require that the applicant:  
24 (1) provide a five-year plan demonstrating how high-cost universal service  
25 support will be used to improve its coverage, service quality or capacity in every  
26 wire center for which it seeks designation and expects to receive universal service  
27 support.... *Report and Order in the Matter of Federal-State Joint Board on*  
28 *Universal Service* released March 17, 2005 (FCC Docket No. FCC 05-46) at p. 2,  
¶ 2 (the "Report and Order").

<sup>2</sup> *Response to Supplemental Staff Report* at p. 6, lines 14-16.

<sup>3</sup> *Id.* at p. 7, lines 14-16.

<sup>4</sup> *Id.* at p. 7, lines 20-21.

<sup>5</sup> *Id.* at p. 8, lines 6-7.

<sup>6</sup> *Id.* at p. 8, lines 20-21.

<sup>7</sup> *Id.* at p. 8, line 24.

1 The FCC encouraged states "to adopt these requirements when deciding whether a  
2 common carrier should be designated as an ETC." *Id.* at p. 2, ¶ 1. ALECA opposed the  
3 application of Western Wireless affiliate ALLTEL Communications, Inc., for designation as an  
4 ETC in Docket No. T-03887A-03-0316 in large part because ALLTEL failed to demonstrate a  
5 commitment to provide the ETC-supported services throughout the requested ETC service area.  
6 ALECA has the same concerns regarding Western Wireless in this docket. It is imperative--and  
7 appropriate--that ETCs be required to use federal high cost support received for rural  
8 communities in Arizona to build out telecommunications infrastructure in those communities.  
9 Staff's Recommendation 1 in the Supplemental Staff Report will help ensure that federal high cost  
10 support is used to achieve the objective of universal service in rural Arizona, and the  
11 recommendation is fully consistent with the FCC's *Report and Order*. ALECA supports the  
12 required submission of a five-year plan by Western Wireless as a precondition to designation as  
13 an ETC, and urges the Administrative Law Judge to reject Western Wireless' request that the  
14 requirement be eliminated in favor of the alternatives offered by Western Wireless in its  
15 Response to Supplemental Staff Report.

16 **Submission of Five-Year Plan as Precondition to Designation is Appropriate.**

17 Western Wireless argues that the five-year plan should not be required as a precondition  
18 to designation as an ETC. Response to Supplemental Staff Report at p. 7, lines 2-3. However,  
19 the FCC's *Report and Order* is clear that the submission of the five-year plan is a precondition to  
20 designation, and part of the burden of proof necessary to demonstrate eligibility. While pending  
21 federal ETC applicants may not be required to submit a five year plan until 2006, there is nothing  
22 that prohibits this Commission from adopting the five-year plan requirement effective  
23 immediately in this docket. In the ALLTEL ETC case referenced above, this Commission  
24 considered new evaluative criteria and requirements announced in the *Virginia Cellular ETC*  
25 *Designation Order*.<sup>8</sup>

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27  
28 <sup>8</sup> *Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45 (2004).

1 This Commission has all requisite authority to impose conditions as it sees fit--including  
2 requiring the submission of the five-year plan--in designating new ETCs in Arizona. The FCC  
3 acknowledges that "state commissions, as the entities most familiar with the service area for  
4 which ETC designation is sought, are particularly well-equipped to determine their own ETC  
5 eligibility requirements." *Report and Order* at p. 28, ¶ 61. Certainly, this Commission may  
6 adopt, effective immediately, a requirement that Western Wireless submit a five-year plan prior to  
7 designation as an ETC.

8 Western Wireless argues incorrectly that this Commission may only impose the five-year  
9 plan requirement pursuant to a rule adopted in a formal rulemaking. Response to Supplemental  
10 Staff Report at p. 14, line 13. As Western Wireless correctly notes, 47 U.S.C. § 254(f) provides  
11 that "states may adopt 'regulations' not inconsistent with the FCC's Rules to preserve and advance  
12 universal service." *Id.* at p. 14, lines 14-16. Ironically, the very requirement that Western  
13 Wireless opposes was adopted by the FCC in its *Report and Order*. Moreover, the other  
14 requirements recommended by Commission Staff in the Supplemental Staff Report have not been  
15 adopted by formal rule-making, and Western Wireless has not challenged those  
16 recommendations.

17 Regarding the five-year plan, Western Wireless states that "it does not plan that far  
18 ahead," that its "plan for network improvement are generally developed the year prior to their  
19 implementation," and that it "does not track capital investment, coverage, or demand on a wire  
20 center basis." However, Western Wireless states that it "could develop a methodology and  
21 process for projecting possible network improvements five years out, but doing so would be a  
22 significant company undertaking that will require a great deal of thought, analysis and input from  
23 various parts of the company." Response to Supplemental Staff Report at p. 8, lines 9-13. These  
24 statements highlight ALECA's primary concern in this docket--that Western Wireless is not  
25 willing to commit to a long-term plan to improve and expand its telecommunications network in  
26 rural Arizona. If designated an ETC, Western Wireless will become eligible to receive millions  
27 of dollars in federal high cost support. With this benefit comes the obligation to deploy federal  
28 support in a way which furthers the national telecommunications policy of universal service. By

1 requiring a five-year network improvement plan prior to designation as an ETC, this Commission  
2 can best discharge its duty to make certain that Western Wireless uses federal high cost support in  
3 the proper way to advance and improve telecommunications services and options in rural  
4 Arizona.

5 **Application of the Five-Year Plan Requirement does not Over-Reach.**

6 Western Wireless asserts in its Response to Supplemental Staff Report that the five-year  
7 plan goes beyond what the FCC and other States have required. Response to Supplemental Staff  
8 Report at p. 9, lines 5-6. This statement is misleading. First, the FCC clearly adopted the five-  
9 year plan opposed by Western Wireless as a "precondition" to designation as an ETC in cases  
10 where the FCC has jurisdiction. Although Western Wireless proposes to eliminate the five-year  
11 plan requirement, it appears that the company's primary objection is to the application of the  
12 requirement in this proceeding as a "precondition" to designation as an ETC. ALECA has  
13 outlined above the reasons why the five-year plan should be required as a precondition to the  
14 designation of Western Wireless. If Western Wireless can formulate a five-year plan by 2006, it  
15 is not unreasonable to require that the company do so now, as part of the designation proceeding.  
16 The Commission is fully within its authority to impose such a requirement as a precondition to  
17 designation.

18 Second, Western Wireless states that it has never had to prepare a five-year service  
19 improvement plan in any other jurisdiction. *Id.* at p. 9, lines 23-25. However, Western Wireless  
20 correctly notes that "[t]he concept of a five-year plan was first introduced less than 11 weeks ago  
21 in the FCC's News Release announcing the contents of the *2005 Report and Order.*" Response to  
22 Supplemental Staff Report at p. 8, lines 15-16. State commissions have had little time to consider  
23 and implement this new requirement. However, there can be little doubt that state commissions  
24 will address this new requirement as ETC applications are reviewed, and many of these  
25 commissions will adopt the requirement just as they have adopted other requirements of  
26 designation recommended by the FCC. The adoption of the requirement that an applicant submit  
27 a five-year network improvement plan as a precondition to designation as an ETC will ensure that  
28 telecommunications infrastructure is constructed and expanded in rural Arizona.

1 **Western Wireless' Proposed Alternatives to the Five-Year Plan should be Rejected.**

2 Western Wireless proposes two alternatives to Staff Recommendation 1 in the  
3 Supplemental Staff Report. The first alternative is to revert to Staff Recommendations 8, 9 and  
4 10 of the original Staff Report which would require the post-designation submittal by Western  
5 Wireless of a list of projects to be supported by federal universal service fund money, together  
6 with annual reporting requirements through April 1, 2009, and related record-keeping  
7 requirements. ALECA supported this recommendation, but submits that Staff Recommendation 1  
8 of the Supplemental Staff Report is a better method of insuring the proper use of federal high cost  
9 support in rural Arizona. Further, Staff Recommendation 1 is fully consistent with the spirit of  
10 Staff Recommendations 8, 9 and 10 of the original Staff Report, and is consistent with the new  
11 requirement adopted by the FCC in the *Report and Order*.

12 The second alternative proposed by Western Wireless is to proceed with the designation  
13 now and require Western Wireless to submit its five-year plan in October 2006. However,  
14 ALECA submits that the five-year plan should be required prior to designation as an ETC, as set  
15 forth in the FCC's *Report and Order*. The submittal of the five-year plan prior to designation is  
16 necessary to ensure that Western Wireless actually complies with the requirement. This is  
17 especially true in light of the many statements in Western Wireless' Response to Supplemental  
18 Staff Report questioning the value of such a plan and explaining the many reasons why Western  
19 Wireless is unable to provide such information. These statements evidence the true feelings of  
20 Western Wireless regarding the requirement--that it is a time-consuming exercise with little  
21 value. Given this attitude, Western Wireless may not make much of an effort to prepare a five-  
22 year network improvement plan *after* Western Wireless is designated.

23 **CONCLUSION**

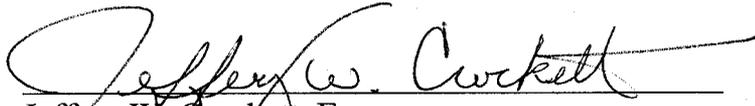
24 ALECA supports the recommendation set forth in the Supplemental Staff Report dated  
25 April 15, 2005, subject to the recommended revisions submitted by ALECA in its response filed  
26 May 13, 2005. Further, ALECA urges the Administrative Law Judge to reject Western Wireless'  
27 request to eliminate Staff Recommendation 1 of the Supplemental Staff Report.

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RESPECTFULLY submitted this 27th day of May, 2005.

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