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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 27 2005

COMMISSIONERS:

JEFF HATCH-MILLER, CHAIRMAN

WILLIAM MUNDELL

MARC SPITZER

MIKE GLEASON

KRISTIN K. MAYES

DOCKETED BY

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

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

Pursuant to the April 22, 2005 Procedural Order in this matter, WWC License LLC ("Western Wireless") submits its comments in reply to the response of the Arizona Local Exchange Carriers Association ("ALECA") to the April 15, 2005 Supplemental Staff Report.

SUMMARY

In its Response to the Supplemental Staff Report, ALECA suggests additions or amendments to several of Staff's recommended compliance conditions. ALECA's suggested changes to the compliance conditions are unnecessary or unclear, and should not be adopted.

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1 **I. INTRODUCTION**

2 The original Staff Report, dated December 30, 2004, concluded that Western Wireless'
3 Application for ETC designation should be granted, subject to ten conditions. In its Response to
4 the Staff Report, Western Wireless proposed certain modifications to eight of these ten
5 conditions. Shortly after Western Wireless filed its Response to the Staff Report, the FCC
6 released its *2005 Report and Order*, which established new reporting requirements for all ETCs
7 designated by the FCC under 47 U.S.C. § 214(e)(6), but did not impose any such requirements on
8 ETCs designated by state commissions.¹ On April 15, 2005, Staff submitted its Supplemental
9 Staff Report, which "generally adopted" the *2005 Report and Order*, revised the ETC designation
10 conditions set forth in the original Staff Report in response to Western Wireless' Response and
11 the *2005 Report and Order*, and continued to recommend that Western Wireless be designated as
12 an ETC. *Supplemental Staff Report*, pp. 5-7, 17.

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15 Western Wireless and ALECA submitted responses to the Supplemental Staff Report on
16 May 13, 2005. ALECA's Response to the Supplemental Staff Report encourages the Commission
17 to amend the conditions set forth in the Supplemental Staff Report regarding: 1) the five-year
18 network improvement plan (Condition 1 in the Supplemental Staff Report); 2) compliance with
19 consumer protection standards and customer service rules (Condition 6 in the Supplemental Staff
20 Report); and 3) compliance with service quality standards (Condition 5 in the Supplemental Staff
21 Report). *ALECA Response*, pp. 3-6.

22
23 Western Wireless believes that the changes ALECA recommends to the Supplemental
24 Staff Report are unnecessary or unclear, and suggests that ALECA's recommendations be
25 disregarded.

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¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 05-46, ¶ 68 (rel. Mar. 17, 2005) ("*2005 Report and Order*").

1 **II. ALECA'S RECOMMENDED CHANGES REGARDING THE FIVE-YEAR**
2 **NETWORK IMPROVEMENT PLAN ARE UNCLEAR OR UNNECESSARY**

3 ALECA supports the five-year network improvement plan precondition set forth in the
4 Supplemental Staff Report's Condition 1. *ALECA Response*, p. 3. For the reasons stated in
5 Western Wireless' Response to the Supplemental Staff Report, Western Wireless objects to the
6 five-year plan precondition, and recommends that Condition 1 be replaced with one of two
7 alternate proposals, each of which would better equip Staff and the Commission with information
8 regarding Western Wireless' use of universal service support in Arizona. *Western Wireless*
9 *Response to Supplemental Staff Report*, pp. 7-12.
10

11 In addition, ALECA recommends several modifications to the five-year plan requirements
12 set forth in Condition 1. First, ALECA recommends that Condition 1 be amended to restrict
13 Western Wireless' use of federal high-cost support from its "ETC rural service area in Arizona to
14 the deployment of telecommunications infrastructure in Arizona." *ALECA Response*, p. 4.
15 Western Wireless does not oppose the inclusion of a sentence limiting its use of federal high-cost
16 support to only the provision, maintenance, and upgrading of facilities and services for which the
17 support is intended, pursuant to 47 U.S.C. § 254(e).² However, the wording used by ALECA is
18 somewhat unclear and should not be adopted. The areas in which Western Wireless seeks
19 designation as an ETC in this proceeding include wire centers of a non-rural telephone company
20 as well as rural telephone company study areas and wire centers. Accordingly, ALECA's use of
21 the terms "rural ETC service area" and "in rural Arizona" could cause confusion. Similarly,
22 ALECA's use of the term "deployment" is imprecise – Section 254(e) provides for universal
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27 ² This is consistent with Western Wireless' Response to the Staff Report, in which Western
28 Wireless did not object to the condition requiring Western Wireless to utilize all federal high-cost
support for its rural ETC service area within the state of Arizona.

1 service support to be used for the "provision, maintenance, and upgrading of facilities and
2 services," not just for "deployment of telecommunications infrastructure."³

3 ALECA further recommends that the restriction on Western Wireless' use of high-cost
4 support should continue as long as Western Wireless receives such support and that any
5 implication that the restriction applies only to the initial five-year plan should be eliminated.
6 *ALECA Response*, p. 4. These recommendations are unnecessary – Condition 1, as drafted,
7 contains no such implication, and, in any case, Western Wireless' use of high-cost support will
8 remain limited by Section 254(e) indefinitely into the future.

9
10 ALECA argues that the filing of additional network improvement plans subsequent to the
11 initial five-year plan would be valuable to the Commission. *ALECA Response*, p. 4. However,
12 Staff and the Commission need not address this issue now. As explained in detail in Western
13 Wireless' Response to the Supplemental Staff Report, pp. 7-8, the status of communications
14 technology and universal service funding cannot meaningfully be predicted five years into the
15 future. Accordingly, it would be premature to determine compliance requirements that will not
16 be relevant until 2010.

17
18 ALECA recommends that the annual progress reports required in Condition 1 should be
19 filed for at least the five years covered by the initial five-year plan, and should remain in place so

20
21 ³ If ALECA's use of the phrase "deployment of telecommunications infrastructure" was not the
22 result of imprecision, but is instead intended to suggest a condition limiting Western Wireless' use
23 of federal high-cost support to the creation of new facilities, the Commission should reject
24 ALECA's recommendation. A condition requiring Western Wireless to use support only for the
25 build-out of new facilities, rather than for the provision, maintenance, and upgrading of facilities
26 and services, would violate the universal service principle of competitive and technological
27 neutrality (because it would restrict Western Wireless' use of support as compared to other
28 carriers, especially wireline carriers) and would also violate the specific and clear statutory
language of Section 254(e). Ironically, ALECA has recently proposed changes to the Arizona
USF that would allow the use of AUSF funds to replace: (i) revenues lost through changes in
federal or state regulatory rules, orders or policies or (ii) reductions in FUSF revenues. See
*ALECA's Proposal for Amending the Arizona Universal Fund Rules and Request for Procedural
Schedule*, Docket No. RT-00000H-97-0137 (filed December 30, 2004) (proposed changes to Rule
1202.A).

1 long as such a five-year plan is in place. *ALECA Response*, p. 4. Again, this recommendation is
2 unnecessary – Condition 1 clearly requires annual progress reports throughout the course of the
3 five-year plan.

4 Finally, ALECA requests the opportunity to review and comment on the five-year plan
5 submitted by Western Wireless. *ALECA Response*, p. 5. Western Wireless is concerned about
6 the ability of its competitors to comment on (and potentially affect) elements of its business
7 plans.⁴ Western Wireless submits that Staff review of the five-year plan is the only meaningful
8 and appropriate review, whether it is filed as a pre-condition or as a compliance condition.
9

10 **III. ALECA'S RECOMMENDATIONS CONCERNING REPORTING OF**
11 **CONSUMER COMPLAINTS ARE UNNECESSARY**

12 ALECA recommends Condition 6 of the original Staff Report (which would require
13 Western Wireless to submit consumer complaints to the Commission, comply with the
14 Commission's customer service rules, and include the Consumer Service Division's phone number
15 on all bills) be adopted. *ALECA Response*, p. 5. The only material effect of ALECA's
16 recommendation would be to reinstate a requirement that Western Wireless submit consumer
17 complaints to the Commission.
18

19 In its Response to the Staff Report, Western Wireless did not specifically object to the
20 requirement to file consumer complaints with the Commission, although it did point out that it
21 develops operational procedures (such as complaint handling) on a multi-state basis, and so its
22 operational efficiency is put at risk if it is required to adhere to different procedures in different
23 areas. *Western Wireless Response to Staff Report*, p. 11. The requirement to file consumer
24 complaints with the Commission provides a good example of this. This requirement will require
25 Western Wireless' customer service centers, which are based in Issaquah, Washington and
26

27 _____
28 ⁴ Any five-year plan or similar document containing detailed information about Western Wireless'
cell sites and business plans will only be submitted confidentially.

1 Manhattan, Kansas, to distinguish complaints involving subscribers in Western Wireless'
2 designated areas in Arizona from those involving other locations, which could slow down
3 customer service and impede the efficiency of the region-wide customer service centers.

4
5 Nevertheless, Western Wireless does not specifically oppose ALECA's recommendation
6 that Western Wireless submit any consumer complaints to the Customer Service Division.
7 Western Wireless does believe, though, that this requirement is unnecessary for several reasons.
8 First and most important, the competitive nature of the wireless industry provides a strong
9 incentive for Western Wireless to provide prompt and complete responses to consumer
10 complaints – if it fails to do so, it will lose subscribers. Second, the Supplemental Staff Report
11 already requires Western Wireless to comply with Commission Rule R14-2-510, which sets forth
12 detailed provisions governing investigations and responses to customer complaints and billing
13 disputes.⁵ *Supplemental Staff Report*, p. 7. Third, the FCC has now clearly stated that for a
14 wireless ETC, a commitment to comply with the CTIA Consumer Code for Wireless Service
15 ("CTIA Code") constitutes a sufficient commitment to consumer protection and service quality.
16 *2005 Report and Order*, ¶ 28. Western Wireless has committed to adhere to the CTIA Code, and
17 will be required to submit to the Commission an annual certification of its compliance to the
18 CTIA Code. *Supplemental Staff Report*, p. 7. The consumer protection and service quality
19 commitments made by Western Wireless, combined with the requirements already set forth in the
20 Supplemental Staff Report, make ALECA's suggestion unnecessary.
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26 ⁵ In fact, if a requirement to submit consumer complaints to the Commission were imposed only
27 on Western Wireless, that requirement would arguably be at odds with the FCC's statement that
28 "states may extend generally applicable, competitively neutral [consumer protection]
requirements that do not regulate rates or entry and that are consistent with sections 214 and 254
of the Act to all ETCs in order to preserve and advance universal service" (emphasis added).
2005 Report and Order, ¶ 31.

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IV. ALECA'S RECOMMENDATION CONCERNING REQUESTS FOR SERVICE IS UNNECESSARY

ALECA recommends that Staff incorporate the service extension requirements set forth in the *2005 Report and Order*, ¶ 22, into the compliance conditions in this docket. *ALECA Response*, p. 6. This recommendation is unnecessary, because, as Staff has noted, Western Wireless has already specifically committed to nearly identical service extension requirements. *Supplemental Staff Report*, p. 8. Western Wireless does not, however, object to the incorporation of these service extension standards into an order designating it as an ETC.

V. CONCLUSION

ALECA's proposed recommendations to the ETC compliance conditions set forth in the *Supplemental Staff Report* should not be adopted because they are unnecessary and/or unclear.

1 RESPECTFULLY SUBMITTED this 27th day of May, 2005.

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