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MEMORANDUM

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TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

DATE: May 15, 2007

RE: THIRD SUPPLEMENTAL REPORT OF STAFF 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)

Attached is Staff's Third Supplemental Report for WWC License LLC ("Western Wireless Corporation") Application for designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(2) of the Communications Act of 1934 and redefinition of rural telephone company service area pursuant to 47 C.F.R. § 54.207(c). Staff recommends approval of the subject Application and makes no eligibility conditions and associated reporting requirements beyond those previously recommended. A hearing has not been requested in this matter.

Any party to this proceeding who wishes may file comments to the Staff Report with the Commission's Docket Control by 4:00 p.m. on or before May 25, 2007.

EGJ:RLB:tdp

Originator: Richard Boyles

Arizona Corporation Commission
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**THIRD SUPPLEMENTAL STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION**

WWC LICENSE LLC

DOCKET NO. T-04248A-04-0239

**APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER PURSUANT TO SECTION 214(e)(2) OF THE COMMUNICATIONS ACT OF
1934 AND REDEFINITION OF RURAL TELEPHONE COMPANY SERVICE AREA
PURSUANT TO 47 C.F.R. SECTION 54.207(c)**

MAY 15, 2007

STAFF ACKNOWLEDGMENT

The Third Supplemental Staff Report for WWC License LLC (Docket No. T-04248A-04-0239) was the responsibility of the Staff member listed below.

A handwritten signature in cursive script, appearing to read "Richard Boyles", is written over a horizontal line.

Richard Boyles
Utilities Engineer

**EXECUTIVE SUMMARY
WWC LICENSE LLC
DOCKET NO. T-04248A-04-0239**

On April 23, 2007, the Administrative Law Judge issued a Procedural Order requiring Staff to file its Reply to Western Wireless's March 2, 2007 and April 17, 2007 filings and ALECA's April 4, 2007 filing by May 15, 2007.

Upon its review of the filings discussed above, and Western Wireless statements that it is willing to abide by the conditions set forth by the Administrative Law Judge in the August 23, 2005, Recommended Opinion and Order and it is further willing to abide by the six additional recommendations set forth by Staff in its Second Supplemental Staff Report, Staff recommends approval and makes no further recommendations.

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I. Procedural Summary

On March 26, 2004, WWC License LLC dba CellularOne ("Western Wireless" or "Company")¹ filed with the Commission an application for designation as an Eligible Telecommunications Carrier ("ETC") in certain wire centers of Qwest Communications ("Qwest"), Rio Virgin Telephone Co., Inc. ("Rio Virgin"), Southwestern Telephone Co. ("Southwestern") and Verizon California, Inc. ("Verizon").

On September 2, 2004, a Procedural Conference was held to address the timing and conduct of the proceeding in this Docket.

On December 30, 2004, Staff filed its Report on the application recommending approval of Western Wireless' application subject to conditions. Subsequently, on February 18, 2005, Western Wireless and ALECA² each filed a response to Staff's Report.

On March 10, 2005, a Procedural Conference was convened to discuss the need for a hearing in this matter. Western Wireless, ALECA and Staff all agreed that a hearing was not required, although ALECA reserved the right to request a hearing at a later date if it believed it necessary. Prior to the Procedural Conference, the FCC issued a press release stating that it would soon issue a Report and Order adopting additional requirements applicable to ETC applicants. Staff proposed to review the new FCC Order³, assess its impact on this Docket, and issue a Supplemental Staff Report within thirty days of the public release of the FCC Order. Western Wireless and ALECA both agreed with Staff's proposal which was subsequently adopted by Procedural Order issued on April 8, 2005.

On April 15, 2005, Staff filed a Supplemental Staff Report on the application recommending approval with revised conditions and reporting requirements. Subsequently, during May 2005, the parties made Responsive and Reply filings.

On August 1, 2005 Alltel Corporation announced that it had completed its merger with Western Wireless Corporation.

On August 23, 2005, the Administrative Law Judge ("ALJ") filed her recommendation to the Commission in the form of a Recommended Opinion and Order ("ROO"). Consideration of this matter was tentatively scheduled for the Commission's September 7 and 8, 2005 Open Meeting. Prior to the Open Meeting Staff was informed of a Complaint proceeding in Colorado concerning Western Wireless' status as an ETC. Staff requested that the item be pulled from the

¹ On August 1, 2005, Alltel announced it had completed its \$6.5 billion merger with Western Wireless Corporation. It is Staff's understanding that Western Wireless operates as a separate subsidiary of Alltel.

² ALECA was granted intervention by Procedural Order on October 27, 2004.

³ *IN THE MATTER OF FEDERAL-STATE JOINT BOARD ON UNIVERSAL SERVICE*, CC Docket No. 96-45, Report and Order (Rel. March 17, 2005)("Report and Order").

Open Meeting agenda to give Staff the opportunity to review the Colorado Complaint and the Colorado Commission's Decision on the Complaint.

On February 27, 2006, Western Wireless filed a request for acceptance of late-filed exceptions to the ROO. On March 15, 2006, ALECA filed a Motion requesting a thirty-day extension to file comments to Western Wireless' request for acceptance of late filed exceptions.

On January 24, 2007, Western Wireless filed a Notice of Withdrawal of Exceptions and Request That ROO Be Heard at Open Meeting.

On January 26, 2007, based on its review of a Complaint in Colorado against Western Wireless Holding Company, Staff filed a Second Supplemental Staff Report on the application recommending approval with revised conditions and reporting requirements.

On March 2, 2007, Western Wireless filed its Comments to the Second Supplemental Staff Report.

On April 4, 2007, ALECA filed its Comments to the Second Supplemental Staff Report.

On April 17, 2007, Western Wireless filed its Reply comments to ALECA's Comments on the Second Supplemental Staff Report.

On April 23, 2007, the Administrative Law Judge issued a Procedural Order requiring Staff to file its Reply to Western Wireless's March 2, 2007 and April 17, 2007 filings and ALECA's April 4, 2007 filing by May 15, 2007.

II. Comments of the Parties

A. *Comments of WWC License LLC on the Second Supplemental Staff Report and Request that Recommended Opinion and Order Be Heard at April 11, 2007 Open Meeting, filed March 2, 2007*

In its comments, Western Wireless states it "does not take exception to any of the six recommended requirements offered by Staff as additional conditions for Eligible Telecommunications Carrier ("ETC") designation."⁴ The Company further states it "is willing to abide by the conditions set forth by the ALJ in the August 23, 2005, ROO and it is further willing to abide by the six additional recommendations set forth by Staff in the Supplemental Staff Report."⁵ Finally the Company States that "it does not oppose amending the ROO to incorporate the six recommendations in the Supplemental Staff Report"⁶ and request that an amended ROO be considered by the Commission at Open Meeting.

⁴ Page 1 at lines 19 – 21.

⁵ Page 1 at line 23 through page 2 at line 2.

⁶ Page 2 at lines 4-5.

B. ALECA's Comments to Second Supplemental Staff Report, filed April 4, 2007

In its background summary, ALECA states that "The ROO recommended approval of the Application subject to revised conditions and reporting requirements set forth in the Supplemental Staff Report. As such, ALECA did not file any exceptions to the ROO."⁷

In its comments, ALECA states that it continues to be non-supportive of Western Wireless' Application for reasons set forth in its previous filings. However, "ALECA acknowledges that the additional eligibility conditions and reporting requirements recommended by Staff in both the Supplemental Staff Report and the Second Supplemental Staff Report are a significant and important step forward in addressing the concerns of ALECA ..."⁸ Further, "ALECA agrees with Staff that the ROO should be amended to incorporate the six additional eligibility and reporting requirements set forth in the Second Supplemental Staff Report."⁹

ALECA continues by addressing a data request it had submitted to Western Wireless subsequent to Staff's Second Supplemental Staff Report. In general, ALECA asked the Company if it, or any of its affiliates, was the subject of any complaint in any jurisdiction relating to its ETC status.

Western Wireless responded to ALECA's data request by identifying a consumer complaint¹⁰ in North Dakota, filed on October 31, 2006, that alleges poor quality of digital service by Alltel¹¹; in particular limited access within and near the complainant's home and an increase in the number of dropped calls. The complaint states the service degradation began after having changed from analog service to digital service and after having updated from a ten year old Motorola bag phone to a Palm Treo digital phone. The complainant mentioned that, as an ETC, Alltel had access to dollars from the federal universal service fund and that such funds were to be used for building, maintaining and operating phone systems in high cost areas. Further the complainant stated that for the period from January 2003 through July 2006 Alltel had received approximately \$50.7 million dollars and questioned whether the dollars had been expended appropriately.

ALECA indicated that Alltel had filed its response to the complaint on December 4, 2006 and that on January 24, 2007 the North Dakota Public Service Commission ("NDPSC") issued a Notice of Hearing. The Notice identified three issues to be considered, summarized as follows:

- 1) Whether the NDPSC has jurisdiction.
- 2) Whether Alltel has met the requirements for service adequacy.
- 3) Whether Alltel has used federal universal service funds as intended.

⁷ Page 1 at lines 24-27.

⁸ Page 2 at lines 10-13.

⁹ Page 2 at lines 14-16.

¹⁰ ALECA provide a complete copy of Western Wireless' data request response with its filing.

¹¹ Within this report, Alltel is used when referencing the North Dakota complaint and Western Wireless is used to reference the Alltel subsidiary (see footnote 1) that initiated the ETC Application that is the subject of this docket.

Subsequent to the Notice the hearing in this matter was continued¹² to allow the parties an opportunity for further discussion regarding resolution and informal disposition of the matter. In its response to the consumer complaint, Alltel identified additional equipment it had offered to the complainant as well as another rate plan. It is also Staff's understanding that Alltel has continued to work with the complainant during the period the North Dakota Hearing is continued to try and resolve its customer's concerns.

ALECA concludes by stating a belief that the North Dakota complaint is illustrative of its concerns regarding wireless ETC's and use of federal universal service funds. ALECA also recommended Staff consider the complaint and determine if it should revise any of the recommendations set forth in its Second Supplemental Staff Report.

C. Reply Comments of WWC License to ALECA's Comments on the Second Supplemental Staff Report and Request that Recommended Opinion and Order be Heard at May 8, 2007 Open Meeting, filed April 17, 2007

Western Wireless began its Reply Comments by again requesting that the Commission consider the ROO in this matter at Open Meeting. The Company continued by stating its belief that a complaint filed by a single customer in North Dakota has no bearing upon its Application for ETC status in Arizona. The Company also state that "it is able to comply with the federal ETC requirements and is further willing and able to comply with the additional requirements in the ROO and in the Supplemental Staff Report".¹³

The Company also addressed certain of the issues that ALECA mentioned in its comments in regards to the North Dakota consumer complaint. In its December 4, 2006, response to the North Dakota complaint, Alltel stated, in pertinent part, that in 2005 it had received approximately \$15.4 million in federal high-cost support and invested \$30.5 million within the state. Similarly, Alltel stated that for year-to-date 2006 it had received approximately \$14.3 million in federal high-cost support and invested \$19.7 million. The Company goes on to state that every year since ETC designation, the NDPSC has certified to the FCC Alltel's continued eligibility to received federal universal service funds.

The Company continues in its Reply Comments by stating that "the North Dakota complainant can make and receive calls from his residence, however he is not able to take advantage of some of the more advanced digital services that Alltel offers in others places within North Dakota. Alltel is committed to expanding and improving its network. It recently announced the activation of 15 new cell sites¹⁴ in North Dakota and expects to activate another

¹² A pre-hearing conference call has been scheduled for May 9, 2007. A hearing date may be set at that time.

¹³ Page 1 line 24 through page 2 line 1.

¹⁴ Attachment 1 to the Company's filing was a news release dated April 9, 2007. The release indicates the 15 cell sites were turned up in the first three months of 2007 and the other 20 sites were expected to turn up during the remainder of 2007. The release identified the communities involved and stated the impacted communities ranged in population from less than 1,500 to approximately 100,000. According to 2000 census data, 12 of the 15 cell sites were in communities of less than 2,000 population.

20 sites before the end of the year. This rapid expansion of its network in North Dakota is made possible, in part, by federal USF support.”¹⁵

In addition, the Company requests that the Commission consider the North Dakota complaint by a single consumer¹⁶ in relation to its service quality to over 12 million customers in the states it serves. By way of example, the Company references the September 2006 J.D. Power and Associates announcement that Alltel provides the best call quality in two regions of the country. The Company also referenced Consumer Report December 2006 recognition of Alltel as being a “Top Performer” in certain markets; of which Phoenix was one. Consumer Report also expressed an opinion that Alltel was “notably good for both connectivity and customer service, including helpfulness in responding to questions or complaints”.

In conclusion Western Wireless stated its request that an amended ROO be issued and be considered by the Commission at Open Meeting

III. Staff Analysis

The North Dakota complaint generally alleges poor quality of digital service; in particular with respect to limited access within and near the complainant’s place of residence. Alltel’s position, in general, is that the complainant was made aware of the differences between analog and digital service at his place of residence and believes that its customer’s concerns are more related to traveling within the state. The Company has indicated to Staff that Alltel believes the complainant was made aware of the difference between analog and digital service at the time of sale. Regardless of that belief, in attempt to resolve the complaint, Alltel has offered a variety of service alternatives to the complainant, including reactivation of his previous analog service, but that all such offers have been refused. Because the record in North Dakota has not been fully developed at this time, Staff is unable to comment on the specifics of this particular complaint.

The FCC, in its March 17, 2005, *Report and Order* addresses minimum requirements for a telecommunications carrier to be designated as an ETC. Two eligibility requirements that are pertinent to the North Dakota complaint are “...an ETC applicant must demonstrate: (1) a commitment and ability to provide services¹⁷, including providing service to all customers within its proposed service area; ... [and] (3) that it will satisfy consumer protection and service quality standards; ...”¹⁸

¹⁵ Page 3 lines 5-11.

¹⁶ Alltel states it has in excess of 157,000 customers in North Dakota.

¹⁷ The services that are supported by the federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. See 47 C.F.R. § 54.101.

¹⁸ See *Report and Order*, para. 20.

The FCC also, however, recognized that there might be instances where the ETC applicant might not have ubiquitous service in its designated ETC service area. In particular the FCC stated:

If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately. In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service¹⁹ within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report²⁰ the unfulfilled request to the Commission within 30 days after making such determination.²¹

The FCC also established a requirement for an ETC applicant to submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network. Among other things, the plan is to state "how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation."²² Further the FCC established a requirement, that in conjunction with its annual certification filing, an ETC must submit information explaining how high-cost monies were used to improve the carrier's network; specifically in regards to signal strength, coverage and capacity.²³

In addition to the above, the FCC required that an ETC applicant meet consumer protection and service quality standards. The FCC stated that a wireless carrier's commitment to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service would satisfy this requirement. The CTIA code provides that wireless carriers agree to: (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and

¹⁹ It is Staff's understanding that the FCC was referencing those services supported by the federal universal service mechanisms that an ETC must offer throughout the designated service area.

²⁰ Alltel did not file an "unfilled request" report for the North Dakota complaint because the customer was able to receive service at his place of residence.

²¹ See *Report and Order*, para. 22 (footnotes omitted).

²² See *Report and Order*, para. 23.

²³ *Id.*

confirm changes in service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to consumer inquiries and complaints received from government agencies; and (10) abide by policies for protection of consumer privacy.²⁴

Should a circumstance, such as the North Dakota consumer complaint, occur in Arizona, Staff believes that the requirements contained in the ROO provide assurance that federal universal service funds will be used in a manner consistent with universal service goals as well as provide for consumer protection. In general, Finding of Fact 111 incorporates the eligibility requirements which the FCC established for ETCs it designates, and encouraged states to adopt, as well as additional recommendations made by Staff. In particular, the ROO in paragraph 111, condition 6) g, in part, requires the filing of an annual certification that Western Wireless is complying with the Commission's rules regarding customer service complaints.

Staff further believes that recommendation six contained in the Second Supplemental Staff Report provides an additional safeguard in that Staff would be made aware by the Company of ETC problems that might arise in other jurisdictions and thus be able to make a determination if investigation in Arizona was warranted. Recommendation six stated:

- 6) The Company be required to a) report any actions brought against it in any states involving a failure to comply with its ETC obligations and b) report on the ultimate resolution reached by the FCC on the Colorado docket.

Upon its review of the filings discussed above, and Western Wireless statements that it is willing to abide by the conditions set forth by the ALJ in the August 23, 2005, ROO and it is further willing to abide by the six additional recommendations set forth by Staff in its Second Supplemental Staff Report, Staff recommends approval and makes no further recommendations.

²⁴ See *Report and Order*, footnote 71.