

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of WWC )  
 Holding Co., Inc., for Designation as an )  
 Eligible Telecommunications Carrier )

DOCKET NO. 98-2216-01  
REPORT AND ORDER

ISSUED: July 21, 2000

**SYNOPSIS**

The Public Service Commission of Utah grants WWC Holding Co., Inc.'s conditional ETC status for a portion of the requested area. Specifically, WWC Holding Co., Inc., is granted conditional ETC status for the U.S. West Communications, Inc., exchanges included in its petition.

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**APPEARANCES**

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Steven R. Beck Gregory Monson	"	U.S. West Communications, Inc.
Michael L. Ginsberg Assistant Attorney General	"	Division of Public Utilities
Douglas C. Tingey Assistant Attorney General	"	Committee of Consumer Services
Jerry D. Fenn	"	Utah Rural Telecom Association

By The Commission:

## **I. PROCEDURAL HISTORY**

On May 8, 1997, the Federal Communications Commission ("FCC") issued its Universal Service Report and Order, CC Docket 96-45, FCC 97-157 ("Universal Service Order") implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The Universal Service Order provides that only eligible telecommunications carriers designated by a state commission shall receive federal universal service support. Under 47 U.S.C. § 214(e), a state commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an eligible telecommunications carrier ("ETC") for a service area designated by the state commission. The FCC defines a service area as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. Together, all of a carrier's calling areas represent the overall area for which the carrier shall receive support from federal universal service support mechanisms.

On August 31, 1998, WWC Holding Co., Inc. ("Western Wireless") filed a Petition with the Public Service Commission ("Commission") for designation as an ETC in Utah to receive federal universal service support under the Act and corresponding FCC regulations, and for the purpose of receiving support from the Utah Universal Service Fund ("State Fund") established by the Commission.

Western Wireless requested ETC designation in the U.S. West local exchanges that are wholly contained in Western Wireless' coverage area as defined in Exhibits WW 1.1 and WW1.2. Western Wireless also requested designation in each rural telephone company's exchanges that are inside Western Wireless' signal coverage area in Utah. WW 1.1 is a listing of the local exchange companies and the exchanges included in Western Wireless' application. WW 1.1 is included as Appendix A to this Order. WW 1.2 is a map of the state of Utah with Western Wireless' coverage area superimposed on it. While the coverage area detailed in WW 1.2 may be accurate, the boundaries of the exchanges and service territories are not. The Commission is relying on WW 1.2 only for a description of Western Wireless' coverage area. A portion of WW 1.2 showing the coverage area is included in Appendix A.

The Utah Rural Telecom Association ("URTA") sought intervention. Five members of URTA are incumbent local exchange carriers ("LEC") and the only designated ETC in their rural study areas in which Western Wireless seeks ETC designation.

U.S. West Communications, Inc. ("U.S. West") similarly sought and was granted intervention. U.S. West is an incumbent LEC providing landline local exchange service in certain areas of Utah for which it holds a certificate of public convenience and necessity from the Commission. U.S. West is the only designated ETC for its non-rural exchanges for which Western Wireless seeks ETC designation.

The Commission sought pre-hearing briefs on certain legal issues presented by Western Wireless' Petition. The Commission heard oral arguments on October 25, 1999. Evidentiary hearings were then held on this matter on November 30 and December 1, 1999. Western Wireless offered the testimony of James Blundell, Director, External Affairs. The Division of Public Utilities ("Division") offered the testimony of Ingo Henningsen, Peggy Egbert, and Dr. George Compton. The Committee of Consumer Services ("CCS") offered the testimony of Phil Bullock. URTA offered the testimony of Raymond Hendershot. U.S. West offered the testimony of Dr. Barbara M. Wilcox.

## **II. STATUTORY PROVISIONS**

To be designated as a federal ETC under the Act, a carrier must: (1) be a common carrier; (2) demonstrate it will provide the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) present an acceptable plan for advertising its universal service offerings and the charges therefor using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, ¶ 24.

The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:

- a. voice grade access to the public switched telephone network;
- b. local usage;

- c. dual tone multi-frequency signaling or its functional equivalent;
- d. single-party service or its functional equivalent;
- e. access to emergency services;
- f. access to operator services;
- g. access to interexchange service;
- h. access to directory assistance;
- i. toll limitation for qualifying low-income consumers.

In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

To obtain funding from the State Fund, the Commission has established the following requirements: (a) a carrier must be designated an ETC under Section 214(e) of the Act; (b) a carrier must be in compliance with applicable Commission orders and rules; (c) a carrier must offer "basic telecommunications service" as defined by Commission Rule R746-360-2; and (d) a carrier must be a facilities-based provider. Utah R746-360-7.

Provision of "basic telecommunications service" requires a carrier to provide access to the public switched network; touch-tone, or its functional equivalent; single-party service with a telephone number listed free in directories that are received free in local calling areas; access to 911 or E911 emergency services (where available); access to long-distance carriers; and access to toll limitation services. Utah R746-360-2(c).

### **III. DISCUSSION AND CONCLUSIONS**

#### **Federal ETC Designation**

With its existing network, Western Wireless has testified that it currently provides each of the supported services set forth in 47 U.S.C. § 54.101(a). Each of the FCC's supported services provided by Western Wireless is discussed below:

a. Voice grade access to the public switched telephone network: Western Wireless provides voice-grade access to the public switched telephone network. Voice-grade access means the ability to make and receive phone calls within a bandwidth of approximately 2700 Hertz between the 300 and 3500 Hertz frequency range. 47 C.F.R. § 54.101(a)(i); Universal Service Order, ¶¶ 63-64. Through its interconnection arrangements with local telephone companies, all Western Wireless customers are able to make and receive calls on the public switched telephone network within the prescribed frequency range.

b. Local usage: The FCC requires that a universal service offering include some level of local usage at a flat rate. 47 C.F.R. § 54.101(a)(2); Universal Service Order, ¶¶ 66-69. The FCC does not currently require any minimum amount of local usage to be provided by an ETC, but has initiated a separate rulemaking proceeding to address this issue. See, Cross-3, Universal Service Further Notice of Proposed Rulemaking, FCC 98-278 (Oct. 26, 1998). Western Wireless provides local usage, and will include unlimited local usage as part of a universal service offering. Western Wireless will also comply with any minimum local usage requirements adopted by the FCC.

The Commission relies on Western Wireless' testimony to conclude that the area of free unlimited local usage offered as part of the basic universal service offer will be at least as comprehensive as the areas currently provided by the local exchange companies providing service in a given area.

c. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent: DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Western Wireless' network uses out-of-band digital signaling and in-band multi-frequency signaling. Western Wireless provides the functional equivalent of DTMF

signaling in satisfaction of the FCC's requirement. 47 C.F.R. § 54.101(a)(3); Universal Service Order, ¶ 71.

d. Single-party service or its functional equivalent: Western Wireless provides the functional equivalent of single-party service. Western Wireless provides a dedicated message path for the length of a user's transmission, which the FCC has deemed to be the functional equivalent of single-party service. 47 C.F.R. § 54.101(a)(4); Universal Service Order, ¶ 62.

e. Access to emergency services: Western Wireless provides all of its customers with access to emergency services by dialing 911. The ability to reach a public emergency service provider through dialing 911 is a required universal service offering. In addressing enhanced 911 or E911 Western Wireless testified that:

E911 . . . which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. *See Universal Service Order*, ¶¶ 72-73. Moreover, a wireless carrier such as WWC is not required to provide E911 services until a local emergency service provider has made arrangements for the delivery of ALI and ANI from carriers and has established a cost recovery mechanism. *Universal Service Order*, ¶ 73. . . . To date, no public emergency service provider in Utah has made arrangements for the delivery of ANI or ALI from WWC. (WW 1, DeJordy Direct Testimony, pg 12.)

Western Wireless testified that when it received a bona fide request from an emergency service provider in accordance with the law cited above, it would provide E911 for its wireless local loop customers.

f. Access to operator services: Western Wireless provides access to operator services to arrange for the billing or completion, or both, of a telephone call. The service is provided by either Western Wireless or other entities, including LECs or interexchange carriers, in satisfaction of the FCC's requirements. 47 C.F.R. § 54.101(a)(6); Universal Service Order, ¶ 75.

g. Access to interexchange service: Western Wireless provides access to interexchange service for the purpose of making and receiving toll or interexchange calls in satisfaction of FCC requirements. 47 C.F.R. § 54.101(a)(7); Universal Service Order, ¶ 78. This service is provided through interconnection arrangements Western Wireless has with several interexchange carriers. Western Wireless exceeds the FCC's requirements by providing customers the ability to access their interexchange carrier of choice by dialing an appropriate access code.

h. Access to directory assistance: Western Wireless provides all of its customers with access to directory assistance by dialing "411" or "555-1212" as required by FCC Rule 54.101(a)(8) and Universal Service Order, ¶ 80.

i. Toll limitation for qualifying low-income consumers: Western Wireless currently provides toll blocking services for international calls and will use this same technology to provide a toll blocking service for its qualifying low-income consumers receiving subsidies pursuant to the federal Lifeline program. This satisfies FCC Rule 54.101(a)(9).

Western Wireless advertises its current wireless service offerings to both residential and business customers through different media services of general distribution, including newspaper, television, radio, and billboard advertising. Western Wireless also maintains retail store locations throughout its authorized service areas in Utah. Western Wireless testifies that it will advertise its universal service offerings and rates, using these same media of distribution and in a way that fully informs the general public, and will comply with any form and content requirements adopted by the FCC or the Commission in the future and required of all designated ETCs. Western Wireless thus meets the advertising requirement of 47 U.S.C. § 214(e)(1).

With regard to the U.S. West exchanges within Western Wireless' requested designated service areas listed on late-filed Exhibit WW-1.1, Western Wireless is licensed and presently provides the supported services throughout those exchanges, and once designated as an ETC Western Wireless has testified it can and will offer and advertise universal service throughout each exchange. To the extent there might be a few small and discrete areas not within Western Wireless' existing signal coverage, Western Wireless has testified it can and shall extend its service within a reasonable time to reach any customers who request service.

With regard to the U.S. West exchanges, the Commission will not add further criteria for federal ETC designation to

those set forth in Section 214(e)(1) of the Act. Universal Service Order, ¶ 24. Consistent with the Act and FCC Rules, Western Wireless satisfies all criteria for federal ETC designation in exchanges served by U.S. West that are in Western Wireless' signal coverage area.

With regard to the exchanges in the rural, or independent companies, the Commission is also required to consider if the designation of a second ETC in areas already served is consistent with the public interest. This consideration is in addition to the other measures included in the law. Western Wireless seeks ETC designation in the Utah study areas of Gunnison Telephone Company, Manti Telephone Company, Navajo Communications Company-Utah, Skyline Telecom and South Central Utah Telephone Association, Inc. ("URTA Companies"). While Western Wireless is licensed and provides the supported services throughout these companies' study areas in which it seeks designation, the Commission has concerns regarding whether the designation would actually be in the public interest.

The concerns focus primarily on the potential impact of the designation on the State's Universal Public Telecommunications Service Support Fund (the State Fund). The independent companies are currently regulated under rate of return regulation. In a sense the State Fund is the final revenue that makes these companies' rate of return meet the required levels. After all other sources of funds are considered, the State Fund must make up the difference between reasonable costs and all revenues. If, by designating Western Wireless as an additional ETC in the respective study areas of the URTA Companies, the effect is to reduce the companies' revenue, without an equal reduction in costs, the State Fund would be called upon to make up the difference. Such a situation would cause a significant increase in the burdens placed upon the State Fund (i.e., all Utah telecommunications customers) without corresponding public benefits.

Further, Western Wireless testifies that their prices may well be higher than the incumbent's prices, up to 125% of the incumbent's prices, therefore offering a lower cost service is not a benefit that can be counted on to balance out the public interest equation. In fact the primary potential benefit of designating Western Wireless as a "rural" ETC could have been that areas that are currently not served by any incumbent, but are within Western Wireless' signal coverage area, could now be served by Western Wireless. However since Western Wireless has only asked for designation in areas that are already being served, even this potential benefit is lost in the public interest analysis.

The Commission finds that because of the possible negative impact on Utah's State Fund it is not in the public interest to add a second ETC to the URTA Companies' service areas at this time. However, if Western Wireless is willing, the Commission believes that designating Western Wireless as an ETC in the areas of the state that are not currently served by any telecommunications corporation, which are generally in Western Wireless' signal coverage area, would advance universal service by bringing telecommunications services to Utah's unserved rural citizens.

### **State Level Qualifications for Approval to Draw on the State Fund**

Western Wireless has testified it could qualify to draw from the State Fund for the U.S. West exchanges in its application area. The services supported by the State Fund as set forth in the Commission's definition of "basic telecommunications service" are similar to the FCC's service requirements under FCC Rule 54.101(a). While the Utah and FCC supported services are expressed in slightly different words, there are few substantive differences between them. As mentioned earlier, the Commission is relying on Western Wireless' testimony that the free local calling area in every area served will be as large, or larger, than the calling area currently provided by U.S. West in the exchanges in its signal coverage area if it is granted state level approval. Further, Western Wireless has testified, and we rely on that testimony as well, that they will obey the Commission's Rules with respect to qualifying to receive money from the State Fund. Specifically, Western Wireless will need to charge no more than the Affordable Base Rate for their universal service offering. The Commission has set rates for the U.S. West exchanges dealt with in this order, and presumes that these rates represent the affordable rates for the relevant exchanges or areas.

Western Wireless currently provides within its existing network the following State Fund supported services or their functional equivalents: access to the public switched network; touch-tone; single-party service; access to 911 emergency services; access to long-distance carriers; and access to toll limitation services. Western Wireless testifies that it will provide a free telephone listing in a directory that is distributed without charge and E911 emergency services when properly requested.

We find that Western Wireless qualifies for federal ETC designation as defined by the Act and 47 C.F.R. § 54.1 *et seq.*, in the exchanges set forth on Exhibit WW-1.1 that are part of the U.S. West service territory, for the purpose of receiving federal universal service support. Further, we find that Western Wireless qualifies for the designation of eligible telecommunications carrier for purposes of drawing from the State Fund for the exchanges and study areas as set forth on Exhibit WW-1.1 1 that are part of the U.S. West service territory. We stress that the finding that Western Wireless meets the criteria for federal and state level designation is a recognition only of their potential to provide the service. Western Wireless will be able to draw from the funds only as they provide service to actual customers, and only for so long as they remain in compliance with Commission rules (and federal guidelines) with respect to prices, quality, services, and offerings.

The Commission has jurisdiction and authority to ensure that Western Wireless continues to meet the ETC criteria set forth in Section 214(e)(1) of the Act and the requirements of the State Fund. Nothing prevents the Commission from, on its own motion, modifying, suspending or revoking Western Wireless' ETC designation if it does not meet those obligations. An ETC's obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. § 214(e)(1), connotes not just willingness to offer the services, but actual performance of the services. Such performance in turn connotes provision of the services at an adequate service level. Whether an ETC (Western Wireless) is actually performing such services could arise in a proceeding to modify, revoke, or suspend the designation.

#### **IV. ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Western Wireless is designated an ETC under the federal guidelines in the U.S. West Local Exchanges included in their application, conditioned on meeting the requirements of this order. On the same conditions, Western Wireless is also designated as qualifying to receive State Fund disbursements as services are provided, in the same U.S. West exchanges for which federal designation has been granted. The Commission notes that it has recently approved the exchange sales in Docket 99-049-65, and is in the process of preparing an order with respect to that Docket. Therefore, the exchanges included in Docket 99-049-65 are not included in the area approved in this Order.
2. Western Wireless shall provide universal service pursuant to a written service agreement in place with its customers. The Service Agreement shall be filed for review with the Commission, and shall contain provisions which ensure it will provide universal service as defined by 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(a) and this Order. The required components of this offering are reviewed in this Order above. We note that our approval is conditional on Western Wireless offering unlimited local usage as part of the universal service offering package that covers, at a minimum, all areas currently covered by the incumbent local exchange provider on an individual calling area basis Western Wireless may offer larger free unlimited local calling areas.
3. Approval to receive money from the State Fund is further conditioned upon Western Wireless providing directory listings as required by state rule, and on their charging a price for basic telecommunications service that is less than or equal to the affordable base rate. At such time as Western Wireless seeks reimbursement from the State Fund, it shall seek reimbursement only for those universal service offerings priced at or below the affordable base rate, as defined in Commission Rule R746-360-7(B), and only for a support area where its total average revenue per line is less than the USF cost proxy model costs as set forth in Commission Rule R746-360-7(B), subject to any future amendments to the Commission's rules for funding from the State Fund.
4. Pursuant to U.C.A. §63-46b-13, an aggrieved party may file, within 20 days after the date of this Report and Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. §54-7-15, failure to file such a request precludes judicial review of the Report and Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§63-46b-1 *et seq.*).

DATED at Salt Lake City, Utah, this 21st day of July, 2000.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard

Commission Secretary

## APPENDIX A

### Western Wireless WW 1.1

<b>Locality</b>	<b>Company Name</b>	<b>Coverage by WWC</b>	<b>Entire Study Area of Telco Served</b>
GUNNISON	GUNNISON TEL CO	YES	YES
MANTI	MANTI TEL CO	YES	YES
HALCHITA	NAVAJO COMMUNICAITONS CO - UT	YES	YES
MONTEZUMA	NAVAJO COMMUNICATIONS	YES	YES
MONUMENT V	NAVAJO COMMUNICATION CO - UT	YES	YES
EUREKA	SKYLINE TELECOM	YES	YES
GOSHEN	SKYLINE TELECOM	YES	YES
MORONI	SKYLINE TELECOM	YES	YES
ANTIMONY	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
APPLE VALL	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BICKNELL	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BOULDER	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BRYCE CANY	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BERYL	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
CANNONVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
CIRCLEVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
SUCK CREEK	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
ENTERPRISE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
ESCALANTE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
PANGUITCH	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
KANAB	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
KOOSHAREM	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
LOA	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
MILFORD	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
MINERSVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
MARYSVALE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
ORDERVILLE	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
PANGUITCH	SOUTH CENTRAL UTAH TEL ASSN INC	YES	YES
BEAVER	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
BRIAN HEAD	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
CEDAR CITY	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
EPHRAIM	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
HANKSVILLE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
HURRICANE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
MOUNT PLEA	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A

MONROE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
NEPHI	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
PAROWAN	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
PAYSON	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
RICHFIELD	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
SALEM	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
SALINA	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
SPRINGDALE	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
ST GEORGE (1)	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
ST GEORGE (2)	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A
ST GEORGE (3)	U.S. West COMMUNICATIONS- MOUNTAIN BELL - UT	YES	N/A

For Western Wireless 1.2 (Electronic Version) See Acrobat file f3997.pdf - Contact PSC for copy of Map of Utah Incumbent Local Exchange Carrier Service Areas and Western Wireless Cellular Coverage