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OF COUNSEL  
(573) 634-8109  
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May 13, 2004

FILED<sup>2</sup>

MAY 13 2004

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Chief Regulatory Law Judge and Secretary  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**RE: Case No. TC-2004-0347**

The Staff of the Missouri Public Service Commission, Complainant v.  
WWC License LLC d/b/a Cellular One Long Distance, Respondent

Dear Mr. Roberts:


Enclosed for filing on behalf of WWC License LLC d/b/a Cellular One Long Distance, please find an original and five (5) copies of **"WWC LICENSE LLC'S MOTION FOR LEAVE TO AMEND ANSWER"** in the above-styled case.

Please see that this filing is brought to the attention of the appropriate Commission personnel.

Thank you for your cooperation and assistance in this matter.

Sincerely,

WILLIAM D. STEINMEIER, P.C.

By:   
William D. Steinmeier

Enclosures

cc: General Counsel  
Office of Public Counsel  
Mary Ann (Garr) Young

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**FILED<sup>2</sup>**

**MAY 13 2004**

**Missouri Public  
Service Commission**

The Staff of the Missouri Public Service Commission, )  
)  
)  
Complainant, )  
)  
v. )  
)  
WWC License LLC d/b/a Cellular One )  
Long Distance. )  
)  
Respondent. )

Case No. TC-2004-0347

**WWC LICENSE LLC'S  
MOTION FOR LEAVE TO AMEND ANSWER**

COMES NOW WWC License LLC d/b/a Cellular One Long Distance ("WWC License"), a subsidiary of Western Wireless Corporation, and pursuant to 4 CSR 240-2.080(20) moves the Commission for leave to amend its answer to the complaint, filed on March 9, 2004, by adding paragraph numbers 13-20, as follows:

13. By way of further answer and defense, Respondent states that it submitted to the Commission, on February 27, 2003, its notarized "Statement of Revenue – FY-2004 Mo. PSC Assessment" reporting \$0 in gross intrastate operating revenue for the year 2002 and that submission of said "Statement of Revenue" constitutes substantial compliance with the requirement of filing an annual report concerning the 2002 reporting year, which is the subject of the instant complaint. A copy of that "Statement of Revenue," the cover letter attached to it and the letter from the Missouri

PSC requesting same, are attached to this Motion for Leave to Amend Answer as **Exhibit A**.

14. By way of further answer and defense, Respondent states that the Commission has considerable discretion concerning the enforcement of this administrative requirement. Section 392.210.1 RSMo. provides in part for the Commission to prescribe a time within which a company may amend a “defective or erroneous” report or to “exempt any telecommunications company from the necessity of filing annual reports until the further order of the commission.” It further states, “If any telecommunications company shall fail to make and file its annual report as and when required *or within such extended time as the commission may allow, ....*” *Section 392.210.1 RSMo., emphasis added.* No standard is fixed by the statute for the Commission’s discretionary exemption of a company from the requirement of filing annual reports nor its extension of time for the filing or correction of such reports. If the intent of the General Assembly had been to strictly prohibit the Commission from exercising discretion on such matters, it would not have provided the Commission with the clear option of assessing the facts and circumstances of the situation and determining when and when not to make exemptions or grant extensions.
15. By way of further answer and defense, Respondent states that the Commission has, in fact, exercised discretion for years concerning the enforcement of Section 392.210.1 RSMo. The sudden and unprecedented

rush to seek maximum penalties for late 2002 Annual Reports is both arbitrary and capricious.

16. By way of further answer and defense, Respondent states that for calendar year 2002 it received no revenue from its Missouri operations (as shown in the notarized "Statement of Revenue" it submitted on January 27, 2003) and, therefore, the Commission should retroactively exempt Respondent from the requirement to file an annual report for that reporting year, in accordance with the Commission's clear discretion to grant an exemption in accordance with Section 392.245.1 RSMo.
17. By way of further answer and defense, Respondent states that for calendar year 2002 it received no revenue from its Missouri operations (as shown in its notarized "Statement of Revenue" submitted on January 27, 2003) and, therefore, the Commission should retroactively grant it an extension of time until February 13, 2004, for the filing of its annual report for that reporting year in accordance with the Commission's clear discretion to grant an extension of time for the filing of annual reports under Section 392.245.1 RSMo.
18. By way of further answer and defense, WWC License respectfully submits that the Commission not only has ample discretion in the enforcement of Section 392.210.1 RSMo., but has an obligation as a matter of public policy to exercise such discretion in light of the State's policy of promoting telecommunications competition as expressed in S.B. 507 (1996). The "purpose clause" (Section 392.185) and the "intent" language

(Section 392.200.4(2)) included in S.B. 507, devices used very sparingly by the Missouri General Assembly, clearly express the policy of the State of Missouri to promote competition in the telecommunications industry. Extracting maximum statutory fines and penalties from competitive telecommunications providers which dramatically exceed their Missouri revenues, for violation of a ministerial filing requirement, could drive some competitors out of the Missouri telecommunications market altogether and make others far less profitable. This would discourage competition, rather than promoting it, as contemplated by the General Assembly in S.B. 507 in 1996. Such a drastic penalty would be dramatically and disproportionately more harmful to the Respondent than the harm experienced by the Commission as a result of not receiving the Annual Report (showing zero Missouri revenues) on time.

19. By way of further answer and defense, Respondent states that for calendar year 2002 it received no revenue from its Missouri operations. For Respondent to be subject to statutory fines of \$100 per day in connection with the allegations in the complaint, or potentially more than \$30,000.00 in fines, for failure to report zero revenues on the right form at the right time would violate the rights of the Respondent as protected under the 8<sup>th</sup> Amendment to the Constitution of the United States and Article I, Section 21 of the Constitution of the State of Missouri against the imposition of excessive fines and infliction of cruel and unusual punishments.

20. For all the reasons stated in its Answer, as amended herein, in this cause, WWC License respectfully requests that the Commission: deny Staff's Motion for Summary Determination; accept its Annual Report out of time; find and conclude that WWC's submission of its "Statement of Revenue" on February 27, 2003 constituted "substantial compliance" with the requirement of filing an annual report concerning the 2002 reporting year; retroactively exempt WWC License from the requirement of filing an annual report for the 2002 reporting year, or retroactively extend the deadline for such filing to February 13, 2004; waive any need for further proceedings or hearings on this matter; and dismiss the complaint filed by Staff herein.

Neither party has commenced discovery in this matter. The addition of these paragraphs would result in no prejudice against nor hardship on Complainant. Justice, fairness and the protection of Respondent's legal rights in this matter would be served by granting leave to amend.

WHEREFORE, WWC License respectfully requests that the Missouri Public Service Commission grant its motion for leave to amend its answer by the addition of the eight numbered paragraphs above.

Respectfully submitted,



William D. Steinmeier

Mo. Bar #25689

Mary Ann (Garr) Young

Mo. Bar # 27951

WILLIAM D. STEINMEIER, P.C.

P.O. Box 104595

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Jefferson City, MO 65110-4595

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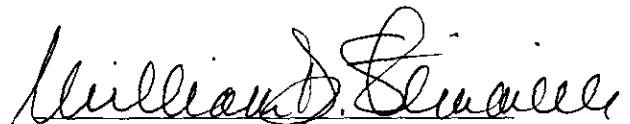
Email: wds@wdspc.com

myoung0654@aol.com

COUNSEL FOR WWC LICENSE  
LLC d/b/a CELLULAR ONE LONG  
DISTANCE

#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to the General Counsel of the Missouri Public Service Commission and the Office of the Public Counsel this 13<sup>th</sup> day of May 2004.



William D. Steinmeier

**WWC LICENSE LLC  
MOTION FOR LEAVE TO AMEND ANSWER  
CASE NO. TC-2004-0347**

**EXHIBIT A**



Commissioners  
KELVIN L. SIMMONS  
Chair  
CONNIE MURRAY  
SHEILA LUMPE  
STEVE GAW  
BRYAN FORBIS

## Missouri Public Service Commission

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>

ROBERT J. QUINN, JR.  
Executive Director  
WESS A. HENDERSON  
Director, Utility Operations  
ROBERT SCHALLENBERG  
Director, Utility Services  
DONNA M. PRENGER  
Director, Administration  
DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge  
DANA K. JOYCE  
General Counsel

February 14, 2003

Cellular One Long Distance  
3650 131st Ave SE, Suite 400  
Bellevue, WA 98006

Attn: Regulatory Utility Assessment Coordinator

Dear Sir or Madam:

Gross intrastate operating revenue is to be reported in compliance with the provision of Section 386.370 RSMo. By law, utilities are assessed annually for the Public Service Commission's operating costs in proportion to their operating revenues.

Please report, to the nearest dollar, gross intrastate operating revenue for the 2002 calendar year on the enclosed Statement of Revenue form. Forward one notarized copy of the form to the Public Service Commission's Internal Accounting Department at the address noted above on or before March 31, 2003. Please retain a copy for your files.

If you had "zero" gross intrastate operating revenue for calendar year 2002, please indicate such on the Statement of Revenue form and return it to us. If you own or operate more than one company, a Statement of Revenue form must be submitted for each company. If you did not receive a pre-printed Statement of Revenue form for all of the companies that you operate, the form may be printed from the Missouri Public Service Commission website at [www.psc.state.mo.us](http://www.psc.state.mo.us). It is located under the "Forms" icon. You may also call (573) 751-4274, and we will mail additional forms to you.

Please be aware that if you do not complete and return a Statement of Revenue form, your company's operating revenue for 2002 will be estimated by Commission staff, and your assessment will be calculated based upon this estimated revenue figure.

Sincerely,



Robert J. Quinn, Jr.  
Executive Director

Enclosure



February 27, 2003

Robert J. Quinn, Jr.  
Executive Director  
Missouri Public Service Commission  
Internal Accounting Department  
P.O. Box 360  
Jefferson City, Missouri 65102

Re: 2002 Gross Intrastate Operating Revenue  
**WWC License L.L.C. dba. Cellular One Long Distance**

Dear Mr. Quinn:

Enclosed is the 2002 Statement of Revenue for WWC License L.L.C. dba Cellular One Long Distance, a subsidiary of Western Wireless Corporation. WWC License holds federal licenses to provide Commercial Mobile Radio Service (CMRS) in Missouri, and State authority to provide Interexchange Carrier (IXC) service in Missouri. This report is a report of the IXC services provided in Missouri during 2002. As you can see from the Report, WWC License did not provide service and did not generate any revenue during 2002.

Please feel free to contact me directly at (425) 586-8432 should you have any questions concerning WWC License L.L.C. or this Report. Thank you.

Sincerely,

Nathan Glazier  
Manager of Regulatory Affairs

Enclosure

**STATEMENT OF REVENUE***FY-2004 Mo. PSC Assessment*

Cellular One Long Distance  
3650 131st Ave SE, Suite 400  
Bellevue, WA 98006

I, Nathan Glazier, Manager of Regulatory Affairs (425) 586-8432  
NAME TITLE TELEPHONE #

hereby certify that the GROSS INTRASTATE OPERATING REVENUE of the above-named Company in the State of Missouri, for the calendar year 2002, is:

NOTE: REPORT (to the nearest dollar) REVENUE APPLICABLE TO YOUR RESPECTIVE UTILITY OPERATIONS. IF YOU OWN OR OPERATE MORE THAN ONE COMPANY IN MISSOURI, SUBMIT A STATEMENT OF REVENUE FORM FOR EACH COMPANY. IF REVENUE IS COMBINED, SUBMIT FORMS FOR ALL COMPANIES AND INDICATE ON EACH FORM THE COMPANIES BEING INCLUDED IN THE COMBINED REVENUE STATEMENT.

ELECTRIC OPERATING REVENUE	\$	<u>N/A</u>
GAS OPERATING REVENUE	\$	<u>N/A</u>
HEATING OPERATING REVENUE	\$	<u>N/A</u>
WATER OPERATING REVENUE	\$	<u>N/A</u>
SEWER OPERATING REVENUE	\$	<u>N/A</u>
TELEPHONE OPERATING REVENUE	\$	<u>0</u>
TOTAL	\$	<u>0</u>

Nathan Glazier  
SIGNATURE

State of Washington  
County of King

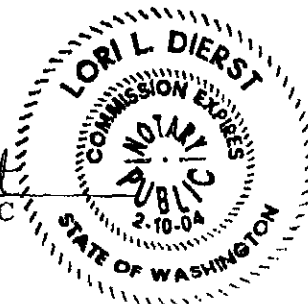
Sworn to and subscribed before me a Notary Public in and for said County and State this

27 day of February, 2003  
DATE MONTH YEAR

(SEAL)

My commission expires 2-10-04

Lori L. Dierst  
NOTARY PUBLIC



Mail one notarized copy of this statement to the Missouri Public Service Commission, Internal Accounting  
Department, P.O. Box 360, Jefferson City, Missouri 65102.  
NO LATER MARCH 31, 2003