

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of WWC)
License, LLC, d/b/a CellularOne, for)
Designation as an Eligible) Case No. TO-2004-0527
Telecommunications Carrier, and Petition for)
Redefinition of Rural Telephone Company Areas)

**MOTION TO DISMISS,
OR IN THE ALTERNATIVE,
MOTION TO DIRECT WESTERN WIRELESS TO AMEND APPLICATION**

COME NOW Intervenor Craw-Kan Telephone Company (“Craw-Kan”) and KLM Telephone Company (“KLM”)(collectively “Intervenor”), and for their Motion to Dismiss, or in the alternative, Motion to Direct Western Wireless to Amend Application, state to the Commission as follows:

SUMMARY

On April 13, 2004, Western Wireless License, LLC (“Western Wireless”) filed its application (“the Application”) for designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e). The Application fails to comply with 4 CSR 240-2.060(K) which requires Western Wireless to identify pending actions before state and federal agencies or courts. The Application also fails to comply with 4 CSR 240-2.060(L) which requires Western Wireless to demonstrate that its annual report and assessment fees are not overdue. Accordingly, the Commission should either dismiss the Application, or in the alternative, direct Western Wireless to amend its application and comply with these Commission rules.

DISCUSSION

1. **The Commission's Rules.** The Commission has a legal obligation to follow its own rules. "An agency is compelled to comply with its rules duly promulgated pursuant to properly delegated authority as such rules have the force and effect of law and are binding upon the agency adopting them." *Prenger v. Moody*, 845 S.W.2d 68, 78 (Mo. App. 1992). Commission Rule 4 CSR 240-2.060(1)(K) requires an applicant to include a statement indicating whether the applicant has any pending action which involves customer service or rates that occurred within three (3) years of the date of application. Commission Rule 4 CSR 240-2.060(1)(L) requires an applicant to affirmatively state that no annual reports or assessment fees are overdue.

2. **The Application.** At footnote 2, the Application states, "There are no pending actions or final unsatisfied judgments against Western Wireless within the last three years concerning customer service or rates. No annual report or assessment fees are overdue."¹ As explained below, neither of these statements is completely accurate.

3. **Pending Actions and Final Unsatisfied Judgments against Western Wireless.** The cases discussed below demonstrate that there are a number of pending actions against Western Wireless which involve customer service and rates. Indeed, there are at least two complaint cases against Western Wireless currently pending before this Commission, and there is also a current proceeding before the Kansas Corporation Commission to determine whether Western Wireless has unlawfully used its Eligible Telecommunications

Carrier (ETC) designation to obtain federal universal service support. (See Attachment A.) Therefore, Western Wireless's Petition fails to comply with Commission Rule 4 CSR 240-2.060(K).

4. **Missouri Complaint Cases – Failure to Pay Lawful Tariff Rates.**

Over two years ago, a group of small rural carriers filed a complaint against Western Wireless (along with other wireless carriers) for failing to pay compensation for the use of the small companies' facilities and services.² A second complaint filed by a different group of small companies (including KLM) has also been pending against Western Wireless (and T-Mobile) for over two years involving Western Wireless's failure to pay lawful and Commission-approved wireless termination service tariff rates.³ Both of these complaint cases involve rates, and both cases are still pending before the Commission. At the very least, Western Wireless should have identified the complaint case involving KLM in the Application because it involves the same Commission and the same service area where Western Wireless seeks ETC designation.

5. **Kansas Case – Allegations of Unlawful Use of Federal USF Support.** In March of this year, the Kansas Corporation Commission issued an order directing an investigation into whether Western Wireless has unlawfully obtained federal universal service support under its ETC designation and violated Kansas Commission orders.⁴ The Kansas Commission's Staff had requested the

¹ Application, ¶4 at footnote 2.

² *Northeast Missouri Rural Tel. Co. et al.*, Case No. TC-2002-57.

³ *BPS Telephone Company et al.*, Case No. TC-2002-1077.

⁴ *In the Matter of GCC Licence Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, 2004 Kan. PUC LEXIS 296, Order Directing Investigation, Mar. 16, 2004 (Attachment A).

investigation **“to determine whether Western Wireless unlawfully obtained federal universal service support for customers in telephone exchanges not included within its ETC designation and whether Western Wireless unlawfully obtained federal universal service support for services beyond the scope of its ETC designation.”**⁵ Specifically, the Kansas Staff has alleged that Western Wireless received federal USF support for non-supported services and in unauthorized areas. The Kansas Commission’s Staff proposed revoking Western Wireless’s ETC designation for what the Kansas Staff asserted to be **“egregious violations of the Commission’s Orders.”**⁶ The Kansas Commission issued its *Order Directing Investigation* on March 16, 2004, which is within the three (3) year requirement of Missouri Commission’s Rule.

6. **ETC Designation.** The Kansas case is particularly relevant to the circumstances presented in this case because the Kansas proceeding involves questions about whether Western Wireless has unlawfully obtained federal universal service support after receiving an ETC designation from the Kansas Commission. The case in Kansas involves both customer service and rates.⁷

7. **Missouri Staff Complaint – Overdue Annual Report.** On February 4, 2004, the Staff of the Missouri Public Service Commission (Staff) filed a complaint alleging that WWC License, LLC d/b/a CellularOne Long Distance had not filed an annual report with the Commission for the period

⁵ *Id.* (Emphasis added.)

⁶ *Id.* at ¶1. (Emphasis added.)

⁷ *Id.* The Kansas Commission Staff alleged that Western Wireless sought and obtained federal USF support for “customers of its conventional cellular service, a non-supported service.” Staff’s allegations also involve the distinction between Western Wireless’s Basic Universal Service offering as opposed conventional cellular service (which includes customer rates).

ending December 31, 2002.⁸ Although Western Wireless's instant Application lists a different d/b/a from the company listed in the Staff complaint, it is still the same company, and the Staff complaint should have been listed in order for the applicant to be in compliance with Commission rules. This alone is sufficient cause for the Application to be dismissed by the Commission.

8. **The Public Interest.** The Kansas and Missouri cases discussed above are exactly the sort of cases that should have been disclosed under the Commission's rule.

- (a) The Kansas case involves allegations that Western Wireless has unlawfully obtained federal universal service funding after receiving ETC status in Kansas. Western Wireless is now seeking ETC status from the Missouri Commission.
- (b) The Missouri wireless tariff complaint cases involve allegations that Western Wireless has failed to comply with tariffs approved by the Missouri Commission.
- (c) The Missouri Staff's complaint involving an overdue annual report is another indication that Western Wireless does not comply with its regulatory obligations.

The statutory test for whether an additional ETC should be designated in areas served by rural telephone companies is a "public interest" test. The cases identified above all raise questions about whether it is in the public interest for Western Wireless to be designated as an ETC in Missouri.

⁸ *Staff of the Missouri Public Service Comm'n v. WWC License, LLC d/b/a Cellular One Long Distance*, Case No. TC-2004-0347.

9. **Missouri Law.** As an applicant requesting specific relief from the Commission, Western Wireless must comply with the Commission's rules. And the Commission has a legal obligation to follow its own rules.⁹

CONCLUSION

The Application fails to comply with the Commission's rules by failing to identify pending actions and decisions against Western Wireless, including two complaint cases before the Missouri Commission and at least one case before another state commission involving alleged misuse of Western Wireless's ETC designation. The Application also fails to comply with the Commission's rules which require an applicant to disclose whether an annual report or assessment is overdue. These omissions make the Application invalid and also raise questions about the "public interest" standard for granting an application for ETC designation. Therefore, the Commission should dismiss the Application, or in the alternative, direct Western Wireless to amend its Application by disclosing all pending actions or adverse decisions involving customer service and rates, particularly any involving ETC designation, federal universal service funding, or failure to compensate other carriers for service in areas where Western Wireless seeks or has obtained ETC designation.

⁹ *Prenger v. Moody*, 845 S.W.2d 68, 78 (Mo. App. 1992).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 25th day of June, 2004, to the following parties:

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Brian T. McCartney
Brian T. McCartney

1 of 2 DOCUMENTS

In the Matter of GCC License Corporation's Petition for Designation as an Eligible
Telecommunications Carrier

Docket No. 99-GCCZ-156-ETC

Kansas Corporation Commission

2004 Kan. PUC LEXIS 296

March 16, 2004, Dated

PANEL: [*1] Before Commissioners: Brian J. Moline, Chair; John Wine; Robert E. Krehbiel

OPINION: ORDER DIRECTING INVESTIGATION AND ESTABLISHING PROCEDURAL SCHEDULE

For the reasons more fully discussed below, the Commission declares that the Eligible Telecommunications Carrier (ETC) designation awarded Western Wireless Corporation and WWC License LLC (collectively Western Wireless) is and has been limited to Western Wireless's Basic Universal Service (BUS) offering and that Western Wireless is not and has not been designated by the Commission to obtain federal and state universal support for conventional cellular service. The Commission further declares that Western Wireless's ETC designation is and has been limited to the exchanges identified or listed in Commission's prior Orders and that exchanges not listed or identified in prior Orders are excluded from Western Wireless's ETC designation. Accordingly, the Commission directs that the investigation requested by Commission staff (Staff) proceed as provided below.

INTRODUCTION

1. On July 22, 2003, Staff filed its Motion to Reopen Docket, to Clarify Order # 11 and to Determine if ETC Designation of Western Wireless Should Be Revoked (Motion). Staff [*2] requests the Commission to initiate an investigation to determine whether Western Wireless unlawfully obtained federal universal support for customers in telephone exchanges not included within its ETC designation and whether Western Wireless unlawfully obtained federal universal support for services beyond the scope of its ETC designation. Staff alleges that notwithstanding the limitation placed upon the scope of Western Wireless's federal ETC status by the Commission, Western Wireless sought and obtained federal universal service support for customers in Sprint/United exchanges, Motion at PP 2-11, and for customers of its conventional cellular service, a non-supported service. Motion at PP 11-20. In its Motion, Staff proposes remedies, including the revocation of the Western Wireless's ETC designation, for what Staff asserts to be egregious violations of the Commission's Orders. Motion at PP 20 and Summary. Staff also requests clarification because the Universal Service Administrator Company (USAC) prefers that orders designating ETC status in certain exchanges also state the exchanges are specifically excluded from universal service fund support. Motion at P 11.

2. Western Wireless [*3] filed a Response on October 21, 2003. As a threshold matter, Western Wireless asserts that the Commission lacks jurisdiction to entertain Staff's Motion. The Commission's Orders from which Staff's Motion is premised are currently on appeal to the District Court of Nemaha County, Kansas, and therefore, according to Western Wireless, the "Commission's jurisdiction is suspended during the pendency of the appeal." Western Wireless Response at 1. Western Wireless continues and argues that it may have mistakenly received federal universal support for customers in Sprint's operating territory but that the mistake has been corrected. Western Wireless Response at 5-7. Finally, Western Wireless argues that its ETC designation for federal universal service fund support was not restricted under the Commission's Orders to Western Wireless's BUS offering. Rather, the "only restriction established by the Commission related to Western Wireless's eligibility to receive KUSF [Kansas Universal Service Fund] support for the BUS offering utilizing wireless local loop equipment as set forth in the May 3, 2001 Order." Western Wireless Response at 19-20. According to Western Wireless, the Commission does [*4] not have the authority to place

conditions on Western Wireless's federal ETC status. Funding eligibility, Western Wireless avers, "is instead determined by USAC [Universal Service Administrator Company] once a carrier is designated as an ETC." Western Wireless Response at 8.

3. On October 31, 2003, Staff filed a Response to Western Wireless's Reply. Staff argues that Western Wireless has not interpreted federal law correctly. Staff, citing to 47 U.S.C. § 214(e), points out that the Commission has been granted the authority to designate a carrier as an ETC, provided that the carrier offers and advertises the services that are supported by federal universal support mechanisms throughout the service area for which the designation is received. Staff Reply at 4-7. Staff, citing to the record, also points out that Western Wireless explicitly stated that its basic universal service offerings for which Western Wireless sought ETC designation, does not and did not include conventional cellular service since Western Wireless's conventional cellular service could not serve the federally supported services throughout the designated service area. Staff Reply [*5] at 4-7. Finally, Staff, citing *In re Estate of Robinson*, 232 Kan. 752, 659 P.2d 172 (1983), asserts that the appeal filed by the Rural Telephone Companies from orders previously entered in this docket did not prevent the Commission from hearing Staff's Motion because the Motion does not attempt to reconsider or change those prior orders that are on appeal to the District Court. Staff Reply at 7-8.

4. On November 5, 2003, a prehearing conference was held. The parties agreed to conduct additional discovery to determine whether the issues could be resolved without hearing. Prehearing Conference Order, entered November 17, 2003. After the prehearing conference, Western Wireless filed a motion to compel Staff to answer certain data requests. Staff also filed a motion to compel against Western Wireless, which was subsequently withdrawn.

5. On February 27, 2004, Staff filed a Motion for Declaratory Judgment. Staff requests the Commission to declare that Western Wireless's ETC designation was limited to Western Wireless's BUS offering and that Western Wireless's ETC designation did not authorize Western Wireless to obtain federal and state universal [*6] fund support for conventional cellular service.

DISCUSSION

6. The Federal Telecommunications Act of 1996 (Federal Act) provides each state a critical role in administering the ETC designations within their respective state boundaries. In doing so, the Federal Act recognizes the states' interest in the provision of local telephone service and competition within state borders. The encouragement of fair competition in telecommunications markets, the development of new services, including construction and deployment of an advanced telecommunications infrastructure, and the protection of universal service, so as to ensure that telecommunications service is available at affordable rates throughout Kansas, are vital state concerns. See K.S.A. 2003 Supp. 66-2001.

7. The Federal Act delegated specific jurisdiction and authority to state commissions to determine ETC designations. The ETC designation is necessary for purposes of receiving state and federal universal service support by a telecommunications carrier for telecommunications operations within the respective state. 47 U.S.C. § 214(e). A state commission may qualify a carrier as an ETC if [*7] the carrier: (a) provides supported services, 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.101, and (b) those supported services are available throughout the service area for which universal service support is sought. 47 U.S.C. § 214(e)(1). The service area for a rural telephone company is its study area. 47 U.S.C. § 214(e)(5). A state-awarded ETC designation is required before a carrier can receive any federal universal service fund support. 47 U.S.C. § 214(e)(2). n1

n1 The Federal Communications Commission (FCC) has the jurisdiction and authority to act on ETC matters in circumstances where a state commission declines, neglects or refuses to act.

8. Staff posits the question whether the ETC designation awarded Western Wireless for federal and state universal service support purposes included financial support for customers of Western Wireless's conventional cellular service. [*8] At issue, according to Staff, is the propriety of Western Wireless's conduct with respect to that ETC designation. Fundamentally, the universal service fund was not intended to compensate telecommunications carriers for services, which are not available throughout the service area or which are not supported services as defined by the Federal Act. The damage or harm from providing compensation to telecommunications carriers for services that do not fall within the definition of supported services or in areas where supported services are not provided throughout the service area or

study area is the inequitable subsidization of a competitor and improper increase of the end-user levy to finance the universal service fund. That harm or damage affects vital state concerns.

9. The Commission's Order awarding ETC designation to Western Wireless were premised upon Western Wireless's BUS offering and not conventional cellular service. As Staff has correctly pointed out through extensive citations to the record, Western Wireless was not seeking ETC designation for its conventional cellular service. Rather, Western Wireless sought ETC designation based solely upon its BUS offering which meets [*9] the necessary criteria to qualify as a supported universal service. Specifically, Western Wireless's BUS offering encapsulated the necessary supported services or functionality, as defined by 47 C.F.R. § 54.10, and Western Wireless averred that those supported services were available throughout the service areas in which ETC designation was sought. Those service areas did not include exchanges within the Sprint/United service territory.

10. While some wording in the Commission's Orders was general, its intent is specific. The Commission directed Western Wireless to disclose details of its BUS offering in order to evaluate whether the offering met the statutory criteria for supported services. Order 10 at P 9. A hearing was conducted on the BUS offering and Western Wireless was questioned extensively by the parties and by the Commission on whether the ETC designation it sought was limited to the exchanges where its BUS offering was available or whether Western Wireless was seeking ETC designation for its conventional cellular service. May 10, 2000 Hearing Transcript. Western Wireless acknowledged that the ETC designation it sought was limited to service areas in which it made its BUS [*10] offering. Western Wireless further acknowledged that its conventional cellular service did not qualify because the conventional cellular service it offered did not include the provision of supported services, as required by the Federal Act. May 10, 2000 Hearing Transcript, at pp. 51-52, 117-118, 125, 202-205 and 223.

11. From review of the prior Orders and other filings in this docket, it is clear that most of the discussion in those documents relates to Western Wireless's BUS offering and not to its conventional cellular service. Of particular note would be the Commission's ETC Order, n2 the Commission's Order Adopting Criteria, n3 and Western Wireless's own Proposed Order designating it as an ETC in rural areas. n4 Clearly, the Commission's Orders and ETC designation pertained to the supported universal service offered by Western Wireless through its BUS offering--and not the conventional cellular services, which were acknowledged to be deficient from qualifying as supported universal service.

n2 Order on Petition of Western Wireless for Designation as an Eligible Telecommunications Carrier, Docket No. 99-GCCZ-156-ETC, entered October 12, 2001. [*11]

n3 Order Adopting Criteria for Receipt of Support from the Kansas Universal Service Fund for Wireless Eligible Telecommunications Carriers in the Non-Rural Areas on an Interim Basis, Docket No. 99-GCCZ-156-ETC, entered May 3, 2001. n4 WWC License L.L.C.'s Proposed Order Designating WWC as an ETC in Areas Served by Rural Telephone Companies, Docket No. 99-GCCZ-156-ETC, dated June 1, 2001.

12. The Commission declares that the ETC designation awarded Western Wireless by this Commission is and has been applicable only to the extent Western Wireless satisfied the statutory criteria for the ETC designation. Western Wireless's ETC designation is and has been limited to its BUS offering. Western Wireless is not and has not been designated by the Commission eligible to obtain federal and state universal support for conventional cellular service.

13. The Commission further declares that Western Wireless's ETC designation is and has been limited to the exchanges identified or listed in Commission's prior Orders and that exchanges not listed or identified in prior Orders are excluded from Western Wireless's [*12] ETC designation. Specifically, Western Wireless does not comply with the requirements of section 214(e) of the Federal Act in Sprint/United service areas and thus does not qualify for federal support in those service areas. The scope of Western Wireless's Application was limited to certain exchanges. Therefore, the prior Orders enumerated the exchanges in which the ETC designation was awarded, as limited by the scope of relief requested by Western Wireless. In that context, it is not necessary to identify, with particularity, the exchanges excluded because the Commission is making its determination based upon the relief requested, as limited by the Application. That is, the Application filed by Western Wireless in this matter was not seeking an ETC designation for all exchanges and therefore, a specific ruling on exchanges not covered by the Application was unnecessary. Nonetheless, without an ETC-designated exchange, the universal service fund is neither appropriate nor authorized for those service areas.

14. Because a state-awarded ETC designation is required to receive federal universal service fund support, a state commission must have enforcement powers. That is, if a state commission [*13] has jurisdiction to grant ETC status, it must also have the power to enforce and determine the rights and responsibilities associated with the ETC designation on an ongoing basis. This Commission, as the state agency entrusted with the regulatory supervision over telecommunications service providers, has the power and authority to protect vital state concerns with respect to the provision of those services within state borders and assure that the ETC designation awarded by this Commission to Western Wireless is used properly, appropriately and not manipulated and used to the detriment of the public interest. *See Pitts v. Kansas Dental Board*, 267 Kan. 775 (1999) (the Kansas Supreme Court implied a jurisdictional grant of authority to allow an administrative agency to perform a function the court considered to be vital). Indeed, it has been recognized by the Federal Communications Commission (FCC) that "where an ETC fails to comply with requirements in section 214(e) and any additional requirements proposed by the state commission, the state commission ... may rescind a certification previously granted." Recommended Decision, *In the Matter of the Federal-State* [*14] *Joint Board on Universal Service*, CC Docket No. 96-45, FCC 04J-1, released February 27, 2004, at P 48 (citations omitted). The Commission can and should investigate whether Western Wireless acted unreasonably or improperly by claiming state or federal funds beyond the scope of its Commission-awarded ETC designation, especially in light of the Commission's original finding that Western Wireless's ETC designation served the public interest.

15. This investigation is further supported by the recent Recommended Decision of the Federal-State Joint Board on Universal Service. *Id.* That recommended decision contains findings that "state commissions should apply a particularly rigorous standard to the minimum qualifications of applicants seeking ETC designations in rural carrier service areas," *Id.* at P 18; that "the state certification process provides the most reliable means of determining whether carriers are using support in a manner consistent with section 254," *Id.* at P 46; and that "states should use the annual certification process to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs." *Id.* [*15] at P 47. Accordingly, this Commission can and should review the extent to which federal universal service support has been used to provide the supported BUS offering and associated infrastructure costs.

16. Western Wireless asserts that the Commission lacks jurisdiction to decide Staff's Motion because the Orders previously entered in this docket are presently on appeal. Staff's Motion, however, does not seek to set, change or amend the regulatory policy and related decisions. Rather, Staff's Motion seeks to enforce and assure compliance with the Commission's Orders by Western Wireless. Because Staff's Motion involves enforcement and does not seek to amend the nature, substance and scope of the original orders, the Commission may proceed to hear and decide the motion without interfering with the District Court's review of the policy decisions made in the prior orders. This power to enforce and assure regulatory compliance is necessary and proper to discharge the Commission's duties on an ongoing, prospective basis. *See In re Estate of Robinson*, 232 Kan. 752, 659 P.2d 172 (1983). Accordingly, Staff is directed to proceed and investigate [*16] (a) whether Western Wireless obtained state or federal universal support for customers of its conventional cellular service and (b) if so, how much support did Western Wireless collect for those customers. The Commission expects that this investigation would include (a) assessing data on the actual, specific number and location of BUS subscribers served by Western Wireless in Kansas, (b) the actual, specific number of conventional cellular customers served by Western Wireless in Kansas, and (c) a comparison of these customer counts with the number of customers for which Western Wireless has sought and received federal universal service fund support since its ETC designation for BUS was awarded by the Commission. Furthermore, Staff is to seek, and Western Wireless is to provide, information demonstrating that the federal universal service support obtained from the USAC is used to provide the supported BUS service in Kansas and showing whether there is any shortfall/overage of federal universal service support versus costs to provide the supported BUS service in Kansas. In addition, Staff should investigate (a) whether Western Wireless obtained federal universal support for customers [*17] in exchanges located in the Sprint/United service territory; (b) if so, how much support did Western Wireless collect; and (c) whether Western Wireless has corrected the mistake, as indicated in its Response, filed October 23, 2003. Staff should also compile and discuss relevant background information and propose relief or remedies that would be appropriate for any violations of the Commission's prior Orders that Staff believes have occurred.

DISCOVERY MATTERS AND PROCEDURAL SCHEDULE

17. Western Wireless filed a motion to compel Staff to disclose its legal analysis supporting an investigation into whether Western Wireless has unlawfully obtained federal universal service support. Similarly, Western Wireless also seeks an order compelling Staff to provide the record basis upon which Staff asserts that Western Wireless limited its ETC application to its BUS offering. *See Western Wireless's Motion to Compel*, Data Requests 8, 9, 13, 14, 18, 19, 23,

26 and 27. Staff states that its legal analysis is fully set forth in its Motion and that the record cites, including citation to hearing transcript record wherein testimony for Western Wireless's witness explains its ETC application [*18] in detail, are also set out in its Motion. Staff's Motion does not seek to amend or modify the regulatory policy decided in prior Orders. Rather, Staff's Motion seeks to enforce a prior Commission order. The legal and record basis upon which Staff makes its request is contained in its Motion. In this context, inquiry into Staff's legal reasoning is neither appropriate nor relevant. The Commission ultimately decides the legal issues and determines whether a legal basis exists for the Commission to investigate this matter. That decision is not limited to the legal arguments and research of Staff nor is it limited the legal arguments and research received from other parties participating in the docket.

18. Western Wireless also seeks an order compelling Staff to provide the factual basis upon which Staff asserts that Western Wireless acted intentionally and purposefully in violation of the Commission's prior Orders. *See* Western Wireless's Motion to Compel, Data Requests 20, 21, 22 and 24. Staff contends that it has provided a factual basis to warrant revocation in its Motion. Staff alleged in its Motion that the intentional and purposefully misconduct of Western Wireless is an aggravating [*19] circumstance that warrants revocation of its ETC designation in the state of Kansas. Western Wireless is entitled to know what evidence -- whether direct or circumstantial -- Staff relies upon to show that Western Wireless's conduct was so "egregious" that it warrants revocation of Western Wireless's ETC designation. The Commission, in this Order, is not ruling that Western Wireless violated prior Orders or that revocation is appropriate. These are issues best addressed through the evidentiary hearing ordered in this case. Accordingly, Staff is directed to specify the facts, documents or other information it believes will support the allegations contained in its Motion, including the allegations of intentional and purposeful misconduct, in its prefiled testimony required by this Order. By directing Staff to answer Western Wireless's data requests in prefiled testimony, discovery will be facilitated and better focused on issues under investigation. Further, discovery may lead to other relevant evidence, and Staff should be permitted to incorporate such evidence into its prefiled testimony.

19. The Commission recognizes that it is, in essence, directing Staff to answer the Western [*20] Wireless's data requests, albeit through the use of prefiled testimony. The requirement that Staff's prefiled testimony disclose the facts Staff relies upon to support its allegation of intentional and purposeful misconduct does not affect the decision to reopen the docket and investigate whether Western Wireless over-collected universal service fund support. The information sought in Western Wireless's Data Requests 20, 21, 22 and 24 relates to the appropriate relief or remedy (if it is proven that Western Wireless did, in fact, over-collect universal service fund support) and not to whether the docket should be reopened and the matter investigated.

20. As part of this investigation, Staff is required to prefile direct and rebuttal testimony, as provided in the procedural schedule below. Staff should address the specific issues identified above, including recommendations for relief or remedy appropriate for any violation of Commission's prior Orders. Western Wireless and any intervening party will be permitted an opportunity to respond and prefile direct testimony in accordance with the procedural schedule below. Accordingly, the following procedural schedule is hereby ordered:

[*21] Staff prefiled direct testimony	April 16, 2004
Western Wireless and Intervenor prefiled direct testimony	June 18, 2004
Staff prefiled rebuttal testimony	July 2, 2004
Deadline for preliminary motions (9:30 a.m.)	July 16, 2004
Prehearing Conference (9:30 a.m.)	July 16, 2004
Technical hearing (9:30 a.m.)	July 20, 2004
Simultaneous initial briefs	July 30, 2004
Simultaneous reply briefs	August 6, 2004

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) Staff's Motions for Declaratory Order and to Reopen Docket are granted, as more fully set forth above. Western Wireless's Motion to Compel is ruled upon, as provided above.

(B) Notice is given that a prehearing conference shall be held in this matter on July 16, 2004, beginning at 9:30 a.m. for the purposes of determining and discussing any preliminary motion, establishing the schedule for witness presentation and the order of cross-examination, and any other matter to assist in an orderly and efficient investigation and hearing process. This prehearing conference will be held in the Third Floor Hearing Room at the Commission offices, 1500 S.W. Arrowhead Road, Topeka, Kansas. Advisory Counsel will preside.

(C) Notice [*22] is given to the parties that an evidentiary hearing in this matter shall commence on July 20, 2004, at 9:30 a.m. and continue thereafter until completed. This hearing will be conducted in the First Floor Hearing Room at the Commission's Offices, 1500 S.W. Arrowhead Road, Topeka, Kansas. One day has been reserved for hearing. The Commissioners shall preside.

(D) Any party who fails to attend or participate in the prehearing or any other stage of this proceeding may be held in default under the Kansas Administrative Procedures Act, K.S.A. 77-520.

(E) The attorney designated to appear for the agency in this proceeding is Mr. Robert Lehr, Assistant General Counsel, 1500 S.W. Arrowhead Road, Topeka, Kansas 66604: (785) 271-3110.

(F) A party may file a petition for reconsideration of this Order within fifteen (15) days of the date of this Order. If this Order is mailed, service is complete upon mailing and three days may be added to the above time frame.

(G) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Moline, Chr.; Wine, Com.; Krehbiel, [*23] Com.

Dated: MAR 16 2004

Susan K. Duffy

Executive Director