

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)

REPLY TO WESTERN WIRELESS

COME NOW Intervenor Craw-Kan Telephone Company ("Craw-Kan") and KLM Telephone Company ("KLM")(collectively "Intervenors"), and for their Reply to Western Wireless's Response to Motion to Dismiss, state to the Commission as follows:

INTRODUCTION

Western Wireless claims the Commission's rules that require applicants to identify pending or unsatisfied cases involving rates or service "do not apply" to Western Wireless in this case. Intervenor respectfully disagree. First, the Kansas and Missouri Commission cases cited by the Intervenor both involve rates and service. Second, and perhaps more importantly, both the Kansas and Missouri cases demonstrate Western Wireless's failure to comply with state commission orders. If Western Wireless is not required to alert the Commission to these pending actions involving rates and service by disclosing them in the application, then the Commission's rule serves no purpose. Other parties should not have to bear this burden. Therefore, the Commission should either dismiss the Application, or in the alternative, direct Western Wireless to amend its application and comply with the Commission's rules.

DISCUSSION

1. The Missouri Complaint Cases – Failure to Pay Lawful Tariff

Rates. Over two years ago, two groups of small rural carriers filed a complaint with this Commission about Western Wireless's failure to pay lawful and Commission-approved wireless termination service tariff rates.¹ Western Wireless argues that the Intervenor's "wrongly suggest the two complaint proceedings before this Commission (Case Nos. TC-2002-57 & TC-2002-1077) 'involve rates.'"² Western Wireless also contends that it is "not an end user 'customer' of the ILECs."³

2. Western Wireless's arguments are belied by the sworn testimony of Western Wireless witness Ron Williams during the November 6, 2003 hearing in Case No. TO-2002-1077:

Q. I understand that you have a disagreement with Complainants about the application of their wireless tariff to intra-MTA traffic; is that correct?

A. Correct.

Q. And the dispute there primarily is on their use of a tariff for intra-MTA traffic and the rate level; is my understanding correct?

A. Yeah. There really – there's a disagreement in principle about the validity of a state-approved termination tariff for

¹ *Northeast Missouri Rural Tel. Co. et al.*, Case No. TC-2002-57; *BPS Telephone Company et al.*, Case No. TC-2002-1077.

² Western Wireless Response, p. 3.

³ *Id.*

federally regulated traffic, correct. And then there's also a dispute about what is an appropriate forward-looking transport and termination agreement.

Q. Okay. But you don't dispute that the minutes are your traffic?

A. I don't dispute the fact that we generate traffic, that that traffic is transited through SBC's network and terminated to independent telephone companies.

Q. Thank you. And you also don't dispute that you're financially responsible for paying for your own customers' traffic, for the termination of that traffic?

A. We are responsible for determining what relationship exists for the reciprocal compensation associated with the exchange of traffic between ourselves and another carrier.

Q. And in this case, it's the Complainants; is that correct?

A. In this case, the other carriers are the Complainants.⁴

This testimony demonstrates that the complaints against Western Wireless do involve both rates and service. Specifically, Western Wireless is taking service from the small rural carriers without paying for it because Western Wireless

⁴ See Attachment A – *BPS Telephone Co. et. al. v. Voicestream Wireless Corp., Western Wireless Corp., and Southwestern Bell Telephone Company*, Case No. TC-2002-1077, Testimony of Western Wireless Witness Ron Williams, Nov. 6, 2003 (Tr. 116-18) (Emphasis added.).

disputes the small companies' lawful and Commission-approved wireless termination service tariff rates.⁵

3. The Missouri complaint cases involve both service and rates, and both cases are still pending before the Commission. Western Wireless should have identified the complaint case involving KLM because it involves the same Commission and the same service area where Western Wireless seeks ETC designation.

4. **Kansas Case – Allegations of Unlawful Use of USF Funding.**

Western Wireless argues that the Kansas Commission's case does not involve customer service or customer rates.⁶ To the contrary, the Kansas Commission's orders make repeated reference to customer service.

5. Specifically, the Kansas Commission's Staff asked the Kansas Commission to find that Western "unlawfully obtained FUSF support for **services** beyond the scope of its ETC designation, arguing the Commission's approval of ETC designation was limited to Western's **BUS [Basic Universal Service] offering** using fixed wireless technology and did not include Western's conventional **wireless service**."⁷ Western Wireless took the position that it "was permitted to obtain FUSF support for its **conventional cellular service as well as for its BUS service**."⁸ The Kansas Commission held "that it did not intend this ETC designation to cover Western's conventional cellular **service** because

⁵ See Attachment B, KLM's Wireless Termination Service Tariff.

⁶ Western Wireless Response, p. 5.

⁷ Attachment C – *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 468, *Order Granting Reconsideration*, May 3, 2004, ¶15.

⁸ *Id.*

Western has never sought approval of this type of service offering in Kansas."⁹ The Kansas Commission's March 16, 2004 order declares that Western Wireless's ETC designation "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."¹⁰

6. Western Wireless's response to the Missouri Commission argues that the Kansas proceeding "is limited to the single issue of whether the Kansas Commission possessed either the intent or authority to purportedly limit the scope of Western Wireless' ETC designation to a single service offering."¹¹ In Kansas, Western Wireless argued that the Kansas Commission "has no authority to determine whether specific service offerings are eligible for universal service support."¹² The arguments of Western Wireless about its universal service offering before this Commission and the Kansas Commission call into question whether Western Wireless will follow Commission authority and orders.

7. ETC Application. Western Wireless states that the cases cited by the Intervenor "have no bearing on Western Wireless's Verified Application for designation as an ETC."¹³ Intervenor respectfully disagree and believe that these cases have direct bearing on Western Wireless's ETC application.

⁹ *Id.* at ¶7.

¹⁰ *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.

¹¹ Western Wireless Response, p. 5. (Emphasis added.)

¹² Attachment C – *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 468, *Order Granting Reconsideration*, May 3, 2004, ¶14. (Emphasis added.)

Specifically, both cases demonstrate Western Wireless's inability or intentional failure to comply with state commission orders. In both cases, Western Wireless chose not to appeal the underlying state commission orders. Instead, Western Wireless simply ignored the state commission orders and engaged in actions that appear to be prohibited by those orders. This pattern bears directly on the question of Western Wireless's willingness to recognize the Missouri Commission's authority and comply with any conditions or limitations that the Missouri Commission may choose to impose on ETC status for wireless carriers.

CONCLUSION

Western Wireless's Application fails to comply with the Commission's rules. 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 and service, federal universal service funding, and failure to compensate other carriers for service in areas where Western Wireless seeks or has obtained ETC designation.

¹³ Western Wireless Response, p. 3.

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 16th day of July, 2004, to the following parties:

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