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April 30, 2004

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

FILED²

APR 30 2004

Missouri Public
Service Commission

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:

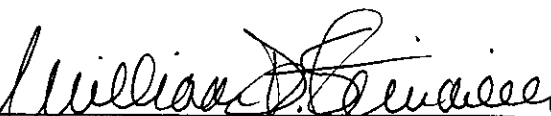
Enclosed for filing on behalf of WWC License LLC d/b/a Cellular One Long Distance, please find an original and five (5) copies of **"WWC LICENSE LLC'S RESPONSE TO STAFF'S MOTION FOR SUMMARY DETERMINATION"** in the above-styled case.

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

FILED²

APR 30 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 RESPONSE TO STAFF'S
MOTION FOR SUMMARY DETERMINATION**

COMES NOW WWC License LLC d/b/a Cellular One Long Distance ("WWC License"), a subsidiary of Western Wireless Corporation, and in response to Staff's Motion for Summary Determination, states:

1. WWC License supports the Staff's recommendation that the 2002 Annual Report of WWC License be accepted out of time.
2. WWC License agrees with the Staff that the submission of the 2002 Annual Report of WWC License on February 12 or 13, 2004 tolled the accumulation of the maximum possible penalties that could legally be assessed against WWC License for its failure to file the 2002 Annual Report on or before April 15, 2003.
3. WWC License has admitted, and regrets, that it failed to submit its 2002 Annual Report on time, due to unfortunate administrative oversight.
4. WWC License urges the Commission to order the parties to submit a proposed procedural schedule in this matter, rather than arbitrarily and unilaterally

authorizing its General Counsel to initiate a penalty action against the Company in the circuit court as recommended by Staff. As a matter of law, the Commission must hold a proper hearing on the facts of any alleged violation of its statutes, rules and regulations before proceeding into circuit court to commence a penalty action. State of Missouri v. E.H. Carroll, 620 S.W.2d 22 (Mo.App. S.D. 1981); State ex rel. Cirese v. Ridge, 345 Mo. 1096, 138 S.W.2d 1012 (Mo. Banc 1940); State ex rel. Sure-way Transportation v. Division of Transp., Dept. of Economic Development, State of Mo., 836 S.W.2d 23 (Mo.App. W.D. 1992).

5. As recited in its "Response and Motion to Dismiss" filed herein on March 9, 2004, WWC faxed and mailed its 2002 Annual Report on February 12, 2004, upon receipt of Staff's complaint in this matter. That report showed that WWC had zero revenue in Missouri in 2002. The lack of this information in a timely manner could not reasonably have caused actual damage to the Commission or to the public interest, nor impeded the Commission in the execution of its statutory responsibilities. WWC does not currently provide service or generate revenue from interexchange carrier customers in Missouri, but maintains its certificate of service authority for future purposes.
6. To proceed to initiate a penalty action in the circuit court in this matter would not only be wrong as a matter of law, and cause great expense to WWC License and to the Commission itself, but it would also be analogous to using a sledgehammer to swat a gnat. WWC License has previously expressed, and continues to express, its sincere regret that it failed to file this Annual Report in a timely fashion, and

has committed to submit all future filings on time and pursuant to Commission rules.

7. There is neither logic nor proportionality in seeking financial penalties from competitive carriers if the penalty dramatically exceeds their annual revenues generated in the State of Missouri. In fact, proceeding in this manner against WWC License and other carriers similarly situated as a result of the bevy of complaint cases currently pending before the Commission concerning late-filed 2002 Annual Reports would seem to fly in the face of the policy directives of the Missouri General Assembly as expressed in S.B. 507 (1996). Section 392.200.4(2) RSMo, expresses the "intent" of that legislation as being "to bring the benefits of competition to all customers ..." and to "promote the goals of the federal Telecommunications Act of 1996," Section 392.185 RSMo describes the purpose of S.B. 507 as including the promotion of "diversity in the supply of telecommunications services and products throughout the state of Missouri," permitting "flexible regulation of competitive telecommunications companies" and allowing "full and fair competition to function as a substitute for regulation" Extracting maximum statutory fines and penalties from competitive telecommunications providers which far, or even 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 appear to discourage competition, rather than promoting it, as contemplated by the General Assembly in S.B. 507 in 1996. Such a drastic penalty is far more harmful to the carrier than the harm

experienced by the Commission as a result of not receiving the Annual Report on time.

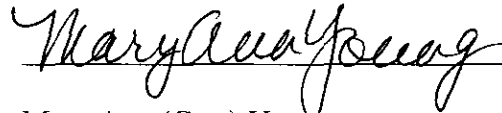
8. It would also be a mistake for the Commission to suggest or entertain the belief that it has no discretion concerning the enforcement of this administrative requirement. Section 392.210.1, the very statute that requires the filing of annual reports by telecommunications companies, provides in part that when any report filed "is defective or erroneous, the commission shall notify the company to amend the same within a time prescribed by the commission." That section goes on to provide that the "commission may, when it deems it advisable, exempt any telecommunications company from the necessity of filing annual reports until the further order of the commission." No standard is fixed by the statute for the Commission's discretionary exemption of a company from the necessity of filing annual reports. If the intent of the General Assembly was 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.
9. The very sentence which authorizes penalties for failure to file Annual Reports also makes it clear that the Commission has discretion to extend the filing deadline for such reports. It 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, *emphasis added*.

10. The unprecedented nature of this complaint, and the numerous similar complaints filed in February 2004 concerning Annual Reports, demonstrates that the Commission has, in fact, exercised discretion for years concerning the enforcement of Section 392.210.1. The sudden and unprecedented rush to seek maximum penalties for late 2002 Annual Reports is both arbitrary and capricious.
11. 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. This is particularly true in light of the State's policy of promoting telecommunications competition. The "purpose clause" (Section 392.185) and the "intent" language (Section 392.200.4(2) included in S.B. 507 are devices used very sparingly by the Missouri General Assembly, as the Commission is well aware. Thus, not only does the Commission have discretion in this matter, but it would be contrary to its charge to encourage competition in the provision of telecommunications services in Missouri not to exercise such discretion in this case.
12. At the very least, then, WWC License encourages the Commission to undertake a proceeding to evaluate the actual public harm or impact caused by the failure of WWC License to timely file its 2002 Annual Report, to hear evidence and argument concerning the discretion accorded to the Commission in Section 392.210.1, and to consider the requirements of that statute in relation to other statutes governing the Commission, including those establishing the policy of the State of Missouri to be to promote competition in the telecommunications industry. Such a proceeding should (and, as a matter of law, must) be undertaken

before any Commission decision is made to direct its General Counsel to seek penalties in circuit court.

WHEREFORE, WWC License respectfully requests that the Commission deny Staff's Motion for Summary Determination, accept its Annual Report out of time, either exempt WWC License from the requirement of filing a 2002 Annual Report or 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 submitted by Staff.

Respectfully submitted,

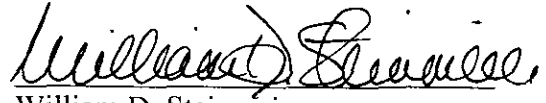
A handwritten signature in cursive script that reads "Mary Ann (Garr) Young". The signature is written in black ink and is positioned above the typed name and contact information.

Mary Ann (Garr) Young
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Mo. Bar #25689
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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 30th day of April 2004.


William D. Steinmeier