

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

In the Matter of the Application of)
WWC License, LLC for Designation as an)
Eligible Telecommunications Carrier, and)
Petition For Redefinition of Rural)
Telephone Company Service Areas)

Case No. TO-2004-0527

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

WWC License, LLC, d/b/a Cellular One® (“Western Wireless”), submits its response to the motion of Craw-Kan Telephone Company and KLM Telephone Company (collectively, “Intervenors”)¹ to dismiss or, in the alternative, to direct Western Wireless to amend its Verified Application for Designation as an Eligible Telecommunications Carrier (“Application”). For the reasons set forth below, Intervenors’ motion should be denied.

INTRODUCTION

The Missouri Public Service Commission (“Commission”) should reject Intervenors’ disingenuous arguments in support of their motion. Intervenors falsely accuse Western Wireless of failing to comply with Commission Rules that – on their face and in fact – do not apply. In sum, Intervenors mistakenly contend Western Wireless failed to comply with 4 CSR 240-2.060(K), which requires an applicant to disclose any pending action or final unsatisfied judgments or decisions which specifically involve either customer service or customer rates. As correctly stated in Western Wireless’ Verified Application, there are none.

¹ Since Intervenors’ motion was filed, Spectra Communications Group, LLC d/b/a CenturyTel (“CenturyTel”) and the Office of Public Counsel (“OPC”) have filed joinders relying on Intervenors’ same flawed arguments. Western Wireless’ response will therefore address each of these motions.

Intervenors also wrongly accuse Western Wireless of failing to comply with 4 CSR 240-2.060(L), which requires an applicant to confirm that no annual reports or assessment fees are overdue. Again, there are none. Although WWC License, LLC d/b/a CellularOne Long Distance had inadvertently failed to file a 2002 Annual Report at the time Staff filed its Complaint on February 4, 2004 in Case No. TC-2004-0347, Western Wireless subsequently filed a completed report with the Commission's Data Center on February 13, 2004, verifying that no assessments were due.² Accordingly, at the time Western Wireless filed its Verified Application in this proceeding on April 13, 2004, this oversight had already been corrected. The Commission should, therefore, deny Intervenors' unsupported motion.

ARGUMENT

I. WESTERN WIRELESS FULLY COMPLIED WITH 4 CSR 240-2.060(K)

Western Wireless' Verified Application fully complied with 4 CSR 240-2.060(K) relating to the disclosure of any pending proceedings involving customer service or customer rates. Western Wireless truthfully confirmed the absence of any such proceedings in its Application. Yet, in a transparent attempt to divert the Commission's attention from the relevant considerations in this proceeding, Intervenors nevertheless contend Western Wireless violated the rule by failing to disclose certain administrative proceedings before this Commission and the State Corporation Commission of the State of Kansas ("Kansas Commission"). This claim is plainly wrong.

² See *Staff of the Missouri Public Service Comm'n v. WWC License, LLC d/b/a CellularOne Long Distance*, Case No. TC-2004-0347, *Staff's Statement* (February 24, 2004). The Company's 2002 Annual Report has been placed in the Electronic Filing and Information System and assigned tracking number BMAR-2004-0094.

Under the plain language of the Commission's procedural rules, an applicant is required to provide certain disclosures in its application which relate to pending actions involving customer service or customer rates. Rule 240-2.060(K) sets forth the requirement as follows:

A statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the application.

4 CSR 240-2.060(K) (emphasis added). Significantly, not one of the administrative proceedings Intervenor's accuse Western Wireless of failing to disclose in its Verified Application relate to customer service or customer rates. And Intervenor's offer little more than conclusory allegations that the proceedings involve either.³

For example, Intervenor's wrongly suggest the two complaint proceedings before this Commission (Case Nos. TC-2002-57 & TC-2002-1077) "involve rates." (Intervenor Mot., p. 3.) This is incorrect. As the Commission is no doubt well aware, both of these proceedings relate to inter-carrier compensation arrangements and the application of certain "termination tariffs" filed by the ILECs. The ILECs that filed those complaints are not end-user "customers" of Western Wireless, and Western Wireless is not an end-user "customer" of the ILECs. Thus, the proceedings cited by the Intervenor's have absolutely nothing to do with customer service or customer rates and, therefore, have no bearing on Western Wireless' Verified Application for designation as an ETC filed in this docket pursuant to 4 CSR 240-2.060.

³ Indeed, although CenturyTel's separate joinder otherwise mimics the Intervenor's motion, it does not even pretend to argue that the allegedly undisclosed proceedings involve customer service or customer rates. Nor does OPC offer any argument to support such a finding.

Likewise, Intervenor baldly contend that the Kansas proceeding (Docket 99-GCCZ-156-ETC) “involves both customer service and rates.” (Intervenor Mot., p. 4.) Intervenor are again mistaken. In fact, Intervenor rely upon the Kansas Commission’s March 16, 2004 Order to support its claim (Intervenor Mot., Attachment A), without noting that the Order was subsequently reconsidered and vacated by the Kansas Commission on May 4, 2004. In any event, the Kansas proceeding relates only to a good faith dispute regarding the scope of Western Wireless’ ETC designation in the State of Kansas based on the record of that proceeding and does not involve either customer service or customer rates.

Western Wireless was previously designated as a competitive ETC in Kansas. Under the plain language of Kansas Commission’s ETC Orders, and pursuant to federal law, the Kansas Commission did not limit the scope of Western Wireless’ ETC designation to any particular service offering. Subsequently, on March 16, 2004, the Kansas Commission issued its Order Directing Investigation in response to a Staff request to “clarify” the scope of Western Wireless’ ETC designation and to limit the scope of the designation to the Company’s basic universal service (“BUS”) offering, which is provisioned using wireless access unit customer equipment. In short, the proceeding involves an interpretation of the Kansas ETC Orders based on the record evidence in that proceeding. Western Wireless disputes that the Kansas Commission had the intent or authority to limit the scope of its ETC designation and, therefore, sought reconsideration of the Kansas Commission’s March 16 Order. Western Wireless’ request for reconsideration was granted on May 4, 2004, and the matter is

presently pending.⁴ Thus, the vacated March 16 Order that the Intervenor rely on has no bearing on this proceeding.

While the issue in the Kansas proceeding is not relevant here, what is clear is that nothing in that proceeding relates to or concerns complaints regarding Western Wireless' customer service or customer rates in the State of Kansas or elsewhere. Rather, the scope of the 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. Accordingly, nothing in 4 CSR 240-2.060(K) required, or now requires, disclosure of the Kansas proceeding as part of Western Wireless' Application in this proceeding.

Further, Western Wireless was under no obligation to identify the Staff complaint concerning its 2002 Annual Report (Case No. TC-2004-0347) in its Application under Rule 240.2.060(K). The subject of that complaint is an administrative requirement imposed by statute on certificated carriers, not customer service or customer rates. And, as discussed more thoroughly below, the Company had already filed its 2002 and 2003 Annual Reports as of April 13, 2004, the date it filed its Application for designation as a competitive ETC.

II. WESTERN WIRELESS FULLY COMPLIED WITH 4 CSR 240-2.060(L)

Western Wireless' Verified Application fully complied with 4 CSR 240-2.060(L), which requires that an applicant include in its application "[a] statement that no annual report or assessment fees are overdue." Once again, Western Wireless provided a

⁴ *In the Matter of GCC License Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, *Order Granting Reconsideration* (May 3, 2004).

truthful response.

As discussed briefly above, although the Company inadvertently failed to file a 2002 Annual Report for its long distance operations by the April 2003 deadline, it corrected this oversight and filed its report within two days of receiving notice of Staff's complaint in Case No. TC-2004-0347.⁵ The Commission received the Company's 2002 Annual Report on February 13, 2004, and Staff reviewed it and found it was complete as described in Staff's Statement filed February 24, 2004.

Moreover, Western Wireless had previously filed with the Commission on February 23, 2003, its "Statement of Revenue" for fiscal year 2002, upon which annual PSC fees and assessments are based.⁶ The Company had also filed its 2003 Annual Report on February 17, 2004.⁷ Therefore, at the time Western Wireless filed its Verified Application in this proceeding on April 13, 2004, the Company had no overdue annual reports or assessment fees consistent with its statement provided pursuant to 4 CSR 240-2.060(L).

III. INTERVENORS' PUBLIC INTEREST ARGUMENTS ARE MISPLACED

Intervenors and CenturyTel both contend that the allegedly undisclosed administrative proceedings are relevant to the Commission's public interest determination in this proceeding (Intervenor Mot., p. 5; CenturyTel Response, p. 2). They are wrong. None of the other proceedings has any appropriate bearing on the

⁵ See *Staff of the Missouri Public Service Comm'n v. WWC License, LLC d/b/a CellularOne Long Distance*, Case No. TC-2004-0347, *WWC License, LLC Answer and Motion to Accept Annual Report out of Time* (March 9, 2004).

⁶ *Id.*

⁷ EFIS Tracking No. BMAR-2004-0105.

Commission's "public interest" determination to designate an additional ETC in an area served by a rural telephone company under 47 U.S.C. §214(e)(2).

The public interest determination required under Section 214(e) of the Telecommunications Act of 1996 (the "Act") depends on whether the designation of a competitive ETC will promote competition and whether consumers will ultimately realize benefits related to competition and the new services provided. Indeed, Congress described the purpose of the 1996 legislation as follows:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added). There can be no doubt that Western Wireless' designation as a competitive ETC throughout its requested ETC service areas in this proceeding will promote Congress' express policy goals.

In designating Green Hills Cellular as a competitive ETC, the Commission has already determined that the public interest would be served because it will "expand the availability of innovative, high-quality and reliable telecommunications service, and will further stimulate economic development within the state of Missouri." *In the Matter of the Application of Green Hills Area Cellular Telephone, Inc. d/b/a Green Hills Telecommunications Services for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support*, Case No. CO-2003-0162, *Order Approving Stipulation and Agreement*, p. 4 (March 4, 2003). This is even more true in the case of Western Wireless.

First, as the FCC has recognized, the entry of a fully independent, facilities-based competitor like Western Wireless will lead to better service, prices and the

provision of new, innovative services by both the new entrant and the incumbent LECs. *In the Matter of Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 00-2896, ¶¶ 16-22 (rel. Dec. 26, 2000) (“We agree with Western Wireless that competition will result not only in the deployment of new facilities and technologies, but will also provide an incentive to the incumbent rural telephone companies to improve their existing network to remain competitive, resulting in improved service to Wyoming consumers.”)

More importantly, Missouri’s rural consumers will benefit from the expanded availability of Western Wireless’ unique service offerings, which include benefits not otherwise available from the incumbent LECs. For example, current service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Western Wireless provides an expanded local calling area, which is of great benefit to rural consumers who otherwise have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, ¶ 29 (rel. Jan. 22, 2004). Moreover, “the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.” *Id.*

Thus, the Commission should reject Intervenor’s attempt to divert its attention

from the appropriate public interest considerations and proceed to address Western Wireless' Application on the merits.

CONCLUSION

For the forgoing reasons, and because Western Wireless fully complied with the requirements of the Commission's rules of procedure when filing its Application, the Commission should reject Intervenor's erroneous arguments and deny their present motion.

Respectfully submitted,

Dated: July 6, 2004

WILLIAM D. STEINMEIER, P.C.

By /s/Mary Ann Young
Mary Ann (Garr) Young (MoBar #27951)
P.O. Box 104595, 2031 Tower Drive
Jefferson City, MO 65110-4595
Telephone (573) 634-8109
Facsimile (573) 634-8224
Email myoung0654@aol.com

BRIGGS AND MORGAN, P.A.
Mark J. Ayotte (MN #166315)
Matthew A. Slaven (MN # 288226)
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone (651) 808-6600
Facsimile (651) 808-6450
Email mayotte@Briggs.com

ATTORNEYS FOR WWC LICENSE, LLC

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the forgoing document was served by electronic mail, US Mail postage prepaid, or hand-delivered on this 6th day of July, 2004, on the following parties:

Dan Joyce
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
gencounsel@psc.state.mo.us
d.joyce@psc.mo.gov
marc.poston@psc.mo.gov

Michael F. Dandino
Senior Public Counsel
Office of the Public Counsel
P.O. Box 2330
Jefferson City, MO 65102
Phone: 573-751-4857
Facsimile: 573-751-5562
opcservice@ded.mo.gov
Mike.dandino@ded.mo.gov

Charles Brent Stewart
Steward & Keevil, L.L.C.
4603 John Garry Drive, Suite 11
Columbia, MO 65203
Phone: 573-499-0635
Facsimile: 573-499-0638
Stewart499@aol.com
*Attorneys for Spectra Communications
Group, LLC d/b/a Centurytel*

W.R. England, III
Sondra B. Morgan
Brydon, Swearengen & England, P.C.
P.O. Box 456
Jefferson City, MO 65102
Phone: 573-635-7166
Facsimile: 573-635-0427
smorgan@brydonlaw.com
*Attorneys for Craw-Kan Telephone
Cooperative, Inc And KLM Telephone
Company*

Mark J. Ayotte
Briggs & Morgan P.A.
mayotte@Briggs.com

/s/Mary Ann Young
Mary Ann (Garr) Young