

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Facilitating the Provision of Spectrum- ) WT Docket No. 02-381  
Based Services to Rural Areas and )  
Promoting Opportunities for Rural )  
Telephone Companies to Provide )  
Spectrum-Based Services )

**REPLY COMMENTS OF  
WESTERN WIRELESS CORPORATION**

Western Wireless Corporation (“Western Wireless”), by counsel, hereby submits its reply comments on the Notice of Inquiry (“NOI”), FCC 02-325 (released Dec. 20, 2002), in this docket.

In its initial comments in this proceeding, Western Wireless provided information on the principal impediments to broader deployment of wireless services in rural areas. Western Wireless showed that the more significant factors slowing deployment are (i) the high cost of providing wireless service in rural areas, and (ii) public policies that have made it difficult for wireless carriers (and other new competitive entrants) to obtain access to the same universal service funding as the incumbent wireline carriers with whom they increasingly compete. Western Wireless notes that several other commenting parties made similar observations. 1/

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1/ See, e.g., Rep. Bart Stupak Comments at 1 (“A major obstacle to the widespread provision of wireless services in rural areas is the cost of building the infrastructure and obtaining the spectrum for such service. . . . [T]he cost of providing wireless service in rural areas is also higher, due to the geographic challenges of wide areas to cover, with fewer customers.”); CTIA Comments at 3-5 (designation of wireless carriers as ETCs has

Western Wireless also demonstrated in its initial comments that the availability of spectrum to rural telephone companies is not a significant problem, and that the public interest does not support creating additional auction credits or other special benefits for rural telephone companies. 2/

As wireless/wireline competition intensifies and more consumers are relying upon wireless service as their primary service or for their greatest minutes of use, 3/ high-cost universal service funding for wireless carriers in rural areas is becoming increasingly important. Rural consumers are entitled to high-quality wireless service offered by providers that can compete on a level playing field with incumbent wireline carriers. The only way to achieve this objective is to ensure that rural wireless providers receive the same support funds as the incumbents. Yet incumbent wireline carriers continue to receive over 95% of the federal high-cost

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increased wireless deployment in rural areas); Smith Bagley Inc. Comments, *passim* (same); U.S. Cellular Comments at 3-5 (encouraging Commission to recognize important role that regional and rural wireless carriers play in competing to provide wireless service to rural populations).

2/ Western Wireless Comments at 8-12; *see also* Corr Wireless Communications Comments at 6 (“There is absolutely no reason why one particular category of rural telecommunications provider, *i.e.*, telcos, should be favored over all others. Indeed, to the extent that such telcos have assured rates of return from their monopoly customer bases, they have an advantage over other non-monopoly providers. Rural telcos should be entitled to the same preferences as other rural telecommunications providers – no less, but also no more.”); *contra, see, e.g.*, NTCA Comments at 5-8; Ionary Consulting Comments at 1-6; TCA Comments at 5-8.

3/ Western Wireless Comments at 5 (market research shows that 51% of consumers in rural areas said wireless service has replaced some or a large percentage of their landline telephone usage); *see also* Nathan Hopper Informal Comments at 1 (“The cellular telephone serves as my only telecommunications device. \* \* \* Western Wireless, operating as Cellular One, . . . has made significant improvements in their cellular network [in South Dakota], adding CDMA and TDMA digital service in the major communities . . .”);

universal service support funds, with the vast majority going to rural telephone companies. 4/ Incumbent wireline carriers continue to enjoy enormous competitive advantages, and wireless carriers and other new entrants continue to experience significant difficulties in obtaining Eligible Telecommunications Carrier (“ETC”) status and receiving funding.

Nonetheless, the incumbent wireline carriers and their representatives continue to complain – and to raise unfounded objections – regarding the funds that competitive wireless carriers are just beginning to receive. For example, the Nebraska Rural Independent Companies (“NRIC”) take the position that it is inappropriate for competitive ETCs to receive funding for serving customers whom they served prior to becoming eligible. This nonsensical argument, which has no basis in the FCC’s rules, is akin to saying that only first time tax filers should get to avail themselves of new tax deductions. It is also highly ironic, given that the rural telcos long argued that a carrier must have been providing ubiquitous service prior to qualifying for ETC status. 5/ As the record in this proceeding makes clear, universal service support enables wireless carriers to substantially improve the quality of the services that they provide to rural Americans. 6/ Moreover, as Western Wireless explained in its initial comments in this proceeding, the dynamics

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4/ See Universal Service Administrative Company, “Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2003,” available at <http://www.universalservice.org/overview/filings> (Feb. 1, 2003), at Appendix HC01.

5/ See, e.g., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, 15 FCC Rcd 15168 (2000).

6/ See Smith Bagley, Inc. Comments at 3-8; CTIA Comments at 3-5.

of wireless competition are changing and evolving; wireless service was previously considered to be supplemental, but now is increasingly used as consumers' primary mode of telecommunications, and increasingly competes against wireline service. <sup>7/</sup> Against this background, NRIC's argument is revealed as an attempt to head off competitive entry by depriving prospective competitors of the same support that the rural telcos themselves receive. The Commission should reject the rural telcos' attempts to obtain protection from competition – indeed, it must do so, under the Telecommunications Act of 1996.

Two groups of rural telephone companies, NRIC and the South Dakota Telecommunications Association (“SDTA”), accuse Western Wireless and other competitive wireless carriers of misrepresenting consumers' billing addresses in a nefarious effort to “game” the system of universal service support and obtain support to which they are not entitled. <sup>8/</sup> These groundless accusations form part of a concerted campaign to malign prospective entrants, influence policymakers to cut back wireless carriers' ability to obtain funds, and ultimately drive out nascent competition in rural areas. The Commission must not allow those anti-competitive efforts to succeed, and must disregard the misinformation submitted by these companies.

SDTA and NRIC proffer that the Universal Service Administrative Company's (“USAC”) November 1, 2002 report for the first quarter of 2003 indicated

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<sup>7/</sup> Western Wireless Comments at 22-27.

<sup>8/</sup> SDTA Comments at 21; NRIC Comments at 4-6.

that Western Wireless was to receive support for serving 30,138 customers on the Pine Ridge Reservation, even though that reservation has a population that is significantly less than that number. But Western Wireless correctly reported to USAC its lines in service, including those serving customers located on the Pine Ridge Reservation and those serving customers located in South Dakota but outside the Reservation. It was USAC, not Western Wireless, that inadvertently and erroneously characterized all of those lines as being on the reservation. USAC has acknowledged this administrative error, and has corrected the error in its February 2003 report for the second quarter of 2003 (issued several days prior to the date SDTA filed its comments). Western Wireless explained this situation in a letter responding to an accusatory letter submitted by SDTA. <sup>9/</sup> SDTA's attorneys were served a copy of this letter. One would expect that SDTA would have been particularly careful to have its facts straight prior to making such inflammatory charges.

SDTA and its attorneys knew that Western Wireless correctly reported its lines to USAC, and that the anomalous attribution of too many Western Wireless lines on the Pine Ridge Reservation was due to USAC's minor administrative error

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<sup>9/</sup> Letter from Gene DeJordy, Western Wireless, to Cheryl L. Parrino and Irene Flannery, USAC (Jan. 3, 2003) at 2 ("Western Wireless properly reported its lines to USAC as specific to each ETC service area as required by FCC rules. Western Wireless has coordinated with USAC on all of its filings and has received confirmation from USAC/NECA that it has properly reported its lines by service area. To be sure, USAC's matrix filed with the FCC (not Western Wireless) erroneously categorized all of Western Wireless' lines under the "Western Wireless (Pine Ridge Reservation)" study area, but that reflects an insignificant administrative error on USAC's part, and not a misrepresentation on Western Wireless' part. Accordingly, this issue raised by SDTA is without merit and should be dismissed.")

rather than Western Wireless' malfeasance. Nonetheless, SDTA makes the same unfounded accusation again, now in this public forum. To make things worse, SDTA and its attorneys transgress the legitimate bounds of vigorous advocacy in making the following statement: "In South Dakota, there have been persistent rumors that many people (both tribal members and non-members) residing in Rapid City and other areas outside the Pine Ridge Reservation have been encouraged to report 'billing addresses' on the Reservation in order to obtain wireless service subsidized by the portable USF support available on the Reservation." 10/ This statement is not only untrue; it also is downright defamatory and malicious.

SDTA's comments in this proceeding, and in particular its outrageous false insinuation prefaced by a suggestion of "persistent rumors," violate the rules prohibiting regulated entities, "in any . . . written statement submitted to the Commission, [from] mak[ing] any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission." 11/ Moreover, the SDTA's attorneys at the Blooston Mordkofsky law firm should be aware that, by abusing a formal FCC pleading to make such false and defamatory accusations – which would violate the rules of practice before any court and the ethical standards

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10/ SDTA Comments at 21. As explained above SDTA and its counsel have good reason to know this statement is untrue. Western Wireless would have no reason to encourage its South Dakota subscribers to report fraudulent addresses, since it has received ETC designation both on and off the Pine Ridge Reservation in South Dakota and is eligible to receive support based on its subscribers' correct addresses outside the reservation.

11/ 47 C.F.R. § 1.17.

of any bar association – they risk violating the standards that govern the conduct of attorneys and advocates before the Commission. 12/

In conclusion, Western Wireless urges the Commission to consider competitively neutral policies to promote the deployment of wireless services and technologies to consumers in rural areas, as discussed above and in its initial comments in this proceeding.

Respectfully submitted,

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12/ 47 C.F.R. §§ 1.24(a), 1.52.