

**BEFORE THE WYOMING PUBLIC SERVICE COMMISSION**

IN THE MATTER OF THE PETITION OF WWC )  
HOLDING CO., INC., D/B/A CELLULARONE® )  
FOR DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN )  
AREAS SERVED BY QWEST CORPORATION )

Docket No. 70042-AT-04-4  
Record No. 8961

IN THE MATTER OF THE APPLICATION )  
OF WWC HOLDING CO., INC., D/B/A )  
CELLULARONE® PETITION FOR )  
DESIGNATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN )  
CLARK; BASIN; FRANNIE; GREYBULL; )  
LOVELL; MEETEETSE; BURLINGTON; )  
HYATTVILLE; AND TENSLEEP )

Docket No. 70042-AT-04-5  
Record No. 9256

DIRECT TESTIMONY  
OF  
DENISE KAY PARRISH  
ON BEHALF OF  
THE OFFICE OF CONSUMER ADVOCATE

TESTIMONY FILED: February 28, 2005  
HEARING DATE: March 29, 2005

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Denise Kay Parrish. My business address is 2515 Warren Avenue,  
3 Suite 304, Cheyenne, Wyoming 82002.

4  
5 **Q. WHAT IS YOUR OCCUPATION?**

6 A. I am the Deputy Administrator of the Wyoming Office of Consumer Advocate  
7 (OCA). In this position, I review and provide input into the recommendations  
8 made by the OCA. I review utility applications filed with the Wyoming Public  
9 Service Commission (Commission) and provide advice to the Administrator  
10 regarding the involvement the OCA should have, if any, in various cases. I  
11 review applications, perform analyses and provide recommendations to the  
12 Commission relative to various utility matters, including revenue requirements,  
13 tariff language, competitive issues, rules and regulations, rate design, performance  
14 standards, and other related items. I also do other assignments and tasks, as  
15 needed and as assigned by the OCA Administrator.

16  
17 **Q. WHAT IS YOUR EDUCATIONAL AND PROFESSIONAL  
18 BACKGROUND?**

19 A. In 1976, I graduated from Michigan State University with a Bachelor of Arts in  
20 Accounting. I have spent more than twenty-seven years as a regulator of public  
21 utilities, having been on the staff of four state utility regulatory commissions and  
22 two consumer advocate entities. Thirteen of those years have been spent at the  
23 Wyoming Public Service Commission.

24  
25 I have taken classes related to various aspects of public utility regulation,  
26 including income taxes, regulatory accounting, capital recovery, cost-of-service,  
27 rate design, revenue requirements, separations and allocations, auditing, and other  
28 specialized topics. I have taught classes on issues of accounting standards,  
29 general ratemaking principles, affiliated transactions, regulatory accounting,  
30 financial reporting, rate case auditing, income taxes, and other specialized topics  
31 to regulatory professionals.





1 **Q. PRIOR TO DISCUSSING WESTERN WIRELESS' SPECIFIC ETC**  
2 **DESIGNATION REQUEST, PLEASE PROVIDE SOME BACKGROUND**  
3 **ON THE FEDERAL UNIVESAL SERVICE FUND AND HOW A**  
4 **CARRIER BECOMES ELIGIBLE TO RECEIVE THIS FEDERAL**  
5 **SUPPORT.**

6 A. While various forms of implicit and explicit support have been available from  
7 interstate rates and the federal mechanisms for decades, the most recent  
8 incarnation of support that is relevant to this proceeding began with the passage of  
9 the Federal 1996 Telecommunications Act (1996 Act). The 1996 Act included  
10 procedures for providing support to various telecommunications services and  
11 customers (rural and high cost areas, service to schools and libraries,  
12 telemedicine, and more) but for purposes of this proceeding, I will focus on those  
13 provisions related to support for customers and providers in high cost and rural  
14 areas.

15  
16 47 U.S.C. 214 and 47 U.S.C. 254 are the specific provisions of the 1996 Act that  
17 most directly relate to the establishment of the federal universal service fund and  
18 the qualifications for eligibility to receive the federal support. Summarizing 47  
19 U.S.C. 254, it:

- 20 ◦ Directs the Federal State Joint Board on Universal Service (Joint  
21 Board) to make recommendations on the implementation of certain  
22 federal USF standards and the definition of services to be  
23 supported by the Federal USF mechanism.
- 24 ◦ Directs the FCC to establish rules defining the services that are  
25 supported by the Federal USF, as well as other implementation  
26 issues.
- 27 ◦ Establishes principles for the preservation and advancement of  
28 universal service including: (1) Quality services should be  
29 available at just, reasonable, and affordable prices; (2) Access to  
30 advanced services should be provided in all regions of the Nation;  
31 (3) Consumers in all regions of the nation should have access to

1 services that are reasonably comparable to those available in urban  
2 areas at a reasonably comparable price; (4) The preservation and  
3 advancement of universal service should be funded in an equitable  
4 and nondiscriminatory manner; and (5) The support from the state  
5 and federal programs should be specific, predictable and sufficient  
6 to preserve and advance universal service.

- 7 ◦ Defines universal service in an evolutionary way taking into  
8 account: services essential to education, public health, or public  
9 safety; customers' market choices; carriers deployment of  
10 networks; and the public interest, convenience and necessity.
- 11 ◦ Defines that carriers are to use the support only for the provision,  
12 maintenance, and upgrading of facilities and services.
- 13 ◦ Cautions the states and the FCC to ensure that universal service is  
14 available at rates that are just, reasonable, and affordable.

15  
16 The content of 47 U.S.C. 254 is important as it sets forth the guidelines that were  
17 used by the FCC to establish more precise rules and processes for the collection  
18 and distribution of federal universal service support. The most specific reason that  
19 this section is important to this proceeding is that it sets the basis for establishing  
20 the standards the types of services to be supported by the federal USF, which are  
21 also the services that must be provided by a telecommunications provider in order  
22 to qualify for ETC status. It is only after a provider is designated as an ETC that  
23 it may receive the federal funds. Thus, if Western Wireless were not designated  
24 as an ETC for a specific service area, it would not be able to receive federal USF  
25 for its service in that designated area.

26  
27 **Q. WHAT SERVICES HAS THE FCC DESIGNATED FOR RURAL,**  
28 **INSULAR (i.e., ISOLATED), AND HIGH COST SUPPORT?**

29 A. The designated services are found at 47 C.F.R. 54.101:  
30  
31

- 1           ◦     Voice grade access to the public switched network
- 2           ◦     Local usage, defined as an amount of minutes of use of exchange service,
- 3                 prescribed by the FCC, provided free of charge to end users
- 4           ◦     Dual tone multi-frequency signaling or its functional equivalent (i.e.,
- 5                 touchtone dialing)
- 6           ◦     Single-party service or its functional equivalent
- 7           ◦     Access to emergency services
- 8           ◦     Access to operator services
- 9           ◦     Access to interexchange service
- 10          ◦     Access to directory assistance
- 11          ◦     Toll limitation for qualifying low-income consumers

12

13   **Q.   HAS THE FCC ESTABLISHED A REQUIRED LEVEL OF LOCAL**  
14   **SERVICE TO BE INCLUDED IN THE SUPPORTED SERVICE?**

15   A.   Unfortunately, no.   However, some insight has recently been provided, as  
16   recounted at paragraph 35 of a recent *Recommended Decision* of the Federal State  
17   Joint on Universal Service (released February 27, 2004 in CC Docket No. 96-45):

18                 Consistent with the requirement that ETCs offer local usage, states  
19                 may consider how much local usage ETCs should offer as a  
20                 condition of federal universal service support.   In the *First*  
21                 *Universal Service Report and Order*, the Commission determined  
22                 that ETCs should provide some minimum amount of local usage as  
23                 part of their “basic service” package of supported services.   Thus,  
24                 local usage is one of the supported services that ETCs are required  
25                 to provide in order to receive federal universal service support.  
26                 Although the Commission has not set a minimum local usage  
27                 requirement, ***there is nothing in the Act, Commission’s rules, or***  
28                 ***others that would limit state commissions from prescribing some***  
29                 ***amount of local usage as a condition of ETC status.***   As  
30                 determined by the Fifth Circuit in *TOPUC v. FCC*, states may  
31                 establish their own eligibility requirements for ETC applicants.   In  
32                 fact, in recently deciding that unlimited local usage should not be  
33                 added to the list of services supported by federal universal service,  
34                 ***the Commission found that the states are in a better position to***  
35                 ***determine whether unlimited local usage offerings are beneficial***  
36                 ***in particular circumstances.***   [Footnotes omitted and emphasis  
37                 added.]

38

1 The Commission may wish to consider defining the local usage standard to be  
2 included in the supported services if it decides to grant Western Wireless ETC  
3 status in this case.

4  
5 **Q. WHY IS THE CONTENT OF 47 U.S.C. 214 IMPORTANT TO THIS**  
6 **PROCEEDING?**

7 A. 47 U.S.C. 214 is important as it establishes the guidelines and processes for  
8 determining those carriers who are eligible to receive federal support.  
9 Specifically, this section (which is found at Section 102 of the 1996 Act) states, in  
10 part:

11 (e) PROVISION OF UNIVERSAL SERVICE

12 (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.

13 – A common carrier designated as an eligible  
14 telecommunications carrier under paragraph (2) or (3) shall  
15 be eligible to receive universal service support in  
16 accordance with section 254 and shall, throughout the  
17 service area for which the designation is received –

18 (A) offer the services that are supported by Federal  
19 universal service support mechanisms under section  
20 254(c), either using its own facilities or a  
21 combination of its own facilities and resale of  
22 another carrier's services (including the services  
23 offered by another eligible telecommunications  
24 carrier); and

25 (B) advertise the availability of such services and  
26 the charges therefor using media of general  
27 distribution.

28  
29 To reiterate, a carrier must offer the services that are supported by the federal  
30 universal service fund (based on the principles listed in Section 254 of the 1996  
31 Act, as recommended by the Joint Board and approved by the FCC) and must  
32 advertise those services and their associated prices in order to be deemed eligible  
33 to receive federal USF.

34  
35 **Q. HAS THE FCC FURTHER DEFINED THE ADVERTISING**  
36 **REQUIREMENT?**

1 A. Once again, the FCC has left much discretion with the states on the advertising  
2 issue. As found in its May 8, 1997 order in CC Docket 96-45, at paragraph 148:

3 We agree with the Joint Board's analysis and recommendation that  
4 we not adopt, at this time, nationwide standards to interpret the  
5 requirement of section 214(e)(1)(B) that eligible carriers advertise,  
6 throughout their service areas, the availability of, and charges for,  
7 the supported services using media of general distribution. *We*  
8 *agree with the Joint Board that, in the first instance, states*  
9 *should establish any guidelines needed to govern such*  
10 *advertising.* We agree with the Joint Board that the states, as a  
11 corollary to their obligation to designate eligible  
12 telecommunications carriers, are in a better position to monitor the  
13 effectiveness of carriers' advertising throughout their service  
14 areas...In response to the comments of CPI, *we conclude that no*  
15 *further regulations are necessary to define the term*  
16 *"throughout."* *The dictionary definition - "in or through all*  
17 *parts; everywhere" - requires no further clarification.*  
18 [Footnotes omitted and emphasis added.]  
19

20 **Q. DO SOME RECENT ETC CASES DECIDED BY THE FCC PROVIDE**  
21 **SOME SPECIFIC EXAMPLES OF THE TYPE OF ADVERTISING THAT**  
22 **ARE BEING DONE BY OTHERS AND FOUND TO MEET THE**  
23 **ESTABLISHED CRITERIA?**

24 A. Yes. In the *Virginia Cellular* case, (CC Docket No. 96-45, Memorandum and  
25 Order released January 22, 2004), paragraph 25 discusses the proposed  
26 advertising. While there is the commonly used generic commitment made by the  
27 ETC to advertise using media of general distribution, there are also more specific  
28 examples given: "For example, Virginia Cellular will provide notices at local  
29 unemployment, social security, and welfare offices so that unserved consumers  
30 can learn about Virginia Cellular's service offerings and learn about Lifeline and  
31 Linkup discounts." The order continues, "Virginia Cellular also commits to  
32 publicize locally the construction of all new facilities in unserved or underserved  
33 areas so customers are made aware of improved service." Similar commitments  
34 were made by the provider in the *Highland Cellular, Inc.* case (CC Docket No.  
35 96-45, April 12, 2004 Memorandum Opinion and Order, paragraph 19).  
36

1 **Q. DOES 47 U.S.C. 214 ESTABLISH OTHER IMPORTANT CRITERIA**  
2 **RELATIVE TO ETC DESIGNATIONS?**

3 A. Yes. It establishes that the state is to designate carriers with ETC status and that  
4 the designation shall involve not only a check list of items that the carrier must  
5 meet, but also involves an examination of the public interest. Specifically, the  
6 statute states:

7 (2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS  
8 CARRIERS. – A State commission shall upon its own motion or  
9 upon request designate a common carrier that meets the  
10 requirements of paragraph (1) as an eligible telecommunications  
11 carrier for a service area designated by the State commission.  
12 Upon request and consistent with the public interest, convenience,  
13 and necessity, the State commission, may, in the case of an area  
14 served by a rural telephone company, and shall, in the case of all  
15 other areas, designate more than one common carrier as an eligible  
16 telecommunications carrier for a service area designated by the  
17 State commission, so long as each additional requesting carrier  
18 meets the requirements of paragraph (1). Before designating an  
19 additional eligible telecommunications carrier for an area served  
20 by a rural telephone company, the State commission shall find that  
21 the designation is in the public interest.  
22

23 Thus, this section again reiterates that any eligible carrier must meet the earlier  
24 described criteria of offering the services specifically designated as being USF  
25 supported services. This is important, since the OCA takes issue with the fact that  
26 Western Wireless does not appear to be complying with each of the statutory  
27 requirements. Furthermore, the Commission should keep in mind the public  
28 interest standard that is found in this statutory language.  
29

30 **Q. DO YOU AGREE WITH WESTERN WIRELESS THAT THE PUBLIC**  
31 **INTEREST STANDARD APPLIES ONLY TO THOSE SEEKING TO BE A**  
32 **SECOND ETC IN RURAL AREAS, AND DOES NOT ENTER INTO THE**  
33 **DISCUSSION FOR NON-RURAL AREAS?**

34 A. No. However, it is not necessary to make that the primary debate in this case.  
35 The Commission could reasonably avoid making a determination on that issue in  
36 this case and focus only on the standards that indisputably apply to non-rural

1 ETCs: the provision of the designated services, offering those services throughout  
2 the service area, and advertising the availability of the services and the associated  
3 charges throughout the service area. The Commission could reach a reasonable  
4 finding that if each of these standards were met, then the spirit of the 1996 Act  
5 was being met, including meeting any public interest standard that may or may  
6 not apply.<sup>1</sup> This then changes the focus of the debate to the level of scrutiny to be  
7 applied by the Commission and the standard for determining that Western  
8 Wireless has reasonably demonstrated its ability, willingness, capability and  
9 commitment to provide universal service.

10

11 As the FCC stated at paragraph 24 in its Declaratory Ruling issued August 10,  
12 2000, in *Western Wireless Corporation Petition for Preemption of an Order of the*  
13 *South Dakota Public Utilities Commission* (provided by Western Wireless as  
14 JHB-5),

15

16 A new entrant can make a reasonable demonstration to the state  
17 commission of its capability and commitment to provide universal  
18 service without the actual provision of the proposed service. There  
19 are several possible methods for doing so, including, but not  
20 limited to: (1) a description of the proposed service technology, as  
21 supported by appropriate submissions; (2) a demonstration of the  
22 extent to which the carrier may otherwise be providing  
23 telecommunications services within a state; (3) a description of the  
24 extent to which the carrier has entered into interconnection and  
25 resale agreements; or (4) a sworn affidavit signed by a  
26 representative of the carrier to ensure compliance with the  
27 obligation to offer and advertise the supported services. ***We***  
28 ***caution that a demonstration of the capability and commitment to***  
***provide service must encompass something more than a vague***

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<sup>1</sup> This is consistent with the FCC's finding in the *Virginia Cellular* decision wherein it states, at paragraph 27:

...We note that the Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instances. We nevertheless conclude that Virginia Cellular's public interest showing here is sufficient based on the detailed commitments Virginia Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas...[Footnotes omitted.]

1 *assertion of intent on the part of a carrier to provide service. The*  
2 *carrier must reasonably demonstrate to the state commission its*  
3 *ability and willingness to provide service upon designation.*  
4 [Footnotes omitted and emphasis added.]  
5

6 **Q. DOES THE 1996 ACT ALSO DEFINE THE TERM SERVICE AREA?**

7 A. Yes. As found in 47 U.S.C. 214(e)(5):

8 (5) SERVICE AREA DEFINED. – The term ‘service area’ means  
9 a geographic area established by a State commission for the  
10 purpose of determining universal service obligations and support  
11 mechanisms. In the case of an area served by a rural telephone  
12 company, ‘service area’ means such company’s ‘study area’ unless  
13 and until the Commission and the States, after taking into account  
14 recommendations of a Federal-State Joint Board instituted under  
15 section 410(c), establish a different definition of service area for  
16 such company.  
17

18 In general, a service area for a rural company<sup>2</sup> comprises the entirety of its service  
19 area within a state, rather than breaking that territory up into portions or  
20 exchanges<sup>3</sup>. The statute does not specifically define the service area for a non-  
21 rural provider, but the FCC does have a discussion of non-rural service areas in its  
22 implementation order.  
23

24 The issue of what comprises a service area is important as the Commission  
25 examines the area into which Western Wireless seeks to expand its ETC  
26 designation.  
27

28 **Q. WHAT FURTHER EXPLANATION OF SERVICE AREA HAS THE FCC**  
29 **PROVIDED RELATIVE TO UNIVERSAL SERVICE FUND**  
30 **ELIGIBILITY?**

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<sup>2</sup> A rural telephone company is defined in 47 U.S.C. 153(47). In Wyoming, Qwest is the only provider who is defined as a non-rural carrier.

<sup>3</sup> In Wyoming, the *study area* is also the entire territory of the provider within the state borders. However, in several instances where exchanges were purchased by one provider from another, and new companies were established as a result of that purchase (e.g., TCT WEST was established when Tri County purchased exchanges from U S WEST) the study area is comprised of the purchasing company exchanges as well as the newly purchased exchanges. The study area is used in determining average costs and for the basis of cost comparisons, in the process of determining federal universal service fund distributions.

1 A. In its Report and Order, released May 8, 1997 in CC Docket No. 96-45, the FCC  
2 offers these thoughts about non-rural service areas<sup>4</sup>:

3  
4 State Adoption of Non-Rural Service Areas. We adopt the Joint  
5 Board's finding that *subsections 214(e)(2) and 214(e)(5) require*  
6 *state commissions to designate the area throughout which a non-*  
7 *rural carrier must provide universal service in order to be eligible*  
8 *to receive universal service support.* We agree with the Joint  
9 Board that, although this authority is explicitly delegated to the  
10 state commissions, states should exercise this authority in a manner  
11 that promotes the pro-competitive goals of the 1996 Act as well as  
12 the universal service principles of section 254. We also adopt the  
13 Joint Board's analysis and recommendation that states designate  
14 service areas that are not unreasonably large. Specifically, we  
15 conclude that service areas should be sufficiently small to ensure  
16 accurate targeting of high cost support and to encourage entry by  
17 competitors. We also agree with the Joint Board's determination  
18 that large service areas increase start-up costs for new entrants,  
19 which might discourage competitors from providing service  
20 throughout an area because start-up costs increase with the size of  
21 a service area and potential competitors may be discouraged from  
22 entering an area with high start-up costs. As such, an unreasonably  
23 large service area effectively would prevent a potential competitor  
24 from offering the supported services, would not be competitively  
25 neutral, would be inconsistent with section 254, and would not be  
26 necessary to preserve and advance universal service.

27  
28 We agree with the Joint Board that, if a state commission adopts as  
29 a service area for its state the existing study area of a large ILEC,  
30 this action would erect significant barriers to entry insofar as study  
31 areas usually comprise most of the geographic area of a state,  
32 geographically varied terrain, and both urban and rural areas. We  
33 concur with the Joint Board's finding that a state's adoption of  
34 unreasonably large service areas might even violate several  
35 provisions of the Act. We also agree with the Joint Board that, if a  
36 state adopts a service area that is simply structured to fit the  
37 contours of an incumbent's facilities, a new entrant, especially a  
38 CMRS-based provider, might find it difficult to conform its signal  
39 or service area to the precise contours of the incumbent's area,  
40 giving the incumbent an advantage. We therefore encourage state  
41 commissions not to adopt, as service areas, the study areas of large  
42 ILECs. In order to promote competition, we further encourage  
43 state commissions to consider designating service areas that

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<sup>4</sup> Paragraphs 184 and 185 of the Report and Order.

1 require ILECs to serve areas that they have not traditionally  
2 served. We recognize that a service area cannot be tailored to the  
3 natural facilities-based service area of each entrant, but note that  
4 ILECs, like other carriers, may use resold wholesale service or  
5 unbundled network elements to provide service in the portions of a  
6 service area where they have not constructed facilities.  
7 Specifically, as noted by the Joint Board, section 254(f) prohibits  
8 states from adopting regulations that are ‘inconsistent with the  
9 Commission’s rules to preserve and advance universal service.’  
10 As noted by the Joint Board, state designation of an unreasonably  
11 large service area could also violate section 253 if it ‘prohibit[s] or  
12 ha[s] the effect of prohibiting the ability of an entity to provide any  
13 interstate or intrastate telecommunications service’ and is not  
14 ‘competitively neutral’ and ‘necessary to preserve and advance  
15 universal service.’ [Footnotes omitted and emphasis added.]  
16

17 Essentially, the states are to designate the service area for ETC purposes for the  
18 areas of non-rural carriers. In Wyoming, the Commission has not designated non-  
19 rural ETC service areas on a generic basis. Rather, as applications have come in,  
20 the service areas requested have generally been granted. These have primarily  
21 been established either as Qwest’s Wyoming territory or specific named  
22 exchanges of Qwest that the ETC designee wishes to serve.  
23

24 **Q. PLEASE PROVIDE SOME SPECIFIC EXAMPLES OF COMMISSION**  
25 **DECISIONS RELATIVE TO NON-RURAL ETC SERVICE AREAS.**

26 A. The first example relates to the ETC status granted to U S WEST  
27 Communications, Inc., the predecessor to Qwest. On September 5, 1997, Qwest  
28 filed an application (Docket No. 70000-TA-97-357) “requesting that the  
29 Commission designate it as an eligible telecommunications carrier for its existing  
30 service territory pursuant to the provisions of 14 U.S.C. 214(e)(2).” In its  
31 December 22, 1997 Notice and Order, the Commission designated U S WEST  
32 Communications, Inc. “as an eligible telecommunications carrier, pursuant to the  
33 provisions of 47 U.S.C. 214(e)(2) for the service territory for which it holds a  
34 Certificate of Public Convenience and Necessity, issued by the Commission, as of  
35 the date of this Notice and Order, subject to notice, protest, opportunity for

1 hearing and further Order.” So, U S WEST requested its entire Wyoming study  
2 area be designated as its ETC service area, and that request was granted.

3  
4 On November 12, 1998, Silver Star Communications filed its application to be  
5 designated as an eligible telecommunications carrier only within the Afton  
6 Exchange, rather than for Qwest’s entire Wyoming service territory. This narrow  
7 request was also granted in a Memorandum Opinion, Findings, Conclusions and  
8 Order issued September 13, 1999 in Docket No. 70006-TA-98-35.

9  
10 On June 14, 2001, Spectracom, Inc., d/b/a Pyxis Communications filed a request  
11 (Docket No. 62017-RA-01-1) to be designated as an ETC in areas presently  
12 served by Qwest Corporation. On November 13, 2001, Pyxis narrowed its  
13 request to only specific exchanges of Qwest: Casper, Riverton, Laramie,  
14 Cheyenne, Worland, Lander, and Gillette. On August 1, 2002, Pyxis further  
15 sought to limit its request so that it was no longer seeking ETC status for  
16 Worland. Having served as the Commission assigned analyst on this case, I can  
17 relay that much of this narrowing was driven by where Pyxis had facilities and  
18 resale agreements, and its ability to actually commit to offering service in the  
19 narrower areas rather than the broader statewide Qwest area. The Commission  
20 granted the twice-amended request in an Order dated September 20, 2002. So,  
21 this is a third variation on a theme: one granted the entire service territory; one  
22 granted one exchange only; and one granted a collection of specifically named  
23 exchanges.

24  
25 Finally, ETC status was granted to Advanced Communications Technology, Inc.  
26 in 2003 and to VCI Company in 2004. In each of these cases, the Commission  
27 granted the ETC status for those areas currently served by Qwest Corporation.

28  
29 **Q. WHAT FURTHER COMMENT HAS THE FCC OFFERED ON ETC**  
30 **SERVICE AREAS FOR RURAL CARRIERS?**

1 A. The FCC comments on the establishment and modification of rural service areas  
2 in the same May 8, 1997 order cited above<sup>5</sup>:

3 Authority to Alter Rural Service Areas. We find that, in contrast  
4 with non-rural service areas, the Act requires the Commission and  
5 the states to act in concert to alter the service areas for areas served  
6 by rural carriers...

7  
8 We conclude that the plain language of section 214(e)(5) dictates  
9 that neither the Commission nor the states may act alone to alter  
10 the definition of service areas served by rural carriers...

11  
12 Under the procedures we adopt, after a state has concluded that a  
13 service area definition different from a rural telephone company's  
14 study area would better serve the universal service principles found  
15 in section 254(b), either the state or a carrier must seek the  
16 agreement of the Commission... A proposal subject to further  
17 consideration by the commission may not take effect until both the  
18 state commission and this Commission agree to establish a  
19 different definition of a rural service area, as required by section  
20 214(e)(5). Similarly, if the commission initiates a proceeding to  
21 consider a definition of a rural service area that is different from  
22 the ILEC's study area, we shall seek the agreement of the relevant  
23 state commission by submitting a petition to the relevant state  
24 commission according to that state commission's procedure. *No*  
25 *definition of a rural service area proposed by the Commission*  
26 *will take effect until both the state commission and this*  
27 *Commission agree to establish a different definition.* In keeping  
28 with our intent to use this procedure to minimize administrative  
29 delay, we intend to complete consideration of any proposed  
30 definition of a service area promptly.

31  
32 Adoption of Study Areas. *We agree with the Joint Board that, at*  
33 *this time, retaining the study areas of rural telephone companies*  
34 *as the rural service areas is consistent with section 214(e)(5) and*  
35 *the policy objectives underlying section 254.* We agree with the  
36 Joint Board that, if competitors, as a condition of eligibility, must  
37 provide services throughout a rural telephone company's study  
38 area, the competitors will not be able to target only the customers  
39 that are the least expensive to serve and thus undercut the ILEC's  
40 ability to provide service throughout the area. *In addition, we*  
41 *agree with the Joint Board that this decision is consistent with*  
42 *our decision to use a rural ILEC's embedded costs to determine,*  
43 *at least initially, that company's costs of providing universal*

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<sup>5</sup> Starting at paragraph 186.

1 *service because rural telephone companies currently average*  
2 *such costs at the study-area level.* Some wireless carriers have  
3 expressed concern that they might not be able to provide service  
4 throughout a rural telephone company's study area because that  
5 study area might be noncontiguous. In such a case, we note that  
6 this carrier could supplement its facilities-based service with  
7 service provided via resale. In response to the concerns expressed  
8 by wireless carriers, however, we also encourage states, as  
9 discussed more fully below, to consider designating rural service  
10 areas that consist of only the contiguous portions of ILEC study  
11 areas. Further, we agree with TCA that any change to a study area  
12 made by the Commission should result in a corresponding change  
13 to the corresponding rural service area. Thus we encourage a  
14 carrier seeking to alter its study area to also request a  
15 corresponding change in its service area, preferably as part of the  
16 same regulatory proceeding. If the carrier is not initiating any  
17 proceedings with this Commission, it should seek the approval of  
18 the relevant state commission first, and then either the state  
19 commission or the carrier should seek Commission agreement  
20 according to the procedures described above. We agree with the  
21 Joint Board that this differing treatment of rural carriers  
22 sufficiently protects smaller carriers and is consistent with the Act.  
23

24 We also conclude, based on additional information presented to us  
25 in response to the Recommended Decision, that universal service  
26 policy objectives may be best served if a state defines rural service  
27 areas to consist only of the contiguous portion of a rural study area,  
28 rather than the entire rural study area. We conclude that requiring  
29 a carrier to serve a non-contiguous service area as a prerequisite to  
30 eligibility might impose a serious barrier to entry, particularly for  
31 wireless carriers. We find that imposing additional burdens on  
32 wireless entrants would be particularly harmful to competition in  
33 rural areas, where wireless carriers could potentially offer service  
34 at much lower costs than traditional wireline service. *Therefore we*  
35 *encourage states to determine whether rural service areas should*  
36 *consist of only the contiguous portions of an ILEC's study area,*  
37 *and to submit such a determination to the Commission according*  
38 *to the procedures we describe above. We note that the state*  
39 *commissions must make a special finding that the designation is*  
40 *in the public interest in order to designate more than one eligible*  
41 *carrier in a rural service area, and we anticipate that state*  
42 *commission will be able to consider the issue of contiguous service*  
43 *areas as they make such special findings.* [Footnotes omitted and  
44 emphasis added.]  
45

1 **Q. HAS THE COMMISSION GRANTED ANY PROVIDER ELIGIBLE**  
2 **TELECOMMUNICATIONS CARRIER STATUS IN RURAL SERVICE**  
3 **AREAS THAT HAVE BEEN LESS THAN THE FULL WYOMING STUDY**  
4 **AREA?**

5 A. Yes. On June 25, 2003, Union Telephone Company, Inc., filed an application  
6 (Docket No. 70008-TA-03-38) asking for an expansion of its ETC designation to  
7 include its wireless territory. In its November 14, 2003 Order, the Commission  
8 found and concluded “that the ETC status should be expanded to include the  
9 Company’s wireless service territory, which consists of RSA 3.” Upon further  
10 examination of RSA 3, it appears that it includes Shoshoni and Jeffrey City, both  
11 RT Communications exchanges. But, it does not appear to include many of the  
12 other RT Communications exchanges, including those in eastern Laramie County,  
13 Worland, and others. Thus, the Commission appears to have granted a second  
14 ETC in only a portion of RT Communications’ territory, without having gone  
15 through the process of seeking a modification from the FCC, as described above.

16  
17 While I am unable to explain how the Commission and parties found the splitting  
18 of the rural territory acceptable without concurrence from the FCC, I caution the  
19 Commission about taking similar action in this proceeding. If the Commission  
20 finds the need to split a rural area in this case, or in the future, I recommend that it  
21 seek FCC concurrence.

22  
23 **Q. PLEASE EXPLAIN HOW WESTERN WIRELESS WAS GRANTED ITS**  
24 **EXISTING ETC STATUS IN WYOMING.**

25 A. On September 1, 1998, Western wireless filed an application (Docket No. 70042-  
26 TA-98-1) seeking designation as an ETC. Upon appropriate consideration,  
27 motions, and argument, the Commission concluded that Wyoming law did not  
28 provide the statutory authority for the Commission to consider the application for  
29 ETC designation for Western Wireless. This finding specifically related to the  
30 Commission’s limited regulatory authority over wireless carriers. Thus, Western  
31 Wireless found itself before the FCC seeking ETC designation in Wyoming.

1 In a Memorandum Opinion and Order released December 26, 2000 (CC Docket  
2 No. 96-45), the FCC authorized Western Wireless to be an ETC in Wyoming. It  
3 was specifically authorized for the following Qwest exchanges: Buffalo,  
4 Cheyenne, Casper, Douglas, Glendo, Glenrock, Gillette, Laramie, Lusk, Rawlins,  
5 Riverton, Sheridan, Wheatland, and Wright. However, for any of these exchanges  
6 that extended beyond the Wyoming border, the ETC status was limited to only the  
7 portion within the state of Wyoming. The Order further granted ETC status for  
8 the Wyoming service areas of: Chugwater Telephone Company, Golden West  
9 Telephone Cooperative, Range Telephone Cooperative, RT Communications, Inc.  
10 and United Telephone Company of the West. But, again, any portion of the study  
11 area for these rural companies that was outside the boundaries of Wyoming was  
12 excluded from the ETC.

13  
14 **Q. WHAT WAS THE PRIMARY BASIS UPON WHICH WESTERN**  
15 **WIRELESS WAS ORIGINALLY GRANTED ITS ETC STATUS IN**  
16 **WYOMING?**

17 A. This question is best answered by looking back to Western Wireless' September  
18 29, 1999 *Petition for ETC Designation* filed with the FCC. There is some key  
19 language that is also pertinent to the OCA position in the current proceeding:

20 Today, Western Wireless provides all of the services and  
21 functionalities supported by the federal universal service program,  
22 enumerated in Section 54.101(a) of the Commission's rules,  
23 throughout its cellular service area in Wyoming. Upon ETC  
24 designation, ***Western Wireless will make available to consumers a***  
25 ***universal service offering*** over its existing cellular network  
26 infrastructure and spectrum, including the same antenna, cell-site,  
27 tower, trunking, mobile switching, and interconnection facilities  
28 used by the company to serve its existing conventional mobile  
29 cellular service customers. ***Western Wireless also will provide***  
30 ***service to any requesting customer within the designated service***  
31 ***areas, and if necessary will deploy any additional facilities***  
32 ***necessary to do so.*** The technical and operational characteristics  
33 of its universal service offering, including the wireless local loop  
34 customer premises equipment ("WLL CPE") that will be used in  
35 connection with the offering, are described in detail in Appendix  
36 B. [Footnotes deleted and emphasis added.]  
37

1 The application further states on page 7:

2 Western Wireless satisfies the requirement set forth in FCC  
3 precedent that an ETC designated pursuant to Section 214(e)(6)  
4 “offer, or will be able to offer all of the services designated for  
5 support by the Commission.” As described below, Western  
6 Wireless currently offers each of the supported services  
7 enumerated in Section 54.101(a) of the Commission’s rules. ***Once***  
8 ***designated as an ETC, Western Wireless intends (and commits)***  
9 ***to make available a “universal service” offering that includes all***  
10 ***of the supported services, for consumers in the designated service***  
11 ***areas in Wyoming.*** [Footnotes omitted and emphasis added.]  
12

13 Page 11 of the application continues to discuss the universal service offering:  
14

15 ***Western Wireless will advertise the availability of its universal***  
16 ***service offering, and the charges therefor, using media of***  
17 ***general distribution.*** Currently Western Wireless employs several  
18 advertising mediums to promote its service offerings, including  
19 television, radio, newspaper, and billboard advertising, as well as  
20 special targeted advertising. ***Western Wireless will expand upon***  
21 ***these media, as necessary, to insure that customers within its***  
22 ***designated service area are fully informed of its universal service***  
23 ***offering.*** Moreover, given the fact that ETCs receive universal  
24 service support only to the extent they serve customers, and given  
25 the investments Western Wireless plans to make to enhance its  
26 network to fully serve the universal service needs of consumers in  
27 Wyoming, Western Wireless will have strong economic incentives,  
28 reinforcing its statutory obligations, to vigorously promote its  
29 universal service offering in Wyoming. [Emphasis added.]  
30

31 Thus, a large portion of the application discusses the universal service offering  
32 that Western Wireless committed to offer and advertise. It is interesting to note  
33 that the universal service offering that was the cornerstone of the prior filing is  
34 mentioned barely in passing in this case – yet the applications are replete with  
35 references to the prior ETC order, an order that depended on the basic universal  
36 service offering that was promised. While it appears that Western Wireless offers  
37 the supportive language from the prior order as a buttress as to why the  
38 Commission should make similar supportive findings, it is odd that this is being  
39 done when the mainstay of the former application is missing – changing the  
40 circumstances dramatically.



1 **Q. ARE THE ETC REQUIREMENTS AND GUIDELINES ESSENTIALLY**  
2 **THE SAME REQUIREMENTS THAT WERE IN EFFECT AT THE TIME**  
3 **WESTERN WIRELESS' ETC STATUS WAS GRANTED IN THE YEAR**  
4 **2000?**

5 A. Yes, although there have been a number of recent decisions that apply the  
6 standards in a more diligent manner than was seen in early ETC cases before the  
7 FCC. These will be described in more detail below, as OCA specifically  
8 identifies its concerns and lack of adequate evidence supporting the requested  
9 grant of expanded ETC status.

10

11 **Q. PLEASE DESCRIBE WHAT WESTERN WIRELESS REQUESTS IN**  
12 **DOCKET NO. 70042-TA-04-4.**

13 A. According to the application filed on March 10, 2004, Western Wireless seeks  
14 ETC status in the Qwest wire centers of Cody and Powell. It purports to support  
15 its request in part by reiterating representations that were contained in the FCC  
16 decision supporting its prior ETC request, and in part with statements that it will  
17 meet each of the FCC and statutorily listed ETC requirements. It also argues that  
18 a public interest finding is not necessary, but then provides some commentary on  
19 the benefits of granting its request. I respond to this public interest commentary  
20 below.

21

22 **Q. PLEASE DESCRIBE WHAT WESTERN WIRELESS REQUESTS IN**  
23 **DOCKET NO. 70042-TA-04-5.**

24 A. According to the application filed on August 9, 2005, Western Wireless seeks to  
25 be granted ETC status in: Project Telephone's Clark exchange; TCT West's  
26 exchanges of Basin, Frannie, Greybull, Lovell, and Meeteetse; and Tri County  
27 Telephone's exchanges of Burlington, Hyattville, and Ten Sleep. On February  
28 16, 2005 – less than two weeks before the OCA's testimony was to be filed in this  
29 proceeding – Western Wireless filed to amend its application to also include the  
30 Tri County Telephone exchange of Hamilton Dome. The amendment is also

1 significant in that Western Wireless is no longer seeking to redefine the service  
2 area for the Tri County service area.

3  
4 The application acknowledges that a public interest finding is necessary, as this  
5 application seeks ETC status in rural service areas. Beyond this  
6 acknowledgement, it relies on many of same prior orders and findings of the FCC  
7 as contained in the Docket 70042-TA-04-4 application.

8  
9 Interestingly, in both applications, Western Wireless gives scant attention to the  
10 requirement that the service be offered throughout the area for which ETC status  
11 is sought. There is no description of how the service will be offered throughout  
12 the area, no description of interconnection or resale agreements for areas distant  
13 from its own facilities, no description of the coverage of its own facilities, or any  
14 other information relative to the offering. There is minimal additional description  
15 of how the advertising requirement will be met, but certainly no plan or  
16 commitment is described with any specificity.

17  
18 **Q. AS YOU NOW MOVE INTO YOUR DESCRIPTION OF THE OCA'S**  
19 **ISSUES AND RECOMMENDATIONS IN THIS PROCEEDING, DO YOU**  
20 **HAVE ANY CONCERN ABOUT THE ETC SERVICE AREAS AS**  
21 **WESTERN WIRELESS SEEKS TO HAVE THEM DEFINED?**

22 A. In the non-rural area, Western Wireless seeks to expand into the Powell and Cody  
23 wire centers. For each of these two areas, the wire center is an area basically  
24 equivalent to the exchange. Thus, breaking down Qwest's service territory by  
25 exchange would not be inconsistent with the manner in which other providers  
26 have been granted ETC status and we do not oppose defining non-rural ETC areas  
27 in this way. In fact, defining non-rural ETC areas by exchange provides a  
28 reasonable means of providing consistency, allows a provider to understand a  
29 defined area in which it must offer service, and is easily administered and  
30 monitored. Furthermore, it seems to provide a reasonable balance between not  
31 allowing a provider to cherry-pick only a very limited, higher density area, and

1 requiring such a large expanse that a provider would have difficulty providing  
2 reasonably adequate coverage of the area.

3  
4 As to the proposed rural service areas, Western Wireless originally requested to  
5 break the rural territory into wire centers (exchanges), wherein it would be an  
6 authorized ETC in all of Project Telephone's Wyoming territory and all but one  
7 very small exchange in the Wyoming territory of Tri-County/TECT WEST's  
8 study area.<sup>6</sup> This would have been problematic for the OCA, as there was no  
9 legitimate, rational explanation offered in the application for the redefinition  
10 sought in the application. The clear message from the request to redefine the  
11 service areas was that it would be a way to redefine the service area in a way that  
12 would be convenient for Western Wireless to serve.

13  
14 Paragraph 44 of the application in Docket No. 70042-TA-04-5 (the rural area  
15 request) asks the Commission to redefine the service area from the study area to  
16 the boundaries of an individual wire center. It continues:

17 ...The most logical and appropriate method of redefinition is by  
18 individual wire centers. Redefining the service area requirement  
19 into separate service areas based on individual wire centers for  
20 purposes of ETC designations will promote competition by  
21 eliminating a barrier to entry into the universal service market.  
22 This approach also would enable Western Wireless to be  
23 designated a federal ETC in the wire center within its existing  
24 licensed and signal coverage area consistent with the public  
25 interest determination of the Commission.  
26

27 The application continues at paragraph 50:

28 The redefinition of the service area standard for Tri-County is  
29 necessary for the promotion of competition and the advancement  
30 of universal service. ***Unless the service area standard is***  
31 ***redefined, Western Wireless is precluded from being designated***  
32 ***as an ETC in any of this rural telephone company's wire centers***  
33 ***because Western Wireless cannot serve the entire study area.***  
34 Redefinition is in the public interest because it will enable Western

---

<sup>6</sup> For federal universal service fund purposes, Tri-County Telephone's and TCT WEST's Wyoming certificated territories are combined into one study area.

1 Wireless, and other competitors, to bring new services and new  
2 technologies to customers of the rural telephone company.  
3 [Emphasis added.]  
4

5 Western Wireless tries to use the generic language of earlier FCC orders to  
6 support its request for redefinition – it would promote competition, it would allow  
7 for the separation of non-continuous areas, it would reduce start-up costs, etc.  
8 However, the reality is that even if the Commission had accepted the redefinition  
9 of the service area by wire center, Western Wireless was then seeking to  
10 repackage the piece parts with the exception of one very small exchange –  
11 Hamilton Dome.<sup>7</sup> Once again, for the convenience of carriers, the most rural (and  
12 presumably the costliest to serve) customers would fall by the wayside.

13  
14 On February 17, 2005, Western Wireless suddenly proposed an amendment to the  
15 application. This amendment would have the Commission ignore all of the many  
16 pages of language in the original application wherein Western Wireless had to  
17 have the redefinition of the rural study area in order to be able to compete in the  
18 Tri-County/TCT area. It asks the Commission to ignore the fact that Mr. Blundell  
19 swore that Tri-County/TCT WEST's entire study area could not be served by  
20 Western Wireless. It is an amendment that is not much more than a *never-mind* all  
21 the things we said earlier -- now we want the whole study area included. There is  
22 no explanation of what has changed from the original filing to the time of the  
23 amendment. There is no explanation of how Western Wireless now plans to serve  
24 the entire area that it claimed it could not serve six months ago.

25  
26 Furthermore, because of the schedule in this case, there was no realistic  
27 opportunity for the OCA to do any meaningful discovery on this issue to answer  
28 the question of what changed. Therefore, we simply respond to some of the  
29 discussion of coverage contained in Mr. Blundell's testimony.  
30

---

<sup>7</sup> Hamilton Dome is a very small exchange in a very small company. According to its 2003 Wyoming annual report, the total of all of the access lines in all five of Tri-County's exchanges was 1,106.

1           However, having said all that, and assuming that the Commission has allows the  
2           amendment of the application, the OCA has no conceptual issue regarding the  
3           service area being defined as Tri-County/TCT WEST’s entire service area, as well  
4           as the Wyoming portion of Project Telephone’s Clark exchange. After all, this is  
5           consistent with the definition that is in compliance with the statute and the current  
6           FCC rule.

7  
8           If for some reason the Commission rejects the submitted amendment to the  
9           application, the OCA has serious issues and many unanswered questions about the  
10          originally proposed redefined rural service area requested in this proceeding. We  
11          would reserve the right to further address these concerns in the event that the  
12          amendment is rejected.

13  
14       **Q.    ARE YOU TAKING ISSUE WITH WESTERN WIRELESS’ ABILITY TO**  
15       **PROVIDE THE DESIGNATED UNIVERSAL SERVICES?**

16       A.    No. I do not question that Western Wireless has the ability to provide the  
17          designated supported services to Wyoming customers. I do, however, question  
18          whether it is truly committed to providing these services in one universal service  
19          offering, such as the one widely discussed and touted in 1999 and 2000. I also  
20          remind the Commission that it would be beneficial to customers if a standard  
21          were established regarding the amount of local usage (without an associated  
22          specific per minute charge) to be included in the offerings. Without a local usage  
23          standard, the door is left open for a provider to claim that any service meets the  
24          standard – even one in which the customer is charged for each and every minute  
25          of use. This means that nearly every offering could be considered a universal  
26          service offering, regardless of its price or affordability to customers.

27  
28       **Q.    ARE YOU QUESTIONING WESTERN WIRELESS’ ABILITY OR**  
29       **WILLINGNESS TO OFFER, THROUGHOUT THE REQUESTED**  
30       **DESIGNATED ETC SERVICE AREA, THE SERVICES SUPPORTED BY**  
31       **THE FEDERAL UNIVERSAL SERVICE FUND?**

1 A. Yes. Please recall my earlier discussion about the abrupt change in the proposed  
2 rural service area to be designated. Western Wireless has offered no explanation  
3 as to what has changed in the past few months that would now allow Hamilton  
4 Dome to be served, when it could not be served at the time the application was  
5 filed. Next, I turn to Mr. Blundell's exhibit JHB-4 that shows Western Wireless'  
6 current coverage for the proposed ETC areas. The map with the Tri County and  
7 TCT WEST exchanges shows that there is significant portion of the landmass in  
8 the Hamilton Dome exchange for which Western Wireless has no coverage. A  
9 similar appearance of the lack of coverage also occurs for the Meteteese  
10 exchange, the Ten Sleep exchange, the Hyattville exchange, and the Cody  
11 exchange. Yet, depiction of coverage areas gives no indication of the number of  
12 potential customers in the exchange who would not be able to receive service. It  
13 is therefore impossible to determine from the information provided with the  
14 application and testimony the extent to which the supported services would be  
15 available throughout the ETC service area.

16

17 **Q. WESTERN WIRELESS ARGUES THAT AN APPLICANT IS NOT**  
18 **REQUIRED TO PROVIDE UBIQUITOUS COVERAGE PRIOR TO**  
19 **BEING DESIGNATED AN ETC. DO YOU AGREE?**

20 A. Yes. But that is not the end of the applicant's obligation. As found in the South  
21 Dakota order, cited by Mr. Blundell on page 12 of his testimony, "A new entrant,  
22 once designated as an ETC, is required, as the incumbent is required, to extend its  
23 network to serve new customers upon reasonable request." This quote from the  
24 order clearly states that the ETC is required "to extend its network." This is  
25 important, as Western Wireless has tried to soften this obligation by Mr.  
26 Blundell's statement that "it does have an obligation as an ETC to meet  
27 reasonable requests for service."<sup>8</sup> Even here, I am concerned that Western  
28 Wireless may be attempting to cut corners in advance and limit the service  
29 obligations that would apply to it as an ETC.

---

<sup>8</sup> Blundell testimony, page 13, lines 7 and 8.



1 Q. Does Western Wireless (or Cellular One) also offer a  
2 residential rate plan that is based more on a fixed wireless  
3 service?

4 A. Not in Wyoming. On Wednesday, January 21, 2004, I  
5 called Cellular One to find out if such an offering was  
6 currently being made in Wyoming. The answer came back  
7 (from a very helpful gentleman named Todd from the  
8 specific department that deals with the fixed wireless  
9 services) that the Wireless Residential Service I was asking  
10 about is not currently available in Wyoming. Furthermore,  
11 he knew of no plans to offer it in Wyoming.  
12

13 On May 24, 2004, I again called CellularOne® to ask about the universal service  
14 offering widely discussed in Western Wireless' earlier ETC application and order.  
15 It should be noted that I was able to make this inquiry about the plan only because  
16 I knew about it from my work experiences. There was no information about the  
17 plan on CellularOne's® website. I spoke with a customer service representative  
18 who indicated that this was a brand new plan in Wyoming, and had to send me to  
19 a special person who would tell me about it. I then spoke with a second  
20 representative who indicated that the plan came out only about two months before  
21 (which is very interesting timing, given that the OCA had expressed a number of  
22 concerns of the lack of offering of this plan at a meeting with Mr. Blundell on  
23 April 6, 2004). But, when I asked for some written literature about the plan, I was  
24 told there was none. This is again quite odd, since at our April 6, 2004 meeting,  
25 Mr. Blundell had shared what he represented to be the written customer material  
26 describing the plan. As a secondary measure, I also went to the CellularOne®  
27 dealer at Frontier Mall on May 27, 2004 and spoke with a sales person and asked  
28 for information about the universal service offering (also described as the \$14.99  
29 plan or the fixed wireless plan). She knew nothing about it and had never heard  
30 of such a thing and had no literature that would describe it.  
31

32 This demonstrates the violation of the earlier promise of Western Wireless that it  
33 would insure that customers were made aware of this offer and that it would be  
34 widely offered throughout its ETC service area. If it could not, or would not, and  
35 did not carry through with its commitment on this issue, why should the

1 Commission believe its representation that it will expand service and its network  
2 as necessary to reasonably serve all customers in its ETC service area?  
3

4 Finally, on February 24 and 25, 2005, I again contacted CellularOne® to find out  
5 the current status of its universal service offering. On February 24, I checked the  
6 CellularOne® website. For the first time, there was a brief mention of the plan on  
7 its website, stating:

8 Western Wireless has been designated an eligible  
9 telecommunications Carrier (ETC) in certain localities. As such,  
10 the company will provide additional service offerings for local  
11 consumers. These offerings include a “Basic Universal Service”  
12 plan whereby a customer receives service for \$14.99 per month  
13 and a Lifeline/Link-Up monthly offering, which allows consumers  
14 to receive a reduced rate monthly plan if the consumer satisfies  
15 certain federal eligibility criteria. For more information about these  
16 and other rate plans, please contact a sales representative at 1 800  
17 CELL-ONE. (<http://www.cellularonewest.com/rateplans.asp>)  
18

19 The charges associated with this offering are not readily apparent, especially the  
20 up-front cost of \$300 for the fixed (non-mobile) unit that must be purchased over  
21 the phone in addition to the \$14.99 monthly charge, the \$15 activation fee, and  
22 the \$30 installation fee. These fees, plus the scope of the ‘free’ local calling area,  
23 the limitations on international dialing, and the charge for toll calls were all  
24 explained to me by a customer service representative. She also explained that this  
25 was deemed to be a ‘residential’ service. (It is not clear whether it would even be  
26 offered to business customers.) When I asked if there were any written materials  
27 that she could e-mail me, I was told there were none. When I asked if there were  
28 written materials available at their customer retail centers, she thought there might  
29 be. So, on the morning of February 25, 2005, I made a visit to the CellularOne®  
30 store in Cheyenne and was told that there were no written materials available at  
31 the store, and that I would need to call the 1-800 telephone number for more  
32 information.  
33  
34  
35

1 **Q. WHAT DO YOU CONCLUDE FROM YOUR THREE EXPERIENCES OF**  
2 **ATTEMPTING TO FIND OUT ABOUT THE SERVICE DESCRIBED BY**  
3 **WESTERN WIRELESS AS ITS UNIVERSAL SERVICE OFFERING, OR**  
4 **ITS BASIC UNIVERSAL SERVICE PLAN?**

5 A. My experience is that until less than one year ago, the plan was not available in  
6 Wyoming. And, for a portion of the past year, customers would have had to know  
7 about the plan to ask for it, since it was not mentioned in Western Wireless' on  
8 line or printed literature. And, most recently, while Western Wireless seems to  
9 finally be offering tidbits of publicly available information on this service, their  
10 actions do not yet comply with the ETC standard of "advertising the availability  
11 of such service and the charges therefor using media of general distribution" as  
12 called for by 47 U.S.C. 214(e).

13  
14 This should raise a point of caution for the Commission. If it has taken more than  
15 four years to get Western Wireless to put one relative uninformative paragraph  
16 on its website about the universal service offering, how long might it take to  
17 actually fill any gaps in the requested coverage in ETC service areas? The  
18 Commission should take from this example of Western Wireless' past behavior  
19 that it is necessary to demand more than unsupported representations from  
20 Western Wireless about its intentions in Wyoming and its commitment to serve  
21 more Wyoming customers than just those who are conveniently located.

22  
23 **Q. IS THERE AN ADDITIONAL REASON THAT YOU ARE CONCERNED**  
24 **ABOUT WESTERN WIRELESS' WILLINGNESS AND ABILITY TO**  
25 **OFFER SERVICE THROUGHOUT THE ETC AREA?**

26 A. Yes. At page 29 of his testimony, Mr. Blundell states, starting at line 15:

27 Second, I analyzed the percentage of the population within each  
28 wire center that is covered by Western Wireless' network after any  
29 identified buildout is completed. The Designated Areas are those  
30 wire centers 1) entirely within Western Wireless' licensed areas  
31 and 2) where the Company's network will reach at least a  
32 substantial portion of the population in the wire center.  
33

1 The OCA is concerned that this statement is neither within the spirit or the letter  
2 of the ETC requirements. Section 214 requires that the supported services be  
3 offered “throughout the service area for which designation is received.”  
4 Statements indicating that service would or could be provided throughout a  
5 substantial portion of the territory seem to fall short of meeting this requirement.  
6 Furthermore, the FCC adopted a clear definition of *throughout*, based on  
7 recommendations from the Joint Board. To further define this thinking, it is  
8 useful to look at the Joint Board’s recommendation<sup>10</sup>:

9 We recommend that the Commission not impose eligibility criteria  
10 in addition to those contained in section 214(e)(1). For example,  
11 some commenters argue that the Commission should require  
12 competing telecommunications carriers to meet all the obligations  
13 imposed by the state on incumbent LEC, such as COLR [carrier of  
14 last resort] requirements or rate regulation. ***The proponents of this  
15 point of view argue that such symmetrical regulation is necessary  
16 to prevent new entrants from selectively targeting only the lowest  
17 cost customers in an area,*** and to prevent unfair treatment of  
18 incumbent LECs. We conclude that establishing specific federal  
19 rules or guidelines that would impose symmetrical regulatory  
20 obligations on all carriers receiving universal service support are  
21 unnecessary to protect the incumbent and would chill competitive  
22 entry into high cost areas. ***The statute already conditions  
23 eligibility for support on the requirement that  
24 telecommunications carriers be common carriers and offer the  
25 defined services “throughout the service area.” The plain  
26 meaning of these two requirements is that eligible carriers must  
27 hold themselves out to provide the specified services to any  
28 customer in the service area...*** [Footnotes omitted and emphasis  
29 added.]  
30

31 The Joint Board’s recommendation is adopted by the FCC in its May 8, 1997  
32 *Report and Order* in CC Docket No. 96-45, at paragraph 143: “As the Joint Board  
33 explained, section 214(e) prevents eligible carriers from attracting only the most  
34 desirable customers by limiting eligibility to common carriers and by requiring  
35 eligible carriers to offer the supported services and advertise the availability of  
36 these services ‘throughout the service area.’” [Footnotes omitted.] Mr. Blundell’s

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<sup>10</sup> *Recommended Decision* of the Federal State Joint Board on Universal Service, CC Docket No. 96-45, released November 8, 1996, paragraph 156.

1 statement provides no comfort that the feared “cherry picking” is not occurring by  
2 only serving a “substantial portion” of the customers in each area. It is also not  
3 clear how this brings the benefit of competition to the rural areas, a theory widely  
4 discussed in Western Wireless’ prefiled testimony, if the hardest to reach, most  
5 remote and relatively expensive customers are not to be included in the area in  
6 which service is to be offered. It is also notable, that unlike Virginia Cellular and  
7 Highland Cellular, Western Wireless does not suggest that it could, or would, fill  
8 in the service gaps in the ETC service areas through the reselling of services.  
9

10 **Q. IS THERE MORE RECENT LANGUAGE FROM THE FCC**  
11 **CONDEMNING THE CONCEPT OF CREAM-SKIMMING OR CHERRY**  
12 **PICKING?**

13 A. Yes. In its April 12, 2004 order deciding *Highland Cellular, Inc.*’s request to be  
14 designated an ETC, the FCC states, beginning at paragraph 31:

15 In this case, we find that the ETC designation of Highland Cellular  
16 in the portion of its licensed service area covers only certain wire  
17 centers of Verizon South raises creamskimming concerns similar  
18 to those identified by the Commission in the *Virginia Cellular*  
19 *Order*. We agree with the arguments of Verizon that Highland  
20 Cellular should not be allowed to serve only the low-cost  
21 customers in a rural telephone company’s study area... [Footnote  
22 omitted.]  
23

24 **Q. THE 1996 ACT REQUIRES THAT AN ETC ADVERTISE THE**  
25 **AVAILABILITY OF THE SERVICES SUPPORTED BY THE FEDERAL**  
26 **UNIVERSAL SERVICE FUND AND THE ASSOCIATED CHARGES**  
27 **THROUGHOUT THE DESIGNATED ETC SERVICE AREA, USING**  
28 **MEDIA OF GENERAL DISTRIBUTION. IS WESTERN WIRELESS**  
29 **COMPLYING WITH THIS REQUIREMENT?**

30 A. As indicated earlier, Western Wireless gives the advertising very little attention in  
31 either its application or testimony. Thus, it is difficult to judge its compliance  
32 level with this standard. For instance, Mr. Blundell provides exhibit JHB-7 as an  
33 example of Western Wireless’ Lifeline and Link-up advertising. But, there is no  
34 indication of where this advertising was done or how often. There is no

1 indication that the advertisement was provided throughout the ETC service area.  
2 There is also no information on the price associated with the Lifeline and Link-up  
3 programs – even though the 1996 Act requires that not only the service be  
4 advertised but that the associated prices also be advertised. It is also difficult to  
5 make a determination about Western Wireless’ advertising compliance based on  
6 this one advertisement for this one subset of services. No other information  
7 showing historical compliance is shown. There are no copies of newspaper ads.  
8 There are no copies of website screenprints. There are no radio announcement  
9 copies. There are no budget figures or action plans. The information is too  
10 limited.

11  
12 Mr. Blundell’s testimony is also troubling regarding the issue of advertising. For  
13 example, on page 14 of his prefiled testimony, he states: “Western Wireless will  
14 use the same media of general distribution that it currently employs to advertise  
15 its service offerings throughout the Designated Areas.” In this response, it does  
16 not specifically discuss the advertising of the availability of its *supported services*  
17 but rather focuses on the advertising its *service offerings*. But, which service  
18 offerings? Do all of these offerings contain each of the designated supported  
19 services?

20  
21 In addition to my personal experience of having difficulty finding information  
22 about the universal service rate, as I described above, the OCA asked Western  
23 Wireless about how advertises the availability of the Basic Universal Service rate.  
24 In response, we were told:

25 ...All of the available specific service offerings and their  
26 corresponding rates are not necessarily separately identified in the  
27 advertisements. The BUS offering and its rate have not been  
28 separately identified in advertisements.  
29

30 This statement appears to be true not only for the Basic Universal Service rate,  
31 but also for many of the other services it offers. There are approximately 100  
32 services listed on Mr. Blundell’s exhibit JHB-3. When I checked the

1 CellularOne® website for information on various plans, there were approximately  
2 a dozen offerings listed with prices and general terms and conditions. But, for the  
3 Basic Universal Service plan and Lifeline and Link-up, there was only a note  
4 explaining that information would be further obtained by calling customer  
5 service.

6  
7 Similarly, while in the retail outlet, I picked up a brochure titled *Calling Plans &*  
8 *Coverage, Montana & Wyoming*. This brochure provides basic overviews of  
9 approximately 14 local, regional, or national mobile cellular rate plans. None of  
10 these plans are similar to the Basic Universal Service offer that was described  
11 extensively in the Western Wireless 1999 application for ETC designation.

12  
13 Mr. Blundell's exhibit JHB-8 contains the Consumer Code *for* Wireless Service,  
14 which has been adopted by Western Wireless, according to page 23 of Mr.  
15 Blundell's testimony. The first provision of that code has a detailed standard  
16 regarding the disclosure of rates and terms of service to new customers. But,  
17 again, it is not apparent how Western Wireless has complied with this, when one  
18 compares the service plans with detailed information on the website and the plans  
19 listed in the brochures to the list of service generally available service offerings  
20 listed on exhibit JHB-3 – one place where the Basic Universal Service plan is  
21 specifically listed in this case.

22  
23 **Q. IF WESTERN WIRELESS WERE TO BE GRANTED THE ETC STATUS**  
24 **THAT IT IS SEEKING IN THIS CONSOLIDATED DOCKET, WOULD IT**  
25 **ALSO THEN BE ELIGIBLE TO RECEIVE WYOMING UNIVERSAL**  
26 **SERVICE FUNDS?**

27 A. No. Western Wireless has not asked in this proceeding to be designated an  
28 eligible telecommunications carrier for the purpose of the Wyoming universal  
29 service fund. Regardless of the Commission's decision in this proceeding on  
30 federal ETC status, Western Wireless would not – and should not – be eligible for  
31 Wyoming universal service support.

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**Q. PLEASE RESPOND TO WESTERN WIRELESS’ EXTENSIVE DISCUSSION IN ITS TESTIMONY OF ITS VIEW OF HOW CUSTOMERS WOULD BENEFIT FROM THE GRANTING OF THE ETC STATUS.**

A. The types of benefits and potential benefits that Western Wireless discusses include: representation of different technologies, an array of pricing plans, the longer-run development of market forces that cause providers to become more efficient, the offering of the longer-run potential for better service to customers, technology innovation, and other similar items. In my view, many of these benefits are theoretical in nature, and are not yet proven – even in the areas where there have been competitive ETCs for a number of years.

These are substantially different than some of the direct benefits provided by many of the existing carriers who have ETC status and currently receive federal universal service funds. Many of those carriers return some or all of their federal funds directly to customers through reduced rates or bill credits. There is no indication that customer rates will be reduced if Western Wireless receives additional federal support, and there is no indication that the prices offered customers in ETC areas are less than the prices offered in non-ETC areas. Thus, customers should expect no direct benefit in the form of reduced pricing.

Western Wireless also discusses the quality of its service and concludes that it is providing high quality service – although, again, there is no empirical data or comparison to other providers to support its claim. If it is true that it already has high-quality service, how could one a significant benefits of its ETC status be improved quality?

Western Wireless also suggests that the deployment of new technology or other innovation could come forth from granting it ETC status. Mr. Blundell specifically discusses advanced services, such as high-speed data services, on

1 page 19 of his prefiled testimony. He discusses the roll out of this service, and the  
2 next generation of this service. But nowhere in his testimony does he indicate  
3 that the roll out of this service in Wyoming is tied to the granting of ETC status.  
4 And, nowhere, does he commitment (with timetables, budgets, and other  
5 empirical support) that if ETC status is granted, these services will be offered in  
6 and throughout the Wyoming ETC service areas. His statements ring hollow and  
7 are too general to be deemed benefits tied to the ETC designation.

8

9 **Q. IF THE COMMISSION DETERMINES THAT ETC STATUS SHOULD BE**  
10 **GRANTED TO WESTERN WIRELESS, REGARDLESS OF THE OCA’S**  
11 **OBJECTIONS, IS THERE ACTION THAT CAN, AND SHOULD, BE**  
12 **TAKEN TO ASSURE THAT THE SUPPORT FUNDS TRULY PROVIDE**  
13 **BENEFITS TO CUSTOMERS?**

14 A. Yes. Each year, the Commission must certify to the FCC and the Universal  
15 Service Administrative Company that the federal universal service funds are  
16 being used only for permitted purposes. Pursuant to 47 U.S.C. 254(e), the funds  
17 are to be used only “for the provision, maintenance, and upgrading of facilities  
18 and services for which the support is intended.” Based on this language, it would  
19 be reasonable for the Commission to specifically obtain information as to how the  
20 support is promoting and advancing universal service in Wyoming before making  
21 its annual certification. Rather than just noting that so many dollars of federal  
22 funds have been received, and so much money has been spent on construction, as  
23 Mr. Blundell does in his testimony, the certification should seek to specifically  
24 find out how the money is being used *for the services for which the support is*  
25 *intended.* The support is not intended to conduct research on advanced services,  
26 since advanced services are not services designated for support from the federal  
27 USF. The universal service principles advance quality services at affordable  
28 prices. The Commission should seek and insist on being provided information  
29 explaining how Western Wireless’ use of the funds advances these principles.

30

1 The Commission also retains the right to decertify an ETC if it is no longer  
2 meeting its universal service obligations. The Commission should take  
3 reasonable steps, perhaps also through the annual certification process, to assure  
4 that these obligations continue to be met, rather than falling by the wayside. I am  
5 in no way suggesting that the Commission regulate Western Wireless beyond its  
6 limited authority, and am in no way suggesting that this proceeding should be  
7 used to levelize the regulatory regimes of incumbent wireline providers and  
8 competitive wireless providers. I am suggesting, however, that the Commission  
9 place greater emphasis on its role in granting ETC designations and the  
10 responsibility that comes in overseeing the obligations accompanying that ETC  
11 status.

12  
13 An example of this type of regulatory oversight is found in the *Highland Cellular*  
14 decision at paragraph 43:

15 Separate and in addition to its annual certification filing under  
16 sections 54.313 and 54.314 of our rules, Highland Cellular has  
17 committed to submit records and documentation on an annual basis  
18 detailing its progress towards meeting its build-out plans.  
19 Highland Cellular also has committed to become a signatory to the  
20 Cellular Telecommunications Industry Associations' Consumer  
21 Code for Wireless Service and provide the number of consumer  
22 complaints per 1,000 mobile handsets on an annual basis. In  
23 addition, Highland Cellular will annually submit information  
24 detailing how many requests for service from potential customers  
25 were unfulfilled for the past year...[Footnotes omitted. ]

26  
27 The FCC notes in its November 18, 2004 decision regarding Sprint's request for  
28 ETC designation in a number of states, that Sprint agreed to similar annual  
29 reporting of: progress toward meeting its build-out plans, the number of  
30 complaints per 1,000 handsets, and how many requests for service from potential  
31 customers were unfulfilled for the past year.

1 **Q. DO YOU HAVE ANY CONCLUDING REMARKS?**

2 A. Yes. If it were not for the fact that the applicant bears the burden in this  
3 proceeding, the OCA would be very concerned about the severely limited  
4 opportunity to do discovery on the testimony of the applicant in this case, given  
5 that only five workdays separated the filing of the applicant's testimony and the  
6 interveners' testimony. We also note that there is a flurry of federal activity in  
7 progress relative to federal universal service fund rules and standards – some of  
8 which may be issued and change the USF standards and expectations between the  
9 time of filing the testimony and the hearing in this proceeding. Thus, we seek to  
10 reserve the right to supplement our evidence presented to the Commission if, and  
11 as, significant events impacting the issues in this case occur or information of  
12 major significance becomes available.

13

14 **Q. DOES THIS COMPLETE YOUR PREFILED DIRECT TESTIMONY AT**  
15 **THIS TIME?**

16 A. Yes.