

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Western Wireless Corporation)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
In the State of Wyoming)	

MEMORANDUM OPINION AND ORDER

Adopted: December 22, 2000

Released: December 26, 2000

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of Western Wireless Corporation (Western Wireless) to be designated as an eligible telecommunications carrier (ETC) in designated service areas within Wyoming pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ In so doing, we conclude that Western Wireless has satisfied the statutory eligibility requirements of section 214(e)(1).² Specifically, we conclude that Western Wireless has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanism throughout the designated service areas.³ In addition, we find that the designation of Western Wireless as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Wyoming. We conclude that consumers in Wyoming will benefit as a result of Western Wireless' designation as an ETC.

II. BACKGROUND

A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications

¹ *Western Wireless Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, filed October 25, 1999 (Western Wireless Petition). See 47 U.S.C. § 214(e)(6).

² 47 U.S.C. § 214(e)(1).

³ 47 U.S.C. § 214(e)(1).

carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁴ Section 214(e)(1) requires that a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁵

3. Pursuant to section 214(e)(2), state commissions have the primary responsibility for designating carriers as ETCs.⁶ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State Commission.”⁷ Under section 214(e)(6), upon request and consistent with the public interest, convenience, and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).⁸ Before designating an additional ETC for an area served by a rural telephone company, the Commission must find that the designation is in the public interest.⁹ On December 29, 1997, the Commission released a Public Notice establishing the procedures that carriers must use when seeking Commission

⁴ 47 U.S.C. § 254(e).

⁵ Section 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under [subsections 214(e)(2), (3), or (6)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received --

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

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

47 U.S.C. § 214(e)(1).

⁶ 47 U.S.C. § 214(e)(2).

⁷ 47 U.S.C. § 214(e)(6). See *Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O’Odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, CC Docket No. 96-45, 13 FCC Rcd 4547 (Com. Car. Bur. 1998); *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, 13 FCC Rcd 22433 (Com. Car. Bur. 1998).

⁸ 47 U.S.C. § 214(e)(6).

⁹ See 47 U.S.C. § 214(e)(6).

designation as an ETC pursuant to section 214(e)(6).¹⁰

B. The Western Wireless Petition and *Twelfth Report and Order*

4. On September 1, 1998, Western Wireless petitioned the Wyoming Public Service Commission (Wyoming Commission) for designation as an ETC pursuant to section 214(e)(2) for service to be provided in Wyoming. On August 13, 1999, the Wyoming Commission dismissed Western Wireless' request for designation on the grounds that the Wyoming Telecommunications Act denies the Wyoming Commission the authority to regulate "telecommunications services using . . . cellular technology," except for quality of service.¹¹ The Wyoming Commission interpreted this prohibition as preventing it from designating Western Wireless as an ETC because Western Wireless provides service using cellular technology.¹²

5. On September 29, 1999, Western Wireless filed with this Commission a petition pursuant to section 214(e)(6) seeking designation of eligibility to receive federal universal service support for service to be provided in parts of Wyoming.¹³ In its petition, Western Wireless contends that the Commission should assume jurisdiction and designate Western Wireless as an ETC pursuant to section 214(e)(6) given the Wyoming Commission's determination that it lacked jurisdiction under applicable state law to designate wireless carriers as ETCs.¹⁴

¹⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419 (rel. Dec. 29, 1997) (*Section 214(e)(6) Public Notice*). In this Public Notice, the Commission delegated authority to the Chief of the Common Carrier Bureau to designate carriers as ETCs pursuant to section 214(e)(6). The Commission instructed carriers seeking designation to, among other things, set forth the following information in a petition: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is "not subject to the jurisdiction of a state commission;" (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c); (3) a certification that the petitioner offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefor using media of general distribution." In addition, if the petitioner meets the definition of a "rural telephone company" pursuant to section 3(37) of the Act, the petitioner must identify its study area. If the petitioner is not a rural telephone company, the petitioner must include a detailed description of the geographic service area for which it requests a designation for eligibility from the Commission.

¹¹ *The Amended Application of WWC Holding Co., Inc., (Western Wireless) For Authority To Be Designated As An Eligible Telecommunications Carrier*, Order Granting Motion to Dismiss Amended Application, Docket No. 70042-TA-98-1 (Record No. 4432) (Aug. 13, 1999) (*Wyoming Order*), citing Wyoming Telecommunications Act of 1995.

¹² *Wyoming Order* at 2-4.

¹³ See Western Wireless Petition. The petition contains a list of the specific rural telephone company study areas and non-rural incumbent local exchange carrier (LEC) exchanges for which Western Wireless is seeking designation. Western Wireless Petition, App. D. See also Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Magalie Roman Salas, FCC, dated Dec. 20, 2000 – Proposed Designated ETC Service Areas (Western Wireless Dec. 20 *ex parte*).

¹⁴ See generally Western Wireless Petition.

6. In the *Twelfth Report and Order*, the Commission concluded that only in those instances where a carrier provides the Commission with an “affirmative statement”¹⁵ from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation will the Commission consider section 214(e)(6) designation requests from carriers serving non-tribal lands.¹⁶ Consistent with this framework, the Commission concluded that it has authority under section 214(e)(6) to consider the merits of Western Wireless’ petition for designation as an ETC in Wyoming.¹⁷

III. DISCUSSION

7. We find that Western Wireless has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for the designated service areas in the state of Wyoming. As discussed above, the Commission previously concluded in the *Twelfth Report and Order* that Western Wireless is a common carrier not subject to the jurisdiction of the Wyoming Commission. We conclude that Western Wireless has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanism throughout the designated service areas upon designation as an ETC. In addition, we find that the designation of Western Wireless as an ETC in those areas served by rural telephone companies serves the public interest by promoting competition and the provision of new technologies to consumers in high-cost and rural areas of Wyoming. We therefore designate Western Wireless as an ETC for the requested service areas within Wyoming.

8. Offering the Service Designated for Support. We conclude that Western Wireless has demonstrated that it will offer the services supported by the federal universal service mechanism upon designation as an ETC. We therefore conclude that Western Wireless complies with the requirement of section 214(e)(1)(A) to “offer the services that are supported by Federal universal service support mechanisms under section 254(c).”¹⁸

9. As noted in its petition, Western Wireless is a commercial mobile radio service (CMRS) provider with operations in 17 states, including the eastern portion of Wyoming.¹⁹ Western Wireless states that it currently offers each of the supported services enumerated in

¹⁵ The Commission defined an “affirmative statement” as “any duly authorized letter, comment, or state commission order indicating that [the state commission] lacks jurisdiction to perform the designation over a particular carrier.” See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (rel. June 30, 2000) at para. 113 (*Twelfth Report and Order*).

¹⁶ *Twelfth Report and Order* at para. 113.

¹⁷ *Twelfth Report and Order* at para. 137.

¹⁸ 47 U.S.C. § 214(e)(1)(A).

¹⁹ Western Wireless Petition at 2. See also Letter from David L. Sieradzki, Counsel for Western Wireless, to Magalie Roman Salas, FCC, dated October 24, 2000 (Western Wireless Oct. 24 *ex parte*).

section 54.101(a) of the Commission's rules throughout its existing cellular service area.²⁰ Once designated as an ETC, Western Wireless "intends (and commits) to make available a 'universal service' offering that includes all of the supported services, for consumers in the designated services areas in Wyoming."²¹ Western Wireless indicates that it will make available its universal service offering over its existing cellular network infrastructure and spectrum. Western Wireless also commits to provide service to any requesting customer within the designated service areas, and if necessary, will deploy any additional facilities to do so.²²

10. No party disputes that Western Wireless has the capability to offer single-party service, voice-grade access to the public network, the functional equivalent to DTMF signaling, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.²³ Nor does any party dispute that Western Wireless complies with state law and Commission directives on providing access to emergency services.²⁴ In addition, although the Commission has not set a minimum local usage requirement, Western Wireless currently offers varying amounts of local usage in its monthly service plans.²⁵ In fact, Western Wireless intends to offer its universal service customers a rate plan that includes unlimited local usage.²⁶ In sum, we conclude that Western Wireless has demonstrated that it will offer each of the supported services upon designation as an ETC in the requested service areas in Wyoming.²⁷ Several state commissions have examined Western Wireless' proposed service

²⁰ Western Wireless Petition at 3, 7-10. *See also* Western Wireless Petition, App. C – Affidavit of Gene DeJordy.

²¹ Western Wireless Petition at 7.

²² Western Wireless Petition at 3.

²³ Pursuant to section 254(c), the Commission has defined those services that are to be supported by the federal universal service mechanism to include: (1) single-party service; (2) voice grade access to the public switched network; (3) local usage; (4) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator service; (7) access to interexchange services; (8) access to directory assistance; and, (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a).

²⁴ *See* 47 C.F.R. § 54.101(a)(5) ("Access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems"). Western Wireless currently offers access to emergency services throughout its cellular service area by dialing 911. Western Wireless indicates that no public emergency service provider in Wyoming has made arrangements for the delivery of E911 to Western Wireless. Western Wireless indicates that it is capable and ready to provide E911 upon request. Western Wireless Petition at 9.

²⁵ Western Wireless Petition at 8.

²⁶ Western Wireless Petition at 8.

²⁷ AT&T Comments at 3; CTIA Comments at 3; PCIA Comments at 3-4.

offering and reached the same conclusion in designating Western Wireless as an ETC.²⁸

11. We reject the suggestion that Western Wireless' proposed service offering lacks the requisite specificity to satisfy the eligibility requirements of section 214(e).²⁹ Western Wireless has provided supplemental information relating to the services offered, the charges for those services, and availability of customer assistance services.³⁰ We also reject the contention that Western Wireless has not sufficiently specified whether it intends to use its fixed or mobile service to fulfill its ETC obligations.³¹ In so doing, we reject the implication that service offered by CMRS providers is ineligible for universal service support.³² In the *Universal Service Order*, the Commission concluded that universal service support mechanisms and rules should be competitively neutral.³³ The Commission concluded that the principle of competitive neutrality includes technological neutrality.³⁴ Thus, a common carrier using any technology, including CMRS, may qualify for designation so long as it complies with the section 214(e) eligibility criteria. Western Wireless indicates that it has the ability to offer the supported services using its existing facilities.

12. We reject the contention of a few commenters that it is necessary to adopt eligibility criteria beyond those set forth in section 214(e) to prevent competitive carriers from attracting only the most profitable customers, providing substandard service, or subsidizing

²⁸ See, e.g., Minnesota Public Utilities Commission, *Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Order Granting Preliminary Approval and Requiring Further Filings, Docket No. P-5695/M-98-1285 (Oct. 27, 1999); Public Utilities Commission of Nevada, *Application of WWC License LLC d/b/a CELLULAR ONE to be designated as an Eligible Telecommunications Carrier in the State of Nevada pursuant to NAC 704.680461 and Section 254 of the Telecommunications Act of 1996*, Compliance Order, Docket No. 00-6003 (Aug. 17, 2000); Public Service Commission of Utah, *Petition of WWC Holding Co., Inc., for Designation as an Eligible Telecommunications Carrier*, Report and Order, Docket No. 98-2216-01 (July 21, 2000).

²⁹ Wyoming Telecommunications Association Comments at 7; US West Comments at 2; Coalition of Rural Telephone Companies Reply Comments at 11.

³⁰ Western Wireless indicates that the charge for its basic universal service offering, excluding taxes and regulatory assessments, will be \$14.99 per month. In addition, Western Wireless indicates its intention to make reasonable arrangements to resolve service disruptions. Customer service personnel will also be available 24 hours per day, 7 days per week. See Western Wireless Oct. 24 *ex parte* - Attachment 1 (Information Sheet).

³¹ Coalition of Rural Telephone Companies Comments at 11; Wyoming Telecommunications Association Comments at 11, 14.

³² Coalition of Rural Telephone Companies Comments at 5-7; Wyoming Telecommunications Association Comments at 11-14.

³³ *Universal Service Order*, 12 FCC Rcd 8776, 8801, para. 46.

³⁴ *Universal Service Order*, 12 FCC Rcd at 8802, para. 49 ("We anticipate that a policy of technological neutrality will foster the development of competition and benefit certain providers, including wireless, cable, and small businesses, that may have been excluded from participation in universal service mechanisms . . .").

unsupported services with universal service funds.³⁵ As the Commission noted in the *Universal Service Order*, section 214(e) prevents eligible carriers from attracting only the most desirable customers by limiting eligibility to “common carriers”³⁶ and by requiring eligible carriers to offer and advertise the supported services “throughout the service area.”³⁷ We also note that section 254(e) requires that “[a] carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁸

13. We find that these statutory provisions are sufficient to ensure that competitive carriers use universal service funds to make the supported services available to all requesting customers throughout the service area. We also believe that the forces of competition will provide an incentive to maintain affordable rates and quality service to customers. Competitive ETCs will receive universal service support only to the extent that they acquire customers. In order to do so, it is reasonable to assume that competitive ETCs must offer a service package comparable in price and quality to the incumbent carrier. In addition, we emphasize that a carrier’s ETC designation may be revoked if the carrier fails to comply with the statutory ETC and common carrier obligations.

14. Offer the Supported Services Using a Carrier’s Own Facilities. We conclude that Western Wireless has satisfied the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.³⁹ Western Wireless states that it intends to provide the supported services using its “existing cellular network infrastructures, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to the network.”⁴⁰ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(A).

15. Advertising the Supported Services. We conclude that Western Wireless has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution. Western Wireless certifies that it intends to advertise the availability of its universal service offering, and the charges therefor, using media of general distribution.⁴¹ Specifically, Western Wireless

³⁵ US West Comments at 12-14; Wyoming Telecommunications Association Comments at 7.

³⁶ The Act requires common carriers to furnish “communications services upon reasonable request,” 47 U.S.C. § 201(a), and states that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services. . . .” 47 U.S.C. § 202(a).

³⁷ See *Universal Service Order*, 12 FCC Rcd at 8855-56, paras. 142-43.

³⁸ 47 U.S.C. § 254(e).

³⁹ 47 U.S.C. § 214(e)(1)(A).

⁴⁰ Western Wireless Petition at 10-11.

⁴¹ Western Wireless Petition at 11.

indicates that it will expand upon its existing advertising media, including television, radio, newspaper, and billboard advertising, as necessary, to ensure that consumers within its designated service area are fully informed of its universal service offering.⁴² Moreover, given that ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory obligation, to advertise the universal service offering in Wyoming.

16. Public Interest Analysis. We conclude that it is in the public interest to designate Western Wireless as an ETC in Wyoming in those designated service areas that are served by rural telephone companies.⁴³ Western Wireless has made a threshold demonstration that its service offering fulfills several of the underlying federal policies favoring competition. We find that there is no empirical evidence on the record to support the contention that the designation of Western Wireless as an ETC in those designated service areas served by rural telephone companies in Wyoming will harm consumers.⁴⁴ In fact, we conclude that those consumers will benefit from the provision of competitive service and new technologies in high-cost and rural areas.

17. We note that an important goal of the Act is to open local telecommunications markets to competition.⁴⁵ Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies. 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.⁴⁶ In addition, we find that the provision of competitive service will facilitate universal service to the benefit of consumers in Wyoming by creating incentives to ensure that quality services are available at “just, reasonable, and affordable rates.”⁴⁷

18. Although we recognize the substantial benefits of competition to consumers, we conclude that additional factors may be taken into consideration in the public interest examination

⁴² Western Wireless Petition at 11.

⁴³ See 47 U.S.C. § 214(e)(6).

⁴⁴ See Coalition of Rural Telephone Companies Comments at 9-11; Wyoming Telecommunications Association Comments at 7-8.

⁴⁵ According to the Joint Explanatory Statement, the purpose of the 1996 Act is “to provide for a pro-competitive, de-regulatory national policy framework designated to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . .” Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113 (Joint Explanatory Statement).

⁴⁶ Western Wireless Petition at 11-13.

⁴⁷ 47 U.S.C. § 254(b)(1).

required by section 214(e)(6) prior to the designation of an additional ETC in an area served by a rural telephone company, such as whether consumers will be harmed. In so doing, we recognize that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges.⁴⁸ In particular, we believe that Congress was concerned that consumers in areas served by rural telephone companies continue to be adequately served should the incumbent telephone company exercise its option to relinquish its ETC designation under section 214(e)(4).⁴⁹

19. Western Wireless demonstrates a financial commitment and ability to provide service to rural consumers that minimizes the risk that it may be unable to satisfy its statutory ETC obligations after designation.⁵⁰ We note that Western Wireless currently provides service in 17 western states.⁵¹ Western Wireless also indicates that it can provide the supported services using its own facilities.⁵² By choosing to use its own facilities to provide service in Wyoming, Western Wireless can continue to offer service to any requesting customer even if the incumbent carrier subsequently withdraws from providing service.⁵³

20. Nor are we convinced that the incumbent rural telephone carriers will relinquish their ETC designation or withdraw service altogether in the event that Western Wireless is designated as an ETC in Wyoming.⁵⁴ None of the incumbent rural telephone companies at issue in this proceeding has indicated any intention to do so.⁵⁵ In the absence of any empirical information

⁴⁸ 47 U.S.C. § 214(e)(6) (stating that before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest). *See also* 47 U.S.C. § 254(b)(3).

⁴⁹ *See* Letter from Earl W. Comstock, Counsel for Nucentrix, to Magalie Roman Salas, FCC, dated October 25, 2000.

⁵⁰ We note that Western Wireless has filed its 1999 Annual Report containing substantial financial information for the period between 1997-1999 in this proceeding. *See* Western Wireless Oct. 24 *ex parte* - Attachment 2 (Western Wireless 1999 Annual Report).

⁵¹ Western Wireless Petition at 2.

⁵² Western Wireless Petition at 10.

⁵³ We note, however, that an ETC is not required to provide service using its own facilities. Section 214(e)(1)(A) allows a carrier designated as an ETC to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.” *See* 47 U.S.C. § 214(e)(1)(A).

⁵⁴ US West Comments at 17.

⁵⁵ Even if the incumbent carrier determined that it no longer desired to be designated as an ETC, section 214(e)(4) requires the ETC seeking to relinquish its ETC designation to give advance notice to the Commission. Prior to permitting the ETC to cease providing universal service in an area served by more than one ETC, section 214(e)(4) requires that the Commission “ensure that all customers served by the relinquished carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.” The Commission may grant a period, not to exceed one year, within which such purchase or construction shall be completed. *See* 47 U.S.C. § 214(e)(4).

to support this assertion, we decline to conclude that this constitutes a serious risk to consumers. In addition, Western Wireless, as an ETC, has a statutory duty to offer service to every customer within the designated service area. We reiterate that a carrier's ETC designation may be revoked if the carrier fails to comply with the statutory ETC and common carrier obligations.

21. Western Wireless also indicates that, in many instances, its local calling area is larger than the local calling area of the existing local exchange carrier.⁵⁶ We believe that rural consumers may benefit from expanded local calling areas by making intrastate toll calls more affordable to those consumers.⁵⁷ As discussed above, Western Wireless also indicates that it will offer varying amounts of local usage, including a package containing unlimited local usage to consumers.⁵⁸ In addition, Western Wireless has stated its intent to offer a new fixed wireless service to consumers in Wyoming.⁵⁹

22. We reject the general argument that rural areas are not capable of sustaining competition for universal service support.⁶⁰ We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.⁶¹ While we recognize that some rural areas may in fact be incapable of sustaining more than one ETC, no evidence to demonstrate this has been provided relating to the requested service areas. We believe such evidence would need to be before us before we could conclude that it is not in the public interest to designate Western Wireless as an ETC for those areas served by rural telephone companies.

23. Designated Service Areas. We designate Western Wireless as an ETC for the specific service areas in Wyoming discussed herein.⁶² For those areas served by the non-rural

⁵⁶ Western Wireless Oct. 24 *ex parte* – Attachment 1 (Information Sheet) at 1.

⁵⁷ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 14 FCC Rcd 21177, 21227 at paras. 122-123 (1999).

⁵⁸ Western Wireless Petition at 8.

⁵⁹ Western Wireless Petition at 8.

⁶⁰ Wyoming Telecommunications Association Comments at 7-8.

⁶¹ As noted in the *Universal Service Order*, we believe that arguments like those of the Wyoming Telecommunications Association “present a false choice between competition and universal service.” *Universal Service Order*, 12 FCC Rcd at 8803, para. 50.

⁶² The term “service area” means a geographic area established by a state commission (or the Commission under section 214(e)(6)) for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). In the *Universal Service Order*, the Commission recommended that the states designate non- (continued....)

carrier Qwest (formerly US West), we designate the specific exchanges requested by Western Wireless to the extent that such exchanges are located within the state of Wyoming.⁶³ We note that Western Wireless has requested designation in two of Qwest's exchanges, Laramie and Cheyenne, that extend beyond the boundaries of Wyoming. We limit the designation in these two exchanges to the area that they cover within the state of Wyoming. Section 214(e)(6) directs the Commission to designate a carrier as an ETC only in those instances when the relevant state commission lacks jurisdiction.⁶⁴ Because the Wyoming Commission has indicated by order that it lacks jurisdiction to perform the designation in Wyoming,⁶⁵ we conclude that the Commission's authority, in this instance, does not extend beyond the boundaries of Wyoming.

24. For the requested service areas served by rural telephone companies,⁶⁶ we designate as Western Wireless' service area the study areas that are located within the state of Wyoming.⁶⁷ The study area of Chugwater Telephone is located entirely within Wyoming, and we designate this study area as Western Wireless' service area without modification. Western Wireless also requests designation for the study areas in Wyoming of Golden West Telephone (Golden West), Range Telephone Coop. (Range), RT Communications, Inc.,⁶⁸ and United Telephone Company of the West (United Telephone).⁶⁹ The study areas of these telephone companies include exchanges that extend beyond the boundaries of Wyoming.⁷⁰ As discussed

(Continued from previous page) _____

rural service areas that are smaller than the incumbent carrier's study area. *Universal Service Order*, 12 FCC Rcd at 8879, para. 185.

⁶³ Western Wireless seeks designation for the following exchanges of Qwest in Wyoming: Buffalo, Cheyenne, Casper, Douglas, Glendo, Glenrock, Gillette, Laramie, Lusk, Rawlins, Riverton, Sheridan, Wheatland, and Wright. See Western Wireless Petition, App. D. See also Western Wireless Dec. 20 *ex parte* – Proposed Designated ETC Service Areas.

⁶⁴ 47 U.S.C. § 214(e)(6).

⁶⁵ *Wyoming Order* at 2-4.

⁶⁶ Western Wireless seeks designation for the following areas served by rural telephone companies in Wyoming: Chugwater Telephone Co. (Chugwater); Golden West Telephone Coop. Inc. (Edgemont); Range Telephone Coop. Inc. (Alzada, Arvada, Clearmont, Decker, Southeast, Sundance); RT Communications, Inc. (Albin, Burns, Carpenter, Gas Hills, Hulett, Kaycee, Midwest, Moorcroft, Newcastle, Osage, Pine Bluff, Upton, Jeffrey City, Thermopolis, Shoshoni, Worland) and United Telephone Company of the West (Lyman, Guernsey, Lingle, Lagrange, Torrington). Western Wireless Petition, App. D. See also Western Wireless Dec. 20 *ex parte* – Proposed Designated ETC Service Areas.

⁶⁷ For areas served by a rural telephone company, section 214(e)(5) of the Act provides that the company's service area will be its study area unless and until the Commission and states establish a different definition of service area for such company. 47 U.S.C. § 214(e)(5). See also *Universal Service Order*, 12 FCC Rcd at 8880, para. 186.

⁶⁸ RT Communications, Inc. is a wholly-owned subsidiary of Range.

⁶⁹ See Western Wireless Dec. 20 *ex parte*.

⁷⁰ Golden West's Edgemont exchange serves lines in both South Dakota and Wyoming. Range's Alzada and Decker exchanges serve lines in both Montana and Wyoming. United Telephone's Wyoming study area extends (continued....)

above, we conclude that we have authority under section 214(e)(6) to designate such study areas only to the extent that they are contained within the boundaries of the state of Wyoming.⁷¹ Accordingly, we designate as Western Wireless' service area the study areas of Golden West, Range, RT Communications, and United Telephone to the extent that such study areas are contained within Wyoming. We exclude from Western Wireless' service area those portions of the requested study areas that are outside the state of Wyoming.⁷²

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

25. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.⁷³ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.⁷⁴ Western Wireless has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁷⁵ We find that Western Wireless has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in

(Continued from previous page) _____
into Nebraska (LaGrange) and its Nebraska study area extends into Wyoming (Lyman). RT Communications' Wyoming study area extends beyond Wyoming into Montana and South Dakota. See Western Wireless Dec. 20 *ex parte*. See also Letter from David L. Sieradzki, Counsel for Western Wireless Corp., to Magalie Roman Salas, FCC dated Dec. 19, 2000 – Attached Maps.

⁷¹ We note that in the *Universal Service Order*, the Commission set forth procedures for modifying a rural telephone company's study area through joint action by the Commission and the relevant state. See *Universal Service Order*, 12 FCC Rcd at 8880-83, paras. 186-190. The instant case deals with study areas that cross state boundaries, however, unlike the situation addressed in the *Universal Service Order*. Accordingly, we find inapplicable the procedures for modification of a study area contained within a state's boundaries.

⁷² In so doing, we follow the approach of state commissions that have designated carriers in similar circumstances. See, e.g., *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168, Order at 6-7 (Texas Pub. Util. Comm'n, rel. Oct., 2000).

⁷³ 47 C.F.R. § 1.2002(a); 21 U.S.C. § 862.

⁷⁴ Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

⁷⁵ See Western Wireless Petition at 13, App.E.

sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, Western Wireless Corporation IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for designated service areas in Wyoming, as discussed herein.

27. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Common Carrier Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau