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ATTORNEYS FOR WWC HOLDING CO., INC. d/b/a CELLULARONE®

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

In the Matter of the Application of WWC)
HOLDING CO., INC. d/b/a CELLULAR-)
ONE® Seeking Designation as an Eligible)
Telecommunications Carrier that may receive)
Federal Universal Service Support)

Case No. WST-T-04-01

APPLICATION OF
WESTERN WIRELESS

I. Introduction

1. WWC Holding Co., Inc. d/b/a CellularOne® ("Western Wireless" or the "Company"), pursuant to 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended (the "Act"), hereby submits this Application for Designation ("Application") as a federal eligible telecommunications carrier ("ETC") in the State of Idaho.

2. Western Wireless does not by this Application seek designation as an eligible telecommunication carrier for purposes of receiving support from the Idaho Universal Service Fund pursuant to Idaho Code § 62-610, *et. seq.*

3. Western Wireless is licensed to provide and provides wireless telecommunications services in certain designated areas (the "Designated Areas") of Idaho, as identified on Attachment 1 and Attachment 2. The Designated Areas identified on Attachment 1 are the rural telephone company study areas and non-rural telephone company wire centers that Western Wireless serves in their entirety. The Designated Areas identified on Attachment 2 are the rural telephone company wire centers where Western Wireless does not serve the entire study area. To effectuate the Idaho Public Utilities Commission's ("Commission's") designation of Western Wireless in the rural telephone company wire centers identified on Attachment 2, the Commission must redefine the service area for the areas served by those rural telephone companies, consistent with 47 C.F.R. § 54.207.

4. As demonstrated herein, Western Wireless meets all of the requirements for designation as an ETC in each of these Designated Areas and respectfully requests that the Commission promptly grant this Application. Western Wireless requests immediate designation in the rural study areas and non-rural wire centers identified on Attachment 1, and requests conditional designation in the wire centers identified on Attachment 2, with designation effective upon the redefinition of the service area on a wire center basis under the procedures identified in 47 C.F.R. § 54.207.

II. Background on Western Wireless

5. Since 1992, Western Wireless, through its subsidiaries (including WWC Holding Co., Inc.), has provided telecommunications services to rural communities in the western United States. Western Wireless currently provides commercial mobile radio services ("CMRS") under the "CellularOne" national brand name to more than 1.2 million subscribers in 19 States west of the Mississippi River. The Company owns cellular licenses covering approximately thirty percent (30%) of the land and two percent (2%) of the population of the continental United

States. In terms of population served, however, Western Wireless' markets cover approximately nine million people, making the Company the 22nd largest wireless carrier in the country. The vast majority of the Company's service area has a population density of less than 11 people per square mile. As such, Western Wireless is uniquely situated to provide state-of-the-art telecommunications service to rural consumers.

6. The FCC has regulatory jurisdiction over Western Wireless' provision of CMRS in all states in which it provides service. The services provided by Western Wireless in Idaho include analog and digital mobile telephony, data/facsimile, 911, voice mail, and other features and services.

III. Statement of Facts Supporting Application

A. Western Wireless Meets All the Requirements for Designation as an Eligible Telecommunications Carrier

7. Under 47 U.S.C. § 214(e)(2), the Commission has jurisdiction and authority to designate Western Wireless as an ETC in the Designated Areas. The requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2) and 47 C.F.R. § 54.101. As set forth below, Western Wireless: (1) is a common carrier; (2) provides the supported services; and (3) will meet all service and advertising obligations of an ETC. In addition, in areas served by rural telephone companies, Western Wireless' ETC designation serves the public interest.

1. Western Wireless is a Common Carrier

8. As a CMRS provider, Western Wireless is a "common carrier" under federal law, as required by 47 U.S.C. § 214(e)(1). Western Wireless will provide the supported services using its own facilities, or a combination of its own facilities and leased facilities.

2. Western Wireless Offers All Required Services and Functionalities

9. The second requirement for ETC designation is that the applicant provide the services or functionalities set forth in 47 C.F.R. § 54.101(a)(1)-(9) throughout the requested designated service areas. 47 U.S.C. § 214(e)(1)(A). Western Wireless currently provides the services and functionalities identified by the FCC in 47 C.F.R. § 54.101(a). In its *Universal Service Order* implementing Sections 214(e) and 254, the FCC identified the specific services that a carrier must provide to be designated as an ETC and receive universal service support. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) ("*Universal Service Order*"). The required services are as follows:

<u>Supported Service</u>	<u>Does Western Wireless currently provide the service or function</u>
1. Voice-grade access to the public switched network	Y
2. Local Usage	Y
3. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent	Y
4. Single-party service or its functional equivalent	Y
5. Access to emergency services	Y
6. Access to operator <u>services</u>	Y
7. Access to interexchange service	Y
8. Access to directory assistance	Y
9. Toll blocking for qualifying Lifeline customers	Y

10. Western Wireless currently provides the nine supported services set forth in 47 C.F.R. § 54.101(a)(1)-(9) over its existing network infrastructure in Idaho as follows:

(a) Voice-grade access to the public switched telephone network. Voice-grade access means the ability to make and receive phone calls within a voice frequency range of between 300 and 3000 Hertz, a bandwidth of approximately 2700 Hertz. *See In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, FCC 97-420, ¶¶ 15-16 (rel. Dec. 30, 1997). Through its interconnection arrangements with local telephone companies, including Qwest, all Idaho

customers of Western Wireless are able to make and receive calls on the public switched network within the prescribed frequency range.

(b) Local usage. Western Wireless provides its customers with an amount of local usage, free of charge, as required by 47 C.F.R. § 54.101(a)(2). Unlimited local usage is not required of any ETC. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Order and Order on Reconsideration, FCC 03-170, (rel. July 14, 2003) ("*July 2003 Order*"). Western Wireless will include local usage in all of its service offerings, and intends to offer unlimited local usage as part of at least one of its service offerings. Western Wireless also will comply with any specific local usage requirements adopted by the FCC in the future and required of federal ETCs.

(c) DTMF signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. *Universal Service Order*, ¶ 71. The FCC recognized that "wireless carriers use out-of-band digital signaling mechanisms [I]t is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling." *Id.* Western Wireless currently uses out-of-band digital signaling and in-band multi-frequency signaling that is functionally equivalent to DTMF signaling.

(d) Single-party service or its functional equivalent. "Single party service" means that only one party will be served by each subscriber loop or access line, in contrast to a multi-party line. A CMRS provider meets the requirement when it offers a dedicated message path for the length of a user's particular transmission. 47 C.F.R. § 54.101(a)(4). Western Wireless provides a dedicated message path for the length of all customer calls.

(e) Access to emergency services. The fifth supported service is the ability to reach the appropriate public safety answering point ("PSAP") by dialing "911." 47 C.F.R. § 54.101(a)(5); *Universal Service Order*, ¶ 72. The FCC also requires that a carrier must provide access to enhanced 911, or "E911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), when the PSAP submits a compliant request to the carrier. To qualify as a compliant Phase I E911 request under the FCC's rules, the PSAP must "be capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the [PSAP'S] costs of the enhanced 911 service [must be] in place." 47 C.F.R. § 20.18(j). Western Wireless currently provides all of its customers with access to emergency services by dialing 911 and stands ready to provide E911 service to its customers once a PSAP submits a compliant request for E911 service. Western Wireless has not received any requests for either Phase I or Phase II E911 service in Idaho. The Company will work with PSAPs within its designated service areas to make E911 service available according to federal requirements.

(f) Access to operator services. Access to operator services means any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Western Wireless meets this requirement by providing all of its customers with access to operator services

provided by either the Company or other entities (e.g., LECs, interexchange carriers ("IXCs"), etc.).

(g) Access to interexchange service. As explained by the FCC, an ETC must offer consumers access to interexchange service for the purposes of making and receiving toll or interexchange calls. 47 C.F.R. § 54.101(a)(7); *Universal Service Order*, ¶ 78; see also 47 U.S.C. § 332(c)(8). Equal access to interexchange service, i.e., the ability of a customer to access a presubscribed long distance carrier by dialing 1+number, is not required. 47 U.S.C. § 332(c)(8); *Universal Service Order*, ¶ 78; see *July 2003 Order*, ¶¶ 14-15, 33. Western Wireless presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with several IXCs. Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code. Consequently, Western Wireless satisfies this service requirement.

(h) Access to directory assistance. "Access to directory assistance" means the ability to place a call directly to directory assistance. 47 C.F.R. § 54.101(a)(8). Western Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or 555-1212.

(i) Toll limitation for qualifying low income consumers. An ETC must offer "toll limitation" services to qualifying Lifeline customers at no charge. 47 C.F.R. § 54.101(a)(9). "Toll limitation" is either "toll blocking" or "toll control" if the carrier cannot provide both, or both "toll blocking" and "toll control" if the carrier can provide both. 47 C.F.R. § 54.400(d). Western Wireless is not currently capable of providing toll control, but does offer toll blocking services for lifeline customers in States where it has been designated as an ETC. Western Wireless will utilize toll blocking technology to provide the service to its Lifeline customers, at no charge, in the Designated Areas in Idaho, as required by law.

3. Western Wireless Will Advertise the Availability of Supported Services

11. The third requirement for ETC designation is that the applicant advertise the availability of the supported services and charges therefor using media of general distribution. 47 U.S.C. § 214(e)(1)(B). The Company currently offers and advertises the federally supported services throughout its requested designated service areas, through several media, including newspaper, television, radio, and billboard advertising. Western Wireless also maintains various retail store locations throughout its authorized service areas, which provide an additional source

of advertising. Once designated, Western Wireless will advertise the availability of and charges for its universal service offerings through media of general distribution.

B. Western Wireless Requests Designation Throughout Each of the Designated Areas

12. An applicant for ETC designation may be designated in an area served by a non-rural telephone company for a service area determined by the Commission. 47 U.S.C. § 214(e)(5). For areas served by a rural telephone company, Section 214(e)(5) of the Act provides that the ETCs designated service area shall be the the rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange area in a given state. *Universal Service Order*, ¶ 172, n. 434. However, the FCC's rules recognize that the study area is subject to redefinition if the FCC and the Commission establish a different service area in accordance with 47 C.F.R. § 54.207(c)-(d).

13. Western Wireless is currently licensed to provide and provides signal coverage throughout the Designated Areas and will offer and advertise its service offerings throughout these areas. Western Wireless serves the entire study area of the rural telephone company identified on Attachment 1, and thus satisfies Section 214(e)(5)'s service area requirement as to that service area. For this rural telephone company study areas, as well as the non-rural telephone company service area identified on Attachment 1, Western Wireless seeks immediate ETC designation.

14. The study areas of the rural telephone companies identified on Attachment 2 do not correspond identically with Western Wireless' licensed coverage area or existing signal coverage in Idaho. As a result, it is necessary in this proceeding for the Commission to redefine the service area for these areas from the study area to the wire center level, pursuant to 47 C.F.R. § 54.207, to enable Western Wireless to meet the ETC requirements under 47 U.S.C. § 214(e).

Western Wireless' request for ETC designation in the wire centers on Attachment 2 is subject to the redefinition of the service area for purposes of Western Wireless' designation in the areas served by the companies identified.

15. The Act and the FCC's regulations require the FCC and the State to act in concert to develop an alternative service area for an area served by a rural telephone company. The sole requirement in establishing a service area other than the study area is that the FCC and the State commission each give full consideration to the Joint Board's recommendations and explain their rationale for reaching a different conclusion. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, ¶ 41 (rel. Jan. 22, 2004) ("*Virginia Cellular*"). As explained more fully below, redefining the service area standard for certain rural telephone company service areas in this proceeding is fully consistent with the Joint Board's recommendations.

C. Western Wireless Should be Designated as an Additional ETC in Areas Served by Qwest

16. Western Wireless requests immediate designation in the areas served by Qwest, a non-rural telephone company. When designating an additional ETC in areas served by a non-rural telephone company, "a State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier..." 47 U.S.C. § 214(e)(2) (emphasis added). As noted above, Western Wireless meets the requirements to be designated as an ETC. Western Wireless is a common carrier, provides the required supported services, and will meet all service and advertising obligations of an ETC. Under the Act, there are no further requirements for

designation in non-rural areas. Therefore, Western Wireless should be designated as an ETC in the areas served by Qwest.

D. Designation of Western Wireless as an ETC for the Designated Areas in the State of Idaho Would Serve the Public Interest

17. For areas served by rural telephone companies, the Commission must find that designation serves the public interest in accordance with 47 U.S.C. § 214(e)(2). Designation of Western Wireless as an ETC in its Designated Areas will serve the public interest.

18. The public interest determination required under Section 214(e) of the Act depends on whether the designation of the additional ETC will promote competition, and if so whether consumers will ultimately realize benefits related to competition and the new services provided. The public interest determination should consider whether the benefits of an additional ETC outweigh any potential harm. *Virginia Cellular*, ¶ 28. The express purposes of the Act in this regard are as follows: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

19. Competition in the telecommunications industry is, as a general matter, in the public interest, and the hallmark of a competitive marketplace is the maximization of consumer choice. It is also clear that the public interest is served where there is a reasonable expectation that competition may have beneficial impacts for consumers. As it applies to the designation of an additional ETC in an area served by a rural telephone company, the public interest necessarily must focus on the benefits of competition to the rural consumer.

20. The Commission must also apply the public interest factor in a way that advances universal service as contemplated by the Act. Congress gave the FCC responsibility to create

rules and policies "for the preservation and advancement of universal service." 47 U.S.C. § 254(b). States must respect and defer to those FCC determinations. States cannot use a public interest standard to affect a result contrary to FCC directives. The FCC, for example, has directed that a State cannot deny an application because a CMRS provider may not meet "the regulatory requirements that govern ILECs, including privacy, marketing, service provisioning, and service quality requirements, as well as carrier of last resort (COLR) obligations." *Universal Service Order*, ¶ 142. The Commission must always remain consistent with the Act and FCC directives as it makes the public interest determination under Section 214(e)(2).

1. Granting ETC Designation Will Facilitate Competition to the Benefit of Consumers

21. The benefits of competition are presumed – increased competition can be expected to lead to better service and the provision of new, innovative services. *In the Matter of Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896, ¶¶ 16-22 (rel. Dec. 26, 2000) ("*Wyoming Order*").

22. Granting ETC status to Western Wireless will recognize the importance of allowing rural consumers a choice of providers for their telecommunications needs. Consumers should be able to choose services based on their own needs, and not just the service of the incumbent LEC. When the Commission designates a competing carrier as an additional ETC, rural consumers choose their service provider on the basis of the most advantageous pricing, services, service quality, customer service, and service availability. And because Western Wireless' network supports the provisions of data services, customers will be able to combine basic universal services with advanced services if they so desire. The benefits of increased competitive choice for consumers are in the public interest. *Virginia Cellular*, ¶ 29.

23. Even many rural telephone companies recognize the public interest benefits of wireless services. The South Dakota Telecommunications Association ("SDTA") recently stated that:

As consumers come to expect greater mobility, it will be necessary for the traditional wireline telephone carriers to incorporate wireless into their service offering. In rural America, this mobility has greater significance, since everyday life often requires traveling over great distances. Moreover, accidents, vehicle breakdowns and medical emergencies have potentially more dire consequences in rural areas, if help is not summoned immediately. Effective and affordable wireless communications can greatly mitigate the reduced availability of emergency services in such area. In addition, fixed and mobile wireless offers the potential to bring broadband data/internet access to rural communities more quickly and less expensively than traditional wireline technologies.¹

24. Having this choice is important to rural consumers because Western Wireless' universal service offerings will provide benefits not otherwise available from the landline LECs. For example, current service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Western Wireless provides an expanded local calling area, which is of great benefit to rural consumers who otherwise have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. See *Universal Service Order*, ¶ 114. Western Wireless' service also provides the benefits of mobility, which has great appeal to many rural consumers. *Virginia Cellular*, ¶ 29. Western Wireless provides innovative service offerings that will be tailored to consumers' needs.

25. In addition to increased choices, Idaho's rural consumers can also expect lower rates and better service resulting from competition in the marketplace. Western Wireless

¹ See *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, Comments of South Dakota Telecommunications Association at p. 2 (filed Feb. 3, 2003).

provides 24-hour customer service, technical and operational support, which is more responsive than the support currently available from many LECs.

26. Western Wireless is committed to providing high service quality to its customers consistent with the public interest. Specifically, Western Wireless has adopted and complies with the Cellular Telecommunications and Internet Association ("CTIA") Consumer Code for Wireless Service, which sets forth certain principles, disclosures and practices for the provision of wireless service to the benefit of consumers.

27. The FCC has confirmed that competition and universal service are to be accomplished together, and that rural consumers are entitled to achieve universal service goals through the benefits of competition:

Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers. For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.

Universal Service Order, ¶ 50 (emphasis added).

28. The FCC and other State commissions have considered and rejected speculative claims that competition will hurt rural consumers. The FCC has rejected arguments that the designation of an additional ETC in rural telephone company service areas would reduce investment in infrastructure, raise local service rates, reduce service quality to consumers, or result in loss of network efficiency:

We reject the general argument that rural areas are not capable of sustaining competition for universal service support. 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.

Wyoming Order, ¶ 22. Similar claims were raised in Western Wireless' application for ETC designation in Minnesota. Faced with claims that rural LECs could not respond to competition and would go out of business, the Minnesota Public Utilities Commission found it more likely that competition would "perform its widely recognized function of motivating the incumbents to find and implement new operating efficiencies, lowering prices and offering better service in the process."² The Washington Utilities and Transportation Commission ("WUTC") has similarly dismissed as "overly speculative" rural LEC concerns that ETC designation would erode universal service for consumers.³

2. Granting ETC Designation Will Advance Universal Service by the Provision of New Telecommunications Services to Rural Consumers

29. Further, wireless technology and networks have been rapidly deployed in the past 15 years. This deployment and network expansion must continue if rural consumers will have full access to this technology in the future. The use of federal universal service support to provide universal services and extend wireless networks in rural areas in Idaho clearly benefits the public interest by ensuring these networks will be available to deliver basic and advanced services to Idaho consumers. In addition, designating Western Wireless as an ETC may allow

² *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5695/M-98-1285, ¶ VIII.C (Oct. 27, 1999).

³ *In the Matter of the Petition of United States Cellular Corp., et al. for Designation as Eligible Telecommunications Carriers*, Third Supplemental Order Granting Petition for Designation as Eligible Telecommunications Carrier, Docket No. UT-970345, ¶ 46 (Jan. 27, 2000).

consumers who are not currently receiving telephone service of any kind an opportunity to obtain telephone service for the first time. There is simply no question that the designation of Western Wireless as an ETC will advance universal service to rural areas consistent with the public interest.

30. Designation of Western Wireless as an ETC will provide an incentive to the incumbent LECs in the Designated Areas to improve their existing networks in order to remain competitive, resulting in improved services to consumers. The benefits of competition are presumed – increased competition can be expected to lead to better service and the provision of new, innovative services. *Wyoming Order*, ¶¶ 16-22. Western Wireless will provide benefits of mobility, large local calling areas, and where requested by the PSAP, GPS location assistance for customers dialing 911.

31. Further, designation of Western Wireless as an ETC will also serve the public interest because Western Wireless will provide all of the supported services required by the Commission, will participate in the Lifeline and Link-Up programs as required by the FCC's Rules, and will otherwise comply with all FCC Rules governing universal service programs, which are designed to ensure that the public interest standards of the Act are achieved. Allowing Western Wireless access to universal service subsidies will allow Western Wireless to continue to enhance and expand its network infrastructure to better serve consumers in underserved, high-cost areas of Idaho, and to compete with other carriers on a level playing field.

3. No Rural LEC Will Experience Any Significant Adverse Impact from Western Wireless' ETC Designation to Justify Denying Consumers the Benefits of Competition

32. The designation of Western Wireless as an ETC in the requested Designated Areas will not result in any significant adverse impact to any rural telephone company. None of

the areas in which Western Wireless is seeking designation is incapable of supporting an additional ETC.

33. Under the current federal universal service funding mechanisms, rural telephone companies will continue to receive funding based on an embedded cost methodology until at least 2006. This extended transition period – as well as their continued receipt of implicit subsidies within intrastate access rates – ensures the rural companies can move successfully to competitive markets.

34. Western Wireless' designation will also ensure the continued affordability of telecommunications services in rural areas in Idaho. Western Wireless competitively markets a variety of service offerings, and Western Wireless' service plans are offered to rural customers at the same rates offered in urban areas.

35. Western Wireless' designation will not adversely burden the federal universal service fund.

36. Accordingly, the designation of Western Wireless as an ETC will serve the public interest.

IV. The Commission Should Conditionally Designate Western Wireless as an ETC in Wire Centers Where it Can Provide Universal Services

37. Section 214(e)(5) of the Act defines the term "service area" as a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For an area served by a rural LEC, Section 214(e)(5) and 47 C.F.R. § 54.207(b) provide that the term "service area" means the rural telephone company's "study area."

38. Western Wireless' request for ETC designation in the areas of the rural telephone companies listed on Attachment 2 is subject to the Commission's action to redefine the service

area from the study area to the wire center level. As stated above, the Act and the FCC's rules provide that the service area of a rural telephone company shall be the "study area" of the rural telephone company, until and unless the FCC and the State commission both agree to redefine this standard. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). Federal rules provide the mechanism by which the FCC will process a request by a State commission for redefinition of a service area standard. 47 C.F.R. § 54.207. The decision to redefine the service area must be made after taking into account recommendations of the Federal-State Joint Board. *Id.*

A. Redefining the Service Area Is Consistent With Joint Board Standards

39. The FCC identified three factors initially recommended by the Joint-Board, which should be considered by the Commission and the FCC when determining the appropriateness of redefining the service area to the level of the wire center. The first factor is the risk that a competitor would selectively target service only to the lowest cost areas of the rural ILEC's study area, a process labeled as "cream-skimming." The FCC noted that if a competitor were required to serve a rural telephone company's entire study area, the risk of "cream-skimming" would be reduced because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchange of the rural ILEC's study area. *Universal Service Order*, ¶ 189. As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.⁴

⁴ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, 12 FCC Rcd. 87, ¶ 172 (rel. Nov. 8, 1996) ("*Joint Board Recommendations*").

40. Second, a State commission and the FCC must consider the regulatory status enjoyed by rural telephone companies under the Act. The FCC determined that initially establishing a service area requirement based on the study area of a rural telephone company was appropriate, at least temporarily, in recognition of the different competitive footing afforded to smaller rural telephone companies which are exempt from certain of the Act's requirements. *Universal Service Order*, ¶ 189; *Virginia Cellular*, ¶ 41. In making its recommendation, the Joint Board had reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continues this exemption until the relevant state commission finds, inter alia, that a request of a rural telephone company for interconnection, unbundling, or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254. Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.

Joint Board Recommendations, ¶ 173.

41. The third factor to be considered is whether any administrative burdens might result from the redefinition of the service area standard. A rural telephone company's universal service support payments are currently based on a rural company's embedded costs determined at the study area level. *Universal Service Order*, ¶ 189. The Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level. The Joint Board stated:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs of providing universal service by a rural telephone company should be based, at least initially, on the Company's embedded costs. Rural telephone companies currently determine such costs at the study area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.

Joint Board Recommendations, ¶ 174.

42. Despite its initial decision to adopt the study area as the service area standard for a rural telephone company, the FCC has now stated a policy favoring redefinition in instances where a rural carrier's study area is large and/or non-contiguous. The FCC has expressly urged State commissions to explore redefinition for purposes of ETC designations when competitive ETCs and wireless carrier might not be able to provide facilities-based service throughout a rural company's entire study area. The FCC cautioned that requiring a new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service." *Universal Service Order*, ¶ 190.

43. Western Wireless requests that the Commission redefine the service areas of the rural telephone companies listed on Attachment 2 from the study area to the boundaries of the individual wire centers for purposes of designating Western Wireless as an ETC under 47 U.S.C. § 214(e). The study areas of these rural telephone companies contain multiple wire centers. In all, the study areas of the three rural telephone companies listed on Attachment 2 contain 29 separate wire centers. Redefining the service area into 29 separate service areas based on individual wire centers for purposes of ETC designations will promote competition by eliminating a barrier to entry into the universal service market. This approach also would enable Western Wireless to be designated a federal ETC in the wire centers within its existing licensed and signal coverage area consistent with the public interest determination of the Commission.

44. The Commission can proceed to redefine the service area to a wire center basis while appropriately taking into account the three factors noted by the Joint Board and adopted by the FCC. The first factor, relating to the risk of cream-skimming, is not present. Western

Wireless seeks redefinition of the service area standard to an individual wire center basis so it can be designated as an ETC in those areas for which it is licensed and has the ability to provide facilities-based services. Moreover, redefining the service area to the wire center will not result in any effects of cream-skimming based on a consideration of the relative high cost and low cost wire centers within the incumbent's study area. *Virginia Cellular*, ¶ 42. Redefinition to an individual wire center basis will also preserve and advance universal service by establishing designated service areas that are more reflective of the areas actually served. Redefinition furthers competition and protects the incumbents from selective targeting of specific wire centers with the lowest cost and highest support. In short, there will be no opportunity for cream-skimming.

45. The risk of "cream-skimming" has been substantially eliminated by subsequent FCC action. Under the FCC's existing universal service support mechanisms, a rural telephone company receives high-cost universal service support based on the average of its embedded costs throughout the carrier's entire study area. See 47 C.F.R. §§ 54.301 and 54.303. As a result, a rural telephone company's support on a per-line basis will be the same throughout its study area even though the costs of serving customers in that study area may vary widely. This averaging may create "artificial barriers to competitive entry in the highest-cost areas and artificial entry incentives in relatively low-cost portions of a rural carrier's study area" because a competitor may try to serve only the low-cost, high-support areas and ignore the more costly areas to serve.⁵

⁵ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *In the Matter of Multi-Association Group (MAG) Plan for Regulations of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 00-256, FCC 01-157, ¶¶ 144-164 (rel. May 23, 2001) ("*Fourteenth Report and Order*").