

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| In the Matter of GCC License |) | Application No. C-1889 |
| Corporation (Western Wireless), |) | |
| Issaquah, Washington, seeking |) | ORDER ON RECONSIDERATION OF |
| designation as an Eligible |) | THE SECOND AMENDED |
| Telecommunications Carrier that |) | ADVERTISING PLAN |
| may receive Universal Service |) | |
| support. |) | Entered: August 13, 2002 |

BY THE COMMISSION:

On February 26, 2002, Western Wireless filed a Second Amended Advertising Plan after receiving direction from the Commission to amend its proposed amended advertising plan at the oral argument held on February 14, 2002. On March 25, 2002, the Commission received an objection to the Second Amended Advertising Plan from intervenors, collectively identifying themselves as the "Independents" in this proceeding. The Commission entered an order disapproving Western Wireless' Second Amended Advertising Plan on June 18, 2002 (Second Compliance Order).

On July 1, 2002, Western Wireless filed a motion requesting reconsideration of the Commission's Second Compliance Order. In its motion, Western Wireless stated that it believed that the Second Amended Advertising Plan complied with the order and direction of the Commission in the February 14, 2002, proceeding. Western Wireless cites extensively to the February 14, 2002, record to support its argument. Western Wireless further provided that it would "inform consumers in a third way" by inserting language in the Customer Preference Page. Each universal service customer in Nebraska will have the opportunity to review and sign this page prior to obtaining service. Western Wireless stated it could not include the Commission's recommended language in all types of its advertisements because of the wide variety of media used by the company to advertise its universal service offering. No request for oral argument was made.

On July 18, 2002, the Independents filed a response to Western Wireless' Motion for Reconsideration. In its response, the Independents argued that Western Wireless' advertising plan fails to comply with the Commission's February 14, 2002, directives.

O P I N I O N A N D F I N D I N G S

In reviewing the Commission's decision, Western Wireless' motion and the arguments of the parties, the Commission finds that the Second Amended Advertising Plan should be approved. From the outset of this portion of the proceeding and in review of the advertising plan filed by Western Wireless, the Commission's main concern has been that Western Wireless' advertising plan did not fully inform consumers about the type of service Western Wireless was offering. Although, Western Wireless' basic universal service (BUS) offering is provided over its cellular network, the Commission recognized that there are some limitations which distinguish its service from that of traditional cellular service.

We note for the record, since the Commission's Second Compliance Order denying approval of Western Wireless' advertising plan, the Nebraska Supreme Court entered a decision ratifying the Commission's designation of Western Wireless as an eligible telecommunications carrier (ETC). In addition, in contravention to the Commission's previous finding that this service should be called "fixed" in some manner, the Federal Communications Commission has now decided that Western Wireless' identical proposed BUS offering in Kansas is not a fixed wireless offering, but a commercial mobile radio service (CMRS) offering.¹

More importantly for our consideration here and in response to the Commission's earlier concern, Western Wireless committed in its Motion on Reconsideration, that it will ensure that all customers are fully notified of the geographic scope of roaming and the local calling area prior to service activation. We find this commitment to be sufficient. Accordingly, the Second Amended Advertising Plan as modified by Western Wireless' Motion for Reconsideration should be approved. Western Wireless should file with the Commission, for information purposes, sample copies of what it provides to consumers once it enters the market and is advertising its BUS offering.

¹ See In the Matter of the Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service, WT-Docket No. 00-239, Memorandum Opinion and Order (rel. August 2, 2002).

O R D E R

IT IS THEREFORE ORDERED that Western Wireless' Second Amended Advertising Plan shall be and it is hereby approved.

IT IS FURTHER ORDERED that Western Wireless shall insert proposed language in its Customer Preference Page pursuant to the commitment made in its Motion for Reconsideration filed on July 1, 2002.

IT IS FURTHER ORDERED that Western Wireless file annually with the Commission, on or before July 1, a sample copy of the Customer Preference Page provided to consumers prior to service activation.

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of August, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

COMMISSIONERS DISSENTING:

Executive Director

Commissioner Rod Johnson dissenting:

I write separately to respectfully express my disagreement with the Commission's approval of Western Wireless' Second Amended Advertising Plan. In my opinion, Western Wireless has not yet given the Commission or the consumers a clear description of its BUS offering through its advertising plan. The Commission has not yet seen Western Wireless define the exact local calling areas for its BUS offering. In addition, the Commission has not been provided with pertinent information on the geographic calling limitations that will be placed on its service. Further information should be required as a prerequisite to approval of Western Wireless' Second Amended Advertising Plan.

Moreover, I am concerned that the Commission has opened the door to supporting other cellular providers who convert their service into a similar wireless residential BUS offering. This exposes the Nebraska Universal Service Fund to providing universal service support to multiple competing networks. I do not believe that supporting duplicate or multiple competing networks would be in the public's best interest. Rather, it could have the effect of depriving either network of necessary support and depriving consumers of quality telecommunications services.

Commissioner Rod Johnson