

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the application) Application No. C-1889
of GCC License Corporation seeking)
designation as an eligible tele-) ORDER ON PRE-HEARING
communications carrier (ETC) that) MOTIONS
may receive universal service)
support.) Entered: October 5, 1999

BY THE COMMISSION:

On August 31, 1998, GCC License Corporation (GCC), a wholly-owned subsidiary of Western Wireless Corporation (Applicant), filed an application with the Commission seeking designation as an Eligible Telecommunications Carrier (ETC) as provided for in Commission Docket No. C-1604. ETCs are eligible to receive universal service support from the federal Universal Service Fund and the state's Universal Service Fund (NUSF) for the provisioning of services supported by these funds.

Petitions of formal intervention were received from numerous telecommunications companies represented by Kelly Dahl, Timothy Clare, and from US West Communications (US West)(collectively, Intervenor). In a procedural progression order entered March 9, 1999, deadlines were established for the filing of prefiled testimony by the applicant, by the intervenors, and rebuttal testimony by the applicant. The order entered in this docket is intended to address certain motions that have been made by the parties involved.

On April 6, 1999, GCC submitted comments by Gene DeJordy for the purpose of supporting the application, and [later] for the purposes of rebuttal. Responsive comments have also been filed by the intervenors.

On June 30, 1999, this Commission received a motion from US West to strike certain testimony from Mr. DeJordy's comment and from the pre-hearing brief. The motion to strike was joined by the Intervenor represented by Kelly Dahl. (For a complete listing, please see the Progression Order, dated March 9, 1999.) The motion alleged that certain testimony offered by GCC regarded the criteria for ETC designation and that such testimony amounted to "improper and impermissible opinion testimony." US West's own motion acknowledges that some issues, if not all, are mixtures of law and fact. In fact, some of the arguments raised in US West's motion include many of these issues and contain much of the "blur" between law and fact complained of.

The Commission is aware of the complexities of this application and the stakes involved. The voluminous testimony already supplied, attests to the fact that the issues presented in this

docket are complex and will require extensive consideration and deliberation. The Commission joins the two motions submitted to strike certain testimony and, hereby, denies the motion to strike. The Commission assures the parties that it will give the testimony proper weight in this proceeding. But, the Commission refuses to go down the road where each sentence, and indeed each word, of testimony submitted by either of the parties is subject to repeated motions and challenges causing irresponsible delay.

On the second motion considered in this order, a group of the intervenors filed a motion to supplement testimony on three matters which the intervenors contend occurred after the deadline for filing testimony. These three issues are: 1) Western Wireless' Petition for Preemption of the South Dakota Public Utility's Commission's Order Denying Western Wireless ETC Status⁽¹⁾; 2) the effect of Texas Office of Public Utility Council v. FCC, 183 F.3d 393 (5th Cir. 1999) ("Texas PUC decision"); and 3) the request by the intervenors to submit testimony relating to the Nebraska Rural Development Commission's Report, dated June 1, 1999.

GCC filed its objections to the motion to supplement testimony on September 24, 1999. Their objections were based upon, respective to the three issues outlined above, relevance, the ability of the Commission to have the law of Texas PUC addressed in legal briefs, and foundation in the issue of the Rural Development Commission report.

Being fully advised, the Commission sustains the objection of GCC and denies the intervenor request to submit information on the South Dakota Order and subsequent legal filings relating to the order finding that GCC's argument on relevance persuasive.

On the issue of the effects of the Texas PUC decision, the Commission will allow all parties to submit briefs on the effect of that decision, such briefs being due on 5:00 p.m., Thursday, October 14, 1999.

Finally, on the issue of admitting the report by the Rural Development Commission, the Commission finds that its submission into the record shall be denied and that the motion of GCC should be sustained. If the intervenors still desire to enter the report into evidence as an exhibit, they shall, prior to the hearing, and at the pre-hearing conference which this Commission shall schedule, list the author of the report as an expert witness and may call such witness at the hearing.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the motions for leave to submit supplemental testimony is denied in part and granted in part, and that GCC's objections are sustained and denied respectively and consistent with the above findings.

MADE AND ENTERED in Lincoln, Nebraska on this 5th day of
October, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

1. See South Dakota PUC Order in Docket TC98-146 entered on
May 19, 1999.

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