

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application)	
of WWC License, LLC d/b/a)	
CellularOne for Designation as an)	
Eligible Telecommunications Carrier,)	Case No. TO-2004-0527
and Petition for Redefinition of Rural)	
Telephone Company Areas.)	

APPLICATION TO INTERVENE

Come now Craw-Kan Telephone Cooperative, Inc. ("Craw-Kan") and KLM Telephone Company ("KLM") and in support of their Application to Intervene in the above-captioned matter state that:

1. Craw-Kan currently provides telecommunications services to members of the public located in the area certificated to it by the Missouri Public Service Commission ("Commission"). As is relevant to this case, Craw-Kan provides "basic local telecommunications services" within six Missouri exchanges as defined by its tariff on file with and approved by the Commission. Craw-Kan's business address is 200 North Ozark, P.O. Box 100, Girard, Kansas, 66743. Its telephone number is 620 724-8325 and it can be reached by fax at 620 724-4099. Craw-Kan is a "telecommunications company" and "public utility" as those terms are defined by § 386.020, RSMo 2000, and is, therefore, subject to the jurisdiction, regulation and control of the Commission as provided by law. Craw-Kan is also a rural telephone company and incumbent local exchange carrier as defined by the Federal Telecommunications Act of 1996 (the "Act"). The company has also been designated by the Commission as an eligible telecommunications carrier ("ETC") for purposes of receiving Federal Universal Service Fund ("USF") monies.

2. KLM currently provides telecommunications services to members of the public located in the area certificated to it by the Commission. As is relevant to this case, KLM provides "basic local telecommunications services" within four (4) Missouri exchanges as defined by its tariff on file with and approved by the Commission. KLM's business address is 616 E. Park Avenue, P.O. Box 30, Rich Hill, Missouri 64779. Its telephone number is 417 395-2121 and it can be reached by fax at 417 395-2120. KLM is a "telecommunications company" and "public utility" as those terms are defined by § 386.020, RSMo 2000, and is, therefore, subject to the jurisdiction, regulation and control of the Commission as provided by law. KLM is also a rural telephone company and incumbent local exchange carrier as defined by the Act. The company has also been designated by the Commission as an ETC for purposes of receiving Federal USF monies.

3. All correspondence, communications, orders and decisions in this matter should be addressed to the following:

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4. On April 13, 2004, WWC License, LLC, d/b/a CellularOne (a/k/a Western Wireless) filed its Application with the Commission for designation as an eligible telecommunications carrier with respect to federal universal service support under Section 254 of the Telecommunications Act of 1996 and the implementing regulations of the Federal

Communications Commission ("FCC"). Western Wireless requests ETC designation in the service areas of both rural and non-rural study areas.

5. Western Wireless seeks an order designating Western Wireless as an ETC, without condition, in the study areas of certain rural telephone companies and non-rural wire centers listed on Attachment 1 and conditionally designating Western Wireless as an ETC in the wire centers of the rural telephone companies listed in Attachment 2. KLM is listed on Attachment 1 where Western Wireless seeks immediate ETC designation, and Craw-Kan is listed on Attachment 2 where Western Wireless seeks conditional designation on a wire center basis. This conditional designation is subject to the Commission redefining the service area from the study area to the wire center level for rural telephone companies such as Craw-Kan.

6. On April 20, 2004, the Commission issued an Order Directing Filing in this proceeding setting May 10, 2004, as the deadline for parties wishing to intervene.

7. Craw-Kan and KLM file this Application to Intervene in the instant proceeding on the grounds that the grant of ETC designation to Western Wireless as a CMRS provider not regulated by the Missouri Commission will affect Craw-Kan and KLM's ability to provide telecommunications services in their certificated exchanges. In considering this Application, Craw-Kan and KLM believe that Western Wireless must demonstrate to the Commission that it currently offers all of the services that are supported by the federal universal service support mechanisms under § 254(c) of the Act including Lifeline and Linkup services. Craw-Kan and KLM do not believe that Western Wireless can demonstrate to the Commission that it provides all of these services. Secondly, the Commission may only designate an additional carrier as an ETC in an area served by a rural telephone company if that designation is consistent with the

public interest, convenience and necessity and upon an express finding that the designation is in the public interest. Granting ETC status to Western Wireless and allowing it to collect USF funds is not in the public interest as granting ETC status to Western Wireless will not bring benefits to the community that the community does not already have. Additionally, Craw-Kan objects to the request to redefine the service area in its exchanges from the study area to the wire center. Finally, the grant of ETC designation to Western Wireless will not increase competition in the requested service area as that area is already served by three (3) to five (5) wireless providers. Granting ETC status to an additional carrier will also have an adverse effect on the USF fund itself and will increase the amount that consumers will be assessed. Therefore, Craw-Kan and KLM seek intervention in this case in order to protect their interests in providing basic local exchange service to the customers located within their service area. Craw-Kan and KLM oppose the application.

8. Craw-Kan and KLM thus have interests that are different from those of the general public and their interests may be adversely affected by the final order arising from this case. Furthermore, their intervention and participation will serve the public interest.

9. Commission Rule 4 CSR 240-2.060(1)(K) states that an applicant must include a statement indicating whether applicant has any pending action which involves customer service or rates which action occurred within three (3) years of the date of the application. 4 CSR 240-2.060(1)(L) requires that an applicant affirmatively state that no annual reports or assessment fees are overdue. Western Wireless did not include an affirmative statement regarding either of these rule requirements, as indeed it could not. On February 4, 2004, the Staff of the Commission filed

a Complaint against WWW License, LLC d/b/a CellularOne Long Distance alleging that Western Wireless had not filed an annual report with the Commission for the period ending December 31, 2002.¹ Although the current application of Western Wireless lists a different d/b/a from the company listed in the Staff complaint, it is still the same company, and the complaint should have been listed in order for the applicant to be in compliance with Commission rules. This alone is adequate reason for the application to be rejected by the Commission. However, the following is a list of further complaints and actions against Western Wireless both before this Commission and in other states.

A. **Missouri Public Service Commission Complaint Cases for Failure to Pay Lawful Tariff Rates.** Over two years ago, a group of small rural carriers filed a complaint against Western Wireless (along with other wireless carriers) for failing to pay compensation for the use of the small companies' facilities and services.² This complaint is still pending before the Commission. A second complaint filed by a different group of small companies (including KLM) has been pending against Western Wireless (and VoiceStream a/k/a T-Mobile) for nearly two years involving Western Wireless's failure to pay the rural carriers' lawful and Commission-approved wireless termination service tariff rates.³ Both of these cases involve rates, and both cases are still pending before the Commission. At the very least, Western Wireless should have identified the case involving KLM in its Petition because it involves the same Commission, the same parties, and the same counsel.

¹ *Staff of the Missouri Public Service Commission v. WWW Licences, LLC d/b/a Cellular One Long Distance*, Case No. TC-2004-0347.

² *Northeast Missouri Rural Tel. Co. et al.*, Case No. TC-2002-57.

³ *BPS Telephone Company et al.*, Case No. TC-2002-1077.

B. **Kansas Case – Unlawful Use of Federal USF Support.** Last month, the Kansas Corporation Commission (KCC) issued an order directing an investigation into whether Western Wireless had unlawfully obtained federal universal service support under its Eligible Telecommunications Carrier (ETC) designation and violated Commission orders. The KCC Staff had requested the investigation:

to determine whether Western Wireless unlawfully obtained federal universal service support for customers in telephone exchanges not included within its ETC designation and whether Western Wireless unlawfully obtained federal universal service support for services beyond the scope of its ETC designation.⁴

Specifically, the Kansas Staff alleged that Western Wireless had received federal USF support for non-supported services and in unauthorized areas. The Kansas Commission's Staff proposed revoking Western Wireless's ETC designation "for what Staff asserts to be **egregious violations of the Commission's Orders.**"⁵ The KCC issued its *Order Directing Investigation* on March 16, 2004, which is clearly within the three (3) year requirement of the Missouri Commission's rule 4 CSR 240-2.060(K).

C. **FCC Notice – Environmental Violations and Unlawful Operation.** Less than a year ago, on May 12, 2003, the Federal Communications Commission (FCC) released a Notice of Apparent Liability proposing that Western Wireless be held liable for a \$200,000 forfeiture for

⁴ *In the Matter of GCC Licence Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. 99-GCCZ-156-ETC, 2004 Kan. PUC LEXIS 296, *Order Directing Investigation*, Mar. 16, 2004. (Emphasis added.)

⁵ *Id.* at ¶1. (Emphasis added.)

operating radio transmitting equipment from an unauthorized location in violation of the Communications Act. Specifically, Western had constructed a 180-foot tower on a ridge overlooking Medora, North Dakota, near sites that are listed in the National Register for Historic Places. The FCC's decision found that Western Wireless had:

willfully and repeatedly violated [the Telecommunications Act] by operating radio transmitting equipment from an unauthorized location in Medora, North Dakota. Specifically, Western unlawfully constructed and continues to operate a facility that has a significant environmental effect without obtaining [FCC] authorization following preparation of an Environmental Impact Statement ("EIS").⁶ The FCC noted, "**It is important that Western not be permitted to benefit from its failure to comply with the environmental rules.**"⁷ Accordingly,

the FCC proposed a \$200,000 forfeiture for the unlawful operation and failure to comply with environmental rules.⁸ These cases demonstrate that Western Wireless has not complied with Commission Rule 4 CSR 240-2.060(1)(K), and its application should be rejected.

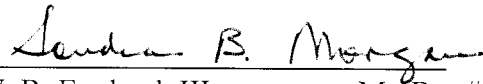
⁶ *In the Matter of Western Wireless Corporation*, File No. EB-02-TS-659, 2003 FCC LEXIS 2642, *Notice of Apparent Liability for Forfeiture*, rel. May 12, 2003. (Emphasis added.)

⁷ *Id.* at ¶21. (Emphasis added.)

⁸ The FCC noted that this was the first case in which it had proposed a monetary penalty for failure to comply with environmental rules.

WHEREFORE, Craw-Kan Telephone Cooperative, Inc. and KLM Telephone Company respectfully request that the Commission issue an order authorizing them to intervene in the above-captioned proceedings and for such other orders as are reasonable in the circumstances.

Respectfully submitted,



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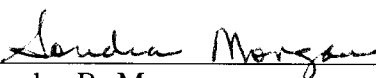
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered, provided electronically or mailed, United States Mail, postage prepaid, this 10th day of May, 2004 to:

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