

## **FCC Local and State Government Advisory Committee**

### **Advisory Recommendation Number 14 Petition of Western Wireless Corp., File No. CWD 98-90**

At its March 4, 1999 meeting, the Local and State Government Advisory Committee (LSGAC) of the Federal Communications Commission (FCC) considered the issues raised by the Western Wireless petition to preempt certain provisions of the State of Kansas' universal service program.

The LSGAC understands that Western Wireless Corporation has filed a petition asking the FCC to preempt portions of the a statute enacted by the Kansas Legislature adopting a State Universal Service Program and regulations promulgated by the Kansas Corporation Commission implementing that program. We further understand that Western Wireless contends that features of the State Universal Service Program enacted by the Kansas Legislature and the implementing regulations promulgated by the Kansas Corporation Commission should be preempted under Sections 253 and 254 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.

In enacting the Telecommunications Act of 1996, Congress intended to permit States to construct State universal service programs to supplement federal universal service programs. There are at least two statutory provisions that support this conclusion. First, although Section 253(a) states that "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service," Section 253(b) provides that Section 253(a) does not limit the ability of a State to impose requirements that are necessary to preserve and advance universal service, as long as those requirements are competitively neutral and consistent with Section 254. Second, Section 254(f) permits States to adopt regulations that are not inconsistent with FCC rules to preserve and advance universal service.

#### **RECOMMENDATIONS:**

1. In view of these statutory provisions, the LSGAC believes that the FCC should not interfere with State universal service programs. The FCC should not lightly preempt any aspect of a State universal service program and should do so only if it concludes that the applicable test for preemption is clearly satisfied.
2. The LSGAC does not believe that the provisions of the Kansas statute and regulations challenged by Western Wireless should be preempted. These provisions do not appear to the LSGAC to be a barrier to entry, nor do these provisions appear to the LSGAC to violate the principles of competitively neutrality and consistency with Section 254.
3. The Kansas State Corporation Commission has a pending docket to study the costs of the largest ILEC in the state. It appears that one result of this docket is to monitor the current transitional mechanism of the state's universal service funding program, leading to the state's "Rate Cut Funding" program becoming cost based. The LSGAC agrees with Kansas and recommends that the Commission allow the state the opportunity to address these issues.

Two copies of this resolution are being filed with the Secretary of the Commission to be placed in the docket as an ex parte filing.

Adopted by the LSGAC on this 12th day of March, 1999.

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**Kenneth S. Fellman**  
Chairman, LSGAC