Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
Cintex Wireless, LLC	)	
Petition for Streamlined Designation as a Lifeline Broadband Provider	)	

REQUEST OF THE PUBLIC UTILITY DIVISION OF THE OKLAHOMA CORPORATION COMMISSION TO HOLD IN ABEYANCE THE PETITION OF CINTEX WIRELESS, LLC FOR STREAMLINED DESIGNATION AS A LIFELINE BROADBAND PROVIDER

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SUMMARY

The Public Utility Division of the Oklahoma Corporation Commission ("PUD") requests that the Federal Communications Commission ("FCC" or "Commission") hold in abeyance the processing of Cintex Wireless LLC's ("Cintex") Petition for Streamlined Designation as a Lifeline Broadband Provider ("Petition") requesting designation as a Lifeline Broadband Provider ("LBP"), "pursuant to Section 214(e)(6) of the Communications Act of 1934, as Amended ("Act"), and Sections 54.201 and 54.202 of the rules of the Federal Communications Commission ("FCC" or "Commission")."

Cintex's Petition seeks an LBP eligible telecommunications carrier ("ETC") designation in Oklahoma, along with other jurisdictions. Cintex does not currently hold an ETC designation granted by the Oklahoma Corporation Commission ("OCC"). Cintex asserts that its Petition qualifies for streamlined treatment under 47 C.F.R. § 54.202(d)(1), and should be granted automatically within 60 days of filing. Where ETC designations in Oklahoma have historically been granted by the OCC in accordance with Section 214(e)(2) of the Act, this application represents one of the early requests for an ETC designation from which the states are preempted from granting, and leaves such designation the exclusive domain of the FCC.[1]

There are two critical issues raised by the preemption of state authority to designate LBP ETCs. One issue is whether or not the FCC has authority to preempt the states in this area, and to issue its own ETC designations. The United States Court of Appeals for the District of Columbia is currently reviewing this important question.[2] The other critical issue is what role, if any, state regulatory agencies, such as the PUD, will have in monitoring the activities of these

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1 47 C.F.R. § 54.201(j).

2 *See, National Association of Regulatory Utility Commissioners v. Federal Communications Commission and the United States of America* Case No. 16-1170 Petition for Review (filed June 3, 2016).

federally designated LBPs, and enforcing applicable state and federal Lifeline rules. This issue, as well as several closely related issues, are currently before the FCC.[3]

Beyond these critical issues, PUD has additional concerns with how the streamlined approval process provided at 47 C.F.R. § 54.202(d)(1), for which Cintex asserts it is qualified, affords the FCC adequate time to review and determine that the requested designation is in the public interest in accordance with 47 U.S.C. § 214(e)(6), specifically with regard to the rural study areas in Oklahoma that are included in Cintex's designation request.[4]

PUD reviews and provides recommendations in response to requests for ETC designation filed with the OCC. Further, PUD, through its Consumer Services group, also engages in monitoring and enforcement activities to ensure ETCs adhere to state and federal rules and laws regarding the provision of Lifeline services in Oklahoma. As such, PUD is concerned about the potential negative impacts to the Lifeline market if the FCC grants ETC designation where statutory authority does not exist and the loss of what, to date, has been effective oversight by states, such as Oklahoma, of the ETCs participating in the Lifeline market. State oversight includes the implementation and enforcement of protections to guard against waste, fraud and abuse in the Lifeline program. PUD is also concerned, notwithstanding the aforementioned issues, that the streamlined approval process does not allow enough time for the FCC to fulfill its obligations under the statute for designating ETCs nor to comply with the FCC's own requirements for designating ETCs.

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[3] *See, Petition for Clarification of the Pennsylvania Public Utility Commission*, WC Docket Nos. 11-42, 09-197, and 10-90, dated June 23, 2016.

[4] Cintex's Petition for Streamlined Designation as a Lifeline Broadband Provider includes Exhibit 2, which provides a list of ZIP codes in which Cintex indicates it has "network coverage for mobile broadband service at 3G speeds or greater." The ZIP codes listed include all ZIP codes in Oklahoma. Accordingly, Cintex's request for LBP ETC designation includes rural study areas, as that is defined within 47 U.S.C. § 214(e)(5), in Oklahoma. PUD is further concerned as to how designation for a service area defined by ZIP codes is compliant with the definition of "service area" found at 47 U.S.C. § 214(e)(5) and the designation standard at 47 U.S.C. § 214(e)(6).

Given that these issues are pending before the FCC and the D.C. Circuit, combined with the fact that the streamlined approval process cannot afford the FCC adequate time to fulfill its statutory obligations, PUD believes the best and most prudent course would be to hold the processing of this Petition in abeyance until these issues have been resolved.

Of critical concern is that the streamlined process for designating LBP ETCs will result in the *automatic* grant of the requested designation in 60 days, which will inevitably occur prior to ruling from the FCC or D.C. Circuit. (emphasis added) Accordingly, PUD further requests the FCC to notify Cintex that its Petition will not be deemed granted in 60 days, thereby stopping the "clock" and then hold the processing of the Petition in abeyance until such time as the critical issues of authority and enforcement can be resolved. Such a step by the FCC is clearly within its authority. 47 C.F.R. § 54.202(d)(1) provides that the FCC can notify the common carrier that "the grant will not be automatically effective." Further, a decision to hold Cintex's Petition in abeyance would be congruent with the FCC's request that the D.C. Circuit Court hold the consolidated cases, which include NARUC's Petition for Review, in abeyance pending action by the FCC on petitions for administrative reconsideration and clarification (this would include the Pennsylvania Public Utility Commission's Petition for Clarification) of the order under review.[5] Additionally, the FCC, by holding this Petition in abeyance, will ensure that it has adequate time to meet all of its statutory obligations in designating ETCs.

For these reasons, PUD respectfully requests the FCC to notify Cintex that its Petition will not be granted automatically within 60 days, and then hold the processing of the Petition in abeyance until the question of designating authority has been resolved and clarification has been provided as to the enforcement responsibilities and capabilities of state regulatory agencies with

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[5] *See,* Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C., *et al.,* Case Nos. 16-1170 and 16-1219, (2016 D.C. Cir.) Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record, (filed September 29, 2016).

regard to the LBP ETCs. The FCC can then process the Petition with the benefit of these issues being resolved and the time necessary to comply with applicable statutory and rule requirements.

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Cintex Wireless, LLC ("Cintex") has requested that the Federal Communications Commission ("FCC" or "Commission") grant it designation as a Lifeline Broadband Provider ("LBP") under the FCC's newly created Lifeline Broadband Provider ("LBP") classification,[6] pursuant to "section 214(e)(6) of the Communications Act of 1934, as Amended ("Act"), and Sections 54.201 and 54.202" of the FCC's rules for the purposes of participation in the Universal Service Fund's Lifeline program.

[6] *See, In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund,* WC Docket Nos. 11-42, 09-197, 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (released April 27, 2016) ("Lifeline Modernization Order").

Cintex is requesting LBP designation "nationwide"[7], with Oklahoma being a state covered by the request. Cintex further asserts that it qualifies for the streamlined designation process afforded to LBP ETC designation requests under the Lifeline Modernization Order and 47 C.F.R. § 54.202(d)(1).[8] Of immediate concern to PUD is the "streamlined" designation provision granting petitions for LBP ETC designation automatically within 60 days of submission. Cintex is not designated as a wireless ETC in Oklahoma for purposes of providing Lifeline services for reimbursement from the federal Universal Service Fund.

Concern is created by the fact that the FCC's Lifeline Modernization Order has come under scrutiny. The FCC's authority to grant the relief requested by Cintex is currently the subject of review by the United States Court of Appeals for the District of Columbia.[9] Additionally, the FCC has not acted on the critical issues contained in the Petition for Clarification of the Pennsylvania Public Utility Commission.[10] Given the aforementioned challenges and the improbability that the FCC will fulfill its statutory obligations for ETC designation within a 60 day automatic approval process, PUD would respectfully request, pursuant to 47 C.F.R. § 54.202(d)(1), that the FCC notify Cintex that its Petition will not become effective automatically. PUD also requests the FCC to hold processing of this Petition

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[7] PUD would note there is a qualification to the request for a "nationwide" service area, as the request is "subject to the coverage of its underlying facilities-based carriers(s)." There is no indication as to where in the nation this qualification would apply nor is there any indication as to which ZIP codes in Oklahoma are impacted by this qualification. Accordingly, at this point, it is not clear exactly where the requested LBP ETC designation would be granted. Additional information and review would be necessary to identify the actual service area being requested.

[8] If the petitioning common carrier has offered broadband Internet access service to the public for at least two years before the date of filing and serves at least 1,000 non-Lifeline customers with voice telephony and/or broadband Internet access service as of the date of the filing, the common carrier's petition for designation as an Lifeline Broadband Provider eligible telecommunications carrier shall be deemed granted within 60 days of the submission of a completed filing unless the Commission notifies the common carrier that the grant will not be automatically effective.

[9] *See,* Nat'l Ass'n of Regulatory Util. Comm'ers v. F.C.C., *et al.,* No. 16-1170, (2016 D.C. Cir.) Petition for Review (filed June 3, 2016).

[10] *See,* Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90, dated June 23, 2016.

in abeyance until such time as the D.C. Circuit resolves the questions around the FCC's authority to designate LBP ETCs, and the FCC addresses the important points of clarification requested by the Pennsylvania Public Utility Commission.

I. Background

The OCC has taken an active and effective role in both designating ETCs for purposes of providing Lifeline services as well as enforcing state and federal rules applicable to the offering and provision of Lifeline services in Oklahoma. The OCC has designated twenty-six (26) wireless ETCs for participation in the federal universal service support program, including and/or limited to the Lifeline program, in accordance with 47 U.S.C. § 214(e), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, 47 C.F.R. § 54.202, and 47 C.F.R. § 54.207.

Also, the OCC has been proactive in its enforcement of federal and state rules as well as in taking a pro-consumer stance. The OCC has put in place effective rules[11] that have established necessary and useful requirements for ETCs in Oklahoma. For example, the OCC established parameters around the mobile marketing activities in which most wireless ETCs engage in while operating in Oklahoma.[12] The OCC implemented these rules to ensure that Lifeline consumers could seek and receive service in a safe and reliable manner that would enable them to understand who their provider would be, as well as to know how to go about resolving consumer issues.

As PUD previously indicated in its filed comments,[13] rules were implemented in response to real problems that were being observed. This included "such things as consumers being unable to identify exactly who their Lifeline service provider actually was, let alone how to reach

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[11] OAC 165:55-23-1, *et al.*

[12] OAC 165:55-23-16 Limitations on Marketing of Supported Services by ETCs ("Mobile Marketing Rules").

[13] *See, Reply Comments of the Public Utility Division of the Oklahoma Corporation Commission* WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90 (filed August 31, 2015).

that carrier or how to have a problem resolved; Lifeline wireless handsets showing up at crime scenes and drug busts; Lifeline services being marketed and sold out of car trunks at the side of the road and consumers easily acquiring multiple wireless handsets activated for Lifeline service and then selling those handsets to anyone willing and able to come up with the requisite amount of cash."[14]

As a result of PUD's rules and enforcement efforts, ICON Telecom, Inc. relinquished its ETC designation in Oklahoma.[15] This is particularly illustrative as ICON Telecom, Inc. and its owner, Wesley Chew, were ultimately charged and pled guilty to money laundering and making false statements in conjunction with the fraudulent activities ICON Telecom, Inc. engaged in with the federal Lifeline program.[16] Further, at the height of the presence of waste, fraud and abuse in the Lifeline program, Lifeline providers in Oklahoma in 2012 received over $246 million of federal Lifeline support.[17] That federal support was reduced by over 56% to $108 million in 2015.[18] There is no doubt that this reduction was connected to the considerable efforts of the OCC and PUD to bring ETCs in Oklahoma into compliance with federal and state Lifeline rules.

PUD believes that any grant of an application for an LBP ETC designation, in advance of the Court ruling on the FCC's legal authority to do so and prior to the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification, could permanently undo the

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[14] *Id* at p. 3.

[15] *See, Cause No. PUD 201300018, Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission for a Show Cause Hearing Against ICON Telecom, Inc.,* filed February 14, 2013. *See also, Cause No. EN 201300076, Complaint, Information, Summons, and Notice of Citation for Contempt,* filed August 13, 2013. *See also Cause No. PUD 201300167, In the Matter of the Notification of ICON Telecom, Inc. of Voluntary Relinquishment of ETC Designations,* filed September 17, 2013.

[16] *See, U.S. v. Chew, No. CR-14-170-D (W.D. OK, 2014 WL 8108217).*

[17] USAC LI05 Annual Low Income Support Amounts by State and Company – January 2012 through December 2014 (http://www.usac.org/about/tools/fcc/filings/2015/q2.aspx).

[18] USAC LI05 Annual Low Income Support Amounts by State and Company – January 2013 through December 2015.xls (http://www.usac.org/about/tools/fcc/filings/2015/q2.aspx).

significant benefits associated with the undertaking by states, such as Oklahoma, to administer and enforce the state and federal ETC and Lifeline rules.

The Pennsylvania Public Utility Commission clearly points out the unacceptable tension between the Lifeline Modernization Order's preemption of the states' ability to designate LBP ETCs[19] and the failure to specifically and clearly address what role and authority state commissions will have with regard to enforcement, consumer protection and general oversight of the LBP ETCs designated by the FCC. Without such clarification from the FCC, it can be anticipated that any carrier with an LBP ETC designation for Oklahoma will not be considering state requirements, such as Oklahoma's Mobile Marketing Rules, in the development of its processes and procedures. Moving forward with LBP ETC designations without clarification will effectively eviscerate all of the pro-consumer and anti-waste, fraud and abuse programs and efforts implemented and administered by Oklahoma and other states. Additionally, to the extent the Lifeline market in Oklahoma is served by two different types of ETCs (i.e., state designation vs. federal designation) with different obligations, problems such as consumer confusion, delays in complaint resolution, and some ETCs being disadvantaged in the marketplace as compared to others, will negatively impact the entire market. Further, without adequate clarification, such problems begin upon the effective date of an FCC designation of an LBP ETC.

In its recent Public Notice (DA 16-1118, released September 30, 2016) there seems to be an attempt to provide guidance to the states as to their role in regulating LBP ETCs designated by the FCC. The statement at ¶19 is "Indeed, the *Lifeline Modernization Order* preserved the 'roles that states have traditionally played in Lifeline' and recognized the states' ability to regulate ETCs subject to the states jurisdiction and applicable state laws." However, the footnote to this statement references ¶¶ 288-289 of the Lifeline Modernization Order. At ¶288 is the

[19] *Lifeline Modernization Order* at ¶*232.*

statement "To the extent a provider only seeks the federal LBP, however, providers are not required to seek approval or designation from the states." While PUD would fully anticipate that an ETC seeking designation for purposes of participating in the Oklahoma Lifeline Fund would be subject to the laws and rules of Oklahoma, the fundamental question is what authority a state has to regulate LBP ETCs designated by the FCC for purposes of only receiving federal support for Lifeline service. PUD is concerned that, given the lack of clarity, an LBP ETC would take the position that they are not required to comply with any state regulation of its operation as an LBP ETC, thereby leaving states with the burden to resolve this question.

An even more fundamental problem with the FCC processing the application of Cintex for designation as an LBP ETC, is that there is an open question as to whether or not the FCC actually has the authority to make such a designation. While the FCC provides its rational as to why states are preempted from designating LBP ETCs, NARUC's Petition for Review[20] points out that the FCC's action is inconsistent with the statutory language at 47 U.S.C. §214(e)(2) which provides states with the authority to designate ETCs, thereby raising a legitimate concern and question. PUD believes that this is a question for the courts and the D.C. Circuit's ruling on this important question is critical in order to correctly implement the process for the newly created LBP ETC designation. The concern today is that to grant Cintex's Petition on a streamlined basis with an automatic "deemed granted" result in sixty (60) days will, given that exceptionally short timeline, inappropriately circumvent the D.C. Circuit's review of this important question and potentially disrupt the Lifeline market, causing consumer confusion as well as unnecessary expense and effort by both state regulators and ETCs themselves in the event the court determines that the FCC does not have the authority it will exercise in granting Cintex's application (whether on a streamlined basis or not).

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[20] *Supra* n.9.

Furthermore, likelihood that the sixty (60) day clock will run prior to the Court's completion of its review of this question is a certainty. The Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record filed with the Court suggests that allowing the FCC to resolve the administrative reconsideration and clarification petitions "may simplify judicial review by resolving issues that the Court would otherwise need to address, or by clarifying or providing additional analysis of issues that remain in dispute."[21] The filing further indicates that, if the Court decides to hold the cases in abeyance, the FCC is proposing to advise the Court and the parties at 90-day intervals of the status of the agency's proceedings. Given this, it is clear that, unless the FCC takes steps to avoid the streamlined "automatic" 60 day approval process, Cintex will have its LBP ETC designation and operations underway for a considerable amount of time before all of these important issues are resolved. Therefore, the FCC would create a situation that could, at best, create significant impairment to consumers, and require considerable effort and resources from all parties to "undo" the approval and associated operations or, at worst, create a situation that cannot be corrected at all.

II. Adequate Time for Review

PUD also suggests that the streamlined, automatic approval process represents a barrier to the FCC's ability to review and act on Cintex's Petition in accordance with existing statutory law. The consideration of Cintex's Petition for LBP ETC designation, under the current structure, is to be done in accordance with 47 U.S.C. § 214(e)(6). Cintex's request, as it relates to Oklahoma, is for designation in the entire state of Oklahoma,[22] which includes areas served by

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[21] Nat'l Ass'n of Regulatory Util. Comm'rs v. F.C.C., *et al.*, Nos. 16-1170 and 16-1219 (2016 D.C. Cir.) Motion of the FCC to Hold Case in Abeyance and to Defer the Filing of the Record at p. 6 (filed September 29, 2016).

[22] Again, it is assumed that the entire state of Oklahoma is to be included in the service area for which designation is requested. While Cintex indicates its actual service area is subject to the coverage of its underlying carriers, there is no indication as to where (or if) this qualification might apply in Oklahoma.

rural telephone companies. With regard to ETC designation in rural service areas, 47 U.S.C. § 214(e)(6) states:

> *Upon request and consistent with the public interest, convenience and necessity, the Commission* ***may****, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as a eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.* (emphasis added)

The use of the word "may", as opposed to "shall", combined with the requirement to make a specific public interest finding when a rural telephone company service area is the subject of the requested ETC designation, makes clear that such applications are to undergo a higher level of scrutiny than a request for designation in a non-rural service area.[23] This need for additional scrutiny alone justifies the FCC to exercise its authority to take a petition for LBP ETC designation off of the automatic processing track.

Specifically, PUD believes grant of a petition for ETC designation in a rural service area on an automatic basis unnecessarily constrains or, more likely, even precludes the FCC's ability to comply with the public interest requirement found at 47 U.S.C. § 214(e)(6) and, without any further action or scrutiny by the FCC, would be inconsistent with the FCC's own expectations.[24] This is of particular concern when qualification for streamlined processing is based on activities

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[23] *See, Federal-State Joint Board on Universal Service,* Recommended Decision, CC Docket No. 96-45, released February 27, 2004, ¶ 17. "In establishing these additional statutory protections, we believe that Congress intended state commissions to exercise a higher level of scrutiny when evaluating ETC applications for designations in rural carrier service areas." *(footnote omitted)*

[24] *ETC Designation Order*, released March 17, 2005, ¶ 42. "We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carriers." (footnote omitted). It is clear that relying on a petitioner's "self-certification" of public interest benefits is not an acceptable substitute for a review of actual facts and circumstances by the granting authority.

and requirements that are unrelated to the provision of Lifeline services generally or, more specifically, the provision of Lifeline services in rural service areas.[25]

The FCC, in its *Memorandum Opinion and Order*, WC Docket Nos. 09-197, 11-42, released April 15, 2013, in which the FCC granted "...limited forbearance from the requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commissions rules that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area" explicitly states the requirement for an affirmative determination of public interest. The FCC stated:

> *The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest and that determination is not affected by this grant of forbearance." (¶ 13) (footnotes omitted)*
>
> *The Commission recognizes all of the important issues raised by commenters in determining whether a particular carrier has met the requirements to become an ETC for the limited purpose of receiving Lifeline support, all of which will be addressed by the designating authority when a carrier submits an application requesting designation. Designating authorities will continue to make an independent assessment as to whether designating a carrier as an ETC within a rural service area is in the public interest." (¶ 15) (footnotes omitted)*
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> *We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting a carrier ETC designation is in the public interest before including any part of a rural service area in such a carrier's service area." (¶ 18) (footnotes omitted)*

By way of example as to the importance of such a review and affirmative finding, the OCC has recent experience with an application requesting ETC designation in all rural service areas in Oklahoma. IM Telecom, LLC d/b/a Infiniti Mobile ("Infiniti"), which held ETC designation in the non-rural service areas in Oklahoma, filed an application seeking "statewide"

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[25] 47 C.F.R. § 54.202(d)(1) allows a petition for LBP designation to be deemed granted in 60 days of submission of the filing if the petitioner has offered broadband Internet access service to the public for at least two years before the filing and serves at least 1,000 <u>non-Lifeline</u> customers with voice telephony and/or broadband Internet access services as of the date of the filing. (emphasis added) There are no specific requirements or considerations for the capabilities to provide Lifeline supported services in rural service areas.

expansion of its ETC designation which involved all rural telephone company service areas in Oklahoma.[26] PUD, in performing its review and analysis, followed its obligations under 47 U.S.C. § 214(e)(2), which also requires a public interest finding when rural telephone company service areas are involved, and, after reviewing information provided by Infiniti and finding operational and financial shortcomings, PUD recommended denial of the application. After conducting discovery and holding a hearing on the merits, the Administrative Law Judge supported PUD's position and recommended that "the Commission adopt the position of PUD and the RLECs to deny the application, because Infiniti met some but not all of the requirements for extension of its ETC designation."[27] The OCC then issued Order No. 647172 on November 24, 2015 adopting the Administrative Law Judge's recommendation and denying Infiniti's application. Obviously, had there been a requirement for Infiniti's application to automatically be granted in sixty days, PUD would not have been able to collect and review the information necessary to make an informed recommendation, in compliance with its duty at 47 U.S.C. § 214(e)(2), and the public interest would not have been served.

III. Service Area Requirements

PUD does not believe that Cintex's use of ZIP codes as the means with which it attempts to define the service area for which it is seeking ETC designation complies with the statutory requirements. 47 U.S.C. § 214(e)(6), under which the FCC is granting such ETC designations, indicates that the Commission shall, in the case of non-rural areas, and may, in the case of areas served by rural telephone companies, designate ETCs for "a service area." While the Commission has latitude to designate the service area in the instance of non-rural areas, 47

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[26] *See*, Oklahoma Corporation Commission Cause No. PUD 201400305, filed October 24, 2014.

[27] *See*, Oklahoma Corporation Commission Cause No. PUD 201400305, Report of the Administrative Law Judge, filed October 8, 2015.

U.S.C. § 214(e)(5) specifies a definition of "service area" when the designation involves an area served by a rural telephone company.[28] It states:

> *In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.*

Cintex does not provide any method or indication that would allow the FCC to understand or otherwise identify, based on the ZIP code list provided, the specific study areas associated with areas served by the rural Oklahoma telephone companies in which ETC designation is requested to be granted. Without identifying the study areas, any designation granted in areas served by rural telephone companies based solely on ZIP codes would not comply with statutory designating authority found at 47 U.S.C. § 214(e)(6).

Further, the use of a ZIP code list to define the service area requested by Cintex, as well as the streamlined automatic grant process itself, would seem contrary to the FCC's ETC designation administrative requirements. The FCC has mandated that "...all future ETC designation orders adopted by the Commission will include: (1) the name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code."[29] PUD's experience is that ZIP codes do not readily translate to wire centers or ILEC study areas. Accordingly, it would seem

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[28] This definition is found within the rules at 47 C.F.R. § 54.207(b). This subsection also specifies the process by which an area different from a study area can be redefined.

[29] *ETC Designation Order*, released March 17, 2005, ¶ 65.

difficult, if not impossible, for the FCC's streamlined process to allow adequate time to meet these administrative requirements.[30]

These unique statutory requirements for ETC designation in rural service areas further support PUD's request to hold Cintex's Petition in abeyance in order to gain the benefit of having the decision of the D.C. Circuit Court's ruling on NARUC's Petition for Review,[31] and the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification.[32] Further, notwithstanding these unresolved issues, unless all the requirements for the analysis and processing of requests for ETC designation can be met within (and addressed by) the 60 day streamlined, automatic grant process, the FCC should notify Cintex that its Petition will not be granted automatically and then take the time necessary to perform a review and reach a determination in accordance with the rules and statutes.

IV. PUD Request Specific to Oklahoma

While PUD believes many, if not all, of the concerns it raises with regard to the automatic approval of Cintex's Petition for designation as a LBP have at least some applicability to other states, PUD speaks only for these matters as they apply to Oklahoma. Accordingly, PUD would have no issue with a bifurcated approach to Cintex's Petition. This would allow for consideration of the Oklahoma component of the Petition to be conducted independently of any other states.

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[30] For instance, under the Oklahoma specific ZIP codes contained in Exhibit 2 to the Cintex Petition, listed is 00690. Upon review, 00690 is not a valid Oklahoma ZIP code. If the petitioner provides erroneous zip codes, it is less likely that accurate wire centers / ILEC study areas can be identified without additional time for review.

[31] *See*, Nat'l Ass'n of Regulatory Util. Comm'ers v. F.C.C., *et al.*, Case No. 16-1170 (2016 D.C. Cir.) Petition for Review (filed June 3, 2016).

[32] *See,* Petition for Clarification of the Pennsylvania Public Utility Commission, WC Docket No. 11-42, WC Docket No. 09-197, and WC Docket No. 10-90, dated June 23, 2016.

V. Relief Requested

For the reasons stated above, PUD respectfully requests that the FCC notify Cintex that its LBP ETC Petition, as it relates to Oklahoma, will not be granted on a streamlined basis and then hold the processing of the application in abeyance pending further action by the D.C. Circuit and the FCC.

The FCC's rules at 47 C.F.R. § 54.202(d)(1) already provide the FCC with the ability to notify Cintex that grant of its Petition "will not be automatically effective." This ability and authority exists even if the FCC's review confirms that Cintex meets the qualifications for the streamlined processing of its LBP ETC application. Once the 60 day "clock" has been stopped, the FCC should hold the processing of this Petition in abeyance pending 1) the D.C. Circuit Court's ruling on NARUC's Petition for Review; and 2) the FCC's response to the Pennsylvania Public Utility Commission's Petition for Clarification.

The FCC, in taking the requested action, will be able to process Cintex's Petition with a full understanding of its authority to grant the relief requested and can take the time to consider Oklahoma's and other states' accomplishments in assisting Lifeline consumers and curtailing waste, fraud and abuse. The FCC can then make a fully informed determination as to whether or not such positive efforts will continue under this newly formed LBP ETC designation process, or if the state's role in curtailing waste, fraud and abuse is going to be abandoned for an, as yet to be defined, alternative structure of regulatory oversight for such carriers. Finally, by removing Cintex's Petition from the streamlined, automatic approval process, the FCC can also ensure that it has adequate time to fulfill all of its statutory obligations applicable to reviewing and granting requests for ETC designation.

Respectfully submitted,

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