

<PROCEEDING> 96-45
<DATE> 10/12/99
<NAME> Montana Telecommunications Association and
Montana Independent Telecommunications Systems
<ADDRESS> 208 North Montana Ave, Suite 207
<CITY> Helena
<STATE> Montana
<ZIP> 59601
<PHONE NUMBER> 406.442.4316
<DESCRIPTION> Western Wireless Petition for Designation as an
Eligible Telecommunications Carrier in the Crow
Agency and other Exchange Areas of Montana
<NOTIFY> Geoffrey A. Feiss, General Manager (MTA)
gfeiss@telecomassn.org or,
Mike Strand, Executive Vice President (MITS)
mits@ixi.net
<TEXT>

I. About MTA and MITS

The 17 independent local exchange company members of the Montana Telecommunications Association (MTA) and Montana Independent Telecommunications Systems (MITS) provide local and long distance telephone, cable, Internet, and wireless services to all citizens of Montana, including Reservation residences and businesses, using all digital, state-of-the-art facilities. These independent communications companies serve approximately 150,000 access lines (about 1/3 of the state's total access lines) covering nearly 80% of the state's geography (122,000 square miles). One MTA member alone, Mid-Rivers Telephone Cooperative, the largest land-mass cooperative in the nation, serves fewer than 15,000 customers in a territory larger than the state of West Virginia. While the national average for rural telephone companies is around 20 access lines per mile, Montana's independent companies serve fewer than three access lines per mile.

II. MITS and MTA Concur with the Comments of Project and Range Telephone Companies

MITS and MTA wish to associate themselves with and concur in the comments of Project Telephone Company, Inc. (Project) and Range Telephone Cooperative, Inc. (Range).¹ The FCC lacks the authority to designate Western Wireless (WW) Corporation as an eligible telecommunications carrier (ETC). WW seeks ETC status under Section 214(e) of the Telecommunications Act of 1996. (47 U.S.C.214(e), hereinafter referred to as the "Act"). Section 214(e) of the Act clearly states that the determination of ETC status rests solely with state commissions.

¹ Project Telephone Company, Inc., is a member of MITS. Range Telephone Cooperative, Inc., is a member of MTA.

As the comments of Project and Range attest, Section 214(e)(6) of the Act is not intended to shift to the FCC the authority of states to designate ETCs. This provision was added to the Act in 1997 as a technical amendment to correct an oversight in the Act. As originally enacted, the Act inadvertently had the effect of denying some non-regulated incumbent carriers the ability to be designated as ETCs eligible for the universal service support which they had already been receiving. Certain Tribal telephone companies and some cooperatives were not regulated by State commissions, and therefore were unable to be designated ETCs in their states.² Section 214(e)(6) of the Act simply corrected this oversight. The fact that no other amendment has been added to the Act illustrates that the amendment was “technical” in nature and not a policy shift by Congress to grant ETC designation powers to the FCC. Nothing in the legislative history of the amendment indicates that Congress intended to change its clear policy regarding state authority to designate ETCs.

The Crow Reservation is not served by a Tribal owned company. Instead, it has been and continues to be served by Project, Range, and U S WEST. By seeking ETC status on the Crow Reservation, WW effectively is seeking ETC status in a combination of non-rural as well as rural telephone company study areas. Of course, it is solely the responsibility of the Montana Public Service Commission to determine whether to designate ETC status in this regard. In fact, as has been pointed out, WW already is seeking ETC status in Montana in a statewide application.³ WW cannot seek ETC status statewide in Montana from the State Commission while simultaneously petitioning the FCC for identical ETC status in rural study areas which encompass reservation and non-reservation lands. Such an application must be made solely to the Montana Public Service Commission.

Again as noted in the Project/Range comments, the WW application includes exchanges which fall outside of the Crow Reservation and encompasses Project’s entire study area. Even if the FCC somehow interprets Section 214(e)(6) as allowing it to designate new carriers as ETCs on Indian Reservations--an erroneous interpretation certain to inject unwarranted confusion into past and pending ETC proceedings at the state level and invite litigation—there has been absolutely no showing by WW that the FCC retains jurisdiction under any provision of the Act to designate ETC status in areas served outside of the Reservation.

² While rural telephone cooperatives are not fully regulated by the Montana Public Service Commission, the Montana Legislature, in response to the Act, has specifically granted to the Public Service Commission the jurisdiction to designate ETCs, including jurisdiction over cooperatives for that purpose. Section 69-3-840, Mont. Code Ann. (1997).

³ *In The Matter of Western Wireless Corporation, Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D98.8.190. On September 30, 1999, WW requested that the Montana PSC “suspend” this docket for 30 days to allow WW time to “reassess the Montana proceedings and determine whether and how it should proceed.” Such action calls into question WW’s commitment to serve rural Montana and the Reservation properties which is the subject of its application.

III. Montana's Tribal Reservations Are Neither Underserved nor Unserved

The Project/Range comments illustrate, contrary to allegations made by WW, that telephone service is immediately available to 99% of the households on the Crow Reservation, and approximately 71% of the Tribal members in Project's service area currently subscribe to telephone service.

The level and quality of service provided, and the commitment of Montana's independent telephone companies to economic development on Montana's Tribal reservations is not isolated to the Crow Reservation. For example, Range exclusively serves the 825 square mile Northern Cheyenne Indian Reservation. Range's current investment on the reservation is \$3.25 million. Its facilities include 278 miles of copper and 73 miles of fiber. Range's facilities reach nearly every residential and business location on the reservation. However, Range. Like other Montana companies serving Reservations, does not categorize subscribers as "Indian or non-Indian" and therefore it is difficult to measure actual penetration. Range does serve 1,252 lines on the reservation, and offers service to all residences and businesses on the Reservation.⁴

Additionally, Range serves two high schools, two elementary schools and one tribal college on the Reservation. One of the high schools is equipped with an interactive audio/video classroom, which allows connections to seven other area high schools and two 4-year colleges. Range provides access to the Internet through toll-free dial-up connections at speeds up to 56kbps.

In addition to the facilities and investment Range has made on the Northern Cheyenne Reservation, two of Range's 36 Montana employees are members of the Northern Cheyenne tribe, who live and work on the Reservation. Also, two of Range's 10 Board members are Northern Cheyenne Tribal members.

Similarly, 3 Rivers Telephone Cooperative, Inc. and Northern Telephone Cooperative, Inc. serve the over 2,500 square mile Blackfeet Indian Reservation. 3 Rivers employs four Blackfeet Tribal members and includes one Blackfeet Tribal member on its board. 3 Rivers has invested \$4 million in exchanges serving the reservation, and deploys 572 miles of plant on the Reservation. Again, neither 3 Rivers nor Northern distinguishes between Tribal and non-Tribal customers, and does not believe that such a distinction is appropriate. Therefore it is difficult to determine precisely penetration and usage rates within the Reservation. Nonetheless, each company is confident that facilities reach practically every residential and/or business location on the reservation. Whether every residence or business in fact is using service however is another matter. In this regard, 3 Rivers and Northern actively promote Lifeline discounts to help encourage service penetration.

⁴ As Rural Utility Service Borrowers, all Montana companies currently serving Reservation exchanges have a commitment to provide service to all customers requesting the same in its service territory, including customers located on Reservations.

The Flathead Indian Reservation located between Kalispell and Missoula is served by CenturyTel and Blackfoot Telephone Cooperative/Clark Fork Telecommunications. Like 3 Rivers and Northern, these companies do not distinguish between Tribal and non-Tribal usage, investment, etc. It is reasonable to assume, however, like elsewhere in Montana, that independent telephone facilities reach nearly every establishment on this reservation as well as the Rocky Boy, Fort Belknap, and Fort Peck Indian Reservations.⁵ Blackfoot alone has invested over \$11 million in Reservation exchanges as of December 31, 1998, and is currently building out its digital wireless service to soon provide new digital wireless service to nearly all Salish and Kootenai Reservation and Flathead Reservation residents, including Tribal members. Blackfoot also provides access to distance learning systems to Tribal high schools and colleges, and supports economic development on Reservations through zero-interest loans. Such Tribal and Reservation support is guided by Blackfoot's outside plant manager, a Tribal member, and the secretary/treasurer of three Blackfoot subsidiaries, also a Tribal member.

The issue on Montana's tribal reservations is not so much one of penetration. Montana's independent telephone companies invest in tribal territories on a par with their other network investments. Rather, the central issue facing the reservations of Montana is economic development. Here too, as illustrated above, Montana's independent telcos are deeply involved in initiatives to bring economic development opportunities to Montana's citizenry.

IV. The FCC Must Avoid Establishing a Devastating Precedent

As noted above and in the Project/Range comments, service on Montana's Indian reservations is provided by incumbent independent local exchange carriers, all of which have been designated ETCs by the Montana Public Services Commission in compliance with the provisions of Sections 214(e) and 254 of the Act and Section 69-3-840 of the Montana Code Annotated.

If the FCC were to claim the authority to designate WW as an ETC on the Crow Reservation, it would effectively overturn all state-designated ETCs serving Indian reservations. Montana's Indian reservations are included in the rural study areas of the companies serving the reservations. The state properly exercised its responsibilities in designating as ETCs the independent telephone companies serving the reservations.

Should the FCC exercise control over the designation of WW as an ETC on the Crow Reservation, the status of all existing ETCs on reservations would be thrown into doubt, at best. At worst, all ETCs so designated by State commissions would be vacated. Moreover, any universal service support received by these "wrongly" state-designated

⁵ The Rocky Boy, Fort Belknap, and Fort Peck Reservations are served by Triangle Telephone Cooperative Association, Inc., Central Montana Communications, Inc., Nemont Telephone Cooperative, Inc., and Valley Telecommunications, Inc., respectively.

ETCs likely would be required to be refunded. In Montana, the effect of an FCC claim of jurisdiction in this WW petition effectively could result in potentially huge rate hikes for both Tribal and non-Tribal consumers whose rates would need to recover universal service “over payments.” Moreover, the rural areas served by existing ETCs could face significant service quality impacts as a result of lost universal service funding. State commissions, as recognized by the Act, are in the best position to address these critical issues.

V. Conclusion

The FCC lacks jurisdiction to designate WW an ETC on the Crow Reservation. Moreover, if the FCC were to mistakenly conclude it has jurisdiction, the ramifications of such a decision could overturn all state-designated ETCs currently serving Indian reservations. Obviously, the immediate effect of such a determination would be to spark an endless barrage of litigation.

Section 214(e) of the Act clearly puts the authority and responsibility of determining ETCs in the hands of those closest to the people affected and issues that need to be considered in such a determination: the state commissions. Nothing in the Act that permits the FCC to undertake such designations except in the limited circumstances addressed by section 214(e)(6) where state commissions lack the authority to do so. That clearly is not the case with regard to WW’s Montana application. The Montana Public Service Commission is vested with the authority to make such designations, and in fact WW itself has invoked that jurisdiction. The FCC should therefore decline to accept jurisdiction of WW’s Petition in this matter.