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October 27, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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**Re: Petition For Designation as an Eligible Telecommunications
Carrier and for Related Waivers To Provide Universal Service
to the Crow Reservation, Montana
CC Docket No. 96-45, DA 99-1847**

Reply Comments of Western Wireless Corporation

Dear Ms. Salas:

On behalf of Western Wireless Corporation ("Western Wireless"), I am enclosing for filing an original and four copies of Western Wireless' Reply Comments in the referenced proceeding.

If you have any questions regarding this matter, please contact me.

Respectfully submitted,


Ronnie London
Counsel for Western Wireless Corp.

Enclosures

cc: Attached Service List

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

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In the Matter of)
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WESTERN WIRELESS CORPORATION) CC Docket No. 96-45
)
Petition For Designation as an) DA 99-1847
Eligible Telecommunications Carrier)
And For Related Waivers To Provide Universal)
Service To The Crow Reservation in Montana)

WESTERN WIRELESS REPLY COMMENTS

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October 27, 1999

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WESTERN WIRELESS REPLY COMMENTS

Western Wireless Corporation's wholly-owned subsidiaries, WWC Holding Co., Inc., and Western CLEC Corporation (collectively, "Western Wireless"), by counsel and pursuant to FCC Public Notice, 1/ hereby reply to the comments filed on the captioned Petition. The record in this proceeding clearly demonstrates that Western Wireless meets the criteria for designation as an Eligible Telecommunications Carrier ("ETC"), that the Crow Reservation supports Western Wireless' proposed universal service offering, and that the public interest would be served by designating Western Wireless as an additional ETC. For all of these reasons, the Commission should expeditiously grant the Petition.

1/ *Western Wireless Corporation Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Services Eligible for Universal Service Support to Crow Reservation, Montana, CC Docket No. 96-45, Public Notice, DA 99-1847 (rel. September 10, 1999).*

I. INTRODUCTION AND SUMMARY

Western Wireless is a commercial mobile radio service ("CMRS") provider that currently provides cellular service throughout the state of Montana, including on the Crow Reservation. In recognition of the Crow Reservation's need for access to affordable telephone service, Western Wireless filed the instant Petition seeking to make available a universal service offering tailored to the Reservation's telecommunications needs.

In its Petition, Western Wireless established that it currently provides all the FCC-defined universal services and functionalities throughout its cellular service area in Montana, including the Crow Reservation. Additionally, Western Wireless committed to providing its universal service offering to all residents of the Crow Reservation, who today may be unserved or underserved by the incumbent local exchange carrier ("ILEC"). Moreover, Western Wireless demonstrated that the public interest would be served by designating Western Wireless as an ETC and that the waivers sought in the Petition are necessary to allow the company to enter the universal service market. Significantly, Western Wireless explained that designating Western Wireless as an ETC will further the FCC's initiative to improve telephone penetration on Indian reservations.

II. THE FCC HAS JURISDICTION UNDER SECTION 214(e)(6) TO GRANT THE PETITION

The Commission has the requisite jurisdiction to grant Western Wireless' request for designation as an ETC on the Crow Reservation. The opposing

commenters incorrectly assert that the instant Petition does not fall within the FCC's purview. ^{2/} Section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), ^{3/} empowers the FCC to designate common carriers "not subject to the jurisdiction of a State commission" as ETCs if they meet the requirements of Section 214(e)(1). ^{4/} In relation to its universal service offering on the Crow Reservation, Western Wireless would be a common carrier "not subject to the jurisdiction of a State commission," in this case, the Montana Public Service Commission ("MTPSC"). While Western Wireless may be subject to the jurisdiction of the MTPSC for purposes of ETC designation in areas outside of Indian reservations, the FCC is empowered to designate Western Wireless as an ETC for the purposes of a targeted universal service offering on the Crow Reservation.

The provision of basic telephone service on an Indian reservation so directly affects tribal affairs that the federal government, *i.e.*, the FCC, has the necessary authority (and responsibility) to designate a carrier as an ETC for

^{2/} U S WEST Communications, Inc. at 2-3 ("U S WEST"); Project Telephone Company, Inc., and Range Telephone Cooperative, Inc. at 1-24 ("Project/Range"); Rural Telephone Coalition at 1-14 ("RTC"); BellSouth Corporation at 3-4 ("BellSouth"); Montana Telecommunications Association and Montana Independent Telecommunications Systems, *passim*.

^{3/} 47 U.S.C. § 214(e)(6).

^{4/} 47 U.S.C. § 214(e)(1).

purposes of federal universal service support. ^{5/} The Commission, in fact, has recognized the critical nature of basic telephone service to tribal life, ^{6/} and that telecommunications service plays a crucial role in a tribe's political, educational, medical, and financial well-being. ^{7/} Together, these factors indicate that, under *Montana v. U.S.*, the FCC is empowered to designate common carriers, such as Western Wireless, as ETCs for purposes of federal universal service funding for universal service offerings on Indian reservations. This is especially true in the

^{5/} Petition for Designation at 8 n.14 (*citing Montana v. U.S.*, 450 U.S. 544, 566 (1980) (holding that tribal authority (in lieu of state jurisdiction) extends to "the conduct of non-Indians on fee lands within [the] reservation when that conduct . . . has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."). Contrary to the unduly narrow reading offered by some parties, see U S WEST at 3 n.3, Project/Range at 15-16, *Montana v. U.S.* is not merely a case about rights to a riverbed somewhere on the Crow Reservation – it is a seminal case in that area of Native American law concerned with the boundaries of state versus tribal jurisdiction. Bradford E. Chatigny, *The Anadarko Dilemma: Can "Offshore" Banking Join Gambling in the Native American Arsenal of Economic Development*, 32 Colum. J.L. & Soc. Probs. 99, 105, 129 n.39 (1998) ("*Montana* is often referred to as the 'seminal' case in the area of modern tribal jurisdiction."); Reid Peyton Chamber, *Indian Law in the United States Supreme Court – Experiences in the 1980s and Predictions for the 1990s*, 22 Am. Indian L. Rev. 601, 610 ("On the question of tribal jurisdiction on reservations outside trust lands, the major decisions in the 1980s were *Montana v. United States* and . . ."); see also, e.g., *Navajo Nation v. Intermountain Steel Bldgs., Inc.*, 42 F.Supp.2d 1222, 1229-30 (D.N.M. 1999) (*citing Montana v. U.S.*, 450 U.S. at 565).

^{6/} *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Notice of Proposed Rulemaking, FCC 99-205, at 3, ¶ 2 (rel. August 18, 1999) ("telephone service is a necessity in our modern society,") ("*Wireless Tribal NPRM*"); *Universal Service Tribal FNPRM* at 3, ¶ 2 ("[t]he absence of telecommunications service in a home puts its occupants at a tremendous disadvantage in today's society.").

^{7/} *Wireless Tribal NPRM* at 3, ¶ 2; accord, *Tribal FNPRM* at 3, ¶ 2.

instant case, where Western Wireless is a CMRS carrier not subject to state commission entry and rate regulation 8/ and would be providing universal telephone service on federally reserved tribal lands.

III. WESTERN WIRELESS SATISFIES THE SECTION 214(e) DESIGNATION CRITERIA

The Petition demonstrates that Western Wireless currently provides each of the services and functionalities required by the Commission's rules and that Western Wireless' proposed universal service offering consisting of the supported services and functionalities meets the requirements of the statute and the Commission's rules. 9/ As explained in its Petition, Western Wireless has an existing network infrastructure in place today which enables the Company to expand upon its current cellular service offerings and provide universal service on the Crow Reservation.

As evidenced by the Statement of Interest filed with the Petition, the Crow Reservation fully supports Western Wireless' efforts to offer affordable telephone service on the reservation. Several commenters, however, would prevent the Crow Reservation from realizing the benefits of Western Wireless' universal service offering based upon an illogical and improper reading of the statutory and regulatory requirements for ETC designation. First, attempting to maintain their

8/ 47 U.S.C. § 332(c)(3).

9/ 47 C.F.R. § 54.101(a).

stranglehold on the universal service market, the ILECs serving the Crow Reservation make the illogical argument that a carrier must first ubiquitously provide universal service throughout the designated service area prior to ETC designation. ^{10/} Next, realizing that Western Wireless meets the statutory criteria for ETC designation, some commenters ask the Commission to discriminatorily impose on Western Wireless additional ETC criteria that lack any basis in the statute or prior FCC decisions. The Commission should dismiss these anti-competitive attempts to derail Western Wireless' initiative to provide universal service on the Crow Reservation.

Clearly, the opposing comments filed by some parties are aimed at precluding competitive entry into a market dominated by the ILECs. What is equally clear, however, is that numerous public interest benefits will flow from designating Western Wireless as an ETC. The Commission should therefore expeditiously grant the instant Petition and designate Western Wireless as an ETC on the Crow Reservation.

^{10/} For all of the reasons identified its Petition for Preemption of the ETC decision of the South Dakota Public Utilities Commission, a requirement to ubiquitously provide universal service throughout the designated service area prior to ETC designation is illogical and inconsistent with Section 214(e) and the FCC implementing regulations and directives. See Comments and Reply Comments filed in *Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Public Notice, DA 99-1356 (rel. July 19, 1999).

A. Western Wireless Offers the Services and Functionalities Required of ETCs Under the Rules, and Has Sufficiently Demonstrated the Ability and Commitment to Provide Universal Service

In its Petition for Designation, Western Wireless explains that its existing cellular system in Montana provides each of the services and functionalities specified in Section 54.101. 11/ The opposing commenters do not contend that Western Wireless does not provide the universal services and functionalities. In fact, some of the opposing commenters even recognize, as they must, that Western Wireless already provides the required services. 12/ Rather, the opposing commenters argue that the Petition should be denied because Western Wireless is not already ubiquitously providing a universal service offering on the Crow Reservation. For the reasons explained herein, these arguments should be soundly rejected.

First, the ILECs are wrong in claiming that it is inconsistent for Western Wireless to show that it currently offers each of the supported services, while at the same time explaining that it will make available a universal service offering once designated as an ETC. 13/ Western Wireless' existing cellular service offerings, provided over its cellular network infrastructure, furnishes all of the

11/ Petition at 8-12.

12/ RTC at 20 ("To be sure, WWC details how it is capable of providing all of the services the Commission has determined to be supported by universal service[.]); Project/Range at 28 (recognizing that, despite alleged quality deficiencies, "none of these problems may disqualify [Western Wireless'] service from compliance with Section 54.101(a)").

services and functionalities enumerated by the FCC as necessary for designation as an ETC. Western Wireless' universal service offering will simply package its existing services and functionalities into an offering that is consistent with the FCC's rules and responsive to the needs of the reservation. The differences between its existing cellular service and its planned universal service offering are: (i) the use of a different piece of customer premises equipment ("CPE") – namely a wireless local loop access unit – rather than a mobile handset; (ii) additional investment in network infrastructure to optimize service quality and availability; and (iii) an affordable universal service pricing and rate structure that reflects the availability of universal service support once Western Wireless receives ETC designation.

The argument that Section 214(e) cannot lawfully or logically be read to require carriers to be already providing universal service before being designated as an ETC has already been squarely presented to the FCC and fully briefed in the comments on the South Dakota Petition, 14/ and it need not be relitigated in full here. In short, though, under the correct reading of the statute, the obligation to actually offer and advertise a universal service offering flows from being designated as an ETC – and is not a prerequisite to designation. Hence, an applicant need only

13/ *Contra* Project/Range at 24.

14/ Notably, some of the same parties commenting here – including U S West, the Rural Telephone Coalition, and CTIA – also participated in that proceeding.

demonstrate its ability to meet the obligations imposed by Section 214(e) to be designated as an ETC.

This is so for four key reasons. First, the past-tense wording of Section 214(e)(1) confirms that the ETC obligation to "offer" and "advertise" a universal service offering follows designation and not vice versa. ^{15/} Second, Section 214(e)(3) demonstrates that ubiquitous provision of universal service is an obligation of a designated ETC, not a prerequisite to designation. ^{16/} Third, requiring ETC applicants to first ubiquitously provide universal service in its designated service area creates the tautology of not knowing *where* to offer and advertise the offering, as no "service area" determination will have yet been made. ^{17/} And, finally, no carrier can be reasonably expected to competitively provide a universal service

^{15/} See 47 U.S.C. § 214(e)(1) (directing common carriers "*designated*" as an ETC to offer and advertise the services) (emphasis added).

^{16/} See 47 U.S.C. § 214(e)(3) (authorizing State commissions to designate a carrier as an ETC for purposes of serving an unserved area). Under this provision, state commissions must determine which common carrier is best able to provide the service subsequent to designation, so it is obvious that such a carrier will not be currently providing the supported services, and likely will have no infrastructure in place in the "unserved area."

^{17/} See 47 U.S.C. § 214(e)(5) (defining a "service area" as "a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms").

package to customers without being eligible for universal service funding which is only available to designated ETCs. 18/

The FCC and some state commissions have endorsed this approach. The FCC confirmed the proper timing and interpretation of Section 214(e) when it first adopted rules implementing the universal service provisions of the Act, 19/ and when it utilized the approach in granting ETC status under 214(e)(6) to several carriers that either offered or would be able to offer all the services designated for support. 20/ State commissions have also readily designated carriers on the basis of

18/ Along these lines, the fact that Western Wireless' cellular signal does not provide "gap-free" cellular coverage to the Crow Reservation clearly does not prevent ETC designation there. No carrier – ILEC, CLEC, or CMRS – covers every square inch of its service area with telecommunications service. Rather, each carrier provides service to most places in its service area, and each has the ability to expediently extend service where necessary to reach requesting customers. *Accord*, Project/Range at 24 ("It is probably true that these gaps can, over time, be closed by the construction of additional facilities . . ."). Thus, it is equally true here, as it was in the South Dakota proceeding, that the alleged "gaps" in Western Wireless' coverage, *see id.* at 24-25; U S WEST at 13-14, are of no import when considering the company's ETC designation request.

19/ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 (1997) ("*First Universal Service Order*") at ¶ 137 (explaining that "a carrier must meet the Section 214(e) criteria as a condition of its being designated as an eligible carrier and *then* must provide the designated services to customers pursuant to the terms of Section 214(e) in order to receive support") (emphasis in original).

20/ *Designation of Fort Mojave Telecommunications, Inc., et al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Rcd 4547, ¶ 11 (CCB 1998) (emphasis added) ("*Fort Mojave*").

commitments to provide universal service, 21/ including a number of CMRS providers, 22/ in proper recognition of the legal and practical perils of demanding that carriers already be providing a universal service offering before receiving ETC designation. 23/ The same treatment should be accorded Western Wireless here. 24/

U S WEST has it exactly backwards when it argues that Western Wireless "wants the benefits before the burden, but the statute requires the benefits to follow the burden." 25/ The benefit of an ETC designation is not the designation itself, but the eventual receipt of universal service support upon the capture of high-cost and rural customers. Thus, it is clear that, as advanced by Western Wireless

21/ See *Provision of Universal Service by Telecommunications Carriers*, Case No. 8745, Order No. 73802, 88 Md. PSC 239, 1997 WL 1008436, *3 (1997) (Maryland Commission's designation of MCI).

22/ These states include Washington, Arkansas, Wisconsin, and California. See Reply Comments of Western Wireless, filed on the South Dakota Petition, September 17, 1999, at 9 n.11.

23/ See Comments of the Minnesota Department of Public Service, filed on the South Dakota Petition, September 2, 1999, at 2 ("[A] determination of *eligibility* for ETC funding requires only a finding that an applicant is capable of providing the nine (9) supported services listed under 47 C.F.R. Section 54.101 [resulting in a] *sequential progression – ETC designation, then provision of supported services, then receipt of funding.*") (emphasis added); accord Reply Comments of the Washington Utilities and Transportation Commission, filed on the South Dakota Petition, September 17, 1999, at 4 ("ETC designation prior to the provision of service is consistent with the Act") ("WUTC South Dakota Reply").

24/ WUTC South Dakota Reply at 3-4 ("Competitive entry requires that states be able, if not required, to designate ETCs prior to the provision of service in the geographic area (service area) where the new entrant plans to compete using support to defray the cost of providing service.").

25/ U S WEST at 11 n.23.

and accepted by Minnesota and other state commissions, the benefit of receiving federal universal service support *does* follow the burden of actually providing the supported services. 26/

B. The FCC Has Previously Rejected, and the Statute Does Not Support, the Additional ETC Criteria Some ILECS Propose to Discriminatorily Impose on Western Wireless

The FCC should reject ILEC efforts to have the Commission deny Western Wireless ETC status based on additional ETC considerations not set forth – or even contemplated – by the Act. Proposed criteria such as "affordability," "substitutability," "carrier-of-last-resort," "competitive neutrality," and "unadornment," and the like 27/ are anti-competitive and irrelevant to this proceeding. The FCC should rebuff such unfounded attempts to bootstrap various stray terms from Sections 254(b), (c), and (e) into Section 214(e) as criteria for ETC designation.

Some commenters suggest that the language in Section 214(e)(1) that carriers designated as ETCs receive universal service support "in accordance with Section 254" means that each ETC applicant must satisfy or address each and every aspect of Section 254 before being designated as an ETC. 28/ While the broad

26/ See WUTC South Dakota Reply at 3-4 ("ETC designation prior to provision of service does not mean that a carrier will receive support without providing service or without the obligation to provide service to any applicant within the geographic service area for which it is designated.").

27/ U S WEST at 13-19.

28/ *Id.* at 15-17.

public policy principles enumerated in Section 254 provide fertile ground for concocting arguments against Western Wireless' Petition, this Commission and the Fifth Circuit Court of Appeals has recognized that the Section 254 principles address the establishment of universal support mechanisms and are not criteria for ETC designation. 29/

Unable to dispute that Western Wireless meets the criteria for ETC designation enumerated in Section 214(e), some ILECs suggest that the Petition should be denied because Western Wireless has not demonstrated that its service is "affordable," 30/ even though "affordability" is not a criterion for ETC designation. Such arguments take the term "affordable," out of context, from Section 254(b)(1) of the Act. It is patently clear, however, as the Fifth Circuit recently confirmed, that the language in Section 254(b) does not "set[] up specific conditions or requirements," but rather provides overarching policy principles on which the FCC's and state commissions' general universal service policies are to be based. 31/ The same holds true for those arguments that the FCC should consider whether Western Wireless' universal service offering is "substitutable" for ILEC service, 32/ or that

29/ See *infra*, note 31 and accompanying text.

30/ *Id.* at 17.

31/ *Texas OPUC*, 183 F.3d at 411.

32/ Contrary to U S WEST's suppositions, there is no basis for inquiring whether a wireless petitioner would be adequate as the sole ETC, U S WEST at 13-17, because it is so unlikely that any ILEC will surrender ETC status. Even if an ILEC

carriers seeking ETC status be forced to demonstrate financial qualification for designation. 33/ No such criteria are provided, or even suggested, by the Act or the FCC's rules. 34/

C. Designating Western Wireless as an ETC for the Rural Telephone Company Portions of the Crow Reservation Will Serve the Public Interest

The FCC must deny the rural ILECs and aligned coalitions a federal forum for seeking to protect rural telephone company monopolies wherever a new entrant seeks an ETC designation. Such efforts always suggest that no possible benefit could sufficiently advance the public interest to support designation of an additional ETC, and they are often accompanied by dire predictions about the sustainability of rural ILEC operations. Although such an effort is attempted here,

took that drastic step, states are required to give any remaining ETC sufficient time to gear up to meet any additional burdens. *See* 47 U.S.C. § 214(e)(4). In any event, such concerns are more appropriately raised in a proceeding in which an ILEC seeks to relinquish its ETC designation.

33/ *See* U S WEST at 13-14. In any event, if a carrier cannot meet the financial burden of offering and advertising universal service throughout its service area, it will cease doing so, and thereby lose its designation as an ETC and its ability to receive support or attract customers.

34/ Likewise, the Commission should decline U S WEST's invitation to require Western Wireless to offer an "unbundled" or "unadorned" universal service package. *See* U S WEST at 18-19. U S WEST admits, as it must, that the Fifth Circuit upheld the FCC's past refusal to impose such a requirement. *Id.* The Commission should adhere to its earlier determination in this regard, which is necessary to ensure that universal service support is distributed on a competitively and technologically neutral basis – *i.e.*, to CMRS carriers as well as ILECs.

the FCC should not be misled into denying or impeding Western Wireless' initiative to bring additional and/or new telecommunications services to the Crow Nation.

As an initial matter, the Commission should put to rest the notion, advanced by some of the ILECs and aligned parties, that introducing competition into heretofore monopolistic or oligopolistic rural markets will usually disserve the public interest. ^{35/} In fact, in many, if not most cases – including Western Wireless' proposed universal service offering to the Crow Reservation – numerous benefits will accrue from the introduction of competition into previously closed markets. Facilitating local telephone competition in rural areas has a number of beneficial effects: (1) it promotes new technological solutions for local service; (2) it creates incentives for new firms as well as incumbents to introduce new pricing plans and to serve customers more responsively; and (3) it gives customers choices among telecommunications companies. Designating Western Wireless as an ETC to permit the competitive provision of universal service on the Crow Reservation will serve all these goals.

Specifically, designating Western Wireless as an ETC will result in the introduction of CMRS local loop technology to the Crow Reservation. It will provide an expanded local calling area to low-income residents on the reservation. And it will aid the telephone penetration rate by facilitating new pricing structures and/or service plans that may make acquiring telephone service more attractive or

^{35/} Project/Range at 30-31; RTC at 14-15.

economically feasible to new subscribers. It is true that Project and Range may ultimately have to learn how to deploy new technology, improve customer service, and adapt their pricing plans and service offerings to retain their market share. But all of those measures accrue to the benefit of the public, and they mean only that the Crow Nation will enjoy better service and more choices, both as to the service options provided by each carrier, as well as among the carriers providing them. Surely the provision of all these benefits, with little, if any, downside, 36/ sufficiently serves the public interest to warrant designating Western Wireless as an ETC for the areas served by rural telephone companies on the Crow Reservation.

IV. THE REQUESTED WAIVERS ARE JUSTIFIED

The waivers requested by Western Wireless in the Petition for Designation were sought to allow the company to compete on equal footing with the incumbents for Crow Reservation customers eligible for universal service support, and are fully justified by the circumstances surrounding the Petition. The waivers are justified by the special circumstances of Western Wireless' attempt to be the first competitive ETC for the requested service area, as well as the need to raise the critically low telephone penetration rate on this reservation. In addition, the waivers are absolutely necessary in view of the historical and extant regulatory

36/ Both Project and Range have verified that the introduction of competition in their service areas on the Crow Reservation will not result in the loss of service there by those companies. Project/Range at 31 (indicating that "Project and Range do not suggest that they would withdraw" if Western Wireless enters the market).

treatment of ILECs that would otherwise put Western Wireless at a significant competitive disadvantage as an ETC on the Crow Reservation. 37/

Western Wireless' waiver requests are necessary and warranted just to put the company on equal footing with the ILECs. 38/ Western Wireless is a new entrant ETC applicant, so it does not enjoy the implicit subsidies built into ILEC rates by state commissions. 39/ Thus, federal provision of all universal service support, using a \$10 cost benchmark, is more than amply justified to assure that

37/ U S WEST is completely off base in suggesting that Western Wireless supports its waiver requests solely by citing special circumstances applicable to the service area. U S WEST at 5. To be sure, the need for additional service on the Crow Reservation, in hopes of improving the penetration rate there, stands as a compelling reason to take the steps necessary to facilitate such additional service. But the real need for the waivers stems from the fact that Western Wireless is a new entrant ETC rather than an incumbent ETC. For the same reason, and as will be demonstrated below, the argument that "Western Wireless cannot show that the impact of [the universal service rules] has a disparate or unintended consequence on it, relative to any other provider of universal service" BellSouth at 2, is completely without merit.

38/ If the FCC, in its universal service orders adopted on October 21, 1999, but not released as of the date of these reply comments, has addressed issues relating to the rules for which the Petition sought waivers, Western Wireless intends to withdraw or amend its waiver requests to reflect any such changes. *See FCC Reforms High-Cost Support to Ensure the Preservation and Advancement of Universal Service*, News Release, CC Docket Nos. 96-45 and 97-160, Report No. CC 99-49 (rel. October 21, 1999).

39/ Moreover, there is no state universal service fund in Montana, so total federal funding is necessary.

the support Western Wireless receives is in line with the implicit and explicit support enjoyed by the ILECs. 40/

Finally, claims that the requested waivers are not competitively neutral are unfounded. 41/ Competitive neutrality would be breached only if the FCC denies equal treatment to *similarly situated* parties. Since none of the opponents here, or constituents of the coalitions aligned with them, are similarly situated with Western Wireless as to universal service on the Crow Reservation, opposition to the waivers based on claims of non-competitive neutrality must be rejected.

40/ In addition, it is most certainly not the case that Western Wireless is seeking waivers of the rules to provide universal service because the company is "less efficient" than the ILECs. *Contra*, U S WEST at 7. As shown above, the rule waivers are necessary not to cure for any inefficiency on Western Wireless' part, but to counter the historical regulatory largesse that the ILECs have enjoyed and continue to enjoy.

41/ U S WEST at 6-8; Project/Range at 33; BellSouth at 2.

V. CONCLUSION

For the foregoing reasons, the Commission should designate Western Wireless as an ETC for an area that includes Crow Reservation and grant Western Wireless the requested waivers of its rules to enable the Company to provide universal service throughout the reservation.

Respectfully submitted,

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CORPORATION**

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October 27, 1999

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