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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**In the matter of**

**WT Docket No. 99-266**

**Extending Wireless  
Telecommunications Services  
to Tribal Lands**

**COMMENTS OF PICURIS PUEBLO**

Picuris Pueblo respectfully wishes to make the following comment on the above entitled Notice of Proposed Rulemaking, and make provision for possible future comment. Picuris Pueblo is located on a seventeen thousand acre reservation in New Mexico, and has approximately 260 citizens living on the reservation primarily in one village. Picuris Pueblo experiences penetration rate problems similar to those described in the Notice of Proposed Rulemaking.

Because Picuris Pueblo is not an expert with respect to technical telecommunications matters, we will not make comment at this time upon the more technical of the possible regulatory initiatives presented in the proposed rulemaking. We defer to the wireless service providers, such as Western Wireless Corporation. This comment will touch on the aspects of tribal sovereignty and the federal trust relationship raised in various provisions of the proposed rulemaking.

An important point of clarification concerns the use of the term "Indian lands". Indian lands are referred to as Indian Country, the definition of which is provided at 18 U.S.C. § 1151. Indian Country includes reservations, formal or informal<sup>1</sup>, Indian allotments and dependent Indian communities. The definition of Indian Country was crafted for federal

<sup>1</sup> See *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993).

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criminal law purposes, however, it applies equally to federal civil jurisdiction.<sup>2</sup> We suggest the Commission adopt this definition in its further rulemaking. Use of the term "Indian Country" will assure uniformity by clearly including tribal citizens residing on federal trust and former reservation lands throughout the United States.

With respect to possible regulatory initiatives designed to encourage wireless carriers to provide basic service on tribal lands, the granting of "additional flexibility" in the licensing procedure must be predicated upon the existence of, and compliance with, a binding agreement between the licensee and the relevant tribal authority. The importance of tribal sovereignty in this procedure is paramount. Inherent in sovereign tribal authority is the right to control certain activities on tribal lands. This includes the right to regulate and tax nonmember corporations doing business on tribal lands. It is a fundamental premise in the law that a tribe may regulate, through licensing, taxation, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members through commercial dealing, contracts, leases, or other arrangements. A wireless carrier wishing to provide service on tribal lands must have tribal consent as a practical matter; therefore, whether it imposes additional burdens upon licensees is a moot question. Similarly moot is the question of whether tribal government consent should be required for the Commission to approve transfers and assignments that affect the service provided.

With respect to the implementation of such a requirement, Picuris Pueblo is encouraged by the awareness of the Commission of the importance of the special trust relationship between tribes and the federal government. In considering the licensing aspects for a service provider to engage in the provision of wireless communications on tribal lands, the federal government must consult with the tribe on a government-to-government basis.<sup>3</sup> This process is the foundation of the trust responsibility of the United States with respect to Indian tribes.

Finally, Picuris Pueblo is encouraged also by the breadth of the possible marketplace incentives presented in the Notice of Proposed Rulemaking. The consideration to provide licensees with special licensing areas and bidding credits, and the potential availability to tribes of drop-in licenses are possibilities that may represent effective methods to address our low penetration rate. Picuris Pueblo recognizes the need for this kind of flexibility and incentives to deal with the unique situations which exist at Picuris and throughout Indian Country.

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<sup>2</sup> *California v. Cabazon Band of Mission Indians*, 480 U.S. 202(1987); *Decoteau v. District County Court*, 420 U.S. 425 (1975); *Pittsburg & Midway Coal Mining Co. v. Watchman*, 52 F. 3d 1531, 1540-41 (10th Cir. 1995) ("We hold § 1151 represents an express Congressional delegation of civil authority over Indian country to the tribes."); *Indian Country U.S. A. Inc. v. State of Oklahoma*, 829 F.2d 967 (10th Cir. 1987)(the Indian Country classification is "the benchmark for approaching the allocation of federal, tribal and state authority with respect to Indians and Indian lands.")

<sup>3</sup> See Executive Order No. 13,084, 63 Fed. Reg. 27,655 (May 14, 1998).

Picuris Pueblo wishes to thank Chairman Kennard, Commissioner Tristani, and their colleagues on the Commission for their continued efforts and commitment to solve this problem in Indian Country, and looks forward to further participation in the rulemaking process on this matter.