

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

RECEIVED  
DEC 9 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Extending Wireless )  
Telecommunications Services ) WT Docket No. 99-266  
To Tribal Lands )

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS  
INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")<sup>1</sup> respectfully submits these reply comments in connection with the *Notice of Proposed Rulemaking* ("NPRM") issued by the Commission in the above-captioned proceeding.<sup>2</sup> PCIA and its members support the FCC's effort to expedite the provision of basic and advanced telecommunications services to unserved areas and tribal lands.

<sup>1</sup> PCIA is an international trade association established to represent the interests of the commercial and private mobile radio service communications industries and the fixed broadband wireless industry. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Alliance, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance, and the Wireless Broadband Alliance. As an FCC appointed frequency coordinator for the Industrial/Business Pool frequencies below 512 MHz, the 800 MHz and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of FCC licensees.

<sup>2</sup> *Extending Wireless Telecommunications Services to Tribal Lands*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 99-205, (rel. August 18, 1999) ("NPRM").

No. of Copies rec'd \_\_\_\_\_  
List ABCDE 029

**I. THE SINGLE, MOST EFFECTIVE MEASURE FOR INCREASING WIRELESS TELEPHONY PENETRATION IN UNSERVED AND UNDERSERVED TRIBAL LANDS IS TO MAKE ETC STATUS AVAILABLE TO WIRELESS CARRIERS.**

While not addressed by the Commission, a number of commenters have indicated that the single most effective measure for increasing penetration rates of telephony services to unserved and underserved areas is ensuring wireless providers have access to Universal Service support.<sup>3</sup>

PCIA believes that even if all of the measures proposed in this NPRM are adopted, they would fall far short of providing adequate incentives for wireless carriers to provide service to inherently high-costs areas. Wireless providers are unlikely to be able to justify the costs and effort of bringing service to many unserved regions on tribal lands until they can receive Universal Service support. To serve these areas, wireless carriers would need to become “eligible telecommunications carriers” (ETCs) pursuant to section 214(e) of the Telecommunications Act.

PCIA believes that the Commission is correct to initiate a proceeding to establish its authority to administer Universal Service on tribal lands.<sup>4</sup> FCC should also continue its efforts to ensure that wireless carriers can qualify for ETC status without unwarranted and burdensome standards beyond those established by Congress in Section 214(e) of the Telecommunications Act.<sup>5</sup>

---

<sup>3</sup> Western Wireless at 2; Airtouch and Globalstar USA, Inc. at 2; United States Cellular Corporation (USCC) at 8; Personal Communications Industry Association (PCIA) at 2; Cellular Telecommunications Industry Association (CTIA) at 2-4; Motorola, Iridium North America, and Iridium LLC at 7; Dobson Communications Corporation at 13.

<sup>4</sup> *Further Notice of Proposed Rulemaking on Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*. CC Docket Number: 96-45 released on September 3, 1999.

<sup>5</sup> The Commission recently ruled that all carriers, including commercial mobile radio service (CMRS) carriers, that provide the supported services, regardless of the technology used, are eligible for ETC status under Section 214(e)(1). “We reiterate that the plain language of section 214(e)(1) prohibits the Commission or the states from adopting additional eligibility criteria beyond those enumerated in section 214(e)(1). We also reaffirm that under section 214(e), a state commission must designate a common carrier, including carriers that use wireless

Many commenters have pointed out that subscribership rates among Native American populations are low because of economic reasons.<sup>6</sup> Further, companies who currently provide services to Tribal areas note that a low subscribership rate does not mean that persons or households who do not subscribe to telephony service do not have such services available. A number of commenters state that even with the availability of heavily subsidized service, many households still choose not to have service.<sup>7</sup>

The record reflects a wide consensus that low subscribership rates result from the fact that even subsidized telecommunication services in tribal areas are often unaffordable for sizable portions of tribal land residents. PCIA notes that it is also evident that no new or enhanced services could be made available in historically high-costs areas by any competitive provider unless competitive providers could have access to Universal Service support. The record is replete with assertions by carriers who stand ready to compete in high-costs areas such as tribal lands if they are afforded comparable access to Universal Service funding.

---

technologies, as an eligible carrier if it determines that the carrier has met the requirements of section 214(e)(1)." *In re Federal-State Joint Board on Universal Service, Access Charge Reform*, CC Docket Nos. 96-45, 96-262, Seventh Report & Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report & Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking, para. 72 (May 28, 1999). The Fifth Circuit Court of Appeals recently confirmed that state commissions may not impose onerous eligibility requirements beyond those established by Section 214. See Texas Office of Public Utility Counsel v. Federal Communications Commission, \_\_\_ F.3d. \_\_\_ (5th cir.)(No. 97-60421) at note 31.

<sup>6</sup> Cellular Telecommunications Industry Association (CTIA) at 2-4, Personal Communications Industry Association (PCIA) at 2, San Carlos Apache Telecommunications Utility (SCATU) at 2, Montana Telecommunications Association (MTA) at 2, Western Wireless at 3, Airtouch and Globalstar USA, Inc. at 2.

<sup>7</sup> National Telephone Cooperative Association (NCTA) at 2. Sioux Tribe Telephone authority at 1, San Carlos Apache Telecommunication (SCATU) at 2, Montana Telecommunications Association (MTA) at 2, United States Cellular Corporation (USCC) at i.

**II. WIRELESS TECHNOLOGIES OFFER A COST-EFFECTIVE MEANS FOR PROVIDING TELECOMMUNICATIONS SERVICES TO REMOTE AREAS.**

Wireless services offer a means of substantially improving telephone penetration rates on Tribal Lands and other underserved areas because, in many instances, wireless services can be delivered at substantially lower costs than traditional wireline service. As an example, Western Wireless, Cook Inlet Region, Inc. and Dobson Communications are working to provide universal services to high costs and rural areas, including Tribal Lands.<sup>8</sup> Other cellular and PCS providers have indicated their willingness to extend service into high-costs areas if Universal Service support could allay some of the disparity between their costs of providing service and the modest proceeds they would expect to receive from additional subscribers.<sup>9</sup> Other commenters have emphasized the promise of other technologies, such as MMDS, LMDS, and Wireless Local Loop to provide advanced services, including high speed Internet access, at a costs basis lower than traditional landline systems.<sup>10</sup>

**III. THE COMMISSION SHOULD NOT SLOW COMPETITIVE ALTERNATIVES BY REQUIRING A SERVICE PROVIDER TO DEMONSTRATE PROOF OF A BINDING AGREEMENT WITH THE APPROPRIATE TRIBAL BODY.**

Developing and operating telecommunications services within areas under the control of tribal authorities may raise some jurisdictional issues concerning a possible encroachment on tribal sovereignty. At the same time, there is no compelling reason for the commission to

---

<sup>8</sup> Western Wireless at 1, Cook Inlet Region at 1, Dobson Communications at 2.

<sup>9</sup> United Cellular Corporation at 2, PCIA at 2, CTIA at 4.

<sup>10</sup> “Higher Education Parties: Educause, American Indian Higher Education Consortium” at 3, Titan Wireless at 3 and 5, Nortel Networks at 2.

condition granting certain types of regulatory relief on a binding agreement between a wireless provider seeking to provide service to a tribal area and the tribal authority. A wireless carrier must already secure the approval of local tribal authorities before initiating any attempt to institute service or construct facilities in tribal-controlled areas. Any requirement that the FCC pass muster on a formal agreement serves no discernable purpose but to unduly protract the time, effort, and costs of bringing competitive services to tribal lands residents. PCIA agrees with CTIA that “the very act of siting antennas and providing service is *prima facie* proof that the carrier and the requisite authorities have entered into a binding agreement with all the requisite approvals in place.”<sup>11</sup>

PCIA also agrees with Western Wireless’ suggestions that the FCC forbear from applying its environmental assessment (EA) requirements for new wireless facilities when the tribal authorities have formally approved a proposed facility.<sup>12</sup> Such a policy would recognize the stringent requirements established by tribal governing authorities and the protracted process necessary for securing tribal approval for constructing new facilities and providing service within the boundaries of tribal lands.

---

<sup>11</sup> CTIA at 8.

<sup>12</sup> Western Wireless at 7.

**V. CONCLUSION**

The record indicates that wireless operators are willing to serve unserved areas but that more can be done to unleash competition in these markets. The FCC can expedite true competition through supporting the rights of qualifying wireless carriers to receive Universal Service funding on a fair and non-discriminatory basis.

Respectfully submitted,

A handwritten signature in black ink that reads "Sheldon Moss". The signature is written in a cursive, flowing style.

---

Mary McDermott  
Brent Weingardt  
Sheldon Moss  
**Personal Communications Industry Association**  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314  
(703) 739-0300