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

In the Matter of)
)
Federal-State Joint Board on)
Universal Service:)
)
Promoting Deployment and Subscribership)
in Unserved and Underserved Areas,)
Including Tribal and Insular Lands)

CC Docket No. 96-45

REPLY COMMENTS OF WESTERN WIRELESS CORPORATION

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EXECUTIVE SUMMARY

The Commission's rules and policies must facilitate the provision of universal service by new entrants, especially wireless carriers, in order to improve service in high-cost and rural areas, including Indian reservations. Wireless service can play a key role in improving telephone penetration rates for tribal reservation lands and other high-cost, rural areas. In particular, wireless providers often offer much broader local calling areas than ILECs, whose limited local calling areas raise the price (and lower the value) of telephone service and put it out of reach of many Native Americans.

The Commission must therefore act to expedite designation of wireless carriers and other new entrants as eligible telecommunications carriers ("ETCs") to participate in federal universal service initiatives. In order to achieve this goal, however, the Commission must resolve a number of outstanding ETC issues, including the following:

- ETC applicants for federal universal service must satisfy *only* the criteria required by the Act and the Commission's rules, and no other criteria may be applied either by the FCC or by state commissions. There can be no requirement that ETC applicants must be already providing ubiquitous universal service before receiving designation.
- Consumer interests in competition, not unsupported fears about impacts on rural ILECs' "bottom lines," must be paramount in the public interest analysis for designating additional ETCs in rural telephone company service areas.
- The FCC's rules should be "scrubbed" to remove any bias against wireless carriers, such as in the definitions of the "local usage" and "toll control/toll limitation requirements" for ETC applicants.

Only by expeditiously adopting these conclusions will the Commission ensure that consumers in high-cost and rural areas, including tribal lands, receive the unique benefits of wireless universal service.

Finally, the Commission should implement Section 214(e)(6) consistent with the clear language of that provision. Section 214(e)(6) gives the Commission jurisdiction over ETC designations that could not otherwise be obtained due to lack of state commission jurisdiction, including not only those for telephony on Indian reservations, but those for carriers over which state legislatures and/or commissions have disavowed jurisdiction as well. This is consistent with both the clear intent underlying Section 214(e)(6) – leaving no carrier without an agency to turn to for ETC designation – and with the provision's legislative history.

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REPLY COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("Western Wireless"), by counsel, hereby submits its Reply Comments on the Further Notice of Proposed Rulemaking in the captioned proceeding. 1/

The comments in this proceeding confirm that wireless telecommunications carriers such as Western Wireless can play a significant role in helping to remedy the problem of low telephone penetration on tribal reservation lands, and in bringing telecommunications service to unserved and underserved areas. In these Reply Comments, Western Wireless sets forth several substantive steps necessary

1/ *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204 (rel. September 3, 1999) ("FNPRM").

to remove significant regulatory barriers that new entrants face in seeking to offer universal service to high-cost and rural areas, including tribal reservation lands. Western Wireless also shows that the Commission has ample jurisdiction under Section 214(e)(6) to remedy low tribal telephone penetration rates, as well as to designate carriers as ETCs in other circumstances where state commissions lack the authority to do so.

I. WIRELESS SERVICES CAN PLAY A KEY ROLE IN IMPROVING TELEPHONE PENETRATION RATES FOR TRIBAL LANDS AND OTHER HIGH-COST, RURAL AREAS

The comments filed in this proceeding support Western Wireless' showing in its initial Comments that consumers stand to benefit greatly from wireless carriers entering the universal service market. The comments on the FNPRM confirm that "use of wireless service will be crucial to a national effort to improve telephone service to tribal lands and other unserved and underserved areas." 2/ The comments also attest that wireless carriers can often provide basic telecommunications to high-cost and rural areas more cost-effectively than wireline service. 3/ Wireless service can not only serve as a valuable solution to the problem

2/ United States Cellular Corporation at 3; *see also* Dobson Communications at 2 ("if treated on a technology- and competitively-neutral basis vis-à-vis wireline carriers in the ETC designation process, CMRS carriers can play a significant role in addressing the telecommunications needs of Native Americans living on tribal lands, as well as residents of other high cost/unserved and underserved areas").

3/ *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Notice of Proposed Rulemaking, FCC 99-205, ¶ 8 & n.16 (rel. August 18,

of low telephone penetration rates on tribal reservation lands, but it can also satisfy consumers' basic telecommunications needs 4/ and should be an integral part of the FCC's overall universal service efforts. Thus, by ensuring that wireless carriers can participate fully in universal service programs, the Commission will improve basic telephone service for tribal lands, and for high cost and rural areas generally.

Many Native American tribes have expressed their "strong support [for] and interest in wireless telephony as an additional and or cost-effective alternative to the Tribe's current wire service in our geographical area." 5/ Notably, the comments show that wireless universal service can be a crucial factor in removing one of the key impediments to tribal telephone subscription – limited local calling areas. 6/ Because universal service offerings by commercial mobile radio service

1999); *accord*, CTIA at 2-3; NRTA/OPASTCO at 12 ("[t]he Commission is well aware of the benefits of wireless technology for remote, rural areas").

4/ See, e.g., United States Cellular at 6 ("That approximately 83 million Americans have chosen wireless service is a testimony to the fact that current wireless service has met their telecommunications needs.").

5/ E.g., Rosebud Sioux Tribe Utility Commission at 1.

6/ Crow Tribal Council at 2 ("a consumer in Crow Agency may be able to afford the basic service charge of the local server Project Telephone (which is a higher rate if compared elsewhere off the Crow Reservation). However, the local calling area does not extend even to the community of Hardin which is incredibly only fifteen miles away. As a consequence, many residents do not have service due to the burden of long distance cause by the restrictive local calling area. * * * * [I]t is useless to subscribe to the basic service when the consumer cannot place calls to Hardin or Billings without incurring long distance charges."); Fort Belknap Community Council at 1 ("it [is] a long distance call to call from our northern end of the reservation to our southern reservation communities"); *accord*, Alaska Rural Coalition at 5, 9 ("The weakness in Alaska's telecommunications is . . . its extremely

("CMRS") providers often feature expanded local calling areas, designating CMRS carriers as ETCs would greatly help improve low tribal telephone penetration rates resulting from limited local calling areas, as confirmed by the Crow and Fort Belknap tribes' comments. 7/ In sum, it is clear that facilitating the offering of wireless universal service by CMRS providers will do much to improve tribal telephone penetration rates. The Commission should thus ensure that it takes all steps necessary to facilitate designation of new entrant ETCs – including wireless carriers – to provide universal service in rural and high-cost areas including, but not limited to, tribal lands. 8/

limited local calling area, and . . . its concomitant reliance on expensive intrastate calling."); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8840, ¶ 114 (1997) ("*Universal Service First Report and Order*") (noting that when local calling areas are small, toll charges can significantly increase subscriber expenditures on telephone service).

7/ *See id.*; *see also, e.g.*, Crow Tribal Council at 2 ("If residents were able to choose another carrier who provided a larger free local calling area, they undoubtably would do so."); Fort Belknap Community Council at 2 ("Fort Belknap College has a public radio station which has a 300 foot tower. This tower could would allow telephone service to be upgraded for the whole reservation as well as the general rural Montana area.").

8/ Western Wireless strenuously objects to the suggestion that the Commission should consolidate into the instant proceeding all pending individual ETC petitions under Section 214(e)(6) involving service to tribal areas and other areas by wireless carriers. NRTA/OPASTCO at 2 n.2. This would be particularly inappropriate for Western Wireless' pending Wyoming ETC petition, which has nothing to do with either tribal lands or general Commission 214(e)(6) jurisdiction over wireless carriers, but rather is based upon an express finding by the Wyoming Public Service Commission that it lacks jurisdiction to designate Western Wireless as an ETC.

II. THE COMMISSION MUST ACT TO FACILITATE COMPETITIVE PROVISION OF UNIVERSAL SERVICE

The comments on the FNPRM confirm the urgent need for the Commission to resolve a number of outstanding issues to remove barriers to universal service competition and to improve telephone service in high-cost and rural areas, including Indian reservations. Commenters on all sides of the issues in this proceeding agree on the need for clarity through expeditious FCC action. 9/

Western Wireless shares the views expressed by Smith Bagley, Inc:

[W]ireless telecommunications carriers are thwarted in their attempts to obtain federal USF dollars by many state public utilities commissions which refuse to expedite processing of wireless carriers' applications to obtain [ETC] designation. The state commissions receive pressure from some [ILECs] which insist that wireless carriers are unable to demonstrate that they are eligible for ETC designation because they cannot currently offer the necessary advanced services. The ILECs' interpretation of the Section 214(e) requirements only serves to thwart competition in high cost and low income areas. 10/

To be sure, the rules and policies currently in place clearly require state commissions to designate wireless providers and other new entrants as ETCs. 11/ Much work remains to be done, however, to ensure that the goal of

9/ For example, NRTA/OPASTCO note the need to "decide the many unresolved issues concerning the obligations and privileges of incumbent and new ETCs," and that "regulatory uncertainty impairs business decisions about investing or seeking ETC designation." NRTA/OPASTCO at 3.

10/ Smith Bagley at 4-5 (footnote omitted); *accord*, United States Cellular at 6; Summit Telephone at 3 (suggesting that the Commission "[a]llow the providers to select whichever method is necessary to provide [universal] service without lengthy administration and costly licenses."); TDS Telecom at 10.

11/ *Contra*, TDS Telecom at 11.

competitive entry into the universal service marketplace becomes a reality. For example, the Commission must act to ensure that wireless providers and other new entrants can be designated as ETCs as quickly as the ILECs, without costly and protracted administrative proceedings and other hurdles not faced by the ILECs. Such action is critical for federal universal service initiatives to fulfill their potential to improve service in high-cost and rural areas, including Indian reservations.

A. The Commission Should Clarify its Rules to Expedite the Designation of Wireless and Other New Entrants as ETCs

The Commission should expeditiously adopt the clarifications set forth in Western Wireless' Comments, and should complete work on the outstanding issues in this docket regarding the designation of ETCs. Decisive FCC action is needed to remove obstructive procedural and substantive rules imposed on new entrant ETC applicants by state commissions. Other commenters – both wireless and wireline – agree. For example, Bell Atlantic Mobile reports:

One of the most serious obstacles is the drag that state and federal regulation is placing on the ability of [CMRS] providers to participate in the universal service program. * * * * [S]ome states' efforts to impose landline regulation on wireless carriers, and state and federal rules written only for landline services, are discouraging wireless carriers from [seeking ETC designations]. 12/

Likewise, the Alaska Rural Coalition recognized that "there must be a uniform procedure for [ETC] designations. Otherwise . . . the opportunity for a jurisdictional morass with its attendant delay and confusion, will only undermine . . . universal

12/ BAM at 1, 16 ("It is equally important that the Commission prohibit state efforts to complicate the ETC process . . ."); *accord*, CenturyTel at 12.

service goals." 13/ FCC action is especially crucial to lift wireless carriers out of this morass, and to cut off the efforts by ILECs and some state commissions to prevent CMRS providers from participating in the federal universal service program. 14/

First and foremost, the Commission should clarify that ETC applicants for federal universal service must satisfy *only* those criteria required by Section 214(e)(1), as interpreted by the Commission, and that no other criteria may be applied. 15/ The Commission should also clarify that any carrier demonstrating the ability and commitment to provide universal service should be designated as an ETC, and that there is no requirement that ETC applicants must be already providing ubiquitous universal service before receiving designation. 16/ These conclusions must apply to federal universal service ETC designation applications both before the FCC under Section 214(e)(6) and – critically – before state commissions under Section 214(e)(2).

13/ Alaska Rural Coalition at 18.

14/ In addition to the substantive Commission guidance discussed below, Western Wireless also noted the crucial need for clarification that state commissions must process competitive entrant ETC applications as expeditiously as those of ILECs. Western Wireless at 8. BAM concurs on this point. See BAM at 2, 17.

15/ 47 C.F.R. § 54.101(a); *contra* CenturyTel at 8-9 (arguing that states are free to adopt additional criteria and that the FCC should not exercise its 214(e)(6) authority in order to ensure that all prospective ETCs are subject to same criteria).

16/ Western Wireless at 8; *contra*, Summit Telephone at 3.

The Commission has ample statutory authority to reach this result. 17/ The Supreme Court held that “§ 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies,” 18/ including provisions directing that state commissions play a role in implementing federal policies. Consistently, the Fifth Circuit held that “[n]othing in the statute . . . speaks at all to whether the Commission may prevent state commissions from imposing additional criteria on eligible carriers,” 19/ and specifically left unaffected the scope of Commission authority to adopt rules implementing Section 214(e). 20/ Indeed, FCC rules barring the states from imposing additional ETC criteria would be particularly appropriate given that the Commission’s universal service support mechanisms comprise a *federal* program in which participation should be governed by a single *federal* standard that is well-specified and predictable. 21/

17/ *Contra* TDS Telecom at 14.

18/ *AT&T Corp. v. Iowa Utilities Board*, 119 S.Ct. 721, 730 (1999) (emphasis in original).

19/ *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (footnote omitted).

20/ *Id.* at 417-18.

21/ *Cf.*, 47 U.S.C. § 254(b)(5) (“There should be specific, predictable and sufficient Federal . . . mechanisms to preserve and advance universal service.”).

B. The Commission Should Clarify that Consumers' Interests are Paramount in Analyzing the Public Interest in Designating Additional ETCs in Rural Telephone Company Service Areas

The Commission also must make it clear that the “public interest” analysis, required by Section 214(e)(2) for designating additional ETCs in rural telephone company service areas, should focus on *consumers* and their interest in access to a competitive choice for their telephone needs. Consumers in rural telephone company areas, no less than those in lower-cost areas, are entitled to the benefits of competition, including better service at lower prices due to market pressures, the introduction of new telecommunications services, and the rapid development of new technologies by both new entrants and incumbents. These effects are not a myth. For example, the Crow Tribe reports that even the prospect of a new entrant seeking ETC status has led to service improvements by the ILEC. 22/

This real-world experience does not support the rural ILEC assertions that the sky would fall in the event of competitive entry. The Commission should pay no heed to assertions that “[m]ultiple supported carriers . . . are not the solution for areas where residents may not be able to afford . . . subscribing to the public

22/ Crow Tribal Council at 2 (“[S]ince [Western Wireless] is seeking to provide local calling service for the Crow Reservation, the [incumbent] local exchange [carrier] has proposed an expansion of its free local calling area.”); *cf.*, Letter from Thomas E. Wheeler, to Honorable William E. Kennard, Chairman, FCC (Dec. 10, 1999) (available at <http://www.wow-com.com/lawpol/regent.pdf>) (noting that the ILEC in Regent, North Dakota, had modified its service plan to offer an expanded local calling area in response to competition from Western Wireless' wireless local loop offering in that community).

switched network," 23/ or that "[c]ontrary to the general model, competition for USF funding in rural tribal lands . . . will, in some circumstances, have a profound adverse effect on universal service." 24/ In reality, these arguments are designed to preserve ILEC monopoly status and subsidy flows, to the exclusion of competition and new entrants. 25/

The Crow example also demonstrates that, particularly with regard to tribal reservation lands, the ILECs should not be sheltered from the advent of competition in rural areas. The ILECs assume that the fault for low tribal telephone penetration rates lies not with their networks, service plans or price schedules, but rather solely with the inability of Native Americans to afford service. 26/ Rather than blaming Native Americans for the dismal state of telephone service on reservations, the ILECs should look within – if they did, they would find that their

23/ NRTA/OPASTCO at 2.

24/ Gila River Telecommunications, Inc. at 3; *accord* NRTA/OPASTCO at 4 ("duplicative support in a rural market is not presumptively beneficial to consumers").

25/ *See, e.g.*, Gila River Telecommunications, Inc. at 5 ("The economic reality is that subjecting a tribal carrier such as GRTI to competition from large non-tribal wireline and wireless carriers will result in the tribal carrier falling short of recovering its costs of providing service."). That the ILEC arguments are intended to shelter them from competition is quite apparent, for example, from their opposition to new entrant wireless ETCs, such as Western Wireless, while they argue at the same that the *ILECs* should be allowed "to use technologies and spectrum that can improve service to tribal and other high cost areas." NRTA/OPASTCO at 3-4.

26/ *E.g.*, NTCA at 5-6; NRTA/OPASTCO at 2, 4-5; Golden West Telecommunications Cooperative, et al., at 2.

failure to address the needs of Native Americans is the primary reason for low telephone penetration on reservations. The Crow experience shows that entry by competitors offering better prices and/or service plans will improve penetration rates by drawing unserved customers to the new entrants, and by forcing ILECs to optimize service offerings so more customers will be able (or will choose) to afford them. 27/

The Commission should reject calls to shelter rural ILECs from universal service competition, which would preclude entry in their service areas and eliminate competitive pressures for those carriers to improve service quality and rates. Moreover, the Commission should pay no heed to ILEC scare-tactic arguments that new entrant ETCs will be insufficient as the carrier-of-last-resort should an ILEC relinquish its ETC designation after a new entrant is designated. 28/ The argument is a red herring – it is so unlikely that an ILEC will simply relinquish its right to receive subsidies from serving high cost and rural customers that carrier-of-last-resort is a non-issue. Indeed, the Commission has already considered and

27/ The ILECs' comments reveal their anxiety about the inevitable development of competition in their areas. *See, e.g.*, NRTA/OPASTCO at 11 ("An incumbent ETC cannot determine whether further investment is feasible if it cannot estimate the customer revenues and support that it may lose before it recovers its investment."); TDS Telecom at 10 (FCC's pro-competitive policies "increase[] the uncertainty about whether a rural ILEC will be able to recover further investments for serving and upgrading networks in high cost areas.").

28/ NRTA/OPASTCO, TDS Telecom at 11.

rejected the need for rules to impose carrier-of-last-resort obligations on ETCs because it sensed the lack of any real-world need for such a step. 29/

In view of the foregoing, it is imperative that the Commission not allow the fact that competition may affect rural telephone company "bottom lines" to become the determinative factor in the Section 214(e)(2) public interest analysis for designating additional ETCs in rural telephone company service areas. Rather, the Commission should find that the public interest is served by designating additional ETCs in rural telephone company service areas unless one or more rural telephone companies come forward with significant, *specific* evidence of harm to *consumers* in their service areas. 30/ This approach will ensure that the benefits of

29/ *Universal Service First Report and Order*, 12 FCC Rcd at 8855-56, ¶ 142. The fact of the matter is that competitive ETCs are obligated to serve all requesting customers within a designated service area. Thus, if an ILEC chooses to relinquish its ETC designation (and the corresponding universal service support), the competitive ETC would be the sole universal service provider, and the FCC or the state commission could adopt measures under Section 214(e)(4), 47 U.S.C. § 214(e)(4), to ensure continuing service to all customers. Furthermore, an ILEC's relinquishment of ETC status would not affect its carrier-of-last resort obligations arising under state law. In sum, the ILECs would be better served by meeting the telephone needs of rural consumers, including Native Americans, rather than threatening to discontinue service.

30/ This is the approach taken by some states. *See, e.g., MN ETC Order* at 16 (granting Western Wireless ETC status in rural service areas, based in part on a holding that once an ETC applicant makes an initial showing that competition will not harm consumers in rural telephone company service areas, it is "incumbent upon the rural telephone companies to produce facts demonstrating that consumers *in individual areas served by individual companies* would be harmed by granting ETC status") (emphasis added).

competition will be denied for only those rural areas, including tribal reservation lands, where such a denial is absolutely necessary to advance universal service.

C. The Commission Should Adopt Other Proactive Measures to Expand Opportunities for Wireless Carriers to Obtain ETC Designation and to Serve Tribal Areas

The Commission should "'scrub' its rules to remove any landline bias," 31/ and should adopt the following clarifications regarding wireless carriers seeking ETC designation:

- Offering prepaid wireless service complies with the toll control/toll limitation requirement. 32/
- The customer premises equipment ("CPE") that a carrier's universal service customers may use is irrelevant to the ETC designation analysis. It follows that all CMRS offerings by wireless carriers – whether using mobile, hybrid fixed/mobile, or fixed CPE – must be treated uniformly in the context of ETC designations. 33/
- Designation of a CMRS provider as an ETC is *not* tantamount to a Section 332(c)(3)(A) finding of landline substitutability, which requires specific FCC findings based on a state petition. 34/
- Designating a wireless carrier as an ETC does not automatically empower a state commission to impose entry regulations such as tariffing or certificate-of-public-convenience-and-necessity requirements. 35/

31/ BAM at 20; *accord*, CenturyTel at 12 (noting wireline bias in current universal service rules and policies).

32/ BAM at 23.

33/ United States Cellular at 5-6 (arguing that cellular and PCS carriers should not have to employ wireless local loop or other fixed wireless applications in order to be designated as ETCs); BAM at 24; *contra* TDS Telecom at 19.

34/ BAM at 8 (showing that the "deregulatory" CMRS "paradigm cannot be allowed to be eroded simply because wireless carriers seek to participate in universal service programs"); *contra* CenturyTel at 6; TDS Telecom at 4.

- Consumer demand and preferences, *not* an anti-competitive local usage requirement, should determine whether customers in high-cost and rural areas will purchase unlimited flat-rate universal service (like the services typically provided by ILECs) or universal service with other advantages (*e.g.*, higher bandwidth and/or mobility) but with usage-based rates. 36/

In addition, the Commission should pay no heed to comments suggesting that concerns over the data rate that non-wireline carriers can provide their customers should render them ineligible to participate in federal universal service programs to improve telephone service to tribal lands and other high-cost and rural areas. 37/ For one thing, the Commission has neither established a data rate requirement for ETCs, nor included access to the Internet as a supported universal service. Moreover, wireless technology can and does support data rates that are higher, in some cases, than the data rates supported by incumbent wireline

35/ *Cf.*, Summit Telephone and Telegraph Company of Alaska, Inc. at 3 (arguing that universal service support should be available "to anyone capable of providing the service and obtaining a CPCN"); TDS Telecom at 20.

36/ As AMSC observes, "Satellite and wireless carriers have higher usage-based costs than typical wireline providers, and, as a result, these providers charge for service based on usage, without providing an unlimited amount of local service for a set monthly fee. A decision to impose a local usage requirement would thereby distort competition in tribal lands and other remote areas in favor of wireline carriers and deter the provision of satellite and wireless services in these areas. In order to avoid this outcome, the Commission should reconfirm the neutrality of its universal service framework by explicitly establishing that carriers that utilize usage-based, rather than flat-rate, billing for local traffic can become eligible for federal universal support." AMSC Subsidiary Corporation at 8; *accord*, BAM at 21 (arguing that the Commission should "reject any prescribed amount of local usage" and "clarify that 'free' means no additional charge beyond the prepaid or contracted-for monthly charge for included minutes").

37/ *E.g.*, CenturyTel at 14; Rural Utilities Service at 11-12.

carriers. Furthermore, mobile wireless systems are being designed to support higher and higher data rates, so it would be completely shortsighted to judge mobile wireless services on the past state of the art – indeed, third-generation technology capable of supporting data rates of 100 Kbps and higher are slated for deployment later this year. QUALCOMM's comments, highlighting the development of high data rate technology for wireless data delivery at speeds significantly faster than even T1 access (including streaming video), confirm how rapidly wireless data rate technology is advancing. ^{38/} CMRS-based universal service will thus lead to greater access to advanced telecommunications and information services.

III. THE COMMISSION SHOULD NOT IMPLEMENT SECTION 214(e)(6) IN AN UNDULY NARROW MANNER

The Commission should reject arguments that it should exercise its Section 214(e)(6) jurisdiction to designate as ETCs all common carriers "not subject to the jurisdiction of a state commission" ^{39/} in a narrow, restricted manner. Nothing in the statutory language or legislative history restricts the Commission's Section 214(e)(6) jurisdiction to designating as ETCs only tribally owned carriers providing on-reservation service. ^{40/} Indeed, the plain text of Section 214(e)(6)

^{38/} QUALCOMM, *passim*. Also, Sprint is now offering and widely advertising a wireless web service. See <http://www.sprintpcs.com/wireless/index.html>.

^{39/} 47 U.S.C. § 214(e)(6).

^{40/} *Contra*, NTCA at 22; Western Alliance at 3-8; NRTA/OPASTCO 17-18; CenturyTel at 7-8.

establishes clearly that the provision applies to *all* carriers "not subject to the jurisdiction of a state commission," and not just to tribally owned carriers. 41/ There is more than one class of carriers that fit this description – in particular, carriers over which state legislatures and/or state commissions have disavowed jurisdiction 42/ – and Congress intended them to have a forum at the FCC for seeking ETC designations.

The legislative history of Section 214(e)(6) does not limit the breadth of the jurisdiction conferred. 43/ The Commission should not be misled by the fact that the legislative history refers to a potential lack of state commission jurisdiction over carriers on tribal lands. 44/ Indeed, the legislative history strongly suggests that Section 214(e)(6) is not intended to apply only to tribal carriers, where it notes that, prior to the addition of Section 214(e)(6), Section 214(e) "ignore[d] the fact that some common carriers providing service today are not subject to the jurisdiction of a State commission; *most notably*, some carriers owned or controlled by native

41/ *Contra* Western Alliance at 3-8; NTCA at 7-8.

42/ Wyo. Stat. Ann. §§ 37-15-104(a)(vi); 37-15-104(x), (xiii); Del. Code Ann., tit. 26 §§ 102(2), 202(c); Md. Code Ann., Public Utility Companies Article, §§ 1-101(p), 1-101(bb); *see also* CenturyTel at 7 ("In addition, state law may circumscribe the state commission's jurisdiction over CMRS carriers.") (*citing Amended Application of WWC Holdings for Authority to be Designated as an Eligible Telecommunications Carrier, Order Granting Motion to Dismiss*, Docket No. 70042-TA-98-1 (Wyoming PSC 1999)); AirTouch/Globestar at 8.

43/ *Accord*, BAM at 11.

44/ 143 Cong. Rec. H10807-02.

Americans." 45/ This language indicates that, while tribal carriers were foremost on the adopters' minds, Section 214(e)(6) was also intended to reach other, similarly situated carriers.

The Commission should establish clear procedural rules, such as the standards regarding the burden of going forward and the burden of proof, in order to expedite the process of granting ETC designations under Section 214(e)(6). The burden of going forward should be on ETC applicants to make a showing that they are not subject to the jurisdiction of a state commission. 46/ However, once that showing is made, the presumption should be that the state lacks jurisdiction, and opposing parties should have the burden of proof for demonstrating otherwise. 47/ In cases where a state commission has explicitly determined that it lacks jurisdiction over a carrier, this presumption should be conclusive. This approach is most consistent with the statutory intent of ready designation of common carriers as ETCs that meet the statutory criteria. 48/

45/ *Id.* at H10807- H10808, Nov. 13, 1997 (emphasis added).

46/ *Accord*, Alaska Rural Coalition at 19.

47/ *Accord*, Salt River Pima-Maricopa Indian Community/National Tribal Telecommunications Alliance at 18; *contra*, TDS Telecom at 17.

48/ Other approaches simply introduce delays into the process, particularly for tribal areas in dire need of rapid introduction of additional telephone service.

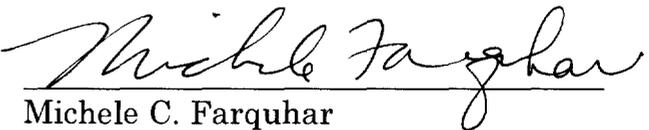
IV. CONCLUSION

In sum, the timely designation of wireless carriers and other new entrants as ETCs would spur competitive universal service to Indian reservations and other rural, high-cost areas, and thereby significantly advance the goal of improving telephone penetration rates in those areas. Thus, the Commission should take the actions discussed above, to ensure a competitively neutral system of designating ETCs and supporting universal service.

Respectfully submitted,

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