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June 1, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Via Hand-Delivery

Chairman William E. Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: 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;

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

Dear Chairman Kennard:

I writing to you as a member of the Chickasaw Nation who is also of Choctaw blood, a lawyer, a former school teacher and the Chickasaw Ambassador to the United States of America. For over twenty-five years, I have devoted myself to improving the quality of life for American Indian people by advocating for strong sovereign tribal governments and strong, self-sustaining tribal economics.

American Indian people across this country, particularly those on reservations, deeply appreciate your interest in, and commitment to, making telephone service universally available to all individuals on reservations. I know you share my deep personal concern over the lack of basic telephone service, including access to emergency services, on reservations. It is truly unacceptable that, at a time when this country is experiencing unprecedented prosperity, too many American Indians – are still without basic telephone service. For over two years now, the Federal Communications Commission (“FCC”) has highlighted the necessity for improved telecommunications service on rural American Indian reservations and the need to make available to all residents of reservations access to high-quality basic and advanced telecommunications services. I strongly urge you and your colleagues to take decisive action that will lead to the availability of basic and advanced telecommunications services to ALL individuals on reservations. I believe that this can be accomplished by the following three-step pathway to universal telephone service on reservations.

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The first step on this pathway to universal telephone service on reservations is to recognize the inherent powers of tribes as domestic sovereign relations. Tribal governments have inherent sovereign power over commercial dealings on reservations and the provisioning of services that affect the tribes' political integrity, economic security, health and welfare.<sup>1</sup> Basic telephone service is absolutely essential for the social well being, good health, economic stability of the citizens of American Indian reservations.

The second step of the three on the pathway to universal telephone service on reservations is to effectuate the desires of the tribal governments through federal programs. It is the responsibility of the federal government, not states, to make telephone service universally available on reservations. Recently, the FCC recognized its responsibility and adopted a Notice of Proposed Rulemaking ("NPRM") on "Extending Wireless Telecommunications Services to Tribal Lands" and a further NPRM on "Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas." Of particular interest to tribal governments and tribal citizens everywhere is the issue of granting or Eligible Telecommunications Carrier ("ETC") status with the support of tribal governments under Section 214(e)(6) of the Communications Act, as amended, to competitive telecommunications carriers, like Western Wireless, to facilitate the availability of basic telephone service to all individuals on reservations. Section 214(e)(6) provides:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State Law.<sup>1</sup>

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<sup>1</sup> The seminal case on the jurisdiction of Indian tribes to regulate the activities or transactions on reservations is *Montana v. U.S.* In that case, the Court construed the "inherent sovereign power" of tribes to regulate the activities on reservations as follows:

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservation, even on [non-fee] lands. A tribe may regulate, through taxation, licensing, 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 tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. <sup>1/</sup>

The elements of Section 214(e)(6) that trigger ETC designation by the FCC are: (1) common carrier status, (2) provision of the telephone exchange service and exchange access, and (3) lack of a state commission's jurisdiction over the carrier. I absolutely believe that if a carrier provides telecommunications service on a federally-recognized Indian reservation, they should agree to be subject to the laws and regulations of the reservation, and with the full support of the tribal government, then the elements of Section 214(e)(6) are met and the FCC must take action under Section 214(e)(6).

The importance of the FCC taking action under Section 214(e)(6) was made ever so apparent by a recent decision by the North Dakota Public Service Commission denying ETC status to Western Wireless, notwithstanding Turtle Mountain reservation's strong support and desire for access to Western Wireless' universal service offering.<sup>2</sup> Chairman Richard La Fromboise is a lawyer who zealously protects against erosion of his tribe's sovereignty.

More generally, the desires of Turtle Mountain and so many similarly impacted tribes are well documented in the pending FCC proceedings. Every one of them unanimously urge the FCC to take action under Section 214(e)(6) and designate competitive carriers as ETCs on reservations. Attached are letters of support representing 67 tribal governments who serve more than 700,000 American Indian people, tribes and Indian associations representing: **(See Attached List of Tribes)**

Finally, the third step of the three-step pathway to universal telephone service on reservations is for the FCC to immediately proceed to designate as ETCs those competitive carriers which meet the requirements of Section 214(e)(6). Currently pending before the FCC is the petition of Western Wireless Corporation, submitted to the FCC on August 4, 1999, in which Western Wireless seeks ETC status to provide service to Crow tribal reservation lands within the context of the universal service subsidy program. Western Wireless has the full support of the Crow Nation; Western Wireless stands ready to build the necessary infrastructure to provide basic and advanced telecommunications services on the reservation; and the leadership of the Crow Tribe have made it clear in writing and by personal messenger to you that the Crow people want the service offered by Western Wireless. The Western Wireless offering, therefore, becomes extremely important not only the Crow Nation but also to every other federally recognized tribal government in the United States.

In sum, the FCC has the ability to work with the tribes and enable them solve the telecommunications problems plaguing reservations by adopting the three-step pathway to universal telephone service on reservations as I've outlined above, *e.g.*, recognizing the tribes' sovereign power, effectuating the desires of the tribes, and designating competitive carriers as ETCs on reservations.

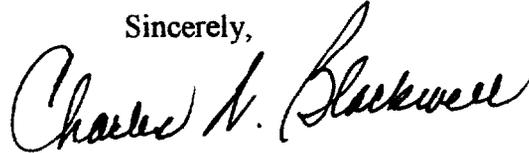
As the Chickasaw Nation Ambassador and the director of Native Affairs and Development Group, it has been my great pleasure to have worked so closely with you, your colleagues and your staff people for the past two years. The Indian law lectures you

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<sup>2</sup> A copy of Turtle Mountain's letter of support is attached hereto at Attachment A.

invited me to conduct, your tribal consultations and field hearings, your visits to reservations and direct conversations with tribal leaders, these proposed rulemakings and the tribal telcom training in September clearly demonstrate your commitment and that of the Commission to our common goal of improving the quality of life for American Indian people. You have my support and my pledge to continue working with you and the Federal Communications Commission on Native American affairs. Please follow the pathway. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Charles N. Blackwell". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

cc: Commissioner Tristani  
Commissioner Ness  
Commissioner Powell  
Commissioner Furthgott-Roth

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<sup>1</sup> 47 U.S.C. Section 214(e)(6) (emphasis added).

\*Attached Document

1. ***Winnebago Tribe of Nebraska***  
P.O. Box 687  
Winnebago, Nebraska 68071
2. ***Lovelock Paiute Tribe***  
P.O. Box 878  
Lovelock, Nevada 89419
3. ***Santee Sioux Tribe***  
52948 Hwy 12  
Niobrara, Nebraska 68760
4. ***Rosebud Sioux Tribe***  
P.O. Box 430  
Rosebud, South Dakota 57570
5. ***Oglala Sioux Tribe***  
Box 4A-2  
Pine Ridge, South Dakota 57770
6. ***Mandan, Hidatsa, & Arikara Nation***  
Fort Berthold Indian Reservation  
HC# Box 2  
New Town, North Dakota 58763-9402
7. ***The Chickasaw Nation***  
P.O. Box 1548  
Ada, Oklahoma 74821
8. ***Muscogee Creek Nation***  
P.O. Box 580  
Okmulgee, Oklahoma 74447
9. ***Northern Cheyenne Tribe***  
P.O. Box 128  
Lame Deer, Montana 59043
10. ***All Indian Pueblo Council (19)***  
3939 San Pedro, NE  
Suite E  
Albuquerque, New Mexico 87110

11. ***Yankton Sioux Tribe***  
Box 248  
Marty, South Dakota 57361
12. ***The Choctaw Nation*** (Five Civilized Tribes of Oklahoma)  
Drawer 1210  
Durant, Oklahoma 74702
13. ***Trenton Indian Service Area***  
P.O. Box 210  
Trenton, North Dakota 58853
14. ***United South and Eastern Tribes*** (26)  
711 Stewarts Ferry Pike  
Suite 100  
Nashville, Tennessee 37214
15. ***Confederated Tribes of the Goshute Nation***  
P.O. Box 6104  
Ibapah, Utah 84034
16. ***Omaha Tribe***  
P.O. Box  
Macy, Nebraska 68039
17. ***Turtle Mountain Band of Chippewa Indians***  
P.O. Box 900  
Belcourt, North Dakota 58316
18. ***Ponca Tribe***  
P.O. Box 28 8  
Niobrara, Nebraska 68760
19. ***Blackfeet Nation***  
P.O. Box 850  
Browning, Montana 59417
20. ***Picuris Pueblo***  
P.O. Box 127  
Pensco, New Mexico 87553