

FCC MAIL SECTION

JUL 5 6 32 PM '00

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of
Federal-State Joint Board on
Universal Service;
Promoting Deployment and
Subscribership in Unserved
and Underserved Areas, Including
Tribal and Insular Areas
Western Wireless Corporation, Crow Reservation
in Montana
Smith Bagley, Inc.
Cheyenne River Sioux Tribe Telephone Authority
Western Wireless Corporation, Wyoming
Cellco Partnership d/b/a/ Bell Atlantic Mobile,
Inc.
Petitions for Designation as an Eligible
Telecommunications Carrier and for Related
Waivers to Provide Universal Service

CC Docket No. 96-45

FCC MAIL SECTION
JUL 6 6 12 PM '00

TWELFTH REPORT AND ORDER,
MEMORANDUM OPINION AND ORDER, and
FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: June 8, 2000

Released: June 30, 2000

Comment Date: August 7, 2000

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By the Commission: Commissioners Ness and Tristani issuing separate statements; Commissioner Powell
approving in part, dissenting in part, and issuing a statement.

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I. INTRODUCTION

1. In this Order, we adopt measures to: (1) promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities;¹ (2) establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6)² of the Communications Act of 1934, as amended (the Act);³ and (3) apply the framework to pending petitions for designation as eligible telecommunications carriers filed by Cellco Partnership d/b/a Bell Atlantic Mobile, Inc., Western Wireless Corporation, Smith Bagley, Inc., and the Cheyenne River Sioux Tribe Telephone Authority.

2. An important goal of the Telecommunications Act of 1996 is to preserve and advance universal service. The 1996 Act provides that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high[-]cost areas, should have access to telecommunications and information services....”⁴ In the *Further Notice* of this proceeding, we sought to identify the impediments to increased telecommunications deployment and subscribership in unserved and underserved regions of our Nation, including tribal lands and insular areas, and proposed particular changes to our universal service rules to overcome these impediments.⁵ Although approximately 94 percent of all households in the United States have telephone service today, penetration levels among particular areas and populations are significantly below the national average.⁶ For example, only 76.7 percent of rural households earning less than \$5,000 have a telephone,⁷ and only 47 percent of Indian

¹ In this Order, the term “Indian” refers to “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. . . . Eskimos and other aboriginal peoples of Alaska....” 25 U.S.C. § 479. The term “Indian tribe” is defined in Section III.B.2., *infra*.

² 47 U.S.C. § 214(e)(6).

³ See Pub. L. No. 104-104, 110 Stat. 56 (1996), amending the Communications Act of 1934, 47 U.S.C. § 151, *et seq.*

⁴ 47 U.S.C. § 254(b)(3).

⁵ *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, 14 FCC Rcd 21177 (1999) (*Further Notice*). We defer consideration of any issues raised in the *Further Notice* that are not addressed in this Order.

⁶ See *Telephone Subscribership in the United States*, Report (Com. Car. Bur., rel. June 22, 2000), at 2 and *passim*.

⁷ See National Telecommunications and Information Administration (NTIA), *Falling Through the Net: Defining the Digital Divide, A Report on the Telecommunications and Information Technology Gap in America* (1999), at 11, Chart I-3, http://www.ntia.doc.gov/ntiahome/fttn99/FTTN_1/chart-1-3.html (*Falling Through the Net 1999*). Although this result is based on a 1998 survey, the data in this area appear to have been relatively stable in the 1990s. March 2000 data analyzed by the Commission indicate a penetration rate of 80.3 percent for all households (urban and rural) with incomes below \$5,000. See *Telephone Subscribership in the United States*, Report (Com. Car. Bur., rel. June 22, 2000), at 28.

tribal households on reservations and other tribal lands have a telephone.⁸ These statistics demonstrate, most notably, that existing universal service support mechanisms are not adequate to sustain telephone subscribership on tribal lands.

3. Central to the issues addressed in the *Further Notice* is the notion that basic telecommunications services are a fundamental necessity in modern society.⁹ As our society increasingly relies on telecommunications technology for employment and access to public services, such telecommunications services have become a practical necessity. The absence of telecommunications services within a home places its occupants at a disadvantage when seeking to contact, or be contacted by, employers and potential employers. The inability to contact police, fire departments, and medical service providers in an emergency situation may have, and in some areas routinely does have, life-threatening consequences.¹⁰ In geographically remote areas, access to telecommunications services can minimize health and safety risks associated with geographic isolation by providing people access to critical information and services they may need. Basic telecommunications services also may provide a source of access to more advanced services. For example, voice telephone is currently the most common means of household access to the Internet, and the same copper loop used to provide ordinary voice telephone service also may be used for broadband services.¹¹ Thus, as use of advanced services among the general population increases, those without basic telecommunications services may find themselves falling further behind in a number of ways.¹² In its *Falling Through the Net* report, the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA) found that, while "[o]verall . . . the number of Americans connected to the nation's information infrastructure is soaring," the benefits of even basic telecommunications services have not reached certain segments of our population.¹³

4. This Order, along with a companion Report and Order and Further Notice of Proposed

⁸ *Housing of American Indians on Reservations – Equipment and Fuels*, Statistical Brief, Bureau of the Census, SB/95, April 1995 at 2 (based on 1990 Census data). In addition, it appears that, in certain insular areas, penetration levels fall significantly below the national average. See PRTC comments at 3-4 (indicating that the average telephone penetration rate in Puerto Rico is 74.2 percent).

⁹ *Further Notice*, 14 FCC Rcd at 21179, para. 2.

¹⁰ See, e.g., *Overcoming Obstacles to Telephone Service for Indians on Reservations*, Hearings, January 29, 1999 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, www.fcc.gov/Panel_Discussions/Teleservice_reservations/tr_newmx.txt (*Albuquerque Hearings Transcript*), testimony of Raymond Gachupin, the appointed governor for the Pueblo of Jemez, at 31-32 (recounting incidents involving the death of individuals within the pueblo who failed to receive critically-needed medical attention due to the lack of telecommunications or other emergency communications services).

¹¹ See generally, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398 (1999).

¹² *Falling Through the Net 1999* at xii (predicting that "[a]s we enter the Information Age, access to information resources will be increasingly critical to finding a job, contacting colleagues, taking courses, researching products, or finding public information).

¹³ *Falling Through the Net 1999* at xii.

Rulemaking¹⁴ and Policy Statement¹⁵ that we adopt, represents the culmination of an ongoing examination of the issues involved in providing access to telephone service for Indians on reservations. This process began when the Commission convened two meetings in April and July of 1998, which brought Indian tribal leaders and senior representatives from other federal agencies to the Commission to meet with FCC Commissioners and Commission staff.¹⁶ The Commission then organized formal field hearings in January 1999 at the Indian Pueblo Cultural Center in Albuquerque, New Mexico, and in March 1999 at the Gila River Indian Community in Chandler, Arizona, at which Indian tribal leaders, telecommunications service providers, local public officials, and consumer advocates testified on numerous issues, including subscribership levels and the cost of delivering telecommunications services to Indians on tribal lands, as well as jurisdictional and sovereignty issues associated with the provision of telecommunications services on tribal lands.¹⁷ Based on information and analysis provided during these proceedings, the Commission initiated two rulemakings: one proposing changes to our universal service rules to promote deployment of telecommunications infrastructure and subscribership on tribal lands,¹⁸ and the other proposing changes to our wireless service rules to encourage the deployment of wireless service on tribal lands.¹⁹

5. In this Order, we take the first in a series of steps to address the causes of low subscribership within certain segments of our population. The extent to which telephone penetration levels fall below the national average on tribal lands underscores the need for immediate Commission action to promote the deployment of telecommunications facilities in tribal areas and to provide the support necessary to increase subscribership in these areas. We adopt measures at this time to promote telecommunications deployment and subscribership for the benefit of those living on federally-recognized American Indian and Alaska Native tribal lands,²⁰ based on the fact that American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country. Toward this end, we adopt amendments to our universal service rules and provide additional, targeted support under the Commission's low-income programs to create financial incentives for eligible telecommunications carriers to serve, and deploy telecommunications facilities in, areas that previously may have been regarded as high risk and unprofitable. By enhancing tribal communities' access to telecommunications services, the measures we adopt are consistent with our obligations under the historic federal trust relationship between the federal government and federally-recognized Indian tribes

¹⁴ *Extending Wireless Service to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-266, FCC 00-209 (rel. June 30, 2000) (*Wireless Tribal Order*). In this companion order and further notice, we address issues relating to expanding the availability of wireless services on tribal lands.

¹⁵ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207 (released June 23, 2000) (*Indian Policy Statement*).

¹⁶ See *Further Notice*, 14 FCC Rcd at 21181-82, para. 6. Appendix A of the *Further Notice* contains a list of individuals who participated in those meetings.

¹⁷ See *Further Notice*, 14 FCC Rcd at 21182, para. 7.

¹⁸ *Further Notice*, 14 FCC Rcd 21177.

¹⁹ *Extending Wireless Service to Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 99-266, 14 FCC Rcd 13679 (1999). See also *Wireless Tribal Order*.

²⁰ See Section III.B.2., *infra*, for definitions of the terms "Indian tribe" and "tribal land."

to encourage tribal sovereignty and self-governance. Specifically, by enhancing tribal communities' access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase their access to education, commerce, government, and public services. Furthermore, by helping to bridge the physical distances between low-income consumers on tribal lands and the emergency, medical, employment, and other services that they may need, our actions ensure a standard of livability for tribal communities. To ensure their effectiveness in addressing the low subscribership levels on tribal lands, we intend to monitor the impact of the enhanced federal support measures and to adjust the measures as appropriate.

6. In response to the requests of Indian tribal leaders, we have adopted a statement of policy that recognizes the principles of tribal sovereignty and self-government inherent in the relationships between federally-recognized Indian tribes and the federal government.²¹ In conjunction with our efforts to adopt policies that further tribal sovereignty and tribal self-determination, we note the Commission's upcoming Indian Telecom Training Initiative, in which the Commission will bring together experts on telecommunications law and technologies to provide information to tribal leaders and other interested parties to promote telecommunications deployment and subscribership on tribal lands.²²

7. In this Order, we also offer guidance on those circumstances in which the Commission will exercise its authority to designate eligible telecommunications carriers under section 214(e)(6) of the Act.²³ We conclude that, consistent with the Act and the legislative history of section 214(e), state commissions have the primary responsibility for the designation of eligible telecommunications carriers under section 214(e)(2). We direct carriers seeking designation as an eligible telecommunications carrier for service provided on non-tribal lands to first consult with the state commission, even if the carrier asserts that the state commission lacks jurisdiction. We will act on a section 214(e)(6) designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction.

8. We recognize, however, that a determination as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a legally complex and fact-specific inquiry, informed by principles of tribal sovereignty, treaties, federal Indian law, and state law. Such jurisdictional ambiguities may unnecessarily delay the designation of carriers on tribal lands. In light of the unique federal trust relationship between the federal government and Indian tribes and the low subscribership levels on tribal lands, we establish a framework designed to streamline the eligibility designation of carriers providing service on tribal lands.²⁴ Under this framework, carriers seeking a designation of eligibility for service provided on tribal lands may petition the Commission for designation under section 214(e)(6). The Commission will proceed to a determination on the merits of such a petition if the Commission determines that the carrier is not subject to the jurisdiction of a state commission. We apply the framework adopted in this Order to several pending requests for eligible

²¹ See *Indian Policy Statement*.

²² *FCC Announces the Indian Telecom Training Initiative to be Held September 25-28, 2000*, News Release, April 24, 2000. See www.fcc.gov/indians/#telecom.

²³ See Section IV.C., *infra*

²⁴ See Section IV.C., *infra*

telecommunications carrier designation on tribal and non-tribal lands.

9. We also recognize that excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas. We therefore commit to resolve requests for designation for the provision of service on non-tribal lands that are properly before us pursuant to section 214(e)(6) within six months of the date of filing. Similarly, we commit to resolve the merits of a request for designation for the provision of service on tribal lands within six months of our determination that the carrier is not subject to the jurisdiction of a state commission. We encourage state commissions to act accordingly, and resolve designation requests filed pursuant to section 214(e)(2) within six months.

10. Finally, in the attached Further Notice of Proposed Rulemaking, we seek comment on the adoption of a rule that would require designation requests filed under section 214(e), either with this Commission or a state commission, to be resolved within six months of the filing date, or some shorter period. We also seek comment on alternative methods by which state commissions, tribal authorities, and this Commission can work together to further facilitate the expeditious resolution of designation requests from carriers serving tribal lands.

11. The Commission will take action in a further proceeding to address the remaining issues raised in the *Further Notice* that are not addressed in this Order. In particular, we will continue to examine and address the causes of low subscribership in other areas and among other populations, especially among low-income individuals in rural and insular areas. In addition, in areas where the cost to deploy telecommunications facilities is significantly above the national average, we anticipate that additional action may be necessary to encourage such deployment. Providing appropriate incentives for the deployment of facilities in such locations will be central to the issues that we will address, in consultation with the Federal-State Joint Board on Universal Service (Joint Board) in our consideration of rules to implement section 214(e)(3) of the Act and in considering the recommendations of the Joint Board for high-cost universal service reform for rural carriers.

II. EXECUTIVE SUMMARY

12. In this Order, we adopt measures to:

- Provide up to \$25 per month in additional federal Lifeline Assistance (Lifeline) support to eligible telecommunications carriers serving qualifying low-income individuals living on American Indian and Alaska Native lands in order to substantially reduce the cost of basic telephone service for such individuals;
- Provide up to \$70 per consumer in additional federal Lifeline Connection Assistance (Link Up) support to eligible telecommunications carriers initiating service to qualifying low-income individuals living on American Indian and Alaska Native lands to offset initial connection charges and line extension costs associated with the initiation of service on behalf of those individuals;
- Broaden our Lifeline and Link Up consumer qualification criteria for low-income consumers on tribal lands to include income-dependent eligibility criteria employed in means-tested programs in which such individuals may be more likely to participate and therefore are more suitable income proxies for such individuals. These include the Bureau of Indian Affairs (BIA) general assistance program, tribally-administered Temporary Assistance for Needy Families, Head Start (only for those meeting its income-qualifying standard), and the National School Lunch Program's free lunch program;

- Require eligible telecommunications carriers to publicize the availability of Lifeline and Link Up support in a manner reasonably designed to reach those likely to qualify for those discounts;
- Permit eligible telecommunications carriers that are not subject to rate regulation by a state commission to receive the \$1.75 of second-tier Lifeline support without state commission approval;
- Permit tribal authorities and eligible telecommunications carriers that are not subject to rate regulation by a state commission to provide the local matching funds necessary to receive third-tier federal Lifeline support;
- Establish a framework for the resolution of eligible telecommunications carrier designation requests under section 214(e)(6) of the Act; and
- Apply the framework adopted in this Order to pending section 214(e)(6) petitions for designation as eligible telecommunications carriers filed by Cellco, Western Wireless, Smith Bagley, Inc., and the Cheyenne River Sioux Tribe Telephone Authority.

III. LOW-INCOME INITIATIVES TO IMPROVE ACCESS TO TELECOMMUNICATIONS SERVICES AND SUBSCRIBERSHIP ON TRIBAL LANDS

A. Overview

13. In this section, we adopt several revisions to our universal service rules designed to increase access to telecommunications services and subscribership among low-income individuals living on American Indian and Alaska Native lands (referred to hereinafter as “tribal lands”).²⁵ Specifically, we create a fourth tier of federal Lifeline support available to eligible telecommunications carriers serving qualifying low-income individuals living on tribal lands consisting of up to an additional \$25 per month, per primary residential connection for each such qualifying individual. This amount, in conjunction with the current first-tier baseline (which may increase to as much as \$4.35 on July 1, 2000)²⁶ and \$1.75 second-tier “non-matching” federal support amounts, will entitle each qualifying low-income consumer on tribal lands to a reduction in its basic local service bill of up to \$31.10 per month. In addition, we revise our rules governing the Link Up program to provide up to \$100 of federal support to reduce the cost of both initial connection charges and line extension charges of qualifying low-income individuals living on tribal lands. To ensure their effectiveness in addressing the low subscribership levels on tribal lands, we intend to monitor the impact of the enhanced federal support measures and to adjust the measures as appropriate.

²⁵ The term “tribal lands” is defined in Section III.B.2., *infra*.

²⁶ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193 (released May 31, 2000) (CALLS Order), para. 216. This order made several revisions to the Commission’s Lifeline rules. In particular, the order revised the first-tier federal Lifeline support amount to correspond to anticipated increases in the amount of the subscriber line charge. The first such increase, from \$3.50 to as much as \$4.35, is scheduled to take place on July 1, 2000. Under the revised Lifeline rules adopted in that order, the first-tier federal Lifeline support amount, after July 1, 2000, shall increase commensurately with any increase in the amount of the subscriber line charge that the Commission may approve.*

14. We also broaden our federal consumer qualification default criteria to enable low-income individuals on tribal lands to qualify for Lifeline and Link Up services by certifying their participation in certain additional means-tested assistance programs. Based on the widespread lack of awareness of the Lifeline and Link Up programs among low-income subscribers, and within tribal communities in particular, we require *all* eligible telecommunications carriers to publicize the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for these services. Finally, we modify our Lifeline rules to permit eligible telecommunications carriers that are not subject to rate regulation by a state commission to (1) receive second-tier federal Lifeline support without state commission approval and (2) provide the local matching funds necessary to receive third-tier federal Lifeline support.

B. Definitions of “Indian Tribe” and “Tribal Lands”

1. Background

15. The *Further Notice* referred to the definition of the term “Indian tribe” that is codified in the Federally Recognized Indian Tribe List Act of 1994.²⁷ Under that definition, the term “Indian tribe” includes “any Indian or Alaska Native tribe, band, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.”²⁸ For purposes of identifying those geographic areas for which the Commission might consider modifications to its rules to provide targeted assistance to Indians or Indian tribes, the *Further Notice* sought comment on how the Commission should define the term “tribal lands.”²⁹

2. Discussion

16. For purposes of this Order, we define the terms “Indian tribe,” “reservation,” and “near reservation” as those terms are defined in Subpart A of the regulations promulgated by the United States Department of the Interior’s Bureau of Indian Affairs (BIA).³⁰ In light of our decision below to adopt rules to benefit low-income individuals living on Indian tribal lands,³¹ we use, for purposes of this Order, the definition of “Indian tribe” contained in section 20.1(p) of the BIA regulations.³² That definition includes “any Indian tribe, band, nation, rancheria, pueblo, colony, or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the U.S. Government for the special programs and services provided by the Secretary [of the Interior] to Indians

²⁷ *Further Notice*, 14 FCC Rcd at 21181, n. 24, *citing* Pub. L. 103-454, 108 Stat. 4791 (1994); 25 U.S.C. § 479a(2).

²⁸ 25 U.S.C. § 479a(2). Under section 479a-1, the Secretary of the Interior is required to publish annually in the Federal Register a list of all Indian tribes that the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians. *See* 25 U.S.C. § 479a-1.

²⁹ *Further Notice*, 14 FCC Rcd at 21199-200, paras. 50-53.

³⁰ 25 C.F.R. § 20.1.

³¹ *See* Section III.B., *infra*.

³² 25 C.F.R. § 20.1(p).

because of their status as Indians.”³³ Although there are minor variations between this definition and the statutory definition of “Indian tribe” in section 479a(2) and cited in the *Further Notice*, the characteristic common to both definitions that is relevant for our purposes is that both refer to the list of entities compiled and published by the Secretary of the Interior.³⁴

17. For purposes of identifying the geographic areas within which the rule amendments set forth below will apply, we define the term “tribal lands” to include the BIA definitions of “reservation” and “near reservation” contained in sections 20.1(v) and 20.1(r) of the BIA regulations, respectively.³⁵ The term “reservation” means “any federally recognized Indian tribe’s reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.”³⁶ “Near reservation” means those areas or communities adjacent or contiguous to reservations that are designated as such by the Department of Interior’s Commissioner of Indian Affairs, and whose designations are published in the Federal Register.³⁷

18. We define the term “tribal lands” to include the BIA definitions of “reservation” and “near reservation” because these definitions appear to encompass the geographic areas in which the Commission may adopt, consistent with principles of Indian sovereignty and the special trust relationship, rule changes to benefit members of federally-recognized Indian tribes. In particular, we agree with commenters who argue that Alaska Native Statistical Areas and other lands conveyed pursuant to the Alaska Native Claims Settlement Act, although not Indian reservations, should be included within the definition of tribal lands insofar as these lands are federally-recognized lands that are inhabited by Alaska Native tribes.³⁸ The BIA definition of “near reservation” includes lands adjacent or

³³ *Id.*

³⁴ See 25 U.S.C. § 479a-1. This list is posted on the Internet at www.doi.gov/bia/tribes/telist97.html.

³⁵ 25 C.F.R. §§ 20.1(v) and 20.1(r).

³⁶ See 25 C.F.R. § 20.1(v).

³⁷ Under section 20.1(r) of BIA’s regulations, “near reservation” is defined as “those areas or communities adjacent or contiguous to reservations which are designated by [the Department of Interior’s Commission of Indian Affairs] upon recommendation of the local [Bureau of Indian Affairs] Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the FEDERAL REGISTER.” 25 C.F.R. § 20.1(r).

³⁸ See, e.g., UUI comments at 1-2 (Alaska Native Village Statistical Areas should be included in the Commission’s definition of tribal lands insofar as these are lands occupied by Alaska Native communities with valid claims to sovereignty and self-determination and because special efforts are “clearly needed” to preserve and advance universal service.); CIRI reply comments at 3-5 (Alaska Natives experience the same geographic and economic problems as Indians on reservations. Alaska Natives are entitled to participate in programs for Native Americans as a matter of fundamental national policy. The Commission should focus on tribal status as defined in 25 U.S.C. § (continued....))

contiguous to reservations that generally have been considered tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. Again, we conclude that such lands properly should be included within our definition insofar as they are Indian lands on which principles of Indian sovereignty and the special trust relationship apply.³⁹ To exclude the “near reservation” lands designated by the Department of the Interior or lands on which tribal members in Alaska live, in our view, would unfairly penalize tribal members who live in tribal communities, but for historic or other reasons, do not live on an Indian reservation.

19. We believe that using the BIA regulations to define and identify the geographic areas to which our rule amendments will apply offers significant advantages in the ease of its administration. Specifically, the BIA definitions of “reservation” and “near reservation”⁴⁰ provide a widely used and readily verifiable standard by which tribes may establish and carriers may verify the eligibility of individuals who qualify for the targeted assistance made available by this Order.⁴¹ We note that the classification “on or near a reservation” is used by BIA in administration of its financial assistance and social services programs for Indian tribes.⁴² If BIA or Congress should modify these definitions in the future, we intend such modifications to apply in equal measure to the classifications adopted in this Order without further action on our part. We believe that this action is consistent with our goal of using a widely used and readily verifiable standard for defining these terms.

C. Bases for Commission Action to Increase Subscribership on Tribal Lands

1. Authority to Take Action to Improve Access to Telecommunications Services and Subscribership on Tribal Lands

20. Section 254(b) of the Act sets forth the principles that guide the Commission in establishing policies for the preservation and advancement of universal service.⁴³ Included among these is the principle that “quality services should be available at just, reasonable, and affordable rates.”⁴⁴ Our authority to take action to remedy the disproportionately lower levels of infrastructure deployment and subscribership prevalent among tribal communities derives from sections 1, 4(i), 201, 205, as well as 254

(Continued from previous page)

450.); RCA comments at 23-24 (With the exception of the Metlakatla Reservation, Alaska Native lands do not come within the definition of “Indian Country.”).

³⁹ See *Morton v. Ruiz*, 415 U.S. 199 (1974) (holding that BIA is obligated to offer Indian assistance programs to tribal members living “on or near” reservation lands, rather than simply to those living on reservations).

⁴⁰ 25 C.F.R. §§ 20.1(v) and 20.1(r).

⁴¹ USCC comments at 1, n. 2 (Commission should define “tribal lands” in a way that provides jurisdictional and regulatory certainty).

⁴² See, e.g., 25 C.F.R. §§ 20.1 and 20.20. The Secretary of the Interior also maintains a list of all federally-recognized Indian tribes on the Internet at www.doi.gov/bia/tribes/telist97.html.

⁴³ 47 U.S.C. § 254(b).

⁴⁴ 47 U.S.C. § 254(b)(1).

of the Act.⁴⁵ As discussed more fully below, the record before us suggests that the disproportionately lower-than-average subscribership levels on tribal lands are largely due to the lack of access to and/or affordability of telecommunications services in these areas (as compared with cultural or individual preferences that cause individuals to choose not to subscribe). Along with depressed economic conditions and low per capita incomes,⁴⁶ commenters have identified the following factors as the primary impediments to subscribership on tribal lands: (1) the cost of basic service in certain areas (as high as \$38 per month in some areas);⁴⁷ (2) the cost of intrastate toll service (limited local calling areas);⁴⁸ (3) inadequate telecommunications infrastructure and the cost of line extensions and facilities deployment in remote, sparsely populated areas;⁴⁹ and (4) the lack of competitive service providers offering alternative technologies.⁵⁰ We note that no tribal representative in this proceeding has suggested that cultural or personal preference accounts for low subscribership levels within or among particular tribes. Based on the substantial Indian tribal participation in this proceeding and in the Commission's proceedings in WT Docket No. 99-266 and BO Docket No. 99-11, we do not have any evidence to conclude that cultural or personal factors generally explain low subscribership levels on tribal lands.⁵¹

⁴⁵ See 47 U.S.C. § 151 (The Commission's regulations should "make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges."); 47 U.S.C. § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."); 47 U.S.C. § 201 (Commission's general authority to regulate common carriers' rates and service offerings); 47 U.S.C. § 205; 47 U.S.C. § 254. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8952-57, paras. 326-340 (1997), as corrected by Errata, CC Docket No. 96-45 (rel. June 4, 1997) (*Universal Service Order*).

⁴⁶ See, e.g., RUS comments at 7-8; Fort Belknap Community Council comments at 1; GRTI comments at 3 (below-average subscribership in tribal areas is the result of economic conditions and low incomes and not just the higher cost of serving remote and sparsely populated areas); SBI comments at 3 ("despite several aggressive marketing efforts, SBI cannot get many of these people [on the Navajo Reservation] to subscribe to its wireless service simply because the median per capita income on the reservations is approximately \$5,000."); Project Telephone reply comments at 3-4 (poverty and unemployment are major causes of nonsubscribership that are beyond the ability of carriers to resolve).

⁴⁷ See, e.g., RCA comments at 4 (local rates range between \$10 and \$38 per month in Alaska); Eastern Shoshone Tribe comments at 7-11 (local rates range between \$9.02 and \$34.81 per month on the Wind River Reservation).

⁴⁸ See, e.g., NTCA comments at 6 (the "greatest concern" for NTCA member companies serving tribal lands is toll calling. Subscribers generate high toll charges because local calling areas often do not encompass hospitals, governmental agencies, cultural centers, or entertainment centers in tribal areas); RCA comments at 19 (UUI reports that the most frequently identified reason why native households do not take service is the high cost of intrastate toll calling in Alaska).

⁴⁹ See, e.g., Qualcomm comments at 3-4; Motorola/Iridium comments at 7 (average line extension charge on Navajo Reservation is more than \$40,000 per loop).

⁵⁰ See, e.g., Crow Tribal Council comments at 1-3 (low penetration levels in tribal areas are the result of the current lack of competition among service providers).

⁵¹ We note that at least 29 Indian tribes, representing approximately a third of the Indian tribal population in the United States, have participated in some manner in this proceeding and in the proceedings in WT Docket No. 99-266 and BO Docket No. 99-11. Although cultural or personal preferences may explain why individual tribal (continued....)

21. We conclude that the unavailability or unaffordability of telecommunications service on tribal lands is at odds with our statutory goal of ensuring access to such services to “[c]onsumers in all regions of the Nation, including low-income consumers.”⁵² In addition, the lack of access to affordable telecommunications services on tribal lands is inconsistent with our statutory directive “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient Nationwide . . . wire and radio communication service, with adequate facilities at reasonable charges.”⁵³ In the *Universal Service Order*, the Commission stated that, where “necessary and appropriate,” the Commission, working with an affected state or U.S. territory or possession, will open an inquiry to address instances of low or declining subscribership levels and take such action as is necessary to fulfill the requirements of section 254.⁵⁴

22. Our authority to alter our rules in ways targeted to benefit tribal communities also must be informed by the principles of federal Indian law that arise from the unique trust relationship between the federal government and Indian tribes. That relationship has been characterized as “unlike that of any other two people in existence,” and “marked by peculiar and cardinal distinctions which exist no where else.”⁵⁵ The Supreme Court has repeatedly “recognized the distinctive obligation of trust incumbent upon the [Federal] Government” in its dealings with Indian tribes.⁵⁶ Moreover, Congress and the courts have recognized the federal government’s responsibility to promote self-government among tribal communities as an important facet of the federal trust relationship.⁵⁷ In *Morton v. Mancari*, for example, the Supreme Court upheld a federal regulation establishing a hiring preference for members of Indian

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members do not subscribe, there is no evidence to suggest that these factors account for low subscribership levels generally on tribal lands. Indeed, we believe that the substantial Indian tribal participation in the Commission’s Indian tribal proceedings would have been unlikely to occur had Indian tribal leaders concluded that cultural factors or personal preference account for low subscribership levels among their membership.

⁵² 47 U.S.C. § 254(b)(3).

⁵³ 47 U.S.C. § 151.

⁵⁴ *Universal Service Order*, 12 FCC Rcd at 8843-44, paras. 120-121.

⁵⁵ *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831) (C. J. Marshall) (*Cherokee Nation*).

⁵⁶ *Seminole Nation v. U.S.*, 316 U.S. 286, 297 (1942) (citing *Cherokee Nation*; *U.S. v. Kagama*, 118 U.S. 375 (1886) (“Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, [the Federal Government] has charged itself with moral obligations of the highest responsibility and trust [towards Indian tribes.]”); *Choctaw Nation v. U.S.*, 199 U.S. 1 (1886); *U.S. v. Pelican*, 232 U.S. 442 (1914); *U.S. v. Creek Nation*, 295 U.S. 103 (1935); *Tulee v. Washington*, 316 U.S. 681 (1942).

⁵⁷ See, e.g., The Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450a(a), (b) (“The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination . . . [and] declares its commitment to the maintenance of the Federal Government’s unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy”); see also *Morton v. Mancari*, 417 U.S. 535, 540 (1974).

tribes as consistent with the goal of promoting Indian self-government.⁵⁸ In that case, the Court noted that “literally every piece of legislation dealing with Indian tribes and reservations. . . singles out for special treatment a constituency of tribal Indians living on or near reservations.”⁵⁹

23. By enhancing tribal communities’ access to telecommunications services, the measures we adopt today are consistent with our federal trust responsibility to encourage tribal sovereignty and self-governance.⁶⁰ Specifically, by enhancing tribal communities’ access to telecommunications, including access to interexchange services, advanced telecommunications, and information services, we increase tribal communities’ access to education, commerce, government, and public services.⁶¹ Furthermore, by helping to bridge physical distances between low-income individuals living on tribal lands and the emergency, medical, employment, and other services that they may need, our actions further our federal trust responsibility to ensure a standard of livability for members of Indian tribes on tribal lands.⁶²

2. Subscribership Levels on Tribal Lands

24. Section 254(i) of the Act requires that the Commission and the states ensure that universal service is available at rates that are just, reasonable, and affordable.⁶³ In the *Universal Service Order*, the Commission adopted the finding of the Joint Board that subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates.⁶⁴ The Commission found that subscribership levels alone, however, do not reveal whether consumers are spending a disproportionate amount of income on telecommunications services or whether paying the rates charged for services imposes a hardship for those who subscribe.⁶⁵ The Commission concurred in the recommendation of the

⁵⁸ *Morton v. Mancari*, 417 U.S. at 540 (upholding Indian employment preferences at the Bureau of Indian Affairs, and stating that “[t]he purpose of these preferences, as variously expressed in the legislative history, has been to give Indians a greater participation in their own self-government”).

⁵⁹ *Morton v. Mancari*, 417 U.S. at 552.

⁶⁰ See, e.g., *Morton v. Mancari*, 417 U.S. at 540, 555 (holding that a BIA hiring preference that was “tied rationally to the fulfillment of Congress’ unique obligation toward the Indians” and was “reasonably and rationally designed to further Indian self-government” did not offend the Constitution).

⁶¹ The actions we take here also are consistent with the principles contained in the Policy Statement adopted contemporaneously with this Order. See *Indian Policy Statement* at 4 (“The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives and consistent with section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communications services.”).

⁶² See, e.g., *Washington v. Washington State Commercial Passenger Fishing Vessel Association, et al.*, 443 U.S. 658 (1979) (holding that the federal government’s unique relationship with Indian tribes may create a federal duty to ensure that federal regulation of tribal lands assures “Indians with . . . a moderate living”).

⁶³ 47 U.S.C. § 254(i).

⁶⁴ *Universal Service Order*, 12 FCC Rcd at 8838-39, para. 112.

⁶⁵ *Universal Service Order*, 12 FCC Rcd at 8839, para. 113.

Joint Board that a determination of affordability take into consideration both rate levels and non-rate factors, such as consumer income levels, that can be used to assess the financial burden subscribing to universal service places on consumers.⁶⁶ The Commission also adopted the Joint Board's finding that the scope of a local calling area "directly and significantly impacts affordability" of universal service.⁶⁷

25. In the *Further Notice*, we expressed concern that, although approximately 94 percent of all households in the United States have telephone service today, penetration levels among particular areas and populations are significantly below the national average.⁶⁸ To better understand the dimensions of the problem of low subscribership in particular areas, we sought information on subscribership levels and impediments to subscribership generally and on tribal lands in particular.⁶⁹ The *Further Notice* defined the term "penetration rate" (or subscribership level) to mean "the percentage of households within a specified area that have telephone service in the housing unit."⁷⁰ We also asked commenters to provide information pertaining to the total population, population density, average annual income, and average unemployment rate for each area within which penetration rates were measured. The *Further Notice* noted the Commission's particular concern that Indians living on reservations, whose nationwide subscribership level is only 46.6 percent,⁷¹ have less access to telecommunications services than other Americans.⁷² In the *Further Notice*, we sought comment on issues that may be affecting the availability of universal service in tribal communities and on possible modifications to the federal universal service support mechanisms that may be necessary to promote deployment and subscribership in these areas.⁷³

26. Consistent with our statutory goal of preserving and advancing universal service and of ensuring that consumers in all regions of the Nation have access to the services supported by federal universal service support mechanisms,⁷⁴ we modify our universal service rules, as set forth below,⁷⁵ to

⁶⁶ *Universal Service Order*, 12 FCC Rcd at 8837-38, para. 110.

⁶⁷ *Universal Service Order*, 12 FCC Rcd at 8840, para. 114 (affordability is affected by the amount of toll charges a consumer incurs to contact essential service providers such as hospitals, schools, and government offices located outside of the consumer's local calling area).

⁶⁸ *Further Notice*, 14 FCC Rcd at 21180-81, para. 5, citing *Telephone Subscribership in the United States*, Report, Table 1 (Com. Car. Bur., rel. Feb. 18, 1999).

⁶⁹ *Further Notice*, 14 FCC Rcd at 21184-92, paras. 11-31.

⁷⁰ *Further Notice*, 14 FCC Rcd at 21184-85, para. 13. We use the terms "subscribership" and "penetration" interchangeably in this Order.

⁷¹ *Further Notice*, 14 FCC Rcd at 21180-81, para. 5, citing *Housing of American Indians on Reservations – Equipment and Fuels*, Statistical Brief, Bureau of the Census, SB/95, April 1995 at 2 (based on 1990 Census data).

⁷² *Further Notice*, 14 FCC Rcd at 21181-82, para. 6.

⁷³ *Further Notice*, 14 FCC Rcd at 21183, para. 9.

⁷⁴ 47 U.S.C. § 254(b).

⁷⁵ See Section III.D., *infra*.

increase telecommunications infrastructure deployment and subscribership on tribal lands. We take action at this time primarily for the benefit of low-income individuals living on tribal lands, as that term is defined above,⁷⁶ because of the critically low telephone subscribership levels that are reported in these areas. Specifically, statistics demonstrate that, although approximately 94 percent of all Americans have a telephone,⁷⁷ only 47 percent of Indians on reservations and other tribal lands have a telephone.⁷⁸ Similarly, an analysis of 1990 Census data found that Indians represent 89 percent of the Nation's population in the one hundred zip codes with the lowest subscribership levels.⁷⁹ More recent studies of subscribership levels for individual tribes suggest that subscribership levels for many tribes remain significantly below the national average.⁸⁰

27. Consistent with recent research that demonstrates that telephone penetration correlates directly with income,⁸¹ federal statistics reveal that tribal communities are among the poorest populations in the United States. For example, according to 1990 data published by the Bureau of the Census, the per capita income of Native Americans living on tribal lands was only \$4,478, as compared with the \$14,420 per capita income in the United States as a whole.⁸² At the time of the 1990 Census data collection, almost 51 percent of American Indians residing on reservations and trust lands had incomes below the poverty level,⁸³ compared to 13 percent of United States residents nationwide with incomes below this level.⁸⁴ Unemployment levels for a sample of 48 tribes averaged 42 percent as compared to the national unemployment figure of 4.5 percent.⁸⁵ The record before us suggests that there is a correlation between

⁷⁶ See Section III.B., *supra*, for definitions of "Indian tribe" and "tribal lands."

⁷⁷ *Falling Through the Net 1999* at 11, Chart I-3.

⁷⁸ *Housing of American Indians on Reservations – Equipment and Fuels*, Statistical Brief, Bureau of the Census, SB/95, April 1995 at 2 (based on 1990 Census data). We will be reexamining subscribership levels upon release of the 2000 Census data in 2001.

⁷⁹ National Exchange Carrier Association comments, attachment IV, table 1, in *Inquiry on Universal Service and Open Access Issues*, Department of Commerce, National Telecommunications and Information Administration, Docket No. 940955-4255, 1994 WL 506372 (rel. Sept. 19, 1994).

⁸⁰ See, e.g., Testimony of Aloa Stevens, Citizens Communications, at FCC Hearing, Gila River Reservation, Chandler, Arizona, March 23, 1999, transcript at 91-92 (indicating penetration level of 17.9 percent for the White Mountain Apache Tribe and 22.5 percent on the Navajo Reservation).

⁸¹ *Falling Through the Net 1999* at Chart I-3.

⁸² *We, the First Americans*, U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, WE-5 (Sept. 1993), at 10 (indicating per capita income in 1989 of approximately \$4,478 for American Indians residing on all reservations and trust lands).

⁸³ *Id.* Twenty-one percent of Alaska Native families lived below the poverty level in this time period as compared with seven percent of Alaska families statewide. *Id.* at 17.

⁸⁴ *Id.* at 6.

⁸⁵ *Assessment of Technology Infrastructure in Native Communities*, Final Report, Prepared for the U.S. Department of Commerce, Economic Development Administration by the College of Engineering, New Mexico State University, June 1999 (*NMSU Report*), at 14.

low subscribership levels and low incomes on tribal lands.⁸⁶ Indeed, the majority of commenters identify low incomes or impoverishment as the key reason for low subscribership levels on tribal lands.⁸⁷

28. Based on our review of these statistics and the record before us, and consistent with the unique trust relationship between the federal government and members of Indian tribes, we conclude that specific action is needed to address the impediments to subscribership on tribal lands and to ensure affordable access to telecommunications services in these areas. Specifically, the significantly lower-than-average incomes and subscribership levels of members of federally-recognized Indian tribes warrant our immediate action to increase subscribership and improve access to telecommunications on tribal lands.

29. We conclude that the potential benefits to tribal members will only increase by extending to non-Indians living on tribal lands, as well as Indians, the measures we adopt in Section III.D. of this Order. First, we believe that, by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced. Implicit in our decision to extend the availability of enhanced federal support to all low-income individuals living on tribal lands, is our recognition of the likelihood that non-Indian, low-income households on tribal lands may face the same or similar economic and geographic barriers as those faced by low-income Indian households.⁸⁸

30. Second, we believe that increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community will result in greater incentives for eligible telecommunications carriers to serve in those areas. We anticipate that the availability of enhanced federal support for all low-income individuals living on tribal lands will maximize the number of subscribers in such a community who can afford service and, therefore, make it a more attractive community for carrier investment and deployment of telecommunications infrastructure. As the number of potential subscribers grows in tribal communities, carriers may achieve greater economies of scale and scope when deploying facilities and providing service within a particular community.

31. Finally, we believe that, by extending the availability of enhanced federal support to all low-income individuals residing on tribal lands, carriers will avoid the administrative burden associated with distinguishing between low-income individuals who are members of federally-recognized tribes living on tribal lands and all other low-income individuals living on tribal lands.⁸⁹ By reducing the

⁸⁶ See, e.g., RUS comments at 7-8; Fort Belknap Community Council comments at 1; GRTI comments at 3 (below-average subscribership in tribal areas is the result of economic conditions and low incomes and not just the higher cost of serving remote and sparsely populated areas); SBI comments at 3 (“despite several aggressive marketing efforts, SBI cannot get many of these people [on the Navajo Reservation] to subscribe to its wireless service simply because the median per capita income on the reservations is approximately \$5,000”); Project Telephone reply comments at 3-4 (Poverty and unemployment are major causes of nonsubscribership that are beyond the ability of carriers to resolve.).

⁸⁷ *Id.*

⁸⁸ See, e.g., RCA comments at 27 (stating that, in Alaska, Native and non-Native customers live in the same villages, use the same utility infrastructure, and face the same problems obtaining affordable service).

⁸⁹ See, e.g., Letter from David Cosson, Counsel to Project Telephone Company, Inc., to Irene Flannery, FCC, dated May 15, 2000 (stressing the “importance of rules which result in simple and unambiguous determination of eligible (continued....)”).

possible administrative burdens associated with implementation of the enhanced federal support, we intend to eliminate a potential disincentive to providing service on tribal lands.

32. At this time, we do not adopt commenters' suggestions to apply the actions taken in this Order more generally to all high-cost areas and all insular areas.⁹⁰ Although the record demonstrates that subscribership levels are below the national average in low-income, rural areas and in certain insular areas,⁹¹ the significant degree to which subscribership levels fall below the national average among tribal communities underscores the need for immediate Commission intervention for the benefit of this population. The record before us does not permit a determination that the factors causing low subscribership on tribal lands are the same factors causing low subscribership among other populations. Indeed, the presence of certain additional factors on tribal lands that may not be present in non-tribal areas, and which appear to create disincentives for carriers to provide service in these areas, suggests that the identical strategy adopted in this Order to boost subscribership levels on tribal lands may not be appropriate for increasing subscribership in other areas. Specifically, the following combination of factors may increase the cost of entry and reduce the profitability of providing service on tribal lands: (1) the lack of basic infrastructure in many tribal communities;⁹² (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community;⁹³ (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access;⁹⁴ and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands.⁹⁵

33. We are concerned that to devise a remedy addressing all low subscribership issues for all unserved or underserved populations simultaneously might unnecessarily delay action on behalf of those who are least served, *i.e.*, tribal communities. We do not believe that we should delay action to benefit those who, based on national statistics and the record before us, comprise the most underserved

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subscribers"); RCA comments at 27 (emphasizing the administrative difficulties inherent in distinguishing between Native and non-Native subscribers and proposing that any measures applied to Alaska Natives also apply to non-Natives living in Native villages in Alaska).

⁹⁰ See, e.g., USTA/NECA comments at 1-3 (suggesting that Commission's proposals should be applied to all high-cost areas and not just to tribal or insular areas); USTA/NECA comments at 9-10 (suggesting that the Commission apply any initiatives benefitting native populations to all areas populated by Native peoples, such as the Hawaiian Homelands, American Samoa, Guam, and Palau).

⁹¹ *Falling Through the Net 1999* at Chart I-3; PRTC reply comments at 3-4 (average 74.2 percent penetration on island).

⁹² A recent study found that, among households of 48 tribes surveyed, 12 percent lack electricity, 23 percent lack gas, 50 percent do not use public sewage treatment facilities, 26 percent have no 911 service, and most responded that they lack an adequate road structure, with certain reservations having only one or two roads. *NMSU Report*, at 15-22.

⁹³ See, e.g., UUI comments at 15.

⁹⁴ See, e.g., Bell Atlantic reply comments at 9.

⁹⁵ See, e.g., Bell Atlantic reply comments at 8.

segment of our population. We will, however, continue to examine and address the causes of low subscribership in other areas and among other populations within the United States and, in conjunction with the release of the 2000 Census data, we will take action as appropriate at that time to address low subscribership among such other populations.⁹⁶

34. Several incumbent local exchange carriers serving tribal communities indicate that subscribership levels among tribal communities within their service territories are higher than the nationwide average penetration rate for Indians on reservations and other tribal lands.⁹⁷ These comments do not lead us to alter our conclusion that Commission action is warranted to improve subscribership levels for low-income individuals on tribal lands. As an initial matter, we recognize that penetration levels for particular tribal communities may exceed the 47 percent national average for Indians on tribal lands, just as certain tribes may be below the national average of 47 percent. This fact, however, is not inconsistent with our decision to adopt measures to benefit tribal communities generally because we are targeting our actions to low-income individuals on tribal lands, who we anticipate will have the lowest subscribership levels in these areas. Specifically, because research indicates that there is a correlation between income and subscribership levels, we anticipate that our actions will benefit tribal communities whose subscribership levels, as a function of low average per capita incomes, are closer to, or less than, the 47 percent national average for Indians on reservations.

35. Although we recognize the achievements of rural carriers serving tribal lands in improving subscribership levels in these areas,⁹⁸ the fact that carriers employ various methodologies when measuring subscribership levels within their service territories limits the utility of particular statistics beyond the specific service territories. For example, statistics that measure the number or percentage of homes passed within a carrier's total service territory on a reservation do not reveal the number or percentage of households that, notwithstanding the fact that facilities are present, do not subscribe because they cannot afford telephone service.⁹⁹ Even where subscribership statistics measure the number or percentage of households within a carrier's territory that have telephone service, those statistics provide no measure of reservation households outside of the carrier's service territory that have access to facilities or take service.¹⁰⁰ Therefore, we conclude that nationwide and regional statistics that measure actual subscribership throughout tribal areas provide a more complete picture than do statistics that measure only the number of homes passed within particular service territories.

⁹⁶ Data from the 2000 Census is expected to become available by the spring of 2001.

⁹⁷ See, e.g., NTCA comments at 2-5 (asserting that 25 of NTCA's member companies provide telephone service on average to 97 percent of the households within their service territory on the reservation).

⁹⁸ See, e.g., Letter from Daniel Mitchell, NTCA, to Magalie Roman Salas, FCC, dated February 11, 2000 (NTCA Feb. 11 *ex parte*), at 5 (reporting survey showing 97 percent coverage rates and 80 percent penetration levels in tribal areas served by NTCA member companies).

⁹⁹ See, e.g., NTCA comments at 4 (NTCA survey results showed that 25 member companies have deployed infrastructure to provide service to 15 percent to 100 percent of the geographic areas within six reservation and trust land areas.).

¹⁰⁰ See, e.g., NTCA comments at 4 (listing number of NTCA member companies that have a combined average penetration rate of 80 percent in their service territory).