

FCC MAIL SECTION

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

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In the Matter 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)
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

ORDER

Adopted: August 15, 2000

Released: August 15, 2000

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant the request of Western Wireless Corporation (Western Wireless) for an extension of time to supplement its claim that the Montana Public Service Commission (Montana Commission) lacks jurisdiction to conduct eligible telecommunications carrier (ETC) designations under section 214(e) of the Communications Act of 1934, as amended, (the Act) for service provided on the Crow Reservation.¹ We find that Western Wireless has demonstrated that good cause exists to grant the extension in order to permit Western Wireless to consult with the Crow tribe and supplement the record in this proceeding. Therefore, we grant Western Wireless' request for an extension of time to supplement the record in this proceeding until October 2, 2000.

II. BACKGROUND

2. Western Wireless Petition. On August 4, 1999, Western Wireless filed with the Commission a petition under section 214(e)(6) seeking a designation of eligibility to receive

¹ Letter from Ronnie London, Counsel for Western Wireless, to Magalie Roman Salas, FCC, dated August 9, 2000.

federal universal service support for a service area comprised of the Crow Reservation in Montana.² Specifically, Western Wireless contends that telecommunications service offered on the Crow Reservation is not subject to the jurisdiction of the state commission. On September 10, 1999, the Common Carrier Bureau released a Public Notice seeking comment on Western Wireless' petition for designation as an ETC.³ In response, the Montana Commission filed comments asking the Commission to dismiss the petition and allow the Montana Commission to consider the designation request.⁴

3. *Twelfth Report and Order*. In the *Twelfth Report and Order*, the Commission concluded that it would resolve the threshold question of whether Western Wireless is subject to the jurisdiction of the Montana Commission for purposes of determining eligibility for federal support for services provided on the Crow Reservation.⁵ To permit Western Wireless a fair opportunity to present its case consistent with the guidance provided in the *Twelfth Report and Order*, the Commission permitted Western Wireless to supplement its claim in its ETC petition that the Montana Commission lacks jurisdiction to make the ETC designations for service provided on the Crow Reservation.⁶ Specifically, the Commission required Western Wireless to notify the Commission of its intent to supplement the record within 15 days from the release of the *Twelfth Report and Order*. Should Western Wireless choose to supplement the record, it was then required to do so within 30 days of the date it notified the Commission of its intent to do so.⁷

4. On July 17, 2000, Western Wireless filed a letter with the Commission indicating its intent to supplement the record regarding its petition to seek ETC designation for the Crow Reservation under section 214(e)(6).⁸ On August 9, 2000, Western Wireless filed a letter with the Commission requesting an extension of time, pursuant to section 1.46 of the Commission's

² See *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service to the Crow Reservation in Montana*, August 4, 1999 (Western Wireless Petition).

³ *Western Wireless Corporation Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Services Eligible for Universal Service Support to Crow Reservation, Montana*, Public Notice, CC Docket No. 96-45, DA 99-1847 (rel. Sept. 10, 1999).

⁴ Montana Commission comments at 2-3 (noting that it has designated other carriers serving tribal lands in Montana, including the Crow Reservation).

⁵ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 (rel. June 30, 2000) (*Twelfth Report and Order*).

⁶ *Twelfth Report and Order* at para. 140.

⁷ *Twelfth Report and Order* at para. 140.

⁸ Letter from Ronnie London, Counsel for Western Wireless, to Magalie Roman Salas, FCC, dated July 17, 2000.

rules, until October 2, 2000, to supplement the record in this proceeding.⁹ Western Wireless contends this additional time is necessary because, in the time since Western Wireless filed its petition in this matter, the Crow tribe has changed administrations, and Western Wireless is in the process of working with the tribe's new leadership regarding the company's proposal to offer universal service on the reservation.

III. DISCUSSION

5. Although section 1.46(a) of the Commission's rules state that "[i]t is the policy of the Commission that extensions of time shall not be routinely granted,"¹⁰ we conclude that there is good cause to grant Western Wireless' request for extension of time until October 2, 2000 to supplement the record regarding its petition to seek ETC designation for the Crow Reservation under section 214(e)(6). The Commission has recognized that the determination as to whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a legally complex inquiry.¹¹ Particularly informative in making such determinations are "any statements and analyses the tribal authority might provide regarding the petitioner's request for designation and the state commission's exercise of jurisdiction."¹² The Commission therefore strongly encourages the participation of the affected tribal authorities in this process.¹³ For these reasons, we grant Western Wireless' request for an extension of time in order to consult with the new leadership of the Crow tribe.

IV. ORDERING CLAUSE

6. IT IS ORDERED that, pursuant to sections 1, 4(i), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 254, and sections 0.91, 0.291, and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.46, the Request for Extension of Time to Supplement the Record filed by Western Wireless is GRANTED as stated herein.

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma
Deputy Chief, Common Carrier Bureau

⁹ Letter from Ronnie London, Counsel for Western Wireless, to Magalie Roman Salas, FCC, dated August 9, 2000.

¹⁰ 47 C.F.R. § 1.46(a).

¹¹ See *Twelfth Report and Order* at para. 117.

¹² *Twelfth Report and Order* at para. 122 ("For example, carriers may include with their petitions a letter from the appropriate tribal authority addressing the jurisdictional questions or merits of the designation request.").

¹³ *Twelfth Report and Order* at para. 124.