

**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	)	CC Docket No. 96-45
	)	
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	)	

PETITION FOR RECONSIDERATION OR CLARIFICATION

The National Telephone Cooperative Association (NTCA) respectfully requests that the Commission reconsider a portion of its rules in the above referenced Twelfth Report and Order. Specifically, NTCA requests that the Commission reconsider its determination that it has the authority to designate carriers as eligible to receive universal service funding in areas designated as “near reservation” by the United States Department of the Interior’s Bureau of Indian Affairs (BIA) and defined as “tribal lands” in the Twelfth Report and Order.

NTCA is a national trade association representing more than 500 small and rural local exchange carriers. All of NTCA's members are "rural telephone companies" as defined in the Telecommunications Act of 1996 (the Act). 47 U.S.C. § 153(37). Thirty-eight of NTCA's members provide service on federally recognized tribal lands.

As an initial matter, NTCA supports the Commission's goals in this proceeding. NTCA has consistently supported initiatives that further the 1996's Act's mandate 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 . . . ."<sup>1</sup> The adopted enhanced federal Lifeline and Link Up assistance rules will help to provide access to individuals living on tribal lands. Similarly, the eligible telecommunications carrier (ETC) designation rules intend to provide a mechanism for carriers to receive universal service funding in those instances where they would not be subject to the jurisdiction of a state commission.

When the Commission adopted its rules in the Twelfth Report and Order, it determined that the term "tribal lands" should include the United States Department of Interior Bureau of Indian Affairs (BIA) definitions of "reservation" and "near reservation" contained in sections 20.1(v) and 20.1(r) of the BIA regulations.<sup>2</sup> The BIA definition of "near reservation" includes lands 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

---

<sup>1</sup> 47 U.S.C. § 254(b)(3).

<sup>2</sup> Twelfth Report and Order, ¶¶ 17 – 18.

in the Federal Register.<sup>3</sup> This definition was used by the Commission to identify the geographic areas within which the amended Lifeline and Linkup rules would apply.<sup>4</sup> The Commission also used this definition to determine the areas for which a carrier may avail itself of the Commission's ETC designation process to receive federal universal service support.<sup>5</sup>

On August 30, 2000 the Commission adopted an Order and Further Notice of Proposed Rulemaking that recognized the inherent problem of the Commission's "tribal lands" definition.<sup>6</sup> In this Order and FNPRM, the Commission stated that the term "near reservation," as it is defined by the BIA, may include "wide geographic areas that do not possess characteristics . . . such as geographic isolation, high rates of poverty, and low telephone subscribership."<sup>7</sup> In fact, "near reservation" designations include areas such as Sacramento County, California with a population of more than a million and Maricopa County, Arizona with a population of more than two million. On its own motion, the Commission stayed the implementation of the Lifeline and Link Up assistance rule amendments as they apply to low-income consumers located "near reservations" and sought additional comment on how to define geographic areas that are part of the reservation's community of interest.<sup>8</sup> The Commission has not, however, considered amending its definition of "tribal lands" as it applies to ETC designations.

---

<sup>3</sup> See 25 C.F.R. § 20.1(r).

<sup>4</sup> Twelfth Report and Order, ¶¶ 17-18.

<sup>5</sup> Twelfth Report and Order, n. 289.

<sup>6</sup> Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 00-332 (rel. August 31, 2000) (Order and FNPRM).

<sup>7</sup> Order and FNPRM at p. 3 (footnote omitted)

Under the Commission's rules, a carrier may petition the Commission directly for ETC designation for tribal lands. The carrier must assert that it is not subject to the state commission's jurisdiction. If the Commission determines that the state commission lacks jurisdiction to make the designation, the Commission will decide the merits of the request within six months of release of an order resolving the jurisdictional issue. The Commission states that "the issue of whether a state commission may exercise jurisdiction over a carrier providing service on tribal lands is a particularized inquiry guided by principles of tribal sovereignty, federal Indian law, and treaties, as well as state law."<sup>9</sup> The state has the opportunity to comment on the petition and the Commission says it will consider any statements and analysis the tribal authority might provide regarding the state commission's exercise of jurisdiction.<sup>10</sup>

The process differs when a carrier seeks ETC designation for non-tribal lands. Before a carrier may petition the FCC for ETC designation for non-tribal areas, the carrier must provide the Commission with an "affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation . . ."<sup>11</sup> Therefore, the carrier cannot petition the Commission directly, it must first have a statement from the state that it lacks the authority to act.

The Commission defines "tribal lands" in a way that is inconsistent with the above analysis. The Commission's definition of tribal lands includes major

---

<sup>8</sup> Order and FNPRM at p. 3.

<sup>9</sup> Twelfth Report and Order, ¶ 122.

<sup>10</sup> *Id.*

<sup>11</sup> Twelfth Report and Order, ¶ 113.

metropolitan areas. Clearly, the Commission did not intend that a carrier could petition it directly for ETC designation for the “near reservation” area of Phoenix, Arizona.

Congress intended that the states would have the authority to designate carriers as ETCs as is expressly indicated in the Telecommunications Act.<sup>12</sup> The Commission may not usurp the state’s jurisdiction in any area, even if that area is “near reservation.” The Commission should reconsider or clarify its Order to indicate that a carrier may only directly petition the Commission for ETC designation for areas that are reservations or otherwise subject to tribal sovereignty. Areas that are “near reservations” are subject to state jurisdiction unless or until the state commission or the courts determine otherwise.

For the above stated reasons, the Commission should reconsider its determination that it has the authority to designate carriers as eligible to receive universal service funding in areas that are “near reservation.” Included in the definition of near reservation, as the definition was adopted by the Commission, are areas that are major metropolitan regions that clearly were never intended to be part of “tribal lands” as that term is defined and used by the Commission.

---

<sup>12</sup> 47 U.S.C. § 214(e)(2).

Congress specifically granted the states jurisdiction over ETC designations and the Commission should not attempt to assume that jurisdiction.

Respectfully submitted,

NATIONAL TELEPHONE  
COOPERATIVE ASSOCIATION

By:           /s/ L. Marie Guillory  
L. Marie Guillory  
(703) 351-2021

By:           /s/ Jill Canfield  
Jill Canfield  
(703) 351-2021

Its Attorneys

4121 Wilson Boulevard, 10<sup>th</sup> Floor  
Arlington, VA 22203

September 5, 2000

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Petition for Reconsideration or Clarification of the National Telephone Cooperative Association in CC Docket No. 96-45, FCC 00-208 was served on this 5th day of September 2000 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

/s/ Gail C. Malloy  
Gail C. Malloy

Chairman William E. Kennard  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B201  
Washington D.C. 20554

Commissioner Gloria Tristani  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C302  
Washington D.C. 20554

Commissioner Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A204  
Washington D.C. 20554

Commissioner Susan Nessi  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B115  
Washington D.C. 20554

Commissioner H W. Furchtgott-Rott  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C302  
Washington D.C. 20554

International Transcription Service  
445 12<sup>th</sup> Street, S.W , Room CY-B400  
Washington D.C. 20554

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

Ms. Sheryl Todd  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., 5-A523  
Washington, D.C. 20554