

Before the ~~SECRET FILE COPY ORIGINAL~~
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)

CC Docket No. 96-45

PETITION FOR RECONSIDERATION

WESTERN WIRELESS CORPORATION

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List A B C D E

TABLE OF CONTENTS

	Page
I. INTRODUCTION	2
II. THE COMMISSION SHOULD RECONSIDER ITS APPROACH TO JURISDICTIONAL ISSUES RAISED UNDER SECTION 214(e)(6).....	4
A. The Commission Should Adopt a Standard that ETC Petitions Proposing Universal Service Directed to Tribal Lands Fall Within the FCC's Jurisdiction Under Section 214(e)(6)	5
B. The Proposed Standard Would Serve the Public Interest	7
C. The Commission Has Clear Legal Authority to Adopt the Standard Proposed Here	8
D. Adoption of the Standard Will Allow the Commission to Refine Key Aspects of the <i>Twelfth R&O</i>	13
III. THE COMMISSION SHOULD RECONSIDER THE TIME FRAME FOR DECIDING ETC PETITIONS UNDER SECTION 214(e)(6).....	15
IV. CONCLUSION	16

EXECUTIVE SUMMARY

Western Wireless Corporation (“Western Wireless”) seeks reconsideration of certain aspects of the *Twelfth Report and Order* in CC Docket No. 96-45 regarding the designation of eligible telecommunications carriers (“ETCs”) under 47 U.S.C. § 214(e)(6) for purposes of improving telephone service in unserved and underserved areas, including tribal lands. Toward that end, Western Wireless offers herein a clear and predictable standard for the FCC to assume jurisdiction under Section 214(e)(6) to designate ETCs seeking to provide universal service directed to tribal lands, and it asks that the Commission adopt the standard.

Specifically, Commission should assume jurisdiction where an ETC applicant (i) secures an agreement with the relevant tribe or shows some other indication of tribal support for the carrier’s provision of universal service on the reservation, (ii) proposes to provide universal service targeted to the subject reservation, and (iii) certifies that it will use all federal universal service funding – including that received under special tribal support mechanisms – solely to provide universal service on the reservation. Given the limitations inherent in these criteria, there is ample legal and public policy support under Indian law doctrines and FCC precedent for the Commission to assume jurisdiction under Section 214(e)(6) whenever the criteria are met.

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PETITION FOR RECONSIDERATION

Western Wireless Corporation ("Western Wireless"), by counsel and pursuant to 47 C.F.R. § 1.429, hereby seeks reconsideration of certain aspects of the Twelfth Report and Order in the captioned proceeding. 1/ Specifically, Western Wireless seeks adoption of a clear and predictable standard regarding federal jurisdiction under 47 U.S.C. § 214(e)(6) for designating eligible telecommunications carriers ("ETCs") that propose to provide universal service directed to tribal lands. 2/ This change is necessary in order to promote deployment of new universal service offerings by competitive carriers on tribal lands.

1/ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order ("*Twelfth R&O*"), Memorandum Opinion and Order ("*MO&O*"), and Further Notice of Proposed Rulemaking ("*FNPRM*"), FCC 00-208 (rel. June 30, 2000) (adopting amendments to 47 C.F.R. §§ 54.400-417 to provide additional universal service support for tribal lands).

2/ Western Wireless emphasizes that this Petition does not seek reconsideration of any of the measures adopted in the *Twelfth R&O* regarding ETC designation for non-tribal lands under Section 214(e)(6), *see id.*, ¶¶ 112-14, and that the proposals herein apply only to the FCC's jurisdiction to award federal universal service support for tribal lands, without implicating either the states' ability to award state

[Footnote continued]

I. INTRODUCTION

Western Wireless is anxious to bring new telecommunications services to tribal lands, including the Crow Reservation in Montana, for which Western Wireless has already applied for ETC status in this proceeding, as well as other reservations within the company's service area. The new and increased universal service support provided by mechanisms adopted and/or modified in the *Twelfth R&O* should do much to improve basic telephone penetration on tribal lands and in other underserved areas. Western Wireless looks forward to offering universal service on tribal lands under these programs that will bring new and additional telecommunications service to areas with inadequate service.

Specifically, Western Wireless has already negotiated with and obtained the support of the Crow Tribe in Montana to provide universal service on that reservation, 3/ and the support of numerous other tribes as well. 4/ In addi-

[Footnote continued]

universal service support or a carrier's responsibility to seek designation for such support directly from the relevant state commissions.

3/ See Reply Comments of Western Wireless at 5, in *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*, CC Docket No. 96-45, Public Notice, DA 99-1847 (rel. Sept. 10, 1999) ("*Crow Reservation Public Notice*").

4/ See, e.g., Comments of the Rosebud Sioux Tribe, filed Dec. 17, 1999; Letter from G. Wayne Tupio and Wilbur Between Lodges, Tribal Leaders of Oglala Sioux Tribe, filed May 31, 2000, in *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); Letters from Charles W. Blackwell, Native Affairs Development Group, filed June 1, 2000, on *Crow Reservation Public Notice* (transmitting support letters from 20 tribes).

tion, Western Wireless is in the process of negotiating the provision of universal service to tribal lands other than the Crow Reservation. To qualify for federal universal service support for these areas, though, Western Wireless must seek designation as an ETC for the tribal lands it wishes to serve. ^{5/} However, even with the release of the *Twelfth R&O* and the accompanying *MO&O*, it is still unclear whether the FCC will exercise its jurisdiction under Section 214(e)(6) to designate Western Wireless as an ETC for the Crow Reservation and other tribal lands. It is also unclear what showing Western Wireless must make to convince the Commission to exercise its jurisdiction under Section 214(e)(6).

Thus, additional clarification is necessary to enable companies like Western Wireless to expeditiously deploy new or additional telecommunications services to tribal lands. Specifically, carriers that wish to help improve the state of telecommunications on tribal lands must be able – at the time they are considering whether and how to structure such an offering – to determine whether to seek ETC status from the relevant state commission or from the FCC. ^{6/} In addition, they must be confident that the FCC will expeditiously and definitively resolve ETC petitions filed under Section 214(e)(6). In the balance of this Petition for Recon-

^{5/} See 47 U.S.C. § 254(e) (“only an [ETC] designated under Section 214(e) shall be eligible to receive specific Federal universal service support”); 47 C.F.R. § 54.201 (“only [ETCs] designated under . . . this section shall receive universal service support distributed to part[s] 36, 54 and 69 of this chapter”).

^{6/} Cf. *Western Wireless Corp. Petition for Preemption of Statutes and Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253*, File No. CWD 98-90, Memorandum Opinion and Order, FCC 00-309, ¶ 8 (rel. Aug. 28, 2000)

[Footnote continued]

sideration, we set forth several steps the FCC should take to remove prevailing uncertainty and improve the process for seeking ETC status to provide universal service on tribal lands.

II. THE COMMISSION SHOULD RECONSIDER ITS APPROACH TO JURISDICTIONAL ISSUES RAISED UNDER SECTION 214(e)(6)

The Commission should fill the void left by the *Twelfth R&O* regarding jurisdictional issues under Section 214(e)(6) by establishing a substantive standard that the FCC properly has jurisdiction to designate a carrier as an ETC under Section 214(e)(6) where the carrier proposes to offer universal service directed to tribal lands. Unlike the approach in the *Twelfth R&O*, this standard, ^{7/} as detailed below, offers carriers much more certainty at the outset regarding whether to apply to the FCC or to the state commission for ETC designation. It also therefore avoids undue delay in carriers being designated as ETCs to provide universal service on reservations, and it will preserve FCC resources by making the Section 214(e)(6) ETC process much simpler and clearer. There is also ample legal support for adopting such a standard for universal service targeted to tribal lands, given

[Footnote continued]

(recognizing that “a carrier may be unable to secure financing or finalize business plans due to uncertainty” over whether it qualifies for universal service support).

^{7/} The standard differs from an approach under which the FCC “generally has authority to make all ETC determinations over carriers providing telecommunications services on tribal lands,” which the FCC rejected, *see Twelfth R&O*, ¶ 107, because the proposed standard distinguishes between carriers merely providing service on tribal lands and those offering *universal service directed* to tribal lands. *See infra*, Section II.A.

that state interests in regulating universal service provided exclusively or predominantly on Indian reservations under federal programs is quite limited.

A. The Commission Should Adopt a Standard that ETC Petitions Proposing Universal Service Directed to Tribal Lands Fall Within the FCC's Jurisdiction Under Section 214(e)(6)

The Commission should reconsider its approach to ETC jurisdictional issues by adopting a standard that any carrier filing an ETC petition proposing to offer universal service directed to tribal lands satisfies the “not subject to the jurisdiction of a state commission” requirement in Section 214(e)(6). The Commission should establish that a carrier meets this “directed to tribal lands” standard if the following criteria are satisfied. First, the carrier must secure an agreement with the relevant tribe(s) or procure some other indication of tribal support for the carrier’s provision of universal service on the reservation. 8/ Second, the carrier’s Section 214(e)(6) petition must propose to provide universal service that is targeted to the reservation. Determinative factors to demonstrate such targeting should include any one of the following:

- the service is geographically targeted exclusively or primarily to tribal lands; or
- there are features of the service that the carrier offers to the tribe that distinguish it from services the carrier it offers elsewhere (*e.g.*, the rate structure, pricing, and/or other aspects of how the service is marketed); or
- the applicant has a special organizational structure designed for service to the tribal area (*e.g.*, some tribal ownership or role in governance, etc.); or

8/ Such a showing would greatly diminish the Commission’s need to consult with the tribe directly (other than to confirm the indicia of support offered by the applicant), as the tribe will have already demonstrated its desire to bring new service to its reservation and its belief that the state lacks jurisdiction.

- the applicant will serve tribal lands and is a commercial mobile radio service (“CMRS”) provider. ^{9/}

Finally, the carrier must certify that, consistent with 47 U.S.C. § 254(e), it will use funding received from the federal high-cost fund, as well as any special federal tribal support mechanisms, solely to support universal service on the reservation.

This standard is preferable to the amorphous, complex and lengthy case-by-case inquiry adopted in the *Twelfth R&O*. It will facilitate more new service to tribal lands than a case-by-case approach, because carriers that lack a clear understanding of how to attain ETC status to offer universal service on reservations – or that must face an arduous designation process with no established ground rules, criteria or time frame – have a clear disincentive to make plans to serve tribal lands. Moreover, as described below, the public interest and legal bases for the standard are sound. Finally, adopting the standard allows the FCC to fulfill its role of encouraging rapid deployment of new service to tribal lands rather than retreating to a fall-back position that every Section 214(e)(6) petition is *sui generis*.

^{9/} It should be noted that these four means of meeting the “targeted to tribal lands” criteria are not intended to be exhaustive or exclusive. If an ETC applicant can offer other evidence demonstrating that the universal service described in its petition is targeted to tribal lands, it should likewise qualify for designation by the FCC. It should also be noted that the last of these four, regarding CMRS providers, distinguishes the FCC’s conclusion that “the provision of service by terrestrial wireless or satellite carrier does not *per se* place the carrier outside the parameters of the state commission jurisdiction under Section 214(e)(2),” *Twelfth R&O*, ¶ 109, from the provision of service by terrestrial wireless or satellite carriers to tribal lands under Section 214(e)(6). *See infra* at Section II.D.

B. The Proposed Standard Would Serve the Public Interest

Adoption of the standard proposed above would result in several public interest benefits not provided by the current approach. The Commission has already demonstrated the dire need for additional telecommunications services on tribal lands, the significant role that federal agencies must play in meeting that need, and the suitability of using federal universal service mechanisms to do so. ^{10/} It has also already recognized the critical nature of ETC designation in the provision of universal service by new entrants. ^{11/} Unlike the approach in the *Twelfth R&O*, the standard proposed here would give carriers much more certainty at the outset regarding whether to apply for designation at the FCC or at a state commission. This would avoid undue delays in getting carriers designated as ETCs and providing universal service on reservations. In addition, the proposed standard would also preserve the FCC's staff resources by making the decision process on Section 214(e)(6) petitions much simpler and clearer. Thus, because the standard will facilitate and expedite the designation of additional ETCs to bring new services to underserved tribal lands more readily, it will advance the public interest.

^{10/} *Twelfth R&O*, ¶¶ 42-67.

^{11/} *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petitions for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, FCC 00-248, ¶¶ 12-13, 23, 27-31 (rel. Aug. 10, 2000); *Western Wireless Petition for Preemption of Statutes and Rules Regarding the Kansas Universal Service Fund*, File No. CWD 98-90, Memorandum Opinion and Order, ¶ 8 (rel. Aug. 28, 2000).

C. The Commission Has Clear Legal Authority to Adopt the Standard Proposed Here

There is ample legal authority for adoption of a standard that universal service supported by federal mechanisms and directed toward tribal lands falls within the Commission's jurisdiction under Section 214(e)(6). First, the FCC has a "general trust relationship with, and responsibility to, federally-recognized Indian Tribes" and a commitment to "work with [them] on a government-to-government basis . . . to ensure . . . that [they] have adequate access to communications services." ^{12/} As discussed above, the proposed standard would facilitate and expedite the designation of additional ETCs to bring new services to underserved tribal lands and thereby help the FCC fulfill its role under this trust relationship.

Second, the proposed standard satisfies the basic tenets of Indian law for determining whether a state lacks jurisdiction over regulated services on tribal lands. The extent of state jurisdiction in this context is generally determined by balancing the state's interest in regulating the service against federal/tribal interests, and in particular the tribe's interest in its own sovereignty and economic well-being, and in tribal health, education and welfare. ^{13/} The FCC, the expert

^{12/} *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207, at Section III (rel. June 23, 2000); see also *Twelfth R&O*, ¶ 119.

^{13/} *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-45 (1980); *United States v. Montana*, 450 U.S. 544, 564-66 (1981); see also *Crow Tribe of Indians v. Montana*, 819 F.2d 895, 902 (9th Cir. 1987) ("The principle of tribal self-government is to seek an accommodation between the interests of the Tribe and the Federal Government, on the one hand, and those of the State, on the other.") (quoting

[Footnote continued]

federal agency on telecommunications, has already determined that telephone service implicates the sovereignty, the economic well-being, and the health, education and welfare of Indian tribes. 14/ Requiring Section 214(e)(6) ETC applicants to secure an agreement with or the support of the tribe ensures that the tribe is taking an active role in advancing its interests, 15/ and requiring carriers to meet one of the four listed criteria for demonstrating that its universal service offering is “targeted” to tribal lands, *see supra* Section II.A, ensures that the state’s interest in regulating the service is minimal. 16/

[Footnote continued]

Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134 (1980)) (internal quotation omitted), *aff’d mem.*, 484 U.S. 997 (1988).

14/ See *Twelfth R&O*, ¶ 3; see also *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, 21179-80 ¶¶ 2-3 (1999); *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Notice of Proposed Rulemaking, 14 FCC Rcd 13679, 13681 ¶¶ 2-3 (1999); see also *Crow Tribe v. Montana*, 819 F.2d at 901 (where an on-reservation activity is “vital to the economic development” of the tribe, the state “faces a heavy burden” to overcome the tribe’s interest with a showing of legitimate state interests).

15/ See *Crow Tribe v. Montana*, 819 F.2d at 899 (noting U.S. Supreme Court distinctions in favor of tribal jurisdiction in cases involving “products generated on the reservation by activities in which the Tribe has a strong interest” and in which “[t]he Indians have invested considerable time and resources”) (distinguishing *Colville Reservation*, 447 U.S. 134, from *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 214-15 (1987)).

16/ See, e.g., *Northern Border Pipeline Co. v. Montana*, 772 P.2d 829, 830-33 (Mont. 1989) (“[Th]e federal/tribal interest will be strongest, and the state interest correspondingly weakest, where the activity or property at issue involves only Indians and the property is located solely within the reservation. The reverse is true when the activity or property involves non-Indians and has effects that are felt off the reservation.”) (citing *White Mountain Apache*, 448 U.S. at 144; *Colville Reservation*, 447 U.S. at 154-57). As a general rule, states may validly assert authority

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Indeed, universal service that is geographically targeted exclusively or primarily to tribal lands will result in little or no carry-over to non-tribal lands within the state's domain, so the tribe's interest in advancing its independence, its economy, and the health, education and welfare of its members outweighs the state's regulatory interest. ^{17/} Likewise, if universal service provided by an ETC designated under Section 214(e)(6), supported by tribal contract or support, is different from that offered off the reservation in its pricing, rate structure, marketing and/or service features, the offering is unique to the reservation and therefore distinct from any service over which the state can claim a legitimate regulatory interest. Special organizational structures for carriers providing universal service offered to tribal areas, such as tribal ownership or a governance role in the offering, also distinguish it from services offered elsewhere in the state over which the state might assert a legitimate regulatory interest. Finally, given that states already

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over the activities of nonmembers on a reservation only when "certain circumstances" are met, and may do so as to on-reservation activities of tribal members only in "exceptional" circumstances. See *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 214-15 (1987) (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-32 (1983)).

^{17/} See *Crow Tribe v. Montana*, 819 F.2d at 902 ("Tribal sovereignty contains a significant geographical component . . .") (citing *Mescalero Apache*, 462 U.S. at 335; *White Mountain Apache*, 448 U.S. at 151); cf., *Otter Tail Power Co. v. Public Service Comm'n*, 451 N.W.2d 95, 104 (N.D. 1990) (finding state regulatory authority over on-reservation electric power supplied by non-tribal electric company under contract with tribally-owned business, in part because the electric supply system, over which PSC otherwise had regulatory control, "is generally not confined to particular parcels of property, but spans across reservation boundaries as well as state borders").

have relatively scant regulatory authority over CMRS offerings, 18/ the state's regulatory interest in universal service offered by CMRS providers is easily outweighed by tribal interest in bringing new and/or improved telecommunications service to the reservation. 19/

Third, the requirement that tribes take an active role in advancing their political, economic, health and education interests by entering an agreement with ETC applicants or signaling support of ETC petitions does more than underscore the tribe's jurisdictional interest as compared to the state's. It also resonates with the Indian law premise that contracts entered with Indians to provide on-reservation services are outside state jurisdiction. 20/

Fourth and last, as a general matter, states have very little interest in regulating universal service targeted to tribal lands. When it comes to funding

18/ See 47 U.S.C. § 332(c)(3) (preempting state regulation of CMRS rates and entry); *cf.*, *Bastien v. AT&T*, 205 F.3d 983 (7th Cir. 2000) (affirming dismissal of a cellular customer's state law claims against carrier for enrolling subscribers despite lacking sufficient infrastructure to provide reliable service, on grounds that claims were really directed toward carrier buildout governed by FCC rules and within federal preemption of CMRS rates and entry); *but see Wireless Consumers Alliance, Inc.*, WT Docket No. 99-263, Memorandum Opinion and Order, FCC 00-292 (rel. Aug. 14, 2000) (holding that Section 332(c)(3) does not generally preempt damages on state consumer-protection, tort, or contract claims, but rather that whether a specific damage calculation is prohibited depends on the specific facts and circumstances of the case). See also *infra*, Section II.D.

19/ See *Northern Border Pipeline*, 772 P.2d at 833 (describing *White Mountain Apache* analysis of extensive federal regulation, and scant state influence, with regard to logging and roads used on reservation to conduct same). Similarly, CMRS providers, particularly those endeavoring to provide universal service as defined by federal statute and the FCC, are subject to relatively little state regulation but significantly more pervasive federal regulation.

20/ See, e.g., *U.S. v. Montana*, 450 U.S. at 565-66.

ETCs designated under Section 214(e), it is a *federal* statute that establishes both the explicit subsidies that support the service and how to qualify for them, 21/ *federal* regulatory provisions dictate the minimum contours of the service, 22/ and on tribal lands, additional funding is currently available only through the *federal* programs adopted in the *Twelfth R&O* to advance a *federal* trust relationship. 23/ Add to this strong federal patina the fact that universal service targeted to tribal lands is by definition (under the criteria set forth above) separate and distinct from service offered outside the reservation, and the state interest is diminished further. Finally, the strength of the *federal*, rather than the state, interest in regulating universal service targeted to tribal lands is underscored by the fact that one of the key inducements – if not the sole incentive – for carriers to rapidly expand basic telephone service on tribal lands will be the FCC’s new support mechanisms established in the *Twelfth R&O*.

21/ See 47 U.S.C. §§ 254; 214(e).

22/ See 47 C.F.R. § 54.101.

23/ Such a pervasive federal interest is an important factor in weighing the state and federal/tribal interests. See *Northern Border Pipeline*, 772 P.2d at 834 (noting that “the Supreme Court in *White Mountain* stated that the balancing of federal, tribal and state interests was to include the broad policies that underlie relevant federal laws,” and holding that “[a] specific federal regulatory scheme would yield a federal/tribal interest that weighed more heavily in the *White Mountain* test, but [] is not a prerequisite” for finding that federal/tribal jurisdiction rather than state jurisdiction applies).

D. Adoption of the Standard Will Allow the Commission to Refine Key Aspects of the *Twelfth R&O*

Adoption of the proposed standard will, as a corollary, allow the FCC to advance the public interest by refining two key determinations in the *Twelfth R&O* regarding concurrent applications for tribal and non-tribal areas, and the provision of universal service to tribal lands by CMRS carriers. Because both of these refinements will provide clearer ETC designation processes and faster deployment of universal service in underserved areas, both will confer significant public interest benefits.

First, adoption of the jurisdictional standard proposed above will allow the Commission to refine its prohibition on carriers seeking ETC designation from both the FCC and a state commission. ^{24/} Western Wireless agrees that a carrier should not be permitted to “forum shop” by seeking a grant of the same ETC petition from both the FCC and a state commission. However, adoption of the directed-to-tribal-lands standard set forth above will remove the specter of a carrier seeking designation from both a state commission and the FCC for the same offering. This is so because, in order to meet the standard, the universal service offering described in a Section 214(e)(6) petition must be different from a more generalized universal service offering that is not “directed to tribal lands.” Thus, it would be possible for a carrier to file two separate petitions at the state and federal levels, triggering dif-

^{24/} *Twelfth R&O*, ¶ 126 (holding that “[i]n order to avoid the potential for ‘forum shopping,’ a carrier may avail itself of the FCC’s ETC designation process only “when it has not initiated a designation proceeding before the affected state commission”).

ferent jurisdictional considerations, and both could co-exist before the respective federal and state agencies. Moreover, this refinement will facilitate competitive entry in underserved tribal and non-tribal areas because it will allow carriers to proceed without fear that a general ETC petition for non-reservation areas filed with the state commission under Section 214(e)(2) will interfere with designation under Section 214(e)(6) by the FCC for universal service targeted to tribal lands (or that the Section 214(e)(6) petition will delay the grant of the non-reservation Section 214(e)(2) petition).

Second, adoption of the jurisdictional standard proposed here will allow the Commission to refine its conclusion that “the provision of service by [a] terrestrial wireless or satellite carrier does not *per se* place the carrier outside the parameters of the state commission jurisdiction under Section 214(e)(2).” 25/ While Western Wireless does not seek reconsideration of this broad statement of general application, the Commission should specify that the statement quoted above was based on an undifferentiated CMRS offering to both reservation and non-reservation areas, 26/ and that a CMRS offering directed toward tribal lands is sufficiently distinct and raises adequate tribal/federal interests to satisfy the Section 214(e)(6) lack-of-state-jurisdiction prerequisite. 27/

25/ See *Twelfth R&O*, ¶ 109.

26/ *Id.*, ¶ 109-110.

27/ Indeed, a CMRS provider intending to direct universal service to an Indian reservation by petitioning for ETC status under Section 214(e)(6) is not pursuing “an artificial competitive advantage over all other businesses in the state,” *Northern Border Pipeline*, 772 P.2d at 833 (quoting *Colville Reservation*, 447 U.S. at 155), nor

[Footnote continued]

III. THE COMMISSION SHOULD RECONSIDER THE TIME FRAME FOR DECIDING ETC PETITIONS UNDER SECTION 214(e)(6)

For petitions filed under Section 214(e)(6), the Commission should collapse consideration of its jurisdiction and the substantive ETC criteria into a single six-month process instead of the system adopted in the *Twelfth R&O* where the FCC *first* decides whether it has jurisdiction to address a Section 214(e)(6) petition, and *then* decides the merits of the petition within six months after taking jurisdiction. Indeed, the Commission should, in the process of examining the jurisdictional basis for a Section 214(e)(6) petition, review sufficient facts to determine at least whether the applicant provides the services and functionalities required of an ETC, especially if the standard proposed above is adopted. 28/ Deciding to take jurisdiction under Section 214(e)(6) should be relatively straight-forward and need not be a months-long process in addition to the substantive analysis. Having the whole process take only six months coincides with the Commission's commitment in the *Twelfth R&O* to decide ETC petitions within six months, and its proposal in the *FNPRM* to do the same for the attendant jurisdictional issues. 29/ Moreover, it is

[Footnote continued]

seeking to avoid state regulation that would otherwise apply, *see supra* note 18, so there is a strong basis for recognizing that CMRS providers directing service to tribal lands are not subject to the jurisdiction of a state commission.

28/ This is particularly true if the Commission must examine whether the offering proposed in a Section 214(e)(6) ETC petition is "targeted" as described above in Section II.A.

29/ *Twelfth R&O*, ¶ 121; *FNPRM*, ¶ 152.

more consistent with the goal of expediting the deployment of services to tribal lands than a framework in which the jurisdictional inquiry can drag on indefinitely.

IV. CONCLUSION

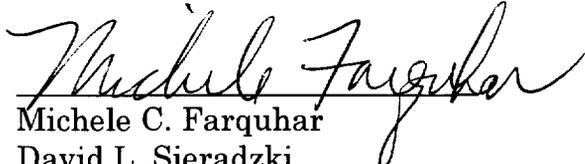
For the foregoing reasons, the Commission should reconsider the aspects of the *Twelfth R&O* outlined above by (i) adopting a standard that universal service directed to tribal lands satisfies the “not subject to the jurisdiction of a state commission” jurisdictional prerequisite in Section 214(e)(6), and (ii) consolidating its jurisdictional and substantive analyses of ETC petitions filed pursuant to Section 214(e)(6) of the federal Act.

Respectfully submitted,

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