

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Western Wireless Corporation)	
Petition for Designation as an Eligible)	CC Docket No. 96-45
Telecommunications Carrier and for)	DA 00-2327
Related Waivers to Provide Services)	
Eligible for Universal Service Support)	
to the Crow Reservation, Montana)	

**INITIAL COMMENTS
OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION**

The National Telephone Cooperative Association (NTCA) submits its initial comments in the above-captioned proceeding.¹ NTCA urges the Federal Communications Commission (Commission or FCC) to dismiss Western Wireless= (WW=s) petition for eligible telecommunications carrier (ETC) designation on the Crow Reservation in Montana.² WW’s claim that the Montana Public Service Commission (MPSC) lacks jurisdiction is without merit. The MPSC has jurisdiction over non-tribally owned carriers seeking ETC designation on the Crow Reservation and nothing in WW’s original petition nor its supplemental filing demonstrates otherwise.³

¹ NTCA is a national association of over 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are defined as “rural telephone companies” in the Telecommunications Act of 1996 (Act). 47 U.S.C. § 151(37). NTCA’s members include non-tribally owned and tribally owned local exchange carriers serving tribal lands. Approximately half of NTCA’s members are cooperatives.

² *Common Carrier Bureau Seeks Comment on Western Wireless’ Supplemental Filing Relating to its Petition for Designation as an Eligible Telecommunications Carrier on the Crow Reservation in Montana*, CC Docket No. 96-45, DA 00-2327 (rel. October 13, 2000) (On October 12, 2000, WW filed a Jurisdictional Supplement in response to an FCC directive to support its contention that the MPSC does not have jurisdiction to designate WW as an eligible telecommunications carrier on the Crow Reservation. The Commission has also allowed the MPSC and interested parties an opportunity to respond to WW’s original petition and the supplemental filing.)

³ *Comments of the Montana Public Service Commission filed in the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier and for the Related*

I. The Montana Public Service Commission Has Authority To Determine The Merits Of Western Wireless' Petition For ETC Designation On The Crow Reservation.

The Commission has acknowledged that section 332(c)(3) “does not prohibit state commissions from designating CMRS providers as eligible telecommunications carriers because such designation relates to a carrier’s right to receive universal service support, rather than a carrier’s legal right to do business in a state.”⁴ The FCC has also determined that section 214(e)(6) “does not provide the Commission with the *per se* authority to designate carriers based solely on the provision of service on tribal lands.”⁵ The Commission further held that “determinations as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a fact-specific inquiry informed by principles of tribal sovereignty, treaties, state law, and federal Indian law.”⁶ If, however, it is determined that the MPSC has jurisdiction over WW, section 214(e)(2) provides that the MPSC, not the FCC, has authority to determine the merits of WW’s petition for ETC designation on the Crow Reservation. The only exception to this rule is when a common carrier is not subject to any state commission jurisdiction.⁷

WW’s Jurisdictional Supplement supports MPSC’s assertion that it has jurisdiction over WW for purposes of determining the merits of WW’s petition for ETC

Waivers to Provide Universal Service to the Crow Reservation in Montana, CC Docket No. 96-45, DA 99-1847, p. 2 (October 6, 1999).

⁴ *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 00-208, ¶ 110 (rel. June 30, 2000).

⁵ *Id.*, at ¶ 139.

⁶ *Id.*

⁷ 47 U.S.C. § 214(e)(6).

designation on the Crow Reservation. The Opinion Letter of Professor Richard B. Collins attached to the WW's Supplement states that the State "has jurisdiction over service" to the non-Indian residents living on the Crow Reservation.⁸ This accounts for approximately 26% of all residents living on the Reservation.⁹ If the MPSC has jurisdiction over "service" on the Crow Reservation, then the MPSC also has jurisdiction over the non-tribally owned carriers providing service on the Reservation, regardless of the degree of that jurisdiction. Indeed, the MPSC has previously exercised its jurisdiction and authority under section 214(e)(2) when it granted ETC designations to Project Telephone Company and US West to provide "service" on the Crow Reservation.¹⁰ WW's Jurisdictional Supplement and Opinion Letter provide nothing to change the fact that the MPSC has jurisdiction over non-tribally owned carriers serving the Crow Reservation, including WW.

Moreover, the enactment of section 214(e)(6) was intended to address an oversight in the 1996 Act which prevented tribally owned carriers providing telephone services exclusively on tribal lands and not subject to state jurisdiction from becoming ETCs and thus ineligible to receive universal support. The sponsor of the bill, Senator McCain, stated the following:

Typically, states have no jurisdiction over tribally owned companies, which may or may not be regulated by a tribal authority that is not a state

8 Opinion Letter of Professor Richard B. Collins, p. 4 (September 29, 2000).

9 *Id.*

10 *Comments of the Montana Public Service Commission filed In The Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier and for the Related Waivers to Provide Universal Service to the Crow Reservation in Montana*, CC Docket No. 96-45, DA 99-1847, p. 2 (October 6, 1999).

commission *per se*. The failure to account for these situations means the carriers not subject to the jurisdiction of a state commission lacked a way of becoming an eligible carrier that can receive universal service support. This would be the case whether these carriers are traditional local exchange carriers that provide services otherwise included in the supported services, have previously obtained universal service support, or will likely be a carrier that continues to be the carrier of last resort for customers in the area.¹¹

The Commission has previously recognized and accepted Congress's intent when it issued its own procedures for the designation of carriers as ETCs:

According to the colloquy between Senator McCain and Senator Daschle, the amendment was intended to correct an oversight in the statute regarding certain carriers, such as tribally owned carriers, that may fall outside the jurisdiction of the state commission. The amendment does nothing to alter the existing jurisdiction that state commissions have over local exchange carriers and providers of commercial radio services."¹²

In cases involving tribally owned carriers, the FCC has properly exercised its authority to designate ETC status for these carriers after a finding that the request is consistent with the public interest.¹³ The law clearly allows tribally owned carriers providing telephone services exclusively on tribal lands to apply to the FCC directly for ETC designation and become eligible to receive universal support. The law, however, does not allow the Commission to substitute its

11 141 Cong. Rec. S12568, (Nov. 13, 1997).

12 See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, FCC 97-419, note 4 (rel. Dec. 29, 1997).

13 See *Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, AAD/USB File No. 98028, DA 98-392, (rel. Feb. 27, 1998); *Petition of Saddleback Communications for Designation of Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 98-2237, (rel. Nov. 4, 1998); *Cheyenne River Sioux Tribe Telephone Authority Seeks FCC Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum

jurisdiction in place of a state commission's jurisdiction for purposes of determining the merits of a non-tribally owned carrier's petition for ETC designation on tribal lands.

II. Conclusion

Based on these reasons, NTCA urges the Commission to dismiss WW=s petition for ETC designation on the Crow Reservation and allow the MPSC to consider the petition on the merits.

Respectfully submitted,

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Opinion and Order, Public Notice, AAD/USB File No. 98-21, DA 98-150, (rel. Jan. 29, 1998).

