

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	
WESTERN WIRELESS CORPORATION)	
Petition for Designation as an)	CC Docket No. 96-45
Eligible Telecommunications Carrier for the)	
Pine Ridge Reservation in South Dakota)	
)	
Federal-State Joint Board)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its Comments in the above captioned proceeding² in support of the Petition for eligible telecommunications carrier ("ETC") designation filed by Western Wireless Corporation and its wholly-owned subsidiary, WWC License, LLC (together, "Western Wireless").

On January 19, 2001, Western Wireless filed a petition seeking ETC designation for the Pine Ridge Reservation in South Dakota. Consistent with CTIA's position in earlier comments, CTIA supports Western Wireless' petition, which demonstrates that Western Wireless meets the requirements for designation as an ETC. Section 214(e)(6) provides for ETC designation of

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² See *Common Carrier Bureau Seeks Comment on Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, *Public Notice*, DA 01-278 (rel. Feb. 2, 2001).

carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) states, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the 2 requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.³

Furthermore, as a commercial mobile radio service (“CMRS”) provider and as a provider of service on federally reserved Native American lands, the FCC has the authority to grant ETC status to Western Wireless pursuant to 47 U.S.C. Sections 214(e)(3) and (e)(6).

A. Western Wireless Is Not Subject To the Jurisdiction of the South Dakota Public Utilities Commission

Pursuant to Section 214(e)(6), the Commission shall designate as an ETC a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a State commission, so long as the carrier otherwise meets the Act’s requirements. For common carriers proposing universal service targeted to Indian reservations, the Commission’s jurisdictional determination under Section 214(e)(6) involves a balancing test. This balancing test includes several factors: the existence of a treaty or other legal document affecting tribal sovereignty; the consent of a non-Indian carrier to tribal jurisdiction; the ratio of Indian to non-Indian residents and land on the reservation; the extent to which the activity under consideration is limited to the reservation or extends beyond its boundaries; and the interests of the tribe and the state under review.⁴

³ 47 U.S.C. §214(e)(6).

⁴ See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

CTIA agrees with Western Wireless in its application of this balancing test that its proposed universal service offering to Native American residents and businesses on the Pine Ridge Reservation is not subject to state jurisdiction, but is entirely within the scope of the FCC's authority. As noted by Western Wireless in its Petition, the population of the Pine Ridge Reservation is overwhelmingly Native American. Also, Western Wireless has entered into an agreement with the Oglala Sioux Tribe, the Tate Woglaka Service Agreement, subjecting its universal service offering to the Tribe's jurisdiction. Furthermore, the Pine Ridge service offering is specifically designed to meet the Tribe's needs. Finally, South Dakota lacks a legitimate interest in regulating the proposed service offering. In balance, the only regulatory body empowered to grant ETC status to Western Wireless for the requested service areas in South Dakota is the FCC.

Finally, CTIA agrees that Western Wireless' separate application for ETC status in South Dakota does not preclude its petition for ETC status on the Pine Ridge reservation. As explained by Western Wireless in its Petition, the application for service on Pine Ridge Reservation differs from the application currently pending in the South Dakota Supreme Court. The South Dakota PUC has appealed the Sixth Judicial Circuit Court's reversal of the South Dakota Public Utilities Commission's ("South Dakota PUC") decision denying Western Wireless' ETC petition.⁵

⁵ *Filing by GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, Findings of Fact, Conclusions of Law, and Order, Civ. 99-235 (SD Sixth Jud. Cir. March 22, 2000). That decision is currently stayed pending the PUC's appeal to the South Dakota Supreme Court. *Cf. Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd. 15168, 15169, ¶3 (rel. Aug. 10, 2000).

B. Western Wireless Offers All Of the Services Supported by Universal Service Support Mechanisms

Western Wireless addressed the nine services and functionalities identified in the Commission's rules, 47 C.F.R. 54.101(a), that are the core services to be offered by an ETC and supported by federal universal service support mechanisms.⁶ Western Wireless's universal service offering will be provided throughout its cellular service area in South Dakota over its existing cellular network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to serve existing mobile cellular service subscribers.⁷ Western Wireless further states that it will advertise its new universal service offering to ensure that consumers on the Pine Ridge Reservation are aware of it. Western Wireless has satisfied the requirements of Sections 254 and 214(e)(1)(A) of the Communications Act of 1934 and Section 54.101(a) of the Commission's rules regarding ETC eligibility.

C. Conclusion

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to Western Wireless for the Pine Ridge Reservation in South Dakota.

⁶ See Western Wireless Petition at 19-25.

⁷ See Western Wireless Petition at 24.

Respectfully submitted,

Michael Altschul

Michael F. Altschul
Senior Vice President & General Counsel
**CELLULAR TELECOMMUNICATIONS
& INTERNET ASSOCIATION**
1250 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20036

March 12, 2001