

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

**COMMENTS OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
IN OPPOSITION OF THE
PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER FILED BY
WESTERN WIRELESS CORPORATION**

The National Telephone Cooperative Association (“NTCA”)¹ submits the following comments in response to the Federal Communications Commission’s (“Commission” or “FCC’s”) Public Notice, released on February 2, 2001 in the above-captioned proceeding.² Western Wireless Corporation (“WW”), through its wholly own subsidiary, has requested the Commission to designate it as an eligible telecommunications carrier (“ETC”) for purposes of providing service to the Pine Ridge Reservation (“Reservation”) in South Dakota. NTCA urges the Commission to deny the petition. WW’s has previously petitioned the South Dakota Public Utility Commission (SDPUC) for ETC

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. 153(37). Approximately half of NTCA’s members are organized as cooperatives.

² See *In the Matter of Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, DA 01-278 (Released February 2, 2001).

designation for the entire state and a decision on appeal is currently pending before the South Dakota Supreme Court.

I. WESTERN WIRELESS' PETITION SHOULD BE DENIED

The FCC has stated “that in order to avoid the potential for ‘forum-shopping’ and the cost and confusion caused by the duplication of efforts between [the] Commission and state commissions, [the FCC] will not make a jurisdiction determination under section 241(e)(6) if the effected state commission has initiated a proceeding in response to a designation request under section 214(e)(2).”³ WW’s has already petitioned SDPUC for statewide ETC status including Pine Ridge Reservation.⁴ In that proceeding, the SDPUC denied WW’s petition for statewide ETC status. The State Circuit Court later overturned the SDPUC decision. The Circuit Court decision, however, was subsequently appealed to the South Dakota Supreme Court, which stayed the enforcement of the lower court decision pending a resolution of the appeal. By filing its statewide application, WW conceded that the state has jurisdiction to grant it ETC status for tribal lands in South Dakota. WW is now attempting to circumvent the South Dakota appeal process by requesting ETC designation from the FCC. WW’s petition is a blatant violation of section 214(e)(2) and the FCC’s *Tribal Lands Order*. Therefore, in accordance with section 214(e)(2) and the *Tribal Lands Order*, the Commission should deny WW’s petition for ETC designation of the Pine Ridge Reservation in South Dakota.

³ *In the Matter of the Federal-State Joint Board on Universal Service; Promoting the Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, FCC 00-208, CC Docket 96-45, ¶ 126 (June 30, 2000). (*Tribal Lands Order*)

⁴ See *In the Matter of the Federal-State Joint Board on Universal Service, Western Wireless Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket 96-45, FCC 00-248 (rel. August 10, 2000).

II. WESTERN WIRELESS PETITION IS NOT IN THE PUBLIC INTEREST

In addressing the public interest requirement in section 214(e), WW claims that its designation as an additional ETC would facilitate competition “to the benefit of consumers on the Pine Ridge Reservation.”⁵ To bolster its case, WW argues that its services “will facilitate competition in the provision of universal service, to the benefit of consumers on the Pine Ridge Reservation.”⁶ Indeed, in order to facilitate competition, Section 214(e)(2) requires state commission to designate additional ETCs in areas served by non-rural ILECs. However, Congress had reservations as to whether the introduction of subsidized competition into the areas served by rural telephone companies would immediately, or in all cases, be beneficial to the provision of universal service. These concerns led Congress to carve out an exception to its general rule favoring multiple ETC designations by adding the requirement of a public interest determination prior to the designation of additional ETCs in rural company service areas. It follows, then, that the introduction of competition into a rural service area cannot be considered a demonstration of serving the public interest, since this is exactly the issue Congress required the states to determine as a prerequisite for designating an additional ETC in a rural telephone company’s study area. Were the FCC to consider adding an additional competitor into the service areas of the three existing carriers – Golden West Telecommunications Cooperative, Fort Randall Telephone Company, and Cheyenne River Sioux Tribal Telephone Authority – as a valid basis for a public interest

⁵ WW Petition, p. 27.

⁶ Id.

showing, it would render meaningless the universal service safeguard Congress purposefully included in the law.⁷

WW also contends that one of the public interest benefits designating it, as an ETC, would be the “rapid development of new technologies.”⁸ WW, however, fails to mention exactly what those services are. To be sure, WW only details how it is capable of providing all of the services the Commission has determined to be supported by universal service, and nothing more.

WWC further contends that the mobility of its service is in the public interest because “residents of the Pine Ridge Reservation will have access to telephone services regardless of whether they are at home or someplace else. . . .”⁹ Offering mobile service, however, does not qualify WW for universal service support because mobility is not included in the current Section 254(b) definition of services listed “for the preservation and advancement of universal service. . . .”¹⁰

Finally, WW highlights in its public interest argument asserting that its designation as an ETC “will serve the public interest by greatly improving the telephone penetration rate.”¹¹ WW argues that less than 50 percent of the households on the Pine Ridge

⁷ In fact, when Congress intended increased competition to qualify as an affirmative public interest showing, it found it necessary to say so explicitly.

⁸ WW Petition, p. 29.

⁹ WW Petition, p. 28.

¹⁰ 47 U.S.C. 254(b). The Joint Board is to base its policies for advancing universal service on several policies including the quality and rates for service, access to advanced services, access in rural and high cost areas, equitable and nondiscriminatory contributions, and specific and predictable support mechanisms. See 47 U.S.C. 254(b)(1-5).

¹¹ WW Petition, p. 26.

Reservation have access to basic phone service.¹² WW's basis for its figure, however, is not scientific data, but a resolution adopted by the Oglala Sioux Tribal Council.¹³ In November 1999, Golden West reported a penetration rate of 86 percent for the portion of the Reservation it served.¹⁴

III. CONCLUSION

For these reasons, the Commission should deny WW's petition for ETC designation on the Pine Ridge Reservation in South Dakota.

Respectfully Submitted,

**NATIONAL TELEPHONE COOPERATIVE
ASSOCIATION**

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¹² WW Petition, p. 3.

¹³ Id.

¹⁴ DIAL-TONE IS NOT ENOUGH: SERVING TRIBAL LANDS: The Role That Small Rural Telecommunications Companies Play in Bringing Both Basic and Advanced services to Reservations, p. 18, By NTCA Staff (November 1999).

March 12, 2001

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Comments of the National Telephone Cooperative Association in CC Docket No. 96-45, DA 01-278 was served on this 12th day of March 2001 by first-class, U.S. Mail, postage prepaid, to the following persons

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