

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

In the Matter of	)	
	)	
Promoting Deployment and Subscribership in	)	CC Docket No. 96-45
Unserved and Underserved Areas, Including	)	DA 07-1239
“Near Reservation”	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
INITIAL COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> files these initial comments in response to the Federal Communications Commission’s (Commission’s or FCC’s) March 12, 2007, public notice on promoting telephone service deployment and subscribership in underserved areas, including “near reservation” areas (Notice).<sup>2</sup> The Commission seeks to refresh the record on several issues discussed in the *Twelfth Report and Order* and the *Twenty-Fifth Report and Order and Further Notice of Proposed Rulemaking* in this proceeding.<sup>3</sup>

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 575 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *Wireline Competition Bureau Seeks Additional Comment on Promoting Deployment and Subscribership in Underserved Areas, Including “Near Reservation” areas, Public Notice Establishing Pleading Cycle*, CC Docket No. 96-45, DA 07-1239, Notice (rel. Mar. 12, 2007) (Notice), ¶ 1.

<sup>3</sup> *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, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12218, ¶¶ 17-18 (2000) (*Twelfth Report and Order*); *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, Twenty-Fifth Order on Reconsideration, Report and Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958 (2003) (*Twenty-Fifth Report and Order*).

The Commission's goal, as stated in the Notice, is to determine how best to provide Lifeline and Link-Up targeted support to "near reservation" areas.<sup>4</sup> The Commission can best provide this support by continuing its stay of federal involvement and by allowing states to exercise their jurisdiction over consumers who qualify for Lifeline and Link-up support and who reside off-reservation. Any definition of "near reservation" may include major metropolitan areas whose characteristics do not match those that Congress intended for targeted tribal Lifeline and Link-up support. The Commission should avoid unnecessary and complex entanglements with state jurisdictions – this is the same rationale that persuaded the Commission to not exert federal authority over "near reservation" lands for ETC status, which is analogous to if not linked with providing Lifeline and Link-Up support.

#### **I. Background.**

In its 2000 *Twelfth Report and Order*, the Commission defined "tribal lands" for purposes of universal service support and ETC status to include both "reservation" and "near reservation" areas, as defined by the U. S. Department of Interior, Bureau of Indian Affairs.<sup>5</sup> The Commission held that it has the authority to consider ETC petitions over "reservation" and "near-reservation" lands prior to any state ETC determinations. Subsequently, NTCA and others asked the Commission to reconsider its definition of "near reservation" areas.<sup>6</sup> NTCA contended that the BIA definition of "near reservation" was too broad for ETC designation

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<sup>4</sup> Notice, ¶ 1.

<sup>5</sup> See 25 CFR 20.1(v), (r), now 25 CFR 20.100: "Near Reservation means those areas or communities designated by the Assistant Secretary that are adjacent or contiguous to reservations where financial assistance and social service programs are provided."

<sup>6</sup> NTCA filed its Petition for Reconsideration or Clarification in this docket on Sept. 5, 2000 (NTCA Petition for Reconsideration). Other petitions for reconsideration were filed by the Crow Tribal Council, Florida Commission, Fork Belknap Indian Community, Goshute Indian Reservation, Oglala Sioux Tribe, Qwest Corporation, Rosebud Sioux Tribe, SBC Communications, South Dakota Independent Telephone Coalition (SDITC) and Western Wireless Corporation. Qwest and SBC later withdrew their petitions for reconsideration.

purposes because the BIA's "near reservation" included large cities, such as Phoenix, Arizona.<sup>7</sup> NTCA also contended that the Commission should not preempt state authority over ETC designations for "near reservation" lands.<sup>8</sup> As one petitioner for reconsideration of the Twelfth Report and Order correctly noted, areas that are "near reservation" areas "are not reservation lands subject to treaties, federal Indian law or tribal sovereignty. They are simply areas adjacent or contiguous to reservations."<sup>9</sup>

Also in 2000, the Commission issued its *Tribal Stay Order* staying implementation of the enhanced federal Lifeline and Link-Up rule amendments to the extent that they applied to qualifying low-income consumers residing on "near reservation" areas.<sup>10</sup> The Commission sought more input at that time on how to extend the enhanced Lifeline and Link-Up measures to qualifying low-income consumers living "near reservations."<sup>11</sup>

On May 21, 2003, the Commission released its *Twenty-Fifth Report and Order and Further Notice of Proposed Rulemaking* in which the Commission agreed with NTCA "that the Commission's rationale for adopting a separate designation framework for carriers seeking designation on tribal lands does not extend to "near reservation" areas, as defined by BIA."<sup>12</sup> The Commission declined to follow the BIA's expansive and evolving definition of "near

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<sup>7</sup> NTCA Petition for Reconsideration, pp. 4-5.

<sup>8</sup> *Id.*, p. 5.

<sup>9</sup> SDITC Petition for Reconsideration, p. 6.

<sup>10</sup> *Twenty-Fifth Report and Order*, ¶ 32, citing *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, 15 FCC Rcd 17112 (2000) (*Tribal Stay Order*).

<sup>11</sup> *Tribal Stay Order*, ¶ 3.

<sup>12</sup> *Twenty-Fifth Report and Order*, ¶ 14.

reservation” but said: “To alleviate the potential for ongoing administrative uncertainty, we conclude that any future modifications to the definition of “reservation” or “near reservation” will take effect in the context of the universal service programs only upon specific action by the Commission.”<sup>13</sup> The Commission also sought comment on potential modifications to its rule, including ways to define geographic areas near reservation.<sup>14</sup>

On August 15, 2003, NTCA urged the Commission to reaffirm its rules that carriers seeking ETC designation on any “near reservation” lands must follow the procedures adopted in the *Twelfth Report and Order* for non-tribal lands.<sup>15</sup> NTCA expressed concern that if and when the Commission extends the enhanced low-income universal service programs to “near reservation” areas, the jurisdictional lines will once again become blurred.<sup>16</sup> The BIA’s definition of “near reservation” lands included major metropolitan areas and the Commission did not intend that a carrier could petition it directly for ETC designation for “near reservation” areas like Phoenix, Arizona.

## **II. The Commission Should Continue Its Stay on Implementing Federal Lifeline and Link-Up Rules on “Near Reservation” Areas.**

The FCC correctly observed that the BIA’s “near reservation” areas do not necessarily invoke the same jurisdictional concerns and principles of tribal sovereignty associated with areas within the exterior boundaries of reservations.<sup>17</sup> The Commission also realized that using the

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<sup>13</sup> *Twenty-Fifth Report and Order*, ¶ 17.

<sup>14</sup> *Id.*, ¶ 37.

<sup>15</sup> NTCA Initial Comments, filed Aug. 15, 2003. These rules require a carrier seeking ETC designation for non-tribal areas to give the Commission an affirmative statement from a state court or the state commission that it lacks jurisdiction to perform the designation.

<sup>16</sup> NTCA Initial Comments (filed Aug. 15, 2003), p. 3.

<sup>17</sup> *Twenty-Fifth Report and Order*, ¶ 14.

BIA's definition of "near reservation" would also create serious jurisdictional disputes since states had traditionally exerted their authority over non-reservation lands regarding ETC designation. Extending universal service support for Lifeline and Link-Up services is analogous to if not linked to the exercise of jurisdiction over ETC designation since ETC applicants provide the Lifeline and Link-Up services. Consequently, the Commission should continue its stay on implementing Lifeline and Link-Up support rules on "near reservation" areas.

Congress intended that the states would have the authority to designate carriers as ETCs as is expressly indicated in the Telecommunications Act. The Commission should not usurp the state's jurisdiction in any "near reservation" area because areas that are "near reservations" are subject to state jurisdiction unless or until the state commission or the courts determine otherwise. The list of "near reservation" areas as defined by the Bureau of Indian Affairs and reflected in Appendix B to the *Twenty-Fifth Report and Order*, includes several major metropolitan regions and cities, including Phoenix, Arizona; Clark County, Nevada (includes Las Vegas); Sacramento County, California, and King County, Washington (includes Seattle).<sup>18</sup> These major metropolitan regions clearly were never intended to be part of "tribal lands" as that term is defined and used by the Commission. Lifeline and Link-Up targeted services, like ETC designation rules, are best handled at the state level rather than the federal level for "near-reservation" areas.

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<sup>18</sup> *Id.*, Appendix B. According to the King County, WA governmental website, "Located on Puget Sound in Washington State, and covering 2,134 square miles, King County is nearly twice as large as the average county in the United States. With more than 1.8 million people, it also ranks as the 13th most populous county in the nation." <http://www.metrokc.gov/about.htm>, accessed Aug. 6, 2007.

### **III. Conclusion.**

The Commission can best provide Lifeline and Link-Up targeted support to “near reservation” areas by continuing its stay of federal authority and by allowing states to exercise their authority over these non-reservation lands. Any definition of “near reservation” may include major metropolitan areas whose characteristics do not match those that Congress intended for targeted tribal Lifeline and Link-up support. The Commission should therefore continue its stay of federal authority for Lifeline and Link-Up support on “near reservation” areas to avoid unnecessary and complex entanglements with state jurisdictions.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION**

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August 6, 2007

## CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in CC Docket No. 96-45, DA 07-1239, was served on this 6<sup>th</sup> day of August 2007 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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