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March 10, 2010

VIA FCC ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Office of the Secretary, Room TW B204
Washington DC 20554

Re: Written Ex Parte Communication by the Oglala Sioux Tribe in *Cellco Partnership d/b/a Verizon Wireless*
WT Docket No. 09-104

Dear Ms. Dortch:

On behalf of the Oglala Sioux Tribe, the Tribal Utilities Commission and the Tribal Economic Development Office (jointly, the Oglala Sioux Tribe), I am submitting this written *ex parte* statement to advise the Commission of pending litigation between the Oglala Sioux Tribe and Verizon. By this letter, we ask that the Commission withhold approval of the transfer of spectrum that covers the area of the Pine Ridge Indian Reservation from Verizon to AT&T until the Oglala Sioux Tribal Court can resolve the dispute between the Oglala Sioux Tribe and Verizon. In accordance with § 1.1206(b) of the Commission's rules, this written ex parte statement is being filed electronically in the above-captioned docketed proceeding.

EXECUTIVE SUMMARY

- Verizon is successor in interest to Western Wireless, which negotiated the Tate Woglaka Service Agreement ("TWSA") with the Oglala Sioux Tribe. That Agreement has governed the provision of service on the Pine Ridge Indian Reservation since 2000.

- The TWSA called for the Oglala Sioux Tribe to support Western Wireless' request for ETC status, in return for providing service on Pine Ridge, and at a time of the Tribe's choosing, turning over the Pine Ridge network to the Tribe. The Tribe lived up to its bargain.

- Since 2001, Verizon/AllTel/Western Wireless have collected **$46 Million** in USF funding.

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- Now, Verizon is attempting to renege on the Agreement by proposing to transfer the spectrum and network on the Pine Ridge Indian Reservation to AT&T, without Tribal consent.

- The Tribe has attempted for months to negotiate with Verizon, to no avail. Having no other option, the Tribe is now attempting to schedule a hearing in Tribal Court to resolve the issue.

- Verizon is using every tactic it can to delay a Tribal Court hearing – it unsuccessfully challenged a scheduled Tribal Court hearing in federal district court. The Court summarily rejected Verizon's argument, but the tactic was successful in delaying a Tribal Court hearing.

- The Tribe asks the Commission to withhold approval of that portion of the former Alltel spectrum that covers the Pine Ridge Indian Reservation – Rural Service Areas 5 and 6 in South Dakota — until such time as the Tribal Court can hear and resolve this dispute. The Tribe has no intention of delaying the broader transfer of Verizon's spectrum. However, if Verizon is permitted to transfer the Pine Ridge spectrum and other network assets to AT&T, it will effectively void the Tate Woglaka Service Agreement, and impose an extraordinary burden on the Tribe's ability to exercise its rights under that contract.

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A. The Oglala Sioux Tribe Is Attempting to Obtain from Verizon the Spectrum and Network Equipment Used to Provide Service On the Pine Ridge Indian Reservation, As Required By Contract

Since August 2000, the provision of wireless telecommunications services on the Pine Ridge Indian Reservation has been governed by a contract known as the Tate Woglaka Service Agreement ("TWSA"). The TWSA was negotiated by the Oglala Sioux Tribe and the Tribe's Economic Development Office and Western Wireless, the CMRS carrier that provided service on the Reservation at that time. When AllTel subsequently acquired Western Wireless, it became subject to the TWSA, and now that Verizon has acquired AllTel, Verizon is now bound by the terms of that contract.

The Tate Woglaka Service Agreement established a bargain between the Oglala Sioux Tribe and the CMRS carrier providing wireless service to the Pine Ridge Reservation: The Oglala Sioux Tribe would support the wireless carrier's designation as an Eligible Telecommunications Carrier ("ETC"), so that the carrier could collect federal Universal Service Fund ("USF") subsidies, and would otherwise cooperate with the carrier. In return, the carrier

would commit to providing a specified level of service on the Reservation, would share some revenues with the Oglala Sioux Tribe, and ultimately would turn over the network and spectrum used to provide the service on the Pine Ridge Indian Reservation to the Oglala Sioux Tribe.

The provisions of the TWSA that require the Pine Ridge wireless network to be turned over to the Oglala Sioux Tribe are listed below. A copy of the TWSA is appended to this letter as Attachment A.

> (E) Role of OGLALA SIOUX TRIBE. Western Wireless and OGLALA SIOUX TRIBE shall hold annual meetings in May of each year of this Agreement to review the role of OGLALA SIOUX TRIBE in the provisioning of universal service and to evaluate options for increasing OGLALA SIOUX TRIBE's role in the provisioning of telecommunications service to include an ownership interest in a telecommunications system used to provide service on the Reservation.

TWSA, § 4(A).

> **Whereas**, the Oglala Sioux Tribe is not currently in a position to assume the responsibility for the installation and maintenance of the On-Site Equipment at this time, and . . .
>
> **Whereas**, Western Wireless agrees to assume responsibility for the installation and maintenance of the On-Site Equipment until such time as the Oglala Sioux Tribe is in the position to assume this responsibility . . . .
>
> Be it known that, Western Wireless and Oglala Sioux Tribe hereby agree to amend the Agreement as follows:
>
> 1. Western Wireless shall . . . retain a portion of revenues . . . until such time as the Oglala Sioux Tribe determines it is economically feasible to assume responsibility for the installation and maintenance of On-Site Equipment.

TWSA, Addendum 1.

Verizon and its predecessors in interest have profited handsomely from the Tate Woglaka Service Agreement. The Tribe lived up to its commitments under the Agreement, and supported Western Wireless' application for ETC status. With the Tribe's support, Western Wireless was granted ETC status, and began collecting both High Cost and Low Income USF funding in

2001.[1] The Commission's grant of ETC status on Western Wireless was expressly based on the Tribe's support, and the fact that Western Wireless was subject to the Tribe's jurisdiction. ***Between 2001 and the present, Verizon and its predecessors in interest have received approximately $46,000,000 in USF support for the services they provided on the Pine Ridge Indian Reservation.***[2]

However, now that Verizon and its predecessors in interest have been enriched by **$46 Million,** due to the Tribe's efforts, Verizon is attempting to renege on its obligation under the TWSA to turn over the network to the Tribe. As discussed below, the Tribe will be irreparably harmed if Verizon is able to transfer the spectrum and other network assets on the Pine Ridge Indian Reservation to AT&T without the Tribe's consent, in violation of the TWSA.

B. Verizon Has Been Doing Everything In Its Power to Delay Efforts By the Tribe to Bring This Dispute Before the Tribal Court, In an Apparent Attempt to Circumvent Enforcement of the TWSA By Transferring the Pine Ridge Network to AT&T Without the Tribe's Approval

Within the last few months, and after extensive correspondence between Tribal officials and their counsel and counsel for Verizon, it became apparent to the Tribe that Verizon was not negotiating in good faith, and would not honor the Tribe's request for the transfer of the network serving the Pine Ridge Reservation. The Tribe then scheduled a hearing in Tribal Court for February 18, 2010, and noticed Verizon.

Immediately upon receiving notice, Verizon filed for an emergency motion with the federal District Court for the Western District of South Dakota, seeking a temporary restraining order to prevent the Tribe from pursuing its hearing in Tribal Court. Verizon's asserted basis for its claim was that the mere assertion of Tribal Court jurisdiction over Verizon constituted "irreparable harm." The District Court scheduled a hearing for February 18, effectively making it impossible for the Tribe to pursue its Tribal Court hearing.

Verizon's arguments were wholly baseless, and were directly contravened by this Commission's orders approving ETC status expressly on the grounds that Western Wireless was

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1 *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota,* 16 FCC Rcd 18145 (2001) ("*Western Wireless ETC Order*"). A copy of that Order is appended to this letter as Attachment B.

2 This number is an estimate. The Tribe has been requesting a full accounting of all USF payments collected by Verizon and its predecessors in interest for the service they provide on Pine Ridge Reservation for over a year. Verizon refuses to provide this information to the Tribe.

subject to Tribal jurisdiction.[3] The District Court judge summarily dismissed Verizon's claims of "irreparable harm," and confirmed that the Tribal Court had authority to determine jurisdiction over this dispute. A copy of the Court's order – which was issued March 1, 2010 – is appended as Attachment C.

While the Verizon pleading was patently without merit, it had the desired effect of delaying the Tribal Court hearing. At present, a new hearing before the Tribal Court to determine Tribal Court jurisdiction is scheduled for March 17. It is not clear at this time when the Tribe's claims against Verizon under the TWSA will be adjudicated on the merits.

The Tribe's concern is this: Verizon is required under the Tate Woglaka Service Agreement to obtain Tribal approval for any transfer of the Pine Ridge network to a third party. TWSA at § 20((J). However, if Verizon violates the terms of the TWSA and transfers the assets to AT&T without Tribal approval, the TWSA is voided. TWSA at § 20(A). If Verizon takes this unilateral action, the Pine Ridge spectrum and network will be owned by AT&T, which is not a party to the TWSA, and has no contractual relationship with the Tribe. In other words, **Verizon can unilaterally renege on its obligations under the TWSA, and in fact void the contract, simply by assigning the Pine Ridge network to AT&T**. The Tribe would then be forced into protracted litigation against Verizon and AT&T in order to vindicate its rights – a process that could take years; and that would impose enormous costs on the poorest Native American Reservation in the country. Given Verizon and AT&T's vastly superior resources, the ability of the Tribe to pursue justice once the TWSA is voided is highly questionable.

C. Relief Sought: The Sioux Tribe Asks this Commission Not to Approve the Transfer of the Spectrum Covering the Pine Ridge Reservation from Verizon to AT&T Until the Tribal Court Can Resolve the Pending Dispute Between Verizon and the Sioux Tribe

The Oglala Sioux Tribe asks this Commission to withhold authorization for Verizon to transfer the spectrum licenses covering the Pine Ridge Indian Reservation to AT&T until after the current dispute between the Tribe and Verizon is resolved. Of course, the Tribe has no interest in holding up the larger transfer of Verizon spectrum licenses to AT&T, and there is no reason to do so.

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[3] *Western Wireless ETC Order,* 16 FCC Rcd at ¶¶ 15, 16 and *passim.*

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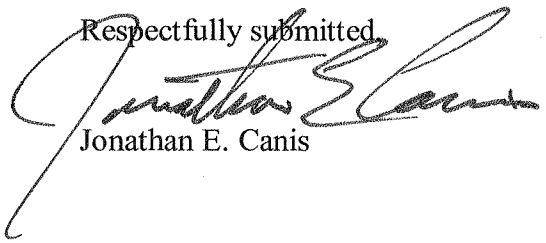
The Commission can prevent Verizon from unilaterally voiding the Tribe's rights under the TWSA by withholding authority to transfer licenses serving the following two Rural Service Areas ("RSAs"):

- RSA 5 (CMA 638)
- RSA 6 (CMA 639).

This action would preserve the Tribe's ability to seek enforcement of the Tate Woglaka Service Agreement, and would prevent Verizon from taking valuable resources from the Tribe.

Thank you for your attention to this matter. Please address any questions regarding this matter to the undersigned.

Respectfully submitted,



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ATTACHMENT A

TATE WOGLAKA SERVICE AGREEMENT

TATE WOGLAKA SERVICE AGREEMENT

BETWEEN

OGLALA SIOUX TRIBE

AND

WESTERN WIRELESS CORPORATION

TATE WOGLAKA SERVICE AGREEMENT

TABLE OF CONTENTS

Basis for Agreement ..... Page 1

Section 1 ..... Page 1
Definitions

Section 2 ..... Page 3
Description of Services

Section 3 ..... Page 4
Universal Service Fund

Section 4 ..... Page 5
Telecommunication Services Plan

Section 5 ..... Page 5
Rates, Payment and Allocation of Revenues

Section 6 ..... Page 8
Site Development

Section 7 ..... Page 8
Training of Oglala Sioux Tribe Personnel

Section 8 ..... Page 9
Network Maintenance

Section 9 ..... Page 9
On-Site Installation and Maintenance

Section 10 ..... Page 9
Jurisdiction of Oglala Sioux Tribe to Authorize the Telecommunications Plan

Section 11 ..... Page 10
Obligations and Responsibilities of Western Wireless Corporation

Section 12 ..... Page 10
Obligations and Responsibilities of Oglala Sioux Tribe

Section 13 ..... Page 11
Representations and Warranties

Section 14 ..... Page 13
Customer Acceptance and Discontinuation of Services

Section 15 ..... Page 13
Term of Agreement

Section 16 ..... Page 14
Design Products, Insurance and Indemnity

Section 17 ..... Page 15
Dispute Resolution, Choice of Law and Jurisdiction

Section 18 ..... Page 17
Confidentiality

Section 19 ..... Page 17
Ownership of Cellular Telecommunications Infrastructure

Section 20 ..... Page 18
Miscellaneous Provisions

Exhibit A: ..... Page i
Description of Reservation Boundaries

Exhibit B: ..... Page ii
Site Lease Form

Exhibit C: ..... Page iii
Universal Service Proposal

Exhibit D: ..... Page x
Jurisdiction of Oglala Sioux Tribe to Authorize the Tate Woglaka Service Agreement

Exhibit E: ..... Page xi
Oglala Sioux Tribe Resolution

Addendum 1: ..... Page xiv

TATE WOGLAKA SERVICE AGREEMENT

This **TATE WOGLAKA SERVICE AGREEMENT** (the "**Agreement**") is made and entered into as of August 21, 2000, by and between **WWC LICENSE LLC**, a ~~South Dakota~~ Delaware limited liability ~~corporation~~ company ("**Western Wireless**"), and **OGLALA SIOUX TRIBE**, a Federally recognized Indian tribe ("**Oglala Sioux Tribe**"). Western Wireless and OGLALA SIOUX TRIBE are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**".

BASIS FOR THIS AGREEMENT

OGLALA SIOUX TRIBE is the sovereign political entity that governs that certain real property located in Shannon, Jackson, and Bennett Counties, South Dakota, commonly referred to as and within the original exterior boundaries of the Pine Ridge Reservation as more specifically described in the Constitution and Bylaws of the Oglala Sioux Tribe on Exhibit A (the "Reservation").

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Western Wireless is a national cellular telecommunication service provider.

Western Wireless and OGLALA SIOUX TRIBE seek to provide telecommunications services on the Reservation in accordance with this Agreement.

Western Wireless and OGLALA SIOUX TRIBE wish to provide in this Agreement for: (i) an identification of the telecommunications infrastructure requirements; (ii) the telecommunications services to be offered; (iii) the rates for the telecommunication services; (iv) the rights and responsibilities of Western Wireless and OGLALA SIOUX TRIBE; and (v) the allocation of costs and sharing of revenue.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Western Wireless and OGLALA SIOUX TRIBE agree as follows:

1. DEFINITIONS.

"Approval Date" shall mean the date upon which (i) the FCC approves Western Wireless as an ETC under the Universal Service Fund and (ii) Western Wireless has received all other Governmental Agency approvals required to provide the Universal Services.

"Approved Site" shall mean the Site approved by the Parties.

"Basic Services" shall mean those services identified in Paragraph 2(b).

"BIA" shall mean the Bureau of Indian Affairs.

"Cellular Telecommunications Infrastructure" shall consist of the Infrastructure Improvements, ~~the rented CPE's~~, and all cellular radio transmitters and receivers,

network switching, transport between cell sites and switching facilities, and other components necessary to provide a high-quality, reliable telecommunications service.

"CPE" shall mean the wireless local loop customer premise equipment to be provided by Western Wireless.

"Customer" shall mean any person located on the Reservation who becomes a Universal Service customer of Western Wireless.

"Customer Monthly Rate" shall mean the Customer monthly rate for basic services established by the Parties pursuant to this Agreement and collected from the customer.

"Enhanced Services" shall mean voicemail, call forwarding, call waiting, conference calling, and other services not falling within the definition of Basic Services.

"ETC" shall mean an eligible telecommunications carrier under the Telecommunications Act.

"FCC" shall mean the Federal Communications Commission.

"Governmental Agency" means any government, any court, and any agency, authority, body, bureau, department, or instrumentality of any government, including, without limitation, the OGLALA SIOUX TRIBE.

"Infrastructure Improvements" shall consist of cellular radio transmitters and receivers, network switching, transport between cell sites and switching facilities, and other components necessary to provide a high quality, reliable telecommunications service.

"Long Distance Service" shall mean the long distance or toll service provided by Western Wireless for both intrastate and interstate services.

"Low Income Consumers" shall mean Customers who meet financial requirements established in 47 C.F.R. Section 54.400, and/or financial requirements established by the Oglala Sioux Tribe. that meet FCC rules. ✓✓
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"On-Site Equipment" shall mean the CPE devices and other equipment installed at the Customer's location.

"Other Agreements" shall mean this Agreement, all the Site Leases and any other agreements or other instruments given to evidence the performance of any or all of the obligations in this Agreement as the foregoing may be amended, modified, extended, or renewed from time to time.

"Site" shall mean the real property on the Reservation upon which Western Wireless will locate antenna and other facilities required pursuant to the Infrastructure Improvements.

"Site Lease" shall mean that certain Site Lease(s) substantially in the form as attached as **Exhibit B**.

"Telecommunications Act" shall mean the Communications Act of 1934, as amended, 47 U.S.C. Section 151, et seq.

"Telecommunications Services Plan" shall mean a landline equivalent wireless local loop service offered by Western Wireless on its Cellular Telecommunications Infrastructure or other telecommunications facilities.

"Universal Services" shall mean the telecommunication service provided by Western Wireless in accordance with the Universal Service Fund and this Agreement.

"Universal Service Fund" shall mean the Universal Service Fund established by the FCC or other Governmental Agency.

2. DESCRIPTION OF SERVICES.

(A) Telecommunication Services. Western Wireless shall serve the telecommunication needs of the Reservation through its Telecommunications Services Plan. Western Wireless shall provide, at a minimum, the Universal Services required of ETCs pursuant to the Telecommunications Act. In addition, Western Wireless shall provide other services and functionalities important to the OGLALA SIOUX TRIBE, such as an expanded local calling area, Long Distance Service, prepaid services, and the Enhanced Services.

(B) Basic Services. As part of the Universal Service Plan, the following basic services shall be included in the Customer Monthly Rate:

(i) Voice-grade access to the national public switched telephone network;

(ii) Unlimited local calling within the Reservation;

(iii) A local calling area that includes all calls to current telephone prefixes on the Reservation, plus all prefixes in Martin, South Dakota (Western Wireless will consider recommendations by the OGLALA SIOUX TRIBE to further expand the local calling area to include areas that fall within existing local calling areas or additional areas requested by customers);

(iv) Single party services;

(v) Access to emergency service, including 911;

(vi) Access to directory service, Long Distance Service, operator service, and customer support;

(vii) White pages and directory listing, to the extent available; and

(viii) Toll limitation for qualifying low-income consumers.

(C) 24-Hour Service. Western Wireless shall offer all Customers 24-hour customer service by dialing "611" or designated customer support number. The Parties shall establish a process for reporting service problems from the Western Wireless call centers to a point of contact on the Reservation as part of the Universal Service Plan.

3. UNIVERSAL SERVICE FUND.

(A) Application for Universal Service Funds. Western Wireless shall act with reasonable due diligence to obtain ETC approval for the Universal Service Fund and all other regulatory approvals required to provide the Universal Services.

(B) Cooperation by OGLALA SIOUX TRIBE. OGLALA SIOUX TRIBE agrees to cooperate with Western Wireless in obtaining ETC approval for the Universal Service Funds and other required regulatory approvals and agrees, upon request, to attend meetings at the FCC and other Governmental Agencies, prepare written correspondence with Governmental Agencies and to execute such applications and other documents as Western Wireless may reasonably request in connection with obtaining the approvals.

(C) Condition Precedent to Western Wireless's Obligations. Western Wireless' responsibilities and obligations under this Agreement shall be expressly conditioned upon its eligibility determination by the FCC for Universal Service Funds to provide affordable telecommunications service on the Reservation, and such Universal Service Funds shall be in an amount which makes the Universal Services economically feasible as determined by Western Wireless, with the advice and timely assistance of OGLALA SIOUX TRIBE. If ETC approval is not obtained within two (2) years from the date of this Agreement, then this Agreement may be terminated by Western Wireless upon written notice to OGLALA SIOUX TRIBE. Upon termination, Western Wireless and OGLALA SIOUX TRIBE shall have no further liability or obligations under this Agreement.

(D) Mediation Clause. An independent third party mediator shall be retained by agreement of the Parties, which shall share the costs, if a jurisdictional dispute arises. The Mediator's decision shall be final and binding on both Parties.

4. TELECOMMUNICATION SERVICES PLAN.

(A) Development of Telecommunications Services Plan. Western Wireless will develop a Telecommunication Services Plan for the entire Reservation with the advice and assistance of the OGLALA SIOUX TRIBE. Such Telecommunications Services Plan to be substantially in accordance with the Universal Service Proposal attached as Exhibit C, with such modifications thereto as shall be recommended by OGLALA SIOUX TRIBE from time to time. Each Party shall bear the internal costs incurred by such Party in connection with such planning activities.

(B) Right of Access. Following the date of this Agreement, Western Wireless, its agents, employees, consultants and professional advisers, contractors, and subcontractors may, with appropriate notice, come upon the Reservation and shall be granted rights of ingress and egress to all Approved Sites for the purpose of inspecting, testing, and surveying the Reservation and planning the development and construction of the Infrastructure Improvements.

(C) Infrastructure Planning. Following the Approval Date, Western Wireless shall proceed to prepare schematic design plans for the Infrastructure Improvements consistent with the Telecommunications Services Plan, such plan to be completed concurrently with the work described in Paragraph 6. The design plans for the Infrastructure Improvements, as modified and supplemented from time to time with the approval of both Parties, are referred to in this Agreement as the "Infrastructure Schematic Plans". All costs incurred pursuant to this Paragraph 4(c) shall be paid 100% by Western Wireless. Such costs include, without limitation, all building permit fees, license fees, engineering fees, labor and materials costs, and all other hard and soft costs of construction incurred in connection with construction of the Infrastructure Improvements.

(D) Site Development. OGLALA SIOUX TRIBE shall assist Western Wireless in identifying and securing Site locations for antenna facilities, towers and other equipment on land held by the OGLALA SIOUX TRIBE. Such Site locations shall be in accordance with the Universal Services Plan.

(E) Role of OGLALA SIOUX TRIBE. Western Wireless and OGLALA SIOUX TRIBE shall hold annual meetings in May of each year of this Agreement to review the role of OGLALA SIOUX TRIBE in the provisioning of universal service and to evaluate options for increasing OGLALA SIOUX TRIBE's role in the provisioning of telecommunications service to include an ownership interest in a telecommunications system used to provide service on the Reservation.

5. RATES, PAYMENT AND ALLOCATION OF REVENUES.

(A) Rates. The OGLALA SIOUX TRIBE shall establish an affordable Customer Monthly Rate for the Basic Services offered on the Reservation as part of the Telecommunications Services Plan. Until such time as there are greater

than 1,000 Customers, the Customer Monthly Rate shall be between $10.00 and $20.00 per month, per Customer, provided, however, that the Parties will agree on and provide for further reductions in the Customer Monthly Rate for Low Income Consumers. To the extent the OGLALA SIOUX TRIBE would like to establish a Customer Monthly Rate outside of the rate range identified above, Western Wireless must approve of the rate established. In addition to the Customer Monthly Rate, Western Wireless shall provide Long Distance Services at the initial rate of $.15 per minute, billed in full minute increments. After six months, and every six months thereafter, Western Wireless will reevaluate the rate for Long Distance Service and make any changes to such rate based upon the recommendations of OGLALA SIOUX TRIBE, market conditions, and the overall business on the reservation. Customers with credit limitations as determined by Western Wireless, will be required to provide Western Wireless with a deposit equal to no more than two months of service or will be provided the opportunity to obtain prepaid, long distance cards for Long Distance Services at a cost to be determined by Western Wireless. Also international calling will be made available by Western Wireless, upon customer request, pending Customer credit approval at the then competitive rates as determined by Western Wireless. The Enhanced Services shall be available at the initial following rates subject to change by Western Wireless in its sole discretion:

(i)	Voice Mail	$4.99
(ii)	Call Forwarding	2.00
(iii)	Call Waiting	2.00
(iv)	Three-party Conference Calling	2.00

Western Wireless will not increase or decrease the rates for Basic Services without the approval and consent of the OGLALA SIOUX TRIBE or its designated individual. There will be no changes to Western Wireless's rates for Long Distance Service and/or Enhanced Service without first providing OGLALA SIOUX TRIBE and Customers with thirty (30) day written notice.

(B) Equipment Rental. All CPEs necessary for the Universal Service Plan shall be provided by Western Wireless to the OGLALA SIOUX TRIBE for installation by the OGLALA SIOUX TRIBE at the Customer locations. Western Wireless shall charge the Customer $3.00 per month for each CPE installed or charge the Customer a one-time purchase price of $300.00. Installation of the CPEs shall be done by the OGLALA SIOUX TRIBE by trained employees of the OGLALA SIOUX TRIBE pursuant to Paragraph 9. Customer shall be responsible to furnish all other equipment, including, without limitation, their own telephone and other telephone devices.

(C) Payment. Western Wireless shall be responsible for generating and mailing a monthly bill for all local, long distance and other charges associated with the Universal Service Plan to Customers on the Reservation.

(D) Allocation of Revenues.

(i) Revenues to be paid by Western Wireless to the OGLALA SIOUX TRIBE at the end of each fiscal quarter:

1. All Customer Monthly Rates for Basic Services once the Customer base reaches and remains above 1000 monthly lines of Universal Service;

2. All Site Lease rental revenue for Sites located on the Reservation; and

3. All revenue from installation charges and customer service calls related to on-site installation and maintenance.

(ii) Revenues to be retained by Western Wireless:

1. All Long Distance Service charges appearing on the Customer's monthly bill;

2. All Universal Service Funds;

3. All revenue from the Enhanced Services;

4. All On-Site Equipment revenue;

5. All other revenue not specifically designated to be distributed to OGLALA SIOUX TRIBE; and

6. All revenues generated by parties or entities other than Customers.

(iii) To the extent third parties require the use of the antenna towers on the Reservation used by Western Wireless, the Parties shall evaluate such use from a technical, operational, and financial standpoint and agree on such use, and the terms and conditions of such use, prior to any third party using the antenna tower.

(E) Taxes. In addition to all other Customer charges and expenses specified in this Agreement, all taxes and assessments which are assessed by any Governmental Agency shall be charged directly to Customer's in their monthly bills.

6. SITE DEVELOPMENT.

(A) Site Development. Following the Approval Date, Western Wireless shall proceed diligently and in good faith, to do the following:

(i) Prepare a Site Lease for each Site required pursuant to the Infrastructure Schematic Plans;

(ii) Prepare reasonably detailed Site plans and specifications for construction, as modified and supplemented from time to time;

(iii) Obtain all necessary governmental permits and other approvals which will permit construction of the Site; and

(iv) Construct the Site in accordance with governmental regulations, the Site Lease and the Site plans and specifications.

(B) Site Lease.

(i) Within fifteen (15) days following the date that Western Wireless has completed the work described in Subparagraphs 6(A)(i) and 6 (A)(ii) and has provided OGLALA SIOUX TRIBE with evidence of the completion of such items, OGLALA SIOUX TRIBE shall execute the Site Lease for the Approved Site to Western Wireless.

(ii) OGLALA SIOUX TRIBE shall expend all reasonable efforts to obtain approval of the Site Lease from all Governmental Agencies within sixty (60) days of execution by OGLALA SIOUX TRIBE.

(iii) OGLALA SIOUX TRIBE, at its expense, shall have obtained any consents that may be reasonably necessary or appropriate from the parties whose land is burdened by the Site Lease or corresponding access easement granted pursuant to the Site Lease for the benefit of Western Wireless and the Approved Site.

(C) Payment of Site Development Costs and Expenses. The costs and expenses incurred by Western Wireless pursuant to this Paragraph 6 (except for the costs associated with Subparagraph 6(A)(iii)), including all planning and design costs, permit fees, financing, and the hard and soft costs incurred in developing and constructing each Approved Site shall be the sole responsibility of Western Wireless.

7. TRAINING OF OGLALA SIOUX TRIBE PERSONNEL.

Following the Approval Date, Western Wireless shall prepare a Training Program for OGLALA SIOUX TRIBE's review and approval. The Training Program shall include, but not be limited to, an introduction to the On-Site Equipment, network

familiarization, installation guidelines, physical equipment requirements and antenna installation. Tribal members shall receive preference in all hiring decisions, in accordance with Tribal Employment Rights Ordinance and other Tribal laws.

8. NETWORK MAINTENANCE.

Western Wireless shall be responsible for all maintenance of the Cellular Telecommunications Infrastructure. At Western Wireless's sole cost and expense, Western Wireless shall provide maintenance, technical support and system monitoring 24 hours a day, 7 days a week.

9. ON-SITE INSTALLATION AND MAINTENANCE.

(A) Installation. The installation of all On-Site Equipment necessary for the Universal Service Plan will be performed by persons designated by and employed by OGLALA SIOUX TRIBE. All necessary training of OGLALA SIOUX TRIBE employees will be conducted by Western Wireless.

(B) Maintenance. OGLALA SIOUX TRIBE will be responsible for diagnosing any service problems with the On-Site Equipment. Western Wireless will provide OGLALA SIOUX TRIBE with an initial supply of 6 spare On-Site Equipment devices for maintenance purposes. Western Wireless will collect and repair all defective On-Site Equipment devices. Broken On-Site Equipment devices found to be damaged by misuse or abuse, excluding normal wear and tear, will result in the Customer being charged a $300.00 replacement fee, less depreciation of the equipment at a rate of 20% per year. OGLALA SIOUX TRIBE will set their own prices for customer service calls and will retain all money collected from such visits.

(C) On-Site Equipment Returns. Upon Western Wireless's written request, OGLALA SIOUX TRIBE shall repossess all On-Site Equipment at the Customer's location specified by Western Wireless. If the On-Site Equipment is not returned in operational form within thirty (30) days of such request, unless the matter is referred to tribal court and the 30 day period is extended, then $300 (less depreciation) for each missing or dysfunctional On-Site Equipment device shall be deducted from OGLALA SIOUX TRIBE's revenues.

10. JURISDICTION OF OGLALA SIOUX TRIBE TO AUTHORIZE THE TELECOMMUNICATION SERVICES PLAN.

(A) Regulatory Authorization. See Exhibit D.

(B) Permits, Licenses, and Regulation Requirements. See Exhibit D.

(C) Regulatory Impact. The regulations, permits, licenses, and any other obligations or requirements imposed on Western Wireless by the Oglala Sioux Tribe shall not have a material impact on Western Wireless and its ability to conduct business on the reservation.

11. OBLIGATIONS AND RESPONSIBILITIES OF WESTERN WIRELESS.

(A) Technology Development. Western Wireless shall update and install new cellular technological advances as they are developed and become economically feasible. The Parties shall work together to continue to improve the Telecommunications Services and shall evaluate the potential of all new technologies to meet Customer needs.

(B) Costs and Expenses. Western Wireless shall pay for all wholesale Long Distance Service costs ~~appearing on Customer's monthly bills~~ and all other expenses specifically designated to be paid by Western Wireless throughout this Agreement.

(C) OGLALA SIOUX TRIBE's Responsibility for Faulty Service. Notwithstanding anything to the contrary in this Agreement, Western Wireless shall not be responsible to pay and OGLALA SIOUX TRIBE shall not be entitled to receive reimbursement or compensation for any services, including, without limitation, installation and maintenance services, if such services or expenses are required due to the fault of OGLALA SIOUX TRIBE or its agents or employees, or due to OGLALA SIOUX TRIBE's failure to perform in accordance with the terms of this Agreement and all applicable laws.

12. OBLIGATIONS AND RESPONSIBILITIES OF OGLALA SIOUX TRIBE.

(A) Governmental Agency Approvals. OGLALA SIOUX TRIBE shall use their best effort to obtain all Governmental Agency approvals requested to provide the Telecommunications Services, to build and operate the Site Leases, and all other services specified in this Agreement.

(B) Marketing. OGLALA SIOUX TRIBE shall identify potential Telecommunications Services users located on the Reservation and shall aggressively market the Telecommunications Services on the Reservation to all potential users.

(C) Costs and Expenses. OGLALA SIOUX TRIBE shall be responsible for all expenses associated with the OGLALA SIOUX TRIBE's employees employed to satisfy the OGLALA SIOUX TRIBE requirements under this Agreement, and all other expenses under this Agreement which are not specifically designated to be paid for by Western Wireless.

13. REPRESENTATIONS AND WARRANTIES.

(A) OGLALA SIOUX TRIBE. OGLALA SIOUX TRIBE represents and warrants to Western Wireless that the following statements set forth in Paragraph 13(a) are true, correct and complete as of the date hereof and will be true, correct and complete as of the Approval Date.

(i) Existence and Authorization. OGLALA SIOUX TRIBE is a federally recognized Indian tribe pursuant to federal law. OGLALA SIOUX TRIBE has the requisite power and authority to execute, deliver, and perform this Agreement and the Other Agreements. The execution, delivery, and performance by OGLALA SIOUX TRIBE of this Agreement and the Other Agreements have been duly authorized by and all requisite action by or on behalf of OGLALA SIOUX TRIBE and will not conflict with, or result in a violation of or a default under, the constitution of OGLALA SIOUX TRIBE or any other agreement or obligation of OGLALA SIOUX TRIBE. A true and correct copy of Resolution No. 00-87, which was duly adopted by the OGLALA SIOUX TRIBE's Tribal Council on August 21, 2000, and pursuant to which the OGLALA SIOUX TRIBE has approved this Agreement, the Other Agreements and the limited waiver of sovereign immunity set forth herein, is attached hereto as **Exhibit E**.

(ii) No Approvals. Except as set forth in this Agreement, no approval, authorization, bond, consent, certificate, franchise, license, permit, registration, qualification, or other action or grant by or filing with any Person is required in connection with the execution, delivery, or performance by OGLALA SIOUX TRIBE of this Agreement and the Other Agreements.

(iii) No Conflicts. The execution, delivery, and performance by OGLALA SIOUX TRIBE of this Agreement and the Other Agreements will not conflict with, or result in a violation of or a default under any applicable law, ordinance, regulation, or rule (federal, state, local, or tribal); any judgment, order, or decree of any arbitrator, other private adjudicator, or Governmental Agency to which OGLALA SIOUX TRIBE is a party or by which OGLALA SIOUX TRIBE or any of the assets or property of OGLALA SIOUX TRIBE is bound, or any agreement, document, or instrument to which OGLALA SIOUX TRIBE is a party or by which OGLALA SIOUX TRIBE or any of the assets or property of OGLALA SIOUX TRIBE is bound.

(iv) Execution and Delivery and Binding Nature of this Agreement and the Other Agreements. This Agreement and the Other Agreements have been duly executed and delivered. This Agreement and the Other Agreements are legal, valid, and binding obligations of OGLALA SIOUX TRIBE, enforceable in accordance with their terms against OGLALA SIOUX TRIBE, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization, or similar laws and by equitable principles or general application.

(v) Legal Proceedings; Hearings, Inquiries, and Investigations. Except as disclosed to Western Wireless in writing prior to the date of this Agreement, (i) no legal proceeding is pending or, to the best knowledge of OGLALA SIOUX TRIBE, threatened before any arbitrator, other private adjudicator, or Governmental Agency to which OGLALA SIOUX TRIBE is a party or by which OGLALA SIOUX TRIBE or any assets or property of OGLALA SIOUX TRIBE may be bound or affected that if resolved adversely to OGLALA SIOUX TRIBE could result in a material adverse change in the business, operations or financial affairs of OGLALA SIOUX TRIBE, and to the best knowledge of OGLALA SIOUX TRIBE, there exist no facts that would form any basis for any of the foregoing, and (ii) no hearing, inquiry, or investigation relating to OGLALA SIOUX TRIBE or any assets or property of OGLALA SIOUX TRIBE is pending or, to the best knowledge of OGLALA SIOUX TRIBE, threatened by any Governmental Agency.

(B) Western Wireless. Western Wireless represents and warrants to OGLALA SIOUX TRIBE that the following statements set forth in this Paragraph 13(B) are true, correct and complete as of the date hereof and will be true, correct and complete as of the Approval Date.

(i) Organization and Powers. Western Wireless is a limited liability company duly organized and validly existing under the laws of the State of Delaware ~~South Dakota~~, and is qualified to transact business in the State of South Dakota. Western Wireless has all requisite power and authority to carry on its businesses now conducted and as proposed to be conducted, and to enter into and perform this Agreement and the Other Agreements. The execution, delivery and performance of this Agreement and the Other Agreements by Western Wireless are within Western Wireless's powers and have been duly authorized by all necessary action by Western Wireless.

(ii) Good Standing. Western Wireless has made all filings and is in good standing in each jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a materially adverse

effect on the business, operations, assets or condition (financial or otherwise) of Western Wireless.

(iii) No Conflict. The execution, delivery and performance of this Agreement and the Other Agreements by Western Wireless will not violate (i) Western Wireless's Articles of Organization and Operating Agreement; or (ii) any legal requirement affecting Western Wireless or any of its properties; or (iii) any agreement to which Western Wireless is bound or to which it is a party and will not result in or require the creation (except as provided in or contemplated by this Agreement) of any lien upon any of such properties.

14. CUSTOMER ACCEPTANCE AND DISCONTINUATION OF SERVICES.

(A) Customer Acceptance. All Customer requests for service will be reviewed and approved by Western Wireless subject to the terms and conditions of service. Unless a Customer passes Western Wireless's credit approval requirements or provides a deposit in the amount not to exceed two months service, Long Distance Service will be restricted by Western Wireless. Prepaid calling cards shall be made available by Western Wireless and other companies for Long Distance Service. Upon credit approval or the payment of a deposit, Customer will be able to subscribe to the Long Distance Services offered to the Customer. In lieu of any individual obtaining credit approval, OGLALA SIOUX TRIBE may provide a line of credit for consideration by Western Wireless to provide Long Distance Service to individuals that do not meet credit requirements.

(B) Bad Debt Collection and Disconnecting Customers. Western Wireless shall be responsible for collecting all outstanding past due Customer payments. The Parties shall establish appropriate opportunities for Customers to make payment on the Reservation, especially for Low Income Customers. Western Wireless shall determine when past due Customers will have their service suspended and ultimately disconnected. Western Wireless shall provide OGLALA SIOUX TRIBE with a list of past due accounts on a monthly basis, with the expectation that OGLALA SIOUX TRIBE will assist in collecting past due amounts in order to pay for OGLALA SIOUX TRIBE's revenue pursuant to Paragraph 5(D)(i).

15. TERM OF AGREEMENT.

(A) Term. The initial term of this Agreement shall be five (5) years commencing on August 21, 2000 (the "Commencement Date"), and terminating at midnight on the last day of the month in which the fifth annual anniversary of the Commencement Date shall have occurred.

(B) Extension of Term. Western Wireless shall have the right to extend this Agreement for four (4) additional, five-year terms ("Renewal Term"). Each

Renewal Term shall be on the same terms and conditions as set forth herein unless the Parties agree on other terms and conditions to govern the Renewal Term.

(C) Automatic Extension. This Agreement shall automatically renew for each successive Renewal Term unless Western Wireless shall notify OGLALA SIOUX TRIBE, in writing, of Western Wireless's intention not to renew this Agreement, at least 60 days prior to the expiration of the term or any Renewal Term.

(D) Termination. Should the other Party fail substantially to perform in accordance with the terms of this Agreement through no fault of the Party initiating the termination, and if after written notice and a thirty (30) calendar day cure period, the default is not cured, this Agreement may then be terminated by the non-defaulting Party upon not less than an additional thirty (30) days' written notice.

16. DESIGN PRODUCTS, INSURANCE AND INDEMNITY.

(A) Design Products. The Parties agree that Western Wireless' preparation of all drawings, specifications, models, renderings, notes, supporting data, designs, reports, calculations, inventions (whether or not patentable), and other elements and documents relating to the Infrastructure Improvements and any and all services rendered in the performance of this Agreement and any and all intellectual property rights related to the foregoing (hereinafter collectively referred to as the "Design Products") represent service work done by Western Wireless and that the ownership of and intellectual property rights in any and all such Design Products vests in Western Wireless. For use in connection with this Agreement, Western Wireless agrees to and does hereby grant and transfer to OGLALA SIOUX TRIBE a non-exclusive, royalty-free license to use the Design Products for the sole purpose of performing OGLALA SIOUX TRIBE's obligations under this Agreement. The Oglala Sioux Tribe reserves the rights to any and all intellectual property rights developed by the Oglala Sioux Tribe.

(B) Insurance Requirements. During the entire term of this Agreement and for any extension to this Agreement, The Parties shall maintain at their own expense, insurance coverage as follows:

(i) Comprehensive General Liability Insurance, including coverage of motor vehicle liability and contractual liability assumed under this Agreement, affording protection of not less than $2,000,000 per occurrence, combined single limit for bodily injury and property damage, insuring the other Party, and any requested Affiliates against damages because of, or on account of, bodily injuries to or the death of any person or destruction of, or damage to, the property of any person, occurring, on or about the Site, the Customer's property, or due in any way to the use, occupancy, maintenance or operation of the Cellular Telecommunications Infrastructure, or related facilities.

(ii) The Parties shall furnish the other Party certificates evidencing that all required insurance has been obtained and is in full force and effect, the other Party and any Affiliates are additional insured there under and stating that the other Party shall receive 30 days' notice prior to modification or cancellation of the insurance. It shall be the obligation of the Parties to furnish all required insurance certificates without notice or demand by the other Party and to immediately furnish new certificates whenever policy renewals or any other insurance change occurs.

(iii) The foregoing insurance does not release the Parties from any responsibilities or liabilities under this Agreement or any Other Agreement. Such insurance shall be available for insured losses accruing to Western Wireless under the indemnity provision of this Agreement and any Other Agreement.

(iv) All insurance policies required by this Agreement shall be obtained from companies duly authorized to issue such policies in the State of South Dakota, having Best's ratings of A and acceptable to the Parties.

(v) Indemnity. Each Party agrees to indemnify, defend and hold the other Party and its Affiliates (as defined herein), and any and all of their respective officers, board members, successors, assigns, directors, agents, representatives and employees (hereinafter collectively, the "Indemnified Parties") harmless for, from and against any and all claims, actions, costs, demands, suits, damages, losses, expenses and liabilities (including, but not limited to, reasonable attorneys' fees), arising out of any negligent act or omissions or willful misconduct of, or breach of this Agreement by, the indemnitor or by its employees, agents, and contractors.

17. DISPUTE RESOLUTION, CHOICE OF LAW AND JURISDICTION.

(A) Sovereign Immunity. Nothing in this Agreement shall be deemed to be a waiver of the OGLALA SIOUX TRIBE's sovereign immunity from suit, except that the OGLALA SIOUX TRIBE hereby provides a limited waiver of sovereign immunity and consents to be sued should an action be commenced to determine and enforce the obligations of the Parties under this Agreement or the Other Agreements, and provided further that the OGLALA SIOUX TRIBE's consent to suit is only as to arbitration and court action initiated consistent with this Agreement and the Other Agreements. OGLALA SIOUX TRIBE agrees not to take any action that would result in the revocation or modification of the limited waiver granted by this Paragraph 17.

(B) Arbitration. The Parties agree that all disputes, claims and controversies between them, whether individual, joint, or class in nature, arising from this Agreement, the Other Agreements or otherwise in connection therewith, including, without limitation, contract disputes and tort claims, shall be resolved

by binding arbitration pursuant to the Commercial Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding held pursuant to this arbitration provision shall be conducted in the city nearest OGLALA SIOUX TRIBE's address having an AAA regional office, or at any other place selected by mutual agreement of the Parties. This arbitration provision shall not limit the right of either Party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies (collectively, the "Ancillary Remedies"), judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer for possession of, any real or personal property, and any such action shall not be deemed an election of remedies. Such Ancillary Remedies include, without limitation, obtaining injunctive relief or a temporary restraining order, obtaining a writ of attachment or imposition of a receivership, or exercising any rights relating to personal property, including exercising the right of set-off or taking or disposing of such property, with or without judicial process pursuant to the Uniform Commercial Code. The statute of limitations, estoppel, waiver, laches and similar doctrines which would otherwise be applicable in an action brought by a Party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of any action for these purposes. Service of process may be made by any means authorized by applicable law and arbitration rules. OGLALA SIOUX TRIBE acknowledges that the Tribal President, Tribal Vice-President and Tribal Secretary are persons authorized to receive service of process and that the address of OGLALA SIOUX TRIBE set forth in this Agreement is the authorized address for mailing when service of process is by mail. OGLALA SIOUX TRIBE further waives and agrees not to assert any doctrine requiring exhaustion of tribal court remedies prior to proceeding with arbitration, self-help remedies, foreclosure, and provisional and Ancillary Remedies pursuant to this Agreement and the other Agreements.

(C) Entry and Review of Award. Judgment shall be entered on any award made by the arbitrator(s) by the OGLALA SIOUX TRIBE's Tribal Court. Review of the award shall be as provided in the Federal Arbitration Act. To the extent such courts may have jurisdiction over matters arising from this Agreement, the OGLALA SIOUX TRIBE hereby consents and agrees that the United States District Court, District of South Dakota and all other federal courts to which its decisions can be appealed (collectively, "Federal Court") shall have concurrent jurisdiction with respect to the entry and review of arbitration awards and other matters as provided for herein. Without limiting the generality of the foregoing, the OGLALA SIOUX TRIBE expressly authorizes any governmental or other agency authorities who have the right and duty under applicable law to take any and all action awarded in any arbitration proceeding or by the OGLALA SIOUX TRIBE's Tribal Court or Federal Court, including without limitation, entry upon the land and any premises owned or controlled by the OGLALA SIOUX TRIBE to give effect to any arbitration award. The OGLALA SIOUX TRIBE also acknowledges that once entered in Tribal Court and/or Federal Court, judgments may also be transferred to and enforced through other courts as

necessary to enforce the Party's rights against the judgment Party's properties and assets.

18. CONFIDENTIALITY.

(A) Information. In connection with Western Wireless's services, either Party may disclose information to the other Party, in writing or verbally, certain business, technical or marketing information, data, analyses, computer programs, compilations, documents, drawings or other information and work product which one Party considers confidential and proprietary (hereinafter collectively, the "Information"). Unless either Party expressly indicates otherwise, all Information will be presumed to be confidential and proprietary, and will be so treated by the other Party.

(B) Confidentiality. With respect to Information under this Agreement, both Parties shall hold the Information in confidence; use the Information only for the purpose of rendering the services, restrict redisclosure of the Information solely to those employees, consultants, contractors, subcontractors, sub-subcontractors and agents of either Party with a need to know for the provision of the services and not disclose it to any other persons; and advise employees, consultants, contractors, subcontractors, sub-subcontractors and agents of their confidentiality obligation with respect to the Information and obtain their agreement to comply with the provisions of this Agreement before disclosing any Information.

(C) Other Agreements. Neither Party shall not divulge information concerning this Agreement to anyone (including, without limitation, information in applications for permits, variances or other forms of governmental consents or regulatory acknowledgments) without the other Party's prior written consent. To the extent that the Parties desire to divulge confidential information outside of the scope of this Agreement, the Parties shall enter into separate confidentiality agreements, as necessary.

(D) Violation. A violation of any of the provisions of this Paragraph 18 by either Party is a material breach of this Agreement, and shall entitle the other Party to seek both equitable and legal remedies.

19. OWNERSHIP OF CELLULAR TELECOMMUNICATIONS INFRASTRUCTURE.

OGLALA SIOUX TRIBE acknowledges and agrees (i) that Western Wireless retains all ownership of the Cellular Telecommunications Infrastructure which provides the Telecommunications Services on the Reservation; (ii) Cellular Telecommunications Infrastructure is a part of a larger cellular network which is used by Western Wireless's mobile cellular customers and will continue to be used by all Western Wireless's mobile cellular customers; (iii) Western Wireless retains all rights to all revenues generated by the Sites and Western Wireless's

mobile cellular customers on the Reservation; and (iv) retains all rights to all licenses granted by the FCC and other Government Agencies.

20. MISCELLANEOUS PROVISIONS.

(A) Approvals. Whenever this Agreement requires the approval of a Party, unless the provision states that such approval may be given or withheld in a Party's sole and absolute discretion, the approval of the Party shall not be unreasonably withheld or delayed, and if a Party does not disapprove in writing a particular matter within forty-five (45) days of receipt of a written request for approval, stating with particularity the reasons for the disapproval, then the matter shall be deemed to have been approved by such Party. Upon termination of this Agreement, the Parties shall negotiate the transfer of Western Wireless assets to OGLALA SIOUX TRIBE or negotiate Western Wireless's continued operation of equipment on the Reservation.

(B) Attorneys' Fees. If any action is brought by a party to this Agreement in respect to its rights under this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs as determined by the court or arbitration.

(C) Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver. Any party may waive any provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other Parties from the performance of any of their other obligations under this Agreement.

(D) Construction. This Agreement will be construed according to OGLALA SIOUX TRIBE and federal laws, or in the absence of such laws, the laws of the State shall be used as guidance, without giving effect to conflict of laws principles. References in this Agreement to "Paragraphs" or "Exhibits" are to the Paragraphs in and Exhibits to this Agreement, unless otherwise noted.

(E) Notices. Notices will be in writing and will be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, by facsimile transmission, or by express delivery service, freight prepaid. Notices will be delivered or addressed to the parties at the addresses or facsimile numbers set forth below such Party's signature on the signature page(s) of this Agreement or such other address or number as a Party may designate in writing. The date notice is deemed to have been given, received and become effective will be (a) the date on which the notice is delivered, if notice is given by personal delivery, (b) the date of actual receipt, if the notice is sent through the United States mail or by express delivery service, or (c) if notice is sent by facsimile transmission, on the date of transmission, if the transmission is commenced prior to 4:00 o'clock p.m. (local time at the place of receipt) and

continuously transmitted thereafter until complete, otherwise on the day following the date of transmission.

To Oglala Sioux Tribe: OGLALA SIOUX TRIBE
Tribal President
P.O. Box 669
Pine Ridge, South Dakota 57770

With a copy to: OGLALA SIOUX TRIBE
Economic Development Office
P.O. Box 669
Pine Ridge, SD 57770

To Western Wireless: WWC LICENSE LLC
Attn: Regulatory Department
3650 131st Avenue, SE
Bellevue, Washington 98006

With a copy to: WWC LICENSE LLC
Attn: Legal Department
3650 131st Avenue, SE
Bellevue, Washington 98006

(F) Further Documentation. Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

(G) Time Periods.

(i) Except as otherwise expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (local South Dakota time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

(ii) If a Party is delayed or hindered in or prevented from the performance of any act required hereunder by reason of acts of God, fire or other casualty, unusual weather conditions, inability to procure materials, failure of power, riots, insurrection, war, strikes or other labor disputes, OGLALA SIOUX TRIBAL emergency, general economic conditions, governmental rules or regulations, or other reason of a like nature not the fault of the party delayed in performing work or doing acts

required under the terms of this Agreement, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay. The provisions of this Paragraph will not operate to excuse any party from the prompt payment of any amounts due under this Agreement.

(H) Defaults. If a Party (a "Defaulting Party") fails to perform any of its obligations or breaches any of its covenants contained in this Agreement and, unless another time limit is elsewhere in this Agreement specifically provided, the default continues for a period of 30 days after written demand for performance is given by the other Party (the "Non-Defaulting Party"), or, if the default is of such a character as to require more than 30 days to cure and the Defaulting Party shall fail to use reasonable diligence in curing such default, then, and in any of such events, the Non-Defaulting Party may, in addition to any other remedies provided in this Agreement, at law or in equity (including the right to sue for damages, an injunction or specific performance) cure such defaults on behalf of the Defaulting Party and, in connection therewith, do all work and make all payments deemed necessary or appropriate by the Non-Defaulting Party, including payment of costs (including attorneys' fees) and charges in connection with any legal action which may have been commenced or threatened, and all sums so expended by the Non-Defaulting Party shall be paid by the Defaulting Party on demand, together with interest from the date of the expenditure until paid at a rate equal to ten (10%) percentage points.

(I) Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.

(J) Assignment by Western Wireless. Subject to OGLALA SIOUX TRIBE's approval, which shall not be unreasonably withheld or delayed, Western Wireless may assign this Agreement upon written notice to OGLALA SIOUX TRIBE, to any person controlling, controlled by, or under common control with Western Wireless, or any person or entity that, after first receiving all necessary regulatory agency approvals, acquires Western Wireless's radio communications business and assumes all obligations of Western Wireless under this Agreement. Upon such assignment, Western Wireless shall be relieved of all liabilities and obligations hereunder and assignee shall assume all liabilities and obligations hereunder. OGLALA SIOUX TRIBE shall look solely to the assignee for performance under this Agreement and all obligations hereunder unless OGLALA SIOUX TRIBE reasonably determines that the assignee is not of equal or substantially similar credit worthiness. Western Wireless may otherwise assign this Agreement upon written approval of OGLALA SIOUX TRIBE, which approval shall not be unreasonably withheld or delayed.

(K) Time is of the Essence. Time is of the essence of this Agreement.

(L) Entire Agreement. This Agreement, which includes the following Exhibits;

Exhibit A	Description of Reservation Boundaries
Exhibit B	Site Lease Form
Exhibit C	Universal Services Proposal
Exhibit D	Jurisdiction of OGLALA SIOUX TRIBE To Authorize The Tate Woglaka Service Agreement
Exhibit E	OGLALA SIOUX TRIBAL Resolution

constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by each of the Parties.

WESTERN WIRELESS:

WWC LICENSE LLC, a Delaware limited liability company

By: _____
Its: Vice President

OGLALA SIOUX TRIBE:

OGLALA SIOUX TRIBE, a federally recognized Indian Nation

By: _____
Its: Vice-President, Oglala Sioux Tribe

By: _____
Its: Chairman, Economic Development Committee

Exhibit A

Description of Reservation Boundaries

The Pine Ridge Indian Reservation is located on the Nebraska border in the southwestern part of South Dakota. West of the reservation are the Black Hills, the sacred "He Sapa" to the Lakota Dakota tribes.

The geographic characteristics of the Pine Ridge Indian Reservation are best described as predominately rolling prairie, covered with buffalo grass, interlaced by creeks lined mostly with cottonwood trees and chalky clay buttes with an abundance of Ponderosa Pine on the slopes. The northwest portion of the reservation contains the most dramatic landscapes, consisting of stark formations of the Badlands ("Mako Sica"). The White River and its tributaries flow from the northwest and form the northern boundary of the reservation.

The attitudes of the reservation range from 2,100 feet to 3,500 feet above sea level. The weather attributes range from 25 degrees below zero in the winter months to 110 degrees in the summer months with the average yearly precipitation being 16.37 inches.

The reservation is approximately 50 miles wide, north to south, and approximately 90 miles long, east to west. Established by Congress in 1889, the original boundaries contained an area of 2,786,539 acres, covering 4,198 square miles. Presently the reservation contains 1,728,870 acres.

All tribal lands and much of the lands owned by individual members are held in "trust" by the Federal government under the responsibility of the Bureau of Indian Affairs (BIA). Trust Lands are managed by the BIA which has hindered development and use by the Indian owners themselves and often encourages exploitation of the lands at the expense of the landowners by lessors, both Indian and non-Indian.

The Oglala Sioux Tribe, the Bureau of Indian Affairs and a collective effort among Tribal Offices such as the Census Department, Social Services Program and the Education Programs reveal the following data as of November 29, 1996.

The Reservation is considered to be the poorest area in the United States. The major employers on the reservation are public sector: Bureau of Indian Affairs, Indian health Service, Tribal Government, Tribal Contract Schools, Cedar Pass Lodge, Tribal Businesses and others. The three major private sector employers are all service industries. There are no local manufacturing operations of any significant size employing Indian people.

Exhibit B

Site Lease Form

~~[TO BE PROVIDED]~~

Exhibit C

Universal Service Proposal

Western Wireless Universal Service Proposal for the Pine Ridge Reservation

Western Wireless Corporation ("Western Wireless") is pleased to present this proposal ("Proposal") to provide telecommunications service, including universal service, on the Pine Ridge reservation. The Proposal includes: (1) an identification of the telecommunications infrastructure; (2) the telecommunications services to be offered; (3) the rates for the telecommunications services; (4) the rights and responsibilities of Western Wireless and the Oglala Lakota Nation; and (5) the allocation of costs and sharing of revenue. The Proposal is made in response to the Statement of Interest by the Oglala Lakota Nation and a specific request for a proposal to provide wireless telecommunications service throughout the reservation.

This Proposal is entirely contingent upon Western Wireless' receipt of universal service funding based upon the cost of providing service on the Pine Ridge reservation as determined by the forward-looking cost model adopted by the Federal Communications Commission ("FCC") in CC Docket No. 96-45. Sufficient universal service funding is necessary to provide affordable telecommunications service on the reservation. Western Wireless has submitted a request to the FCC for receipt of federal funding for a similar universal service offering. This request is currently pending at the FCC. Western Wireless will file with the FCC a similar request for federal funding for its universal service offering on the Pine Ridge reservation. The assistance of the Oglala Lakota Nation will be necessary to secure federal funding for this Proposal.

Telecommunications Infrastructure

Western Wireless will provide telecommunications service using a wireless telecommunications infrastructure, consisting of cellular radio transmitters and receivers, network switching, and transport between cell sites and switching facilities. Western Wireless will construct additional cell sites, as necessary, to optimize service on the reservation. It is anticipated that the majority of the reservation land area can be served with existing cell sites, together with the construction of three additional cellular sites and towers. The feasibility of incorporating other technologies to serve the telecommunications needs of the reservation, including wire line and Local Multipoint Distribution Service ("LMDS"), will also be considered.

Telecommunications Services

Western Wireless will serve the telecommunications needs of the Pine Ridge reservation through its Wireless Residential Service universal service offering (referred to herein as "WRS"). WRS is a wireless local loop service offered by Western Wireless over its cellular telecommunications infrastructure. WRS will provide, at a minimum, the universal services and functionalities as defined by the Federal Communications Commission. Additionally, Western Wireless will provide other services and functionalities important to the Oglala Lakota Nation, such as an

expanded local calling area, data services, long distance service, prepaid services, and enhanced services, including voicemail, call forwarding, call waiting, and conference calling.

Rates

Western Wireless will work with the Oglala Lakota Nation to establish an affordable rate for the telecommunications services offered on the Pine Ridge reservation. Western Wireless recognizes that the consumer's total telecommunications service must be affordable. Importantly, for the universal service offering, the Oglala Lakota Nation will determine the affordable rate to be charged to the consumer for the service.

Although the Oglala Lakota Nation will determine the rate for the basic universal service offering, it is anticipated that a $13 per month rate would be affordable and would include:

a) voice-grade access to the national public switched telephone network;
b) unlimited local calling within a defined geographical area;
c) the local calling area includes all calls to current telephone prefixes on the reservation, plus all prefixes in Martin and Rapid City
d) single party service;
e) access to emergency service, including 911;
f) access to directory service, long distance service, and operator service; and
g) toll limitation for qualifying low-income consumers.

Long distance service, both intrastate and interstate, will be provided at a price of $.15 per minute, billed in full minute increments. For those customers found to have credit limitations, pre-paid long distance cards will be available for sale. International calling can be made available upon request, pending credit approval, at competitive rates.

Additional features will be available, including the one below at rates identified:

VOICE MAIL	$4.99
CALL FOWARDING	$2.00
CALL WAITING	$2.00
3 PARTY CONFERENCE CALLING	$2.00

Rights and Responsibilities of Western Wireless

Western Wireless will be responsible for, among other things:

- 24 hour a day, 7 day a week, 365 days a year customer service
- training on the operation and maintenance of customer premise equipment

Other responsibilities of Western Wireless are as follows:

Wireless Local Loop Customer Premise Equipment

The wireless local loop customer premise equipment ("WLL CPE") necessary for WRS will be provided by Western Wireless to the Oglala Lakota Nation for installation at customer locations. The customer will be charged $3 per month to rent the WLL CPE, or may purchase it for $300. The WLL CPE will be installed by a member(s) of the Oglala Lakota Nation who will be trained by Western Wireless. It will be the responsibility of the customer to furnish its own telephone or other telephone devices.

Customer Acceptance

For local telephone service, all requests for service will be approved subject to the terms and conditions of service. Unless a customer passes credit approval or provides a deposit, long distance calling will be restricted (*e.g.*, toll limitation). Pre-paid calling cards, however, will be available from Western Wireless and other companies for long distance calls. Upon credit approval or the payment of a deposit, applicants will be able to subscribe to WRS with direct billing of LD.

Network Maintenance

Western Wireless will be responsible for all maintenance of the telecommunications system used to provide WRS. Technical support and system monitoring are provided on a 24-hour a day, 7-day a week, 365 day a year basis.

Monthly Billing

Western Wireless will be responsible for generating and mailing a monthly bill for all local, LD and other charges associated with WRS to customers on the Pine Ridge Reservation.

Collections

Western Wireless will be responsible for collecting all outstanding past due customer payments. Western Wireless will work with the Oglala Lakota Nation to establish appropriate opportunities for WRS customers to make payment on the reservation, especially those with special needs. Western Wireless will determine when past due customers will have their service suspended and ultimately disconnected. Western Wireless will provide the Oglala Lakota Nation with a list of past due accounts on a monthly basis, with the expectation that the Oglala Lakota Nation will assist in collecting past due amounts in order to garner their tribal revenue.

Customer Services

Western Wireless will offer all WRS customers 24-hour customer services. Western Wireless and the Oglala Lakota Nation will establish a process for reporting service problems from the Western Wireless call centers to a point of contact on the Pine Ridge reservation.

Data

Today, WRS is capable of supporting data rates of up to 9.6k. New cellular technology is under development to increase cellular data rates and will be deployed in the network as it become commercially viable and available. In the meantime, Western Wireless and the Oglala Lakota Nation will work together to identify the data communications needs that cannot be adequately addressed by the existing cellular network and will evaluate the use of other technologies, such as LMDS, microwave, and wire line, to serve those needs.

Rights and Responsibilities of the Oglala Lakota Nation

The Oglala Lakota Nation will be responsible for, among other things:

- identification of potential customers
- installation of WLL CPE necessary for WRS
- maintenance of WLL CPE
- assisting in locating additional antenna cell sites on the reservation

Installation

The installation of the WLL CPE necessary for WRS will be performed by persons designated by and employed by the Oglala Lakota Nation. All necessary training of tribal employees will be conducted by Western Wireless. Training will include, but not be limited to, an introduction to WRS equipment, network familiarization, installation guidelines, physical equipment requirements and antenna installation.

Maintenance

The Oglala Lakota Nation will be responsible for diagnosing any service problems with WRS WLL CPE. Western Wireless will provide the Pine Ridge Reservation with an initial supply of 6 spare WRS WLL CPE devices for maintenance purposes. Western Wireless will collect and repair all defective WRS WLL CPE devises collected from customer premises on a monthly basis. Broken WRS WLL CPE devices found to be damaged by misuse or abuse will result in the end user being charged a $300.00 replacement fee. The Oglala Lakota Nation will set their own prices for service visits and will retain all money collected from such visits.

Customer Service

The Oglala Lakota Nation will be responsible for all customer service calls.

Assistance Required from Oglala Lakota Nation

Western Wireless's proposed WRS offering is contingent upon the FCC approving Western Wireless' request for the receipt of universal service funding based upon the cost of providing service on the Pine Ridge reservation as determined by the FCC-adopted cost model. To assist in the approval process, representatives from Pine Ridge Reservation may be asked by Western Wireless to assist in this approval process, including attending meetings at the FCC and other regulatory agencies and preparing written correspondence with regulatory officials.

Allocation of Costs and Sharing of Revenue

Revenues to be Retained by Oglala Lakota Nation:

- All collected monthly service charges for Basic Service once the customer base reaches and remains above 1000 monthly lines of service.
- All cell site rental revenue for sites located on tribal controlled land
- All installation and service visit revenues

Revenues to be Retained by Western Wireless:

- All long distance charges appearing on monthly bill
- All Universal Service Funds
- All voice mail and feature revenue

Expenses to be Paid by Oglala Lakota Nation:

- All payroll expenses associated with employees from the tribal telephone venture

Expenses to be Paid by Western Wireless:

- All site leases
- All expenses associated with constructing the cellular telephone system necessary to provide WRS on the Pine Ridge Reservation
- All payroll expenses associated with system maintenance
- All expenses associated with repair of wireless local loop units once delivered to Western Wireless by Oglala Lakota Nation
- All expenses associated with site repair and maintenance
- All wholesale long distance costs for long distance appearing on WRS customer bills
- All bad debt expense

The Oglala Lakota Nation acknowledges that Western Wireless retains all ownership of the cellular system infrastructure needed for the provision of WRS on the Pine Ridge Reservation. As part of a larger cellular network, the system will also be used by mobile cellular customers. Western Wireless retains all rights to all revenues generated by the sites on the Pine Ridge Reservation. It also retains all rights to all licenses granted by the FCC and other government entities necessary for the provision of cellular service.

Revenue Model of WRS Tribal Telephone Venture for Oglala Lakota Nation

Assuming 1500 lines of service:

Monthly Service Fee Revenue:	$ 19,500.00
Monthly Site Rental (3 sites @ $300/mo)	$ 900.00
Monthly Maintenance Fees (50 X 30/mo)	$ 1,500.00
Monthly Installation Revenue (50 X 25/mo)	$ 1,250.00
TOTAL MONTHLY REVENUE	$ 23,150.00

Questions or inquiries should be directed to Gene A. DeJordy, Esquire, Vice President of Regulatory Affairs, at (425) 586-8055 or via e-mail at gene.dejordy@wwireless.com.

Exhibit D

JURISDICTION OF OGLALA SIOUX TRIBE TO AUTHORIZE THE TATE WOGLAKA SERVICE AGREEMENT

Regulatory Authorization.

Section 1-101. Findings

The Oglala Sioux Tribe, a Federally recognized Indian tribe, through the elected Oglala Sioux Tribal Council, acting pursuant to its inherent sovereign governmental authority and the enumerated powers under the Constitution and Bylaws of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation finds that –

(1) Inherent Tribal Sovereign Power to Regulate Utilities

The power to regulate is an inherent and essential part of the authority of any reservation tribal government. This power is, therefore, an aspect of the retained sovereignty of the Oglala Sioux Tribe except where it has been limited or withdrawn by Federal law. The Oglala Sioux Tribe is a sovereign Indian tribe organized pursuant to the Act of June 18, 1934, 48 Stat. 984, as amended, and governed pursuant to a Constitution and Bylaws of the Oglala Sioux tribe of the Pine Ridge Indian Reservation of South Dakota, Article 4, Section 1(f), (g), (m) and (t), approved on January 15, 1936 and amended December 24, 1969 and December 3, 1985 and July 11, 1997.

Permits, Licenses, and Regulation Requirements.

The permitting, licensing and regulation are governed by the Oglala Sioux Tribal Utilities Commission pursuant to the ordinances, rules and regulations duly adopted by the Oglala Sioux Tribal Council.

Exhibit E

Oglala Sioux Tribal Resolution

RESOLUTION NO. 00-87

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL
OF THE OGLALA SIOUX TRIBE
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBE TO APPROVE THE TATE WOGLAKA CONTRACT WITH WESTERN WIRELESS CORPORATION THAT WILL ESTABLISH A RESIDENTIAL WIRELESS TELECOMMUNICATIONS SYSTEM TO PROVIDE WIRELESS TELEPHONE COMMUNICATIONS CAPABILITY FOR THE ENTIRE PINE RIDGE INDIAN RESERVATION.

WHEREAS, the Oglala Sioux Tribe, was organized under an amended Constitution and By-Laws, approved January 15, 1936, and amended on December 24, 1969, December 3, 1985 and July 11, 1997, for the purpose of serving the members of the Tribe, and

WHEREAS, the Oglala Sioux Tribe has recognized that more than 50% of the residents of the Pine Ridge Indian Reservation have either no telephone service or are unable to afford telephone service, and

WHEREAS, the Western Wireless Corporation has recognized the sovereign powers of the Oglala Sioux Tribe that regulate services on the Pine Ridge Indian Reservation, and

WHEREAS, this project will provide the Pine Ridge Indian Reservation with 100% telephone penetration rate capability, and will provide for the subsequent phases of development and maintenance, promote public safety and provide for maximum service delivery to the residents of the Pine Ridge Indian Reservation, and

WHEREAS, the Economic and Business Development Committee of the Oglala Sioux Tribe has reviewed, approved and hereby recommends to the Oglala Sioux Tribal Council that this contract is in the best interest of the Tribe, and

WHEREAS, expeditious action by Tribal Officials is of extreme importance, now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribal Council, does hereby authorize that Acting Tribal President to sign the Tate Woglaka Contract with Western Wireless Corporation, and

BE IT FURTHER RESOLVED, that the Oglala Sioux Tribal Council does hereby authorize a limited waiver of Sovereign Immunity, specific to this agreement and limited to the terms and conditions of this agreement, and

BE IT FURTHER RESOLVED, that the Oglala Sioux Tribal Council directs all Tribal Committees and Agencies to act expeditiously in coordinating all efforts with the Oglala Sioux Tribe Economic Development Office to establish this residential wireless telecommunications system.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Recording Secretary of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe, hereby certify that this resolution was adopted by the vote of: 8 for; 6 against; 0 abstain; 0 not voting, during a REGULAR SESSION held on this 21ST day of AUGUST, 2000.

Jocelyn Gibbons
JOCELYN GIBBONS
Recording Secretary
Oglala Sioux Tribe

A-T-T-E-S-T:

Wilbur Between Lodges
WILBUR BETWEEN LODGES
Vice-President
Oglala Sioux Tribe

RECEIVED
AUG 30 2000
BIA SUPERINTENDENT
PINE RIDGE AGENCY, SD

ADDENDUM 1

This addendum entered into on August 21, 2000 is to the Tate Woglaka Service Agreement ("Agreement") entered into on August 21, 2000 between WWC License LLC ("Western Wireless") and Oglala Sioux Tribe ("Oglala Sioux Tribe"). Addendum 1 revises the obligations imposed on the Parties by the Agreement for a transitional period of time.

Whereas, the Oglala Sioux Tribe is not currently in a position to assume the responsibility for the installation and maintenance of the On-Site Equipment at this time; and,

Whereas, the Oglala Sioux Tribe agrees to take all necessary steps to be in a position to assume responsibility for the installation and maintenance of the Off-Site Equipment within six (6) months of commencement of service under the Telecommunications Services Plan for the reservation; and,

Whereas, Western Wireless agrees to assume responsibility for the installation and maintenance of the On-Site Equipment until such time as the Oglala Sioux Tribe is in the position to assume this responsibility; now,

Be it known that, Western Wireless and Oglala Sioux Tribe hereby agree to amend the Agreement as follows:

1. Western Wireless shall assume responsibility for the installation and maintenance of On-Site Equipment for a period of time not to exceed six months from the date of commencement of service under the Telecommunications Services Plan for the reservation. After such six-month period, the Oglala Sioux Tribe shall assume all such responsibilities pursuant to the terms of the Agreement. During such six-month period, Western Wireless shall retain a portion of revenues from the Customer Monthly Rates for Basic Services, and installation and service calls until such time as the Oglala Sioux Tribe determines it is economically feasible to assume responsibility for the installation and maintenance of On-Site Equipment.

WESTERN WIRELESS:

WWC LICENSE LLC, a Delaware limited liability company

By: _____
Its: Vice President

OGLALA SIOUX TRIBE:

OGLALA SIOUX TRIBE, a federally recognized Indian Nation

By: _____
Its: Vice-President, Oglala Sioux Tribe

By: _____
Its: Chairman, Economic Development Committee

ATTACHMENT B

WESTERN WIRELESS ETC ORDER

H
16 F.C.C.R. 18145, 16 FCC Rcd. 18145, 2001 WL 1181249 (F.C.C.)

Federal Communications Commission (F.C.C.)

Memorandum Opinion and Order
**1 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
FCC

01
-
284

Adopted: September 27, 2001

Released: October 5, 2001

***18145** By the Commission: Commissioner Martin dissenting and issuing a statement.

I. INTRODUCTION

1. Section 214(e) of the Communications Act (Act) sets forth the requirements for telecommunications carriers to be eligible for federal universal service support and provides for state and federal authority to determine whether carriers meet these eligibility requirements. In this Order, we undertake a jurisdictional analysis to determine whether the FCC or the South Dakota Public Utilities Commission (South Dakota PUC) should decide whether Western Wireless is eligible to receive federal universal service support for providing telephone service to residents of the Pine Ridge Reservation (Reservation) in South Dakota. After reviewing federal Indian law and the specific facts in this case, we conclude that the FCC should make the eligible telecommunications carrier (ETC) determination for Western Wireless' provision of service to members of the Oglala Sioux Tribe on the Reservation, and the South Dakota PUC should do so for provision of service to non-tribal members on the Reservation. In a separate companion order, we designate Western Wireless to be an ETC to serve the tribal population on the Pine Ridge Reservation.

II. BACKGROUND

A. The Communications Act

2. Section 254(e) of the Act states, in relevant part, that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."[FN1] Section 214(e)(1) sets forth the requirements for ETC designation. Section 214(e)(2) provides for state commission designation of ETC carriers:

> A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of [section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State ***18146** commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [section 214(e)(1)].[FN2]

3. When Congress first enacted section 214(e) in 1996, the statute contained no provision for designation of carriers that were not subject to the jurisdiction of a state commission. As a result, such carriers, "most notably, some carriers owned or controlled by native Americans," had no access to a forum in which they could obtain a determination whether they met the requirements of section 214(e)(1).[FN3] As a result, these carriers would have become ineligible for universal service support as of January 1, 1998, when the eligibility requirements of the Act became effective. In 1997, Congress amended the Act with the addition of section 214(e)(6) to correct this "oversight."[FN4] Section 214(e)(6) states that:

> **2 In the case of a common carrier providing telephone exchange service and exchange access

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that is not subject to the jurisdiction of a State commission, the [FCC] shall upon request designate such a common carrier that meets the requirements of [section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the [FCC] consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the [FCC] may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under [section 214(e)(6)], so long as each additional requesting carrier meets the requirements of [section 214(e)(1)].[FN5]

B. The *Universal Service Twelfth Report and Order*

4. As set forth above, the Act requires the FCC to determine a carrier's eligibility to receive universal service funds when a state lacks jurisdiction. The Act does not provide any guidance, however, on how to determine whether a state commission lacks jurisdiction, who makes the determination, or what to do if two entities (*e.g.*, a state and a tribe) both assert jurisdiction over the same telecommunications carrier. In order to fill this gap in the statute, the FCC set forth a procedure in the *Universal Service Twelfth Report and Order*, which permits carriers serving tribal lands to petition the FCC for a determination on the jurisdictional question -- *i.e.*, whether the state or the FCC will determine the carrier's eligibility for universal service funds.[FN6]

5. Once a carrier files with the FCC a petition seeking ETC designation for service provided on tribal lands, we undertake a two-step analysis: first, we determine whether a carrier providing service on tribal lands is subject to the jurisdiction of a state commission or whether it is subject to a tribal authority given the tribal interests involved. Second, if the carrier is not subject to the jurisdiction of a ***18147** state commission, the FCC considers the merits of the carrier's request to be designated as an ETC. This two-step process is intended to "avoid any costs and delays associated with resolving the threshold jurisdictional determination in a state designation proceeding and possible court appeal" of the state's decision, yet "preserv[e] the state commissions' jurisdiction consistent with federal, tribal, and state law."[FN7] During the first stage of the two-step process (which we conduct in this Order), the petitioning carrier bears a strict burden of proving that it is not subject to the state commission's jurisdiction. The petitioning carrier must set forth in detail the basis for its assertion, including any relevant statements by the tribal authority.[FN8]

C. The Western Wireless Petition for the Pine Ridge Reservation

****3** 6. In November 1999, the Oglala Sioux Tribe began negotiating with Western Wireless regarding the deployment of a wireless universal service offering on the Pine Ridge Reservation in South Dakota. On August 16, 2000, Western Wireless and the Oglala Sioux Tribe signed the Tate Woglaka Service Agreement (Service Agreement).[FN9] Pursuant to the service agreement, Western Wireless represents that it has expressly consented to the Tribe's regulatory authority[FN10] and the Tribe has rights to participate extensively in and administer Western Wireless' service plan for the Reservation.[FN11] Furthermore, the service agreement is to be governed by tribal and federal law, and resolution of any disputes arising under the agreement will be through an arbitration process where judgments will be enforceable by the tribal court.[FN12]

7. In accordance with the *Twelfth Report and Order*, Western Wireless filed a petition with the FCC on January 19, 2001, requesting ETC designation for its provision of service to the Pine Ridge Reservation.[FN13] On February 13, 2001, we sought public comment on the Western Wireless Petition. Nine ***18148** parties filed comments, three parties filed replies, and numerous parties made additional filings.[FN14] The Oglala Sioux Tribe supports FCC ETC jurisdiction and designation of Western Wireless in this case.[FN15]

8. In its Petition, Western Wireless argues that the FCC should make the ETC determination because the South Dakota Commission lacks jurisdiction over its provision of service on the Reservation. Western Wireless requests that we designate the entire geographic area of the Reservation as its "service area."[FN16] Currently Western Wireless provides service only to tribal members which, according to Western Wireless, comprise nearly 91 percent of the Reservation's population.[FN17] If Western Wireless is designated as an ETC, Western Wireless intends to provide supported service to both tribal and non-

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tribal members living on the Reservation.[FN18]

9. The South Dakota Commission opposes FCC action on Western Wireless' petition. The PUC asserts that Western Wireless is subject to its general regulatory authority under State law,[FN19] and that its regulations applicable to Western Wireless at this time encompass the areas of service quality, complaint adjudication, and prohibitions on unjust and unreasonable discrimination in rates and terms of service.[FN20] The South Dakota PUC also asserts a specific interest in making ETC determinations, citing off-reservation effects on maintaining quality and uniformity in telecommunications service for the existing ETC carrier and preventing unjust and unreasonable discrimination in telecommunications statewide.[FN21] SDITC further argues that the State is better able to make the public interest determination whether to permit an additional ETC carrier for the area currently served by the incumbent rural telephone company, because the State is more familiar with its local history and circumstances.[FN22] Furthermore, the South Dakota PUC maintains that the State has a strong interest in continuing to regulate all carriers ***18149** serving the area constituting the Reservation, which include three wireline carriers currently serving approximately 73 percent of the households on the Pine Ridge Reservation.[FN23] Shortly after the Act was passed, the South Dakota PUC designated all incumbent wireline carriers as ETC carriers throughout their service territories (some of which include parts of the Pine Ridge Reservation) without conducting a particularized inquiry.[FN24]

III. DISCUSSION

****4** 10. We conclude below that, under relevant Supreme Court precedent, the Tribe has jurisdiction with respect to Western Wireless' service provided to tribal members on the Reservation -- who comprise the vast majority of the Reservation's population -- and the State has jurisdiction with respect to any service provided to the remaining non-tribal residents on the Reservation. We further conclude under section 214(e) that the relevant service area for Western Wireless's ETC designation is defined as service to tribal members living within the boundary of the Pine Ridge Reservation. The service area does not include service to non-tribal members.

A. Analysis Under Federal Indian Law

11. In assessing "the extent of state authority over the activities of non-Indians engaged in commerce on an Indian reservation," the Supreme Court in *White Mountain Apache Tribe v. Bracker* has established that the question calls "for a particularized inquiry into the nature of the state, federal, and tribal interests at stake."[FN25] By balancing these interests, we are then able to resolve the ultimate question of whether the South Dakota PUC has jurisdiction over Western Wireless' service on the Pine Ridge Reservation. We therefore undertake that inquiry, examining in turn the relevant federal, state and tribal interests, consistent with the principles set out by the courts.

1. Federal Interests

12. As to federal interests, we agree with the parties that this is not an instance in which state regulatory authority is preempted based on federal policies reflected in the Communications Act.[FN26] Section 214(e)(2) gives the states primary responsibility to determine whether a carrier meets the ETC ***18150** criteria. At the same time, section 214(e)(6) requires the FCC to make the ETC determination when the state lacks jurisdiction to do so. But the Act is silent on the issue of the circumstances in which a state commission lacks jurisdiction.[FN27] In enacting section 214(e)(6), Congress acknowledged pending jurisdictional disputes between states and tribes and made clear that the adoption of section 214(e)(6) was not "intended to impact litigation regarding jurisdiction between State and federally-recognized tribal entities."[FN28] Therefore, given Congress' recognition of possible tribal jurisdiction over carriers requesting ETC determinations, our task at this stage in the process is to determine whether the state or the tribe has jurisdiction, by examining the state and tribal interests in accordance with the relevant factors articulated by the Supreme Court and lower court decisions.[FN29]

2. Tribal Interests

13. Background. This case presents the issue of the extent of tribal authority over a non-tribally owned carrier that intends to serve both tribal members and others on the reservation. More specifically, the population of the Pine Ridge Reservation, like that of most reservations, consists of both tribal and non-tribal members. The record indicates that 91 percent of the population is comprised of Indians, most of whom also are tribal members, and about 9 percent of the population is comprised of non-Indians.[FN30] In

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addition, about 85 percent of the land on the Reservation is owned by or held in trust for the Tribe, whereas about 15 percent of the land within the Reservation boundaries is non-Indian fee land that is not owned by or held in trust for the Tribe and its members.[FN31] This non-Indian fee land, mostly occupied by non-tribal members, is scattered randomly in a checkerboard fashion throughout the Reservation.

5 14. The Supreme Court has long held that tribal sovereignty interests are strongest with regard to on-reservation conduct of tribal members. In such cases, state law is generally inapplicable[FN32] but for "exceptional circumstances."[FN33] The Supreme Court's decision in *Montana v. United States*[FN34] sets out the guiding principle that Indian tribes generally lack jurisdiction to regulate non-members on the reservation,[FN35] but it recognized two exceptions to that rule. Under the first *Montana* exception, "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or ***18151 other arrangements."[FN36] Under the second *Montana* exception, "[a] tribe may ... exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[FN37] In its most recent decisions, the Supreme Court continues to follow closely the principles of *Montana v. United States*, which it has referred to as "the pathmarking case" on Indian tribes' regulatory authority over non-members.[FN38] We have therefore resolved this case in light of *Montana's* guidance.

15. Discussion. After carefully examining the service agreement between the Oglala Sioux Tribe and Western Wireless, we are persuaded that, because of the carrier's consensual relationship with the Tribe, the first *Montana* exception is satisfied with respect to the carrier's service to tribal members. Pursuant to the service agreement, Western Wireless represents that it has expressly consented to the Tribe's regulatory authority,[FN39] and the Tribe has rights to participate extensively in and administer the service plan.[FN40] The Tribe, for example, assists Western Wireless in developing the service plan, deploying infrastructure, and establishing basic service rates.[FN41] In addition, the agreement requires Western Wireless to give financial proceeds directly to the Tribe and give hiring preferences and training to tribal members.[FN42] Furthermore, it allows the Tribe to interface with customers on the Reservation concerning such issues as marketing and billing and collection.[FN43] The service agreement is to be governed by tribal and federal law, and resolution of any disputes arising under the agreement will be through an arbitration process where judgments will be enforceable by the tribal court.[FN44] In this regard, Western Wireless states that its transactions with tribal members (with Western Wireless' consent) "are subject to the Tribe's jurisdiction."[FN45] Similarly, the Oglala Sioux Tribe states that, in order to establish affordable telecommunications services for its residents, it has established a Utilities Commission "which has full rate and regulatory authority over all purveyors," and that Western Wireless "has agreed ... to abide by the Oglala Sioux Tribe Utilities Commission authority."[FN46]

6 16. These features, we believe, set the agreement apart from a normal carrier-customer relationship and are directly related to the Tribe's sovereignty interests, including the regulation of transactions between the carrier and tribal members and substantial authority over the provision of ***18152 communications services to the Tribe that affect the welfare of the Tribe.[FN47] Consistent with the relevant Supreme Court decisions, these are areas in which tribal sovereignty interests are at their zenith. By the same token, given that the areas of state regulatory authority currently are limited to matters that primarily involve issues of service quality and complaint adjudication, we believe that the State's interests in resolving such disputes solely between tribal members and Western Wireless are minimal.

3. State Interests

17. Service to Tribal Members. As explained above, we are persuaded that, under well-established Supreme Court precedent, the tribal sovereignty interests in Western Wireless' service to tribal members outweigh the State's regulatory interests. We acknowledge the state interests in regulation of telecommunications services throughout the State of South Dakota, as well as the possibility that designating an additional ETC carrier for service to the Reservation could have off-reservation effects on the incumbent carrier's service throughout its service area. Indeed, because Congress generally gave the states the authority to make ETC designations in sec-

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tion 214(e)(2), the statute establishes Congress' own recognition of the important state interests at stake.[FN48]

18. Nevertheless, we do not agree that the interests asserted by the State under these circumstances outweigh the tribe's interests in regulating a carrier that has entered into a service agreement with the tribe and that provides service to its tribal members. Although we are sympathetic to state concerns about maintaining uniformity and preventing unjust and unreasonable discrimination in telecommunications statewide, we are persuaded that the tribe's interests in regulating service quality and determining the procedures by which to resolve complaints between Western Wireless and its tribal members are more compelling. Also, although we agree that, in general, states are more familiar with local history and circumstances, here we have been presented with a full record detailing the Oglala Sioux Tribe's sovereignty interests and its desire to regulate the relationship between the carrier and its own tribal members.

19. Section 214(e)(6) provides that, where a state lacks jurisdiction, the FCC shall make the public interest determination whether to designate a carrier as an ETC. Here, in light of *Montana* and the specific facts presented, we conclude that Western Wireless's service to tribal members is not properly subject to the jurisdiction of the state. We further conclude, therefore, that section 214(e)(6) requires the FCC to make the ETC designation.

****7** 20. We note that our decision that the state lacks jurisdiction over Western Wireless's service to tribal members is not inconsistent with continued state regulation of wireline carriers serving the Reservation, all of which were automatically granted ETC status by the state shortly after the Act was passed.[FN49] States have far greater interests in regulating state-certificated rural or other wireline ETC ***18153** carriers that provide service to and beyond the reservation area, often under comprehensive state regulatory schemes for wireline carriers of last resort. Here, the state does not regulate the rates that Western Wireless charges consumers,[FN50] nor is Western Wireless the carrier of last resort. Indeed, the need for the state to protect its consumers through regulation of a second carrier providing service on the Reservation is reduced because tribal customers have the option, as a fallback, to subscribe to a state-regulated carrier. Furthermore, Congress appears to have contemplated the situation with which we are presented here: where an additional carrier, not subject to state jurisdiction, wants to be designated as an ETC for an area already being served by a rural telephone company, which is presumably regulated by the state and has most likely been designated by the state as an ETC.[FN51]

21. Finally, and perhaps most importantly, the state-regulated wireline carriers, unlike Western Wireless, have not consented to tribal jurisdiction. Consent is a prerequisite under the first *Montana* exception, which provides that a tribe may regulate non-members who enter into a "consensual relationship" with the tribe. Thus, we conclude, as in other areas of federal Indian law, that the state continues to have jurisdiction over some entities for some purposes (*i.e.*, regulating the wireline carrier-of-last-resort) and the Tribe has jurisdiction over other entities for other purposes (*i.e.*, regulating a second carrier that has consented to tribal jurisdiction).

22. Service to Non-Tribal Members. Although we find that the tribe has jurisdiction over Western Wireless to the extent that it serves *tribal* members, we conclude that there is little support for tribal jurisdiction over Western Wireless' service to *non-tribal* members on the Reservation.[FN52] As noted above, approximately 9 percent of the Reservation's population is comprised of non-Indians. The Supreme Court has indicated that tribal sovereignty interests generally do not apply to non-tribal members, particularly on non-Indian fee land.[FN53] While the carrier's agreement to submit to tribal jurisdiction when it serves the tribal members has a nexus to tribal sovereignty interests, we do not find any support in the cases that tribal sovereignty interests extend to the carrier's relationship with non-tribal members, even if the carrier were to agree to submit to tribal jurisdiction when serving those customers. Indeed, a non-tribal carrier serving non-tribal customers does not appear to have any relationship to the internal affairs of the tribe.[FN54]

****8** 23. Similarly, we do not agree with Western Wireless' position that we should declare tribal jurisdiction over all of Western Wireless' service on the Reservation, whether to tribal members or to others, based on the second *Montana* exception. As noted above, that exception permits tribal jurisdiction

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***18154** over non-tribal members because the conduct at issue " threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[FN55] In its decisions following *Montana*, the Supreme Court has made clear that the second exception is to be narrowly construed and does not extend beyond "what is necessary to protect tribal self-government or to control internal relations,"[FN56] and is "crucial to 'the political integrity, the economic security, or the health or welfare"' of the tribe.[FN57] We are not persuaded that, in the circumstances of this case, tribal regulation of the relationship between non-tribal customers and Western Wireless is so crucial to Indian sovereignty interests that it meets the Supreme Court's exacting standard. Insofar as the State asserts authority to regulate Western Wireless' provision of service to non-tribal members, therefore, we believe it may do so. We conclude, therefore, that under principles of federal Indian law, the Tribe has jurisdiction over aspects of Western Wireless' service to tribal members living within the Reservation boundaries, but the State commission has authority over the carrier's provision of service to non-tribal members.

24. Western Wireless also argues that we should utilize a balancing test based on the relative percentages of tribal and non-tribal residents and conclude that we may determine ETC designations for the entire Reservation. As explained above, however, we have discovered nothing in the relevant case law that provides for any *de minimis* exception to the boundaries of state jurisdiction that would permit the FCC to make the ETC determination for Western Wireless' service to non-members on the Reservation. Nor do we believe that section 214(e) itself supports such a result. Defining Western Wireless' service area as the entire Reservation in this case would exceed the boundaries of our authority under section 214(e)(6), which expressly provides that we may make ETC designations only when a carrier's service is not subject to the jurisdiction of a state commission.[FN58]

B. Analysis of Service Area under Section 214

25. Under section 214(e)(1), a carrier designated as an ETC is eligible to receive universal service support "throughout the service area for which the designation is received[.]"[FN59] Under the circumstances presented here, we conclude that the "service area" consists of the geographic area within the boundary of the Pine Ridge Reservation. We note, however, that section 214(e)(6) only permits the ***18155** FCC to authorize federal universal service funding when the carrier providing telephone service "is not subject to the jurisdiction of a State commission." As discussed above, we find that the state retains jurisdiction over Western Wireless to the extent that the carrier serves non-tribal members. Thus, we are barred by the statute from authorizing universal service funding for Western Wireless to the extent that it serves non-tribal members. Accordingly, Western Wireless need comply with the requirements of section 214(e)(1) -- including the requirement to offer supported services -- only insofar as it is providing service to tribal members on the Reservation.[FN60]

****9** 26. We also note that, at the current time, Western Wireless is offering telephone service only to tribal members on the Reservation.[FN61] Thus, our definition of the service area reflects Western Wireless' current service offering for which they do not currently receive universal service support. From an administrative perspective, the carrier would merely be converting its current service offering into a supported service, which should enable the carrier to receive universal service support and to offer reduced rates to its tribal customers.

27. As to non-members, we encourage the South Dakota PUC to act expeditiously should Western Wireless request the PUC to designate Western Wireless as an ETC for service to non-tribal members living on the Reservation.[FN62] In our companion order, we have determined that it serves the public interest for Western Wireless to be designated an ETC for its service to tribal members on the Reservation; however, we recognized in the *Twelfth Report and Order* that non-Indian, low-income households on tribal lands may face the same or similar economic and geographic barriers as those faced by low-income Indian households.[FN63] Further, as we stated in the *Twelfth Report and Order*, increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community, enhances the value of the network in the community and results in greater incentives for carriers to serve these areas.[FN64] Therefore, we encourage the South Dakota PUC to take action consistent with these policies.

***18156 IV. ORDERING CLAUSES**

28. Accordingly, IT IS ORDERED that, pursuant to

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the authority contained in sections 1-4, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-54, 214, and 254, this Memorandum Opinion and Order IS ADOPTED.

29. IT IS FURTHER ORDERED that Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota IS GRANTED IN PART and DENIED IN PART to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

FN1. 47 U.S.C. § 254(e).

FN2. 47 U.S.C. § 214(e)(2).

FN3. 143 Cong. Rec. H10807 (daily ed. Nov. 13, 1997) (statement of Rep. Bliley).

FN4. 143 Cong. Rec. S12568 (daily ed. Nov. 13, 1997) (statement of Sen. McCain).

FN5. 47 U.S.C. § 214(e)(6).

FN6. *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Smith Bagley, Inc.; Cheyenne River Sioux Tribe Telephone Authority; Western Wireless Corporation, Wyoming; Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc.; Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service;* CC Docket No. 96-45; Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking; 15 FCC Rcd 12208, 12265, paras. 115-27 (2000) (*Twelfth Report and Order*).

FN7. *Twelfth Report and Order*, 15 FCC Rcd at 12265, para. 115.

FN8. *Twelfth Report and Order*, 15 FCC Rcd at 12266-67, paras. 120-22.

FN9. Western Wireless Petition.

FN10. Western Wireless Petition at 15.

FN11. Western Wireless Petition at 4-5.

FN12. Western Wireless Petition at 6.

FN13. Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota (filed Jan. 19, 2001) (Western Wireless Petition). Western Wireless filed a petition for ETC designation with the South Dakota PUC for the entire state on August 25, 1998. *See GCC License Corporation for Designation as an Eligible Telecommunications Carrier*, 623 N.W.2d 474 (S.D. 2001). The South Dakota PUC concluded that Western Wireless failed to meet the ETC requirements in section 214(e)(1) of the Act and denied Western Wireless' petition. On appeal, the South Dakota Supreme Court reversed and held that Western Wireless met the ETC requirements statewide, but remanded to the South Dakota PUC the public interest determination required under section 214(e)(2) for areas served by a rural telephone company. *Id.* These areas encompass the Pine Ridge Reservation.

Subsequent to the South Dakota Supreme Court's remand, Western Wireless removed from the South Dakota PUC's consideration those study areas that encompass nearly all of the Reservation. *See* Letter from David L. Sieradzki, Hogan & Hartson, L.L.P., Counsel for Western Wireless Corp., to Magalie Roman Salas, Secretary, FCC, dated June 5, 2001 (Western Wireless June 5, 2001 *Ex Parte* Letter); Letter from Richard J. Johnson, Moss & Barnett, Counsel for Fort Randall Telephone Company, to Magalie Roman Salas, Secretary, FCC, dated June 27, 2001. Western Wireless took this action to eliminate any claim that it was violating the *Twelfth Report and Order's* restriction on simultaneously pending ETC requests before the state PUC and FCC. Western Wireless June 5, 2001 *Ex Parte* Letter.

FN14. Commenters are the Cellular Telecommunications & Internet Association (CTIA), Fort Randall/Mt. Rushmore Telephone Co., Golden West Telecommunications Cooperative Inc. (Golden West), Great Plains Communications Inc. (Great Plains), National Telephone Cooperative Association (NTCA), Oglala Sioux Tribe, South Dakota Inde-

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pendent Telephone Coalition (SDITC), South Dakota Public Utilities Commission (South Dakota PUC), and Western Wireless. Reply commenters are Fort Randall/Mt. Rushmore Telephone Co., Oglala Sioux Tribe, and SDITC.

FN15. Letter from John Yellow Bird Steele, President, Oglala Sioux Tribe, to Michael Powell, Chairman, FCC, dated March 12, 2001; Letter from John Steele, Tribal Chairman, Frank Means, Economic and Business Development Committee Chairman, and Gary Janis, Economic and Business Development Committee Vice-Chairman, Oglala Sioux Tribe, to Magalie Roman Salas, Secretary, FCC, dated June 12, 2001.

FN16. Western Wireless Petition at 7.

FN17. *See* Western Wireless Petition at 3, 9, 10-11, ("[a]bout 91.5% of the residents of the Pine Ridge Reservation are Native Americans"), 25 ("[tribal] members ... comprise 91.5% of the Reservation's population); South Dakota Comments at 19 (referring to the "failure of Western Wireless to identify the actual number of members of the Oglala Sioux Tribe"); Western Wireless Reply at 13, n.28 ("virtually all" of the Native American population on the Pine Ridge Reservation "are likely Oglala Sioux, and the SDPUC provides no evidence supporting a different conclusion").

FN18. Western Wireless Petition at 9.

FN19. The South Dakota PUC asserts that the services Western Wireless offers on the Reservation fall within the definition of a "telecommunications service" under South Dakota state law SDCL 49-31-1(27) and, as such, Western Wireless is a "telecommunications company" subject to the "general panoply of state regulatory authority." *See also* SDITC Comments at 12, n.13 (South Dakota state law SDCL 49-31-78 expressly provides for South Dakota PUC action on ETC designation petitions).

FN20. South Dakota PUC Comments at 12-17; *see* Golden West Comments at 6.

FN21. South Dakota PUC Comments at 15-16; *see* Golden West Comments at 6; Fort Randall Reply at 3-4.

FN22. South Dakota Independent Telephone Coalition, Inc. Comments at 16-17; *see* Fort Randall Reply at 3.

FN23. *See* Letter from Benjamin H. Dickens, Jr., Blooston, Mordkofsky, Dickens, Duffy & Prendergast, Counsel for Golden West Telecommunications Cooperative, to Susan H. Steiman, Office of General Counsel, FCC, dated July 11, 2001; Golden West Comments at 18; Great Plains Comments at 2; Letter from Bruce Hanson, Treasurer, Mt. Rushmore Telephone Company, to Magalie Roman Salas, Secretary, FCC, dated July 5, 2001; *but see* Western Wireless Petition at 3, App. A (according to Tribe resolution, telephone penetration rate on Reservation is less than 50 percent); NTCA Comments at 4-5 (according to 1999 NTCA staff report, Golden West reported telephone penetration rate of 86 percent for portion of Reservation it served).

FN24. *See, e.g.*, SDITC Comments, Appendix B (South Dakota PUC orders designating Golden West and Fort Randall telephone companies as ETC carriers.)

FN25. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980).

FN26. Western Wireless Petition at 8-9 (referencing Western Wireless Petition for Designation as an Eligible Telecommunications Carrier and for Related Waivers To Provide Universal Service to the Crow Reservation in Montana, Jurisdictional Supplement, Appendix (Letter from Richard B. Collins, Professor, University of Colorado at Boulder School of Law, to Gene DeJordy, Vice President of Regulatory Affairs, Western Wireless Corporation, (dated Sep. 29, 2000) (Collins Sep. 29, 2000 *Ex Parte* Letter) at 2)); Golden West Comments at 6; Great Plains Comments at 6; South Dakota PUC Comments at 10-11; Letter from Benjamin H. Dickens, Mary J. Sisak, Blooston, Mordkofsky, Dickens, Duffy and Prendergast, Counsel for Golden West Telephone Cooperative, Inc., and David Cosson, Kraskin, Lesse & Cosson, L.L.P., Counsel for Great Plains Telecommunications, Project Telephone Company and Range Telephone Cooperative, to Magalie Roman Salas, Secretary, FCC (dated June 29, 2001) (Golden West/Great Plains June 29, 2000 *Ex Parte* Letter).

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FN27. 47 U.S.C. § 214(e)(2), (e)(6); *see* Collins Sep. 29, 2000 *Ex Parte* Letter at 2.

FN28. 143 Cong. Rec. H10808-09 (daily ed. Nov. 13, 1997) (Colloquy between Representatives Thune and Bliley); *see also* 143 Cong. Rec. S12568-01 (daily ed. Nov. 13, 1997) (Colloquy between Senators Daschle and McCain).

FN29. *See* *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 n.16 (1983) (the exercise of State authority may be barred if "it unlawfully infringes 'on the right of reservation Indians to make their own laws and be ruled by them,"' *quoting* *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980) and *Williams v. Lee*, 358 U.S. 217, 220 (1959)).

FN30. *See supra* note 15.

FN31. Letter from David L. Sieradzki, Counsel for Western Wireless Corp., Hogan & Hartson L.L.P., to Magalie Roman Salas, Secretary, Federal Communications Commission, dated June 5, 2001, at 3 ("[eighty-five]% of the Reservation's land ... is owned by or held in trust for the tribe and its members," *referencing* year 2000 statistics from the Bureau of Indian Affairs).

FN32. *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

FN33. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 215 (1987) (*quoting* *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331-332 (1983)).

FN34. *Montana v. United States*, 450 U.S. 544 (1981).

FN35. *Nevada v. Hicks*, 2001 WL 703914, 4, 121 S.Ct. 2304 (2001).

FN36. *Montana v. United States*, 450 U.S. 544, 565 (1981).

FN37. *Montana v. United States*, 450 U.S. 544, 566 (1981).

FN38. *Nevada v. Hicks*, 2001 WL 703914, 3, 121 S.Ct. 2304 (2001) (*citing* *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997)).

FN39. Western Wireless Petition at 15; *see* *Nevada v. Hicks*, 2001 WL 703914, 11 (first *Montana* exception refers "to private individuals who voluntarily submitted themselves to tribal regulatory jurisdiction by the arrangements that they ... entered into").

FN40. Western Wireless Petition at 4-5.

FN41. Western Wireless Petition at 4-5.

FN42. Western Wireless Petition at 5.

FN43. Western Wireless Petition at 5.

FN44. Western Wireless Petition at 6.

FN45. Western Wireless Petition at 15.

FN46. Letter from John Yellow Bird Steele, President, Oglala Sioux Tribe, to Michael Powell, Chairman, FCC, dated March 12, 2001, Attachment at 2 (Letter from Wilbur Between Lodges, Vice Chairman, Oglala Sioux Tribe and G. Wayne Tapio, Chairman, Oglala Sioux Tribe Economic & Business Development Committee, to William Kennard, Chairman, FCC, dated May 31, 2000).

FN47. *See Nevada v. Hicks*, 2000 WL 703914 (2001) ("Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them"); *see also* *Atkinson Trading Company, Inc. v. Shirley*, 121 S.Ct. 1825, 1833 (2001) ("*Montana's* consensual relationship exception requires that the ... regulation imposed by the Indian tribe have a nexus to the consensual relationship itself," *citing* *Strate v. A-1 Contractors*, 520 U.S. 438, 457 (1997)); *cf.* *Cheyenne River Sioux Tribe Telephone Authority v. Public Utilities Commission of South Dakota*, 595 N.W.2d 604, 609 (S.D. 1999) (contract for purchase of telephone exchange between Tribe and US WEST failed to displace state law requiring state PUC approval of all sales of telephone exchanges under first *Montana* exception because contract "was dependent upon approval of the sale, not upon the consensual agreement between US WEST and [Tribal carrier]" and thus State law did not impair tribal sovereignty interests.)

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FN48. *See* South Dakota Independent Telephone Coalition Comments at 16; Fort Randall Reply at 3-4; Golden West/Great Plains June 29, 2001 *Ex Parte* Letter at 2.

FN49. *See, e.g.*, SDITC Comments, Appendix B (South Dakota PUC orders designating Golden West and Fort Randall telephone companies as ETC carriers.)

FN50. The issue of whether state rate and entry regulation of Western Wireless' basic universal service offering is preempted under section 332(c)(3) of the Act is pending before the FCC. *See, e.g.*, South Dakota PUC Comments at 15, *citing* State Independent Telecommunications Group Petition for Declaratory Ruling that the Basic Universal Offering Provided by Western Wireless in Kansas Is Subject to Regulation as Local Exchange Service, WT Docket 00-239 (filed Nov. 3, 2000).

FN51. Section 214(e)(6) provides that the FCC may, "with respect to an area [already being] served by a rural telephone company ... designate more than one common carrier as an eligible telecommunications carrier[.]"

FN52. *See* Collins at 3; *Nevada v. Hicks*, 2001 WL 703914 (2001) (characterizing sole Court decision upholding under *Montana* tribal regulatory authority over nonmembers on non-Indian land within reservation as "minor exception"); *Atkinson v. Shirley*, (tribe lacks jurisdiction under *Montana* to tax nonmember guests of hotel located on non-tribal land within reservation); *Strate v. A-1 Contractors*.

FN53. *See Nevada v. Hicks*, 2001 WL 703914 (2001) (land ownership is only one factor to be considered in determining tribal jurisdiction, and land ownership alone is not enough to support tribal regulatory jurisdiction over non-tribal members.)

FN54. *See Nevada v. Hicks*, 2001 WL 703914 (2001) ("Where nonmembers are concerned, the exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes ....") (Emphasis in original).

FN55. *Montana v. United States*, 450 U.S. 544, 566 (1981).

FN56. *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997) (*quoting* *Montana v. United States*, 450 U.S. 544, 564 (1980)).

FN57. *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997).

FN58. We note that our decision here is distinguishable from cases such as *Arizona Public Service Company v. Environmental Protection Agency*, 211 F.3d 1280, 1288-1292 (D.C. Cir. 2000), in which the court concluded that Congress had expressly delegated authority to the tribes to regulate air quality on all nonmember fee lands located within reservations. In that case, the court relied on 1990 Amendments to the Clean Air Act providing that a tribe could exercise authority "within the exterior boundaries of the reservation" and not merely in areas "within a tribal government's jurisdiction." The *Arizona* court conceded that, had Congress used only more general language referring to the tribes' authority in areas within tribal "jurisdiction," the statute would have supported the petitioner's position that tribes lacked authority over privately owned fee land within reservations. In contrast to *Arizona*, there is no similar statutory language here indicating express congressional intent to afford tribes jurisdiction over nonmember fee land within reservations; instead, the language of section 214(e)(6) refers only generally to the absence of state "jurisdiction." Further, the legislative history of section 214(e)(6) affirmatively indicates the section was not intended to affect jurisdictional disputes between tribes and states. Also, given the high mobility of air pollutants and their serious areawide effects, the *Arizona* court agreed with the EPA that a "checkerboard' pattern of regulation of air quality would be "inconsistent with the purpose and provisions of the [Clean Air] Act." 211 F.3d at 1288. We find no indication that our jurisdictional determination in this case, which hinges on whether particular customers receiving service from Western Wireless are tribal members, would result in a pattern of regulation that conflicts with the purposes or provisions of the Communications Act or section 214(e).

FN59. 47 U.S.C. § 214(e)(1).

FN60. As we explain in our companion order, we

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reject the contention raised by some commenters that, under section 214(e)(5), the service area we define must be coextensive with the incumbent LEC's study area. Reading sections 214(e)(5) and (e)(6) together, we conclude that we must designate the service area in these circumstances to include only those portions of the relevant study areas over which the Commission has jurisdiction to make the ETC designation under section 214(e)(6). *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 01-283 (rel. Oct. 5, 2001).

FN61. Letter from David L. Sieradzki, Hogan & Hartson, L.L.P., to Magalie Roman Salas, Secretary, FCC, dated June 13, 2001 (Western Wireless June 13, 2001 *Ex Parte* Letter), Att. at 2.

FN62. *See Twelfth Report and Order*, 15 FCC Rcd 12208, 12267, para. 121 (where the carrier fails to demonstrate that it is not subject to the state commission's jurisdiction, the Commission will dismiss the carrier's request for ETC designation and direct the carrier to seek designation from the appropriate state commission).

FN63. *Twelfth Report and Order*, 15 FCC Rcd 12208, 12225, para. 29.

FN64. *Twelfth Report and Order*, 15 FCC Rcd 12208, 12225, paras. 29-30.

***18157 DISSENTING STATEMENT OF COMMISSIONER KEVIN J. MARTIN**

****10***Re: Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, Memorandum Opinion and Order, CC Docket No. 96-45.

I dissent from the Commission's determination that the South Dakota Public Utilities Commission lacks jurisdiction to designate Western Wireless as an eligible telecommunications carrier (ETC) in its service to Indians on the Pine Ridge Reservation. Section 214(e)(6) states that the Commission may designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission." 47 U.S.C. § 214(e)(6). As the Commission acknowledges, Congress added this provision based on concerns that some Indian controlled carriers had been unable to obtain a forum in which to seek ETC status due to limitations on the jurisdiction of particular State commissions. *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, ¶ 98 (2000). Congress thus amended the statute to ensure that every carrier has some forum in which to obtain ETC status and thereby receive universal service support. *See* Pine Ridge Jurisdiction Order ¶ 3.

In my view, the Commission has taken a misguided approach to effectuating Congress's intent. Rather than simply ensuring that carriers have a place to go when State commissions or courts conclude that a State lacks jurisdiction, the Commission has made itself the arbiter of competing jurisdictional claims made by States and Indian tribes. The Commission has chosen to displace State claims of jurisdiction based on its own analysis of the merits, using "a complicated and intensely fact-specific legal inquiry informed by principles of tribal sovereignty and requiring the interpretation of treaties, and federal Indian law and state law." Twelfth Report and Order, 15 FCC Rcd ¶ 108. The Commission should refrain from making such determinations. As a body devoted to the oversight of our nation's communications, we have neither the experience, skill, nor authority to make these complicated and contentious decisions regarding the power of Indian tribes and States.

Moreover, despite the Commission's best efforts, its decision in this case is fraught with legal and practical problems. Among other things, we have set up a regime in which Western Wireless will receive universal service funding for serving Indians but not non-Indians, even if they live on the same land. This approach conflicts with our statutory obligation to make ETC designations for a particular "service area," which, by statute, "means a geographic area." 47 U.S.C. § 214(e)(5). In this case, the Orders even acknowledge that the State has jurisdiction to make

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the designation with respect to some of the residents within the service area. To the extent the Commission could not lawfully make a designation for the entire geographic area, as its Orders conclude, it bolsters my view that we should not be making designations in such cases at all. Additionally, we have set up a regime in which different carriers serving the same people will be regulated by different entities, depending largely on whether the carrier has "consented to tribal jurisdiction." Pine Ridge Jurisdiction Order ¶ 21. This regime will only encourage forum shopping and make impossible any coherent telecommunications policy on the reservation. Finally, in designating Western Wireless as an ETC, we have made a public interest determination that may differ from the one made by the South Dakota Commission, which is in a superior position to assess the relevant local conditions.

****11*18158** I worry that this decision will only encourage more parties to come before the Commission seeking to displace State claims of jurisdiction. While Indian tribes may have legitimate claims of sovereignty in these situations, both they and the States deserve a better forum than this one to resolve their claims. I am convinced that the parties would be far better served by resolving such claims through the legal process in the courts and letting the Commission devote its limited resources to issues of communications. Accordingly, I respectfully dissent.

16 F.C.C.R. 18145, 16 FCC Rcd. 18145, 2001 WL 1181249 (F.C.C.)
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ATTACHMENT C

D.S.D. COURT ORDER REJECTING VERIZON TRO MOTION

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

ALLTEL COMMUNICATIONS, LLC,	)	CIV. 10-5011-JLV
Plaintiff,	)	ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER
vs.	)	
OGLALA SIOUX TRIBE,	)	
Defendant.	)	

Plaintiff filed a complaint (Docket 1) alleging that defendant, Oglala Sioux Tribe, is in breach of an arbitration provision contained in the Tate Woglaka Service Agreement (the "Agreement") between the Oglala Sioux Tribe and Western Wireless Corporation (Docket 1-2). The complaint seeks injunctive relief to prohibit the defendant from conducting further proceedings in an action filed in Oglala Sioux Tribal Court ("tribal court") captioned "Oglala Sioux Tribal Court, Petitioners, v. Alltel Communications, LLC, and Verizon Wireless, LLC, Respondents" Civ. #09-0673. A temporary restraining order (TRO) was sought to enjoin defendant from bringing on a hearing at 1 p.m. on Thursday, February 18, 2010, pursuant to a tribal court petition for preliminary injunction notice of hearing (Docket 1-4) scheduled before Tribal Judge Patrick Lee, or his designee. Plaintiff filed its

motion for a TRO and preliminary injunction with its complaint on February 17, 2010. (Docket 4).

The court issued its order (Docket 10) setting a hearing at 10 a.m. CST on February 18, 2010, on plaintiff's motion for a TRO. The court further ordered plaintiff to serve on counsel for defendant notice of the TRO hearing along with all documents filed by plaintiff in the action.

Attending the hearing by video conference or telephonic conference were plaintiff's attorneys, Patrick F. Philbin, Talbot Wieczorek, and Donald Knudsen, and defendant's attorneys, Mario Gonzalez and Lisa Adams. During the course of the hearing defendant's counsel advised the court that the tribal court hearing set for 1 p.m. that day was being canceled because of inclement weather and that another hearing would be scheduled the following next week. Defendant's counsel stated on the record and assured the court that the sole purpose of the tribal court hearing was to determine whether the tribal court had jurisdiction to entertain the tribe's preliminary injunction request filed with the tribal court on October 21, 2009. Counsel for defendant Oglala Sioux Tribe confirmed on the record that the tribe would not ask the tribal court to enter an injunction or take other action adverse to plaintiff Alltel Communications or other respondents.

Having considered the arguments of counsel and having issued a decision supported by findings of fact and conclusions of law orally on the record, the court now makes the following written findings of fact:

1. Under paragraph 17(B) of the Agreement the parties specifically agreed to binding arbitration on "all disputes, claims, and controversies between them . . . arising from this Agreement, . . . including, without limitation, contract disputes and tort claims . . . ." (Docket 1-2, p. 15).

2. Paragraph 17(B) of the Agreement further provided the "arbitration provision shall not limit the right of either Party during any dispute, claim or controversy to seek, use, and employ ancillary, or preliminary rights and/or remedies (collectively, the "Ancillary Remedies"), judicial or otherwise, for the purposes of realizing upon, preserving, protecting, foreclosing upon or proceeding under forcible entry and detainer for possession of, any real or personal property, and any such action shall not be deemed an election of remedies. Such Ancillary Remedies include, without limitation, obtaining injunctive relief or a temporary restraining order . . . ." Id. at p. 16.

3. Paragraph 17(B) also provided that the "OGLALA SIOUX TRIBE further waives and agrees not to assert any doctrine requiring exhaustion of tribal court remedies prior to proceeding with arbitration, self-help

remedies, foreclosure, and provisional and Ancillary Remedies pursuant to this Agreement . . . ." Id. (capitalization in original).

4. That plaintiff has been providing telecommunication services to the Pine Ridge Indian Reservation under the Agreement since at least 2005.

5. The court accepts the in-court representations of defendant's counsel that in tribal proceeding Civ. #09-0673, the defendant intends to give plaintiff not less than seven (7) days advance notice of the next tribal court proceeding and the sole purpose of that proceeding will be to address whether the tribal court has jurisdiction to consider the petition for preliminary injunction filed by defendant in tribal court on October 21, 2009.

6. There is no urgency justifying the issuance of a TRO under Fed. R. Civ. P. 65(b) because the tribal court hearing scheduled for 1 p.m. MST on February 18, 2010, was canceled. Plaintiff has not met its burden of proof of immediate and irreparable injury for the issuance of a TRO under the current state of the record before the court.

Based upon the submissions and arguments of counsel and upon the foregoing findings of fact, the court now makes the following written conclusions of law:

1. Having considered Fed. R. Civ. P. 65, Bruce H. Lien Co. v. Three Affiliated Tribes, 93 F.3d 1412 (8th Cir. 1996), and Gaming World

International, Ltd., v. White Earth Band of Chippewa Indians, 317 F.3d 840 (8th Cir. 2003), plaintiff's complaint properly establishes federal jurisdiction pursuant to 28 U.S.C. § 1331 and proper venue based on 9 U.S.C. § 4 and 28 U.S.C. § 1391(a).

2. That plaintiff has failed to prove, for purposes of a temporary restraining order, that it will suffer immediate and irreparable injury.

3. That under the guidance of Lien and Gaming World, the court recognizes comity and honors the right of the Oglala Sioux Tribal Court, in the first instance, to determine whether it has jurisdiction to consider the defendant tribe's petition for preliminary injunction in tribal court action Civ. #09-0673.

4. The court shall retain jurisdiction over these proceedings and will schedule a hearing on plaintiff's motion for a preliminary injunction.

Now therefore, it is hereby

ORDERED that plaintiff's motion for a temporary restraining order (Docket 4) is denied.

IT IS FURTHER ORDERED that this court shall retain jurisdiction over these proceedings but stay any further action for a period of twenty-one (21) days to allow the Oglala Sioux Tribal Court to determine, in the first instance, whether it has jurisdiction to considered the defendant tribe's petition for preliminary injunction in tribal court action Civ. #09-0673, with

the proviso that this court will consider lifting the stay if it is satisfied that undue delays are causing irreparable harm to either party through the tribal court exhaustion process.

Dated March 1, 2010, *nunc pro tunc* February 18, 2010.

BY THE COURT:

/s/ Jeffrey L. Viken
JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE