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May 5, 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

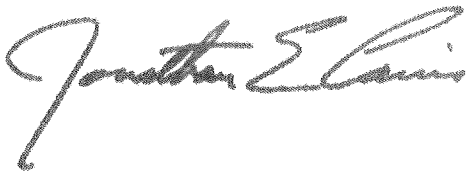
Re: Written Ex Parte Communication by the Oglala Sioux Tribe in *Cellco Partnership d/b/a Verizon Wireless*
WT Docket No. 09-104

Dear Ms. Dortch:

On May 4, 2010, Joseph RedCloud, Chairman of the Oglala Sioux Tribe's Tribal Utilities Commission and the undersigned met with Rosemary McEnery and Jacqueline Spindler of the Market Disputes Resolution Division to discuss various issues regarding the transfer of CMRS Spectrum serving the Pine Ridge, South Dakota Reservation from Verizon/Alltel to AT&T. A copy of the written presentation used in that meeting is attached.

In accordance with § 1.1202 of the Commission's rules, this letter and a copy of the presentation are being filed electronically in the above-captioned dockets.

Respectfully submitted,



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OGLALA SIOUX TRIBE

Presentation re the Transfer of CMRS Spectrum Serving the Pine Ridge, S.D. Reservation from Verizon/Alltel to AT&T WT Docket No. 09-104

Presented by

Joseph RedCloud
Chairman of the Oglala Sioux Tribe Utilities Commission
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May 3-4, 2010

Overview

- The Tate Woglaka Service Agreement ("TWSA"), which Western Wireless negotiated with the Tribe 10 years ago, binds its successor, Verizon.
- Description of the rights and responsibilities of the Tribe and Verizon under the TWSA.
- The Tribe has attempted for almost two years to negotiate an agreement with Verizon under the TWSA, but Verizon has stonewalled its attempts.
- Description of Federal and Tribal Court litigation between the Tribe and Verizon.
- Verizon is attempting to "run out the clock" until it receives Commission authorization to transfer the CMRS assets covering the Pine Ridge Reservation to AT&T, thereby voiding the TWSA.
- The Tribe has just begun to enter discussions with AT&T, but there is no indication of a reasonable agreement in the foreseeable future.
- The Tribe asks the Commission to withhold authorization to Verizon to transfer the Pine Ridge spectrum to AT&T until reasonable terms are established, and asks the Commission to oversee Mediation between the Tribe and AT&T.
- The Tribe does not wish to delay the transfer of any spectrum other than that which serves the Pine Ridge Reservation.

The Tate Woglaka Service Agreement

- **Verizon is successor in interest to Western Wireless ("WW"), 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 Agreement was signed on August 22, 2000.
  - The TWSA specifies benefits and responsibilities for both Western Wireless/Alltel/Verizon and the Tribe.

TWSA – Benefits to WW/Alltel/Verizon

- **In return for providing basic and some other services on Pine Ridge, the Tribe would support WW's ETC application. (TWSA § 3).**
  - The Commission granted that application in October, 2001, expressly relying on the TWSA and the Tribe's support.
    - *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota,* 16 FCC Rcd 18145, ¶¶ 15-16 (2001) (*ETC Order*).
- **As a result, WW/Alltel/Verizon have collected approximately <u>$46 million</u> in USF since 2001.**
  - Verizon and its predecessors have also collected significant retail service revenues over that period.
  - The precise amount of service revenues and USF collected by WW/Alltel/Verizon is unknown to the Tribe, because Verizon refuses to provide this information to the Tribe, despite repeated requests for an audit.

TWSA – Benefits to the Tribe

- **Prior to the TWSA, more than 50% of the Pine Ridge residents had no access to basic phone service, or could not afford it.** (TWSA Exhibit E, Tribal Resolution).
  - Today, over 90% have access. Approx. 3,400 households – 75% of total households on the Reservation – use Verizon cellular service as their sole or primary source of basic phone service.
  - The CMRS service is provided for $1.00 per month to most Reservation residents.
- **WW/Alltel/Verizon and the Tribe jointly developed a Telecom Services Plan to provide basic and some other services across the Reservation.** (TWSA § 4(A)).
  - The TWSA expressly calls for eventual Tribal ownership and control of the telecom network on the Reservation. (TWSA §§ 4(E) and Addendum 1).
- **WW/Alltel/Verizon pledged to share a portion of their retail service revenues with the Tribe, provided 1,000 lines remain in service.** (TWSA § 5).
  - This revenue sharing agreement was honored by Western Wireless, but has not been implemented by Alltel or Verizon. Verizon has ignored the Tribe's repeated requests for an accounting of these revenues.

Verizon's Stonewalling Tactics

- **Verizon is using every tactic it can to delay resolution of this matter until the FCC approves its transfer of spectrum to AT&T:**
  - It is suing the Tribe in Federal Court in an attempt to prevent the Tribal Court from exercising jurisdiction over the issue, despite the fact that the TWSA (page 1 and § 17) and the FCC's *ETC Order* (¶ 15) expressly recognize Tribal jurisdiction.
    - *Alltel Communications, Inc. v. Oglala Sioux Tribe*, D.S.D., Case No. Civ. 10-5011.
  - It has refused to negotiate with the Tribe's telecom expert consultant, and has initiated an harassing lawsuit against him.
  - It cancelled scheduled negotiations with the Tribe's DC telecom counsel, Jon Canis, asserting that neither he nor Joe RedCloud have authority to represent the Tribe.
  - It has refused to respond to the Tribe's repeated requests for an accounting of the USF funds and service revenues that it and its predecessors have received, despite repeated Tribal requests.

Negotiations with AT&T

- On April 1, 2010, AT&T began direct discussions with the Tribe regarding a possible settlement.
- AT&T does not believe that the Tate Woglaka Service Agreement is applicable.
- AT&T's initial offer is absolutely unacceptable to the Tribe.

The Consequences of Doing Nothing

- **Should Verizon obtain the ability to transfer the Pine Ridge spectrum and other telecom assets to AT&T without the Tribe's consent, it will:**
  - Void the TWSA, and effectively eliminate the only affordable means of communication available on the Reservation.
  - Force the Tribe to negotiate a service agreement *ab initio* with AT&T, after it has been installed as the de facto carrier on the Reservation, and before the most fundamental questions have not been addressed:
    - Will AT&T continue to provide discounted service to Pine Ridge residents, even if it does not collect USF?
    - The Pine Ridge network is now CDMA. Will AT&T maintain it, switch to GSM, or even act as the cellular provider for the Reservation at all?
    - Will AT&T honor the revenue sharing and network modernization commitments of the TWSA?
  - Effectively remove ETC status from the Pine Ridge Reservation, without a relinquishment proceeding and consideration of the impact of such a development.

Relief Requested

- **The Tribe asks the Commission to withhold approval of that portion of the former Alltel spectrum that covers the Pine Ridge Indian Reservation – part of Rural Service Areas 5 and 6 in South Dakota — until such time as this issue is resolved, either in Tribal Court or by negotiation.**
  - The Tribe has no intention of delaying the broader transfer of Verizon's spectrum to AT&T.
- **The Tribe also wishes to pursue Mediation with AT&T, under the supervision of the Market Disputes Resolution Division. It is prepared to file an Informal Complaint to initiate such discussions.**