

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

In the Matter of)
)
Petition of AT&T Mobility LLC for) WC Docket No. 09-197
Designation as an Eligible Telecommunications)
Carrier Pursuant to Section 214(e)(6) of the)
Communications Act and Transfer of the Alltel)
Pine Ridge Reservation Eligible)
Telecommunications Carrier Designation)

REPLY COMMENTS OF AT&T

On June 22, 2010, the Commission approved the transfer to AT&T of certain licenses and assets from Verizon Wireless.¹ Included among these assets are the licenses and wireless network serving the Pine Ridge Reservation (“Reservation”) in South Dakota. In the AT&T/Verizon Wireless Transaction proceeding, AT&T committed, among other things, to requesting a transfer of WWC LLC’s (d/b/a Alltel) eligible telecommunications carrier (“ETC”) designation covering its provision of service to the tribal members on the Reservation. AT&T also committed to continue offering the postpaid rate plans then available to Alltel’s subscribers living within the boundaries of the Reservation “without any material changes for one year after the closing of this transaction. Thereafter, if the FCC transfers WWC’s ETC status to AT&T and if ETC funding continues to be available to AT&T, then AT&T will continue to offer

¹ *Applications of AT&T Inc. and Verizon Wireless for Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704 (2010) (“*AT&T/Verizon Wireless Asset Transfer Order*”). For purposes of these reply comments, we will refer to this transaction as the “AT&T/Verizon Wireless Transaction.”

comparable voice rate plans.”² The Commission conditioned its approval of the transaction on AT&T honoring these service commitments, which will expire three years after the closing of this transaction.³

On July 30, 2010, AT&T, on behalf of its affiliate AT&T Mobility LLC (“AT&T Mobility”), filed a petition, requesting the Commission to transfer to AT&T Mobility the Alltel ETC designation that covers the provision of service to tribal members on the Reservation (i.e., the “Alltel Pine Ridge Reservation ETC Designation”).⁴ The Wireline Competition Bureau (“Bureau”) sought comment on AT&T Mobility’s Petition and, on September 10, three parties – the Oglala Sioux Tribe (“OST”), Mr. George Rogers, III, who is the OST’s Designated Agency Representative for Broadband & Technology, and the South Dakota Telecommunications Association (“SDTA”) – filed comments. AT&T submits these reply comments in response to the parties’ concerns. As we explain below, the commenters’ concerns do not justify the Bureau delaying approval of, let alone denying, the Petition. We therefore reiterate our request that the Bureau act quickly to grant the Petition.

SDTA raises several objections to the Petition. First, it claims that AT&T Mobility’s Petition is “legally flawed” (and therefore must be rejected) on the grounds that Verizon has already relinquished the Alltel Pine Ridge Reservation ETC Designation and thus has nothing

² Letter from Joan Marsh, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 09-104, at 3 (filed May 20, 2010) (AT&T May 20 *Ex Parte* Letter).

³ *AT&T/Verizon Wireless Asset Transfer Order* at ¶ 142; AT&T May 20 *Ex Parte* Letter at 3. Obviously, if the Bureau grants AT&T Mobility’s instant request to transfer to it the Alltel Pine Ridge Reservation ETC Designation, AT&T Mobility will comply with the Commission’s ETC requirements (including offering Enhanced Lifeline and Link-Up to eligible low-income consumers on the Reservation) for as long as it remains an ETC.

⁴ Petition of AT&T Mobility LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act and Transfer of the Alltel Pine Ridge Reservation Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed July 30, 2010) (“Petition”).

left to transfer to AT&T.⁵ Second, SDTA asserts that granting the Petition and allowing AT&T Mobility access to high-cost support for the provision of service on the Reservation would be bad public policy.⁶ Third, despite the Commission’s clear ruling in the recent *Corr Wireless Order and NPRM*,⁷ SDTA contends that the Commission should, nonetheless, find that “unique facts” exist to warrant applying the phase-down of all high-cost support over a five-year period that is applicable to Verizon Wireless to any high-cost support that AT&T might receive for providing service to tribal members on the Reservation.⁸ Finally, SDTA argues that AT&T’s Petition jeopardizes universal service reform by undermining the Commission’s ability to “rein[] in high-cost universal service disbursements.”⁹ We address each of these concerns below.

SDTA claims that since Verizon Wireless filed a notice of relinquishment with the Commission on August 11, 2010 “effective immediately or no later than 30 days from the date of this Notice,” there is nothing left to “transfer” to AT&T, and, even if there was, the Bureau lacks authority to approve such a transfer.¹⁰ SDTA’s claims are flawed in multiple respects. First, SDTA ignores the fact that AT&T filed its Petition seeking approval for the transfer of the Alltel Pine Ridge Reservation ETC Designation on July 30, 2010, two weeks before Verizon Wireless filed its notice of relinquishment, and that AT&T requested that the transfer be effective June 22, 2010, the day on which the AT&T/Verizon Wireless Transaction closed and AT&T Mobility

⁵ SDTA Comments at 3.

⁶ *Id.* at 4-5.

⁷ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Notice of Proposed Rulemaking, FCC 10-155 (rel. Sept. 3, 2010).

⁸ SDTA Comments at 6-7.

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 3 (quoting Verizon Wireless Notice of Relinquishment of Eligible Telecommunications Carrier Designation at 1, WC Docket No. 09-197, filed Aug. 11, 2010).

assumed the responsibility of providing service as an ETC to the tribal members on the Reservation.¹¹ Moreover, insofar as Verizon Wireless stated that its relinquishment would be effective immediately or “no later than 30 days from the date of this Notice,” Verizon Wireless’s notice was not self-effectuating on the date it was submitted. Indeed, AT&T is aware of at least two orders (involving AT&T and Verizon) in which, in response to the carriers’ notification of ETC relinquishment, the Bureau subsequently issued orders “permitting” these carriers to relinquish their respective designations.¹² As such, SDTA is simply wrong that the Bureau cannot approve the transfer because there is nothing left to transfer.

Nor is there any merit to SDTA’s claim that the Bureau lacks authority to transfer an ETC designation.¹³ In 1997, the Commission delegated to the Bureau (then the Common Carrier Bureau) broad “authority to designate carriers as eligible telecommunications carriers, pursuant to section 214(e)(6).”¹⁴ In its Petition, AT&T Mobility has requested that the Bureau designate it an ETC for the provision of service to tribal members on the Reservation and the Bureau thus clearly has authority to grant AT&T Mobility’s request.¹⁵ Moreover, consistent with its

¹¹ AT&T Petition at 3. Indeed, we think it is appropriate that the Bureau make Verizon Wireless’s relinquishment of its ETC designation simultaneously effective with the transfer of this designation to AT&T Mobility. This would be consistent with Verizon Wireless’s notification to USAC that, as of June 22, 2010, it is no longer eligible for federal universal service support as all of its customers on the Reservation were transferred to AT&T. Verizon Notice at 5.

¹² See *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al.*, WC Docket No. 05-337, CC Docket No. 96-45, DA 08-2704 (rel. Dec. 15, 2008) (permitting AT&T to relinquish its Dobson New York ETC designation effective December 15, 2008 after AT&T notified the Bureau that it was relinquishing this designation as of September 30, 2008); *Federal-State Joint Board on Universal Service, RCC Minnesota, Inc. and RCC Atlantic, Inc.*, CC Docket No. 96-45, DA 09-494 (rel. Feb. 26, 2009) (permitting Verizon to relinquish its RCC New Hampshire ETC designation effective February 26, 2009 after Verizon asked the Bureau on January 14, 2009, to approve the request “effective immediately”).

¹³ SDTA Comments at n.14.

¹⁴ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

¹⁵ This seems particularly true as AT&T’s Petition is essentially a “me too” request of an ETC application that the full Commission already deemed to be in the public interest when it granted Western Wireless this same designation

commitment to the Commission (which was accepted as a condition of the Commission’s approval of the transfer of licenses from Verizon Wireless to AT&T), AT&T Mobility has been providing supported services throughout the Reservation (at deeply discounted rates for eligible low-income tribal members) since June 22 – the date the Commission approved Verizon Wireless’s transfer of certain licenses and assets to AT&T. Finally, insofar as the Commission conditioned its approval of the AT&T/Verizon Wireless Transaction on AT&T’s “fulfillment of its commitments reflected in the AT&T [May 20 *Ex Parte* Letter] with respect to the provision of wireless services on the Reservation,”¹⁶ which included a commitment to request a “transfer” of the Alltel Pine Ridge Reservation ETC designation,¹⁷ there can be no doubt that the Commission was aware that AT&T intended to request a transfer of that designation to AT&T and that it intended the Bureau to grant that request. Otherwise, it would have it would have directed AT&T *not* to seek such a transfer or indicated that the full Commission, not the Bureau, would have to review and act on AT&T’s transfer request in the *AT&T/Verizon Wireless Asset Transfer Order*.

Second, SDTA’s contention that AT&T’s “desire to receive high cost funding now is flatly contrary to the public interest”¹⁸ ignores the Commission’s finding in its *AT&T/Verizon Wireless Asset Transfer Order* that “wireless service provided to tribal members on the Reservation at prices supported by the Commission’s universal service funds is *essential*.”¹⁹ The

in 2001. Moreover, unlike in the Western Wireless proceeding, the South Dakota Public Utilities Commission has not asserted jurisdiction over AT&T Mobility’s provision of service to tribal members on the Reservation.

¹⁶ *AT&T/Verizon Wireless Asset Transfer Order* at ¶ 142.

¹⁷ AT&T May 20 *Ex Parte* Letter at 3.

¹⁸ SDTA Comments at 4.

¹⁹ *AT&T/Verizon Wireless Asset Transfer Order* at ¶ 140 (emphasis added).

Commission did not issue this order in a vacuum. At the time that it released this order, it had already sought comment on several proposals to reduce the amount of support that is distributed via legacy high-cost support mechanisms, citing the strains on its current high-cost fund.²⁰ Nonetheless, in its *AT&T/Verizon Wireless Asset Transfer Order*, the Commission chose not to limit its finding to its low-income program and, instead, indicated that wireless service on the Reservation that is “supported by the Commission’s universal service funds is essential.” The Bureau should therefore reject SDTA’s request to “fence[] off” AT&T from the high-cost fund since the full Commission has already concluded that permitting AT&T to receive high-cost support, along with reimbursement from its participation in the Commission’s low-income program, is “essential.”

Similarly, SDTA is mistaken when it asserts that there are “unique facts” and “strong public policy reasons” for the Commission to apply the Verizon Wireless five-year phase down of high-cost support to AT&T. While SDTA acknowledges that the Commission plainly carved out Verizon Wireless’s divested properties from its 2008 requirement that Verizon Wireless phase down all of its competitive ETC high-cost support in five years (beginning on the closing date of Verizon Wireless’s acquisition of Alltel), it nevertheless asserts that the Commission should reverse course and apply this same five-year phase down to any high-cost support that AT&T Mobility would otherwise receive for providing service to tribal members on the Reservation.²¹ SDTA is apparently the only entity that believes that the Petition presents “unique facts” that “warrant the survival of the phase-down condition.”²² Clearly, the full

²⁰ *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Docket Nos. 10-90 & 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010).

²¹ SDTA Comments at 6 (citing *Corr Wireless Order and NPRM* at n.33).

²² *Id.* at 6.

Commission did not believe that AT&T's acquisition of the licenses and wireless network serving the Reservation raised the same policy concerns that the Commission expressed when it conditioned Verizon Wireless's acquisition of Alltel on the merged entity agreeing to phase-down all of its high-cost funding over five years. Far from applying the same condition on AT&T in its *AT&T/Verizon Wireless Asset Transfer Order*, the Commission conditioned its approval on AT&T seeking a transfer to it of the Alltel Pine Ridge Reservation ETC Designation. The Commission thus not only signaled its support for AT&T providing service to tribal members on the Reservation as an ETC, it *required* AT&T to seek this designation.²³ And, as noted above, the Commission imposed no limitation on the type of federal universal service support that AT&T Mobility would be eligible to receive after the Bureau granted the Petition.

Additionally, the "unique facts" in our Petition weigh in favor of the Commission *not* placing any Verizon Wireless-like condition on the amount of high-cost support to which we will be eligible once the Bureau grants our Petition. As the Commission explained in its *AT&T/Verizon Wireless Asset Transfer Order*, approximately 75 percent of households on the Reservation use Alltel's (now AT&T's) wireless service as "their sole or primary source of basic phone service."²⁴ Thus, the majority of residents on the Reservation have rejected as deficient incumbent local exchange carrier service offerings. As SDTA is no doubt aware, the purpose of the Commission's high-cost program is to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably

²³ *AT&T/Verizon Wireless Asset Transfer Order* at ¶ 142.

²⁴ *Id.* at ¶ 140.

comparable to rates charged for similar services in urban areas.”²⁵ By not imposing any artificial restriction, like the Verizon Wireless five-year phase down, the Bureau (and the Commission) will ensure that the provider that serves the overwhelming majority of tribal members on the Reservation will be able to continue doing so, in fulfillment of the Act’s universal service objectives.

Lastly, SDTA contends that AT&T’s Petition will thwart the Commission’s efforts to reform its high-cost support mechanisms by undermining its ability to reduce the amount of capped high-cost support available to competitive ETCs in a given state.²⁶ Like all of its other arguments, this SDTA claim has no merit. The Commission has never capped competitive ETC support in tribal areas. In its *CETC Industry-wide Cap Order*, the Commission created a limited exception to its state-specific, competitive ETC cap on high-cost support to allow these providers to continue receiving “uncapped high-cost support for lines served” on tribal lands after concluding that, given the “low penetration rates for basic telephone service [on tribal lands], we do not believe that competitive ETCs are merely providing complementary services in most tribal lands, as they do generally”²⁷ That plainly is the case on the Reservation where, according to the Commission, most residents obtain service solely or primarily from AT&T Mobility. In addition, the “unique facts” present in AT&T Mobility’s Petition (i.e., a Commission-imposed requirement that AT&T request a transfer to it of the Alltel Pine Ridge Reservation ETC Designation) are unlikely to be replicated again and thus SDTA’s assertion that AT&T has

²⁵ 47 U.S.C. §254(b)(3).

²⁶ SDTA Comments at 8 (granting AT&T’s Petition will “foil the Commission’s efforts” to “rein[] in high-cost disbursements”).

²⁷ *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834, ¶ 32 (2008).

discovered some “loophole” around the Commission’s stated intention to reclaim a competitive ETC’s high-cost support if it relinquishes its designation is unfounded.

As for the concerns expressed by both the OST and Mr. Rogers, we reiterate that, through our May 20 *Ex Parte* Letter (which was incorporated into the Commission’s *AT&T/Verizon Wireless Asset Transfer Order* and made a condition of the Commission’s approval of this transaction), AT&T made several significant commitments to provide quality services throughout the Reservation and we stand ready to fulfill those commitments. We also note that we continue to negotiate in good faith with the OST and we are optimistic that we will reach a mutually satisfactory arrangement with the OST. We look forward to a long and productive partnership with them.

For the forgoing reasons, we urge the Bureau to grant the Petition and designate AT&T Mobility an ETC for its provision of service to tribal members on the Reservation by transferring to it the Alltel Pine Ridge Reservation ETC Designation.

Respectfully Submitted,

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