

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)	
)	
Telecommunications Carriers Eligible for Universal Service Support)	
)	
Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier)	WC Docket No. 09-197
)	
Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas)	

**Comments of West River Telecommunications Cooperative
in Opposition to Petition for Reconsideration**

West River Telecommunications Cooperative (“West River”), by counsel, and pursuant to the October 15, 2010 Public Notice issued in this matter,¹ hereby submits these comments in opposition to the Petition for Reconsideration filed by Standing Rock Telecommunications, Inc. (“SRTI”) on September 23, 2010 (the “*SRTI Petition*”). The *SRTI Petition* effectively challenges only one finding made by the Wireline Competition Bureau (the “Bureau”) of the Federal Communications Commission (“the “Commission” or the “FCC”), and that finding is the Bureau’s decision that it will seek the input of the North Dakota Public Service Commission (the “NDPSC”) with respect to the redefinition of a portion of West River’s Study Area prior to making that decision final.² The *SRTI Petition* should be denied.

¹ See Public Notice, DA 10-1988, released October 15, 2010. As noted herein, West River is a party in interest in this proceeding as it is West River’s Study Area that is being addressed.

² See *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, Standing Rock Telecommunications, Inc. Petition of Designation as an Eligible Telecommunications Carrier, Petition of Standing Rock Telecommunications, Inc. to Redefine*

As shown by the record in this proceeding, the Bureau already had many of the contentions raised in the *SRTI Petition* before it when issuing the *MO&O*. Thus, those SRTI contentions were already found by the Bureau to be wanting. Moreover, SRTI apparently wants the Bureau to conclude that the designation of an Eligible Telecommunications Carrier (“ETC”) is the same process as a re-definition of the service of a Rural Telephone Company (“RTC”) like West River.³ West River is confident that the Bureau understood the distinct and different directives contained in section 214(e)(6) (Designation as an ETC)⁴ with that contained in section

Rural Service Areas, Memorandum Opinion and Order, WC Docket No. 09-197, DA 10-1601, released August 24, 2010 (the “*MO&O*”) at paras. 25 and 27.

³ West River is a Rural Telephone Company (“RTC”) as that term is defined in Section 153(37) of the Communications Act of 1934, as amended (the “Act”). *See* 47 U.S.C. § 153(37). For example, West River provides local exchange and exchange access services to less than 50,000 access lines. *See* 47 U.S.C. § 153(37)(B).

⁴ Section 214(e)(6) states as follows:

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission 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 this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(6).

214(e)(5)(redefinition of an RTC's Study Area),⁵ and the fact that it is the *re-definition* of West River's service area under section 214(e)(5) for which the Bureau seeks the NDPSC's input.

To that end, the Bureau's request for the NDPSC's input is entirely appropriate. As indicated in section 214(e)(5), before finalizing any redefinition of West River's universal service area (which by statute is presumptively West's River's Study Area) the FCC (or the Bureau acting for the FCC) and the NDPSC must consult one another. And, in any event, SRTI has not demonstrated that the Bureau, as part of its public interest determination, cannot request state commission input as it has done here, particularly in light of the Bureau's finding that the NDPSC "is uniquely qualified to examine the proposed redefinition because of its familiarity with the rural telephone company's service area in question."⁶ Not only is the Bureau's action rational, but it is also consistent with the underlying policies of the Act such as that found in 47 U.S.C. § 410(b).⁷

⁵ Section 214(e)(5) of the Act states as follows:

(5) "Service area" defined

The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.

47 U.S.C. § 214(e)(5).

⁶ *MO&O* at para. 27.

⁷ See 47 U.S.C. § 410(b) ("The Commission may confer with any State commission having regulatory jurisdiction with respect to carriers, regarding the relationship between rate structures, accounts, charges, practices, classifications, and regulations of carriers subject to the jurisdiction of such State commission and of the Commission")

In short, nothing is presented in the *SRTI Petition* that should alter the referral to the NDPSC. Accordingly, for the reasons stated herein, West River requests that the Bureau deny the *SRTI Petition*.

First, the *SRTI Petition* mistakenly fails to consider that the Bureau's referral of the redefinition proposal to the NDPSC is based on the jurisdiction of the NDPSC *over West River*. There is no question that the NDPSC has state jurisdiction over aspects of West River's operations, including the definition of its service area for universal service purposes.⁸ Moreover, as SRTI's own submission reflects, not all of the consumers living within the three exchanges at issue – Fort Yates, McLaughlin and Selfridge – are native Americans.⁹ Thus, the referral at issue arises not due to the NDPSC's jurisdiction over SRTI but rather the NDPSC's jurisdiction over West River. And, as to that jurisdiction, section 410(b) of the Act provides an independent basis for concluding that the public interest is served by the Commission involving and seeking the reactions of state commissions like the NDPSC in universal service area *re-definition* issues.¹⁰

Second, while SRTI attempts to persuade the Bureau to abandon the conclusions reached in the *MO&O* based on the FCC's previous *Western Wireless Pine Ridge Decision*,¹¹ SRTI's

⁸ See N.D.C.C. § 49-21-01.7(13); *see also* N.D.C.C. § 49-21-01.7(12)(The NDPSC has the power to “[d]esignate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act”); N. D. Admin. Code §§ 69-09-05-12 (Eligible Telecommunications Carrier Applications and Advertising) and 69-09-05-12.1 (Annual Reporting Requirements for Designated Eligible Telecommunications Carriers).

⁹ *SRTI Petition* at 4, n.4.

¹⁰ *See generally* 47 U.S.C. § 410(b).

¹¹ *See In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine*

arguments effectively have already been presented to the Bureau in a prior submission by SRTI filed on April 12, 2010 in this proceeding.¹² SRTI has failed to demonstrate that the Bureau had not considered SRTI's prior arguments or failed to give them the weight they deserved. SRTI may not like the result it has received from the Bureau but repetition of claims that SRTI made does not mean that the Bureau decision to refer the redefinition of West River's Study Area to the NDPSC is not in the public interest.¹³

Finally, even if one were required to look at the substance of the claims that SRTI makes with respect to the *Western Wireless Pine Ridge Decision*, SRTI has failed to show how the fact that the FCC seeks to designate SRTI an ETC for a service area that is less than the full West River Study Area somehow empowers the Commission to ignore the specific directives in the last sentence of section 214(e)(5). Moreover, the *Western Wireless Pine Ridge Decision* was based on materially different and specific facts of the request that was then before the FCC.¹⁴

Ridge Reservation in South Dakota, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 01-283, released October 5, 2001 (the "*Western Wireless Pine Ridge Decision*").

¹² See, e.g., Reply Comments of Standing Rock Telecommunications, Inc., WC Docket No. 09-197, dated April 12, 2010 at 8 and n. 23, 9-12 and *SRTI Petition* at 3-4.

¹³ At the same time, it is also questionable whether SRTI's repetition of prior arguments meets the threshold of properly filed requests for reconsideration. See, e.g., *In the Matter of Qwest Communications Corporation v. Farmers and Merchants Mutual Telephone Company, Third Order on Reconsideration*, File No. EB-07-MD-001, 25 FCC Rcd 3422, 3425-26 (para. 8) (2010) (It is "settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously addressed and rejected." (footnote omitted)).

¹⁴ Likewise, SRTI's reference (see *SRTI Petition* at 6) to the fact that there was no state referral in certain of the Commission's prior ETC designations of tribal telephone companies is irrelevant because those decisions addressed companies that are all incumbent local exchange carriers ("ILECs") whose service area/study area did not overlap with any other RTC. Further the *Smith Bagley* and *Hopi* decisions cited by SRTI are also irrelevant. See *id.* at 9, n. 18; see also *In the Matter of Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah, Order*, CC Docket No. 96-45, DA 07-605, released February 8, 2007 ("*Smith Bagley*"); *In the Matter of Federal-State Joint Board on Universal Service, Hopi Telecommunications, Inc.*

Legally, SRTI argument is, in effect, that the Commission should write out of the statute section 214(e)(5)'s directive that:

the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.¹⁵

This statutory directive addresses a different question than the *designation of an ETC* where the state commission does not have jurisdiction over the entity, which is when section 214(e)(6) is triggered.¹⁶ The Bureau's referral to the NDPSC was wholly consistent with the former section (*i.e.*, section 214(e)(5)) and does not implicate the latter (*i.e.*, section 214(e)(6)).

While admittedly the *Western Wireless Pine Ridge Decision* may not have articulated fully the application of the section 214(e)(5) and section 214(e)(6) directives to the specific underlying facts and circumstances then before the Commission, those facts are different than those applicable to SRTI. For example, that case involved a non-tribally owned carrier seeking designation on a reservation in a different state with a different regulatory history. Further, in the *Western Wireless Pine Ridge Decision* Western Wireless was only seeking FCC action on its request to serve members of the tribe as noted in the companion jurisdiction decision issued by

Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona, Order, CC Docket No. 96-45, DA 07-459, released January 31, 2007 ("*Hopi*"). In *Smith Bagley*, the moving party proposed to serve the entirety of the Study Area of the rural ILEC as issue in that case. *See Smith Bagley* at para. 28. Hopi Telecommunications is an ILEC because it is the successor to the ILEC from which it purchased its entire study area (*see, e.g., Hopi* at paras. 6, 25), so again there was no issue of redefinition before the Commission.

¹⁵ 47 U.S.C. § 214(e)(5).

¹⁶ 47 U.S.C. § 214(e)(6).

the Commission.¹⁷ This is not the case here since SRTI has not disputed the Bureau’s finding that Standing Rock “seeks only to serve *those consumers* living on the Reservation.”¹⁸ In addition, SRTI has made clear that it “strongly disagrees with the odd and unworkable bifurcation delineated in *Western Wireless [Pine Ridge Decision]* for the ETC status of a non-Tribal carrier on tribal lands in servicing tribal versus non-tribal customers.”¹⁹ Understandably, SRTI also does not address this distinction head on or the interplay between what it seeks through the *SRTI Petition* and the FCC’s discussion within the *Western Wireless Pine Ridge Jurisdiction Order* where the FCC stated that “we find that the state retains jurisdiction over Western Wireless to the extent that the carrier serves non-tribal members.”²⁰

Thus, both legally and factually, SRTI’s effective effort to have the Bureau make rote application of the *Western Wireless Pine Ridge Decision* with respect to the re-definition issue that is the subject of the *SRTI Petition* is questionable at best. The Bureau is correct that the NDPSC “is uniquely qualified to examine the proposed redefinition because of its familiarity with the rural telephone company’s service area in question.”²¹ Any suggestion that this conclusion is erroneous should be rejected outright.

¹⁷ See, e.g., *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, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 01-284, released October 5, 2001 (the “*Western Wireless Pine Ridge Jurisdictional Order*”) at 1.

¹⁸ *MO&O* at para. 28 (footnote omitted)(emphasis added).

¹⁹ *SRTI Petition* at 4, n.4; *SRTI Reply Comments* at 8 n.23.

²⁰ *Western Wireless Pine Ridge Jurisdictional Order* at para. 25; see also *id.* at para. 23.

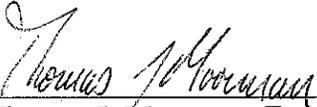
²¹ *MO&O* at para. 27.

Accordingly, for all of the reasons stated herein, the *SRTI Petition* should be denied in its entirety. The Bureau decision to refer to the NDPSC the FCC's proposed re-definition of West River's Study Area should be affirmed.

Respectfully submitted,

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Date: November 15, 2010

Certificate of Service

I, Thomas J. Moorman, do hereby certify that, on this 15th day of November, 2010, a copy of the foregoing "Comments of West River Telecommunications Cooperative in Opposition to Petition for Reconsideration", WC Docket No. 09-197, have been served to the following individuals and entity:

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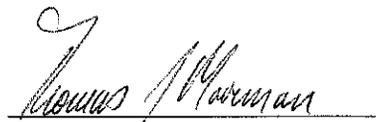
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