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January 6, 2011

**VIA ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: WC Docket No. 09-197**

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

Dear Ms. Dortch:

West River Telecommunications Cooperative (“West River”), by counsel, and pursuant 47 C.F.R. §1.1206(b)(1) and the October 15, 2010 Public Notice issued in this matter reflecting the fact that this is a “permit but disclose” proceeding,<sup>1</sup> hereby files this written ex parte in the above-captioned proceeding. This submission is aimed at ensuring that the record is clear upon which the Commission is being asked to address the petition for reconsideration filed by Standing Rock Telecommunications, Inc. (“SRTI”), and specifically with respect to certain of the contentions made by SRTI in its November 30, 2010 reply comments in this proceeding.<sup>2</sup>

In its reply comments at pages 5-6, SRTI alleges that West River has provided conflicting statements with respect to the jurisdiction of the North Dakota Public Service Commission (“NDPSC”) over the redefinition of West River’s Study Area as compared to representation made by West River in its May 9, 2002 federal Universal Service Fund (“USF”) disaggregation submission to the Commission (the “2002 Disaggregation Filing”). In making this allegation, SRTI suggests that the underlying reason for West River’s statement contained in its 2002 Disaggregation Filing regarding the NDPSC’s jurisdiction is “not entirely clear.”<sup>3</sup> Based on these statements, SRTI then inappropriately suggests that “the North Dakota Commission

<sup>1</sup> See Public Notice, DA 10-1988, released October 15, 2010 at 2.

<sup>2</sup> See Reply Comments of Petitioner, Standing Rock Telecommunications, Inc., WC Docket No. 09-197, filed November 30, 2010 (“SRTI Reply”).

<sup>3</sup> SRTI Reply at 5.

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
January 6, 2011  
Page 2

appears to have disclaimed jurisdiction in favor of the Commission's jurisdiction" and further that this is an instance of "selectively" claiming jurisdiction.<sup>4</sup> SRTI is wrong.

The NDPSC has the powers enumerated by the North Dakota Legislature. In addition to the authority under section 49-21-01.7(12) N.D.C.C to designate Eligible Telecommunications Carriers under the 1996 revisions to the Communications Act of 1934, as amended (the "Act"), section 49-21-01.7(13) N.D.C.C provides the NDPSC with authority to "[d]esignate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act."

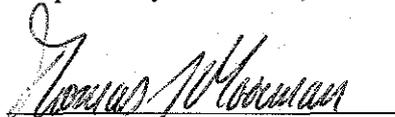
In response to SRTI's suggestion that the underlying reason for West River's statements contained in its 2002 Disaggregation Filing is unclear, attached is a February 22, 2002 Memorandum from the NDPSC. In this memorandum, the NDPSC expressed its view that it did not have jurisdiction over West River's 2002 Disaggregation Filing and thus could not conduct the process formulated under Section 54.315 of the Commission's rules.

In its comments in this proceeding, the NDPSC has advised this Commission that it has statutory authority to conduct the proceeding to redefine West River's geographic service area under the Act because of the clear mandate in 49-21-01.7(13). That explicit grant of jurisdiction to the NDPSC is distinct from the opinion of the NDPSC with respect to assisting the Commission in implementing Section 54.315 of the Commission's rules regarding disaggregation.

Accordingly, for the reasons set forth in West River's earlier response to the petition for reconsideration the Commission should deny SRTI's request to revisit the same issues that were adequately addressed and resolved in the Commission's earlier proceeding.

Please direct any inquiries concerning this matter to the undersigned. Courtesy copies of this submission have been provided as noted below.

Respectfully submitted,



Thomas J. Moorman  
Counsel for West River Telecommunications Cooperative

Attachment

cc: D. Shenoy, Telecommunications Access Policy Division  
Wireline Competition Bureau (via email)  
C. Tyler, Telecommunications Access Policy Division  
Wireline Competition Bureau (via email)  
H. Thompson, Counsel to Standing Rock Telecommunications, Inc. (via email)

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<sup>4</sup>*Id.*



# Public Service Commission

State of North Dakota

## COMMISSIONERS

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DA: February 22, 2002

TO: Manager, Rural Incumbent Local Exchange Carriers

RE: Disaggregation

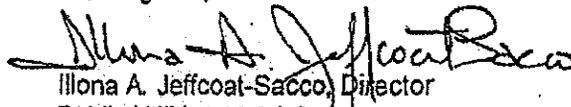
As you know, rules recently promulgated by the Federal Communications Commission (FCC) require all rural companies to choose one of three alternative universal service support disaggregation paths by 15 May 2002. The specific provisions regarding the three available paths and the procedure to follow for each can be found in *47 Code of Federal Regulations, Part 54, Section 315*, a copy of which is attached for your use.

The FCC rules contemplate that company filings under each path will be made to the state commissions with jurisdiction over each respective company. The rules also contemplate that for companies not subject to state jurisdiction, required company filings will be made directly to the FCC.

The Public Service Commission discussed this matter at a working session on 21 February 2002 and reviewed the opinion of its Chief Counsel regarding Public Service Commission jurisdiction to approve disaggregation plans under state law. Path Two contemplates the filing of disaggregation plans for approval, while Paths One and Three contemplate the receipt of certifications from companies. It is the opinion of the Chief Counsel that the Public Service Commission lacks statutory authority to approve disaggregation plans, a key component of the process for Path Two.

Consequently, the Public Service Commission concluded that it is best for companies to file directly with the Federal Communications Commission regardless of which path each company chooses to follow. The Commission asked that I notify you by this letter that *you should make your required filings under 47 CFR 54.315 directly with the Federal Communications Commission*. If you have any questions, please do not hesitate to call or write.

Best regards,

  
Ilona A. Jeffcoat-Sacco, Director  
Public Utilities Division

c: FCC  
Mike Bosh  
Enclosure