



Law Offices

Duncan, Weinberg, Genzer & Pembroke, P.C.

WALLACE L. DUNCAN (1937-2008)
EDWARD WEINBERG (1918-1995)
ROBERT WEINBERG
JEFFREY C. GENZER
THOMAS L. RUDEBUSCH
MICHAEL R. POSTAR
ELI D. EILBOTT*
LISA S. GAST
PETER J. SCANLON
KATHLEEN L. MAZURE
DEREK A. DYSON
BHAVEETA K. MODY
KRISTEN CONNOLLY McCULLOUGH
SETH T. LUCIA
JOSHUA E. ADRIAN
MATTHEW R. RUDOLPHI
JASON T. GRAY
NATALIE M. KARAS

SUITE 800
1615 M STREET, N.W.
WASHINGTON, DC 20036

(202) 467-6370
FAX (202) 467-6379
www.dwgp.com

California Offices
SUITE 1410, 915 L STREET
SACRAMENTO, CA 95814
(916) 498-0121
SEAN M. NEAL

SUITE 501
100 W. SAN FERNANDO STREET
SAN JOSE, CA 95113
(408) 288-2080
BARRY F. McCARTHY*
C. SUSIE BERLIN*

Northeast Regional Office
2700 BELLEVUE AVENUE
SYRACUSE, NY 13219
(315) 471-1318
THOMAS J. LYNCH*

*REGISTERED TO PRACTICE BEFORE U.S.
PATENT AND TRADEMARK OFFICE

RICHMOND F. ALLAN*
JAMES D. PEMBROKE*
TANJA M. SHONKWILER*
TERRY E. SINGER*

August 18, 2011

*OF COUNSEL

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: WC Docket No. 09-197
Correction to NTUA Wireless, LLC Petition for ETC Designation
Petition of NTUA WIRELESS, LLC for Designation as an Eligible
Telecommunications Carrier Pursuant to Section 214(e)(6) of the
Communications Act of 1934, as Amended on the Navajo Nation

Dear Ms. Dortch:

NTUA Wireless, LLC (NTUA Wireless), an entity majority owned by the Navajo Tribal Utility Authority—a Navajo Nation enterprise—files the attached “Correction to ETC Petition of NTUA Wireless LLC.”

Please contact me with any questions.

Respectfully submitted,

/s/ Seth T. Lucia

Derek A. Dyson

Seth T. Lucia

Counsel for NTUA Wireless, LLC.

cc: Geoffrey Blackwell (via email)
Irene Flannery (via email)
Katelyn Wicks (via email)
Joseph Cavender (via email)
Trent Harkrader (via email)
Kimberly Scardino (via email)
Divya Shenoy (via email)

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC

In the Matter of)
)
Petition of NTUA WIRELESS, LLC for) WC Docket No. 09-197
Designation as an Eligible)
Telecommunications Carrier pursuant to)
Section 214(e)(6) of the Communications Act)
of 1934, as Amended)

CORRECTION TO ETC PETITION OF NTUA WIRELESS, LLC

NTUA Wireless, LLC (“NTUA Wireless”), a newly established telecommunications service provider for the Navajo Nation, which is majority-owned by the Navajo Tribal Utility Authority (“NTUA”)—one of the Navajo Nation’s oldest Navajo enterprises—submits a correction (“Correction”) to its above-referenced Petition for Designation as an Eligible Telecommunications Carrier (“Petition”) and expressly states that it no longer seeks redefinition as part of its request for Eligible Telecommunications Carrier (“ETC”) designation. *See* Petition at 21-22. The Federal Communications Commission (“FCC” or “Commission”) can make ETC designations throughout an entire rural service area within its jurisdiction, such as within reservations of Tribal lands, without the need for redefinition of incumbent local exchange carrier service area boundaries.¹ Accordingly, NTUA Wireless requests expeditious ETC

¹ *See In the Matter of Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier,* (continued on next page)

designation—without the need for redefinition—within the exterior boundaries of the Navajo Reservation, pursuant to the Commission’s authority, as exercised in the *Standing Rock Order on Reconsideration*.

I. REDEFINITION IS NOT NECESSARY FOR THE COMMISSION TO GRANT NTUA WIRELESS’ ETC PETITION

On June 22, 2011, the Commission issued its *Standing Rock Order on Reconsideration*. In that order, the Commission directly addresses the issue of redefinition in a geographic area where the Commission exercises jurisdiction to make ETC designations, *i.e.*, the Standing Rock Sioux Reservation. The Commission explains:

Consistent with our precedent, we conclude that, because we here designate Standing Rock to serve the part of the service area of each of the rural telephone companies that lies within the limits of our jurisdictional authority, redefinition is unnecessary and no state commission need consent before Standing Rock’s designation takes effect.²

The Commission further notes in the *Standing Rock Order on Reconsideration* that, consistent with Commission precedent:

[T]his Commission has jurisdiction to designate Standing Rock as an ETC within the Reservation, but not beyond it, and may therefore define Standing Rock’s service area to encompass the parts of the rural service areas that lay within our jurisdiction . . . including the rural service areas of [four rural telephone companies] within the Reservation’s boundaries.³

In the original Petition filed on March 3, 2011, NTUA Wireless petitioned the Commission for ETC designation within the exterior boundaries of the Navajo Reservation, which includes, among other areas, part of the study area of some rural telephone companies. Petition at 20-23.

Memorandum Opinion and Order On Reconsideration, 26 FCC Rcd 9160, paras. 18-24 (2011) (“*Standing Rock Order on Reconsideration*”).

² *Standing Rock Order on Reconsideration* at para. 19.

³ *Id.* at para. 21.

NTUA Wireless requested redefinition of the study areas of the three rural telephone companies to separately include those areas within the exterior boundaries of the Navajo Nation and those areas outside of the Navajo Nation. *Id.* at 21-22. Thus, the redefinition issue presented in the NTUA Wireless Petition for ETC designation is similar to the issue decided recently in the *Standing Rock Order on Reconsideration*.

The *Standing Rock Order on Reconsideration* was issued after NTUA Wireless filed its Petition with the Commission. Given the clarity of the *Standing Rock Order on Reconsideration* regarding the authority of the Commission to make ETC designations for areas within its jurisdiction, *e.g.*, Indian reservations, without redefinition, NTUA Wireless has concluded that a request for redefinition is not necessary for the Commission to designate NTUA Wireless as an ETC throughout the Navajo Reservation. Accordingly, NTUA Wireless no longer seeks redefinition of any rural telephone company study area serving part of the Navajo Reservation. Given that NTUA Wireless only seeks to serve areas within the exterior boundaries of the Navajo Reservation, and given the Commission's authority to grant such a request without redefinition, NTUA Wireless expressly states that it no longer seeks redefinition and requests that the Commission expeditiously approve the Petition for ETC designation on the Navajo Reservation.

II. THE COMMISSION HAS JURISDICTION TO MAKE THE ETC DESIGNATION OVER THE AREA IN NTUA'S WIRELESS PETITION

In its *Standing Rock Order on Reconsideration*, the Commission emphasizes that "redefinition [is] unnecessary when it has designated carriers as ETCs throughout a rural telephone company's entire service area *within its jurisdiction*."⁴ It is long established that this

⁴ *Id.* at para. 20 (emphasis in original).

Commission has jurisdiction to make ETC designations within the boundaries of Indian reservations.⁵ NTUA Wireless' Petition asks the Commission to make such an ETC designation within the boundaries of the Navajo Reservation, which encompasses the maximum geographic area for which the Commission has jurisdiction. *See* Petition at 9-11. Moreover, because redefinition is not necessary, the Commission need not consult with state commissions and can act unilaterally and expeditiously. On this point, the Commission explained in the *Standing Rock Order on Reconsideration*, "if [the Commission] were to seek to redefine the service area of any of the rural telephone companies at issue here, we would need to seek the assent of the appropriate state commission. Because we conclude that redefinition is not necessary, however, no such assent is needed."⁶

III. NO PARTY OPPOSES ETC DESIGNATION OF NTUA WIRELESS AND NTUA WIRELESS IS SUBJECT TO THE NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION

As discussed in its May 16, 2011 Reply Comments, NTUA Wireless reiterates here that no party has voiced opposition to NTUA Wireless' Petition for ETC designation.⁷ As NTUA Wireless set forth in its original Petition, NTUA Wireless acknowledges that it is subject to the laws of the Navajo Nation and the jurisdiction of the Navajo Nation Telecommunications Regulatory Commission ("NNTRC"), the Navajo Nation's telecommunications regulatory authority.

⁵ *See id.* at para. 21.

⁶ *Id.* at para. 23.

⁷ Frontier Communications Corporation filed comments "solely for the purpose of urging the Commission to deny NTUA's request [for redefinition]" and did not oppose NTUA Wireless' Petition for ETC designation. Frontier Comments at 1. As explained in this Correction, NTUA Wireless clarifies that it no longer seeks redefinition.

CONCLUSION

NTUA Wireless has petitioned the Commission for ETC designation that encompasses an area over which the Commission has jurisdiction, and as such, redefinition is unnecessary. Therefore, with this Correction, NTUA Wireless no longer requests redefinition as part of its Petition. As the Commission itself noted in its recent *Standing Rock Order on Reconsideration*, “when a designation ‘encompasses the maximum geographic area for which the Commission has jurisdiction,’ there is ‘no basis for delaying the ETC designation or pursuing additional procedures to consult with neighboring state commissions.’ ”⁸ Moreover, as discussed in NTUA Wireless’ Reply Comments filed in this docket on May 16, 2011, no party opposes NTUA Wireless’ Petition for ETC designation.⁹ NTUA Wireless therefore respectfully requests the Commission expeditiously act to designate it as an ETC for purposes of receiving federal universal service support throughout the Navajo Nation, including the partial telephone company

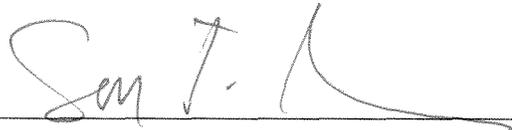
⁸ *Standing Rock Order on Reconsideration* at para. 20 (citing *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Order on Reconsideration*, 16 FCC Red at 19147, para. 8 (2001)).

⁹ See Reply Comments of NTUA Wireless, LLC, at 1.

wire centers and study areas serving the Navajo Nation.

Respectfully submitted,

NTUA WIRELESS, LLC

By: 

Derek Anthony Dyson
Seth T. Lucia
Duncan, Weinberg, Genzer & Pembroke, P.C.
1615 M Street, N.W.
Suite 800
Washington, D.C. 20036
202-467-6370 (Office)
202-467-6379 (Fax)
E-Mail: DAD@dwgp.com
STL@dwgp.com
Its Attorneys

August 18, 2011