

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Line-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

PETITION FOR RECONSIDERATION

Benjamin H. Dickens, Jr.
Mary J. Sisak

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street NW, Suite 300
Washington, DC 20037
Tel: 202-659-0830
Fax: 202-828-5568

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Executive Summary

Petitioners hereby request reconsideration of the Tribal Engagement section of the Commission's *Order* and rule § 54.313(a)(9) pertaining to the provision of services on Tribal lands.

First, the requirement imposed on wireline ETCs to "meaningfully engage" Tribal governments is not supported by the record and, therefore, it is arbitrary and capricious. In support of this requirement, the Commission states that it is vitally important to the successful deployment and provision of service and cites to a handful of comments and ex parte filings made by various entities representing Tribal governments to support this claim. None of these cited materials, however, support the Commission's conclusion and, in fact, they provide no evidence or even argument that the consulting requirements are important to the successful deployment and provision of wireline broadband service. On the other hand, the Commission ignored the comments of the National Tribal Telecommunications Association and the reply comments filed by a group of rural local exchange carriers which make clear that a consultation obligation on all ETCs serving Tribal lands is not necessary to promote the universal deployment of broadband service. Accordingly, the record evidence does not support the Commission's requirement that wireline local exchange carriers must "meaningfully engage" Tribal governments or its conclusion that such engagement is important or necessary in any way, let alone "vitally important," to advance the goal of universal service.

Second, the requirement that ETCs demonstrate compliance with Tribal business and licensing requirements, including certificates of public convenience and necessity from Tribal governments, violates state and federal law, the Communications Act and it is beyond the scope of the Commission's jurisdiction. The Petitioners all have been granted certificates of public

convenience and necessity and ETC designation for their entire service areas, including portions of Tribal lands, from their respective state commissions. The Commission's *Order* departs from its past finding in the *Western Wireless Order* concerning Tribal authority without explanation. The Commission's *Order* also conflicts with Court precedent in *Montana v. United States*. Accordingly, the Commission's requirement that ETCs must comply with Tribal business and licensing requirements, including certificates of public convenience and necessity requirements, or else be subjected to financial consequences, including the loss of federal universal service support, violates state and federal law and must be rescinded.

Third, the Commission's requirement concerning marketing violates the First Amendment of the Constitution of the United States. Courts rely on a four-part test to determine whether government restrictions on commercial speech are permissible. First, the court considers if the speech is misleading or involves illegal activity, in which case the government may freely regulate the speech. If not, the court examines whether the government has a substantial interest in regulating the speech. If it does, then the government must show that the restriction on commercial speech directly advances that interest. Finally, the regulation must not be more excessive than necessary to serve the government interest. Here, the speech in question is not misleading or illegal. Nevertheless, the Commission has not articulated a substantial interest in regulating speech in this context. It also has not shown that its restriction on speech directly and materially advances a government interest or presented any evidence to support its claim. Finally, the Commission's restriction is not narrowly tailored, as it applies in all situations where an ETC provides service on Tribal land, even where broadband service is available. Therefore, the Commission's requirement violates the First Amendment.

Finally, the Commission's specific consultation and reporting requirements will be extremely burdensome and costly for Petitioners, which are small local exchange carriers with limited employees and resources. In many cases, outside consultants will be necessary. Further, some Petitioners serve only a small portion of Tribal lands, while others serve portions of multiple Tribal lands, and cannot justify the cost of separate assessment, planning studies, and marketing efforts.

Therefore, the Petitioners ask the Commission to reconsider its requirement concerning Tribal engagement as it applies to wireline ETCs.

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PETITION FOR RECONSIDERATION

The Rural Incumbent Local Exchange Carriers Serving Tribal Lands,¹ by their attorneys, ask the Commission to reconsider its requirement concerning Tribal engagement as it applies to wireline eligible telecommunications carriers (ETCs) in the above-captioned *Order*.² As demonstrated herein, the requirement imposed on wireline ETCs is not supported by the record

¹ The rural incumbent local exchange carriers listed in Attachment A are participating in the filing of this Petition for Reconsideration.

² *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund; Report and Order and Further Notice of Proposed Rulemaking*, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, released November 18, 2011, at ¶¶636-637, §54.313(a)(9)(*Order*).

and, therefore, it is arbitrary and capricious. The requirement that ETCs demonstrate compliance with Tribal business and licensing requirements, including certificates of public convenience and necessity from Tribal governments, violates state and federal law, the Communications Act and it is beyond the scope of the Commission's jurisdiction. The requirement concerning marketing violates the First Amendment of the Constitution of the United States. Further, the Commission's consultation and reporting requirements are unduly burdensome. For these reasons, the Commission must eliminate its unsupported and unlawful requirement.

All of the rural incumbent local exchange carriers participating in this Petition are ETCs whose service area includes Tribal lands as defined by the Commission. Therefore, they will be impacted by the Commission's *Order* and rules concerning Tribal engagement.

I. The Consultation Requirement is not Supported by the Record

In the *Order*, the Commission requires ETCs to demonstrate that they have "meaningfully engaged" Tribal governments in their supported areas as part of the annual certification required to obtain federal universal service support. The Commission states that, at a minimum, discussions with Tribal governments must include: "(1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements."³ In footnote 1052, the Commission states that Tribal business and licensing requirements include certificates of public convenience and necessity.

³ *Id.* at ¶637.

In support of these requirements, the Commission states that they are "vitaly important to the successful deployment and provision of service"⁴ and cites to a handful of comments and ex parte filings made by various entities representing Tribal governments to support this claim.⁵ None of these cited materials, however, support the Commission's conclusion and, in fact, they provide no evidence or even argument that the consulting requirements are important to the successful deployment and provision of wireline broadband service. On the contrary, the joint comments of NPM and NCAI,⁶ the comments of Twin Houses⁷ and the reply comments of the Navajo Nation Telecommunications Regulatory Commission specifically are limited to the Commission's proposal to establish a separate Tribal mobility fund. They do not address in any way the need or benefit of any consultation requirement for wireline carriers or any fund recipient other than the Tribal mobility fund. The Tribal mobility fund is a unique and limited

⁴ *Id.*

⁵ The Commission cites an October 18, 2011 ex parte letter filed by the National Tribal Telecommunications Association (NTTA), the National Congress of American Indians (NCAI) and the Affiliated Tribes of the Northwest Indians (ATNI); an October 24, 2011 ex parte letter filed by the Navajo Commission; joint comments filed by the Native Public Media and the NCAI; reply comments filed by the Navajo Commission; comments filed by Twin Houses; and an ex parte filed by the Navajo Nation Telecommunications Regulatory Commission. It appears that the October 24, 2011 ex parte letter filed by the Navajo Commission and the ex parte filed by the Navajo Nation Telecommunications Regulatory Commission are the same document.

⁶ In support of its statement that applicants seeking funding from the Tribal Mobility Fund should consult with Tribal governments, NPM and NCAI reference a resolution of the NCAI that states "incumbent mobility services are deployed in a haphazard and often illegal manner on Native lands (regarding rights of way permission, business and other permitting requirements, and failure to use Native labor)." *See Joint Comments of Native Public Media and The National Congress of American Indians Notice of Proposed Rulemaking*, WT Docket No. 10-208, citing the NCAI Native Broadband Fund Resolution, at 9, fn. 19, filed May 4, 2011. The same cannot, and has not, been said of wireline local exchange carrier services.

⁷ Twin Houses Consulting, LLC's primary argument is that the Commission should consult with the tribes with respect to universal service policy and only suggests a requirement on all bidders in the Tribal Mobility Fund to consult with the affected tribal governments as a way to assure the Commission meets its consultation requirement. *See, Comments of Twin Houses Consulting, LLC*, WC Docket No. 10-208, at 1 and 2, filed May 4, 2011.

fund, which provides "one-time support to deploy mobile broadband to unserved Tribal lands."⁸ Thus, even if there may be some justification to support Tribal involvement in connection with a one-time funding mechanism to support entirely unserved areas, there is no such justification for the Tribal lands served by Petitioners, which are not unserved.

Similarly, the reference to Tribal engagement in the October 24, 2011, ex parte filing of the Navajo Nation Telecommunications Regulatory Commission (NNTRC) also is primarily related to mobile communications and the Navajo Nations' complaints about the build out of mobile communications by licensees. The only direct reference to wireline carriers is in connection with the NNTRC's concern that the Commission not cut support for Lifeline and Linkup service "for traditional telephone service, which has served a critical role in increasing telephone penetration and affordability on the Navajo Nation."⁹ Thus, rather than support the Commission's requirement, NNTRC provides evidence which indicates the requirement is not necessary for wireline ETCs.

The ex parte filing by the NTTA, NCAI and ATNI, dated October 18, 2011 and filed on October 20, 2011, also provides no evidence or argument to support the Commission's conclusion that its extensive and burdensome engagement requirement is "vitally important to the successful deployment and provision of service." Rather, NTTA, NCAI and ATNI make clear that they support a tribal consultation requirement to "support and enhance tribal sovereignty."¹⁰ Even then, the only specific requests made by NTTA, NCAI and ATNI are that the Commission should "Require all non-Native ETCs to attain permission from Tribes to serve

⁸ *Order* at ¶481 (emphasis added).

⁹ NNTR Ex Parte Presentation, October 24, 2011, at 2.

¹⁰ NTTA, NCAI, and ATNI Ex Parte letter, dated October 20, 2011, at 1.

Native communities" and "Require all regulatory providers and vendors to engage in commercial consultation with Native Nations on quality of service to the community."¹¹

On the other hand, in addition to the favorable comments of the NNTRC noted above, the Commission also ignored the comments of the National Tribal Telecommunications Association (NTTA) and the reply comments filed by a group of rural local exchange carriers¹² which make clear that a consultation obligation on all ETCs serving Tribal lands is not necessary to promote the universal deployment of broadband service. The Commission also ignored the data in the National Broadband Map (NBM) which supports these commenters and reply commenters.¹³

In comments, NTTA pointed to the advanced technology deployed in the networks by rural rate of return carriers, like Petitioners, coupled with their achievement of carrier of last resort responsibilities, as "examples of successful high-cost support market stimulation strategies."¹⁴ Also, in Reply Comments in this proceeding, a group of rural local exchange carriers, including Petitioner Venture Communications Cooperative (Venture), showed that wireline broadband service is widely available on the Tribal lands they serve. For example, for the portions of the Sisseton Wahpeton Sioux¹⁵ reservation served by Venture, wireline broadband service is available to 100% of the households on Tribal lands. The widespread availability of wireline broadband service is supported by the NBM, which shows that for the

¹¹ *Id.* at 3.

¹² Reply Comments of Golden West Telecommunications Cooperative, Midstate Communications, Inc., and Venture Communications Cooperative, WC Docket 10-90 et.al., filed May 23, 2011.

¹³ In the *Order*, the Commission relies on the data in the NBM to determine the number of people without access to broadband service and the number of people without access to broadband service in rate of return areas. (*Order* at ¶4 and n. 199)

¹⁴ Comments of the National Tribal Telecommunications Association, WC Docket 10-90 et al, at 7 (April, 18, 2011). See also, NTTA's Comments at 4-6.

¹⁵ In the NBM, the Sisseton Wahpeton Sioux is listed as the Lake Traverse reservation.

entire area of the reservation (including the areas not served by Venture) 94.7% of the population of the Lake Traverse reservation has access to wireline broadband.

The other rural ILEC Petitioners also have extensively deployed wireline broadband services on the Tribal lands that they serve. For example, Range Telephone Cooperative serves all of the Northern Cheyenne reservation and, according to the NBM, wireline broadband service is provided to more than 99% of the population. The NBM also shows that almost 99% of the population of the North Fork Rancheria, served by Ponderosa Telephone, has access to wireline broadband.¹⁶ Triangle Telephone Cooperative (Triangle) provides wireline broadband service to approximately 91% of the population in the area it serves of the Fort Belknap reservation and to 95% of the population in the area it serves of the Rocky Boy's reservation. Triangle anticipates that it will provide broadband access to 100% of the population it serves on the Rocky Boy's reservation by 2013. West River Cooperative Telephone Company provides wireline broadband service to 100% of the area it serves on the Standing Rock and Cheyenne River reservations. The Petitioners also provide essential and advanced communications services to Tribal community institutions, such as Tribal housing, finance, emergency services, social services, courts and schools.

A cursory review of the data in the NBM for other Native Nations shows that widespread access to broadband services is not unique to the Tribal lands served by the Petitioners and further shows that, on the whole, access to broadband on Tribal lands is far greater than the Commission has acknowledged in the *Order* and in the various Notices of Inquiry and Notices of

¹⁶ It is not clear if the rules apply to Rancherias since they are not listed in the Commission's definition of Tribal lands. (See, 47 C.F.R. §54.5)

Proposed Rulemaking cited in the *Order*.¹⁷ While there are some issues with the NBM data, for example, the NBM states that the broadband record set is not complete for some reservations,¹⁸ the data shows that the Commission's claims about the lack of broadband access are based on old data that the Commission continues to recycle from one proceeding to the next.

A cursory review of the NBM data also shows that there are vast differences among Native Nations in connection with broadband availability and other characteristics, which argue against a unified approach for all Native Nations. For example, the broadband availability on Tribal lands runs the gamut from the 483 tribal members on the Havasupai reservation in Arizona¹⁹ (occupying an area close to the south rim of the Grand Canyon), who have no access to either wireline or wireless broadband service to the 1,473 tribal members on the Mohegan reservation, who have 100 percent access to two wireline broadband providers and 100 percent access to three wireless providers and the 354 tribal members on the Seminole reservation, who have 100 percent access to two wireline providers and 100 percent access to four wireless providers.

Finally, as small, rural companies that are located in the communities they serve, the Petitioners' services are tailored to their customers. In addition, many of the Petitioners are cooperative companies, in which the subscribers, including Tribal and non-Tribal members residing on Tribal lands, are owners/members of the cooperative, with all of the rights associated therewith. These companies, in particular, provide service in response to the needs of their owner/members.

¹⁷ See, *Order* at n. 1047.

¹⁸ The NBM also does not reflect the broadband facilities that are currently being deployed as a result of grants from the Rural Utilities Service and the National Telecommunications and Information Administration.

¹⁹ This may not be accurate, however, as the NBM states that the data set is not complete.

Accordingly, the record evidence does not support the Commission's requirement that wireline local exchange carriers must "meaningfully engage" Tribal governments or its conclusion that such engagement is important or necessary in any way, let alone "vitaly important," to advance the goal of universal service. Therefore, the Commission's *Order* is arbitrary and capricious and it must reconsider this requirement.

II. The Requirement that ETCs must Comply with Tribal Business and Licensing Requirements Violates the Act, State and Federal Law and is Beyond the Scope of the Commission's Jurisdiction

The Commission's requirement that ETCs must comply with Tribal business and licensing requirements, including certificates of public convenience and necessity requirements, or else be subjected to financial consequences, including the loss of federal universal service support, violates state and federal law, the Act, and it is beyond the scope of the Commission's authority. All of the Petitioners are local exchange carriers that have received a certificate of public convenience and necessity from their respective state commissions, which authorizes them to operate throughout their respective service areas, including all Tribal lands that are part of their service areas. None of the Petitioners have consented to Tribal authority for the provision of services on Tribal lands. Further, all of the Petitioners have been designated as an ETC for their entire service area, including those areas encompassing Tribal lands, pursuant to state law and Section 214(e)(2) of the Act.

In the *Western Wireless Order*,²⁰ the Commission provided an analysis for determining the extent of Tribal authority, the Commission's authority and the state commission's authority

²⁰ *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*, 16 FCC Rcd 18145 (FCC 2001)

in connection with carriers providing service on Tribal lands. Although the *Western Wireless Order* concerned ETC designation, the Commission's analysis is equally applicable here. In that Order, the Commission found that state regulatory authority is not "preempted based on federal policies reflected in the Communications Act."²¹ Rather, the Commission relied on the Supreme Court's decision in *Montana v. United States*²² to determine whether the state or the Commission should consider Western Wireless' request for ETC designation to serve Tribal members residing on Tribal land. According to the Commission, "*Montana v. United States* sets out the guiding principle that Indian tribes generally lack jurisdiction to regulate non-members on the reservation, but it recognized two exceptions to that rule. Under the first *Montana* exception, '[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.' Under the second *Montana* exception, '[a] tribe may . . . exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'"²³

The Commission ultimately concluded that the state did not have jurisdiction in this case based on its examination of a service agreement between the Tribe and Western Wireless in which Western Wireless consented to the Tribe's regulatory authority. The Commission found that "because of the carrier's consensual relationship with the Tribe, the first *Montana* exception is satisfied with respect to the carrier's service to tribal members. Pursuant to the service agreement, Western Wireless represents that it has expressly consented to the Tribe's regulatory

²¹ *Id.* at 18149.

²² *Montana v. United States*, 450 U.S. 544 (1981)

²³ *Id.* at 566.

authority, and the Tribe has rights to participate extensively in and administer the service plan.”²⁴ The Commission rejected Western Wireless' argument that the Commission should declare tribal jurisdiction over all of Western Wireless' service on the Reservation, whether to tribal members or to others, based on the second *Montana* exception. According to the Commission, that exception “is to be narrowly construed and does not extend beyond ‘what is necessary to protect tribal self-government or to control internal relations,’ and is ‘crucial to ‘the political integrity, the economic security, or the health or welfare’ of the tribe.”²⁵

The Commission also noted that its decision did not affect the “continued state regulation of wireline carriers serving the Reservation, all of which were automatically granted ETC status by the state shortly after the Act was passed.”²⁶ According to the Commission, “States have far greater interests in regulating state-certificated rural or other wireline ETC carriers that provide service to and beyond the reservation area, often under comprehensive state regulatory schemes for wireline carriers of last resort.”²⁷ In supporting the continued jurisdiction of the state commission over wireline ETCs, the Commission further stated that “perhaps most importantly, the state-regulated wireline carriers, unlike Western Wireless, have not consented to tribal jurisdiction.”²⁸

The Commission distinguished cases where Congress expressly delegated authority to the tribes to regulate nonmembers because there is no similar statutory language in the Communications Act. Rather, the Commission noted that “section 214(e)(6) refers only

²⁴ *Western Wireless*, 16 FCC Rcd at 18151 (emphasis added).

²⁵ *Id.* at 18154, citing *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997).

²⁶ *Id.* at 18152.

²⁷ *Id.* at 18153.

²⁸ *Id.*

generally to the absence of state ‘jurisdiction’”²⁹ and that “the legislative history of section 214(e)(6) affirmatively indicates the section was not intended to affect jurisdictional disputes between tribes and states.”³⁰

The Commission, without explanation and contrary to federal and state law, has now departed from its analysis in *Western Wireless* and requires ETCs to comply with Tribal business and licensing requirements, including certificates of public convenience and necessity, even when the ETC has not consented to the Tribe's authority; where the ETC provides service both outside of Tribal lands and on Tribal lands; and where the state commission has clearly exercised authority over the ETC for the purpose of granting a certificate of public convenience and necessity and designating the carrier as an ETC. Accordingly, the Commission's requirement that ETCs must comply with Tribal business and licensing requirements, including certificates of public convenience and necessity requirements, or else be subjected to financial consequences, including the loss of federal universal service support, violates state and federal law and must be rescinded.

III. The Marketing Requirement Violates the First Amendment

Although Section 214(e) of the Act requires ETCs to advertise the availability of supported services, the Commission's requirement that ETCs must meaningfully engage Tribal governments, including "marketing services in a culturally sensitive manner," goes beyond the Act and is a violation of the First Amendment's guarantee of free speech. In *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York (Central Hudson)*,³¹ the Court

²⁹ *Id.* at 18154.

³⁰ *Id.*

³¹ 447 U.S. 557, 100 S. St. 2343, June 20, 1980.

set out a four-part test to determine whether government restrictions on commercial speech are permissible. First, the court considers if the speech is misleading or involves illegal activity, in which case the government may freely regulate the speech. If not, the court examines whether the government has a substantial interest in regulating the speech. If it does, then the government must show that the restriction on commercial speech directly advances that interest. Finally, the regulation must not be more excessive than necessary to serve the government interest.³²

In this case, the Commission's *Order* and rules concerning Tribal engagement restrict speech that the Tribal government and, ultimately, the Commission, deem to be not culturally sensitive. In addition to being vague, this restriction is not limited to misleading speech or illegal activities. Therefore, the Commission must demonstrate a substantial interest in regulating the speech; it must show that the restriction on speech directly advances the government's stated interest; and it must show that the regulation is not more excessive than necessary to serve that interest.

The Commission fails on all three counts. The Commission has not articulated a substantial interest in regulating speech in this context. It also has not shown that its restriction on speech directly and materially advances a government interest or presented any evidence to support its claim.³³ Finally, the Commission's restriction is not narrowly tailored, as it applies in all situations where an ETC provides service on Tribal land, even where broadband service is available. Further, the language is so vague it could allow restriction of any speech. Clearly,

³² *Id.* 447 U.S. at 564.

³³ In *U.S. West, Inc. v. FCC*, 182 F.3d 1224, 1237, the court indicated that the Commission must present empirical evidence to support its claim that a restriction on speech directly and materially advances a government interest.

therefore, the Commission's requirement fails the test established in *Central Hudson* and must be eliminated as a violation of the First Amendment.

IV. The Consultation Requirement is Unduly Burdensome

Finally, the Commission's specific consultation and reporting requirements will be extremely burdensome and costly for Petitioners, which are small local exchange carriers with limited employees and resources. In some cases, Petitioners do not have in-house staff to perform needs assessments and feasibility and sustainability planning or marketing plans, and they will have to hire outside consultants to perform these functions for the Tribal lands they serve. Further, some of the Petitioners serve only a small portion of Tribal lands, with very few subscribers, such that separate assessment and planning studies and marketing efforts cannot be cost justified on any basis.³⁴ Some of the Petitioners also serve portions of multiple Tribal lands, which would necessitate that they engage in multiple assessment, planning and marketing efforts for each specific Tribal land area that they serve.³⁵ For carriers serving Alaska, it is not clear which Tribal entities must be consulted.³⁶ The Commission's requirements are all the more burdensome because they are not needed to advance the goal of universal service and are arbitrary and capricious as a result.

³⁴ For example, Range Telephone Cooperative serves only 32 access lines on a small part of the Crow reservation. Dubois Telephone Exchange, Inc. serves only a small part of the Wind River Reservation with a limited population, approximately 60% of which is non-Tribal. Western New Mexico Telephone serves a very small part of the Navajo Nation in New Mexico.

³⁵ For example, Range Telephone Cooperative serves the Northern Cheyenne reservation and a small part of the Crow reservation and Triangle Telephone Cooperative serves part of the Rocky Boy's and Fort Belknap reservations.

³⁶ Copper Valley Telecom's service area in Alaska includes two Regional Native Corporations and several Village Corporations that are part of the Regional Native Corporations. It also includes other village areas. It is not clear if all levels of Tribal government must be consulted.

V. Conclusion

Based on the foregoing, the Petitioners ask the Commission to reconsider its requirement concerning Tribal engagement as it applies to wireline ETCs. As demonstrated, the requirements imposed on wireline ETCs are not supported by the record, they are arbitrary and capricious, and they are unduly burdensome. In addition, the requirement concerning marketing violates the First Amendment of the Constitution of the United States. Further, the requirement that ETCs demonstrate compliance with Tribal business and licensing requirements, including certificates of public convenience and necessity from Tribal governments, violates state and federal law, the Communications Act and it is beyond the scope of the Commission's jurisdiction. For these reasons, the Commission must rescind its unsupported and unlawful requirement.

Respectfully submitted,

/s/ Mary J. Sisak

Benjamin H. Dickens, Jr.

Mary J. Sisak

Counsel for Petitioners

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568
Email: mjs@bloostonlaw.com

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Attachment A

List of Petitioners

Copper Valley Telecom

Dubois Telephone Exchange, Inc.

Golden West Telecommunications Cooperative

Midstate Communications, Inc.

The Ponderosa Telephone Co.

Range Telephone Coop., Inc.

Table Top Telephone Company, Inc.

Triangle Telephone Cooperative d/b/a Triangle Communications

Venture Communications Cooperative

Western New Mexico Telephone Company

West River Cooperative Telephone Company