

January 19, 2016

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East Suite 350  
St. Paul, MN 55101-2147

RE: **Comments of the Minnesota Department of Commerce**  
Docket No. P6958/M-15-1051

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce in the following matter:

In the Matter of the Request of Leech Lake Telecommunications Company, LLC for the Commission to Issue a Statement Deferring to the Federal Communications Commission For Consideration of its Petition for Designation as an Eligible Telecommunications Carrier.

The petition was filed on December 11, 2015 by:

Judith A. Endejan  
Garvey, Schubert, Barer  
1191 2<sup>nd</sup> Ave  
Seattle, WA 98101

The Department recommends that the Commission grant Leech Lake Telecommunications, LLC's request for a statement to the FCC as described herein. The Department recommends that such letter be narrowly tailored and specific to the instant case and circumstances.

Sincerely,

/s/ KATHERINE DOHERTY  
Rate Analyst

/s/ ALIXANDRA COWMEADOW  
Rate Analyst

KD/AC/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P6958/M-15-1051

**I. PROCEDURAL BACKGROUND**

On December 11, 2015, Leech Lake Telecommunications Company, LLC (LLTC) submitted a letter to the Minnesota Public Utilities Commission (Commission). LLTC requested that the Commission issue a statement to the Federal Communications Commission (FCC) deferring to the FCC for consideration of LLTC's Petition for Designation as an Eligible Telecommunications Carrier (ETC) (FCC Petition).

On December 17, 2015, the Commission issued a request for comments on LLTC's request. Initial comments are due January 19, 2015, and replies are due February 15.

On January 5, 2016, LLTC refiled its request, including a copy of its FCC petition.

**II. LLTC'S LETTER**

LLTC currently provides telecommunications service on the Leech Lake Reservation, and is wholly owned by the Leech Lake Band of the Ojibwe. (LLBO)

LLTC indicated, in its letter, that it had filed its FCC Petition on December 5, 2013. LLTC noted that on December 12, 2013, the FCC issued a notice (Notice) soliciting comments on Leech Lake's Petition. Comments were due on January 13, 2014, and replies were due January 29, 2014 (see Attachment A). No party filed comments.

To the Department's knowledge, the FCC has taken no further action with respect to the petition.

LLTC requested that the Commission issue a statement that it "will defer to the FCC with respect to ruling on the LLTC Petition for Designation as Eligible Telecommunications Carrier (ETC) pursuant to 214(e)(6) of the Communications Act of 1934 as amended, filed on December 5, 2013."<sup>1</sup>

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<sup>1</sup> LLTC Letter, page 3.

LLTC acknowledged that its request of the Commission is unprecedented, but asserted its belief that “the public interest would be served by helping a regulatory process move forward that will ultimately benefit LLBO members in need of the type of telecommunications services provided elsewhere in Minnesota.”<sup>2</sup>

### III. THE FCC’S PROCESS FOR ETC DESIGNATION OF CARRIERS SEEKING TO SERVE ON TRIBAL LANDS

On June 30, 2000, the FCC released its *Twelfth Report and Order*<sup>3</sup> in CC Docket 96-45 which, among other things, set forth the procedure for ETC designation of carriers seeking to serve Tribal Lands.<sup>4</sup>

While an ETC applicant seeking to serve *non-tribal* lands must consult with the state commission for a determination as to whether the state has jurisdiction *prior to* petitioning the FCC, an ETC seeking designation on tribal lands may directly petition the FCC for the threshold determination of which entity – the state or the FCC – has jurisdiction to make the eligibility designation.<sup>5</sup> The *Twelfth Report and Order* provides that the petitioner must set forth in its petition the basis for its assertion that it is not subject to the state commission’s jurisdiction, and bears the burden of proving that assertion. If, based on the evidence in the record, the FCC determines that the carrier has sufficiently demonstrated that it is not subject to the state commission’s jurisdiction, the FCC will decide the merits of the request within six months of release of an order resolving the jurisdictional issue. If the FCC determines that the petitioner has not met its burden of proof that it is not subject to the state commission’s jurisdiction, the FCC will dismiss the request and direct the carrier to seek designation from the appropriate state commission.

### IV. DEPARTMENT COMMENTS

LLTC appears to have followed the process established by the FCC in the *Twelfth Report and Order* for carriers seeking to serve on Tribal Lands, and has properly filed its petition with the FCC for a determination as to jurisdiction. It is not clear to the Department why the FCC has

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<sup>2</sup> LLTC Letter, page 1.

<sup>3</sup> In the Matters of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; et al., CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, June 30, 2000 *Twelfth Report and Order*).

<sup>4</sup> To the Department’s knowledge the process has not been modified since it was established in the *Twelfth Report and Order*. See for example *Designation of NTUA Wireless as an Eligible Telecommunications Carrier*, DA 14-200A1.

<sup>5</sup> The FCC recognized that a determination as to whether a state commission lacks jurisdiction over carriers serving tribal lands involves a legally complex and fact-specific inquiry, informed by principles of tribal sovereignty, federal Indian law, and treaties, as well as state law, and expressed concern that “such jurisdictional ambiguities may unnecessarily delay the designation of carriers on tribal lands.” The FCC concluded that such jurisdictional determinations, which will involve an analysis of principles of tribal sovereignty, federal Indian law, treaties, and state law, may be appropriately performed by th[e] [Federal Communications Commission].

not made a jurisdictional determination, or taken any other action with respect to LLTC's petition in over two years.

To the extent that LLTC believes that a narrowly tailored statement such as it describes in its letter<sup>6</sup> would encourage the FCC to move forward to consider the merits of LLTC's petition, the Department supports LLTC's request. LLTC's petition, if approved, would enable LLTC to provide Lifeline and Linkup, as well as other services, to its members. Such a result would clearly be in the public interest.<sup>7</sup>

The Commission need not take a position with respect to the extent of its jurisdiction over LLTC, or over ETC designations on Tribal Lands at this time. As the FCC noted in its Twelfth Report and Order, such a determination "would involve a legally complex and fact-specific inquiry, informed by principles of tribal sovereignty, federal Indian law, and treaties, as well as state law,"<sup>8</sup> and would likely be lengthy and contentious.

If the Commission determines that it should make a statement that it defers to the FCC with respect to LLTC's petition, the Commission should make clear in its letter that its deferral to the FCC for consideration of this matter applies only to *this case* under *these circumstances* and that its statement is not intended to concede that it lacks jurisdiction over ETC designations on Tribal Lands, nor to concede that it lacks jurisdiction over any other issue with respect to Tribal Lands.

## V. COMMISSION OPTIONS

- A. Grant LLTC's request and provide a statement deferring to the FCC for a determination on LLTC's petition for ETC designation. Make clear in the statement that the Commission's deferral to the FCC for consideration of this matter applies only to *this case* under *these circumstances*, and that its statement is not intended to concede that it lacks jurisdiction over ETC designations on Tribal Lands generally, or to concede that it lacks jurisdiction over any other issue with respect to Tribal Lands.
- B. Reject LLTC's Request.
- C. Other action of the Commission's choosing.

## VI. DEPARTMENT RECOMMENDATION

The Department recommends Option A.

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<sup>6</sup> The LLTC suggests that Commission's statement of "deferral" to the FCC be tailored so as to apply only to *this case, under these circumstances*.

<sup>7</sup> The Department takes no position with respect to the merits of LLTC's petition before the FCC, to LLTC's statements regarding the LLBO's Utility Service and Rights of Way Trespass Ordinance, the Tribal Utility Commission, or the extent of LLBO's authority in any other matter.

<sup>8</sup> Twelfth Report and Order, para. 95.

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. P6958/M-15-1051**

**Dated this 19<sup>th</sup> day of January 2016**

**/s/Sharon Ferguson**

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