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December 11, 2015

Daniel P. Wolf
 Executive Secretary
 Minnesota Public Utilities Commission
 121 7th Place E., Suite 350
 Saint Paul, MN 55101-2147

Re: Request to Defer to FCC ETC Designation - Request of Leech Lake
 Telecommunications Company, LLC

Dear Mr. Wolf:

We represent the Leech Lake Telecommunications Company, LLC ("LLTC"), a telecommunications service provider on the Leech Lake, Minnesota Reservation, wholly owned by the Leech Lake Band of Ojibwe ("LLBO" or "Band"). At the suggestion of staff of the Minnesota Public Utilities Commission ("MPUC"), we are writing to ask the MPUC to issue a statement that it will defer to the Federal Communications Commission ("FCC") with respect to ruling on the LLTC's Petition ("Petition") for Designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e) (6) of the Communications Act of 1934, *as amended*, ("Act") filed on December 5, 2013¹ (copy attached). This Petition applies only to services to be provided on the LLBO Reservation.

Representatives of LLTC and LLBO met with MPUC staff members from its telecommunications unit and staff from the Minnesota Department of Commerce in October 2015 to discuss, among other things, LLTC's pending ETC Petition at the FCC. As a result of that meeting, the LLBO and LLTC respectfully request the MPUC to let the FCC decide LLTC's pending ETC Petition. The FCC, rather than a state commission, will assert jurisdiction to make the ETC designation where, as here, the petitioning carrier is subject to Tribal authority and a significant Tribal interest is involved.

¹ Minnesota's administrative rules do not provide a clear procedure for submitting this request. Rather, they state a procedure for filing a petition to seek ETC status in MINN. AD. Rule 7812.1400, but this rule does not state a procedure for requesting this Commission to decline jurisdiction over tribal ETC designations. Accordingly, the Band submits this letter for the purposes of making such a request.



The FCC's *Twelfth Report and Order* sets out the procedure for a tribal carrier seeking ETC designation to serve tribal lands, for purposes of receiving federal universal service ("USF") high cost and Lifeline support.² Under this procedure, a tribal carrier (like LLTC) files an ETC Petition with the FCC without first seeking ETC status from a state commission.³

The *Twelfth Report and Order* notes that "[t]he state commission will have an opportunity during the notice and comment period, to respond to the assertion that it lacks jurisdiction."⁴ The FCC issued its Notice and Request for Comments on the LLTC ETC Petition on December 12, 2013, with a reply comment date of January 29, 2014.⁵ This notice was to have been served on the MPUC. The Band does not know if this occurred. No party submitted comments in the FCC's dockets for LLTC's case (WC Docket No. 09-197 and WT Docket No. 10-208). The position of the MPUC regarding jurisdiction is unknown. Until it is known, the FCC might not rule that it has jurisdiction. That ruling starts a six-month clock within which the FCC must act on LLTC's ETC Petition. The LLTC wishes to resolve any jurisdictional issue to get resolution on its ETC Petition⁶.

A statement from this Commission to the FCC that the MPUC will defer to the FCC for ruling on the LLTC Petition would allow the FCC to resolve the ETC Petition on the merits expeditiously.

The FCC has asserted jurisdiction to make ETC designation for tribal carriers serving tribal lands – like LLTC - in many recent cases that are similar to LLTC's case⁷

In doing so, the FCC has explained why it is best equipped to do so:

The Federal Communication Commission (FCC or Commission) shares an historic federal trust relationship with federally recognized Tribal Nations, has a longstanding policy of promoting Tribal self-sufficiency and economic

² *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Red 12208 (2000) ("*Twelfth Report and Order*"), ¶¶ 92-96.

³ Under 47 U.S.C. § 214(e) ETC's designations for non-tribal carriers are usually made by state commissions

⁴ See ft. 2.

⁵ *WIRELESS TELECOMMUNICATIONS BUREAU AND WIRELINE COMPETITION BUREAU SEEK COMMENT ON PETITION BY LEEACH LAKE TELECOMMUNICATIONS COMPANY, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR PARTICIPATION IN AUCTION 902, TRIBAL MOBILITY FUND PHASE I, AND TO PROVIDE LIFE LINE AND LINK UP SERVICES*. (DA 13-2354.)

⁶ The LLTC may amend and update with the FCC its original ETC Petition with current information.

⁷ *Designation of Hopi Telecommunications, Inc., as an Eligible Telecommunications Carrier for the Hopi Reservation*, Memorandum and Order, CC Docket No. 96-45 (2007). *Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Memorandum Opinion and Order, 13 FCC Red 4547 (1998). *Designation of Standing Rock Telecommunications, Inc.*, WC Docket 09-197 (2011) (FCC 11-102); *Designation of NTUA Wireless as an Eligible Telecommunications Carrier*, WC Docket No. 09-197, WT Docket No. 10-208 (2014) (DA 14-200).



development, and has a record of helping ensure that Tribal Nations have adequate access to communications services.⁸

Further, well-settled principles of Indian Law establish that the LLBO is a sovereign, tribal nation recognized by the federal government and states.⁹ The LLBO has the right “to engage in any business that will further the economic well-being of members of the Reservation.”¹⁰ The LLBO may control economic activity on its Reservation, including the provision of telecommunications services that are critical to the social, political, economic welfare of the Band. In short, Tribal interests prevail over state interests with respect to providing these services on the LLBO Reservation.

The LLTC is subject to tribal authority. In 2009, the LLBO based its Utility Service and Rights-of-Way Trespass Ordinance in Title 14 of its code on its treaty rights. In Title 14 § 1.02, the LLBO established the Tribal Utility Commission with authority to assert jurisdiction over matters regarding “all Utility Services” including telecommunications service on the Reservation provided by a company owned by the Tribe. The LLUC regulates the LLTC under Title 14.

Federal courts, including the Supreme Court, have guarded tribal authority over tribal economic affairs, including¹¹ the provision of utility service on the Reservation.

Therefore, given the unique tribal and federal interests, it seems clear that the FCC is the appropriate body to address LLTC’s ETC Petition, and the MPUC should defer to the FCC to handle it. A statement to that effect in response to this letter in *this case* would not bind the MPUC in future cases that may present different circumstances.

The LLBO recognizes that the request it makes to the Commission in this letter is unprecedented, but 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 throughout Minnesota.

⁸ *Id.*

⁹ See the Chippewa Treaty of February 22, 1855 (10 Stat. 1165) which is considered the “supreme law of the land.” U.S. Const. Art. VI. By submitting this letter the LLBO does not consent to the MPUC’s jurisdiction.

¹⁰ Under the LLBO’s Constitution, the LLBO has jurisdiction over “all territory within the Leech Lake Indian Reservation boundaries” and has the right “to engage in any business that will further the economic well-being of members of the Reservation.” See Revised Constitution and Bylaws of the Minnesota Chippewa Tribe, Minnesota (“LLBO Constitution”). The Minnesota Chippewa Tribe consists of the LLBO, along with the Chippewa Indians of the White Earth, Fond du Lac, Boise Forte (Nett Lake) and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians.

¹¹ *Williams v. Lee*, 358 U.S. 217, 223 (1959).



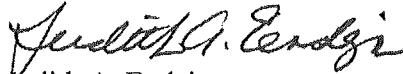
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Please let us know if you have further questions or if you need additional information. Thank you for your time and attention.

Sincerely,

GARVEY SCHUBERT BARER



Judith A. Endejan

CC: M. Oberlander, Telecommunications Manager, MPUC
G. Doyle, Telecommunications Manager, Minnesota Department of Commerce

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