

**Minnesota Public Utilities Commission**  
*Staff Briefing Paper*

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Meeting Date: April 21, 2016.....\*\* Agenda Item # 3

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Companies: Leech Lake Telecommunications Company (LLT)

Docket Nos. P-6958/M-15-1051  
In the Matter of the Leech Lake Telecommunications Company Request to Defer Designation as an Eligible Telecommunications Carrier to the Federal Communications Commission

Issues: Should the Commission defer to the Federal Communications Commission (FCC) the Leech Lake Telecommunications Company (LLT) request for designation as an Eligible Telecommunications Carrier (ETC)?

Staff: Kevin O’Grady.....651-201-2218

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*Relevant Documents*

LLT Request ..... December 15, 2015  
LLT Supplemental Filing..... January 5, 2016  
DOC Comments..... January 19, 2016

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The attached materials are work papers of Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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## ***Relevant Documents***

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**On December 15, 2015**, the Leech Lake Telecommunications Company (LLT) asked this Commission to file a letter with the Federal Communications Commission (FCC) stating that this Commission defers to the FCC the matter of LLT's petition for designation as an Eligible Telecommunications Carrier (ETC). ETC designation is required to obtain access to federal universal service support.

**On January 5, 2016**, LLT filed supplementary material.

**On January 19, 2016**, the Minnesota Department of Commerce (DOC) filed comments in support of LLT.

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## ***LLT's Request***

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### **LLT Petition**

LLT is a Tribally-owned wireless carrier of the Leech Lake Band of Ojibwe. In December of 2013, LLT petitioned the FCC seeking (1) conditional ETC designation to participate in the Tribal Mobility Fund Auction (Phase I) and (2) ETC designation for the provision of Lifeline and Link Up services on Tribal lands.

LLT states that this Commission does not have jurisdiction over the Leech Lake Band of Ojibwe or LLT, and that it has appropriately filed its petition with the FCC. The FCC issued a request for comments regarding its petition in December of 2013, to which no party submitted comments. LLT states that, to date, its petition is still pending before the FCC. LLT speculates that the FCC may be waiting for this Commission to state its position regarding jurisdiction. As such, LLT asks this Commission to file a letter with the FCC stating that it defers to the FCC, in this case, the matter of LLT's petition for designation as an ETC. LLT speculates this deferral would allow the FCC to proceed with its petition on its merits.

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### *DOC Comment*

DOC argues that LLT appears to have followed the appropriate filing procedures set forth by the FCC. It is unclear as to why the FCC has not addressed LLT's petition. To the extent that LLT believes that a narrowly tailored statement would encourage the FCC to move forward to consider the merits of LLT's petition, DOC supports LLT's request. LLT's petition, if approved, would enable LLT to provide Lifeline and Linkup, as well as other services, to its members. Such a result would clearly be in the public interest.

DOC recommends the Commission grant LLT's request and provide a statement to the FCC indicating that this Commission defer to the FCC LLT's petition for ETC designation. DOC states that the Commission should make clear in its statement that its deferral 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.

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### *Staff Analysis*

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### *ETC Designation Process*

The Telecommunications Act of 1996 provides that only an "eligible telecommunications carrier" as designated under section 214(e) shall be eligible to receive federal universal service support.<sup>1</sup> Section 214(e)(2) addresses ETC designation by state commissions and section 214(e)(6) addresses designation by the FCC where the requesting carrier is not subject to state commission jurisdiction.<sup>2</sup>

In its *Twelfth Report*, the FCC outlined the ETC petitioning process for Tribal and non-Tribal lands:

[W]e direct carriers seeking designation as eligible telecommunications carriers for service provided on **non-tribal lands** to consult with the state commission, even if the carrier asserts that the state commission lacks jurisdiction over the carrier. We

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<sup>1</sup> 47 U.S.C. § 254(e).

<sup>2</sup> 47 U.S.C. § 214(e).

will act on a section 214(e)(6) designation request from a carrier providing service on non-tribal lands only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction.<sup>3</sup>

And,

We conclude that a carrier seeking a designation of eligibility to receive federal universal service support for telecommunications service provided on **tribal lands** may petition the Commission for designation under section 214(e)(6), without first seeking designation from the appropriate state commission. 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. The petitioner must provide copies of its petition to the appropriate state commission at the time of filing with the Commission. The Commission will release, and publish in the Federal Register, a public notice establishing a pleading cycle for comments on the petition. The Commission will also send the public notice announcing the comment and reply dates to the affected state commission by overnight express mail to ensure that the state commission is notified of the notice and comment period.<sup>4</sup>

Based on the evidence presented in the record, the Commission shall make a determination as to whether the carrier has sufficiently demonstrated that it is not subject to the state commission's jurisdiction. In the event the Commission determines that the state commission lacks jurisdiction to make the designation and the petition is properly before the Commission under section 214(e)(6), the Commission will decide the merits of the request within six months of release of an order resolving the jurisdictional issue. If the carrier fails to meet its burden of proof that it is not subject to the state commission's jurisdiction, the Commission will dismiss the request and direct the carrier to seek designation from the appropriate state commission.<sup>5</sup>

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<sup>3</sup> Federal Communications Commission. Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking. *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*. CC Docket No. 96-45, FCC 00-208, released June 30, 2000 (*Twelfth Report*), ¶ 93, footnote omitted, emphasis added.

<sup>4</sup> *Twelfth Report*, ¶ 120, emphasis added.

<sup>5</sup> *Twelfth Report*, ¶ 121.

We decline to place on the affected state commission the burden of proving that it has jurisdiction over a particular carrier. To do so would suggest that state commission bear the burden of overcoming a general presumption that states do not have jurisdiction over carriers providing service on tribal lands. Such a presumption is inconsistent with our determination that the issue of whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a particularized inquiry, and thus specific to each state and the facts and circumstances surrounding the provision of the service.<sup>6</sup>

LLT filed its petition with the FCC on December 5, 2013. On December 12, 2013, the FCC issued a request for comments regarding the petition.<sup>7</sup> The Commission has no record of receiving a notice directly from either the FCC or LLT. The Minnesota Commission did not file comments with the FCC.

### **Tribal Mobility Fund Phase I Auction**

In 2011, in its *Transformation Order*, the FCC announced that, by way of its Tribal Mobility Fund Phase I Auction, it would make a one-time allocation of \$50 million from its universal service fund to deploy mobile broadband to unserved Tribal lands.<sup>8</sup> The FCC determined that the funds would be disbursed through a reverse auction mechanism – an open, fair and transparent bidding process.<sup>9</sup> The FCC refers to that auction as Auction 902.

To afford Tribally-owned or controlled entities an increased opportunity to participate at the auction the FCC relaxed, for those entities, its requirement that they be approved as ETCs at the time of the auction. Tribally-owned or controlled entities need only have an ETC application pending by the application deadline to be eligible to participate in the auction. However, a winning bidder could only receive support upon final approval of its application.<sup>10</sup>

LLT filed its application with the FCC by the deadline of December 5, 2013. The auction took place on February 25, 2014. LLT was not among the five winning bidders.<sup>11</sup>

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<sup>6</sup> *Twelfth Report*, ¶ 123.

<sup>7</sup> Federal Communications Commission. *Public Notice*. WT Docket No. 10-208, DA-13-2354, December 12, 2013.

<sup>8</sup> Federal Communications Commission. *Report and Order and Further Notice of Proposed Rulemaking*. *In the Matter of the Connect America Fund*. WC Docket No. 10-90, FCC 11-161, released November 18, 2011 (*Transformation Order*), ¶¶ 479-492.

<sup>9</sup> *Transformation Order*, ¶ 487.

<sup>10</sup> *Transformation Order*, ¶ 491.

<sup>11</sup> [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=902](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=902). Accessed March 23, 2016.

### **Low-Income Support**

LLT states that it seeks ETC designation for the provision of Lifeline and Link Up services on Tribal lands. Leech Lake plans to offer wireless service on the Leech Lake Reservation, an area of over 1,300 square miles. At the time of its petition much of that area was unserved by LLT. LLT owned four tower sites and, with the support of the Mobility Fund, planned to build another eleven towers.

In its petition to the FCC, LLT states that it will meet the requirements for designation as an ETC. The FCC requires that the petitioner must show that its proposed service is in the public interest, and:

In addition, Commission's rules require that a petitioner seeking an ETC designation, either for high-cost support or for Lifeline-only support, must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer protection and service quality standards; (4) demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with our rules; and (5) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.<sup>12</sup>

### **Speculation**

LLT speculates that the FCC has not addressed the jurisdiction question because it "might"<sup>13</sup> be awaiting a statement from this Commission as to its position regarding jurisdiction. LLT offers no supporting evidence, and although DOC supports LLT's request for a statement, it offers no additional support for the speculation.

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<sup>12</sup> Federal Communications Commission. Order. *In the Matter of Second Amendment to Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier for Lifeline Service and for Conditional ETC Status to Participate in Tribal Mobility Fund Phase I (Auction 902) on the Navajo Nation*. WT Docket No. 10-208, DA-14-200, released February 18, 2014, ¶ 7.

<sup>13</sup> LTT Petition, p. 2, ¶ 2.

As noted by LLT the FCC issued a request for comments on LLT's petition, a comment period that closed on January 29, 2014. To interpret the FCC's actions as waiting, in silence, for this Commission for over two years to file comments stretches credibility.

An alternative explanation for the FCC's silence may be that the FCC ceased its review because LLT did not receive the 902 Auction funds it needed to build a network necessary to serve the entire proposed service area.

Although LLT does not seek ETC designation from this Commission it is reasonable to speculate, based on the record before this Commission, that LLT's petition may not meet the FCC's requirements. Although the petition is unclear, it appears that LLT's assertions about how it will meet the FCC's requirements is contingent upon receipt of funding through the 902 Auction. It is not clear from LLT's petition the extent to which LLT provided service to any customers on the Reservation in 2013. And it is unclear how, absent the funding to build a network, LLT could demonstrate its ability to remain functional in an emergency situation. Further, the petition does not demonstrate that LLT is financially and technically capable of providing the Lifeline service absent 902 Auction funds. And the petition does not provide information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers.

### **Recommendation**

DOC recommends the Commission grant LLT's request to issue a statement to the FCC indicating that this Commission defers to the FCC LLT's petition for ETC designation. DOC states that the Commission should make clear in its statement that its deferral 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.

Staff disagrees with DOC and recommends the Commission deny LLT's request, in large part because no need for Commission action has been established at this time. Further, even a carefully tailored statement can be interpreted to mean more or less than it states, and it could require the Commission in the future to clarify, distinguish and defend its statement from misinterpretations unknown today. Staff recommends the Commission say no more than it needs to say, and need has not been established.

LLT's petition before this Commission could be clarified if LLT contacted the FCC directly to determine the status of its petition there. Additionally, or alternatively, LLT could seek informal assistance from DOC or this Commission in communicating with the FCC.

### **Commission Options**

1. Grant LLT's request. Issue an order indicating that this Commission defers to the FCC LLT's petition for ETC designation. Make clear that this deferral applies only to this case under these circumstances, and that the deferral is not intended to concede that this Commission 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.
2. Deny LLT's petition, without prejudice.
3. Take other action.

Staff recommends option #2.