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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 LEECH 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 Rcd 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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Daniel P. Wolf
December 11, 2015
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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

GSB:7383342.2

CONFIDENTIAL INFORMATION –SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 09-197,
WT DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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

In the matter of

Leech Lake Telecommunications Company, LLC

Petition for Designation as an Eligible
Telecommunications Carrier Pursuant to Section
214(e)(6) of the Telecommunications Act of 1996

Universal Service Reform – Mobility Fund

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)
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WC Docket No. 09-197

WT Docket No. 10-208

Leech Lake Telecommunications Company, LLC
115 Sixth Street
Cass Lake, MN 56633

December 5, 2013

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EXECUTIVE SUMMARY

Leech Lake Telecommunications Company, LLC (“LLT”), a Tribally-owned wireless carrier of the Leech Lake Band of Ojibwe (“LLBO” or “Ojibwe Tribe”), petitions the Federal Communications Commission (“FCC” or “Commission”) for designation as an Eligible Telecommunications Carrier (“ETC”) for a service area coterminous with the existing rural study areas within the boundaries of the Leech Lake Band of Ojibwe Reservation (“Leech Lake Reservation”). LLT is seeking conditional ETC designation in order to participate in the Tribal Mobility Fund Phase I reverse auction (“Auction 902”), and LLT also seeks designation in order to provide Lifeline and Link Up services in all areas within the Ojibwe Tribal Lands.

The Commission has jurisdiction over this application pursuant to Section 214(e)(6) of the Communications Act as the State of Minnesota does not have jurisdiction over a tribally-owned wireless carrier providing services within reservation boundaries. The Commission has previously recognized this lack of State jurisdiction by designating several other tribally owned carriers as ETCs.

LLT will offer all of the services supported by the universal service fund over its own wireless network facilities. The application details an extensive outreach program to ensure all subscribers have access to the Lifeline program for low income customers. LLT will also meet the additional eligibility criteria for ETC designation adopted by the Commission. This petition includes specific details of the company’s five year build-out plan, to include upgrades that will provide advanced wireless broadband services and expansion of network infrastructure. LLT will be able to remain functional in emergency situations, will provide consumer protection in accordance with wireless industry standards and will provide local usage and equal access. LLT certifies that it will use support for the provision, maintenance, and upgrading of facilities and services for which it is intended.

Grant of this petition will serve the public interest because it will result in improved and ubiquitous wireless telecommunications service for residents of the Reservation, promote local economic development, and support a viable, high technology enterprise owned and controlled by the Ojibwe Tribe.

I. INTRODUCTION

LLT, a 100% Tribally-government owned wireless carrier, respectfully petitions the Commission for designation as an ETC pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), within the boundaries of the Reservation. LLT is owned and chartered by the government of the Ojibwe Tribe and is the long-term lessee of personal communication services (“PCS”) spectrum within the exterior boundaries of the Reservation.

LLT seeks ETC designation from Commission under the Commission’s well-established streamlined designation process for carriers serving Tribal lands and not subject to the jurisdiction of a State commission.¹ The *Twelfth Report and Order* concluded that a carrier seeking designation of eligibility to receive federal universal service support for telecommunications service offered on tribal lands may petition the Commission for designation under section 214(e)(6) without first seeking designation from the state commission. The Leech Lake Band of Ojibwe is a federally recognized Indian tribe. The Leech Lake Reservation boundaries define LLT’s service area. LLT is subject to the regulatory authority and jurisdiction

¹ *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*”). See also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Red 1563 (2004) (“*Virginia Cellular Order*”); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Red 6422 (2004) (“*Highland Cellular Order*”).

of the Leech Lake Band of Ojibwe. LLT is not subject to the jurisdiction of the State of Minnesota.

LLT petitions for ETC designation to be eligible to receive all available support from the federal Universal Service Fund (“USF”) including but not limited to support for service to rural, insular and high cost service areas and support for Lifeline support to qualified, low-income customers. Specifically, LLT seeks ETC conditional designation in order to participate in the Tribal Mobility Fund Phase I reverse auction (“Auction 902”). Additionally, LLT seeks ETC status in order to be eligible for low-income support so that it may immediately provide Lifeline service and Link Up service (which remains available to carriers that receive high-cost support on Tribal lands) to qualified, low-income customers within the Leech Lake Reservation.

LLT serves the public interest by promoting competition and the provision of new technologies to the Leech Lake Reservation citizens and businesses, which currently suffer from significant impediments to affordable competitive telecommunications services. As demonstrated herein, expeditious action in granting this petition will allow LLT to receive uncapped cost recovery support while assuring that the subscribers it serves benefit from quality mobile telecommunications services at reasonable rates. LLT operates in a rural and remote area and should be deemed eligible to receive cost recovery from mechanisms established to foster universal service in rural and remote areas. Ubiquitous service penetration is critical to the provision of high quality wireless services and is essential to securing customers to support LLT’s wireless infrastructure investment. Within the exterior boundaries of the 1,309.91 square miles of land and water on the Leech Lake Reservation, there exists little to no wireless service except along roadways and the in City of Cass Lake, Minnesota. LLT would offer a larger local calling area on the Leech Lake Reservation than is available from any one of several existing

incumbent and rural telecom service providers in the Cass Lake area. LLT also would offer supported service to any requesting customer within its service area.

II. LEECH LAKE TELECOMUNICATIONS SATISFIES ALL OF THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ETC.

LLT satisfies each of the elements required for ETC designation by the FCC pursuant to Section 214(e)(6) of the Act. LLT's wireless network is designed based on state-of-the-art wireless industry standards. LLT will access inter-exchange roaming outside of its service area, transport services, interconnection, and traffic termination with local exchange carriers operating within LLT's service area through its hosting service provider. The supported services are designed to meet all Universal Service Fund requirements. LLT is a full service wireless carrier that offers all Universal Service supported services and satisfies all of the statutory and regulatory requirements for designation as an ETC.

(1) Because LLT Is A Tribal Government Owned Company And Is Self-Regulated by the Leech Lake Band of Ojibwe, It Is Not Subject to the Jurisdiction of the State of Minnesota.

Non-tribally owned telecommunications carriers are typically subject to State jurisdiction with and State commissions assuming responsibility for designating ETCs within the State and service areas for such carriers.² Section 214(e)(6) of the Act, however, provides that in the case of a common carrier that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of Section 214(e)(1) as an ETC for a service area designated by the Commission.³

² *Id.*

³ 47 U.S.C. Section 214(e)(6).

In its *Twelfth Report and Order*, the Commission established a framework for the ETC designation process under Section 214(e)(6) of the Act for carriers serving Tribal lands.⁴ The first line of inquiry set out for the Commission is whether the applicant is “subject to the jurisdiction of a state commission.”⁵ For the numerous reasons set forth below, LLT is in no respect subject to the jurisdiction of the State of Minnesota. Once making the determination that the Commission has jurisdiction, the FCC is then tasked with evaluating the merits of the ETC application.

The Commission has recognized that one of the primary classes of carriers Congress sought to ensure were covered and protected by Section 214(e)(6) of the Act were Tribally-owned carriers servicing Tribal lands.⁶ Additionally, the Commission has observed that the “determination of jurisdiction over a carrier serving tribal lands is an inquiry that will extend beyond questions of state law, and will be informed by principles of tribal sovereignty, federal law, and treaties.”⁷ Therefore, this Petition first discusses relevant Tribal law and Treaties.

First, under the Leech Lake Band of Ojibwe’s own Constitution, the LLBO has jurisdiction over “all territory within the Leech Lake Indian Reservation boundaries.”⁸ Pursuant to the Minnesota Chippewa Tribe Constitution, Leech Lake Band of Ojibwe has the right “to engage in any business that will further the economic well-being of members of the Reservation.”⁹ LLBO has never consented to state jurisdiction, and has always recognized its

⁴ *Twelfth Report and Order* at ¶¶115-127.

⁵ *Id.* at ¶116.

⁶ *Id.* at ¶12261.

⁷ *Id.* at ¶125.

⁸ 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, Bois Forte (Nett Lake) and Grand Portage Reservations and the Nonremoval Mille Lac Band of Chippewa Indians.

⁹ *Id.*

inherent legal status as that of one nation to another nation, directly within the U.S. federal government. Therefore, pursuant to LLBO's own Constitution, codes, and common law neither the Tribe nor its subsidiaries are subject to the jurisdiction of a State.

Second, federal treaties are the "supreme law of the land" for the U.S. federal government, as established by Article VI in the United States Constitution, a fact acknowledged by the Commission in the *Twelfth Report and Order*.¹⁰ In the Treaty of 1855, between the U.S. government and the Leech Lake Band of Ojibwe, issues involving utilities and infrastructure ("works of utility or necessity") were *not* negotiated. It is in the best interest of the citizen members of the Leech Lake Band of Ojibwe that such "works of utility or necessity" be negotiated directly between the Tribal government and the federal government. Therefore, utility and infrastructure issues related to the Leech Lake Band of Ojibwe and its Tribal lands are subject to the jurisdiction of the federal government in accordance with the Treaty.

Finally, the Commission's own precedent is clear with regard to Tribally-owned carriers serving Tribal lands. Tribally-owned carriers serving Tribal lands are eligible to apply to the Commission for evaluation of their ETC status. The FCC has reached this determination consistently in each case in which a fully Tribally-owned carrier has applied to the FCC to have their ETC applications considered, such as Hopi Telecommunications, Fort Mojave Telecommunications, Gila River Telecommunications, San Carlos Telecommunication, Tohono O'Odham Utility Authority, and the Standing Rock Telecommunications.¹¹ In each instance listed, the ETC application was approved.

¹⁰ *Twelfth Report and Order* at ¶125 ("[T]he determination of jurisdiction over a carrier serving tribal lands...will be informed by principles of tribal sovereignty, federal law, and treaties.")

¹¹ *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*

Under the U.S. Constitution, the LLBO Constitution, and the 1855 Treaty, the State of Minnesota has recognized that it has no jurisdiction over Tribal utility matters. Further, Minnesota Governors since October of 2002 have each issued Executive Orders requiring the basic principles of federal Indian law to guide Tribal matters. Thus, under Section 214(e)(6) of the Act and the Commission's own precedent, LLT, as a wireless company operating as a tribally-owned carrier operating only on tribal lands, certifies that it is not subject to the jurisdiction of the state commission of Minnesota and may apply directly to the Commission for a determination of its eligibility as an ETC.

(2) Minnesota's Authority Over Wireless Carriers Is Restricted.

Under 47 U.S.C. § 332(c)(3)(A), state jurisdiction to regulate commercial mobile service is limited.¹² Under the Communications Act of 1934, as amended by the Omnibus Budget Reconciliation Act of 1993, Pub. L. NO. 103-66, commercial mobile radio service providers are exempt from state authority to regulate entry or rates charged.

(3) LLT Offers All of the Service Supported by the Federal High-Cost Universal Service Program.

The FCC has identified the following services and functionalities as the core services to be offered by an ETC and supported by federal universal service support mechanisms.¹³ LLT telephony services certifies that it will provide: (a) voice-grade access to the public switched network; (b) minutes of use for local service provided at no additional cost to end users; (c)

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 Rcd 4547 (1998).

¹² 47 U.S.C. § 332(c)(3)(A).

¹³ 47 C.F.R § 54.101(a).

access to the emergency services provided by local government or other public safety organizations; and (d) toll limitation services to qualifying low-income consumers.

(a) Voice-grade Access to the Public Switched Telephone Network. “Voice grade access” permits a telecommunications user to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal that there is an incoming call. LLT will provide its customers with “voice grade access” by providing mobile voice communications service and by enabling such customers to make and receive calls on the Public Switched Telephone Network (“PSTN”). All LLT customers will be able to make and receive calls on the PSTN.

(b) Minutes of Use for Local Services Provided at no Additional Cost to End Users. An ETC must include local usage as part of a universal service offering. LLT will include local usage that allows customers to originate and terminate calls within a local calling area without incurring toll charges. LLT will offer service plans that include varying amounts of local usage. LLT will comply with any and all minimum local usage requirements the Commission may adopt with respect to universal service offerings. Therefore, LLT satisfies the local usage criterion for ETC designation.

(c) Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. LLT will provide access to emergency services in conformance with the Commission’s requirements. LLT also plans to meet all requests for E-911 service received from Public Service Answering Points. Phase I E-911, which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. LLT will provide all of its customers with access to emergency service by dialing

911 in satisfaction of the basic 911 requirement, and either provides or will provide subscribers with Phase I and Phase II E-911 services in accord with the deployment schedules agreed to by LLT and local or other governmental emergency service provider agencies.

(d) Lifeline and Toll Limitation for Qualifying, Low-Income Consumers. Certain low-income consumers in Minnesota will be eligible to pay reduced monthly fees under the Federal Lifeline program in which LLT will participate. LLT will offer toll limitation services (which may be in the form of “toll control” or “toll blocking” services) to qualifying Lifeline customers.¹⁴ Toll blocking allows customers to block the completion of outgoing toll calls. Toll control allows the customer to limit the toll charges a subscriber may incur during a billing period. Upon designation as an ETC in the additional service areas described in this Petition, LLT will offer toll limitation services to Lifeline customers in those areas, at no charge. Therefore, LLT meets the ETC requirement of offering toll limitation services to Lifeline customers.

(4) LLT Will Offer Supported Services through its Own Facilities.

Section 214(e)(6) of the Act requires that a carrier requesting designation must certify that it offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”¹⁵ LLT will provide the supported services through its own existing network infrastructure (e.g., antennas, cell sites, towers, trunking, mobile switching agreements, and interconnection facilities) to serve its future conventional mobile cellular service customers.

¹⁴ 47 C.F.R. § 54.101(a). *See Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318 (1997).

¹⁵ 47 U.S.C. § 214(e)(6).

(5) LLT Will Advertise its Universal Service Offering.

LLT will advertise the availability of each of the supported services detailed above, throughout its licensed service area, by media of general distribution, in accordance with Section 214(e)(1) of the Act. The methods of advertising may include local and tribal newspapers (e.g., the *DeBahJiMon* maintains a circulation of 4300, promoted through notices on the Leech Lake Band of Ojibwe website, radio announcements (e.g., KOJB 90.1 The Eagle), broadcasting throughout tribal lands, tribal offices, public benefits offices, electronic newsletters, billing inserts, at the (sub-governments) Local Indian Council monthly meetings, and public exhibits. LLT will publicize the availability of supported services to reach all of the residents in its service area, and ensure that customers are aware of the availability of the supported services, particularly, the support to low income customers.

III. LLT REQUESTS DESIGNATION THROUGHOUT ITS SERVICE AREA WITHIN THE BOUNDARIES OF THE LEECH LAKE RESERVATION.

The proposed study area for which LLT seeks ETC designation is located in north central Minnesota and is the area coterminous with the boundaries of the Leech Lake Reservation, which includes segments of four counties within its borders—Beltrami, Cass, Hubbard and Itasca Counties. The proposed study area is also encompassed by the partitioned lease area identified in a long-term *de facto* transfer lease agreement that LLT has entered into for access to personal communication services (PCS) spectrum throughout the boundaries of the Reservation. *See* map of Proposed Study Area within the Leech Lake Reservation attached as Exhibit 1. The proposed service area is 838,342 acres and is largely composed of the Chippewa National Forest and large bodies of water (i.e., Leech Lake, Winnibigoshish Lake, and Cass Lake).

LLT specifically requests ETC designation for all rural study areas (or portions thereof) that correspond to LLT's authorized service area within the boundaries of the Leech Lake

Reservation. LLT's authorized service area covers the following rural and non-rural telephone companies operating within the boundaries of the Reservation (See Exhibit 1 for additional details):

<u>ILEC/CLEC Exchange</u>	<u>SAC#</u>	<u>Wire Center</u>	<u>CLLI</u>
CenturyLink (formerly Qwest)	365142	Cass Lake	CSSLMNCL
Arvig Tel Co	361350		
Johnson Tel Co	361410		
Paul Bunyan Rural	361451		

The proposed study area is remote, wooded, and is home to the Ojibwe Tribe's anchor institutions, community centers, clinics, and remote police stations. The Leech Lake Reservation encompasses thirteen (13) tribal communities—S. Lake, Inger, Winnie Dam, Ball Club, Bena, Sugar Point, Kego Lake, Onigum, Oak Point, Prescott, Cass Lake, Mission and Cass River—each of which has its own community anchor institutions. This low-density area has approximately 25,832 citizens residing in 1309.91 square miles, which amounts to roughly 20 persons per square mile. According to 2010 U.S. Census data, the Leech Lake Reservation includes 35 Civil Townships, 10 Cities, and 6 Unorganized Territories.

ETC designations are for an entire "service area," which by statute "means a geographic area" within which an ETC has universal service obligations and may receive universal service support. Based on Commission precedent, neither redefinition of the service areas of the rural telephone companies nor the concurrence of a State commission is needed here.¹⁶ In the *Standing Rock Reconsideration MO&O*, the Commission concluded that, when designating an ETC to serve the part of the service area of a rural telephone company that lies within the limits of the Commission's jurisdictional authority, redefinition is unnecessary and no State

¹⁶ *Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160, 1123 (2011) ("*Standing Rock Reconsideration MO&O*").

commission need consent before the designation takes effect.¹⁷ LLT seeks ETC designation only within the boundaries of the Leech Lake Reservation, which is subject exclusively to the Commission's jurisdictional authority. Accordingly, ETC status for the LLT should be granted for LLT's entire service area corresponding to the boundaries of the Leech Lake Reservation.

IV. GRANTING LLT'S APPLICATION WILL SERVE THE PUBLIC INTEREST.

LLT's ETC designation will serve the public interest by increasing consumer choice, improving service quality, enhancing health and safety benefits, and enhancing competition. Because LLT is seeking designation in areas served by rural LECs, the Commission must consider public interest factors prior to designating LLT as an ETC.¹⁸ Designating LLT as an ETC will further the public interest by bringing the benefits of competition to an exceedingly underserved marketplace in rural and tribal areas in north central Minnesota.

The FCC has recognized the advantages wireless carriers can bring to the universal service program. In particular, the FCC has found that "imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service."¹⁹ One of the principal goals of the Telecommunications Act of 1996 was to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."²⁰ Competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer's business.

¹⁷ *Id.*

¹⁸ *See* 47 U.S.C. §214(e)(6).

¹⁹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Red. 8776, 8881-82 (1997) .

²⁰ Telecommunications Act of 1996, P.L.104-104, 100 Stat. 56 (1996).

Increased Consumer Choice. ETC designation of LLT will advance universal service, promote competition and facilitate the provision of advanced communications services to customers within LLT's service area. Currently, wireless services are limited throughout the LLT's service area with large sections of the Reservation having no coverage at all. LLT is committed to providing supported services throughout the Reservation.

Improved Service Quality. Ubiquitous service penetration is critical to providing high quality of service to customers. Currently, there are only four (4) cellular towers in the 1,309.91 square miles of land and water within the boundaries of the Leech Lake Reservation, resulting in limited to no wireless services within LLT's service area. The new LLT tower sites will be located in the following exchanges within LLT's service area:

<u>District I</u>		<u>ILEC/CLEC Exchanges</u>
S Lake	One tower	Paul Bunyan Telecom
Inger	One tower	Paul Bunyan Telecom
Winnie Dam	One tower	Paul Bunyan Telecom
Ball Club	One tower*	Paul Bunyan Telecom
Cut Foot	One tower*	Paul Bunyan Telecom
<u>District II</u>		
Bena	One tower*	Arvig
Sugar Point	One tower	Johnson Telephone
Kego Lake	One tower	Arvig
<u>District III</u>		
Onigum	One tower*	Arvig
Oak Point	One tower	CenturyLink/Arvig
Prescott	One tower	CenturyLink/Arvig
Cass Lake	One tower	CenturyLink/Arvig
Pennington	One tower	CenturyLink
Mission	One tower	CenturyLink/Paul Bunyan
Buck Lake	One tower	CenturyLink/Paul Bunyan

* Present tower sites (owned by LLT)

LLT will offer a larger local calling area on the Leech Lake Reservation than is available from any one of the incumbent service providers, and LLT will offer supported service to any

requesting customer within its service area. With Mobility Fund support, LLT plans to expand wireless service penetration and upgrade the network to provide higher bandwidth throughout the LLT service area to further advance and improve service quality.

Enhanced Health and Safety Benefits. With the requested ETC designation, LLT would mitigate the health and safety risks associated with living and working in a remote and rural location. The availability of wireless universal service provides access to emergency services that otherwise would not be accessible. LLT would provide all of its customers with access to 911 and E-911 emergency services.

Enhanced Competition. LLT is a facilities-based mobile communications provider that has incorporated pricing plans and service offerings that offer consumers a choice of service providers. Competition in this rural and tribal area would spur the development of advanced communications. Granting LLT ETC designation would provide support that is essential to the company's service objectives.

No Cream-Skimming. As part of its public interest analysis, the Commission has in the past determined whether a carrier's ETC designation will enable it to "cream-skim," that is, target low-cost portions of a rural incumbent LEC's service area in which uneconomically high levels of support are available. The Commission's concern was allowing ETCs to receive more support than is reflective of the rural incumbent LEC's cost of serving that wire center because support for each line was based on the rural telephone company's average costs for serving the entire service area. However, the Commission's *USF/ICC Transformation Order* has eliminated any possibility of cream-skimming by recipients of Mobility Fund support.²¹ This is because the level of a competitive ETC's support in a given service area is no longer based on the per-line

²¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Red at 17825-30, (Nov. 18, 2011) ("*USF/ICC Transformation Order*").

support received by the rural incumbent LEC in that service area²² Moreover, the Mobility Fund reverse auction mechanism disburses support to the lowest bidders of support.²³ These actions taken by the Commission have the effect of mooted the Commission's prior concerns regarding cream-skimming. Because LLT would participate in the reverse auction mechanism, Auction 902 in particular, in order to receive Mobility Fund support, the Commission's prior concerns regarding cream-skimming in the era of portable support are moot.

Low-Income Services. Lifeline and Link-up services would be provided in the local office located at Cass Lake Minnesota. Citizens who regularly visit the City of Cass Lake for their social and welfare services would have direct face-to-face interaction with LLT staff and LLT anticipates that Lifeline advertising materials will be relevant to the cultural family way of life. LLT also would assure that there is no duplication of Lifeline services. The applicant for Lifeline and Link-up services will be required to complete a social services income verification form to provide LLT with income details by each family household member along with a statement of accuracy provided by the applicant. Each applicant income verification form shall be updated on an annual basis or as the applicant's income level changes. The ease of gaining Lifeline and Link-up services at their local government headquarters would enhance and increase potential customers of LLT.

V. FIVE-YEAR PLAN.

Granting ETC designation to LLT will provide universal service support for its existing facilities and enable the company to complete its five-year build out plan. The five-year plan includes construction of new tower sites within the Leech Lake Reservation. This buildout would allow LLT to provide mobile broadband services for small and home based businesses,

²² See 47 C.F.R. § 54.307(e)(1).

²³ See *USF/ICC Transformation Order* at 17773-17818 and 17824-25.

educational institutions, healthcare facilities, and government throughout the Reservation. LLT will provide high-quality handsets and other mobile devices and accessories to its customers.

Detailed information on the Five Year plan can be found in Confidential Exhibit 2.

VI. LLT SATISFIES THE ADDITIONAL REQUIREMENTS OF AN ETC APPLICANT UNDER SECTION 214(e)(6) OF THE ACT.

In its *ETC Designation Order*,²⁴ the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts under Section 214(e)(6) of the Act. The Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing services to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act. Section 54.202(a) of the Commission's rules requires common carrier applicants seeking ETC designation under Section 214(e)(6) of the Act to certify that the applicant will comply with the service requirements applicable to the support that it receives.

(1) LLT Will Be Able To Provide Services To All Customers Within Its Service Area.

Current wireless services are limited throughout LLT's service area, with large sections of the Leech Lake Reservation having no coverage at all. LLT is scheduled to launch its operations soon and through its network design will provide supported services to all customers living within its service area. LLT certifies that it will provide service, on a timely basis, to customers within its service area. With ETC designation, LLT will implement Enhanced Lifeline

²⁴ *Federal-State Joint Board on Universal Service*. CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) ("*ETC Designation Order*").

and Link-up programs, which will offer service to the lowest income customers that may otherwise not have the ability to afford wireless telecommunication services.

The Tribe has issued a Corporate Charter and a Certificate of Public Convenience and Necessity to LLT to provide telecommunication services throughout its tribal land area.

(2) LLT Will Remain Functional In Emergency Situations.

LLT will be able to remain functional in emergency situations in its proposed study area. In particular, LLT will (1) have adequate amounts of back-up power to ensure functionality without an external power source; (2) be able to reroute traffic around damaged facilities; and (3) be capable of managing traffic spikes resulting from emergency situations. LLT customer service representatives also will be reachable at company headquarters in Cass Lake, MN.

(3) LLT Will Meet All Consumer Protection And Service Quality Standards.

Pursuant to Section 54.202(a)(3) of the Commission’s rules, the FCC states that an ETC applicant must “demonstrate that it will satisfy applicable consumer protection and service quality standards.”²⁵ A commitment by wireless applicants to comply with the Consumer Code for Wireless Service adopted by CTIA—The Wireless Association (“CTIA Code”) satisfies this requirement.²⁶ LLT is committed to abiding by the CTIA Code, as it may be amended from time to time, throughout its study area.

(4) LLT Will Offer Comparable Local Usage To That Of The Incumbent LEC.

LLT’s service rate plans will be comparable to plans offered by the existing incumbent local exchange carrier. The incumbent LEC operating on the Leech Lake Band of Ojibwe reservation is CenturyLink.

²⁵ 47 C.F.R. § 54.202(a)(3).

²⁶ CTIA Code available at http://files.ctia.org/pdf/The_Code.pdf.

(5) LLT Will Provide Equal Access.

LLT understands that it may be required to provide consumers with equal access to long distance carrier if other eligible telecommunications carriers relinquish their ETC designation pursuant to Section 214(e)(4) and no longer provide equal access to areas within LLT service area.

(6) LLT Will Comply With Applicable Service Requirements.

LLT certifies that it will comply with the service requirements applicable to the Universal Service support that it receives, including Tribal Mobility Fund Phase I support and low-income support for Lifeline and Link Up services.

VII. ANTI-DRUG ABUSE ACT CERTIFICATION

LLT certifies that no party to this petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §862.

VIII. CERTIFICATION OF GOOD STANDING

The Leech Lake Band of Ojibwe hereby attests that Leech Lake Telecommunications Company, LLC is a Limited Liability Company in good standing of the Leech Lake Band of Ojibwe. LLT was granted its charter on the 21st day of June, 2013. LLT is operated under the laws of the Leech Lake Band of Ojibwe as a tribally owned entity of the Band and continues to operate in good standing through the date of making this declaration. The foregoing Petition for designation as an ETC was duly presented and adopted by a vote of at a special meeting of the Leech Lake Band of Ojibwe Reservation Tribal Council in Cass Lake, Minnesota.

IX. CONCLUSION

LLT meets the requirements set forth by the Commission to be designated as an ETC pursuant to Section 214(e)(6) of the Communications Act. Accordingly, LLT respectfully

CONFIDENTIAL INFORMATION –SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 09-197, WT
DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

requests that the Commission designate LLT as an ETC conditionally to participate in Auction
902 and in order to provide Lifeline and Link Up services within the Leech Lake Reservation.

Respectfully submitted,

**LEECH LAKE TELECOMMUNICATIONS
COMPANY, LLC**

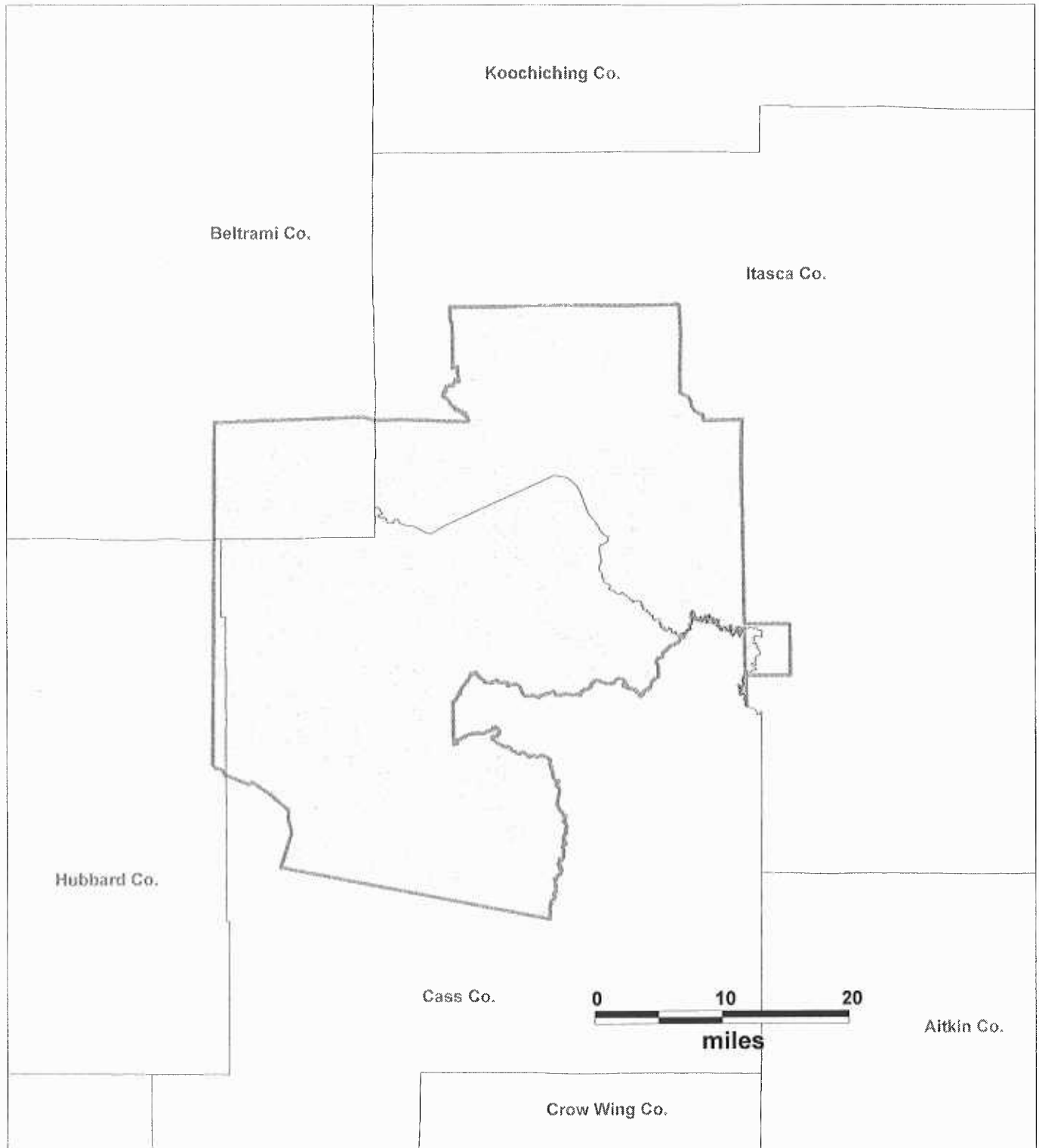
By: */s/ Carri Jones*

Carri Jones
Chairwoman
Leech Lake Band of Ojibwe
115 Sixth Street
Cass Lake, MN 56633
Phone: (218) 335-7217

Dated: December 5, 2013

Leech Lake Indian Reservation

EXHIBIT 1



December 4, 2013



Leech Lake Indian Reservation Boundary



County Boundary



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6124 MacArthur Boulevard
Bethesda, MD 20816
(202) 371 - 1500

CONFIDENTIAL INFORMATION –SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 09-197,
WT DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS Commission

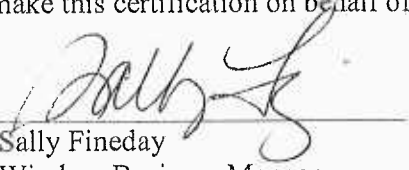
LEECH LAKE TELECOMMUNICATIONS COMPANY LLC- FIVE YEAR BUILD OUT PLAN

WHERE ARE WE NOW?	WHERE DO WE WANT TO BE?	HOW DO WE GET THERE?	HOW DO WE MEASURE PROGRESS?	TIMELINE
<ul style="list-style-type: none"> • LLT is a limited liability company organized wholly owned by the LLBO • 1 yr LLBO Direct funding • \$162,568 – operating budget • 4 customers • Own 6 towers - <ol style="list-style-type: none"> 1. Onigum – 195’ 2. Ball Club – 400’ 3. Ball Club – WT 4. Bena – 500’ 5. Cass Lake - WT 6. Cut Foot – 400’ <p>Towers not relevant with the proposed plan 1) Palace Casino 2) Northern Lights Casino, and 3) White Oak Casino</p>	17 cell site wireless broadband network	ETC Petition – filings needed	Filings – ETC	2013 – October
		<ul style="list-style-type: none"> • 602 Ownership Application • Spectrum Lease (608 filing) 		2013 – December 5
		902 Auction –filings needed <ul style="list-style-type: none"> • ETC Petition • Plan build out 	Short form Application filed	2013 – December 5
	7 th tower of network	State of MN constructs tower at LLBO Cass Lake site <ul style="list-style-type: none"> • Equipment needed to serve • LLBO has agreement to lease space at no charge except to power the equipment 	<ul style="list-style-type: none"> • Tower Constructed • Estimated cost analysis for new equipment (902) • Exchange for service with gaming 	2014 - May
	Phase I 8, 9 and 10 th towers of network	902 Auction – applied & secured Requirements to accept 902 <ul style="list-style-type: none"> • Letters of Credit matching build out (in process) 	(902) Construct (3) towers <ol style="list-style-type: none"> 1. Pennington/Mission 2. Kego Lake 3. Sugar Point 	2014 – February 25 & March 30 2014 – August
Additional customers added in December with transfer of Node B to LLBO water tower. 50 customers per month. April with State tower constructed will increase Customers to 100 per month.	Phase II 11 and 12 th tower of network	Indian Business Loan funds 2 towers - Oak Point Tower – 400’ & Prescott – 250’	Construct (2) towers <ol style="list-style-type: none"> 1. Oak Point 2. Prescott 	2015 – June
	Own spectrum over entire tribal lands	Identified Spectrum over all tribal lands, secure funds to purchase		April 2014
	Phase III 13 and 14 th tower of network	Seek USDA RUS to construct 2 towers – Inger & S Lake		2016- August

DECLARATION OF SALLY FINEDAY

I, Sally Fineday, do hereby declare under penalty of perjury the following:

1. I am the Wireless Telecommunications Business Manager of the Leech Lake Band of Ojibwe ("LLBO") and Leech Lake Telecommunications Company, LLC ("LLT"). Leech Lake Telecommunications Company, LLC ("LLT") is 100% owned by the LLBO.
2. LLT is seeking conditional designation as an eligible telecommunications carrier ("ETC") in order to participate in the Tribal Mobility Fund Phase I reverse auction ("Auction 902"). LLT also seeks ETC designation in order to provide Lifeline and Link Up services.
3. I have read the foregoing "Petition of Leech Lake Telecommunications Company, LLC For Designation as an Eligible Telecommunications Carrier in the State of Minnesota" ("Petition") and I have personal knowledge of the facts set forth therein and believe them to be true and correct.
4. I certify that LLT will comply with the service requirements applicable to the Universal Service support that LLT receives, including Tribal Mobility Fund Phase I support in Auction 902 and low-income support for Lifeline and Link Up services.
5. I further state that LLT offers or will be able to offer all of the services designated for support by the Federal Communications Commission ("FCC") and for which LLT receives support throughout the areas in which LLT is requesting designation as an ETC, that the Petition is made in good faith, with the intention of presenting evidence in support thereof in every particular.
6. I further certify that, in my capacity as Wireless Telecommunications Business Manager of the LLBO and LLT that upon being designated an ETC by the FCC, LLT will use any Universal Service Fund support received only for the purposes for which the support is intended and that I am authorized to make this certification on behalf of LLT.


Sally Fineday

Wireless Business Manager

Leech Lake Band of Ojibwe and Leech Lake
Telecommunications Company, LLC

12-5-13

Date