

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for	)	WC Docket 09-197
Universal Service Support	)	
	)	
Petition of AT&T Mobility LLC for	)	
Designation as an Eligible Telecommunications	)	
Carrier Pursuant to Section 214(e)(6) of the	)	
Communications Act and Transfer of the Alltel	)	
Pine Ridge Reservation Eligible	)	
Telecommunications Carrier Designation	)	

**ORDER**

**Adopted: May 11, 2011**

**Released: May 11, 2011**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we address a petition filed by AT&T, Inc. on behalf of its affiliate AT&T Mobility LLC (AT&T Mobility), pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (Act).<sup>1</sup> AT&T Mobility requests transfer of the eligible telecommunications carrier (ETC) designation held by Western Wireless, LLC d/b/a Alltel for service offered to Tribal members on the Pine Ridge Reservation (Reservation) in the state of South Dakota and designation as an ETC.<sup>2</sup> As discussed in detail below, we grant in part AT&T Mobility's petition. In so doing, we find that AT&T Mobility meets the eligibility requirements of section 214(e)(1) of the Act and the Commission's rules to be designated as an ETC.<sup>3</sup>

**II. BACKGROUND**

**A. Requirements for ETC Designation**

2. *Statutory Requirements for ETC Designation.* Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."<sup>4</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service support

<sup>1</sup> Petition of AT&T Mobility LLC for Designation as an Eligible Telecommunications Carrier and Transfer of the Alltel Pine Ridge Reservation Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Jul. 30, 2010) (AT&T Mobility ETC Petition); *see Comment Sought on Petition of AT&T Mobility, LLC for Designation as an Eligible Telecommunications Carrier and Transfer of the Alltel Pine Ridge Reservation Eligible Telecommunications Carrier Designation*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 10800 (2010). The Oglala Sioux Tribe and the South Dakota Telecommunications Association filed comments. AT&T and the Oglala Sioux Tribe filed replies.

<sup>2</sup> AT&T Mobility ETC Petition at 1.

<sup>3</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. §§ 54.201, 54.202.

<sup>4</sup> 47 U.S.C. § 254(e).

mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout its designated service area.<sup>5</sup> Although state commissions have primary responsibility for designating ETCs under section 214(e)(2) of the Act,<sup>6</sup> that responsibility shifts to the Commission for carriers "providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>7</sup>

3. Pursuant to section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>8</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>9</sup>

4. *Commission Requirements for ETC Designation.* A carrier seeking ETC designation from the Commission must: (1) certify and briefly state facts demonstrating that it is not subject to the jurisdiction of a state commission; (2) certify that it offers or intends to offer all services designated for support by the Commission; (3) certify that it offers or intends to offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services throughout its proposed service area; (4) describe how it will advertise the availability of supported services and the charges therefor using media of general distribution; and (5) describe in detail the geographic service area for which it requests designation if the carrier is not a rural telephone company.<sup>10</sup> In addition, such a carrier must demonstrate: (6) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (7) how it will remain functional in emergency situations; (8) that it will satisfy consumer protection and service quality standards; (9) that it offers local usage comparable to that offered by the incumbent local exchange carrier; and (10) 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.<sup>11</sup>

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<sup>5</sup> 47 U.S.C. § 214(e)(1).

<sup>6</sup> 47 U.S.C. § 214(e)(2).

<sup>7</sup> 47 U.S.C. § 214(e)(6).

<sup>8</sup> *Id.* Section 3 of the Act defines a rural telephone company as a local exchange carrier operating entity to the extent that such entity:

- (A) provides common carrier service to any local exchange carrier study area that does not include either—
  - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
  - (ii) any territory, incorporated or unincorporated, included in any urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

47 U.S.C. § 153(37).

<sup>9</sup> 47 U.S.C. § 214(e)(6).

<sup>10</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948–49 (1997) (*Section 214(e)(6) Public Notice*).

<sup>11</sup> 47 C.F.R. § 54.202(a).

5. The Commission has established a framework for determining whether a state commission or the Commission itself has jurisdiction to designate ETCs on Tribal lands.<sup>12</sup> First, a carrier seeking ETC designation to receive federal universal service support for telecommunications service provided on Tribal lands must petition the Commission for a determination on whether the state has jurisdiction over the carrier.<sup>13</sup> The Commission then determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Tribal authority given the Tribal interests involved. In the latter case, the Commission has jurisdiction to designate the carrier as an ETC<sup>14</sup> and will consider the merits of the carrier's petition for designation.<sup>15</sup> The Commission has delegated authority to the Chief of the Wireline Competition Bureau (Bureau) to act on requests for ETC designation.<sup>16</sup>

#### B. The Pine Ridge Reservation

6. In 2000, Western Wireless Corporation (Western Wireless), a wireless telecommunications provider, and the Oglala Sioux Tribe (Tribe) signed the Tate Woglaka Service Agreement (Service Agreement) so that Western Wireless could deploy telecommunications infrastructure on the Reservation.<sup>17</sup> Pursuant to the Service Agreement, Western Wireless represented that it expressly consented to the Tribe's regulatory authority.<sup>18</sup> In 2001, Western Wireless filed a petition with the Commission seeking ETC designation on the Reservation.<sup>19</sup> Later that year, the Commission designated Western Wireless as an ETC on the Pine Ridge Reservation, for the provision of service to Tribal members.<sup>20</sup>

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<sup>12</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas; Smith Bagley, Inc., Cheyenne River Sioux Tribe Telephone Authority, Western Wireless Corporation, Wyoming, Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc., Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265-69, paras. 115-27 (2000) (*Twelfth Report and Order*), recon. by *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958, 10964 n.28 (2003) (*Tribal Recon. Order*).

<sup>13</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12265-69, paras. 115-27.

<sup>14</sup> *Id.* at 12266-67, paras. 120-22.

<sup>15</sup> *Id.* at 12265, para. 115.

<sup>16</sup> See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948. The Wireline Competition Bureau previously was known as the Common Carrier Bureau.

<sup>17</sup> See *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*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18145, 18147, para. 6 (2001) (*Pine Ridge Jurisdictional Order*) (finding that the FCC has jurisdiction to determine whether Western Wireless is eligible to receive federal universal service support for providing telephone service to residents of the Pine Ridge Reservation).

<sup>18</sup> *Id.*

<sup>19</sup> Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, CC Docket No. 96-45 (filed Jan. 19, 2001).

<sup>20</sup> *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition For Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133, 18136, para. 6 (2001) (*Western Wireless ETC Designation Order*). In a companion order, the Commission concluded that it was the appropriate authority to designate Western Wireless as an ETC for the provision of service to Tribal members and that the South Dakota Public Utilities Commission (South Dakota Commission) was the appropriate authority to designate Western Wireless for the

(continued . . .)

7. In 2005, ALLTEL Corporation (Alltel) acquired Western Wireless;<sup>21</sup> Verizon Wireless subsequently acquired Alltel<sup>22</sup> and, as a condition of approval of this acquisition, the Commission required Verizon Wireless to divest business units and associated licenses in 105 markets, which included the licenses and the wireless network serving the Pine Ridge Reservation.<sup>23</sup>

8. On June 22, 2010, the Commission approved the transfer of the licenses and business units in certain markets from Verizon Wireless to AT&T Inc. (AT&T), including the Commission licenses and the wireless network serving the Pine Ridge Reservation.<sup>24</sup> The Commission conditioned its consent to the transaction on AT&T's fulfillment of certain voluntary commitments associated with its provision of wireless services on the Reservation.<sup>25</sup> Among other commitments, AT&T agreed to: (1) undertake the rights and obligations of Western Wireless under the Service Agreement; (2) build a third generation (3G) High Speed Packet Access (HSPA) broadband wireless network on the Reservation and transition the divestiture Code Division Multiple Access network subscribers living within the boundaries of the Reservation to the 3G HSPA network within 12 months of the closing of the transaction; and (3) continue to offer the post-paid rate service plans currently offered to Tribal subscribers without any material changes until June 22, 2011.<sup>26</sup> AT&T also noted its intention to seek ETC status from the Commission with respect to service offered to Tribal members residing on the Reservation.<sup>27</sup>

9. *AT&T Mobility ETC Petition.* On July 30, 2010, AT&T, on behalf of its affiliate AT&T Mobility, filed the instant petition, asking the Bureau to transfer to AT&T Mobility the ETC designation held by Western Wireless, LLC d/b/a Alltel for services offered to the Tribal members on the Pine Ridge Reservation, and designate it as an ETC pursuant to section 214(e)(6) of the Act.<sup>28</sup> In its petition, AT&T Mobility states that it meets all of the statutory and regulatory ETC obligations and is able to provide the supported services to the Tribal members residing on the Reservation.<sup>29</sup> AT&T Mobility also states that it will: (1) offer the services designated for support by the Commission pursuant to section 254(c) of the Act; (2) offer the supported services using its own facilities or a combination of its own facilities and the resale of another carrier's service; and (3) advertise the availability of the supported services and

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provision of service to non-Tribal members on the Reservation. *Pine Ridge Jurisdictional Order*, 16 FCC Rcd at 18151, para. 15.

<sup>21</sup> See *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-50, Memorandum Opinion and Order, 20 FCC Rcd 13053, 13053, para. 1 (2005).

<sup>22</sup> See *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008).

<sup>23</sup> See *Applications of AT&T Inc. and Verizon Wireless for Consent To Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, WT Docket No. 09-104, Memorandum Opinion and Order, 25 FCC Rcd 8704, 8705, para. 1 (2010) (*AT&T/Verizon Wireless Asset Transfer Order*).

<sup>24</sup> *AT&T/Verizon Wireless Asset Transfer*, 25 FCC Rcd at 8709–16, paras. 11–21; see also AT&T Mobility ETC Petition at 1–2.

<sup>25</sup> *AT&T/Verizon Wireless Asset Transfer*, 25 FCC Rcd at 8764, para. 142.

<sup>26</sup> *Id.* at 8763, para. 141.

<sup>27</sup> *Id.*

<sup>28</sup> AT&T Mobility ETC Petition at 5 (requesting the transfer of the Alltel Pine Ridge ETC Designation on behalf of itself and its subsidiary licensee, Peach Acquisitions, LLC and indicating that it does not seek to expand the area of the Alltel Pine Ridge Reservation ETC Designation).

<sup>29</sup> See AT&T Mobility ETC Petition at 4.

associated charges using media of general distribution.<sup>30</sup> AT&T Mobility also asserts that it meets the additional ETC eligibility criteria set forth in section 54.202 of the Commission's rules,<sup>31</sup> and states that it has consented to the Tribe's regulatory authority.<sup>32</sup>

10. The Oglala Sioux Tribe filed comments objecting to AT&T Mobility's petition.<sup>33</sup> The Tribe states that AT&T Mobility did not seek the Tribe's support for its ETC designation on the Reservation.<sup>34</sup> The Tribe also notes that AT&T Mobility has submitted a written proposal to amend the terms of the Service Agreement and to date the parties have failed to come to an agreement on acceptable service types, terms, and rates of service on the Reservation.<sup>35</sup> The Tribe maintains that coordination on the provision of telecommunications service on the Reservation is "critical to tribal sovereignty, jurisdiction, and the health, safety and well-being of the Tribe and its members."<sup>36</sup> On January 30, 2011, AT&T filed a letter notifying the Commission that it may be unable to comply with all commitments in the *AT&T/Verizon Wireless Asset Transfer Order*.<sup>37</sup> In particular, AT&T states that absent business and regulatory certainty around the pending AT&T Mobility ETC Petition, there is no guarantee that AT&T Mobility can continue to provide services on the Reservation after June 22, 2011, the date stipulated in the *AT&T/Verizon Wireless Asset Transfer Order*.<sup>38</sup>

### III. DISCUSSION

11. In this order, we consider whether AT&T Mobility meets the requirements of the Act and the Commission's rules to be designated as an ETC for services offered to Tribal members on the Pine Ridge Reservation in South Dakota. We note here that, although the Commission approved the acquisition by AT&T of the licenses and the wireless network serving the Reservation, there has been no evaluation as to whether AT&T Mobility meets the requirements to be designated as an ETC on the Reservation. Because we find that AT&T Mobility satisfies the applicable requirements to be designated an ETC on the Pine Ridge Reservation, it is not necessary to "transfer" Western Wireless's ETC designation to AT&T Mobility. We therefore designate AT&T Mobility as an ETC for the provision of service to Tribal members on the Reservation.<sup>39</sup>

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<sup>30</sup> See AT&T Mobility ETC Petition at 7–13.

<sup>31</sup> *Id.* at 13–17; see *supra* para. 4.

<sup>32</sup> See AT&T Mobility ETC Petition at 7.

<sup>33</sup> See Oglala Sioux Tribe Comments at 1; Oglala Sioux Tribe Reply Comments at 1.

<sup>34</sup> Oglala Sioux Tribe Reply Comments at 1.

<sup>35</sup> See Oglala Sioux Tribe Comments at 2; Oglala Sioux Tribe Reply Comments at 1–4.

<sup>36</sup> See Oglala Sioux Tribe Comments at 2.

<sup>37</sup> Letter from Joan Marsh, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 4 (filed Jan. 31, 2011).

<sup>38</sup> *Id.* at 3.

<sup>39</sup> We note that AT&T Mobility originally requested that the effective date of its ETC designation be June 22, 2010, the day that the AT&T/Verizon Wireless transaction closed. See AT&T Mobility ETC Petition at 3 (stating that June 22, 2010 is the day on which AT&T Mobility "began acting as an ETC to the tribal members on the Reservation"). Because AT&T Mobility voluntarily withdrew this request on May 5, 2011, we do not rule on this aspect of AT&T Mobility's petition. See Letter from Cathy Carpino, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed May 5, 2011). As a result, AT&T Mobility's ETC designation for the Pine Ridge Reservation in South Dakota shall be effective upon release of this order. 47 C.F.R. § 1.102.

**A. Jurisdiction**

12. The Act provides for either this Commission or a state commission to designate ETCs.<sup>40</sup> We conclude that we have jurisdiction to make the ETC designation in this case. First, AT&T Mobility has consented to the Tribe's regulatory authority.<sup>41</sup> Second, we note that the South Dakota Commission has not contested the authority of the Commission to consider AT&T Mobility's ETC designation petition, and there is no suggestion that the state's interests have changed since the Commission last considered them in 2001.<sup>42</sup> We conclude, therefore, that the South Dakota Commission lacks jurisdiction to consider AT&T Mobility's ETC designation petition for the provision of service to Tribal members residing on the Pine Ridge Reservation and that the Commission may consider that petition on the merits.

**B. Analysis of Eligibility Requirements**

13. As discussed in detail below, we find that AT&T Mobility meets the requirements of section 214 of the Act and the Commission's rules for the requested ETC designation.

14. *Offering the Services Designated for Support.* We conclude that AT&T Mobility has demonstrated through its filing and certifications that it now offers, or will offer upon obtaining designation as an ETC, the services supported by the federal universal service support mechanisms. Specifically, AT&T Mobility certifies that it now provides, or will provide upon designation, the services and functionalities enumerated in section 54.101(a) of the Commission's rules.<sup>43</sup> In addition, AT&T Mobility has demonstrated that it will offer throughout its service area supported services using its existing network infrastructure or a combination of its own facilities and resale of another carrier's services in compliance with section 214(e)(1)(A) of the Act.<sup>44</sup> We disagree with the Tribe's argument that because AT&T and the Tribe have not "defined the type of service provided, the prices, and the locations on the Pine Ridge Indian Reservation," the Bureau should reject AT&T Mobility's assertion that it offers the services and functionalities supported by the federal universal service fund.<sup>45</sup> AT&T Mobility is able to provide the services supported by the federal universal service support mechanisms and has provided such services on the Reservation since June 22, 2010.<sup>46</sup>

15. *Advertising the Supported Services.* AT&T Mobility has demonstrated that it will satisfy the requirement of section 214(e)(1)(B) of the Act by advertising the availability of supported services and related charges using media of general distribution, including television, radio, newspaper, magazine, other print advertisements, direct mailings, bill inserts and the Internet.<sup>47</sup> We disagree with the Tribe's argument that the Bureau should reject AT&T Mobility's assertion that it will advertise the availability of and charges for the universal service offerings because AT&T and the Tribe have not defined the type of service provided.<sup>48</sup> As discussed below, we find that reliance on the commitments made by AT&T

<sup>40</sup> 47 U.S.C. § 214(e)(2), (e)(6). The Act was amended to include section 214(e)(6) to provide a venue for ETC designation of carriers not subject to the jurisdiction of a state commission, including carriers operating on Tribal lands. See, e.g., 143 Cong. Rec. S12568 (daily ed. Nov. 13, 1997) (colloquy between Senators Daschle and McCain) (discussing necessity for enactment of section 214(e)(6) of the Act to ensure carriers would have a forum to obtain a determination whether they met the ETC requirements of the Act).

<sup>41</sup> AT&T Mobility Petition at 7.

<sup>42</sup> See *supra* note 20.

<sup>43</sup> AT&T Mobility ETC Petition at 8–12; see 47 C.F.R. § 54.101.

<sup>44</sup> AT&T Mobility ETC Petition at 12 & Exh. A; see 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

<sup>45</sup> Oglala Sioux Tribe Comments at 3.

<sup>46</sup> See AT&T Mobility Petition at 2.

<sup>47</sup> AT&T Mobility Petition at 12–13; see 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

<sup>48</sup> Oglala Sioux Tribe Reply Comments at 3–4.



Mobility in its petition is reasonable.<sup>49</sup> Moreover, once designated as an ETC, if the Commission finds that AT&T Mobility has failed to meet its obligations under the Act, the Commission rules, or this order, the Commission may take certain action, including revocation of AT&T Mobility's ETC designation. AT&T Mobility also provides that it will publicize the availability of Lifeline and Link Up throughout its ETC designated service area.<sup>50</sup>

16. *Additional Eligibility Requirements.* AT&T Mobility has also agreed to satisfy additional obligations that the Commission requires before designating a carrier as an ETC. AT&T Mobility has committed to providing service to any requesting customers within its designated service area,<sup>51</sup> has committed to follow "generally" the five-year service quality plan previously submitted by Alltel detailing proposed improvements to its network,<sup>52</sup> and has demonstrated its ability to remain functional in emergency situations.<sup>53</sup> AT&T Mobility also has committed to complying with consumer protection and service quality standards, as well as with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service,<sup>54</sup> and offering local usage plans among its universal service offerings.<sup>55</sup> AT&T Mobility also has acknowledged that it may be required to provide consumers with equal access to long-distance carriers.<sup>56</sup>

### C. Public Interest Analysis

17. We conclude that it is consistent with the public interest, convenience, and necessity to designate AT&T Mobility as an ETC for services offered to the Tribal members residing on the Pine Ridge Reservation. We conclude that AT&T Mobility has satisfied its burden of proof in establishing that granting the ETC designation will benefit Tribal consumers and is in the public interest.<sup>57</sup>

18. We find that AT&T Mobility's universal service offering will provide a variety of benefits to consumers, including increased consumer choice and improved quality of service. For example, universal service support will enable AT&T Mobility to construct facilities and provide wireless services that may not otherwise exist on the Reservation.<sup>58</sup> Moreover, the mobility of AT&T Mobility's wireless service will provide additional benefits to consumers on the Reservation.<sup>59</sup> For example, access

<sup>49</sup> See *infra* para. 24.

<sup>50</sup> AT&T Mobility Petition at 13; see 47 C.F.R. §§ 54.405(b), 54.411(d).

<sup>51</sup> AT&T Mobility Petition at 13; see 47 C.F.R. § 54.202(a)(1)(i).

<sup>52</sup> AT&T Mobility Petition at 14; see *supra* para. 8 (AT&T commits to build a 3G HSPA broadband wireless network on the Reservation and transition the divestiture CDMA network subscribers living within the boundaries of the Reservation to the 3G HSPA network within 12 months of the closing of the transaction); see also 47 C.F.R. § 54.202(a)(1)(ii).

<sup>53</sup> AT&T Mobility Petition at 15–16; see 47 C.F.R. § 54.202(a)(2).

<sup>54</sup> AT&T Mobility Petition at 16; see 47 C.F.R. § 54.202(a)(3).

<sup>55</sup> AT&T Mobility Petition at 17; see 47 C.F.R. § 54.202(a)(4).

<sup>56</sup> AT&T Mobility Petition at 17; see 47 C.F.R. § 54.202(a)(5).

<sup>57</sup> See *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1574–75, para. 26 (2004); *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 Rcd 6422, 6431, para. 20 (2004). In determining whether the public interest is served in an ETC petition, the Commission places the burden on the ETC applicant. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6390, para. 44 (2005) (*ETC Designation Order*).

<sup>58</sup> See AT&T Mobility ETC Petition at 18–19.

<sup>59</sup> *Id.* at 20.

to wireless service will mitigate the health and safety risks associated with living and working in a remote and rural location, where consumers must often drive significant distances for work, school, medical attention, or other needs.<sup>60</sup> Access to wireless communications services will also help ensure public safety.<sup>61</sup> AT&T Mobility will also provide all of its customers with access to emergency services that are vital to those living in remote communities.<sup>62</sup>

19. The Commission has previously recognized that Tribal areas often experience particularly low levels of subscribership because of the very high cost of service, inadequate telecommunications infrastructure, and a lack of competitive service providers.<sup>63</sup> We therefore disagree with the Tribe that granting AT&T Mobility's petition would not serve the public interest.<sup>64</sup> We also disagree with the South Dakota Telecommunications Association's comments that allowing AT&T to receive universal service funds would undermine the Commission's efforts to remedy the growth of the high-cost universal service support mechanism.<sup>65</sup> The benefits of the wireless telecommunications on the Reservation have previously been documented.<sup>66</sup> We believe that any Commission remedy to address universal service fund growth affecting Tribal lands should be addressed as part of comprehensive reform.<sup>67</sup> At this time, we find that the benefits of designating AT&T Mobility as an ETC for the remote community of the Reservation, the specific type of area that the universal service fund was designed to support, outweigh any concerns regarding allowing AT&T Mobility to receive such support.

20. Finally, because AT&T Mobility is requesting to serve (without modification) a service area previously designated by the Commission, we find that creamskimming is not a significant concern here.<sup>68</sup> We, therefore, find that designating AT&T Mobility as an ETC for the Tribal members on the Pine Ridge Reservation is in the public interest.

#### **D. Designated Service Area**

21. We designate AT&T Mobility as an ETC for the Tribal members residing on the Pine Ridge Reservation as provided in the Appendix.

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *See id.*; *ETC Designation Order*, 20 FCC Rcd at 6391, para. 44; *see also Twelfth Report and Order*, 15 FCC Rcd at 12212, para. 3.

<sup>63</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12220, para. 20; *see also* Federal Communications Commission, Connecting America: The National Broadband Plan at 152 (rel. Mar. 16, 2010), *available at* <http://www.broadband.gov/plan/> (stating that "[m]any Tribal communities face significant obstacles to the deployment of broadband infrastructure").

<sup>64</sup> Oglala Sioux Tribe Reply Comments at 3.

<sup>65</sup> South Dakota Telecommunication Comments at 2, 4–5.

<sup>66</sup> *See supra* para. 19.

<sup>67</sup> *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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (rel. Feb. 9, 2011).

<sup>68</sup> A carrier "creamskims" when it serves only those customers that are least expensive to serve. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881–82, para. 189 (1997) (subsequent history omitted).



**E. Regulatory Oversight**

22. Consistent with Commission rules, AT&T Mobility certified in its petition that it will use all of its federal high-cost support “for the provision, maintenance, and upgrading of facilities and services for which the support is intended” in the areas in which the company is designated as an ETC.<sup>69</sup> A newly designated ETC is eligible to receive support as of the effective date of its designation as an ETC, provided that it submits the data required by section 54.307(b) of the Commission’s rules within 60 days of the effective date. Therefore, if AT&T Mobility files the required data within the 60-day period, the company will be eligible to receive support as of the effective date of its designation. We direct AT&T Mobility to make all required filings with the Universal Service Administrative Company (USAC) under Part 54 of the Commission’s rules so that it may be eligible to receive high cost support.<sup>70</sup> We also direct USAC to work with AT&T Mobility as necessary for AT&T Mobility to make the required filings with USAC.

23. AT&T Mobility must meet and continue to meet each of the criteria required by the Commission and must submit information detailing how it has satisfied the criteria annually.<sup>71</sup> These records and documentation must be filed with the Commission and USAC on October 1 of each year.<sup>72</sup> As noted above, AT&T Mobility has also committed to meeting applicable consumer protection and service quality standards.<sup>73</sup>

24. We find that reliance on AT&T Mobility’s commitments is reasonable and consistent with the public interest, the Act, and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.<sup>74</sup> We conclude that fulfillment of these additional reporting requirements will further the Commission’s goal of ensuring that AT&T Mobility satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.<sup>75</sup>

25. We note that the Commission may institute an inquiry on its own motion to examine any ETC’s records and documentation to ensure that the high-cost support it receives is being used “only for the provision, maintenance, and upgrading of facilities and services” in the areas where it is designated as an ETC.<sup>76</sup> AT&T Mobility must provide such records and documentation to the Commission and USAC upon request. We further emphasize that, if AT&T Mobility fails to fulfill the requirements of the Act, the Commission’s rules, or the terms of this Order after it begins receiving universal service support, the Commission may exercise its authority to revoke AT&T Mobility’s ETC designation.<sup>77</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>78</sup>

<sup>69</sup> AT&T Mobility Petition at Exh. E; *see also* 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314.

<sup>70</sup> *See generally* 47 C.F.R. Part 54.

<sup>71</sup> *See* 47 C.F.R. §§ 54.202(a), 54.209; *see supra* para. 4.

<sup>72</sup> *See ETC Designation Order*, 20 FCC Rcd at 6401–02, paras. 68–69; *see also* 47 C.F.R. §§ 54.202(a), 54.209.

<sup>73</sup> AT&T Mobility Petition at 16.

<sup>74</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417–18 (5th Cir. 1999).

<sup>75</sup> 47 U.S.C. § 214(e).

<sup>76</sup> 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

<sup>77</sup> *See Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); *see also* 47 U.S.C. § 254(e).

<sup>78</sup> *See* 47 U.S.C. § 503(b).

**IV. ANTI-DRUG ABUSE ACT CERTIFICATION**

26. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>79</sup> AT&T Mobility has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>80</sup> We find that AT&T Mobility's certification satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001–1.2003 of the Commission's rules.

**V. ORDERING CLAUSES**

27. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, 47 U.S.C. § 214(e)(6), and pursuant to authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), AT&T Mobility LLC IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER to serve Tribal members residing on the Pine Ridge Reservation in South Dakota, to the extent described herein.

28. IT IS FURTHER ORDERED that AT&T Mobility LLC SHALL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2011, as part of its annual reporting requirements.

29. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED by the Wireline Competition Bureau to the South Dakota Public Utilities Commission and the Universal Service Administrative Company.

30. IT IS FURTHER ORDERED that pursuant to section 1.102 of the Commission's rules, 47 C.F. R. § 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

<sup>79</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b); *see Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

<sup>80</sup> *See* AT&T Mobility Petition at 22 & Exh. A.

## APPENDIX

AT&T Mobility LLC's  
Designated Service Area

Wire Center	State	Incumbent Carrier	CLLI Code
Pine Ridge*	South Dakota	Golden West Telecommunications	PNRGSDXA
Kyle*	South Dakota	Golden West Telecommunications	KYLESDXA
Long Valley*	South Dakota	Golden West Telecommunications	LGVYSDXA
Interior*	South Dakota	Golden West Telecommunications	INTRSDXA
Martin*	South Dakota	Golden West Telecommunications	MARTSDXA
Gordon*	South Dakota	Great Plains Communications	GRDNNERQ

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\* Only those areas within the boundaries of the Pine Ridge Reservation.