

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Petitions for Designation as an Eligible Telecommunications Carrier For Purposes of Participation in Tribal Mobility Fund Phase I	)	WT Docket No. 10-208
	)	
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	)	
	)	

**ORDER**

**Adopted: February 18, 2014**

**Released: February 18, 2014**

By the Chief, Wireline Competition Bureau and the Acting Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) conditionally designate NTUA Wireless, Inc. (NTUA Wireless) as an eligible telecommunications carrier (ETC) on the Navajo Nation located in Arizona, New Mexico, and Utah (Navajo Nation) for those areas on the Navajo Nation in which NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I.<sup>1</sup> In areas in which NTUA Wireless's designation becomes effective pursuant to the Tribal Mobility Fund, NTUA Wireless will be required to provide Lifeline services and satisfy other ETC obligations as described herein. We otherwise designate NTUA Wireless as a limited ETC, eligible to receive Lifeline-only support on the Navajo Nation in areas where NTUA Wireless does not receive support in the Tribal Mobility Fund Phase I.

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<sup>1</sup> See 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 the Tribal Mobility Fund Phase I (Auction 902) on the Navajo Nation, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 13-53 (filed Sept. 30, 2013) (Second Amended NTUA Wireless Petition); see also Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier on the Navajo Nation, WC Docket 09-197 (filed Mar. 3, 2011) (NTUA Wireless March 2011 Petition); Correction to ETC Petition of NTUA Wireless, LLC, WC Docket 09-197 (filed Aug. 18, 2011) (NTUA Wireless Petition Correction); Amendment to Petition of NTUA Wireless, LLC, for Designation as an Eligible Telecommunications Carrier for Lifeline Service and to Qualify for the Mobility Fund Phase I (Auction 901) on the Navajo Nation, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25 (filed Sept. 5, 2012).

2. The Federal Communications 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 development, and has a record of helping ensure that Tribal Nations have adequate access to communications services.<sup>2</sup> Tribal governments play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Owning and operating critical communications infrastructure empowers Tribal Nations to protect the health and safety of consumers living on Tribal lands, to spur local economic development, to preserve Tribal language and culture, and to further the education of residents through federal distance education programs. Given the difficulties faced in these remote, underserved Tribal lands, and the upcoming Tribal Mobility Fund Phase I auction, the Bureaus recognize the importance of universal service support to providing services to the residents of this Tribal Nation. We find that it is appropriate at this time to designate NTUA Wireless, a facilities-based provider offering service on Tribal lands, so that the company will know its ETC status prior to the Tribal Mobility Fund Phase I auction. Additionally, based on the facts presented, we believe that NTUA Wireless's offerings will benefit low-income consumers of the Navajo Nation.

## II. BACKGROUND

### A. ETC Designations Pursuant to the Communications Act

3. Section 254(e) of the Communications Act of 1934, as amended (Act), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”<sup>3</sup> Pursuant to section 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer the services supported by the federal universal service support 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 and must advertise the availability and charges for those services.<sup>4</sup>

4. Although state commissions have primary responsibility for designating ETCs,<sup>5</sup> that responsibility shifts to the FCC for a carrier “providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>6</sup> The FCC has established a framework for

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<sup>2</sup> *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080–81 (2000) (*Tribal Policy Statement*).

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> 47 U.S.C. § 214(e)(1)(A), (B).

<sup>5</sup> 47 U.S.C. § 214(e)(2); 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, 12255, para. 93 (2000) (*Twelfth Report and Order*), recon. sub nom. *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 (2003) (*Tribal Recon. Order*).

<sup>6</sup> 47 U.S.C. § 214(e)(6); see, e.g., *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 Rcd 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 Rcd 6422 (2004) (*Highland Cellular Order*), both orders aff'd sub nom. *Federal-State Joint Board on Universal Service; Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular*, (continued . . .)

determining whether a state commission or the FCC itself has jurisdiction to designate ETCs on Tribal lands.<sup>7</sup> First, a carrier serving Tribal lands must petition the FCC for a determination on whether the state has jurisdiction over the carrier.<sup>8</sup> The FCC 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 FCC has jurisdiction to designate the carrier as an ETC<sup>9</sup> and will proceed to consider the merits of the carrier's petition for designation.<sup>10</sup>

5. Under 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>11</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>12</sup>

### **B. Commission Requirements for ETC Designation**

6. A petitioner seeking ETC designation from the FCC must file a petition that includes: (1) a certification and brief statement of supporting facts demonstrating that it is not subject to the jurisdiction of a state commission; (2) a certification that it offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that it offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;<sup>13</sup> (4) a description of how it advertises the availability of the supported services and the charges therefor using media of general distribution; (5) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests to be designated as an ETC;<sup>14</sup> and (6) a certification that neither it, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>15</sup>

7. Consistent with relevant service obligations, an entity designated as an ETC eligible for high-cost support must submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area, estimating the area and population that will be served as a result.<sup>16</sup> 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

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*Inc. Designations as Eligible Telecommunications Carriers in the Commonwealth of Virginia*, CC Docket No. 96-45, Order on Reconsideration, 27 FCC Rcd 15383 (2012).

<sup>7</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12265–69, paras. 115–27; *Tribal Recon. Order*, 18 FCC Rcd at 10964, para. 11 n.28.

<sup>8</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12265–69, paras. 115–27.

<sup>9</sup> *Id.* at 12266–67, paras. 120–22.

<sup>10</sup> *Id.* at 12265, para. 115.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948-49 (1997) (*Section 214(e)(6) Public Notice*).

<sup>14</sup> *But see Telecommunications Carriers Eligible for Support*, WC Docket Nos. 09-197 and 11-42, Memorandum Opinion and Order, 28 FCC Rcd 4859 (2013) (*Lifeline Service Area Redefinition Forbearance Order*) (forbearing from service area redefinition requirements for Lifeline-only ETCs).

<sup>15</sup> *See Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948-49.

<sup>16</sup> 47 C.F.R. § 54.202(a)(1)(ii).

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>17</sup>

8. Prior to designating a carrier as an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.<sup>18</sup> When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>19</sup> The Commission has delegated authority to the Wireline Competition Bureau to consider appropriate ETC designation requests.<sup>20</sup>

### C. Federal Universal Service Lifeline Support

9. The Lifeline program reduces the monthly cost of telecommunications service for qualifying low-income consumers. Under the Lifeline program ETCs receive \$9.25 of support per month for providing Lifeline service to eligible low-income consumers.<sup>21</sup> The program provides up to an additional \$25 per month in support to ETCs that provide Lifeline to eligible residents of Tribal lands.<sup>22</sup>

### D. Tribal Mobility Fund Phase I

10. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost component of the Universal Service Fund (USF) to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. To further achievement of that goal, the Commission created the Mobility Fund. In particular, the Commission provided that in Phase I of the Tribal Mobility Fund, it would award by reverse auction up to \$50 million in one-time support to immediately accelerate deployment of current and next generation networks providing mobile voice and broadband services in Tribal lands not presently covered by such networks.<sup>23</sup> The Commission will offer Tribal Mobility Fund Phase I support through Auction 902, which is scheduled for February 25, 2014.

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<sup>17</sup> See 47 C.F.R. § 54.202(a).

<sup>18</sup> See 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(b); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6388-96, paras. 40-57 (2005) (*ETC Designation Order*); *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para.

21. The Commission places the burden on the ETC applicant to demonstrate that designation will serve the public interest. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

<sup>19</sup> See *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (Wireline Comp. Bur. 2010).

<sup>20</sup> 47 C.F.R. § 54.207(e).

<sup>21</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012) (*Lifeline Reform Order*). The \$9.25 support amount on non-Tribal lands is an interim rate.

<sup>22</sup> *Id.* at 6663-64. Lifeline support is passed on to the subscriber by the ETC, which provides discounts to eligible households and receives reimbursements from the universal service fund for provision of such discounts. *Id.* at 6663.

<sup>23</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; Universal Service Reform-Mobility*

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11. In the auction for Tribal Mobility Fund Phase I support, applicants will bid for the amount of support they need to meet the Tribal Mobility Fund Phase I service and other public interest obligations in the eligible census blocks covered by the geographic area on which they bid. Applicants, except for Tribally-owned and controlled entities, must be designated as ETCs in the areas on which they wish to bid prior to filing their auction applications.<sup>24</sup> In connection with the Tribal Mobility Fund, the Bureaus have delegated authority to grant or deny ETC designation petitions.<sup>25</sup> An ETC designation may be conditional subject to receipt of Tribal Mobility Fund Phase I support.<sup>26</sup>

#### **E. NTUA Wireless Petition**

12. NTUA Wireless originally filed a request seeking designation as an ETC within the Navajo Nation on March 3, 2011, prior to the Commission's reforms in the *USF/ICC Transformation Order*.<sup>27</sup> On March 30, 2011, the Wireline Competition Bureau released a public notice seeking comment on the NTUA Wireless March 2011 Petition.<sup>28</sup> In 2012, the Bureaus released a Protective Order so that interested parties might have a means of reviewing information redacted from publicly available filings related to NTUA Wireless's petition.<sup>29</sup>

13. On September 30, 2013, NTUA Wireless provided additional information and clarified its request to be designated as an ETC in a proposed area covering all of the Navajo Nation.<sup>30</sup> In part, NTUA Wireless clarified that it seeks to participate in Auction 902, the upcoming competitive bidding for support offered in Tribal Mobility Fund Phase I.<sup>31</sup> NTUA Wireless states that it meets all of the eligibility

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*Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17819-20, para. 481 (2011) (*USF/ICC Transformation Order*) (subsequent history omitted).

<sup>24</sup> See *id.* at 17798-99, paras. 388-92; 47 C.F.R. § 54.1003. A Tribal entity may participate in the auction provided it has applied for designation as an ETC for the relevant area and that application is still pending. Any such entity must still receive designation prior to support being awarded. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491; 47 C.F.R. § 54.1004(a).

<sup>25</sup> See 47 C.F.R. §§ 0.91(p) (functions of Wireline Competition Bureau), 0.131(r) (functions of Wireless Telecommunications Bureau), 0.291 (delegation of authority to Wireline Competition Bureau), 0.331 (delegation of authority to Wireless Telecommunications Bureau); see also *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22947 (express delegation with respect to ETC designations to predecessor to Wireline Competition Bureau); *Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 2054 (Wireless Telecom. Bur. and Wireline Comp. Bur. 2012).

<sup>26</sup> 47 C.F.R. § 54.1003(a); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99 paras. 389, 392.

<sup>27</sup> See generally NTUA Wireless March 2011 Petition.

<sup>28</sup> *Wireline Competition Bureau Seeks Comment on NTUA Wireless, LLC Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket No. 09-197, Public Notice, 26 FCC Rcd 4993 (Wireline Comp. Bur. 2011).

<sup>29</sup> *Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, Protective Order, 27 FCC Rcd 5281 (Wireless Telecom. Bur. and Wireline Comp. Bur. 2012). The Bureaus also recently adopted a protective order limiting access to proprietary and confidential information that may be filed in WC Docket No. 09-197 and WT Docket No. 10-208 in connection with petitions filed for designation as an ETC for purposes of participation in any Mobility Fund auction. See *Petitions For Designation As An Eligible Telecommunications Carrier For Purposes of Participation in Mobility Fund Auctions*, WC Docket No. 09-197, WT Docket No. 10-208, Protective Order, 28 FCC Rcd 318 (Wireless Telecom. Bur. and Wireline Comp. Bur. 2013).

<sup>30</sup> See generally Second Amended NTUA Wireless Petition.

<sup>31</sup> See *id.* at 1, 40-42.

requirements for ETC designation.<sup>32</sup> NTUA Wireless 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 and other facilities; and (3) advertise the availability of the supported services and associated charges using media of general distribution.<sup>33</sup>

### III. DISCUSSION

14. We find that NTUA Wireless, a facilities-based provider offering service on Tribal lands, has satisfied the Commission's requirements to be designated as an ETC on the Navajo Nation pursuant to the terms of this Order.<sup>34</sup> We therefore conditionally designate NTUA Wireless as an ETC for those areas on the Navajo Nation in which NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I. In areas where this designation becomes effective pursuant to the Tribal Mobility Fund, NTUA Wireless will be required to provide Lifeline services and satisfy other ETC obligations. Finally, we otherwise designate NTUA Wireless as a limited ETC eligible to receive Lifeline-only support on the Navajo Nation should NTUA Wireless not receive support in Tribal Mobility Fund Phase I. NTUA Wireless's ETC designation is conditioned on its compliance with the Commission's rules and the representations and commitments made in its petition.

#### A. Commission Authority to Perform the ETC Designation

15. NTUA Wireless's petition seeks ETC designation to serve the entire Navajo Nation, including the exterior boundaries of the Navajo Nation, Eastern Navajo Agency and the island chapters of To'hajilee, Alamo, Ramah, and Jeddito.<sup>35</sup> NTUA Wireless contends that the Commission has jurisdiction because it is a Tribally-owned carrier subject to the jurisdiction of the Navajo Nation, and because states, including Arizona, Utah, and New Mexico do not have jurisdiction over a Tribally-owned carrier providing service to the Navajo Nation.<sup>36</sup>

16. Inherent Tribal sovereignty, guarded by treaties, federal law, executive orders, and numerous court decisions, dictates that the government of the Navajo Nation exercises authority over the Tribal commercial activities on its land.<sup>37</sup> The Navajo Nation Telecommunications Regulatory

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<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Id.* at 10-15.

<sup>34</sup> See Appendix for a list of the service areas in which NTUA Wireless will provide Lifeline services.

<sup>35</sup> See NTUA Wireless March 2011 Petition at 17 n.30, 20-21, Exhs. D-E; Ex Parte Letter from Seth T. Lucia, Counsel to NTUA Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-197, at 1-2, Attach. 1, Exh. A (filed Jan. 15, 2014) (clarifying NTUA Wireless's requested designation area and filing a letter of non-opposition from Hopi Telecommunications, Inc.) (NTUA Wireless Jan. 15, 2014 Ex Parte Letter); see also NTUA Wireless Reply Comments at 6; NNTRC Comments at 7, Attach. 2-5; NNTRC Reply Comments at Exh. B at 3; NTUA Wireless Petition Correction. The request excludes the Hopi Indian Reservation, which is located entirely within the boundaries of the Navajo Indian Reservation. See NTUA Wireless Jan. 15, 2014 Ex Parte Letter at Attach. 1, Exh. A; see also Second Amended NTUA Wireless Petition at 39-40, Exh. E; Ex Parte Letter from Seth T. Lucia, Counsel to NTUA Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-197, at 5 (filed March 19, 2013) (NTUA Wireless March 19, 2013 Ex Parte Letter).

<sup>36</sup> See NTUA Wireless March 2011 Petition at 1-14; see also Second Amended NTUA Wireless Petition at 8-10; NTUA Wireless Reply Comments at 2-4.

<sup>37</sup> See generally Treaty of Fort Sumner with the Navajo Tribe, June 1, 1868, 15 stat. 667. See also, e.g., *The Indian Financing Act of 1974*, 25 U.S.C. § 1451 (1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983); *Twelfth Report and Order*, 15 FCC Rcd 12208; NTUA Wireless March 2011 Petition at 9-11; NNTRC Comments at 2-6; *Tribal Policy Statement*, 16 FCC Rcd at 4080.

Commission (NNTRC) was established by the Navajo Nation with authority to assert jurisdiction over matters of the telecommunications industry and services on the Navajo Nation.<sup>38</sup> Additionally, the Navajo Tribal Utility Authority (NTUA) is a governmental non-profit enterprise established and Tribally-owned by the Navajo Nation for the purpose of promoting expansion of utilities on the Navajo Nation, including telecommunications services.<sup>39</sup> NTUA Wireless is Navajo owned and submits to the jurisdiction over its operations by the NNTRC.<sup>40</sup> As such, NTUA Wireless is subject to the laws and jurisdiction of the Navajo Nation.<sup>41</sup> Therefore, we find that NTUA Wireless is a Tribally-owned commercial mobile radio service provider subject to the laws and jurisdiction of the Tribal authority of the Navajo Nation. Further, the Commission has previously exercised jurisdiction to designate Tribally-owned carriers as ETCs in these states.<sup>42</sup> Moreover, no state commission contested the authority of the Commission to consider NTUA Wireless's ETC designation petition.<sup>43</sup>

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<sup>38</sup> See NNTRC Comments at 2-5; NNTRC Reply Comments at 1-2, Exh. B.

<sup>39</sup> See About the NTUA, Navajo Tribal Utility Authority, available at <http://www.ntua.com/> (last visited Feb. 11, 2014); see also NTUA Wireless March 2011 Petition at 5-7; Second Amended NTUA Wireless Petition at 5 n.11; NTUA Wireless March 19, 2013 Ex Parte Letter at 2-3; NTUA Wireless Jan. 15, 2014 Ex Parte Letter at Attach. 2 at 4-7 (Overview of NTUA and Commnet Wireless, LLC Joint Venture, Presentation to FCC Tribal Liaison Office, Jan. 4, 2011).

<sup>40</sup> See Ex Parte Comments of NNTRC, WC Docket 09-197 (filed Jan. 14, 2014) (attaching a Certificate of Eligibility by the Navajo Nation Business Regulatory Department deeming NTUA Wireless a Navajo owned business under Navajo Law and, based on the majority interest held by NTUA, a Navajo Enterprise); see also NTUA Wireless March 2011 Petition at 1-3, 9-11; Second Amended NTUA Wireless Petition at 1, 5, 8-10; NTUA Wireless Reply Comments at 1-3. See also generally NTUA Wireless March 19, 2013 Ex Parte Letter; NNTRC Comments at 6-7, Attach. at 1-2; NNTRC Reply Comments at 1-2, Exh. B.

<sup>41</sup> See NTUA Wireless March 19, 2013 Ex Parte Letter; NTUA Wireless Reply Comments at 1.

<sup>42</sup> See *Designation of Hopi Telecommunications, Inc. as an Eligible Telecommunications Carrier for the Hopi Reservation*, CC Docket No. 96-45, Memorandum and Order, 22 FCC Rcd 1866 (2007); *Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Apache Telecommunications Utility, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214 (e)(6) of the Communications Act*, AAD/USB File No. 98-28, Memorandum Opinion and Order, 13 FCC Rcd 4547 (1998). But see *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2680 para. 12 n.46 (2011) (*Native Nations NOI*) (stating that Mescalero Apache Telecommunications, Inc. (MATI), a Tribally-owned entity of the Mescalero Tribe, received its ETC designation from the New Mexico Public Regulation Commission (NMPRC) upon its petition to, and submission to, the jurisdiction of the NMPRC); see also, e.g., Letter from Jaime Flores, Operations Manager, MATI, to Susan Oberlander, Telecommunications Bureau, NMPRC, NMPRC Case No. 03-00198-UT, Doc. No. 1011235 (Aug. 12, 2004) (requesting notification from NMPRC to FCC of ETC eligibility status).

<sup>43</sup> NNTRC Reply Comments at 2, Exh. B. See *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas*, WC Docket No. 09-197, Memorandum Opinion and Order, 25 FCC Rcd 12388, 12393, para. 14 (Wireline Comp. Bur. 2010) ("Neither state commission contested the authority of the Commission to consider Standing Rock's ETC designation petition"); see also *Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas; Petition for Reconsideration of Standing Rock Telecommunications, Inc.'s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation*, WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160, 9163, para. 10 n.27 (2011) ("No party argues that either the North Dakota Commission or the South Dakota Public Utilities Commission has jurisdiction to designate Standing Rock, a Tribally owned, Tribally operated carrier that seeks to serve its own reservation as an ETC").

17. Accordingly, we conclude that the Arizona, New Mexico, and Utah state commissions lack jurisdiction to consider NTUA Wireless's ETC designation petition, and that we may consider the petition for ETC designation on the merits. We conclude that we may, and should, exercise our jurisdiction to consider NTUA Wireless's petition for ETC designation.

### B. Designated Service Area

18. First, we conditionally designate NTUA Wireless as an ETC on the Navajo Nation in those areas in which NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I.<sup>44</sup> The Commission provided in the *USF/ICC Transformation Order* that a party must be an ETC to be eligible to compete for support available in Mobility Fund, of which Tribal Mobility Fund Phase I is a part.<sup>45</sup> The Commission further provided that a party might meet this eligibility requirement with an ETC designation that was conditioned upon the receipt of Mobility Fund support.<sup>46</sup> In other words, the Commission would accept as sufficient for participation in the competitive bidding for Tribal Mobility Fund Phase I support an ETC designation that is conditioned upon the party becoming authorized to receive Tribal Mobility Fund Phase I support as a result of the bidding.

19. Depending upon the outcome of Auction 902, NTUA Wireless might become authorized for Tribal Mobility Fund Phase I support in only a portion of a rural telephone company study area.<sup>47</sup> The terms of section 214(e)(5) of the Act require that an ETC's service area conform to the study area of any rural telephone company within that area.<sup>48</sup> The Bureaus, however, recently issued an Order forbearing from application of the conformance requirement with respect to petitions for conditional designation for purposes of participating in Tribal Mobility Fund Phase I.<sup>49</sup> Accordingly, NTUA Wireless's ETC service area may be limited to the area in which it receives support, in the event that NTUA Wireless becomes authorized to receive support in only a portion of a relevant rural telephone company study area.

20. Next, we designate NTUA Wireless as a limited ETC eligible to receive Lifeline-only support on the Navajo Nation should NTUA Wireless not receive support in Tribal Mobility Fund Phase I. NTUA Wireless seeks designation as an ETC, eligible only for Lifeline support, throughout its licensed

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<sup>44</sup> We note that NTUA Wireless identifies wire centers in its petition. *See* Second Amended NTUA Wireless Petition at Exh. E. Tribal Mobility Fund Phase I support, however, will be authorized based on census blocks. *Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902*, AU Docket No. 13-53, Public Notice, 28 FCC Rcd 11628, 11633, para. 12 (Wireless Telecom. Bur. and Wireline Comp. Bur. 2013). Accordingly, NTUA Wireless's final Tribal Mobility Fund I service area will be defined by reference to census blocks, rather than by wire centers; in those areas of the Navajo Nation in which NTUA Wireless does not become authorized to receive support in Tribal Mobility Fund Phase I, it is authorized, pursuant to this Order, to offer Lifeline to qualified consumers in the wire centers listed in the Appendix.

<sup>45</sup> 47 C.F.R. § 54.1003(a); *see USF/ICC Transformation Order*, 26 FCC Rcd at 17798–99, 17809, paras. 389, 392, 439.

<sup>46</sup> 47 C.F.R. § 54.1003(a); *see USF/ICC Transformation Order*, 26 FCC Rcd at 17799, para. 391 n.665.

<sup>47</sup> *See* 47 U.S.C. § 153(44) (defining “rural telephone company”).

<sup>48</sup> 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

<sup>49</sup> *Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, as Amended; Universal Service Reform – Mobility Fund*, WC Docket No. 09-197, WT Docket No. 10-208, Order, 28 FCC Rcd 16407 (Wireline Comp. Bur. and Wireless Telecom. Bur. rel. Dec. 4, 2013). The Commission previously adopted a limited forbearance from those provisions with respect to ETC designations conditioned on receipt of support in Auction 901, the Mobility Fund Phase I auction. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Report and Order, 27 FCC Rcd 7856 (2012). *See also* Frontier Comments (opposing the redefinition request in NTUA Wireless's March 2011 Petition). Because the Commission has forbore from the service area redefinition process, we find it is unnecessary to address Frontier's comments.



service areas on the Navajo Nation in which it does not become authorized to receive Tribal Mobility Fund Phase I support.<sup>50</sup> NTUA Wireless has provided a detailed description of the relevant geographic area by specifying in the NTUA Wireless Petition wire centers within which it may seek support.<sup>51</sup> We conclude that a Lifeline only service area designated by these means meets the Commission's requirement.

### C. Eligibility Requirements

21. *Offering the Services Designated for Support.* An applicant seeking ETC designation must certify that it offers or will offer all of the services designated for support by the Commission pursuant to section 254(c) of the Act.<sup>52</sup> NTUA Wireless has established through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.<sup>53</sup>

22. With respect to areas in which it will be a Lifeline-only ETC, NTUA Wireless has demonstrated through its filings and certifications that it will offer upon designation as a limited ETC the voice telephony services supported by the Lifeline program.<sup>54</sup> NTUA Wireless states that it will provide the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout its licensed service areas.<sup>55</sup>

23. *Offering the Supported Services Using a Carrier's Own Facilities.* An applicant seeking ETC designation must certify that, upon designation as an ETC, it will offer the supported service using either its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>56</sup> NTUA Wireless has certified that it offers or will offer the supported services using its own facilities or a combination of its own and other facilities.<sup>57</sup> NTUA Wireless states that it will offer the supported services using "its own facilities and resale or roaming if necessary."<sup>58</sup> NTUA Wireless states it is a facilities-based wireless telecommunications carrier with its own switching, trunking, cellular sites and network equipment.<sup>59</sup> We find NTUA Wireless's showing to be sufficient.

24. *Advertising Supported Services.* An applicant seeking ETC designation must advertise the availability of the supported services and the charges thereof using media of general distribution and provide a description of how it will do so.<sup>60</sup> NTUA Wireless has committed to advertise the availability

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<sup>50</sup> The Commission has similarly forborne from the service area redefinition requirements for Lifeline-only ETCs. See *Lifeline Service Area Redefinition Forbearance Order*.

<sup>51</sup> Second Amended NTUA Wireless Petition at Exh. E.

<sup>52</sup> See 47 U.S.C. § 214(e)(1)(A); *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22948.

<sup>53</sup> Second Amended NTUA Wireless Petition at 11-15, Exh. A.

<sup>54</sup> See *id.* at 11, Exh. A.

<sup>55</sup> See Second Amended NTUA Wireless Petition at Exh. A. Voice telephony services include: (i) voice grade access to the public switched telephone network, (ii) local usage, (iii) access to emergency services and (iv) toll limitation for qualifying Low-Income Consumers, as set forth in 47 C.F.R. § 54.101. In the *Lifeline Reform Order*, the Commission adopted rules providing that toll limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See *Lifeline Reform Order*, 27 FCC Rcd at 6679, para. 49.

<sup>56</sup> Second Amended NTUA Wireless Petition at 11.

<sup>57</sup> *Id.*; see 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

<sup>58</sup> Second Amended NTUA Wireless Petition at 11.

<sup>59</sup> *Id.* at 11, 17.

<sup>60</sup> See 47 U.S.C. § 214(e)(1)(B); *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

of the supported services.<sup>61</sup> Consistent with the requirements of section 214(e)(1)(B), NTUA Wireless has committed to advertise the availability of the supported services and the related charges using the best means available to reach the population in its service area, thereby meeting the requirement of “using media of general distribution.”<sup>62</sup> NTUA Wireless has also committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.<sup>63</sup>

25. To increase accountability within the program and to target support where it is needed most, the Commission has adopted rules requiring ETCs to explain in their marketing material that Lifeline service is a government benefit, that the individual must be eligible to receive the benefit and that the consumer may receive no more than one benefit at a time from the program.<sup>64</sup> NTUA Wireless has indicated its commitment to comply with these Commission rules regarding marketing of Lifeline service.<sup>65</sup>

26. *Anti-Drug Abuse Act Certification.* An applicant for ETC designation must provide a certification that neither it nor any party to the application is subject to denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>66</sup> NTUA Wireless provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>67</sup> NTUA Wireless’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.

27. *Compliance with Applicable Service Requirements.* An applicant seeking ETC designation must certify that it will comply with all service requirements applicable to the support it receives.<sup>68</sup> NTUA Wireless has established through the required certifications and related filings that it meets the other requirements for ETC eligibility. NTUA Wireless has certified that it will comply with the service requirements applicable to the support that it receives.<sup>69</sup> Moreover, in conjunction with its request for designation in areas in which it may become authorized to receive Tribal Mobility Fund Phase I support, NTUA Wireless submitted a five-year plan containing the required information.<sup>70</sup> Our determination that NTUA Wireless has met these requirements takes into account the fact that, in the event that NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I, it must provide information to the Commission regarding its project plans to meet the Tribal Mobility Fund Phase I service requirements as part of its post-auction application for support. Further, NTUA Wireless will have to certify compliance with all requirements for receipt of Tribal Mobility Fund Phase I support prior to requesting the disbursement of any such support.<sup>71</sup> Should NTUA Wireless become authorized to receive Tribal Mobility Fund Phase I support, NTUA Wireless will be required to report certain information to the Commission, the Universal Service Administrative Company (USAC), and relevant State or Tribal authorities for the area in which it is designated as an ETC pursuant to section 54.1009 of

<sup>61</sup> See Second Amended NTUA Wireless Petition at 14-15.

<sup>62</sup> 47 U.S.C. § 214(e)(1)(B); see Second Amended NTUA Wireless Petition at 14-15.

<sup>63</sup> See Second Amended NTUA Wireless Petition at 14-15.

<sup>64</sup> See *Lifeline Reform Order*, 27 FCC Rcd at 6776–77, paras. 274–77; 47 C.F.R. § 54.405.

<sup>65</sup> See Second Amended NTUA Wireless Petition at 21-25.

<sup>66</sup> See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949 (citing 47 C.F.R. § 1.2002(a); 21 U.S.C. § 862).

<sup>67</sup> See Second Amended NTUA Wireless Petition at 46, Exh. G.

<sup>68</sup> See 47 C.F.R. § 54.202(a)(1)(i).

<sup>69</sup> See Second Amended NTUA Wireless Petition at 45.

<sup>70</sup> NTUA Wireless March 2011 Petition at Exh. C.

<sup>71</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.1008(e); see also Second Amended NTUA Wireless Petition at 45.

the Commission's rules.<sup>72</sup> In addition, NTUA Wireless has demonstrated its commitment to comply with the Commission's Lifeline rules, and specifically to comply with the rules regarding consumer enrollment and certification of eligibility.<sup>73</sup> NTUA Wireless will also be required to report certain information to the Commission, USAC, and relevant State or Tribal authorities for the area in which it is designated as an ETC pursuant to section 54.422 of the Commission's rules.<sup>74</sup>

28. *Ability to Remain Functional in Emergency Situations.* An applicant seeking ETC designation must demonstrate its ability to remain functional in emergency situations.<sup>75</sup> NTUA Wireless states that it has the ability to remain functional in emergency situations and has back-up power sufficient to ensure functionality in the designated service area without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.<sup>76</sup> We find that NTUA Wireless has demonstrated its ability to remain function in emergency situations.

29. *Satisfaction of Applicable Consumer Protection and Service Quality Standards.* An applicant seeking ETC designation must demonstrate that it will satisfy applicable consumer protection and service quality standards.<sup>77</sup> In particular, "[a] commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement," i.e., the final requirement of the preceding sentence.<sup>78</sup> NTUA Wireless has committed to providing applicable consumer protection and service quality standards by complying with the CTIA Consumer Code for Wireless Service.<sup>79</sup> We find that reliance on NTUA Wireless's commitments to meet these requirements is reasonable and consistent with the public interest and the Act.

30. *Financial and Technical Capability.* An applicant for ETC designation must demonstrate that it is financially and technically capable of providing Lifeline supported services.<sup>80</sup> NTUA Wireless states that it is owned by the Navajo Tribal Utility Authority and Commnet, a subsidiary of Atlantic Tele- Network Inc. (ATNI).<sup>81</sup> The Navajo Tribal Utility Authority has provided utility services to the Navajo Reservation since 1959 and ATNI provides Lifeline services in 6 states.<sup>82</sup> Additionally, NTUA Wireless certifies that it is financially and technically qualified to provide broadband services meeting the Commission's requirements.<sup>83</sup>

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<sup>72</sup> 47 C.F.R. § 54.1009(c).

<sup>73</sup> See Second Amended NTUA Wireless Petition at 21-33 (explaining how it will implement rules regarding certification of eligible consumers and re-certification, and providing an overview of employee training for the Lifeline program) and Exh. D (providing sample Lifeline certification forms); see also 47 C.F.R. § 54.410 (setting forth the Commission's rules on subscriber eligibility determination and certification); *Lifeline Reform Order*, 27 FCC Rcd at 6895, App. C (setting forth certification requirements for Lifeline subscribers).

<sup>74</sup> 47 C.F.R. § 54.422.

<sup>75</sup> See 47 C.F.R. § 54.202(a)(2).

<sup>76</sup> See Second Amended NTUA Wireless Petition at 17.

<sup>77</sup> See 47 C.F.R. § 54.202(a)(3).

<sup>78</sup> *Id.* The Cellular Telecommunications and Internet Association is now known as CTIA-The Wireless Association. We use its former name in this Order because it appears in the text of 47 C.F.R. § 54.202.

<sup>79</sup> See Second Amended NTUA Wireless Petition at 18.

<sup>80</sup> See 47 C.F.R. § 54.202(a)(4); see also *Lifeline Reform Order*, 27 FCC Rcd at 6818, para. 387.

<sup>81</sup> See Second Amended NTUA Wireless Petition at 18.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

31. *Information Regarding the Terms and Conditions of Lifeline Plans.* An applicant for ETC designation must submit information regarding the terms and conditions of any voice telephony plans it offer to Lifeline subscribers.<sup>84</sup> Consistent with compliance with this requirement, NTUA Wireless has submitted information concerning its proposed service offers.<sup>85</sup>

#### **D. Public Interest Analysis**

32. Prior to designating an ETC, we must also determine whether such a designation is in the public interest.<sup>86</sup> As discussed in more detail, we conclude that NTUA Wireless's participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. At the same time, we also condition the designation as a provider of Lifeline services on NTUA Wireless's compliance with the representations and commitments made in its petition as well as on the Commission's Lifeline rules.

33. The Navajo Nation is the largest Tribally-governed territory in the United States, comprised of over 26,000 square miles in rural and remote lands of northeastern Arizona, northwestern New Mexico, and southeastern Utah.<sup>87</sup> Approximately sixty percent of Navajo citizens, or approximately 180,000 people, live on the Reservation – a density of about 7 persons per square mile.<sup>88</sup> Navajo citizens often face extreme hardship and isolation, living far from towns and city centers and lacking access to many modern-day necessities.<sup>89</sup> For example, despite its continuing efforts to create a rural addressing system, the Navajo Nation still contains many areas, homes, chapter houses, and other dwellings that lack formal addresses.<sup>90</sup> This contributes to difficulties in obtaining services like U.S. Postal Service delivery and other federal government funded assistance programs. It also creates difficulties in implementing important emergency systems, such as 911 and E-911.<sup>91</sup> These limitations even further contribute to the health and safety concerns for Navajo citizens living in these lands.<sup>92</sup>

34. NTUA Wireless states that it intends, in the event that it obtains Tribal Mobility Fund Phase I funding in an area, to bring improved coverage and cost-effective wireless and broadband services to unserved and underserved lands of the Navajo Nation.<sup>93</sup> Further, NTUA Wireless states that it intends to employ Navajo citizens and that it will provide all of its customers with access to emergency services

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<sup>84</sup> See 47 C.F.R. § 54.202(a)(5).

<sup>85</sup> See Second Amended NTUA Wireless Petition at 19, Exh. B.

<sup>86</sup> See 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(b).

<sup>87</sup> Second Amended NTUA Wireless Petition at 7; NNTRC Comments at 1-2; *see also* Letter from Ben Shelly, President, The Navajo Nation, to Geoffrey Blackwell, Chief, Office of Native Affairs and Policy, Consumer and Governmental Affairs Bureau, Federal Communications Commission, WC Docket Nos. 03-109 and 11-42, CC Docket No. 96-45, at 1 (dated March 17, 2011) (March 17 President Shelly Letter); NNTRC Comments at 1.

<sup>88</sup> March 17 President Shelly Letter at 2.

<sup>89</sup> *Id.* at 1-2.

<sup>90</sup> *Id.* In the *Lifeline Reform Order*, the Commission noted that the record indicated that residential addresses are frequently non-existent on Tribal lands and imposing an address verification requirement for Tribal land residence would be unduly cumbersome. The Commission therefore concluded that consumer self-certification is sufficient to meet the residency requirement for Tribal lands Lifeline support. *See Lifeline Reform Order*, 27 FCC Rcd at 6728, para. 166.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*; *see also* NTUA Wireless March 2011 Petition at Exh. A (Letter of Support from Navajo Nation President Ben Shelly).

<sup>93</sup> Second Amended NTUA Wireless Petition at 2, 42.

that are vital to those living in remote rural communities.<sup>94</sup> NTUA Wireless also asserts that it is uniquely situated to meet the needs of the Navajo Nation because of its familiarity with the Navajo Nation and with the difficulties its consumers face living on the Navajo Nation.<sup>95</sup>

35. We conclude that NTUA Wireless's participation in universal service programs would provide a variety of public interest benefits to consumers. Tribal Mobility Fund Phase I funding would enable NTUA Wireless, a facilities-based carrier, to construct the facilities that will provide these wireless services that may not otherwise exist on the territory.<sup>96</sup> Additionally, we agree that universal service support will help provide increased consumer choice, affordability, and improved quality of service for mobile voice and current or next generation broadband access on the Navajo Nation.<sup>97</sup> The Commission has previously recognized that Tribal lands 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>98</sup> We agree that NTUA Wireless, because of its relationship to the Navajo Nation, may be particularly well-suited to reaching low-income consumers and other residents of the Navajo Nation and could provide an additional option for the provision of telecommunications services.

36. We further find that the designation of NTUA Wireless as an ETC has the support of the Navajo Nation and would provide additional public interest benefits, such as much-needed emergency services and employment opportunities to the residents of the Navajo Nation. The mobility of NTUA Wireless's service across the entire Navajo Nation 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>99</sup> Additionally, access to wireless communications services will assist the Navajo Nation and law enforcement to ensure public safety during severe weather conditions or natural disasters.<sup>100</sup> Finally, the NNTRC enacted a resolution concluding that ETC designation for NTUA Wireless is in the interest of the Navajo People,<sup>101</sup> and the Navajo Nation's President has filed supporting statements explaining the need and urging the granting of the petition.<sup>102</sup>

37. For these reasons, we find that it is consistent with the public interest, convenience, and necessity to conditionally designate NTUA Wireless as an ETC, eligible to receive Tribal Mobility Fund Phase I support, on the lands identified herein.

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<sup>94</sup> See *id.* at 6, 13, 17, 43; NTUA Wireless March 2011 Petition at 23-25; see also NNTRC Reply Comments at Exh. B at 4.

<sup>95</sup> See Second Amended NTUA Wireless Petition at 2-3, 7, 43-45; NTUA Wireless March 2011 Petition at 25-26.

<sup>96</sup> See Second Amended NTUA Wireless Petition at 19-20, 42-45, Exh. F (supporting letter from Navajo Nation President Ben Shelly); NTUA Wireless March 2011 Petition at 15, 17-18.

<sup>97</sup> See NTUA Wireless March 2011 Petition at 19-20; Second Amended NTUA Wireless Petition at 19, 42-45, Exh. F (supporting letter from Navajo Nation President Ben Shelly). We note that this Order in no way pre-judges whether any particular proposed service offering by NTUA Wireless meets the requirements of the Commission's rules.

<sup>98</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://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-296935A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf) (stating that “[m]any Tribal communities face significant obstacles to the deployment of broadband infrastructure”).

<sup>99</sup> See Second Amended NTUA Wireless Petition at Exh. F (supporting letter from President Ben Shelly to FCC Chairman Julius Genachowski).

<sup>100</sup> *Id.*

<sup>101</sup> NNTRC Reply Comments at 5-6, Exh. B.

<sup>102</sup> See Second Amended NTUA Wireless Petition at Exh. F (supporting letter from President Ben Shelly to FCC Chairman Julius Genachowski); see also March 17 President Shelly Letter.

38. Additionally, in order to promote public safety, and safeguard against waste, fraud and abuse in the Lifeline program, we also conclude it is necessary to require NTUA Wireless to comply with certain conditions. Specifically, its ETC designation is conditioned on NTUA Wireless's compliance with the representations and commitments made by NTUA Wireless in its petition and the Commission's rules pertaining to the Lifeline program, including those adopted by the Commission in the *Lifeline Reform Order*.<sup>103</sup> Subject to these conditions, we find that designating NTUA Wireless as an ETC eligible to receive Lifeline support is in the public interest.<sup>104</sup>

39. We conclude that conditionally designating NTUA Wireless as an ETC, subject to the receipt of Tribal Mobility Fund Phase I support, and as a limited ETC for only Lifeline support, furthers the goals of universal service. Based on the facts presented, we find that this designation will serve the public interest by providing citizens of the Navajo Nation with critically needed services tailored to their needs and interests.

#### **E. Regulatory Oversight**

40. Under section 254(e) of the Act, NTUA Wireless is required to use the specific universal service support it receives "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>105</sup>

41. In the event that NTUA Wireless becomes authorized to receive support in Tribal Mobility Fund Phase I, it will have to certify compliance with this requirement and all other requirements for receipt of Tribal Mobility Fund Phase I support, prior to requesting the disbursement of any such support.<sup>106</sup> In addition, if it becomes authorized to receive Tribal Mobility Fund Phase I support, NTUA Wireless must report certain information to the Commission, USAC, and relevant State or Tribal authorities for the area in which it is designated as an ETC pursuant to section 54.1009 of the Commission's rules.<sup>107</sup> We find that reliance on NTUA Wireless's commitments to meet these requirements is reasonable and consistent with the public interest and the Act.<sup>108</sup> We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that NTUA Wireless satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

42. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>109</sup> Additionally, in providing services pursuant to the ETC designations granted herein, NTUA Wireless must comply with the measures described in its petition and the Commission's rules.

43. Finally, we note that the Commission may institute an inquiry on its own motion to examine NTUA Wireless's records and documentation to ensure that the universal service support it

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<sup>103</sup> See generally *Lifeline Reform Order*.

<sup>104</sup> Our finding here applies to both the conditional designation as an ETC eligible for Tribal Mobility Fund support and to its designation as an ETC eligible to receive only Lifeline support.

<sup>105</sup> 47 U.S.C. § 254(e). Because NTUA Wireless is not eligible to receive federal universal service high-cost support, it is not required to file reports and certifications pursuant to section 54.313 of the Commission's rules, 47 C.F.R. § 54.313.

<sup>106</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.1008(e); see also Second Amended NTUA Wireless Petition at 45.

<sup>107</sup> 47 C.F.R. § 54.1009(c).

<sup>108</sup> See generally Second Amended NTUA Wireless Petition.

<sup>109</sup> See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

receives is being used for the purpose for which it was intended.<sup>110</sup> NTUA Wireless is required to provide such records and documentation to the Commission or USAC upon request. We further emphasize that, if NTUA Wireless 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 the ETC designation.<sup>111</sup> The Commission may also assess forfeiture penalties for violations of Commission rules and orders.<sup>112</sup>

#### IV. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91, 0.131, 0.291, and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.131, 0.291, 0.331, NTUA WIRELESS, LLC, IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER on the NAVAJO NATION, contingent upon NTUA Wireless becoming authorized to receive Tribal Mobility Fund Phase I support, and limited to those areas in which it becomes so authorized.

45. IT IS FURTHER ORDERED, pursuant to section 54.722(a) of the Commission's rules, 47 C.F.R. § 54.722(a), that NTUA WIRELESS, LLC, IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER eligible only for Lifeline support for those portions of the NAVAJO NATION in which it does not become authorized to receive Tribal Mobility Fund Phase I support and as listed in the Appendix, to the extent described in this Order and subject to the conditions set forth herein.

46. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Office of the President and Vice President of the Navajo Nation, the Navajo Nation Telecommunications Regulatory Commission, and the Universal Service Administrative Company.

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<sup>110</sup> 47 U.S.C. §§ 220, 403.

<sup>111</sup> See *Federal-State Joint Board on Universal Service; Western Wireless Corp. 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>112</sup> See 47 U.S.C. § 503(b).

47. 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

Julie A. Veach  
Chief  
Wireline Competition Bureau

Roger C. Sherman  
Acting Chief  
Wireless Telecommunications Bureau



## APPENDIX

**NTUA Wireless Lifeline Only ETC Designated Service Area-  
Navajo Nation**

<b>COMPANY NAME</b>	<b>CLLI CODE</b>
Arizona Telephone Company	MRCNAZXC
Beehive Telephone Company	DNRPUTXC
Century Tel of Southwest, Inc.	PNHLNMXC
Citizens Telecom Co. of Wht Mtns, Inc.	STJHAZXB
Navajo Communications Company	BLMSAZXF
Hopi Telecommunications Inc. AZ	KMCNAZXC
Navajo Communications Company	CHNLAZXC
Navajo Communications Company	DLKNAZXC
Navajo Communications Company	DNHSAZXC
Navajo Communications Company	FTDFAZXC
Navajo Communications Company	GANDAZXC
Navajo Communications Company	GSWDAZXC
Navajo Communications Company	KABTAZXC
Navajo Communications Company	KIVGAZXC
Navajo Communications Company	KYNTAZXC
Navajo Communications Company	LCHEAZXC
Navajo Communications Company	LEPPAZXC
Navajo Communications Company	LKCHAZXC
Navajo Communications Company	MNFRAZXC
Navajo Communications Company	PINNAZXC
Navajo Communications Company	RDVYAZXC
Navajo Communications Company	RHRKAZXC
Navajo Communications Company	RKPNAZXC
Navajo Communications Company	SHNTAZXC
Navajo Communications Company	STMCAZXE
Navajo Communications Company	TBCYAZXC
Navajo Communications Company	TNPSAZXR
Navajo Communications Company	TOYIAZXC
Navajo Communications Company	TSILAZXC
Navajo Communications Company	WDRNAZXC
Navajo Communications Company	CRPNMXXC
Navajo Communications Company	NAVJNMXXC
Navajo Communications Company	NSCHNMXXC
Navajo Communications Company	NWCMNMXXC
Navajo Communications Company	PBPONMXXC

<b>COMPANY NAME</b>	<b>CLLI CODE</b>
Navajo Communications Company	SANSNMXC
Navajo Communications Company	SHRKNMXC
Navajo Communications Company	TBNTNMXC
Navajo Communications Company	TDLNNXNC
Navajo Communications Company	THTCNMXC
Navajo Communications Company	TRNSNMXC
Navajo Communications Company	TWLKNMXC
Navajo Communications Company	HLCHUTXC
Navajo Communications Company	MNCKUTXC
Navajo Communications Company	MNVYUTXC
QWEST CORPORATION	FLGSAZMA
QWEST CORPORATION	GLLPNMFW
QWEST CORPORATION	PAGEAZMA
SACRED WIND	FRTNNMMA
SACRED WIND	FRTNNMWE
SACRED WIND	GLLPNMEA
SACRED WIND	GLLPNMMA
Table Top Telephone Company	SNDRAZXC
Western New Mexico Telephone	MGDNNMXC