

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

In the Matter of
Federal-State Joint Board on
Universal Service;
Promoting Deployment and
Subscribership in Unserved
And Underserved Areas, Including
Tribal and Insular Areas
Commonwealth of Northern Mariana
Islands
Petitions for Reconsideration filed by:
Crow Tribal Council
Florida Public Service Commission
Fort Belknap Indian Community
Goshute Indian Reservation
National Telephone Cooperative Association
Oglala Sioux Tribe
Rosebud Sioux Tribe
South Dakota Independent Telephone
Coalition
Western Wireless Corporation

CC Docket No. 96-45

TWENTY-FIFTH ORDER ON RECONSIDERATION, REPORT AND ORDER,
ORDER, AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner Copps approving in part, concurring in part and issuing a
statement.

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I. INTRODUCTION

1. In this Order, we address the requests of several petitioners to reconsider portions of the *Twelfth Report and Order and Further Notice* adopting rules to provide additional, targeted universal service support to low-income consumers on tribal lands and establishing a framework for the resolution of eligible telecommunications carrier (ETC) designations under section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ The advancement of universal service on tribal lands remains a major policy goal of this Commission. Through our on-going dialogue with the tribes, as most recently exemplified by the Commission's launch of the Indian Telecommunications Initiatives in Phoenix, Arizona on September 19, 2002, the Commission continues in its efforts to promote telecommunications subscribership within American Indian and Alaskan Native tribal communities.

2. We affirm that the framework adopted by the Commission for resolution of ETC designations on tribal lands provides a reasonable means to facilitate the expeditious resolution of such requests, while balancing the respective federal, state, and tribal interests. We also conclude that the definition of "reservation" for purposes of the universal service programs remains the same as that adopted in the *Twelfth Report and Order and Further Notice* despite the Bureau of Indian Affairs' (BIA) subsequent modification of that definition for purposes of its direct assistance programs. We address several requests for reconsideration relating to the rule amendments to the universal service low-income programs adopted in the *Twelfth Report and Order and Further Notice*. We also clarify, on our own motion, the Commission's rules regarding the qualification criteria for enhanced Lifeline and Link-Up service. In addition, we decline to adopt a rule that would require resolution of the merits of any request for ETC designation within six months of the filing date. We also decline to extend the enhanced low-income programs to the Northern Mariana Islands. Finally, we seek further comment on potential modifications to our rules regarding availability of enhanced Federal Lifeline and Link-Up assistance to qualifying low-income consumers living "near reservations."

II. BACKGROUND

3. On June 30, 2000, the Commission released the *Twelfth Report and Order and Further Notice* adopting amendments to the Commission's universal service rules. The amended rules were designed to provide additional, targeted support under the universal service low-income programs in order to create financial incentives for carriers to serve and deploy facilities on tribal lands.² Specifically, the Commission adopted measures to provide up to \$25 per month in additional federal Lifeline support and \$70 per consumer in additional Link-Up support to ETCs serving qualifying low-income individuals living on tribal lands.³ The Commission

¹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 12208 (2000) (*Twelfth Report and Order and Further Notice*).

² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12213-14, para. 5.

³ The Lifeline support program is designed to increase subscribership by reducing qualifying low-income consumers' monthly basic local service charge. See 47 C.F.R. § 54.401. The Link-Up program assists qualifying low-income consumers in initiating telephone service by paying a portion of the service connection charge. See 47 C.F.R. § 54.411.

concluded that significantly lower-than-average incomes and subscribership levels on tribal lands warranted the adoption of additional measures designed to increase subscribership and improve access to telecommunications service.⁴ In so doing, the Commission noted that the lack of availability of telecommunications service on tribal lands is at odds with the statutory goal of ensuring access to such services to “[c]onsumers in all regions of the Nation, including low-income consumers.”⁵ For purposes of identifying the geographic areas within which the rule amendments should apply, the Commission determined that the term “tribal lands” should include the BIA definitions of “reservation” and “near reservation” contained, at that time, in sections 20.1(v) and 20.1(r) of the BIA regulations, respectively.⁶

4. On August 31, 2000, the Commission, on its own motion, released an order staying implementation of the enhanced federal Lifeline and Link-Up assistance rule amendments to the extent that they applied to qualifying low-income consumers living “near reservations.”⁷ Specifically, the Commission concluded that the term “near reservation,” as defined by BIA, includes wide geographic areas that do not possess the same characteristics that warranted the targeting of enhanced Lifeline and Link-Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.⁸ The Commission sought comment on how to define alternative geographic areas that are adjacent to reservations in a manner that is consistent with our goal of targeting enhanced Lifeline and Link-Up to the most underserved areas of the Nation.

5. In the *Twelfth Report and Order and Further Notice*, the Commission also found that jurisdictional ambiguities associated with the question of whether a state may designate a carrier as an ETC may unnecessarily delay the provision of service on tribal lands.⁹ The Commission noted that, although section 214(e)(6) of the Act directs the Commission to perform the eligibility designation in instances where a carrier is not subject to the jurisdiction of a state commission, section 214(e) does not address how such jurisdictional determinations should be made or by whom. The Commission therefore established a framework to streamline the process for eligibility designations for carriers seeking to provide service on tribal lands.¹⁰ Specifically, the Commission concluded that carriers seeking eligibility designations for service provided on tribal lands may petition the Commission directly under section 214(e)(6), without first seeking designation from the relevant state commission.¹¹ The Commission found that this framework

⁴ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12225, paras. 28-29.

⁵ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12221, para. 21 (citing 47 U.S.C. § 254(b)(3)).

⁶ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12218-19, paras. 17-18. Subsequent to the release of the *Twelfth Report and Order and Further Notice*, BIA modified these definitions. See 25 C.F.R. § 20.100.

⁷ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 17112 (2000) (*Tribal Stay Order and Further Notice*).

⁸ *Tribal Stay Order and Further Notice*, 15 FCC Rcd at 17113, para. 3.

⁹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12266, para. 118.

¹⁰ See *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12265-69, paras. 115-127.

¹¹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12265-67, paras. 115, 120. Once a carrier files with the Commission a petition seeking ETC designation for service on tribal lands, the Commission undertakes a two-step analysis. First, the Commission determines whether a carrier providing service on tribal lands is subject to the jurisdiction of a state commission. Second, if the carrier is not subject to the jurisdiction of a state commission,

(continued....)

is consistent with the execution of its duty to preserve and advance universal service under section 254, principles of tribal sovereignty, and the unique federal trust relationship between Indian tribes and the federal government.

6. The Commission rejected, however, the contention that section 214(e)(6) confers upon it the general authority to make ETC designations over all carriers providing service on tribal lands.¹² The Commission concluded that the inquiry as to whether a state commission has authority to regulate the provision of telecommunications service on tribal lands is a particularized one, and thus specific to each state and the facts and circumstances surrounding the provision of service.¹³

III. ORDER ON RECONSIDERATION

A. Petitions for Reconsideration

7. In September 2000, petitions for reconsideration were filed in response to the *Twelfth Report and Order and Further Notice*.¹⁴ Several petitioners request that the Commission reconsider the framework to resolve jurisdictional issues under section 214(e)(6) for carriers seeking ETC designation on tribal lands.¹⁵ Several petitioners also raise issues relating to the amendments to the universal service low-income programs adopted in the *Twelfth Report and Order and Further Notice*.¹⁶

B. Discussion

1. ETC Designation Framework for Carriers Serving Tribal Lands

8. As discussed in greater detail below, we deny petitions for reconsideration of the framework to resolve requests for ETC designations for carriers providing service on tribal

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the Commission proceeds to rule on the carrier's request to be designated as an ETC. *See 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*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 18133 (2001).

¹² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12261, para. 107.

¹³ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12262, para. 108.

¹⁴ Petitions for reconsideration were filed by the Crow Tribal Council (Crow), Florida Commission, Fork Belknap Indian Community (Fort Belknap), Goshute Indian Reservation (Goshute), NTCA, Oglala Sioux Tribe (Oglala), Qwest Corporation (Qwest), Rosebud Sioux Tribe (Rosebud), SBC Communications (SBC), SDITC, and Western Wireless Corporation (Western Wireless). Qwest and SBC subsequently filed requests to withdraw their petitions for reconsideration. *See Request to Withdraw Petition for Reconsideration and Application of Stay of Order* filed by SBC on Oct. 4, 2001; Letter from Craig J. Brown, Qwest, to Magalie Roman Salas, FCC, filed Dec. 3, 2001. These requests were granted. *See Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Requests to Withdraw Petitions for Reconsideration*, Order, CC Docket Nos. 96-45, 97-21, 16 FCC Rcd 21424 (2001).

¹⁵ *See, e.g.*, Crow Petition; Fort Belknap Petition; Goshute Petition; Oglala Petition.

¹⁶ *See e.g.*, SDITC Petition; Florida Petition.

lands.¹⁷ We affirm the Commission's prior conclusion that this framework facilitates the expeditious resolution of such requests, while balancing the relevant federal, state, and tribal interests in determining jurisdiction over carriers operating on tribal lands.¹⁸ In addition, we note that similar arguments were previously considered and rejected by the Commission in the *Twelfth Report and Order and Further Notice*.¹⁹ We find no basis to now reconsider these issues.²⁰

9. Consistent with the Commission's prior conclusion, we decline to adopt the suggestion of those petitioners contending that section 214(e)(6) provides the Commission with the authority to assume jurisdiction over all carriers seeking ETC designation for service on tribal lands.²¹ These petitioners contend that any exercise of state jurisdiction in designating ETCs on tribal lands is inconsistent with the federal trust responsibility to tribes and the principle of tribal sovereignty. As the Commission concluded in the *Twelfth Report and Order and Further Notice*, we do not believe that Congress intended the Commission to use section 214(e)(6) to usurp the role of a state commission that has jurisdiction over a carrier providing service on tribal lands.²² To the contrary, in adopting section 214(e)(6), Congress recognized that some state commissions had asserted jurisdiction over tribal lands.²³ Congress also acknowledged pending jurisdictional disputes between states and tribes and made clear that the adoption of section 214(e)(6) was not "intended to impact litigation regarding jurisdiction between State and federally-recognized tribal entities."²⁴

10. We affirm that this framework is consistent with the federal trust responsibility to the tribes and the principle of tribal sovereignty.²⁵ In establishing the framework for the designation of carriers serving tribal lands, the Commission was guided by the recognition of, and respect for, principles of tribal sovereignty and self-determination.²⁶ The designation framework recognizes that the principles of tribal sovereignty may lead some carriers and tribes to be unwilling to submit jurisdictional questions relating to tribal lands to a state commission. The adopted framework therefore provides the opportunity for parties to submit this issue directly to the Commission for resolution. In addition, the availability of a federal forum allows carriers and tribes to avoid the potential costs and delays that would arise if they were required to

¹⁷ See Crow Petition; Fort Belknap Petition; Goshute Petition; Oglala Petition; Rosebud Petition; SDITC Petition; Western Wireless Petition.

¹⁸ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12265, para. 115.

¹⁹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12261-62, 12265-69, paras. 106-08, 115-27.

²⁰ See 47 C.F.R. § 1.429(b).

²¹ See, e.g., Crow Petition at 2-7; Fort Belknap Petition at 1-3; Oglala Petition at 1-2; Rosebud Petition at 1-2.

²² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12261, para. 107. See also *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*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 18145 (2001) (*South Dakota Jurisdictional Order*).

²³ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12261, para. 107. See 143 Cong. Rec. H10808 (daily ed. Nov. 13, 1997) (statement of Rep. Hayworth).

²⁴ See Colloquy between Representatives Thune and Bliley, 143 Cong. Rec. H10808-09 (daily ed. Nov. 13, 1997).

²⁵ But see Crow Petition at 2-7; Fort Belknap Petition at 1-3; Oglala Petition at 1-2; Rosebud Petition at 1-2.

²⁶ See *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12266, para. 119.

first challenge the jurisdictional issue in state proceedings and judicial appeals prior to requesting designation from this Commission under section 214(e)(6).

11. For the reasons discussed above, we also decline to grant SDITC's request that the Commission require the relevant state commission to make the threshold determination as to whether it has jurisdiction over a carrier offering service on tribal lands.²⁷ In addition, we note that nothing in the Commission's designation framework affects the ability of a carrier to seek designation from a state commission. The Commission's framework merely provides carriers with the option to seek resolution of the threshold jurisdictional issue on tribal lands from this Commission.²⁸

12. We also decline to adopt Western Wireless' suggestion that the Commission establish a standard whereby the Commission assumes jurisdiction under section 214(e)(6) in those instances in which the requesting carrier has obtained an agreement with the tribe and proposes to offer universal service that is targeted to the tribal land.²⁹ In so doing, we note the admonition of the United States Supreme Court that "[g]eneralizations on this subject have become . . . treacherous."³⁰ Although the existence of a consensual relationship between the tribe and carrier regarding the provision of telecommunications service to tribal lands may be a significant factor in the jurisdictional analysis, we do not believe that it is prudent or necessary to establish such a fixed presumption. A careful analysis of the specific agreement between the tribe and carrier is necessary to determine its relevance to the jurisdictional determination.³¹ As noted in the *Twelfth Report and Order and Further Notice*, the issue of whether a state commission lacks jurisdiction over a carrier is a particularized inquiry guided in each case by the principles of tribal sovereignty, federal Indian law, and treaties, as well as state law.³² The framework established by the Commission allows for the careful balancing of the respective federal, state, and tribal interests, including an examination of the relationship between the carrier and tribe, to make this determination on a case-by-case basis.³³ We therefore decline to adopt Western Wireless' proposal.

2. Definition of "Tribal Lands"

13. Consistent with the request of NTCA,³⁴ we confirm that the Commission's definition of "tribal lands" for purposes of considering requests for ETC designation under section 214(e)(6) is identical to the definition of "tribal lands" utilized in the context of the

²⁷ SDITC Petition at 4-5.

²⁸ To avoid the potential for "forum-shopping" and the costs and confusion caused by a duplication of effort, the Commission has concluded that it will not entertain a jurisdictional determination if the carrier has submitted a request for designation to the state commission for the same geographic area within the state. *See Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12268-69, para. 126.

²⁹ Western Wireless Petition at 4-5. Western Wireless contends that such a standard would provide greater certainty at the outset regarding whether a carrier should apply to the state or Commission for ETC designation. *See id.*

³⁰ *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148 (1973).

³¹ *See South Dakota Jurisdictional Order*, 16 FCC Rcd at 18151-52, paras. 15-16.

³² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12267, para. 122.

³³ *See generally South Dakota Jurisdictional Order*.

³⁴ *See NCTA Petition* at 1-5.

enhanced Lifeline and Link-Up support programs.³⁵ In the *Twelfth Report and Order and Further Notice*, the Commission adopted a definition of “tribal lands” that included “reservation” and “near reservation” areas, as defined, at that time, in sections 20.1(v) and (r) of the BIA regulations.³⁶ Subsequently, the Commission became aware that the term “near reservation” included wide geographic areas, extending substantially beyond the boundaries of reservations, that do not possess the same characteristics that warranted the targeting of support to reservations. For example, areas such as Phoenix, Arizona and Sacramento, California are considered to be “near reservation areas,” even though they are not isolated and underserved. As a result, the Commission issued an order staying implementation of the enhanced Lifeline and Link-Up rules to the extent that they apply to qualifying low-income consumers located on “near reservation” areas.³⁷

14. We agree with NTCA that the Commission’s rationale for adopting a separate designation framework for carriers seeking designation on tribal lands does not extend to “near reservation” areas, as defined by BIA. As defined by BIA, near reservations are designated areas or communities that are adjacent or contiguous to reservations where financial assistance and social service programs are provided.³⁸ Because these areas often extend substantially beyond the exterior boundaries of reservations, we do not believe they invoke the same jurisdictional concerns and principles of tribal sovereignty associated with areas within the exterior boundaries of reservations. Therefore, pending resolution of the issues presented in the *Tribal Stay Order*, petitions for designation filed under section 214(e)(6) relating to “near reservation” areas will not be considered as petitions relating to tribal lands.³⁹ Petitioners seeking ETC designation in such areas must follow the procedures outlined in the *Twelfth Report and Order* for non-tribal lands prior to submitting a request for designation to this Commission under section 214(e)(6).⁴⁰

15. We also take this opportunity to confirm that the definition of “reservation” and “near reservation” for purposes of the universal service programs remains the same as that adopted in the *Twelfth Report and Order and Further Notice*.⁴¹ Therefore, within the context of the universal service programs, the term “reservation” means “any federally recognized Indian

³⁵ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12268, n.289.

³⁶ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12217-18, para. 16. BIA has subsequently modified its definition of both reservation and near reservation areas. See 25 C.F.R. § 20.100. See *infra* discussion.

³⁷ See *Tribal Stay Order and Further Notice*.

³⁸ See 25 C.F.R. § 20.100 (the definition of near reservation was previously contained in 25 C.F.R. § 20.1(r)).

³⁹ As noted above, the Commission has stayed implementation of the enhanced Lifeline and Link-Up rules amendments to the extent that they apply to qualifying low-income consumers living “near reservations.” See *Tribal Stay Order and Further Notice*. In addition, 25 C.F.R. § 20.1(r), defining “near reservations,” has been replaced by 25 C.F.R. § 20.100. The Commission seeks further comment on the issues set forth in the *Tribal Stay Order and Further Notice* in the attached Further Notice of Proposed Rulemaking.

⁴⁰ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12263-64, paras. 112-13 (“[o]nly in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) designation requests from carriers serving non-tribal lands.”).

⁴¹ See *infra* Appendix A, § 54.400(e). In the *Twelfth Report and Order and Further Notice*, the Commission adopted BIA’s definition of “reservation” and “near reservation” contained, at that time, in 25 C.F.R. § 20.1(v) and 20.1(r), respectively. *Twelfth Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd at 12218, para. 17.

tribe's reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.”⁴² The term “near reservation” is defined as those areas or communities adjacent or contiguous to reservations which are designated by the Department of Interior's Commission of Indian Affairs upon recommendation of the local Bureau of Indian Affairs Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation; (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area.⁴³

16. As noted above, the Commission defined the term “reservation” in a manner consistent with section 20.1(v) of the BIA regulations and stated that any future BIA modifications to the definition of “reservation” would also apply to the definitions adopted in the *Twelfth Report and Order*.⁴⁴ Following the release of the *Twelfth Report and Order and Further Notice*, BIA revised its definition of “reservation” in such a way as to no longer explicitly include “former reservations in Oklahoma” or “Indian allotments.”⁴⁵ Residence in a “service area,” rather than a “reservation,” is the new geographic eligibility requirement to receive financial assistance.⁴⁶ As defined by BIA, “service area” means a geographic area, designated by the Assistant Secretary of Indian Affairs, where financial assistance and social services programs are provided.⁴⁷ Such a geographic area designation can include a reservation, near reservation, or other geographic location. Under this mechanism, tribes may also request alternative service area designations. As noted above, BIA has also eliminated section 20.1(r) defining near reservations and replaced it with a similar definition now contained in section 20.100.⁴⁸

17. To alleviate the potential for ongoing administrative uncertainty, we conclude that any future modifications to the definition of “reservation” or “near reservation” will take effect in the context of the universal service programs only upon specific action by the Commission. In so doing, we decline to incorporate BIA's recent revisions to the definition of “reservation.”⁴⁹ Notwithstanding the fact that BIA modifications did not include “former reservations in Oklahoma” and Indian allotments in its definition of “reservation,” BIA continues to provide

⁴² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12218, para. 17.

⁴³ The Commissioner of the Department of Interior's Commission of Indian Affairs is required to publish such designations in the Federal Register. For administrative efficiency, we have compiled a comprehensive list of all “near reservation” designations published in the Federal Register to date. See Appendix B.

⁴⁴ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12219, para. 19.

⁴⁵ See 25 C.F.R. § 20.100. See also 66 Fed. Reg. 15029 (March 15, 2001).

⁴⁶ See 25 C.F.R. § 20.100.

⁴⁷ See 25 C.F.R. § 20.100.

⁴⁸ See 25 C.F.R. § 20.100.

⁴⁹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12219, para. 19.

financial assistance in these areas.⁵⁰ Accordingly, we find that maintaining the current definition of “reservation” for universal service purposes will be consistent with BIA’s action in continuing to provide assistance in these areas, and with the Commission’s commitment to increase subscribership and improve access to telecommunications services. We believe that this will ensure that the definition of “reservation” will remain consistent with the underlying goals of the Commission’s enhanced Lifeline and Link-Up programs.

3. Universal Service Low-Income Programs

18. *SDITC Petition.* We grant SDITC’s request to reconsider the Commission’s finding that non-wireline carriers are eligible to receive Link-Up support for that portion of a handset that receives wireless signals.⁵¹ Upon reconsideration, we conclude that Link-Up should not offset any costs of a wireless handset.⁵² The Commission’s rules preclude Link-Up support for facilities or equipment that fall on the customer side of the demarcation point.⁵³ Although the Commission has never defined a demarcation point for wireless service, it has generally treated wireless handsets for purposes of bundled marketing of equipment and services as Customer Premises Equipment (CPE),⁵⁴ which is equipment that falls on the customer side of the demarcation point between customer and network facilities.⁵⁵ At the same time, we recognize

⁵⁰ See Department of the Interior, Bureau of Indian Affairs, Financial Assistance and Social Services Programs, 65 Fed. Reg. 63144 at 63148, 63150-51 (2000) (indicating that Indian allotments were to be included under the new definition of service area). Department of the Interior, Bureau of Indian Affairs, Technical Amendments to Financial Assistance and Social Services Programs, 66 Fed. Reg. 15029 (2000) (clarifying that an inconsistency in the final rule regarding eligibility in Alaska “could support an unintended interpretation that the BIA was denying service to persons previously served under the former regulations.”).

⁵¹ SDITC Petition at 7-8.

⁵² We note that this decision extends only to wireless handsets that constitute customer equipment. Certain types of wireless service are provided using a wireless access terminal that is owned by the carrier and is not considered “customer equipment.” Accordingly, such a unit would not be excluded from receiving Link-Up support under our rules. See also *Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Provided by Western Wireless in Kansas is Subject to Regulation as Local Exchange Service*, Memorandum Opinion and Order, WT Docket No. 00-239, 17 FCC Rcd 14802, para. 23 (2002). Similarly, as noted in the *Twelfth Report and Order and Further Notice*, if a fixed wireless service requires the installation of a receiver on a rooftop, for example, to bring service to a demarcation point, expanded Link-Up support could be used to offset the cost of installing such facilities. *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12240, para. 61.

⁵³ 47 C.F.R. § 54.411(a)(3). The demarcation point is the “interface between the [public switched telephone network] and the inside wiring, and is the juncture at which the telecommunications carrier’s responsibilities end and the customer’s control begins.” See *Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission’s Rules Filed by the Electronics Industries Association*, Third Report and Order, CC Docket No. 88-57, 15 FCC Rcd 927, 929, para. 2 (2000) (*Inside Wiring Order*).

⁵⁴ See, e.g., *Bundling of Cellular Customer Premises Equipment and Cellular Service*, Report and Order, CC Docket No. 91-34, 7 FCC Rcd 4028, para. 9 (1992).

⁵⁵ *Telecommunications Inside Wiring*, Notice of Proposed Rulemaking, CS Docket No. 95-184, 11 FCC Rcd 2747, 2776 (1996). See *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets*, Report and Order, CC Docket No. 96-61, CC Docket No. 98-183, 16 FCC Rcd 7418, 7450 (2001).

that some portion of a wireless handset may perform functions analogous to the functions on the network side of the demarcation point, which, in the wireline context, would be eligible for Link-Up support. Nevertheless, under all the circumstances, we find that Link-Up should not support any costs of a wireless handset. In reaching this decision, we consider the difficulty of defining what portion, if any, of a wireless handset is on the network side of the demarcation point, as well as the difficulty in isolating the costs of such portion.⁵⁶ We note that we make this finding regarding wireless handsets solely for purposes of determining what charges are eligible for Link-Up discounts. We further note that non-wireline carriers remain eligible to receive Link-Up support for the “customary charge for commencing telecommunications service,” as defined in section 54.411 of the Commission’s rules,⁵⁷ including wireless activation fees. Where wireless telecommunications service is provided to an eligible resident of tribal lands, such charges may also continue to include “facilities-based” charges associated with the construction of facilities needed to initiate service, as provided in section 54.411(a)(3).⁵⁸

19. *Florida Commission Petition.* We deny the Florida Commission’s requests for reconsideration.⁵⁹ We disagree with the Florida Commission’s contention that the expansion of the existing Lifeline program may be without clear statutory authority and without support in the record.⁶⁰ As the Commission explained in the *Twelfth Report and Order and Further Notice*, the authority to provide additional federal Lifeline and Link-Up assistance and broaden consumer qualification criteria for low-income consumers on tribal lands derives from sections 1, 4(i), 201, 205, and section 254 of the Act.⁶¹ The Commission concluded that the unavailability or unaffordability of telecommunications service on tribal lands is at odds with its statutory goal of ensuring access to such services to “[c]onsumers in all regions of the Nation, including low-income consumers.”⁶² The Commission further concluded that the lack of access to affordable telecommunications services on tribal lands is inconsistent with its statutory directive “to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient Nationwide . . . wire and radio communication service, with adequate facilities at reasonable charges.”⁶³ The Commission also determined that its actions were consistent with its general authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”⁶⁴

20. In addition, the evidence and record before us at the time supported the expansion of the Lifeline and Link-Up program and nothing on reconsideration persuades us otherwise. In reaching the decision to enhance Lifeline and Link-Up assistance, the Commission relied on

⁵⁶ SDITC Petition at 7-8.

⁵⁷ See 47 C.F.R. § 54.411(a).

⁵⁸ 47 C.F.R. § 54.411(a)(3).

⁵⁹ Florida Commission Petition at 3.

⁶⁰ Florida Commission Petition at 4.

⁶¹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12220-21, paras. 20-21 and authority cited therein.

⁶² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12221, para. 21 (citing 47 U.S.C. § 254(b)(3)).

⁶³ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12221, para. 21 (citing 47 U.S.C. § 151).

⁶⁴ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12219-20, para. 20 n.45 (citing 47 U.S.C. § 154(i)).

statistical evidence that demonstrated that American Indian and Alaska Native communities on average have the lowest reported telephone subscribership levels in the country.⁶⁵ For example, the Commission noted that, according to the most recent census data, although approximately 94 percent of all Americans have a telephone, only 47 percent of Indians on reservations and other tribal lands have a telephone.⁶⁶ In addition to these statistics, other statistical evidence, as well as the majority of comments, demonstrated that low incomes and poverty are the key reasons for low subscribership levels on tribal lands.⁶⁷ Along with these conditions, the record also identified other factors as impediments to subscribership. These included: (1) the cost of basic service in certain areas (as high as \$38 per month in some areas); (2) the cost of intrastate toll service (limited local calling areas); (3) inadequate telecommunications infrastructure and the cost of line extensions and facilities deployment in remote, sparsely populated areas; and (4) the lack of competitive service providers offering alternative technologies.⁶⁸ Finally, the record demonstrated that non-Indian, low-income households on tribal lands may face the same or similar economic and geographic barriers as those faced by low-income Indian households.⁶⁹ After careful consideration of this evidence, the Commission concluded that specific and immediate action was needed to remedy the disproportionately lower levels of infrastructure deployment and subscribership prevalent among tribal communities to ensure affordable access to telecommunications services in these areas.

21. We also reject the Florida Commission's contention that the creation of a fourth tier of federal Lifeline support available to eligible telecommunications carriers serving qualifying low-income individuals living on tribal lands "may raise issues of discrimination."⁷⁰ Specifically, the Florida Commission "questions whether there is any discriminatory impact by singling out Native American and Alaska tribal areas for the benefit of up to an additional \$25.00 per primary residential line." The Florida Commission adds that "[i]f the goal is to increase subscribership for these populations, we respectfully request first increasing efforts to enroll qualified low-income Native Americans and Alaskan Natives in the already existing Lifeline and Link-Up programs."⁷¹

22. The goal of the *Twelfth Report and Order and Further Notice* was not, as the Florida Commission implies, to increase subscribership solely among low-income Native American and Alaskan Natives. As explained above, the Commission recognized that American Indian and Alaska Native communities, on average, have the lowest reported telephone subscribership levels in the country. In response, the Commission adopted amendments to its universal service rules to provide additional, targeted support under the low-income programs for all qualifying low-income individuals on tribal lands, as opposed to limiting these benefits solely

⁶⁵ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12223-24, paras. 26-27 and footnotes cited therein.

⁶⁶ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12224, para. 27.

⁶⁷ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12223-24, paras. 26-27 and footnotes cited therein.

⁶⁸ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12220, para. 20 and footnotes cited therein.

⁶⁹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12225, para. 29.

⁷⁰ Florida Commission Petition at 4.

⁷¹ Florida Commission Petition at 4.

to qualifying low-income tribal members on tribal lands.⁷² In addition, the Commission noted that its efforts in the *Twelfth Report and Order and Further Notice* represent only the first step in addressing the causes of low subscribership within underserved and unserved areas.⁷³ The Commission therefore continues to monitor the causes of low subscribership throughout the Nation and will be addressing this important issue on an ongoing basis.⁷⁴ Accordingly, we do not find that our rules raise issues of discrimination.

4. Qualification Criteria for Enhanced Lifeline and Link-Up Service

23. We also clarify, on our own motion, the federal default qualification criteria for enhanced Lifeline and Link-Up service as set forth in section 54.409(c) of the Commission's rules. As discussed above, in the *Twelfth Report and Order and Further Notice*, the Commission modified its universal service rules to increase access to telecommunications services among low-income individuals on tribal lands. In particular, the Commission created a fourth tier of federal Lifeline support to substantially reduce the cost of basic telephone service for such individuals. In addition, the Commission revised its rules governing the Link-Up program to provide increased federal support to reduce the costs of initial connection charges and line extension charges. Finally, the Commission broadened the federal default qualification criteria to enable low-income individuals living on tribal lands to qualify for this enhanced support by certifying their participation in certain additional means-tested assistance programs.⁷⁵ We make this clarification to ensure that those otherwise eligible to participate in the enhanced programs will have the full opportunity to do so.

24. We take this opportunity to clarify that a low-income individual living on tribal lands in a state that mandates state Lifeline support shall be eligible for Tiers One, Two, Three, and Four of federal Lifeline support if the consumer meets the eligibility criteria established by the state for such support. If the consumer does not meet the eligibility criteria established by the state for such support, or if the consumer lives in a state that does not mandate state Lifeline support, the consumer living on tribal lands may qualify for Tiers One, Two, and Four of federal Lifeline support if the consumer participates in at least one of the following nine programs: Bureau of Indian Affairs General Assistance, Tribally-Administered Temporary Assistance for Needy Families, Head Start (only those meeting its income qualifying standard), the National School Lunch Program's free lunch program, Medicaid, Food Stamps, Supplemental Security Income, Federal Public Housing Assistance (Section 8) or the Low-Income Home Energy Assistance Program.⁷⁶ In addition, such consumer may still be eligible to receive Tier Three of federal Lifeline support, as described in section 54.403(a)(3) of the Commission's rules, if the ETC offering the Lifeline service provides carrier-matching funds.⁷⁷ We strongly encourage eligible carriers to ensure that customer service representatives handling inquiries about the universal service low-income programs, especially enhanced Lifeline and Link-Up, are trained

⁷² *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12225, paras. 29-31.

⁷³ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12213-14, para. 5.

⁷⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 03J-2, paras. 15-19 (rel. Apr. 2, 2003) (*Recommended Decision*).

⁷⁵ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12245, para. 68.

⁷⁶ See *infra* Appendix A, § 54.409 (c).

⁷⁷ See 47 C.F.R. § 54.409(c).

with regard to the operative eligibility criteria as clarified in this Order. We also take this opportunity to reiterate that the Commission's rules require eligible carriers to publicize the availability of Lifeline and Link-Up services in a manner reasonably designed to reach those likely to qualify for those services.⁷⁸

IV. REPORT AND ORDER ADDRESSING THE FURTHER NOTICE OF PROPOSED RULEMAKING IN THE *TWELFTH REPORT AND ORDER*

A. Background

25. In the *Twelfth Report and Order and Further Notice*, the Commission sought comment on whether to adopt a rule that would require resolution, by the Commission or a state commission, on the merits of any request for ETC designation within a six-month period, or some shorter period.⁷⁹ The Commission noted that lengthy delays in addressing requests for designation may hinder the availability of affordable telecommunications service in many high-cost areas. The Commission committed to resolve, within six months of the date filed, all ETC designation requests for non-tribal lands that are properly before it pursuant to section 214(e)(6).⁸⁰ In addition, the Commission committed to resolve, within six months of release of an order resolving the jurisdictional issue, any request for ETC designation on tribal lands.⁸¹ Several parties filed comments in response to this Further Notice.⁸²

B. Discussion

26. We decline to adopt a rule at this time that would require state commissions to resolve the merits of any request for designation under section 214(e) within six months or some shorter period. We conclude that such action is unnecessary at this time. In so doing, we note that a number of ETC designation requests pending at the time of release of the *Twelfth Report and Order and Further Notice* have been resolved by state commissions.⁸³ We commend these state commissions for resolving those designation requests. We continue to encourage state commissions to act with the appropriate analysis yet as expeditiously as possible on all such requests. In addition, we note that a state's action on ETC designation requests may be reviewed

⁷⁸ See 47 C.F.R. §§ 54.405 and 54.411.

⁷⁹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12277, paras. 151-152.

⁸⁰ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12265, para. 114.

⁸¹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12267, para. 121.

⁸² The following parties filed comments in response to this Further Notice: California Public Utilities Commission (California Commission), Cheyenne River Sioux Tribe Telephone Authority, Competitive Universal Service Coalition (CUSC), Florida Public Service Commission (Florida Commission), National Telephone Cooperative Association (NTCA), Regulatory Commission of Alaska, South Dakota Independent Telephone Coalition (SDITC), United States Telecom Association (USTA), and WorldCom.

⁸³ See, e.g., *Western Wireless Corporation Designated Eligible Carrier Application*, Order on Remand, Case No. PU-1564-98-428 (ND PSC rel. Oct. 3, 2001); *WWC License LLC, d.b.a. Cellular One*, Order Granting Request for Eligible Telecommunications Carrier Status, Docket No. 199 IAC 39.2(4) (Iowa Dept. of Commerce Util. Bd. rel. Nov. 21, 2000). See also NTCA Comments at 3 (noting that state commissions in Arkansas, California, Kansas, Maryland, Minnesota, North Dakota, Washington, and Wisconsin have recently issued decisions granting carrier ETC designations).

under section 253 as a potential barrier to entry.⁸⁴ Although we continue to encourage states to address such requests in a timely manner, we find no need for further action at this time.

27. In addition, we disagree with those commenters who suggest that the Commission should adopt a rule requiring resolution within six months of all ETC designations filed with the Commission, including requests for designation on tribal lands.⁸⁵ In the *Twelfth Report and Order and Further Notice*, the Commission committed to resolve the merits of any request for designation on tribal lands within six months of release of an order resolving the jurisdictional issue.⁸⁶ We decline, however, to extend this commitment to resolution of the jurisdictional issues presented in tribal ETC designation proceedings.⁸⁷ As the Commission noted in the *Twelfth Report and Order and Further Notice*, the determination of whether a state commission lacks jurisdiction over a carrier providing service on tribal lands is a legally complex inquiry that may require additional time to fully address. The Commission also has specifically committed to resolving, within six months from the date filed, all designation requests for non-tribal lands that are properly before it pursuant to section 214(e)(6).⁸⁸ The Commission has acted expeditiously on all ETC requests filed since the release of the *Twelfth Report and Order and Further Notice*.⁸⁹ We conclude, therefore, that no further measures beyond those adopted in the *Twelfth Report and Order and Further Notice* are required at this time to expedite the resolution of ETC designation requests filed before this Commission.

V. ORDER ADDRESSING THE REQUEST OF THE COMMONWEALTH OF NORTHERN MARIANA ISLANDS

A. Background

28. In a letter dated September 11, 2000, the Commonwealth of the Northern Mariana Islands' (CNMI) requested that the Commission extend to the Northern Mariana Islands the same measures adopted by the Commission to promote subscribership and infrastructure deployment on tribal lands.⁹⁰ CNMI maintains that the rationale for enhancing Lifeline and

⁸⁴ See, e.g., *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, CC Docket No. 96-45, 15 FCC Rcd 15168 (2000) (*Section 214(e) Declaratory Ruling*).

⁸⁵ See generally Competitive Universal Service Coalition Comments filed Sept. 2, 2000; WorldCom Comments filed Aug. 7, 2000. But see California Commission Comments filed Aug. 4, 2000 at 3; Florida Commission Comments filed Aug. 4, 2000 at 3-4; NTCA Comments filed Sept. 1, 2000; SDITC Comments filed Aug. 7, 2000 at 2-3.

⁸⁶ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12267, para. 121.

⁸⁷ See CUSC Comments at 19.

⁸⁸ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12265, para. 114.

⁸⁹ See, e.g., *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*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 01-283 (rel. Oct. 5, 2001); *Federal-State Joint Board on Universal Service; Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, Memorandum Opinion and Order, CC Docket No. 96-45, 17 FCC Rcd 1502 (2002).

⁹⁰ Letter from Thomas K. Crowe, Counsel for the Commonwealth of the Northern Mariana Islands to Magalie R. Salas, FCC, dated September 11, 2000 (CNMI *ex parte*).

Link-Up support and broadening the eligibility criteria for support on tribal lands applies to the Northern Mariana Islands.

B. Discussion

29. We decline, at this time, to extend to the Northern Mariana Islands the same measures that were adopted to promote subscribership on tribal lands. The record is insufficient to establish that the Northern Mariana Islands has the same impediments to subscribership and infrastructure investment as tribal lands.

30. The actions taken by the Commission in the *Twelfth Report and Order and Further Notice* were designed to address impediments to subscribership and infrastructure investment on tribal lands, where high cost service and low subscribership are most egregious. The Commission identified a number of factors that are primary impediments to subscribership on tribal lands, including the cost of basic service, the cost of intrastate toll service, inadequate telecommunications infrastructure and the cost of line extensions, and the lack of competitive service providers offering alternative technologies.⁹¹ We find that CNMI has not provided any information that would allow us to identify the main impediments to subscribership on the Northern Mariana Islands (*e.g.*, geographic isolation, limited local calling areas, cost of basic service). CNMI merely asserts that the Northern Mariana Islands has low telephone penetration rates, low income levels, and a trust relationship with the federal government that is similar to that of tribal communities.⁹² Given the lack of specific information in the record, we cannot conclude that the enhanced low-income programs established for tribal lands would be effective in addressing the causes of low subscribership rates on the Northern Mariana Islands.

31. We note that the Commission specifically chose not to apply the actions taken in the *Twelfth Report and Order and Further Notice* more generally to all high-cost areas and all insular areas, which would have included the Northern Mariana Islands.⁹³ The Commission found that, although the record demonstrated that subscribership levels are below the national average in other low-income, rural areas and in certain insular areas, it did not permit a determination that the factors causing low subscribership on tribal lands are the same factors causing low subscribership among other populations.⁹⁴ We find that CNMI has not provided any evidence that would lead us to depart from this determination. Specifically, CNMI has not demonstrated that the Northern Mariana Islands has low penetration rates and low per capita incomes that are similar to those on tribal lands.⁹⁵ Although CNMI provides 1995 data suggesting that telephone penetration rates and per capita incomes on the Northern Mariana Islands are below the national average, even these statistics exceed those that exist on tribal lands. In the *Twelfth Report and Order and Further Notice*, the Commission noted that subscribership on reservations was approximately 47 percent and per capita incomes were only \$4,478.⁹⁶ By comparison, CNMI indicates that the subscribership rates in the Northern Mariana

⁹¹ See *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12220, para. 20.

⁹² CNMI *ex parte* at 5.

⁹³ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12226, paras. 32-33 and footnotes cited therein.

⁹⁴ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12226, para. 32.

⁹⁵ CNMI *ex parte* at 4.

⁹⁶ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12223-24, paras. 26-27.

Islands is 61 percent and per capita income is \$6,897. We therefore deny CNMI's request to extend to the Northern Mariana Islands the same measures adopted by the Commission to boost subscribership levels on tribal lands. As noted, however, the Commission continues to monitor the causes of low subscribership and develop appropriate measures to address these causes as necessary.

VI. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

32. On August 31, 2000, the Commission stayed the implementation of the enhanced federal Lifeline and Link-Up assistance rule amendments to the extent that they apply to qualifying low-income consumers living "near reservations."⁹⁷ In so doing, the Commission concluded that the term "near reservation," as defined by BIA at the time, includes wide geographic areas that do not possess the same characteristics that warranted the targeting of enhanced Lifeline and Link-Up support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.⁹⁸ The Commission therefore stayed application of enhanced Lifeline and Link-Up support on near reservation areas. At that time, the Commission sought further comment on whether and, if so, how it should identify geographic areas that are adjacent to the reservations, consistent with the goal of targeted enhanced Lifeline and Link-Up.⁹⁹ The Commission indicated that the stay would remain in effect pending resolution of the issues raised in the Further Notice. A few commenters filed in response to this Further Notice.¹⁰⁰

B. Discussion

33. We seek further comment on the proposals in the record to identify geographic areas that are adjacent to the reservations, consistent with the goal of targeting enhanced Lifeline and Link-Up to the most underserved areas of the Nation. As set forth in the *Tribal Stay and Order*, the term "near reservation," as defined by BIA at the time of adoption of the *Twelfth Report and Order and Further Notice* and codified in our rules in this Order,¹⁰¹ includes wide geographic areas that do not possess the same characteristics that warrant the targeting of support to reservations, such as geographic isolation, high rates of poverty, and low telephone subscribership.¹⁰² As several commenters note, this definition of "near reservation" incorporates many highly populated, urban areas across the Nation, including major cities such as Phoenix,

⁹⁷ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 15 FCC Rcd 17112 (2000) (*Tribal Stay Order and Further Notice*).

⁹⁸ *Tribal Stay Order and Further Notice*, 15 FCC Rcd at 17113, para. 3. As set forth above, in this Order we adopt the previous BIA definition of "near reservation" and codify it in our rules. See *supra* para. 14.

⁹⁹ *Tribal Stay Order and Further Notice*, 15 FCC Rcd at 17113, paras. 5-6.

¹⁰⁰ The following parties filed comments in response to the Further Notice: AT&T, SBC, United States Cellular Corporation (USCC), Verizon, and Washington Utilities and Transportation Commission (Washington UTC). Reply comments were filed by AT&T and USCC.

¹⁰¹ See *supra* para. 14. We note that BIA's current definition of "near reservation" is not narrower than its prior definition. See 25 C.F.R. § 20.100.

¹⁰² *Tribal Stay Order and Further Notice*, 15 FCC Rcd at 17113, para. 3.

Sacramento, Seattle, and Las Vegas.¹⁰³ As set forth in the *Tribal Stay and Order*, we continue to find that using this definition of “near reservation” will not target enhanced Lifeline and Link-Up appropriately.

34. We issue this Further Notice to obtain more detailed information on proposals contained in the current record, as well as additional proposals that may be more consistent with our goal of targeting enhanced Lifeline and Link-Up support to only the most underserved areas of our Nation and that may impose fewer administrative burdens.¹⁰⁴ For instance, USCC recommends excluding major metropolitan areas from the enhanced low-income programs by excluding Consolidated Metropolitan Statistical Areas (CMSAs) from receiving enhanced low-income support.¹⁰⁵ Washington UTC suggests that enhanced Lifeline and Link-Up support be provided in the entirety of any telephone exchange that contains all or any portion of a tribal reservation.¹⁰⁶ In addition, Smith Bagley, Inc. (SBI) proposes that a person qualify for enhanced Lifeline and Link-Up benefits if he or she resides within 50 miles of a recognized Native American reservation and in a county that has a population density of no more than 50 persons per square mile.¹⁰⁷

35. We seek comment on data that addresses whether these proposed target areas share the same characteristics of reservation areas. For example, SBI fails to explain why it recommends choosing a population density of 50 persons per square mile.¹⁰⁸ We seek record support regarding these issues. Moreover, the proposals of USCC, Washington UTC, and SBI may not adequately ensure that the enhanced Lifeline and Link-Up support mechanisms are targeted only to those areas that share the same attributes as reservations. For example, we believe that these proposals may not exclude large cities from the definition of “near reservation.”¹⁰⁹ We seek comment on how these proposals may be tailored to exclude such large cities.

¹⁰³ See, e.g., AT&T Comments at 2-3; SBC Comments at 1; Verizon Comments at 1-2.

¹⁰⁴ We note that the Commission is also seeking comment on how to define areas that are adjacent to tribal lands where it might be appropriate to provide tribal lands bidding credits. The Commission’s current tribal lands bidding credits program grants credits to winning bidders who deploy facilities and provide service to federally-recognized tribal areas that have a telephone service penetration rate below 70 percent. See *Extending Wireless Telecommunications Services to Tribal Lands*, Second Report and Order and Second Further Notice of Proposed Rulemaking, WT Docket No. 99-266, paras. 1, 32-33 (rel. Mar. 14, 2003).

¹⁰⁵ USCC Comments at 6-7. A CMSA is a Metropolitan Statistical Area (MSA) that has a population of one million or more, has separate component areas can be identified within the entire area by meeting certain statistical standards, and in which local opinion indicates there is support for the component areas. An MSA is an area that includes: (1) at least one city with 50,000 or more inhabitants, or (2) a Census Bureau-defined urbanized area (of at least 50,000 inhabitants) and a total metropolitan population of at least 100,000 (75,000 in New England). See <<http://www.census.gov/population/www/estimates/aboutmetro.html>>.

¹⁰⁶ Washington UTC Comments at 4-5.

¹⁰⁷ Letter from David LaFuria, counsel for Smith Bagley, Inc. to Marlene H. Dortch, FCC, dated August 22, 2002 (SBI Letter).

¹⁰⁸ See SBI Letter generally.

¹⁰⁹ See, e.g., USCC Comments at 6-7 (acknowledging that cities as large as Yakima, WA would be included in its definition of “near reservation”); SBI Letter at Near Lands Comparative Analysis Arizona & New Mexico (showing that its proposal would include Flagstaff, AZ).

36. We seek comment on how to minimize any administrative burdens raised by these proposals. For example, SBI proposes that the Commission produce and distribute maps outlining all areas that are within a 50 mile radius of a reservation in which the county contains less than 50 persons per square mile.¹¹⁰ We believe that the Commission may not be the appropriate entity to undertake such tasks because it has no particular expertise with regard to such mapmaking. In addition, we are not aware of any current map that contains all reservations as defined by the Commission.¹¹¹ We seek comment on alternative sources for such maps. We seek comment on the feasibility of having prospective ETCs bear the cost and burden of producing their own maps showing the areas in which they request ETC designation.

37. We also seek comment on additional proposals for defining the geographic areas that are near reservations to ensure that enhanced Lifeline and Link Up support is targeted to qualifying low-income consumers living in areas adjacent to, or near, reservations that share many of the same characteristics as the reservations. We request that commenters provide detailed information to assist us in determining how enhanced Lifeline and Link Up support should be targeted. Such information should include the population of the geographical area, the number of income-eligible subscribers, the distance of each area from the nearest reservation, whether there is any legal recognition of that area by the BIA, whether the area includes or is part of a Metropolitan Statistical Area (MSA),¹¹² and the level of telephone subscribership in the area. Wireline Competition Bureau staff have estimated, through analysis of recent Census data of a sampling of zip codes in near reservation areas,¹¹³ that the level of telephone subscribership in Indian households is lower than the level of telephone subscribership for all households.¹¹⁴ We ask commenters to provide their own data comparing the level of telephone subscribership in Indian households in near reservation areas with the level of telephone subscribership in all households in near reservation areas, or comment on the Bureau's preliminary estimates. Bureau staff have also estimated that a greater percentage of Indian households in near reservation areas have incomes under \$25,000, compared to all households in near reservation areas.¹¹⁵ We ask

¹¹⁰ SBI Letter at 4-5.

¹¹¹ See Appendix A, 47 C.F.R. § 54.400(e).

¹¹² See *supra* n. 105.

¹¹³ See 2000 Census Data at <<http://www.census.gov/main/www/cen2000.html>> (analysis excluded MSAs); Appendix B (List of Near Reservation Areas).

¹¹⁴ For example, in near reservation areas in Arizona, telephone subscribership for Indian households was estimated to be 88.1% compared to 95.6% for all households. In near reservation areas in Montana, telephone subscribership for Indian households was estimated to be 83.7% compared to 95.1% for all households. In near reservation areas in New Mexico, telephone subscribership for Indian households was estimated to be 88.5% compared to 95.3% for all households. In near reservation areas in South Dakota, telephone subscribership for Indian households was estimated to be 74.8% compared to 95.2% for all households. See 2000 Census Data at <<http://www.census.gov/main/www/cen2000.html>> (analysis excluded zip codes in MSAs); Appendix B (List of Near Reservation Areas).

¹¹⁵ For example, in near reservation areas in Arizona sampled by the Bureau, 46.1% of Indian households had annual incomes under \$25,000 compared to 37.2% for all households. In near reservation areas in Montana, 62.4% of Indian households had annual incomes under \$25,000 compared to 43.1% for all households. In near reservation areas in New Mexico, 43.6% of Indian households had annual incomes under \$25,000 compared to 37.9% for all households. In near reservation areas in South Dakota, 67.2% of Indian households had annual incomes under \$25,000 compared to 48.4% for all households. See 2000 Census Data at <<http://www.census.gov/main/www/cen2000.html>> (analysis excluded zip codes in MSAs); Appendix B (List of Near Reservation Areas).

commenters to provide their own data comparing the percentage of low-income Indian households in near reservation areas with the percentage of all low-income households in near reservation areas, or comment on the Bureau's preliminary estimates.¹¹⁶ We note that the Bureau's most recent penetration report indicates that there is a correlation between low levels of household income and low levels of telephone subscribership.¹¹⁷

38. Finally, we seek comment on the effect of any proposed "near reservation" definitions on the ETC designation process. As explained above, we conclude that, pending resolution of the "near reservation" definition, petitions for ETC designation relating to near reservation areas will not be considered as petitions relating to tribal lands. Petitioners seeking ETC designation in such areas must follow the procedures outlined in the *Twelfth Report and Order and Further Notice* for non-tribal lands prior to submitting a request for designation to the Commission under section 214(e)(6).¹¹⁸ The Commission reached this conclusion because it believed that near reservation areas do not invoke the same jurisdictional concerns and principles of tribal sovereignty that are associated with areas within the boundaries of reservations. Accordingly, we request that any proposed definitions of "near reservation" also include a discussion of the impact of such definition on the ETC designation process.

VII. PROCEDURAL MATTERS

A. Paperwork Reduction Act

39. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose new reporting and/or recordkeeping requirements or burdens on the public. Implementation of these modified reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the Federal Register.

B. Supplemental Final Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act (RFA),¹¹⁹ an Initial Regulatory

¹¹⁶ According to the Federal Poverty Guidelines (FPG), a family of four with an income at or below \$25,000 is just above 135% of the FPG. See 2003 Poverty Guidelines for the 48 Contiguous States and the District of Columbia, 68 Fed. Reg. 6456-58 (2003). A family of four with a yearly income of \$24,840 is at 135% of the FPG. *Id.* We note that issues related to the federal low-income programs, Lifeline and Link-Up, have been raised in a different proceeding. See *Recommended Decision*, FCC 03J-2 at paras. 15-19 (recommending, *inter alia*, that the Commission add an income-based criteria of 135% of the FPG to the current default eligibility criteria). See *generally Recommended Decision*, FCC 03J-2.

¹¹⁷ Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, *Telephone Penetration by Income by State*, at 7, Chart 1 (rel. May 20, 2003) (*Telephone Penetration Report*) (households with the lowest incomes had the lowest telephone penetration rates).

¹¹⁸ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12263-64, paras. 112-13 ("[o]nly in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) designation requests from carriers serving non-tribal lands.").

¹¹⁹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Flexibility Analysis (IRFA) was incorporated in the *Tribal Stay Order and Further Notice*.¹²⁰ The Commission sought written public comment on the proposals in the Further Notice, including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis (FRFA) and IRFA were included in the *Twelfth Report and Order and Further Notice*.¹²¹ In compliance with the RFA, this present FRFA supplements the FRFA contained in the *Twelfth Report and Order and Further Notice* to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA.¹²²

1. Need for and Objectives of the Order

41. The Commission issues this Order to ensure that enhanced Lifeline and Link-Up support is targeted to the only the most underserved segments of our Nation. The Commission takes this action as part of its implementation of the Act's mandate that "[c]onsumers in all regions of the Nation . . . have access to telecommunications and information services . . ."¹²³ In this Order, we affirm that the framework adopted by the Commission for resolution of ETC designations on tribal lands provides a reasonable means to facilitate the expeditious resolution of such requests, while balancing the respective federal, state, and tribal interests. In addition, we conclude that the definition of "reservation" for purposes of the universal service programs remains the same as that adopted in the *Twelfth Report and Order and Further Notice* despite the Bureau of Indian Affairs' (BIA) subsequent modification of that definition for purposes of its direct assistance programs. We also clarify the Commission's rules regarding the qualification criteria for enhanced Lifeline and Link-Up service.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

42. We received no comments directly in response to the IRFA in this proceeding. However, we reconsider our conclusion that Link-Up support should offset a portion of the costs of a wireless handset. Pending resolution of the issues presented in the *Tribal Stay Order*, we also conclude that carriers seeking designation as an ETC on "near reservation" areas must follow the procedures established for non-tribal designations in the *Twelfth Report and Order and Further Notice*.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

43. In the FRFA at paragraphs 162-178 of the *Twelfth Report and Order and Further Notice*, we described and estimated the number of small entities that would be affected by the new universal service rules and amendments for low-income consumers residing on tribal lands. The rule amendments adopted herein apply to the same entities affected by the rules adopted in that order. We therefore incorporate by reference paragraphs 162-178 of the *Twelfth Report and*

¹²⁰ *Tribal Stay Order and Further Notice*, 15 FCC Rcd at 17115-25, paras. 8-36.

¹²¹ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12278-89, paras. 155-183.

¹²² See 5 U.S.C. § 604.

¹²³ 47 U.S.C. § 254.

*Order and Further Notice.*¹²⁴

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

44. The actions taken herein will require carriers seeking designation as an ETC on near reservation areas to file such requests with the relevant state commission. Pending resolution of the issues presented in the *Tribal Stay Order and Further Notice*, only in those instances where a carrier provides the Commission with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation will we consider section 214(e)(6) designation requests from carriers serving near reservation areas.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

45. In this Order, we confirm that the definition of “reservation” for purposes of the universal service programs remains the same as that adopted in the *Twelfth Report and Order and Further Notice*. This decision will not result in a significant economic impact on small entities. We also conclude that Link-Up support should not offset any costs of a wireless handset. Given that Link-Up support is a one-time reduction in the eligible consumer’s connection charge, we do not believe that this decision will result in a significant economic impact on any small wireless entities.

6. Report to Congress

46. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

C. Effective Date of Amended Rules

47. Pursuant to 5 U.S.C § 553(d),¹²⁵ the rule amendments adopted herein shall take effect thirty (30) days after publication in the Federal Register.

D. Initial Regulatory Flexibility Analysis

48. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA),¹²⁶ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic effect on small entities by the policies and rules proposed in the FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments on the FNPRM provided below in

¹²⁴ *Twelfth Report and Order and Further Notice*, 15 FCC Rcd at 12281-87, paras. 162-78.

¹²⁵ 5 U.S.C. § 553(d).

¹²⁶ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

the Comment Filing Procedures section. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹²⁷ In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.¹²⁸

1. Need for, and Objectives of, the Proposed Rules

49. This FNPRM is being issued in order to ensure that enhanced Lifeline and Link-Up support is targeted to the most underserved segments of our Nation. The Commission sought comment on the same questions present herein in the *Tribal Stay Order and Further Notice*.¹²⁹ This FNPRM seeks to bolster the record on how to define the geographic areas that are adjacent to reservations or are otherwise part of the reservation's community of interest, in a manner that is consistent with our goal of targeting enhanced Lifeline and Link-Up support to the most underserved segments of the Nation. This action is taken pursuant to the Act's mandate that "[c]onsumers in all regions of the Nation . . . have access to telecommunications and information services. . . ."¹³⁰

2. Legal Basis

50. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1-4, 201-205 and 254 of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201-205 and 254.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

51. In the IRFA at paragraphs 11-31 of *Tribal Stay Order and Further Notice*, we described and estimated the number of small entities that would be affected by the determination to stay application of the enhanced low-income programs to "near reservation" areas and to consider alternative definitions. The proposals discussed in this FNPRM apply to the same entities. We therefore incorporate by reference paragraphs 11-31 of the *Tribal Stay Order and Further Notice*.¹³¹

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. The measures under consideration in this FNPRM may, if adopted, result in additional reporting or other compliance requirements. A modified definition of "near reservation" may impact reporting requirements for carriers eligible to receive enhanced Lifeline and Link-Up. For example, such carriers may be required to compile maps or derive other means to determine whether qualifying low-income customers fall within any designated geographic areas. In addition, if the current stay is lifted and an alternative definition of "near

¹²⁷ See 5 U.S.C. § 603(a).

¹²⁸ See *id.*

¹²⁹ See generally *Tribal Stay Order and Further Notice*.

¹³⁰ 47 U.S.C. § 254.

¹³¹ *Tribal Stay Order and Further Notice*, 15 FCC Rcd at 17112, paras. 11-31.

reservation” is adopted, eligible carriers may be required to submit data regarding an increased number of qualifying low-income consumers. Such increased reporting requirements would be offset by increased opportunities to receive universal service support.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

53. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹³²

54. In the FNPRM, we outline the various alternative proposals that have been suggested to the Commission in response to the *Tribal Stay Order and Further Notice*. We seek comment on the cost and benefits of each of these alternative proposals, including the potential administrative burdens involved in implementing such proposals on eligible carriers. The Commission’s rules relating to the receipt of enhanced Lifeline and Link-Up support apply equally to all eligible carriers providing service to qualifying low-income consumers. The proposals presented herein are consistent with these standards.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

55. None.

E. Filing of Comments and Reply Comments

56. We invite comment on the issues and questions set forth in the Further Notice above. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

57. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get

¹³² 5 U.S.C. § 603(c).

form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to Sheryl Todd, Federal Communications Commission, 445 12th Street, Rm. 5-A520, S.W., Washington, DC 20554.

58. Written comments by the public on the proposed and/or modified information collections are due on or before 45 days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or via the Internet to edward.springer@omb.eop.gov.

59. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (tty).

VIII. ORDERING CLAUSES

60. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 214(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 214(e), and 254, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, this ORDER ON RECONSIDERATION, REPORT AND ORDER, ORDER, AND FURTHER NOTICE IS ADOPTED. The collections of information contained within this Order are contingent upon approval by the Office of Management and Budget. The Commission will publish a notice announcing the effective date of the collections of information.

61. IT IS FURTHER ORDERED that the above-captioned petitions for reconsideration of the *Twelfth Report and Order and Further Notice* ARE DENIED, to the extent discussed herein.

62. IT IS FURTHER ORDERED that the petition for reconsideration of the National Telephone Cooperative Association, filed on September 5, 2000, IS GRANTED, to the extent

discussed herein.

63. IT IS FURTHER ORDERED that the petition for reconsideration of the South Dakota Independent Telephone Coalition, filed on September 5, 2000, IS GRANTED IN PART AND DENIED IN PART, to the extent discussed herein.

64. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A attached hereto, effective thirty (30) days after the publication of this ORDER in the Federal Register.

65. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Initial and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54 – UNIVERSAL SERVICE**Subpart E – Universal Service Support for Low-Income Consumers.**

1. Section 54.400 is amended by revising paragraph (e) and the note to paragraph (e) to read as follows:

§ 54.400 Terms and definitions.

* * * * *

(e) *Eligible resident of Tribal lands.* An “eligible resident of Tribal lands” is a “qualifying low-income consumer,” as defined in paragraph (a) of this section, living on or near a reservation. A “reservation” is defined as any federally recognized Indian tribe’s reservation, Pueblo, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments. “Near reservation” is defined as those areas or communities adjacent or contiguous to reservations which are designated by the Department of Interior’s Commission of Indian Affairs upon recommendation of the local Bureau of Indian Affairs Superintendent, which recommendation shall be based upon consultation with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a written designation by the tribal governing body that members of their tribe and family members who are Indian residing in the area, are socially, culturally and economically affiliated with their tribe and reservation; (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area.

Note to Paragraph (e): This paragraph (e) is stayed to the extent that it applies to qualifying low-income consumers living “near reservations.”

2. Section 54.409 is amended by revising the third sentence of paragraph (a), and the first and third sentence of paragraph (c) to read as follows:

§ 54.409 Consumer qualification for Lifeline

(a) * * * A state containing geographic areas included in the definition of “reservation” and “near reservation,” as defined in § 54.400(e), must ensure that its qualification criteria are reasonably designed to apply to low-income individuals living in such areas.

* * * * *

(c) A consumer that lives on a reservation or near a reservation, but does not meet the qualifications for Lifeline specified in paragraphs (a) and (b) of this section, nonetheless shall be a “qualifying low-income consumer” as defined in § 54.400(a) and thus an “eligible resident of Tribal lands” as defined in § 54.400(e) and shall qualify to receive Tiers One, Two, and Four Lifeline service if the individual participates in one of the following federal assistance programs: Bureau of Indian affairs general assistance; Tribally administered Temporary Assistance for

Needy Families; Head Start (only those meeting its income qualifying standard); or National School Lunch Program's free lunch program. * * * To receive Lifeline support under this paragraph for the eligible resident of Tribal lands, the eligible telecommunications carrier offering the Lifeline service to such consumer must obtain the consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from at least one of the programs mentioned in this paragraph or paragraph (b) of this section, and lives on or near a reservation, as defined in § 54.400(e). * * *

APPENDIX B – LIST OF NEAR RESERVATION AREAS

This list encompasses areas in all states that have been given a “near reservation” designation by the Bureau of Indian Affairs, Department of the Interior.

Arizona

Tribe: Pascua Yaqui

Pima County, Arizona communities of South Tucson, Old Pascua Village and Yoem Pueblo.

Tribe: Tonto Apache Indians of Arizona

The communities of Gisela, Payson, and Star Valley in the State of Arizona.

Tribe: Colorado River

Bouse, Ehrenberg, Parker, Salome, Lake Havasu City, Kingman, Bull Head City, Holiday Shores, Mohave Valley, Havasu Valley

Tribe: Fort Apache

Pine Top, Lakeside, Eager, Showlow, Nutrioso, Holbrook, Overgaard, Alpine, Taylor, Springerville, Herber, Globe, St. Johns, Snowflake, Winslow

Tribe: Majave-Apache

Mesa, Tempe, Scottsdale

Tribe: Queehan, Cocopah

Gadsen, Roll, San Luis, Somerton, Tacna, Yuma, Wellton

Tribe: Hopi

Holbrook, Winslow, Flagstaff, Grand Canyon, Page

Tribe: Navajo

Grand Canyon, Joseph City, Marble Canyon, Flagstaff, Snowflake, Holbrook, Page, Wupatki, Winslow

Tribe: Papago

Tucson, Why, South Tucson, Ajo, Gila Bend, Sasabe, Case Grande, Sahuarita, Coolidge, Marana, Florence, Red Rock, Eloy, Cortaro, Toltec, Picacho, Buckeye, Arizona City, Stanfield

Tribe: Ak-Chin

Chandler, Mobile, Laveen, Stanfield, Casa Grande, Gila Bend, Phoenix, Midway, Eleven Mile Corner, Kyrene, Coolidge, Florence, Buckeye, Maricopa

Tribe: Gila River

Chandler, LaPalma, Eloy, Ocotillo, Casa Grande, Gilbert, Higley, Kyrene, Rittenhouse, Hightown, Queen Creek, Gila Bend, Stanfield, Chandler Hts, Florence, Mobile, Maricopa, Coolidge, Boree Corners, Avondale, Randolph, Tempe, Phoenix, Guadalupe, Mesa, Glendale, Litchfield, Laveen, Eleven Mile Corner, Buckeye, Cotton Bowl, Tolleson, Apache Junction

Tribe: Salt River Pima-Maricopa
Tempe, Mesa, Phoenix, Scottsdale

Tribe: San Carlos
Miami, Superior, Eden, Thatcher, Pima, Safford, Hayden, Winkleman, Globe, Port Thomas, Showlow

Tribe: Hualapai
Kingman, Seligman, Nelson, Grand Canyon, Williams, Flagstaff

Tribe: Yavapai (Prescott)
Prescott

Tribe: Yavapai (Apache)
Jerome, Clarkdale, Cottonwood, Rimrock, McGuireville, Camp Verde, Lake Montezuma

Tribe: Kalbab-Palute
Fredonia, Arizona; St. George, Utah; Kanob, Utah; Cedar City, Utah

California

Tribe: Big Sandy Rancheria
The counties of Madera, Fresno and Kings in the State of California.

Tribe: Big Valley Rancheria
The counties of Lake and Sonoma in the State of California.

Tribe: Bishop Reservation
The counties of Mono and Inyo in the State of California.

Tribe: Cedarville Rancheria
The county of Modoc in the State of California.

Tribe: Cortina Rancheria
The counties of Glenn, Colusa, Yolo and Sacramento in the State of California.

Tribe: Dry Creek Rancheria
The county of Sonoma in the State of California.

Tribe: Fort Bidwell Reservation
The county of Modoc in the State of California. The counties of Lake and Klamath in the State of Oregon.

Tribe: Greenville Rancheria
The counties of Plumas, Lassen, Shasta, Tehama, Butte, Yuba and Sutter in the State of California.

Tribe: Hopland Reservation

The counties of Mendocino and Sonoma in the State of California.

Tribe: Karuk Tribe of California

The counties of Siskiyou, northeastern Humboldt from State Highway 96 milepost HUM 28.61 north to the Siskiyou County Line in the State of California.

Tribe: Laytonville Rancheria

The counties of Mendocino, Lake and Humboldt in the State of California.

Tribe: Mechoopda Indian Tribe of the Chico Rancheria

The county of Butte in the State of California.

Tribe: Mooretown Rancheria

The county of Butte in the State of California.

Tribe: North Fork Rancheria

The counties of Madera, Mariposa and Fresno in the State of California.

Tribe: Picayune Rancheria of the Chukchansi Indians

The counties of Fresno, Madera and Mariposa in the State of California.

Tribe: Pinoleville Reservation

The counties of Mendocino, Sonoma, Lake and Napa in the State of California.

Tribe: Redding Rancheria

The county of Trinity and the western two-thirds of Shasta in the State of California.

Tribe: Redwood Valley Rancheria

The counties of Mendocino and Sonoma in the State of California.

Tribe: Coast Indian Community of the Resighini Rancheria

The county of Del Norte in the State of California.

Tribe: Bear River Band of Rohnerville Rancheria

The counties of Humboldt and Del Norte in the State of California.

Tribe: Round Valley Reservation

The counties of Trinity, Mendocino, Lake and Sonoma in the State of California.

Tribe: Scotts Valley Rancheria

The counties of Mendocino, Lake, Sonoma and Contra Costa in the State of California.

Tribe: Sherwood Valley Rancheria

The counties of Mendocino, Lake and Sonoma in the State of California.

Tribe: Shingle Springs Rancheria

The counties of El Dorado, Sacramento, Placer and Yolo in the State of California.

Tribe: Smith River Rancheria
The counties of Del Norte and Humboldt in the State of California. The counties of Curry, Josephine and Coos in the State of Oregon.

Tribe: Susanville Indian Rancheria
The county of Lassen in the State of California.

Tribe: Tule River Reservation
The county of Tulare in the State of California.

Tribe: Tuolumne Rancheria
The county of Tuolumne in the State of California.

Tribe: Yurok Tribe
The counties of Humboldt and Del Norte in the State of California.

Colorado

Tribe: Navajo
La Plata, Cortez, Bayfield, Durango, Ignacio, and Towaoc

Idaho

Tribe: Shoshone-Bannock
Counties of Bingham, Power, Bannock and Caribou

Tribe: Battle Mountain Indian Colony of the Te-Moak Band of the Western Shoshone, Confederated Tribes of the Goshute Reservation, Duck Valley Shoshone-Paiute, Duckwater Shoshone Tribe, Elko Community Committee, Ely Colony of Western Shoshone, Te-Moak Bands of the Western Shoshone, South Fork Community Committee organization.
The Nevada counties of Elko, Eureka, Lander, Nye, and White Pine inclusively; the community of Winnemucca, Nevada; the Utah county of Tooele; the Idaho counties of Ada, Canyon, Elmore, and Owyhee.

Tribe: Nez Perce Tribe
The towns of Lewiston, Kendrick, Grangeville, and Cottonwood in Idaho, and the towns of Asotin and Clarkston in Washington.

Louisiana

Tribe: Chitimacha Tribe of Louisiana
The Saint Mary Parish in the State of Louisiana

Tribe: Coushatta Tribe of Louisiana
Parishes of Allen Jefferson Davis, Louisiana

Tribe: Tunica-Biloxi Indians of Louisiana
Parishes of Avoyelles and Rapids, Louisiana

Michigan

Tribe: Bay Mills Indian Community

The counties of Chippewa, Luce and Mackinac in the State of Michigan.

Tribe: Grand Traverse Band of Ottawa and Chippewa Indians

The counties of Grand Traverse, Charlevoix, Leelanau, Benzie, Manistee and Antrim in the State of Michigan.

Tribe: Hannahville Indian Community

The counties of Delta, Menominee and Dickinson in the State of Michigan.

Tribe: Keweenaw Bay Indian Community

The counties of Baraga, Iron, Houghton, Marquette, Ontonagon, Dickinson, Gogebic and Keweenaw in the State of Michigan.

Tribe: Lac Vieux Desert

The counties of Gogebic, Ontonogin and Iron in the State of Michigan.

Tribe: Saginaw Chippewa

The counties of Isabella, Arenac, Osceola, Mecosta, Montcalm, Midland, Gratiot, Gladwin and Midland in the State of Michigan.

Tribe: Sault Ste. Marie Tribe of Michigan

The counties of Chippewa, Mackinac, Luce, Alger, Schoolcraft, Delta and Marquette in the State of Michigan.

Mississippi

Tribe: Choctaw

Counties of Neshoba, Leake, Newton, Kemper, Scott, Attala, Lauderdale, Winston, Noxubee, Clarke, Smith and Jones

Montana

Tribe: Blackfeet Tribe of the Blackfeet Indian Reservation of Montana

The communities of Cut Bank, Dupuyer, and Valier in the State of Montana.

Tribe: Crow Tribe of Montana

City of Hardin, Montana

Tribe: Gros Ventre and Assiniboine Tribes

Cities of Harlem and Dodson, Montana

Tribe: Northern Cheyenne

Ashland, Montana

Nevada

Tribe: The Nevada counties of Humboldt, Washoe, Storey, Pershing, Churchill, Douglas, Mineral, Lyon, Esmeralda, Clark and Nye.

Tribe: Fallon Paiute Shoshone; Fort McDermitt Paiute Shoshone; Lovelock Paiute; Pyramid Lake Paiute; Reno Sparks Indian Colony's Summit Lake Paiute; Walker River Paiute; Washoe Tribe of Nevada and California; Winnemucca Indian Colony; Yerington Paiute; and Yomba Shoshone

The county of Carson City in the State of Nevada

Tribe: Battle Mountain Indian Colony of the Te-Moak Band of the Western Shoshone, Confederated Tribes of the Goshute Reservation, Duck Valley Shoshone-Paiute, Duckwater Shoshone Tribe, Elko Community Committee, Ely Colony of Western Shoshone, Te-Moak Bands of the Western Shoshone, South Fork Community Committee organization.
The Nevada counties of Elko, Eureka, Lander, Nye, and White Pine inclusively; the community of Winnemucca, Nevada; the Utah county of Tooele; the Idaho counties of Ada, Canyon, Elmore, and Owyhee.

New Mexico

Tribe: Pueblo of San Juan, New Mexico

Communities within five miles from the reservation border, including Alcade, Arroyo Seco, Chamita, Chili, El Llano, El Quique, Espanola, Guachupange, Hernandez, La Mesilla, San Pedro, Santa Cruz and Velarde, New Mexico.

Tribe: Navajo

Farmington, Aztec, Bloomfield, Magdalena, Cuba, Kirtland, Grants, Milan, Socorro, Gallup

North Carolina

Tribe: Cherokee

Counties of Cherokee, Graham, Haywood, Jackson and Swain

North Dakota

Tribe: Turtle Mountain Band of Chippewa Indians
Rolette County, North Dakota

Tribe: Devils Lake Sioux Tribe

Cities of Devils Lake, Minnewaukan, Oberon and Sheyenne, North Dakota

Oklahoma

Tribe: Kaw, Otoe-Missouria, Ponca, Tonkawa, Pawnee

North Boundary- From the west of Grant County, along the Oklahoma-Kansas state line, to the east boundary of Kay County. *East Boundary*- Commencing northeast corner of Kay County, south on Kay County line to Kaw City thence southwest to the Arkansas River, following

Arkansas River to Cimarron Turnpike. *South Boundary*- From juncture of Arkansas River and Cimarron Turnpike, west on Cimarron Turnpike to State Highway 18, south on State Highway 18 to the Cimarron River, west along the Cimarron River to Coyle, Oklahoma, thence along State Highway 33 west to Kingfisher, Oklahoma. *West Boundary*- Commencing at Kingfisher, Oklahoma, north on State Highway 81 to the Garfield County line, west along the Garfield County line to the west boundary of Garfield County, thence north along the west boundaries of Garfield and Grant Counties to the Oklahoma-Kansas state line.

Tribe: Chyenne-Arapaho

Woodward, Major, Kingfisher, Canadian, Blaine, Dewey, Custer, Washita, Beckham, Roger Mills Counties and that southeastern portion of Ellis County which falls within the former reservation boundaries.

Tribe: Absentee Shawnee Tribe of Oklahoma, Citizen Band Potawatomi Tribe of Oklahoma, Iowa Tribe of Oklahoma, Kickapoo Tribe of Oklahoma, Sac and Fox Tribe of Oklahoma. All of Payne County north of the Cimarron River except that part which lies within the boundaries of the Pawnee Tribe's former reservation; and all the area within a six-mile-wide strip of land in Logan, Oklahoma, and Cleveland Counties, beginning at the extreme southwest corner of Payne County where the line intersects with the Cimarron River, then running due south to the South Canadian River (all within the State of Oklahoma).

Oregon

Tribe: Burns Paiute

The Communities of Burns and Hines in the State of Oregon and those public domain allotments in Harney County, Oregon inhabited by members of the Burns Paiute Tribe.

Tribe: Yakama Indian Nation

The community of Celilo Village in the State of Oregon

Tribe: Umatilla

Counties of Umatilla and Union; Celilo Village in Wasco county

Tribe: Warm Springs Confederated Tribes

Counties of Jefferson, Wasco, Clackamas, Marion, Linn, Crook, Deschutes, and Hood River (all within the State of Oregon).

Tribe: Fort Bidwell Reservation

The county of Modoc in the State of California. The counties of Lake and Klamath in the State of Oregon.

Tribe: Smith River Rancheria

The counties of Del Norte and Humboldt in the State of California. The counties of Curry, Josephine and Coos in the State of Oregon.

Tribe: Confederated Tribe of the Siletz Indians

The counties of Washington, Clackamas, and Multnomah (all of the above within the State of Oregon).

South Dakota

Tribe: Cheyenne River Sioux

The community of Faith, South Dakota (only that area falling within the city limits of Faith, South Dakota).

Tribe: Rosebud Sioux

The South Dakota counties of Gregory, Melette, Tripp, and Lyman (excluding that portion of Lyman County which falls within the boundaries of the Lower Brule Indian Reservation).

Tribe: Sisseton-Wahpeton Sioux

The communities of Waubay, South Dakota and Wilmot, South Dakota.

Utah

Tribe: Kalbab-Palute

Fredonia, Arizona; St. George, Utah; Kanob, Utah; Cedar City, Utah

Tribe: Battle Mountain Indian Colony of the Te-Moak Band of the Western Shoshone, Confederated Tribes of the Goshute Reservation, Duck Valley Shoshone-Pauite, Duckwater Shoshone Tribe, Elko Community Committee, Ely Colony of Western Shoshone, Te-Moak Bands of the Western Shoshone, South Fork Community Committee organization.

The Nevada counties of Elko, Eureka, Lander, Nye, and White Pine inclusively; the community of Winnemucca, Nevada; the Utah county of Tooele; the Idaho counties of Ada, Canyon, Elmore, and Owyhee.

Washington

Tribe: Muckleshoot

The counties of King and Pierce in the State of Washington.

Tribe: Nisqually

Thurston, County and pierce County in the State of Washington.

Tribe: Nooksack

Whatcom County and Skagit County in the State of Washington.

Tribe: Suquamish

Counties of Mason, Kitsap, Thurston, Snohomish, King and Pierce in the State of Washington.

Tribe: Swinomish

Skagit County in the State of Washington.

Tribe: Quinault Indian Nation

The counties of Grays Harbor and Jefferson in the State of Washington

Tribe: Skokomish Indian Tribe of the Skokomish Reservation of Washington
Mason County within the State of Washington

Tribe: Lummi
County of Whatcom in the State of Washington

Tribe: Klallam
County of Kitsap in the State of Washington

Tribe: Puyallup
Counties of King, Pierce, Kitsap, Thurston, in the State of Washington

Tribe: Tulalip
County of Snohomish in the State of Washington

Tribe: Hoh
Counties of Clallam, Jefferson, Grays Harbor and King in the State of Washington

Tribe: Quileute
Forks, Washington

Tribe: Colville Confederated Tribes
Counties of Ferry, Stevens, Okanogan, Grant, and Douglas

Tribe: Nez Perce Tribe
The towns of Lewiston, Kendrick, Grangeville, and Cottonwood in Idaho, and the towns of Asotin and Clarkston in Washington.

Tribe: Kalispel Tribe
Counties of Pend Oreille, Stevens, and Spokane (all within the State of Washington).

Tribe: Spokane
Counties of Spokane, Lincoln, Stevens and Pend Oreille (all within the State of Washington).

Tribe: Chehalis Confederated Tribes
Counties of Grays Harbor, Lewis, Thurston, Cowlitz, and Mason (all within the State of Washington).

Tribe: Shoalwater Bay
Counties of Grays Harbor and Pacific (all within the State of Washington).

Tribe: Squaxin Island
Counties of Mason, Kitsap, Pierce, and Thurston (all within the State of Washington).

Tribe: Confederated Tribes of the Yakima Indian Nation
Counties of Klickitat, Grant, Yakima, and Skamania; towns of Wenatchee and Ellensburg (all within the State of Washington).

Wyoming

Tribe: Arapahoe Tribe of the Wind River reservation of Wyoming and Shoshone Tribe of the Wind River Reservation of Wyoming
Cities of Lander and Riverton, Wyoming

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART, CONCURRING IN PART**

Re: *Federal-State Joint Board on Universal Service; Promoting Deployment and
Subscribership in Unserved and Underserved Areas, Including Tribal and Insular
Areas*

Three years ago, the Commission adopted an official policy statement to guide interactions between the agency and tribal governments. For the first time in its history, the Commission formally affirmed the principles of tribal sovereignty and federal trust responsibility. The Commission committed to consult with tribal governments before taking action affecting tribal land and resources and committed to address persistent communications problems like low penetration in Indian communities.

Although I support the Order we adopt today, I concur in part because I fear that our Further Notice of Proposed Rulemaking falls short of the vision and commitment expressed in our official policy statement. For the second time in three years, we seek comment on how the Commission can ensure that tribal members living *near* tribal lands can benefit from the same enhanced Lifeline and Link Up available to those living *on* tribal lands. As the Commission already has recognized, lands adjacent to reservations have been considered tribal lands for purposes of other federal programs targeted to federally-recognized Indian tribes. Many of these near reservation areas share the same high rates of poverty, low telephone subscribership and geographic isolation found on tribal lands. Moreover, rates of unemployment on tribal lands of 20 and 30 and 40 percent often compel members to move off reservations to adjacent areas where job prospects are brighter. I understand that the Commission's prior definition of near reservation inadvertently included highly populated urban areas not targeted for enhanced support. Nonetheless, I believe that it is high time for the Commission to choose an appropriate limiting principle for near reservation areas and resolve this issue once and for all.

By seeking another round of comment we only further delay enhancing tribal communities' access to telecommunications. As a result, we delay these same communities' access to education, commerce, government and public services. Native Americans should not be the last Americans to reap the benefits of the Information Age. We need to work harder to honor the commitment we made in our policy statement to address low penetration rates in Indian Country. I remain hopeful that in this proceeding we finally will identify the effective mechanism to address support for subscribership and facilities deployment in Indian communities in near reservation areas. I look forward to working with my colleagues and with tribal governments and communities to make this happen.