S nnenschein
SONNENSCHEIN NATH & ROSENTHAL LLP

1301 K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005-3364
202.408.6400
202.408.6399 fax
www.sonnenschein.com

Douglas G. Bonner
202.408.3957
dbonner@sonnenschein.com

RECEIVED
SEP 28 2010
PUBLIC SERVICE COMMISSION

VIA ECFS

September 23, 2010

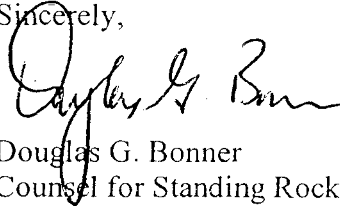
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Petition for Reconsideration of Standing Rock Telecommunications, Inc. To Redefine Rural Service Areas ("Petition"), WC Docket 09-197

Dear Ms. Dortch:

Please find enclosed for filing, pursuant to 47 CFR § 1.106, a petition for reconsideration of Standing Rock Telecommunications, Inc. of certain portions of the Wireline Competition Bureau's August 24, 2010 Memorandum Opinion and Order in WC Docket 09-197.

Sincerely,



Douglas G. Bonner
Counsel for Standing Rock
Telecommunications, Inc.

Enclosure

7 PU-10-574 Filed: 9/28/2010 Pages: 19
Copy of Standing Rock petition to FCC for reconsideration to redefine rural service areas
Public Service Commission

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Standing Rock	)	WC Docket No. 09-197
Telecommunications, Inc.,	)	
To Redefine Rural Service Areas	)	

PETITION FOR RECONSIDERATION OF STANDING ROCK TELECOMMUNICATIONS, INC.

Standing Rock Telecommunications, Inc. (SRTI), a 100% Tribal-government owned wireless carrier of the Standing Rock Sioux Tribe (SRST), was recently designated an Eligible Telecommunications Carrier ("ETC") for entire wire centers within its licensed service area within the Standing Rock Sioux Reservation by the Wireline Competition Bureau's ("Bureau") Memorandum Opinion and Order dated August 24, 2010 ("Order"). SRTI and SRST are pleased with the Order's decision to designate SRTI as an ETC. However, SRTI, through undersigned counsel, petitions for the Commission to reconsider, pursuant to 47 C.F.R.§ 1.106, the Order's conditioning of the redefinition of the rural service area of West River, a rural telephone company, on SRTI, a Tribal-government owned wireless carrier not subject to state jurisdiction, obtaining the "consent" of the North Dakota Public Service Commission for the requisite service area redefinition

Specifically, SRTI petitions for reconsideration of paragraphs 25, 27, and 28 of the Order in which the Bureau refers the redefinition of West River's service area to the State of North Dakota for its consent.

SRTI is concerned about this portion of the Order, which is inconsistent with the relevant statutes, past Commission precedent, the Commission's own *Indian Policy*,[1] and the Commission's stated commitment to progressive policies respecting Tribal sovereignty. Ironically, the North Dakota Public Service Commission, which was given ample notice by SRTI of both its ETC Petition and Rural Service Area Redefinition Petition, did not even request nor expect to exercise any state jurisdiction with regard to the requested redefinition of wire centers within SRTI's licensed service area within the Reservation. In fact, the North Dakota Commission filed no comments on the issue. This is hardly surprising considering the express terms of 47 USC § 214(e)(6) exempting common carriers such as SRTI from state jurisdiction, and prior Commission precedent interpreting Section 214(e)(6) under similar circumstances as these, as discussed further below. In addition, since the issuance of the order, SRTI has received numerous communications from other Tribes who believe this decision is directly contrary to Commission policy and precedent, and expressing their great concern over this outcome.

In fact, according to public statements by the National Tribal Telecommunications Association (NTTA), the association representing all currently regulated Tribal telecommunications providers, the Commission has designated seven (7) tribal telecommunications providers as ETCs, and in none of those decisions has the Commission has ever ceded jurisdiction or delegated authority for the designation of tribal ETC status and service area designation to the state.

[1] *FCC Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes.* Pg 3, III. Reaffirmation Of Principles Of Tribal Sovereignty And The Federal Trust Responsibility. (June 23, 2000) ("*Indian Policy Statement*") (emphasis added)

SRTI believes the enactment, legislative history, and sequence of passage, of the relevant statutory provision, 47 U.S.C. § 214(e)(6), must be considered and carefully weighed when interpreting the Commission's rule, 47 C.F.R. § 54.207(d)(1), on which the Order relied.[2]

Specifically, SRTI requests that the Commission reconsider and reconcile the statutory directive of tribal sovereignty pertaining to tribal carrier service area redefinition and ETC designation under 47 U.S.C. §§ 214(e)(5) & (6) with 47 C.F.R. § 54.207(d)(1) of the Commission's Rules, in a manner consistent with Commission precedent. The Bureau does recognize in the Order that the responsibility for designating ETCs "shifts to the Commission [from state commissions] for carriers 'providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.[3]'" As such, the Bureau or the Commission should clarify, consistent with Section 214(e)(5) & (6) and prior Commission precedent in *Western Wireless*, that the Commission alone has the authority to redefine rural study areas when the subject common carrier --here, a Tribal Government-owned wireless carrier-- is not subject to State jurisdiction, and its service area is wholly contained with the exterior boundaries of an Indian reservation. As the full Commission held in *Western Wireless*:

> We reject the contention of a few parties that the Commission must consult with the [state] Commission before designating Western Wireless as an ETC for a service area that differs from the rural telephone company's study area....[W]e do not believe that Congress envisioned that the designating entity might need to involve another regulatory body, or seek its permission, before designating an ETC for a service area otherwise lying wholly within its jurisdiction, or that a regulatory body without jurisdiction over a carrier could interfere with the designating entity's authority to designate that carrier an additional ETC within its own jurisdictional authority. In addition, we note that the Commission rule and process cited by the South Dakota Commission and other commenters, as set forth in section 54.207 of the Commission's rules, was established prior to the adoption of section 214(e)(6). This rule therefore did not contemplate the current situation in which the Commission, in

[2] Order at ¶27 & nn. 68-29.

[3] *Id.* at ¶3.

the absence of state jurisdiction over a carrier, has a statutory obligation to be the sole designating entity under section 214(e)(6).[4]

I. THE COMMISSION HAS THE FLEXIBILITY TO INTERPRET THE STATUTE AND REGULATIONS IN A MANNER MORE CONSISTENT WITH ITS FEDERAL TRUST RESPONSIBILITY, TRIBAL SOVEREIGNTY, AND ITS OWN INDIAN POLICY.

In the *Twelfth Report and Order,* the Commission outlined those policy matters that are to be taken into consideration in Tribal petitions to serve Tribal Lands including "principles of tribal sovereignty, federal Indian law, and treaties."[5] Specifically the Commission outlined that flexibility must be built into Commission rules and decisions in order to best ensure a respect for "tribal sovereignty and self determination":

> We are mindful that the federal trust doctrine imposes on federal agencies a fiduciary duty to conduct their authority in matters affecting Indian tribes in a manner that protects the interest of the tribes. *We are also mindful that federal rules and policies should therefore be interpreted in a manner that comports with tribal sovereignty and the federal policy of empowering tribal independence.*[6]

The Standing Rock Sioux Tribe has made it very clear Petition for Redefinition of Study Areas[7] and subsequent Reply Comments, in its Constitution, and again in its recently passed Tribal Resolution, that the Standing Rock Sioux Tribe has jurisdiction over the Standing Rock Sioux Reservation, not any state government.

---

[4] *See Federal-State Joint Board on Universal Service, Western Wireless Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota, Memorandum Opinion and Order,* 16 FCC Rcd 18133, at 18140 (2001). ("*Western Wireless*") (Note: While not at issue in this petition as SRTI is a Tribal entity, SRTI strongly disagrees with the odd and unworkable bifurcation delineated in *Western Wireless* for the ETC status of a non-Tribal carrier on tribal lands in servicing tribal versus non-tribal customers.)

[5] *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking,* 15 FCC Rcd 12208, Para. 117 (2000) ("*Twelfth Report and Order*")

[6] *Twelfth Report and Order.,* FCC Rcd 12208, ¶119. (Emphasis added)

[7] *Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service* Areas, *WC Dkt. No. 09-197* (Feb. 18, 2010)

The Commission's own *Indian Policy Statement* clearly recognizes that "Indian Tribes exercise inherent sovereign powers over their members and territory."[8] In order to respect the Tribe's "inherent sovereignty" over its own "territory," and be consistent with Standing Rock's Constitution and Treaty with the United States, the Commission's own *Indian Policy Statement,* the Congressional intent of 47 U.S.C. § 214(e)(5) & (6), and Commission precedent, the Commission must reevaluate its interpretation of the statutes and regulations in a manner consistent with the Tribe's authority over its own lands. See also, *Executive Order 13175.*[9]

II. THE COMMISSION ALONE SHOULD REDEFINE THE STUDY AREAS ON TRIBAL LANDS.

SRTI greatly appreciates the positive government-to-government conversations that have been ongoing between SRTI, the Commission, the Bureau, and representatives of the South Dakota and North Dakota Commissions (SDPUC and NDPSC) throughout this ETC application process and redefinition of study areas, and SRTI looks forward to a strong and amicable working relationship for years in the future.

However, SRTI respectfully disagrees with the Bureau's conclusion that SRTI must obtain state agreement regarding the redefinition of study areas entirely within Tribal lands, and respectfully

---

[8] *FCC Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes*, at 3, III. Reaffirmation Of Principles Of Tribal Sovereignty And The Federal Trust Responsibility. (June 23, 2000) (*"Indian Policy Statement"*). (Emphasis added)

[9] *Executive Order 13175--Consultation and Coordination With Indian Tribal Governments* (November 6, 2000). "Fundamental Principles." In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles: (a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes. (b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights. (c) The United States recognizes the right of Indian tribes to self- government and supports tribal sovereignty and self-determination

requests that the Commission reexamine the statutory and legislative history with regard to this portion of the Order.

This decision is inconsistent with the Commission's *Indian Policy Statement*, the "public interest," and Sections 214(e)(5) & (6) as applied specifically to Tribal entities on Tribal lands and study areas wholly contained within the exterior boundaries of an Indian reservation. In addition, according to public statements by the National Tribal Telecommunications Association (NTTA), the association representing all current incumbent Tribal providers, the Commission has designated seven (7) tribal telecommunications providers as ETCs, and in none of those decisions has the Commission has ever ceded jurisdiction or delegated authority for the designation of tribal ETC status and service area designation to the state.

The Bureau relies on 47 CFR 54.207(d)(1) and (2) as its primary authority for requiring that its redefinition order be submitted to the state for "consent". That rule provides:

> 47 CFR 54.207 (d) The Commission may, on its own motion, initiate a proceeding to consider a definition of a service area served by a rural telephone company that is different from that company's study area. If it proposes such different definition, the Commission shall seek the agreement of the state commission according to this paragraph.
>
> > (1) The Commission shall submit a petition to the state commission according to that state commission's procedures. The petition submitted to the relevant state commission shall contain: (i) The definition proposed by the Commission; and (ii) The Commission's decision presenting its reasons for adopting the proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.
> >
> > (2) The Commission's proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

Unfortunately, what the Order ignores is that Section 54.207 of the Commission's rules was adopted **before** the enactment of the relevant statute (47 U.S.C. § 214(e)(6)) in 1997, and is therefore superseded by the subsequent enactment of Section 214(e)(6) under circumstances involving common carriers not subject to state jurisdiction.[10] Commission rule Section 54.207 was last amended in 2002.[11] Congress first enacted section 214(e) in 1996, and amended the Act with the addition of 214(e)(6) in 1997.[12]

At a minimum, Rule 54.207(d)(1) must be applied by the Commission in a way that is consistent with Congress' mandate under the statute applicable to "COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION":

> Common carriers not subject to State commission jurisdiction -- In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.[13]

In fact, the Commission has previously addressed this precise issue. In its 2001 *Western Wireless* decision, the Commission appropriately reconciled its pre-existing redefinition rule with the

---

[10] *Western Wireless,* 16 FCC Rcd at 18140.

[11] 62 FR 32948, June 17, 1997, as amended at 67 FR 13226, Mar. 21, 2002

[12] 143 Cong. Rec. S12568 (daily ed. Nov. 13, 1997).

[13] 47 U.S.C. § 214(e)(6).

statute governing common carriers not subject to state jurisdiction, when considering the redefinition of the rural study area within the Pine Ridge Reservation.

> ...the Commission rule and process...as set forth in section 54.207 of the Commission's rules, was established prior to the adoption of section 214(e)(6). This rule therefore did not contemplate the current situation in which the Commission, in the absence of state jurisdiction over a carrier, has a statutory obligation to be the sole designating entity under section 214(e)(6).[14]

The Commission held that despite the fact that three rural telephone companies served portions of the Pine Ridge Reservation, Western Wireless could be designated as an ETC and the study areas redefined as necessary, without obtaining the State of South Dakota's consent.

> The designated service area differs from the study areas of three rural telephone companies (Fort Randall, Golden West, and Great Plains) in as much as these study areas extend...beyond the boundaries of the Reservation.... This modification is necessary, however, because under section 214(e)(6) the Commission's authority to designate carriers as ETCs is limited to areas in which the state does not have jurisdiction.[15]

There have been FCC ETC decisions subsequent to *Western Wireless* which address the interaction of 54.207(d) and 214(e)(6) which do find that the Commission must in fact follow the processes of 54.207(d) in seeking state "agreement." However, these can be easily distinguished from the present case. None of those decisions involved a designated ETC service area for a tribally-owned carrier that is wholly contained within Tribal lands, but involved privately owned, state incorporated ETC applicants providing services on lands within state jurisdiction.[16] The *Joint*

---

[14] *Western Wireless*, 16 FCC Rcd. at 18140.

[15] *Western Wireless*, 16 FCC Rcd. at 18140.

[16] *In the Matter of Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6438 (2004) ("*Highland Cellular*"); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the State of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (2004) ("*Virginia Cellular*")

Board on Universal Service has not addressed the specific issue with regard to Tribal providers on Tribal lands.[17]

In addition, while neither decision required the same level of study area redefinition as in *Western Wireless* or in this petition, of the two Tribal lands cases which have been decided since *Highland Cellular* and the *Joint Board on Universal Service*, the Commission did not seek state commission agreement in either its *Smith Bagley* (Navajo Reservation) or *Hopi Telecommunications* (Hopi Tribe) ETC Orders.[18]

As the Bureau recognizes, SRTI is a Tribal government-owned entity and all of its service area is wholly within the external boundaries of the Standing Rock Sioux Reservation and under the jurisdiction of the Tribe and "is not subject to the jurisdiction of a state commission[19]." Section 214(e)(6) of the Communications Act clearly states that the Commission may designate as an ETC a common carrier "not subject to the jurisdiction of a State commission,"[20] for an established "service area" designated under Section 214(e)(6). Section 214(e)(5) further defines a "service area" as a "geographic area established by a State commission (<u>or</u> the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms."[21] The "or" in 214(e)(5) clearly authorizes and anticipates a separate and unique federal --not state-- procedure for establishing "services areas" directly by the Commission under Section 214(e)(6):

---

[17] *Federal-State joint Board on Universal Service, Report and Order,* CC Docket No. 96-45, 20 FCC 6371, 6405 Para 77 (2005) (emphasis added) (*"Joint Board on Universal Service")*

[18] *Order, In re Federal-State Joint Board on Universal Service, Smith Bagley, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Navajo Reservation in Utah,* 22 F.C.C.R. 2479, Para 29 (2007); *Order, In re Federal-State Joint Board on Universal Service, Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona,* CC Docket 96-45, DA 07-459 (Jan 31, 2007)

[19] Order, ¶3.

[20] 47 U.S.C. 214(e)(6)

[21] 47 U.S.C. 214(e)(5) *"Service Area" Defined.* (emphasis added)

> 47 U.S.C. 214(e)(5) "Service area" defined. The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410 (c) of this title, establish a different definition of service area for such company.

In addition, in the treaty between the U.S. government and the Standing Rock Sioux Tribe (The Fort Laramie Treaty of 1868 or "Treaty"), it is clear that issues involving utilities and infrastructure ("works of utility or necessity") were intended to be negotiated directly between the Tribal government and the federal government.[22] The statute, 214(e)(6), and previous regulations, 54.207(d), must be read in conjunction with the Commission's own canon of interpretation with regard to Tribes, and as such the "federal rules and policies should...be interpreted in a manner that comports with tribal sovereignty and the federal policy of empowering tribal independence."[23]

Irrespective of how the Commission may appropriately decide to handle privately-owned common carriers subject to state regulation under its redefinition regulations and procedures, under no circumstances should the Commission force a tribal government-owned carrier (and in this case an FCC-licensed wireless carrier) to submit the regulation of common carrier services on tribal lands to state jurisdiction.

The Commission expressed very clearly in *Western Wireless* that Commission decisions with regard to study area definitions within the boundaries of Tribal lands do not need agreement of the state commissions:

> We reject the contention of a few parties that the Commission must consult with the [state] Commission before designating Western Wireless as an ETC for a service area that differs from the rural telephone company's study area. We conclude that the

[22] *The Treaty of Fort of Laramie of 1868*, 15 Stat. 635 (Apr. 29, 1868).

[23] *Twelfth Report and Order*, FCC Rcd 12208 at Para. 119

> federal-state process in section 214(e)(5) contemplates situations in which only one entity, either the state commission or this Commission, has the authority to designate the rural telephone company's entire study area as the ETC's service area. ...In any event, we do not believe that Congress envisioned that the designating entity might need to involve another regulatory body, or seek its permission, before designating an ETC for a service area otherwise lying wholly within its jurisdiction, or that a regulator body without jurisdiction over a carrier could interfere with the designating entity's authority to designate that carrier an additional ETC within its own jurisdictional authority.[24]

SRTI recognizes and respects both North Dakota and South Dakota jurisdictional interest in service areas and wire centers outside the boundaries of Standing Rock's Reservation. However, SRTI strongly disagrees that redefinition of a rural service area within SRST tribal lands must "not take affect until both the state commission and the Commission agree upon the definition of a rural service area."[25] The North Dakota Commission and other interested parties have had ample opportunity to comment on the requested redefinition pursuant to public notice and comment. The Bureau took into account all comments filed, performed its redefinition analysis, and approved a redefinition of the three West River wire centers within Standing Rock Reservation boundaries. No exercise of state jurisdiction was required nor permitted either under the controlling statutes and Commission precedent. And as a matter of Commission tribal policy, is not in the "public interest" to give a state commission what essentially may amount to "veto" authority over a Tribe's ability to provide services within its own lands, particularly when Congress acted to clearly define a "streamlined" federal process for Tribal lands.[26]

---

[24] *Western Wireless*, 16 FCC Rcd. at 18140.

[25] 47 CFR 54.207(d)(2)

[26] SRTI has been very grateful for what has been a new and positive working relationship with the SD PUC. However, in the case of the Cheyenne River Sioux Tribal Telephone Authority (CRSTTA), the SDPUC previously denied CRSTTA the right to purchase exchanges that were partially on CRST's land in order that the Tribe could provide wireline services to its entire Nation. *Cheyenne River Sioux Tribe Tel. Auth. V. Public Util. Comm'n of S.D.*, Civil No. 95-288 (S.D. Cir. Ct. Feb 21, 1997), aff'd, 595 N.W. 2d 604 (S.D. 1999). As FCC Commissioner Copps stated in his dissent on the Commission's ruling on the issue, the "effect of the decision of the PUC [was] to prevent Indian-owned telephone companies from purchasing exchanges." *Memorandum Opinion and Order, Cheyenne River Sioux Tribal Telephone Authroity and US WEST*

III. THE COMMISSION HAS THE AUTHORITY TO WAIVE RULES INCONSISTENT WITH THE PUBLIC INTEREST

Even if the Commission were to find that the rules require referral to the state, strict interpretation of any precedent or rules are not necessary. The Commission has clearly stated in its decision on the Mescalero Apache Tribe's application to waive the definition of a study area, that "Commission rules may be waived for good cause shown. ... [and] the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance *inconsistent with the public interest*."[27] Requiring a tribal governmental entity to appear before a state governmental regulatory body that has no jurisdiction over the Tribe or its lands in order to receive a federal benefit is clearly "inconsistent with the public interest." Additionally, the Commission has made clear that each petition for redefinition of a study area is a "case-specific analysis."[28]

IV. CONGRESS HAS NOT DELEGATED AUTHORITY TO THE FCC TO REQUIRE STATE COMMISSION CONSENT FOR A SERVICE AREA REDEFINITION INVOLVING A COMMON CARRIERS NOT SUBJECT TO STATE JURISDICTION.

Administrative agencies may only "issue regulations", or likewise undertake regulatory action, pursuant to authority delegated to it by Congress.[29] The "FCC's power to promulgate legislative regulations is limited to the scope of the authority Congress has delegated to it.[30]" Under the plain language of 47 U.S.C. §§ 214(e)(5) & 214(e)(6), and as subsequently interpreted by the Commission in *Western Wireless*, Congress expressly instructed the FCC, and excluded state

---

Communications Inc Joint Petition for Expedited Ruling Preempting South Dakota Law, CC Docket No 98-6, FCC 02-222, *Statement of Commissioner Michael J. Copps Concurring in Part, Dissenting in Part* (August 21, 2002)

[27] *Mescalero Apache, et al, Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules.* CC Docket No 96-45, DA 01-129, at Para 7. (2001) Citing 47 C.F.R. s13 and *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir 1969), *cert. denied*, 409 U.S. 1027 (1972) (emphasis added)

[28] *Joint Board on Universal Service*, 20 F.C.C.R. 6371 at Para. 75.

[29] *American Library Ass'n v. FCC*, 406 F.3d 689, 691 (DC Cir. 2005)

[30] *Id.*at 698 (citing *Michigan v. EPA*, 268 F.3d 1075, 1081 (DC Cir. 2001).

commissions, from exercising jurisdiction to make ETC and service area redefinition decisions for "common carriers not subject to state jurisdiction." Unfortunately, the August 24, 2010 Order exceeds the authority delegated to the Commission by Congress to the extent that it requires that the North Dakota Commission consent to the FCC's definition of SRTI's (a tribally owned wireless carrier not subject to state jurisdiction) service area before the FCC's service area redefinition of the West River wire centers can become effective. This condition unlawfully cedes jurisdiction to the state commission (and to a state commission that never sought jurisdiction in this case) from the FCC of a common carrier service area redefinition that is not subject to state commission jurisdiction, thereby violating Congress' mandate under 47 U.S.C. §§ 214(e)(5) & (6). SRTI respectfully submits this aspect of the Bureau's Order should be reconsidered.

V. ANY REFERRAL FOR CONSENT SHOULD BE TO THE TRIBAL REGULATORY BODY WITH JURISDICTION OVER THOSE LANDS, NOT A STATE REGULATORY BODY WHICH DOES NOT HAVE JURISDICTION

As discussed above, SRTI submits that the FCC alone was delegated authority by Congress under 47 U.S.C. §§ 214(e)(5) & (6) to decide a service area redefinition by a tribally owned wireless carrier operating within Reservation boundaries. However, in the alternative, if the Commission determines that its redefinition decision as to the SRTI service area must be sent to a secondary, local jurisdiction for approval, then that jurisdiction could only be the Standing Rock Sioux Tribe's regulatory authority that regulates SRTI, not the State of North Dakota. As discussed herein and in SRTI's filings below, the State has no jurisdiction over SRTI, the Standing Rock Sioux Tribe, nor over the Standing Rock lands. Moreover, there is ample authority in many other tribal contexts of federal agency interpretation of federal statutes providing for "state" approval, of federal agencies interpreting such a requirement in connection with Tribal lands as requiring the approval or consent of the appropriate Tribal agency or authority empowered to regulate Tribal lands.

VI. CONCLUSION

SRTI respectfully submits that the Commission interpret its statutes and regulations in a "manner that comports with tribal sovereignty and the federal policy of empowering tribal independence" as outlined in the *Twelfth Report and Order.* [31]

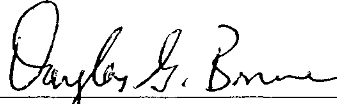
Specifically SRTI requests that the Commission reconsider its interpretation of state commission jurisdiction over a common carrier that is not subject to state jurisdiction under the controlling statute, 47 U.S.C. § 214(e)(5)& (6), and hold consistent with its own precedent in *Western Wireless* that the Commission alone has the authority to make ETC designations and redefine rural service areas that are wholly contained with the exterior boundaries of an Indian reservation.

---

[31] *Twelfth Report and Order,* FCC Rcd 12208 at Para. 119

Dated this 23rd of September, 2010.

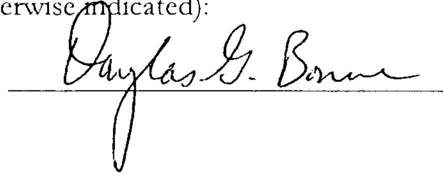
Respectfully submitted,



Heather Dawn Thompson
Douglas G. Bonner
Sonnenschein, Nath & Rosenthal, LLP
1301 K Street, NW
Suite 600, East Tower
Washington, D.C. 20005
(202) 408-6400
(202) 408-6399 (Fax)
hthompson@sonnenschein.com
dbonner@sonnenschein.com
Attorneys for Standing Rock Telecommunications, Inc.

Certificate of Service

I hereby certify that on September 23, 2010 a copy of the foregoing Petition of Standing Rock Telecommunications, Inc. to Reconsider was served on the following parties by First-Class Mail, postage prepaid (except where otherwise indicated):



Charles W. Murphy, Chairman
Standing Rock Sioux Tribe
P.O. Box D
Fort Yates, ND 58538

Sharon Gillett*
Chief, Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Nicholas Degani*
Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

Divya Shenoy*
Wireline Competition Bureau
Federal Communications Commission
Washington, DC 20554

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

---

* by electronic mail