

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)

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REPLY COMMENTS

PUBLIC SERVICE COMMISSION

The South Dakota Telecommunications Association (SDTA), by its attorneys, hereby submits reply comments on the Petition for Reconsideration filed by Standing Rock Telecommunications, Inc. (Standing Rock), in connection with the Wireline Competition Bureau's order designation Standing Rock an eligible telecommunications carrier (ETC) in North Dakota.¹ In the Petition, Standing Rock asks the Commission to reconsider the WCB's *Standing Rock Order* to the extent that it requires the consent of the North Dakota Public Service Commission to the redefinition of West River Telecommunications Cooperative's (West River) study area. SDTA supports the comments filed by West River and the North Dakota Public Service Commission, which argue that the WCB's Order is correct on this point. Accordingly, Standing Rock's petition should be denied.

In the *Standing Rock Order*, the WCB designated Standing Rock an ETC for various wire centers in North Dakota, including the Fort Yates, McLaughlin, and

¹*Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier and Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Area*, CC Docket No. 09-197, Memorandum Opinion and Order, 25 FCC Rcd 12388 (2010) (*Standing Rock Order*).

Selfridge wire centers within West River's service area. The WCB further stated that "[t]he definition of Standing Rock's service area is conditioned on the consent of the North Dakota Commission to redefine the service area of West River, a rural telephone company."²

In its Petition for Reconsideration, Standing Rock asks for reconsideration of this aspect of the WCB's order, arguing that it is inconsistent with Sections 214(e)(5) and (6) of the Act and the Commission's past precedent in the *Western Wireless Order*,³ *Smith Bagley Order*⁴ and *Hopi Telecommunications Order*,⁵ among other things. In the Petition, Standing Rock asks the Commission to find 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 within the exterior boundaries of an Indian reservation."⁶

SDTA contends that the WCB's order is fully consistent with Section 214(e)(5) and (6) of the Act and Commission precedent. In fact, Section 214(e)(5) requires the Commission to seek the consent of the North Dakota Commission to redefine West River's service area as proposed. Section 214(e)(5) of the Act states, in relevant part:

² *Standing Rock Order* at ¶25.

³ *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, CC Docket No. 96-45, 16 FCC Rcd 18133 (2001) (*Western Wireless Order*).

⁴ *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 FCC Rcd 2479 (2007) (*Smith-Bagley Order*).

⁵ *Federal-State Joint Board on Universal Service, Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Hopi Reservation in Arizona*, 22 FCC Rcd 1866 (2007) (*Hopi Order*).

⁶ Petition for Reconsideration at 3.

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), establish a different definition of service area for such company.⁷

Accordingly, the plain language of the Act requires the Commission to seek the consent of the North Dakota Commission to redefine West River’s service area.

The Commission's *Virginia Cellular Order*,⁸ *Highland Cellular Order*⁹ and 2005 *Universal Service Order*,¹⁰ affirm that the Commission must seek the consent of the state commission to redefine a rural incumbent local exchange carrier's (ILEC's) study area.

Further, these cases make clear that the primary focus of a redefinition analysis is the impact of such redefinition on the rural ILEC. As stated by the Commission in the *Virginia Cellular Order*, the state commission "is uniquely qualified to examine the redefinition proposal because of its familiarity with the rural service areas in question."¹¹

This rationale applies in the current case, as well.

Moreover, the three cases cited by Standing Rock do not support its position. The *Western Wireless Order*, in which the Commission designated Western Wireless as an ETC only to serve the tribal population on the Pine Ridge Reservation, was decided before the *Virginia Cellular* and *Highland Cellular Orders* and the 2005 *Universal*

⁷ 47 U.S.C. § 214(e)(5).

⁸ *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6438 (2004) (*Virginia Cellular Order*).

⁹ *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563 (2004) (*Highland Cellular Order*).

¹⁰ *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, 20 FCC Rcd 6371 (2005) (*2005 Universal Service Order*).

¹¹ *Virginia Cellular Order* at para. 45.

Service Order. Further, the *Hopi Order* and *Smith Bagley Order* simply do not apply to the current case because neither involved the redefinition of a rural ILEC's study area. In the *Hopi Order*, the Commission designated Hopi Telecommunications, Inc., a local exchange carrier (LEC), as an ETC for its entire new study area comprised of three local exchanges purchased from another incumbent LEC. In the *Smith Bagley Order*, the Commission designated wireless carrier Smith Bagley, Inc. as a competitive ETC on the Navajo Reservation in Utah for the entire study area of Navajo Communications. Accordingly, these cases do not support a finding that the proposed redefinition in this case should not be sent to the North Dakota Commission for its consent.

Based on the foregoing, SDTA asks the Commission to deny Standing Rock's Petition for Reconsideration.

Respectfully submitted,

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Certificate of Service

I hereby certify that on November 30, 2010, a copy of the forgoing Reply Comments of the South Dakota Telecommunications Association was served on each of the following via electronic mail, as indicated:

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