

SUPPORTING STATEMENT

This collection is being submitted to the Office of Management and Budget (OMB) for review and approval to extend the existing collection with no changes in the reporting requirements and/or third party disclosure requirements. There is no change in the estimated burden hours; however, there is an increase in the number of respondents (10).

A. Justification:

1. *Circumstances that make collection necessary.* The Communications Act of 1934, as amended (the Act), mandates that only eligible telecommunications carriers may receive universal service support. Under the Act, state commissions must designate telecommunications carriers subject to their jurisdiction as eligible. Section 214(e)(6), however, states that “[i]n the case of a common carrier . . . that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier . . . as an eligible telecommunications carrier for a service area designated by the Commission . . .”.

BACKGROUND:

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. The Commission 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. 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.” 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 Bureau of Indian Affairs (BIA), Department of the Interior, definitions of “reservation” and “near reservation” contained, at that time, in sections 20.1(v) and 20.1(r) of the BIA regulations, respectively.

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 Eligible Telecommunications Carrier (ETC) may unnecessarily delay the provision of service on tribal lands. 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. 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. The Commission found that this framework 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.

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.” 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.

ORDER:

In the Order, we addressed the requests of several petitioners to reconsider portions of the *Twelfth Report and Order and Further Notice*. Specifically, we affirmed 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 addressed 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 clarified, on our own motion, the Commission’s rules regarding the qualification criteria for enhanced Lifeline and Link-Up service.

Consistent with the request of NTCA, 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 enhanced Lifeline and Link-Up support programs. 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. 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. 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.

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 “areas or communities designated by the Assistant Secretary that are adjacent or contiguous to reservations where financial assistance and social service programs are provided.” 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. 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).

Currently, carriers seeking eligibility designations for service provided on tribal lands (which include “near reservations”) may petition the Commission directly under section 214(e)(6), without first seeking designation from the relevant state commission and all others must go to the state first for resolution of the jurisdictional issues before seeking designation from the Commission. In the Order, the Commission concluded that petitions for designation filed under section 214(e)(6) relating to “near reservation” areas will not be considered as petitions relating to tribal lands and as a result, 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).

As noted on the OMB Form 83i, this information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

The statutory authority for this collection is contained in: sections 1-4, 201-205, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 218-220, 254, 303(r), 403.

2. *Use of information.* The Commission will use the information collected to determine whether the telecommunications carriers providing the data are eligible to receive universal service support.
3. *Technological collection techniques.* Respondents may submit paper copies of all information requested, and are directed to file an electronic copy either on 3.5" computer diskette or via the Internet.
4. *Efforts to identify duplication.* This information collection requires telecommunications carriers seeking designation as ETC’s on near reservation areas to follow the procedures established for non-tribal designation requests. These carriers must demonstrate that they meet the eligibility criteria set forth in the Act and described in the Commission's rules. There is no identified duplication of efforts: carriers should apply to only one entity to receive designation.
5. *Impact on small entities.* The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. At this point, the Commission is unable to identify with specificity which of these firms are small entities that are not subject to state jurisdiction and that

therefore may be affected by this information collection. It is estimated that 100 telephone service firms are not subject to state jurisdiction. It seems reasonable to conclude that fewer than 100 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this information collection.

6. *Consequences if information is not collected.* Without the requested information, the Commission would be unable to determine whether a carrier meets the statutory criteria for eligible telecommunications carriers. If the Commission or state commission does not designate as eligible the carriers affected by section 214(e), these carriers will not be able to receive universal service support.

7. *Special circumstances. Confidential information:* Respondents may seek to withhold their responses from public inspection. The Commission's rules contain procedures to protect information that respondents claim to be confidential. See 47 C.F.R. § 0.459. Carriers seeking proprietary treatment for some data are required to submit two additional copies of the submission containing the confidential data. These confidential copies are filed with the Wireline Competition Bureau's Telecommunications Access Policy Division --- one in paper and one in computer-readable format. *Requiring more than three copies of each completed response:* Carriers are required to file in accordance with Commission rules, 47 C.F.R. § 1.419, which require an original and 4 copies. In order to provide for a timely review of these applications, applicants are required to file 3 copies of their petitions directly with the Telecommunications Access Policy Division. In addition, one computer-readable copy and one paper copy are filed with the Commission's commercial duplicating and research contractor. These multiple copies are necessary to make the information available to the public and to the staff working at the Commission.

8. *Federal Register notice; efforts to consult with persons outside the Commission.* Pursuant to 5 CFR 1320.8(d), the Commission published a 60 day notice in the Federal Register soliciting public comment. See FR 74 27544, dated June 10, 2009. No comments were received.

9. *Payments or gifts to respondents.* The Commission does not anticipate providing any payment or gift to respondents.

10. *Assurances of confidentiality.* Pursuant to 47 C.F.R. § 0.459, a respondent may request that information submitted to the Commission not be put in the public record. The respondent must state the reasons, and the facts on which those reasons are based, for withholding the information from the public record. The appropriate Bureau or Chief Officer of the Commission may grant a confidentiality request that presents, by a preponderance of the evidence, a case for non-disclosure consistent with the Freedom of Information Act, 5 U.S.C. § 552. If a confidentiality request is denied, the respondent has five days to appeal the decision before the Commission. If the appeal before the Commission is denied, the respondent has five days to seek a judicial stay.

11. *Questions of a sensitive nature.* There are no questions of a sensitive nature with respect to the information collected.

12. *Estimates of the hour burden of the collection to respondents filing.*

a. **Petitions Pursuant to Section 214(e)(6):**

- (1) Number of respondents: Approximately 100.
- (2) Frequency of response: On occasion reporting requirement.
- (3) Annual hour burden per respondent: 60 hours. Total annual hour burden: **6,000 hours.**
- (4) Total estimate of annualized cost to respondents for the hour burden: \$282,000 (6,000 hours x approx. \$47/hr).
- (5) Explanation of calculation. We estimate that time to comply with the requirement will be 60 hours x approx. \$47 per hour = \$282,000.

The United States Bureau of the Census (“the Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. At this point, we are unable to determine with particularity the number of telephone companies that may be affected by this information collection, but we estimate that fewer than 100 telephone companies are not subject to state jurisdiction and therefore may be affected by this information collection. Estimates of the hour burden per question are based on the average length of time a respondent will likely require to respond to the request. Actual hour burdens may vary. We assume that respondents will use some combination of staff and attorney services (blended rate of \$47/hour) when preparing petitions.

b. **Submission of Written Comments by Interested Third Parties:**

- (1) Number of respondents: 10.
- (2) Frequency of Response: On occasion reporting requirement and third party disclosure requirement.
- (3) Annual hour burden per respondent: 20 hours. Total annual burden is **200 hours.**
- (4) Total estimate of annualized cost to respondents for the hour burden: \$9,400 (200 hours x approximately \$47/hour).
- (5) Explanation of calculation: We estimate that preparation time will be approximately 20 hours per petition. 20 hours x \$47 per hour = \$9,400.

Total annual hourly burden: 6,000 + 200 = 6,200 hours.

13. Cost to the Respondent:

- (a) We estimate that there will not be capital or start-up costs for any of these requirements. We do not believe that these requirements will necessitate any additional equipment.
- (b) We estimate that there will be no operating and maintenance or purchase of services costs for these requirements. There is no filing fee associated with these applications.

14. Cost to the Commission:

Review of petitions: 2 staff members to process 100 petitions x \$47 (average grade and hourly salary of staff) x 20 hours per staff member to process the petitions = \$9,400 (less than \$180,000).

15. There is no change in burden.

16. The collections of information will not be published.

17. Not applicable. No request is being made not to display the expiration date.

18. As explained in item 7 above, applicants will be required to submit more than an original and two copies of their filings. See item 7 above.

When the Commission published the 60 day notice (74 FR 2544), we indicated there was an error in the previous submission in which the burden hours were published as 9,200 hours. During the 60 day comment period, we continued to review the collection and determined that the previous estimates were correct. With the publication of a 30 day notice (anticipating submission to OMB in August 2009), we are correcting this error. There by providing the public with more accurate burden estimates for this information collection (IC).

B. Collections of Information Employing Statistical Methods:

Not applicable.