

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

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Hopi Telecommunications, Inc.	)	
Petition for Designation as an	)	
Eligible Telecommunications Carrier for the	)	
Hopi Reservation in Arizona	)	

**ORDER**

**Adopted: January 31, 2007**

**Released: January 31, 2007**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, we grant Hopi Telecommunications, Inc.’s (Hopi) request to be designated as an eligible telecommunications carrier (ETC) on the Hopi Reservation and on a small portion of the Navajo Reservation in Arizona<sup>1</sup> pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).<sup>2</sup> Hopi, a tribally-owned wireline carrier, seeks ETC designation in the study area where it purchased three local exchanges of CenturyTel of the Southwest (CenturyTel), a rural incumbent local exchange, to provide telecommunications services to areas, including underserved and unserved areas, on tribal lands. Applying the Commission’s two-step analysis for ETC designations for tribal lands, we first conclude that the Commission has jurisdiction to determine whether Hopi should be designated an eligible telecommunications carrier. We also conclude that Hopi has satisfied the statutory eligibility requirements of section 214(e)(1) to be designated an ETC on the Reservation in Arizona.<sup>3</sup>

<sup>1</sup> We refer to the Hopi and Navajo reservations collectively as the “Reservation” throughout this Order.

<sup>2</sup> Hopi Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45 (filed Feb. 21, 2006) (Hopi Petition or Petition). On February 22, 2006, Hopi filed Appendices B (signed Verification) and C (Anti-Drug Abuse Certification) to the Petition. Letter from David Cosson, Counsel for Hopi Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, filed Feb. 22, 2006 (Appendix B and Appendix C, respectively). On February 23, 2006, Hopi filed a Section 254(e) Certification, attesting that all universal service support funds will be used for the purpose for which they are intended. Letter from Brent Kennedy, General Manager, Hopi Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, filed Feb. 23, 2006 (Section 254(e) Certification).

<sup>3</sup> 47 U.S.C. § 214(e)(1).

## II. BACKGROUND

### A. Jurisdiction to Designate ETCs on Tribal Lands

2. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”<sup>4</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>5</sup> Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>6</sup> Section 214(e)(6) directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>7</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>8</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>9</sup> The Wireline Competition Bureau (“Bureau”) has delegated authority to perform ETC designations.<sup>10</sup>

3. The Act is silent, however, on how to determine whether a state commission lacks jurisdiction, who makes the jurisdictional determination, and what to do if two entities – for example, a state and a tribe – both assert jurisdiction over the same telecommunications carrier. Therefore, in the *Twelfth Report and Order*, the Commission established that carriers serving tribal lands may first petition the Commission for a determination on whether the state has jurisdiction over the carrier.<sup>11</sup> Under this framework, we undertake a two-step analysis. First, we determine whether a carrier providing service on

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<sup>4</sup> 47 U.S.C. § 254(e).

<sup>5</sup> 47 U.S.C. § 214(e)(1).

<sup>6</sup> 47 U.S.C. § 214(e)(2); see *Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

<sup>7</sup> 47 U.S.C. § 214(e)(6). See, e.g., *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422 (2004) (*Highland Cellular Order*).

<sup>8</sup> 47 U.S.C. § 214(e)(6).

<sup>9</sup> *Id.*

<sup>10</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*). The Wireline Competition Bureau was previously named the Common Carrier Bureau.

<sup>11</sup> *Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, *Smith Bagley, Inc.*, *Cheyenne River Sioux Tribe Telephone Authority*, *Western Wireless Corporation*, *Wyoming*, *Cellco Partnership d/b/a/ Bell Atlantic Mobile, Inc.*, *Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12265, paras. 115-27 (2000) (*Twelfth Report and Order*), *aff'd Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twenty-Fifth Order on Reconsideration, Report and Order, Order, and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10958, 10964, n.28 (2003) (*Tribal Recon. Order*).

tribal lands is subject to the jurisdiction of a state commission or whether it is subject to a tribal authority given the tribal interests involved. Second, if the carrier is not subject to the jurisdiction of a state commission, we consider the merits of the carrier's request to be designated as an ETC.

#### B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of [supported] services and the charges therefore using media of general distribution;" and (5) if the petitioner meets the definition of a "rural telephone company" pursuant to section 3(37) of the Act, an identification of the petitioner's study area, or, if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.<sup>12</sup>

5. In the *ETC Designation Order*, released March 17, 2005, the Commission generally affirmed its earlier holdings and adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.<sup>13</sup> Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.<sup>14</sup> These additional requirements are mandatory for all ETCs designated by the Commission.<sup>15</sup> ETCs already designated by the Commission or ETC applicants that submitted applications prior to the effective date of the *ETC Designation Order* are required to make such showings in their annual certification filings.<sup>16</sup>

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<sup>12</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948-49 (1997) (*Section 214(e)(6) Public Notice*); 47 U.S.C. § 3(37).

<sup>13</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular*).

<sup>14</sup> See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20, citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, para. 5 (2004) (*Recommended Decision*).

<sup>15</sup> 47 C.F.R. § 54.202(a).

<sup>16</sup> See *id.*; 47 C.F.R. § 54.202(c).

### C. The Hopi Petition for ETC Designation on the Hopi and Navajo Reservations in Arizona

6. Hopi acquired the study area consisting of the three local exchanges of CenturyTel, a rural incumbent local exchange company.<sup>17</sup> The study area covers the Hopi Reservation and a small portion of the Navajo Reservation in Arizona.<sup>18</sup> Hopi filed a petition requesting that the Commission grant it ETC designation concurrent with the closure of its Asset Purchase Agreement with CenturyTel.<sup>19</sup> With the closure of the Asset Purchase Agreement on June 1, 2006, Hopi states that it is the incumbent LEC and a “rural telephone company” as defined by the Act.<sup>20</sup> Hopi must be designated an ETC in order to be eligible to receive universal service support, including high cost support that CenturyTel was previously receiving.

7. Hopi contends that it is not subject to the jurisdiction of the Arizona Corporation Commission (Arizona Commission).<sup>21</sup> Hopi states that it is a tribal corporation wholly owned by and subject to the jurisdiction of the Hopi Tribe, a federally-recognized Indian Tribe.<sup>22</sup> Hopi also states that it will only provide service on the tribal lands and points out that the Commission has exercised jurisdiction over other tribally-owned carriers operating on tribal lands in Arizona.<sup>23</sup>

8. The Commission sought comment on the Hopi Petition.<sup>24</sup> The National Tribal Telecommunications Association (NTTA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) filed comments in support of the Petition.<sup>25</sup> Significantly, the Arizona Commission did not comment.

### III. DISCUSSION

9. As discussed in detail below, we conclude that it is appropriate for the Commission to exercise jurisdiction over the Hopi Petition for ETC designation. We also find that Hopi has satisfied the

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<sup>17</sup> Letter from David Cosson, Counsel for Hopi Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, filed Sept. 29, 2006 (Purchase Closure *Ex Parte* Letter). Hopi closed the purchase of the assets and subscriber base of CenturyTel of the Southwest on June 1, 2006. *Id.*

<sup>18</sup> Hopi Petition at 2. The three exchanges are Keams Canyon, Kykotsmovi, and Polacca. *Id.*; see Purchase Closure *Ex Parte* Letter.

<sup>19</sup> Hopi Petition at 2; see Purchase Closure *Ex Parte* Letter.

<sup>20</sup> See Hopi Petition at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> See *id.* at 3 and n.6 (citing *Designation of Fort Mohave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O’Odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, AAD/USB File No. 98-28, Memorandum Opinion and Order, 13 FCC Rcd 4547 (Wireline Comp. Bur. 1998)); see also *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Memorandum Opinion and Order, 13 FCC Rcd 22433 (Wireline Comp. Bur. 1998).

<sup>24</sup> See *Parties are Invited to Comment on the Petition of Hopi Telecommunications, Inc. for Designation as an Eligible Telecommunications Carrier in the Hopi and Navajo Reservations in the State of Arizona*, CC Docket No. 96-45, Public Notice, DA 06-615 (rel. March 17, 2006).

<sup>25</sup> See generally NTAA Comments, CC Docket No. 96-45, filed April 6, 2006; OPASTCO Comments, CC Docket No. 96-45, filed April 6, 2006.

statutory requirements for ETC eligibility under section 214(e)(1) of the Act. The service area for Hopi's ETC designation is defined as the study area of the rural incumbent LEC CenturyTel on the Hopi and Navajo Reservations, consisting of the Keams Canyon, Kykotsmovi, and Polacca local exchanges.

#### A. Jurisdiction

10. In the *Twelfth Report and Order*, the Commission established the framework for the ETC designation process under section 214(e)(6) of the Act for carriers serving tribal lands.<sup>26</sup> The Commission concluded that a carrier seeking ETC designation on tribal lands may petition the Commission without first seeking designation from the state commission.<sup>27</sup> The carrier must notify the state commission by providing copies of its petition to the state commission.<sup>28</sup> The Commission places the petition on public notice, establishing a comment and reply period, and sends the public notice to the state commission to ensure that the state commission is properly noticed.<sup>29</sup> Under this framework, the carrier has the burden to prove that it is not subject to the jurisdiction of the state commission.<sup>30</sup>

11. The determination of whether the Commission has jurisdiction to consider an ETC petition for service on tribal lands is greatly informed by the participation of the tribe and the state commission or other state authorities.<sup>31</sup> We are mindful that some state commissions will not object to the Commission's jurisdiction over designation of carriers serving tribal lands.<sup>32</sup> Significantly, Hopi is a tribally-owned carrier operating only on tribal lands.<sup>33</sup>

12. We find that Hopi has made a *prima facie* showing that the Commission has jurisdiction for designation of Hopi as an ETC on the Hopi Reservation and a small portion of the Navajo Nation Reservation. Under the framework established in the *Twelfth Report and Order*, Hopi filed its petition with the Commission and simultaneously served a copy on the Arizona Commission.<sup>34</sup> In its Petition, Hopi asserts that the Commission has jurisdiction to consider the ETC designation petition because Hopi is a tribally-owned wireline carrier operating on tribal lands.<sup>35</sup> Further, the Arizona Commission has not asserted jurisdiction in this matter. Finally, we have previously found that the Commission has

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<sup>26</sup> *Twelfth Report and Order*, 15 FCC Rcd at 12265-12269, paras. 115-127. In the *Twelfth Report and Order*, the Commission noted that the legislative history of section 214(e)(6) made clear that the class of carriers covered by this provision was "dominated by tribally-owned carriers," although certainly not limited to these. *Id.* at 12261, para. 106.

<sup>27</sup> *Id.* at 12266, para. 120.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 12268, para. 124.

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

<sup>33</sup> Hopi Petition at 2.

<sup>34</sup> Letter from David Cosson, Counsel for Hopi Telecommunications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45, filed Oct. 3, 2006 (attaching signed Certificate of Service certifying service of the Petition on Feb. 21, 2006 via U.S. Mail, first-class postage pre-paid, to Arizona Corporation Commission, Utilities Division ).

<sup>35</sup> *See* Hopi Petition at 2.

jurisdiction to designate tribally-owned carriers operating on tribal lands in Arizona.<sup>36</sup> We, therefore, find that the Commission has jurisdiction to consider Hopi's request for ETC designation.

## **B. Analysis of Hopi's Petition for Designation as an ETC**

13. Having determined that we have jurisdiction over the Hopi Petition, we now examine whether Hopi satisfies the requirements of section 214 of the Act for the requested service area on the Hopi and Navajo Reservations. As explained below, we find that Hopi, a tribally-owned wireline carrier, meets the requirements of sections 214(e)(1) and (e)(6) of the Act. We therefore designate Hopi as an ETC for the requested service area.

### **1. Offering and Advertising the Supported Services**

14. Offering the Services Designated for Support. Hopi has demonstrated through the required certifications and related filings that it now offers, or will offer upon obtaining designation as an ETC, the services supported by the federal universal mechanisms. With the June 1, 2006 closure of the Asset Purchase Agreement, Hopi is authorized to provide wireline service in the requested service area.<sup>37</sup> Hopi certifies that it now provides or will provide throughout its designated service area the services and functionalities enumerated in section 54.101(a) of the Commission's rules.<sup>38</sup> Hopi also certifies that, in compliance with the Commission's Lifeline rules, it will make available and advertise enhanced Lifeline and Link-up services to qualifying low-income consumers.<sup>39</sup> Hopi has also committed to serve unserved or underserved areas.<sup>40</sup>

15. Hopi has committed to meet consumer protection and service quality standards as required by the *ETC Designation Order*. Although not subject to the jurisdiction of the Arizona Commission, Hopi has adopted consumer protection standards in its local exchange tariff that satisfy current Arizona Commission rules.<sup>41</sup> Hopi also commits to provide: (1) annual reporting of unfulfilled service requests and of consumer complaints per 1,000 lines; (2) specific commitments to provide service

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<sup>36</sup> See *Designation of Fort Mohave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O'odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, AAD/USB File No. 98-28, Memorandum Opinion and Order, 13 FCC Rcd 4547 (Com. Carrier Bur. 1998); see also *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Memorandum Opinion and Order, 13 FCC Rcd 22433 (Com. Carrier Bur. 1998). The Arizona Commission "recognizes that it has no jurisdiction over utility services provided by Indian tribes on the reservation, if the tribe asserts jurisdiction;" however, it has found jurisdiction over nontribally-owned carriers seeking ETC designation on tribal lands. Compare *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Attach. G, filed June 2, 1998 to *Public Notice Smith Bagley, Inc. Petitions to Redefine the Service Area of Table Top Telephones Company on Tribal Lands Within the State of Arizona*, CC Docket No. 96-45, 16 FCC Rcd 7559 (Com. Car. Bur. 2001).

<sup>37</sup> See Hopi Petition at 2; Purchase Closure *Ex Parte* Letter.

<sup>38</sup> *Id.* at 3-4.

<sup>39</sup> *Id.* at 5-10.

<sup>40</sup> See *id.* at 12.

<sup>41</sup> *Id.* at 15.

to requesting customers in the area for which it is designated; and (3) specific commitments to improve its network.<sup>42</sup>

16. Offering the Supported Services Using a Carrier's Own Facilities. Hopi has demonstrated that it satisfies the requirement of section 214(e)(1)(A) of the Act that it will offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>43</sup> Hopi states that it intends to provide the supported services using the existing network infrastructure purchased from CenturyTel.<sup>44</sup>

17. Advertising Supported Services. Hopi has demonstrated that it satisfies the requirement of section 214(e)(1)(B) of the Act to advertise the availability of the supported services and related charges using media of general distribution, including radio, newspaper, and press releases.<sup>45</sup> Hopi points out that, as a tribally-owned wireline carrier, it will work closely with the agencies of the tribal government to inform the public of its service.<sup>46</sup> Hopi also has committed to specific methods to publicize the availability of Lifeline and Link-up services, such as personal outreach coordinated through tribal liaisons, advertising in the offices of social service agencies, and advertising via bill inserts and its website to provide information to those people most likely to qualify for Lifeline and Link-Up benefits.<sup>47</sup> Thus, Hopi plans to use advertising to ensure that consumers within its designated service area are fully informed of its universal service offering.

## 2. Public Interest Analysis

18. As explained below, we conclude that it is consistent with the public interest, convenience, and necessity to designate Hopi as an ETC for the requested service area that is served by the rural incumbent LEC, CenturyTel. We conclude that Hopi has satisfied its burden of proof in establishing that its universal service offering in the service area will provide benefits to rural consumers.<sup>48</sup>

19. Prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.<sup>49</sup> In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas.<sup>50</sup> In determining the public interest, the benefits of increased consumer choice

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<sup>42</sup> See 47 C.F.R. § 54.209; *Virginia Cellular*, 19 FCC Rcd at 1584-85, para. 46; see also Hopi Petition at 11-15. Hopi has provided detailed information on how it will use universal service support to expand its service throughout the requested service area. See *id.* at 11-14.

<sup>43</sup> See Hopi Petition at 11-14.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 6; 47 U.S.C. § 214(e)(1)(B).

<sup>46</sup> See Hopi Petition at 4.

<sup>47</sup> *Id.* at 5-8.

<sup>48</sup> See *Virginia Cellular*, 19 FCC Rcd at 1574-75, para. 26; *Highland Cellular*, 19 FCC Rcd at 6431, para. 20.

<sup>49</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). See *ETC Designation Order*, 20 FCC Rcd at 6388-6396, paras. 40-57; *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. In determining whether the public interest is served in an ETC petition, the Commission places the burden on the ETC applicant. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

<sup>50</sup> *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43. A carrier "creamskims" when it serves only the least expensive customers, thereby undercutting the incumbent LEC's ability to provide service throughout the

and the unique advantages and disadvantages of the applicant's service offering are considered.<sup>51</sup> As the Commission noted in the *ETC Designation Order*, however, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.<sup>52</sup> In particular, the "creamskimming" analysis is limited to designations in rural service areas.<sup>53</sup> Thus, when an ETC applicant seeks designation below the study area of a rural telephone company, a creamskimming analysis is conducted to compare the population density of the wire centers in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation.<sup>54</sup>

20. We find that Hopi's universal service offering will provide a variety of benefits to consumers, including providing upgraded capacity and service to unserved areas. Hopi states that the network of CenturyTel is currently at capacity and not available to serve some portions of the service area.<sup>55</sup> Hopi states that universal service support will enable Hopi to construct facilities that, according to Hopi, may not otherwise be built on the Reservation, and thus enable additional services to be available to consumers on the Reservation.<sup>56</sup>

21. In addition, Hopi will also use support to offer a basic universal service package to subscribers who are eligible for Lifeline support.<sup>57</sup> Hopi has committed to provide service to any requesting customers within its designated service area.<sup>58</sup> Hopi also will offer a local calling plan that includes unlimited local calling among the three exchanges, which is the same as offered by CenturyTel.<sup>59</sup>

22. Hopi has also made service quality commitments as required by the *ETC Designation Order*, including compliance with applicable consumer protection and service quality standards.<sup>60</sup> Likewise, Hopi has committed to report annually to the Commission on the number of complaints per 1,000 lines and how many requests for service from potential customers were unfulfilled.<sup>61</sup> In addition, Hopi's commitments to use a combination of various media channels to advertise its service offerings satisfy section 214(e)(1)(B) of the Act.<sup>62</sup> As the Commission has stated previously, because an ETC receives universal service only to the extent that it serves customers, strong economic incentives exist, in

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entire study area. *See Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8881-82, para. 189 (1997).

<sup>51</sup> 47 C.F.R. § 54.202(c).

<sup>52</sup> *Id.* at 6390, para. 43.

<sup>53</sup> *ETC Designation Order*, 20 FCC Rcd at 6390, para. 42.

<sup>54</sup> *Id.* at 6392-95, paras. 48-53.

<sup>55</sup> *See* Hopi Petition at 11.

<sup>56</sup> *See id.* at 13-14.

<sup>57</sup> *See id.* at 5.

<sup>58</sup> *See id.* at 11-13.

<sup>59</sup> *Id.* at 15.

<sup>60</sup> *Id.* at 15; *see ETC Designation Order*, 20 FCC Rcd at 6384, para. 28.

<sup>61</sup> Hopi Petition at 11-15; *see ETC Designation Order*, 20 FCC Rcd at 6402, para. 69.

<sup>62</sup> Hopi Petition at 11.



addition to the statutory obligation, for Hopi to advertise its universal service offering in its designated area.<sup>63</sup>

23. Finally, because Hopi has purchased the assets of CenturyTel and is seeking designation for CenturyTel's entire study area, we are not concerned about creamskimming. Rural creamskimming occurs when competitors seek to serve only the low-cost, high revenue customers in a rural telephone company's study area.<sup>64</sup> Hopi is not seeking to do this here. Thus, we find that designation of Hopi, a tribally-owned wireline carrier, as an ETC on the Reservation is in the public interest.

### 3. Designated Service Area

24. Under section 214(e)(1), a carrier designated as an ETC is eligible to receive universal service support throughout the service area for which the designation is received.<sup>65</sup> We conclude that Hopi's "service area" is the study area of the rural incumbent LEC CenturyTel on the Hopi and Navajo Reservations, consisting of the Keams Canyon, Kykotsmovi, and Polacca local exchanges.<sup>66</sup> We therefore designate Hopi as an ETC on the Reservation in the requested area previously served by the rural telephone company, CenturyTel of the Southwest.

### 4. Regulatory Oversight

25. We note that Hopi is required under section 254(e) of the Act to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" and must, under sections 54.313 and 54.314 of the Commission's rules, certify annually that it is in compliance with this requirement.<sup>67</sup> In its Petition, Hopi certified to the Commission that, consistent with sections 54.313 and 54.314 of the Commission's rules, all federal high-cost support will be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" pursuant to section 254(e) of the Act in the area for which Hopi is designated as an ETC.<sup>68</sup> Furthermore, because Hopi is a tribally-owned wireline rural incumbent LEC, we find good cause exists to make the ETC designation effective as of the date of closure of the Purchase Asset Agreement. This is necessary to ensure that universal service support payments are not interrupted solely because of the acquisition of certain CenturyTel assets by Hopi. We direct Hopi to make all required filings with the Universal Service Administrative Company (USAC) under Parts 36, 54, and 69 of the Commission's rules so that it may be eligible to receive high-cost support from the date of closure of the Purchase Asset Agreement.<sup>69</sup> To the extent necessary, we extend the applicable ETC filing deadlines for 60 days from the release of the Order so that Hopi may make the necessary filings.<sup>70</sup> We also direct USAC to work with Hopi as necessary for Hopi to make the required filings with USAC.

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<sup>63</sup> See *Virginia Cellular Order*, 19 FCC Rcd at 1574, para. 25.

<sup>64</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 180, para. 172 (1996).

<sup>65</sup> 47 U.S.C. § 214(e)(1).

<sup>66</sup> See Hopi Petition at 3. Hopi requests that its service area be designated as the geographic area included in CenturyTel's study area. *Id.* at n.3.

<sup>67</sup> 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.313, 54.314.

<sup>68</sup> See Hopi Petition at 17; February 23, 2006 *Ex Parte*, Attach. at 1.

<sup>69</sup> See generally 47 C.F.R. Parts 36, 54, and 69.

<sup>70</sup> Generally, the Commission may waive its rules for good cause shown. See 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the

26. Hopi has committed to meeting each of the criteria required by the *ETC Designation Order* and will annually submit information detailing how it has satisfied the criteria.<sup>71</sup> These records and documentation must be filed with the Commission and the Universal Service Administrative Company (USAC) on October 1 of each year, beginning October 1, 2007.<sup>72</sup> As noted above, Hopi has also committed to providing applicable consumer protection and service quality standards.<sup>73</sup>

27. We find that reliance on Hopi's commitments is reasonable and consistent with the public interest, the Act, and the Fifth Circuit decision in *Texas Office of Public Utility Counsel v. FCC*.<sup>74</sup> We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that Hopi satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.<sup>75</sup>

28. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas where it is designated as an ETC.<sup>76</sup> Hopi is required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that, if Hopi fails to fulfill the requirements of the Act, the Commission's rules, or the terms of this Order after it begins receiving universal service support, the Commission may exercise its authority to revoke Hopi's ETC designation.<sup>77</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>78</sup>

### C. Anti-Drug Abuse Act Certification

29. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>79</sup>

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public interest. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. For all of the reasons discussed above, we find good cause to waive the applicable ETC filing deadlines, including those that may have expired from June 1, 2006, until the release date of this Order.

<sup>71</sup> *See* Hopi Petition at 11.

<sup>72</sup> *See ETC Designation Order*, 20 FCC Rcd at 6401-2, paras. 68-69.

<sup>73</sup> Hopi Petition at 15; *see supra* paras. 15 and 21.

<sup>74</sup> *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5<sup>th</sup> Cir. 1999).

<sup>75</sup> 47 U.S.C. § 214(e).

<sup>76</sup> 47 U.S.C. §§ 220, 403; 47 C.F.R. §§ 54.313, 54.314.

<sup>77</sup> *See Declaratory Ruling*, 15 FCC Rcd at 15174, para. 15. *See also* 47 U.S.C. § 254(e).

<sup>78</sup> *See* 47 U.S.C. § 503(b).

<sup>79</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b); *see Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

Hopi has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>80</sup> We find that Hopi's certification satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.

#### IV. ORDERING CLAUSES

30. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, 47 U.S.C. § 214(e)(6), and pursuant to authority delegated in sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), Hopi Telecommunications, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER, effective as of June 1, 2006, for portions of its licensed service area on the Hopi and Navajo Nation Reservations in Arizona, to the extent described herein.

31. IT IS FURTHER ORDERED that, pursuant to sections 1, 4(i), 5(c), 201, 202 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, 202, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, the ETC filing deadlines required by to Parts 36, 54, and 69 of the Commission's rules, 47 C.F.R. Parts 36, 54, and 69, ARE WAIVED, to the extent described herein, for 60 days from the date of this Order so that Hopi Telecommunications, Inc. may be eligible to receive high-cost support from June 1, 2006.

32. IT IS FURTHER ORDERED that Hopi Telecommunications, Inc. SHALL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2007, as part of its annual reporting requirements.

33. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED by the Wireline Competition Bureau to the Arizona Corporation Commission and to the Universal Service Administrative Company.

34. IT IS FURTHER ORDERED that pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief  
Wireline Competition Bureau

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<sup>80</sup> See Hopi Petition at 17, App. C.