

Further Notice of Proposed Rulemaking. We also clarify, on our own motion, the Commission's rules regarding the qualification criteria for enhanced Lifeline and Link-Up service. In addition, we decline to adopt a rule that would require resolution of the merits of any request for ETC designation within six months of the filing date. We also decline to extend the enhanced low-income programs to the Northern Mariana Islands.

II. Order on Reconsideration

A. Petitions for Reconsideration

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

B. Discussion

1. ETC Designation Framework for Carriers Serving Tribal Lands

4. As discussed in greater detail, we deny petitions for reconsideration of the framework to resolve requests for ETC designations for carriers providing service on tribal lands. We affirm the Commission's prior conclusion that this framework facilitates the expeditious resolution of such requests, while balancing the relevant federal, state, and tribal interests in determining jurisdiction over carriers operating on tribal lands. In addition, we note that similar arguments were previously considered and rejected by the Commission in the *Twelfth Report and Order and Further Notice of Proposed Rulemaking*. We find no basis to now reconsider these issues.

5. Consistent with the Commission's prior conclusion, we decline to adopt the suggestion of those petitioners contending that section 214(e)(6) provides the Commission with the authority to assume jurisdiction over all carriers seeking ETC designation for service on tribal lands. These petitioners contend that any exercise of state jurisdiction in designating ETCs on tribal lands is inconsistent with the federal trust responsibility to tribes and the principle of tribal sovereignty. As the Commission concluded in the *Twelfth Report and Order and Further Notice of Proposed Rulemaking*, we do not believe that Congress intended the

Commission to use section 214(e)(6) to usurp the role of a state commission that has jurisdiction over a carrier providing service on tribal lands. To the contrary, in adopting section 214(e)(6), Congress recognized that some state commissions had asserted jurisdiction over tribal lands. Congress also acknowledged pending jurisdictional disputes between states and tribes and made clear that the adoption of section 214(e)(6) was not "intended to impact litigation regarding jurisdiction between State and federally-recognized tribal entities."

6. We affirm that this framework is consistent with the federal trust responsibility to the tribes and the principle of tribal sovereignty. In establishing the framework for the designation of carriers serving tribal lands, the Commission was guided by the recognition of, and respect for, principles of tribal sovereignty and self-determination. The designation framework recognizes that the principles of tribal sovereignty may lead some carriers and tribes to be unwilling to submit jurisdictional questions relating to tribal lands to a state commission. The adopted framework therefore provides the opportunity for parties to submit this issue directly to the Commission for resolution. In addition, the availability of a federal forum allows carriers and tribes to avoid the potential costs and delays that would arise if they were required to first challenge the jurisdictional issue in state proceedings and judicial appeals prior to requesting designation from this Commission under section 214(e)(6).

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

8. We also decline to adopt Western Wireless' suggestion that the Commission establish a standard whereby the Commission assumes jurisdiction under section 214(e)(6) in those instances in which the requesting carrier has obtained an agreement with the tribe and proposes to offer universal service that is targeted to the tribal land. In so doing, we note the admonition of the United States Supreme Court that "[g]eneralizations on this subject have

become * * * treacherous." Although the existence of a consensual relationship between the tribe and carrier regarding the provision of telecommunications service to tribal lands may be a significant factor in the jurisdictional analysis, we do not believe that it is prudent or necessary to establish such a fixed presumption. A careful analysis of the specific agreement between the tribe and carrier is necessary to determine its relevance to the jurisdictional determination. As noted in the *Twelfth Report and Order and Further Notice of Proposed Rulemaking*, the issue of whether a state commission lacks jurisdiction over a carrier is a particularized inquiry guided in each case by the principles of tribal sovereignty, federal Indian law, and treaties, as well as state law. The framework established by the Commission allows for the careful balancing of the respective federal, state, and tribal interests, including an examination of the relationship between the carrier and tribe, to make this determination on a case-by-case basis. We therefore decline to adopt Western Wireless' proposal.

2. Definition of "Tribal Lands"

9. 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 of Proposed Rulemaking*, 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. For example, areas such as Phoenix, Arizona and Sacramento, California are considered to be "near reservation areas," even though they are not isolated and underserved. As a result, the Commission issued an order staying implementation of the enhanced Lifeline and Link-Up rules to the extent that they apply to qualifying low-income consumers located on "near reservation" areas.

10. We agree with NTCA that the Commission's rationale for adopting a