

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Northwest Missouri Cellular Limited)	
Partnership for Designation as a)	
Telecommunications Company Carrier)	Case No. TO-2005-0466
Eligible for Federal Universal Service)	
Support Pursuant to Section 254 of the)	
Telecommunications Act of 1996.)	

OFFICE OF PUBLIC COUNSEL’S PRETRIAL BRIEF

Public Counsel cannot support the Application in its present form. As the Public Service Commission has determined with the adoption of 4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers (published as an order of final rule making in the Missouri Register on May 15, 2006), wireless ETCs must adopt the same obligations of the landline carriers to provide public switched access infrastructure, technology, information and telecommunications facilities and functions at reasonable prices. (Federal Telecommunication Act of 1996, Section 259 (a) and (b)). An eligible carrier must provide all services supported by federal support mechanisms in a designated service area. Eligible telecommunications carriers must use media of general distribution .to advertise the availability and charges for universal service elements. 47 U.S.C. Section 214(e)(1)(A)-(B).

The identification of the three issues in this case show that the applicable law is not disputed. The dispute lies with the application of the law, including the new PSC ETC regulation, to the facts as presented by the application and the applicant’s testimony.

Public Counsel believes that the applicant has left too many unanswered questions

on its compliance with the requirements for ETC status, most of these questions arising from the lack of specifics to round out how and in what manner, it will carry out the ETC obligations.

OPC cites the following deficiencies as identified in OPC witness Barbara Meisenheimer's Rebuttal Testimony:

Availability of supported services: the Company has provided incomplete information on its planned Lifeline offerings and methods for serving customers throughout its requested designated ETC area in Missouri.

Service throughout requested designated areas: the Company needs to provide more specific evidence that it can reasonably serve ubiquitously and on a timely basis throughout the requested designated areas, including areas of "spotty" service.

Price, terms and conditions of service: the Company now provides its customers with many services identified for Federal universal service support and in its Application and testimony committed to offer the remaining supported services, but lacks sufficient detail to evaluate and ensure that they are comparable to the ILECs' cost, terms and conditions for supported services.

Reasonably priced service for Lifeline customers: the record should provide specific assurance that this will be available to on an ongoing basis.

Comparison of services and rates: Appendix K does not provide an apples to apples comparison of services and rates in that ILEC rates are illustrated at "full price" while Nwmc's rates are reduced by the federal support. Rates shown do not reflect these discounts even though they would be provide to lifeline customers served by any of the incumbents.

Terms and conditions of the Lifeline and Link Up: the Company's application does not provide an adequate description

Lifeline customers subject to credit checks. The Company should be required to provide service to all customers that do not have a past unpaid account with the Company.

Public Counsel has set out the applicable law in the attached Appendix for the Commission's convenience.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was sent to counsel for all parties of record in Case No. TO-2005-0466 by electronic transmission this 24th day of May, 2006.

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APPENDIX OF TEXT OF APPLICABLE LAW

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.040, 386.250, 392.451 and 392.470, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-3.570 is adopted.

4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers

(1) For purposes of this rule, the following definitions apply.

(C) Eligible telecommunications carrier (ETC) is a carrier designated as such by the Missouri Public Service Commission pursuant to 47 U.S.C. 214(e) in order to receive universal service support.

Eligible telecommunications carrier (ETC) shall refer to alternative local exchange carriers and commercial mobile radio service providers and shall not include incumbent local exchange carriers unless otherwise specified.

(E) Reasonable request for service refers to a request for service of a type and quantity that is not in excess of service which is normally requested by like customers and is for service at a location within the carrier's designated service area.

(2) Applications for Designation as an ETC.

(A) Each request for ETC designation shall include:

1. Intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts;

2. A two (2)-year plan demonstrating, with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

A. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

(I) Quality and rates—quality services should be available at just, reasonable, and affordable rates;

(II) Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

(III) Access in rural and high cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost

areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

3. The two (2)-year plan shall include a demonstration that universal service support shall be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the Missouri service area for which the requesting carrier seeks ETC designation including:

A. A detailed map of coverage area before and after improvements and in the case of CMRS providers, a map identifying existing tower site locations for CMRS cell towers;

B. The specific geographic areas where improvements will be made;

C. The projected start date and completion date for each improvement;

D. The estimated amount of investment for each project that is funded by high-cost support;

E. The estimated population that will be served as a result of the improvements;

F. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area; and

G. A statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support and that such support will be used in addition to any expenses the ETC would normally incur;

4. A demonstration of the carrier's ability to remain functional in emergency situations, including a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities and is capable of managing traffic spikes resulting from emergency situations;

5. A demonstration that the commission's grant of the applicant's request for ETC designation would be consistent with the public interest, convenience and necessity;

6. A commitment to advertise the availability of services and charges therefore using media of general distribution throughout the ETC service area;

7. A commitment to provide Lifeline and Link Up discounts consistent with 47 CFR 54.401 and 47 CFR 54.411. Each request for ETC designation shall include a commitment to publicize the availability of Lifeline service in a manner reasonably designed to reach

those likely to qualify for the service consistent with 47 CFR 54.405;

8. A statement that the carrier will satisfy consumer privacy protection standards as provided in 47 CFR 64 subpart U and service quality standards as applicable;

9. A statement that the requesting carrier acknowledges it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e) of the Telecommunications Act of 1996; and

10. A commitment to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts and Missouri Universal Service Fund (MoUSF) discounts pursuant to 4 CSR 240-31, if applicable, at rates, terms and conditions comparable to the Lifeline and Link Up offerings and MoUSF offerings of the incumbent local exchange carrier providing service in the ETC service area.

(B) Each request for ETC designation by a CMRS provider shall include a commitment to abide by the consumer code for wireless service recognized by the Cellular Telecommunications and Internet Association (CTIA) at the time of the ETC designation request. As part of the initial application, a CMRS provider shall include a copy of the consumer code for wireless service currently recognized by CTIA to which it commits to abide. Any CMRS provider designated as an ETC shall file with the commission, any change(s) to the consumer code for wireless service included with its application or any subsequent code approved under this section of the rule, within thirty (30) days of the change(s). The commission shall allow interested parties thirty (30) days to provide comment as to whether the CMRS provider should be required to commit to the proposed changes, or should continue to abide by the consumer code for wireless service currently approved for that provider.

(C) Each request for ETC designation shall include a plan outlining the method for handling unusual construction or installation charges.

(3) Service Requirements of ETCs.

(A) ETCs shall develop a bill design that can be easily interpreted by their customers and clearly sets forth charges in compliance with state and federal billing requirements.

(B) ETCs shall provide customer service contact information online and on billing statements. This requirement also applies to ETCs that use a third party billing agent.

(C) Service Provisioning Commitment.

1. ETC shall make available to each end-user subscribing to its supported services within its ETC designated service area the following service features:

- A. Dual tone multi-frequency signaling or its functional equivalent;
 - B. Single-party service or its functional equivalent;
 - C. Access to emergency services;
 - D. Emergency telephone number services capable of automatic number identification, automatic location identification and call routing facilities to facilitate public safety response; e.g., enhanced 911 service, where the local government agency serving the end-user has implemented enhanced 911 systems;
 - E. Access to interexchange service;
 - F. Access to telecommunications relay services by dialing 711;
 - G. Access to Directory Assistance service;
 - H. Access to operator services; and
 - I. Toll limitation and/or blocking for qualifying low-income consumers.
2. ETCs shall publicize the construction of all new facilities that will enhance services in unserved or underserved areas so that consumers are aware of the improved service in the area.
 3. ETCs shall extend their networks to serve new customers upon a reasonable request. ETCs shall take the following steps, as applicable, to respond to all such reasonable requests for service within its ETC service area.
 - A. If a request comes from a customer residing within the ETC service area where the ETC already provides service, the ETC shall immediately provide service using its standard customer equipment.
 - B. If a request comes from a customer residing within the ETC service area where the ETC does not already provide service, the ETC shall take reasonable steps to provide acceptable service at no cost to the customer, including: modifying or replacing customer equipment; deploying a roof-mounted antenna or other network equipment at the premises; making adjustments at the nearest cell site or to other network or customer facilities; employing, leasing or constructing an additional cell site, a cell-extender, repeater or other similar equipment; or offering resold service of other carriers that have facilities available to that premises.
 - C. Where special conditions or special requirements of the customer involve unusual construction or installation costs, the customer may be required to pay a reasonable portion of such costs in accordance with the plan outlining the method for handling unusual construction or installation charges approved by the commission at the time of designation as an ETC.
 - D. If there is no possibility of providing service to the requesting customer, the ETC shall notify the customer and include such information in its annual certification documentation to the commission.

(D) Within thirty (30) days of receiving ETC status, each CMRS carrier designated as an ETC shall make an informational filing with the commission consisting of a complete description of all of its service offerings. Such informational filings will be amended as service offerings are introduced or modified.

(E) ETCs shall maintain a record of customer complaints that have been received by the company in a manner that includes, at a minimum: the end-user name; the account number; a description of the complaint; the date the complaint was filed; the resolution; and the amount of refund or credit, if any. ETCs shall also maintain a record of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the Federal Communications Commission for which the company has knowledge in a manner that includes, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any.

(F) ETCs shall, within ten (10) days of a change in the company designated contacts, either notify the manager of the Telecommunications Department, in writing or by electronic mail, or shall update the commission's electronic filing system (EFIS). The notification or update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s). The contact name(s) provided pursuant to this section shall be the individual(s) primarily responsible for: customer service; repair and maintenance; answering complaints; authorizing and/or furnishing refunds to customers; and informational or tariff filing issues.

(4) Annual Filing Requirements for ETCs.

(A) All ETCs, including incumbent local exchange telecommunications carriers that receive federal high-cost support, shall, by August 15 of each year, submit an affidavit executed by an officer of the company attesting that federal high-cost support is used consistent with the commission's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred. The commission or its staff may request additional information regarding the annual certification.

Questions regarding the appropriate documentation for ETCs should be directed to the commission's Telecommunications Department.

(B) ETCs seeking certification by October 1 of each year shall, no later than June 15 of each year, set up a meeting with the Telecommunications Department staff and the Office of the Public Counsel to review and discuss the ETC's proposal for the two (2)-year improvement plan. The meeting shall include a discussion of the proposed plan and any changes to the plan that would improve coverage, service quality or capacity in unserved or underserved areas in the Missouri service area in which ETC designation was

granted.

1. A two (2)-year improvement plan shall include progress updates on any previously submitted plan. The two (2)-year improvement plan shall include, with specificity, proposed improvements or upgrades to the carrier's network on a wire center-by-wire center basis throughout its proposed designated service area and address all of the separate components addressed in the initial plan, set forth in (2)(A)2. above.

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2. Reports on unfilled service requests and customer complaints for the previous year and how the two (2)-year improvement plan may address such requests and complaints.

(C) ETCs shall submit a demonstration that the receipt of high-cost support was used only for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which ETC designation was granted.

1. For purposes of this section, "support is intended" is defined consistent with the Telecommunications Act which outlines the following principles:

A. Quality and rates—quality services should be available at just, reasonable, and affordable rates;

B. Access to advanced services—access to advanced telecommunications and information services should be provided in all regions of the state;

C. Access in rural and high-cost areas—consumers in all regions of Missouri, including those in rural, insular and high-cost areas will have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(D) ETC shall submit a demonstration that high-cost support was used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the ETC would normally incur.

(E) ETCs shall submit an affidavit signed by an officer of the company certifying that the ETC continues to comply with the approved consumer code for wireless service recognized by the Cellular Telecommunications and Internet Association (CTIA) and/or applicable service quality standards and consumer protection rules, certifying

that the ETC continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent local exchange telecommunications carrier in the relevant service areas (if applicable), and continues to acknowledge that it shall provide equal access pursuant to 4 CSR 240-32.100(3) and (4) if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(3) of the Telecommunications Act of 1996.

(F) ETCs shall submit a report of complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the Federal Communications Commission in the previous twelve (12) months for which the company has knowledge. Such report shall include, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any. If the commission finds the ETC's resolution of complaints is not satisfactory or if a particular type of complaint is recurring without being satisfactorily addressed, then the commission may decline to certify the ETC during the annual certification process.

(G) An application for ETC designation shall be deemed to be acceptance of Missouri Public Service Commission jurisdiction over any issues related to ETC designation and status and USF funding and acceptance of additional rules made applicable to that ETC.

(H) All ETCs, including incumbent local exchange telecommunications carriers, in non-rural areas of Missouri shall, in conjunction with the annual high-cost certification process, assist the commission staff in comparing residential rates in rural areas served by non-rural incumbent local exchange carriers to urban rates nationwide.

(I) All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the ETC or incumbent local exchange telecommunications carrier.

(J) Except as otherwise provided in commission rules, ETCs shall keep all books and records associated with its ETC designation and/or the commission's annual certification process in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The ETC shall make its books and records associated with its ETC designation and/or the commission's annual certification process available to the commission at reasonable times for examination and inspection at a location designated by the commission.

(K) All records required by this rule shall be preserved for at least two (2) years.

(L) ETCs, or carrier requesting ETC designation, shall promptly furnish requested information, including financial information, related to its designation as an ETC to the commission, its staff or the

Office of the Public Counsel.

(5) Additional Requirements.

(A) Each CMRS provider shall submit to the commission a letter reflecting a change to the name and/or change, deletion or addition of a trade name under which the ETC will be doing business in the state of Missouri, attaching, as applicable, an amended Certificate of Incorporation, Fictitious Name registration or an amendment thereof. The CMRS provider shall modify its current informational filing, as required in subsection (3)(D) to reflect the new name and shall attest that no revisions are being made, except for the name change.

(B) ETCs shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.

(C) ETCs, including incumbent local exchange telecommunications carriers, shall not willfully make any false entry in any business record of any kind kept by it, nor shall it willfully destroy, mutilate, alter or by any method falsify any such record, nor shall it willfully neglect or fail to make full, true and correct entries in such records of all facts and transactions appertaining to its business, nor shall it falsify any statement to the commission.

(D) Allegations of failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the ETC designation.

(E) The commission shall not certify, by October 1 of each year, any ETC, including incumbent local exchange telecommunications carriers, that fails to comply with these rules.

(F) ETCs shall submit to the commission staff, by August 15, 2006, a statement of compliance with 4 CSR 240-3.570. All carriers with requests for ETC designation pending as of the effective date of this rule shall submit, within thirty (30) days of the effective date of the rule, any missing information required by 4 CSR 240-3.570 or a statement that all required information was previously submitted as part of the request for ETC designation.

Relevant provisions are contained in Section 254 and Section 214 of the 1996 Telecommunications Act.

Section 254(e) mandates that:

- Only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.
- A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Section 254(f) allows:

- A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.

Section 214(e) (1) defines eligible carriers and establishes minimum service and advertising requirements:

- A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with Section 254 and shall, throughout the service area for which the designation is received.
- A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall, throughout the service area for which the designation is received, offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier.)
- A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall, throughout the service area for which the designation is received, advertise the availability of such services and the charges therefore using media of general distribution.

Section 214(e) (2) establishes the Missouri Commission's authority to designate eligible telecommunications carriers:

- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission.
- Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of 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 by the State commission, 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 State commission shall find that the designation is in the public interest.

Section 214(e) (3) establishes the Missouri Commission's authority to designate eligible telecommunications carriers for unserved areas. This is currently not an issue in this proceeding.

Section 254(5) defines the service area for the purpose of universal service:

- The term 'service area' means a geographic area established by a State commission 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), establish a different definition of service area for such company.

FCC's supported services are set forth in 47 C.F.R. § 54.101(a):

- a. voice grade access to the public switched telephone network;
- b. local usage;
- c. dual tone multi-frequency signaling or its functional equivalent;
- d. single-party service or its functional equivalent;
- e. access to emergency services;
- f. access to operator services;
- g. access to interexchange service;
- h. access to directory assistance;
- i. toll limitation for qualifying low-income consumers.

47 C.F.R. § 54.202

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) On or after the effective date of these rules, in order to be designated an eligible telecommunications carrier under section 214(e) (6), any common carrier in its application must:

(1) (A) commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment; and

(B) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e) (6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e) (6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under section 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e) (6), the Commission determines that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a cream skimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.