

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

In the Matter of)	
)	
Inquiry Concerning the Deployment of Advanced)	GN Docket No. 14-126
Telecommunications Capability to All Americans)	
in a Reasonable and Timely Fashion, and Possible)	
Steps to Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act of)	
1996, as Amended by the Broadband Data)	
Improvement Act.)	

**COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the Tenth Broadband Progress (Report) Notice of Inquiry issued in this proceeding.¹

NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

The main issue, in a wide sense, to be addressed is whether broadband is being deployed to all Americans in a reasonable and timely fashion. A more narrow inquiry into this

¹ Tenth Broadband Progress Notice of Inquiry, GN Docket No. 14-126 (FCC 14-113), released August 5, 2014 (NOI)

question is whether broadband is being deployed to certain classes of Americans in a reasonable and timely fashion. It is NTTA's contention that broadband² is demonstrably *not* being deployed to Native Americans living in Tribal areas in a reasonable or timely fashion. The problem of the disparity in service availability between urban, rural, and Tribal areas has been around since the beginning of telecommunications service, and with the importance of broadband to all areas of the economy, it is well beyond the time the digital divide that exists between Tribal areas and the rest of the country be closed.

II. DEFINITION OF BROADBAND

In order to properly assess the state of the broadband market, one must first determine the relevant goal. Since the 2010 Sixth Broadband Progress Report, the Commission has found that broadband is not being deployed in a reasonable and timely manner.³ Before the Sixth Report, the FCC found each year that broadband was being deployed in a reasonable and timely fashion. Also in the Sixth Report the Commission took the "overdue step" of increasing the broadband speed benchmark to 4 Mbps / 1 Mbps, according to which the progress of broadband deployment was measured.⁴ NTTA firmly believes that it is time for another overdue step, the result of which will be for the Commission to recognize that 4 mbps/1 mbps is no longer a reasonable definition of broadband and to adopt a standard speed, for rural Tribal areas, that will ensure these areas can become and remain economically viable well into the future.

According to the Commission's data, the current 4/1 standard will not meet even common moderate household usage.⁵ In addition, the Commission has proposed to increase the standard broadband speed to be offered by recipients of high cost support to 10 mbps (down).⁶ While NTTA appreciates the movement towards the recognition that, to date, the definition of broadband in the United States has been woefully inadequate, the increase to 10

² As reasonably and legitimately defined herein as to fixed broadband downstream and upstream speed availability

³ Sixth Broadband Deployment Report, GN Docket No. 09-137 et al at 2

⁴ *NOI* at footnote 9

⁵ *NOI* at Table 1

⁶ *In the Matter of Connect America Fund*, WC Docket No. 10-90, et al., Further Notice of Proposed Rulemaking (FCC 14-54, rel. June 10, 2014) at 140 (*CAF FNPRM*)

mbps is, at best, a patch if the Commission believes it will solve any broadband deployment and adoption problems. Instead, the Commission should, as stated in the *NOI*, consider a number of factors in identifying the proper definition of advanced telecommunications capability.⁷ In general, NTTA believes the average or typical household usage presents a reasonable starting point for defining broadband/advanced telecommunications services or capabilities. The Commission must also consider the needs inherent in the area under consideration; for example, residents and businesses in Tribal areas may require higher relative broadband speeds due to the lack of physical access to vital goods and services, such as health care specialists and research centers.

A valid approach to addressing the widening broadband digital gulf in Tribal areas is to consider services and speeds available in urban areas, and conclude that the same or reasonably comparable services and speeds should be available in rural, and rural Tribal⁸, areas. In the *NOI*, the Commission asks whether a 10 mbps download speed “would adequately reflect Congress’s goal of evaluating *advanced* telecommunications capability.”⁹ As the Commission discussed its proposal to increase the standard broadband speed to 10 mbps, data was analyzed that is currently available in the National Broadband Map (NBM).¹⁰ This data shows “that 33 percent of the population residing in rural census blocks lack access to fixed broadband providing 10 Mbps/768 kbps speeds.”¹¹ As alarming as this is, the more pertinent data relates to the speeds available to a majority of residents in urban areas as compared to the speeds available in rural areas. This data shows that, on average, 70% of customers in urban areas have broadband services delivering downstream speeds in excess of 100 mbps.¹² In Tribal areas, this amount drops to 19.5 percent.¹³ Clearly, a gulf in 100 mbps broadband availability between urban and Tribal areas leads to the conclusion that reasonably comparable broadband service is not available, and is not being made available on a reasonable or timely basis.

⁷ *NOI* at 5

⁸ The Eighth Broadband Progress Report included broadband statistics for all Tribal areas, and rural Tribal areas, a differentiation both valid and necessary. *Eighth Broadband Progress Report*, GN Docket No. 11-121 (rel. August 21, 2012) at 51-52 and Table 4

⁹ *NOI* at 15

¹⁰ *CAF FNPRM* at 140-141; National Broadband Map (*NBM*) available at www.broadbandmap.gov

¹¹ *Id.*, at 140

¹² *NBM* “Broadband Statistics Report, Broadband Availability in Urban vs. Rural Areas”

¹³ *NBM* statistical report for all “Native Nations”

As a result of the above data, NTTA recommends the Commission adopt a definition of advanced telecommunications capability that is forward-looking in nature and recognizes that all Americans, including those residing on Tribal lands, should have access to reasonably comparable services (i.e., speeds) at reasonably comparable rates. To maintain a 4/1 service level, or to increase the definition to 10/1 is not only unsupported by the data, but is irresponsible in regards to the Native Americans living in Tribal areas who count on such services. Instead, the Commission must consider higher speeds in its definition of advanced telecommunications service when determining whether such services are being deployed in a reasonable and timely manner. Furthermore, NTTA suggests the Commission take into account the relatively higher need for quality, high-speed broadband services in Tribal areas, where customers do not have access to important goods and services that many in urban areas take for granted. NTTA submits that the answer for Tribal areas is substantially higher than the current 4/1 standard or even the proposed 10/1 level.

III. BROADBAND DEPLOYMENT IN TRIBAL AREAS

It is without a doubt that broadband deployment in many Tribal areas lags behind other areas in the United States. In the 8th Broadband Progress Report, the Commission disclosed that 49.5 percent of residents living in rural areas of Tribal lands do not have access to basic 4/1 broadband service, compared to 6 percent of Americans nationally.¹⁴ Current NBM data suggests this disparity grows exponentially when the speed availability target increases - only 32.6 percent of the population on Tribal lands has access to fixed broadband speeds in excess of 25 mbps, compared to the nationwide average of 83.8 percent.¹⁵ The list could go on, but the clear conclusion is substantially more work must be done in Tribal areas in order for the Commission to be able to successfully meet Section 706's mandate that advanced telecommunications capability is being deployed to all (Native) Americans in a reasonably and timely fashion, no matter how "advanced telecommunications capability" is defined.

As noted in the NOI, the Commission is also required to "include information comparing the extent of broadband service capability in a total of 75 communities in at least 25 countries

¹⁴ Eighth Broadband Progress Report at 52

¹⁵ NBM statistical report for all "Native Nations" (reflects reported data as of 12/31/13)

abroad.”¹⁶ The reason for this look outside the United States is to compare broadband deployment with other countries, with a positive comparison providing additional evidence that deployment in the United States is being accomplished in a reasonable and timely fashion. Unfortunately, according to the International Bureau’s latest International Broadband Data Report, the United States ranks 24th in average actual speeds purchased and experienced by consumers, and 17th “when based on a stratified sampling technique using weighted average actual download speed.”¹⁷ Considering that the United States has the world’s largest single national economy¹⁸ and has approximately 25 percent of the nominal global gross domestic product¹⁹, these broadband speed rankings are puzzling, at best, and can be seen to represent a serious failure in national broadband policy.

While NTTA members tend to provide broadband services to a greater percentage of their service areas, the facts remain that (1) Tribal areas not served by NTTA members are often at a bigger disadvantage when it comes to the availability of high-speed broadband services, (2) it requires substantial capital and operating funds to operate and maintain current broadband networks, and (3) it will require even more funds to upgrade broadband networks to get them where they need to be - able to deliver broadband speeds in excess of 25 mbps or more (downstream). Thus, even in NTTA member areas, where the Tribally-owned company has committed to providing quality, state-of-the-art broadband services to Native Americans, more needs to be done in order to meet Section 706’s mandates.

IV. SOLUTIONS FOR TRIBAL AREAS

There are solutions for addressing the widening broadband-based digital gulf in Tribal areas, but such solutions will require political and regulatory will to an extent that, to date, has yet to be seen in the United States. As stated in the National Broadband Plan:

“Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter

¹⁶ *NOI* at 39 (quoting from 47 U.S.C. § 1303(b)(1))

¹⁷ *8th Broadband Progress Report* at 118

¹⁸ Bergmann, Andrew (April 2014). "World's Largest Economies". CNN. CNN Money. Retrieved June 18, 2014.

¹⁹ "World Nominal GDP". International Monetary Fund. International Monetary Fund. April 2014. Retrieved June 18, 2014.

investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding.”²⁰

Since the National Broadband Plan was released, there has not been increased funding made available to Tribes for accelerating broadband deployment; instead, at best there has been no change in support available to Tribal areas, and in many cases there has been less support available for the acceleration of broadband deployment. In fact, due in large part to regulatory uncertainty surrounding portions of the federal universal service program available to rate-of-return regulated LECs, there has been a freezing of or a contraction in investment.²¹

There is no doubt that broadband services help bring economic opportunity to rural areas. In a recent study conducted by a group of university researchers and funded by the National Agriculture and Rural Development Policy Center, one of the conclusions was “rural counties in which at least 60 percent of households had a wired high-speed Internet connection showed stronger income growth and a smaller growth in unemployment rates.”²² The reasons for this apparent correlation are clear - expanding opportunities in rural areas beyond the physical reach of the residents of these areas results in economic benefits, including more and better education, health care, and expanding markets for goods and services. In many Tribal areas, broadband services (at speeds discussed herein, not at the minimal speeds being sustained by the Commission) provide for the only reliable way for Native Americans to expand their collective reach beyond the reservation’s borders.

To address the lack of deployment of broadband services on Tribal lands in a reasonable and timely fashion, the Commission (and others) must address both the availability of advanced telecommunications capability (as defined herein), the affordability in Tribal areas, and the

²⁰ Federal Communications Commission - National Broadband Plan (March 2010) at p.152 (Box 8-4) (*National Broadband Plan*)

²¹ *In the Matter of Connect America Fund*, WC Docket No. 10-90 et al., Seventh Order on Reconsideration, etc. (FCC 14-54, rel. June 10, 2014), at 133 and footnote 297

²² *Rural Broadband Availability and Adoption: Evidence, Policy Challenges, and Options*, By Brian Whitacre (Oklahoma State University), Roberto Gallardo (Mississippi State University), and Sharon Strover (University of Texas), available at www.nardep.info/BenefitsBroadband8.html

adoption rates in Tribal areas. While the Commission and others seem to recognize the unique challenges in serving Tribal areas, little has been done to address these difficulties. NTTA believes it is time to come up with a holistic solution to bridging the ever-widening digital gulf, of which Native Americans are on the wrong side.

First, in order to address the lack of broadband availability (at speeds in excess of 25 mbps downstream), there will need to be additional support made available to service providers, including NTTA members. This can only be accomplished via a sufficient, predictable, and explicit funding mechanism that can be relied upon to provide a certain measure of regulatory certainty to the investing companies. In conjunction with the FCC-Native Nations Broadband Task Force²³, the Commission should begin the process of implementing a Tribal Broadband Fund (TBF). The TBF could be structured as contemplated in the *National Broadband Plan*:

“Congress should consider establishing a Tribal Broadband Fund to support sustainable broadband deployment and adoption in Tribal lands, and all federal agencies that upgrade connectivity on Tribal lands should coordinate such upgrades with Tribal governments and the Tribal Broadband Fund grant-making process.”²⁴

Only in this way can the Commission meet its Section 706 obligations as they relate to Tribal areas - additional support to reach ubiquitous 25 mbps or greater speeds must be focused, sufficient, and predictable.²⁵

Second, a Tribal-specific broadband Lifeline program will need to be adopted in order to ensure Native Americans living in rural Tribal areas can afford the cost of legitimate levels of advanced telecommunications services. To this end, two NTTA members, Gila River Telecommunications, Inc. (GRTI) and Hopi Telecommunications, Inc. (HTI) are participating in

²³ See e.g., *FCC Seeks Nominations for Tribal Government Representatives to Serve on the FCC-Native Nations Broadband Task Force*, Public Notice (DA 14-342) released March 12, 2014

²⁴ *National Broadband Plan* at 152 (Recommendation 8.18)

²⁵ While NTTA does not in these comments advocate for a specific method of determining broadband costs or support amounts, significant evidence exists that the current system based on actual costs, if targeted correctly, works in most, if not all, situations, and is superior to other methodologies. See e.g., comments of The Small Company Coalition, filed August 8, 2014 in WC Docket No. 10-90, et al., at 6-9

the Commission's Broadband Adoption Broadband Pilot Program.²⁶ GRTI's and HTI's preliminary results reveal that adoption and disconnection rates are directly tied to the cost of equipment and/or monthly recurring charges.²⁷ In order for legitimate levels of broadband services to be available and adopted by residents of rural Tribal lands, the price of such services will have to be addressed.

V. CONCLUSION

It is without a doubt that Section 706's mandates, given a legitimate definition of advanced telecommunications capability, are not being met in regards to rural Tribal areas. In order to keep the digital gulf from widening, the Commission must adopt a legitimate, forward-looking definition of broadband, especially in regards to downstream and upstream speeds. Adopting anything less than, for example, 25 mbps downstream and an upstream speed of 2 mbps or better for fixed broadband service, is inviting a widening of the digital gulf to levels that cannot be crossed. NTTA recommends the Commission first find that advanced telecommunications capabilities are *not* being deployed in rural Tribal areas on a reasonable and timely basis. Then, the Commission should immediately move forward with adopting a Tribal Broadband Fund and a Tribal Broadband Lifeline Program in order to begin the narrowing of the digital gulf that exists between rural Tribal areas and the rest of the world. Residents of the richest nation on Earth deserve no less.

Respectfully Submitted,

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²⁶ See e.g., Gila River Telecommunications, Inc. Ex Parte communication (Letter filed by Gregory W. Guice) filed March 13, 2014 in WC Docket Nos. 12-23, 11-42, and 10-90 (*GRTI Ex Parte*). Also see Hopi Telecommunications, Inc. Application for the FCC's Broadband Adoption Lifeline Pilot Program, WC Docket No. 11-42, filed July 9, 2012

²⁷ *GRTI Ex Parte*