

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

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**UNITED STATES TELECOM ASSOCIATION**

**PETITION FOR RECONSIDERATION AND CLARIFICATION**

**COMMENTS IN OPPOSITION OF  
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

June 3, 2013

## I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments regarding the United States Telecom Association's (USTelecom) Petition for Reconsideration and Clarification, filed on April 4, 2013 (*Petition*), as requested by the Wireline Competition Bureau.<sup>1</sup> The *Petition* requests the Federal Communications Commission (FCC or Commission) reconsider and/or clarify a number of items, including, once again, the Tribal Engagement rules<sup>2</sup> and *Further Guidance* on the Tribal engagement obligation provisions of the Connect America Fund.<sup>3</sup> NTTA will limit its comments to issues surrounding the Tribal Engagement rules and *Further Guidance*, topics on which NTTA has filed comments in the past.

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., Native American Telecom – Crow Creek, Native American Telecom - Pine Ridge, 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 providing modern telecommunications services to Tribal lands.

The Commission should put an end to USTelecom's continual stream of complaints about the very reasonable and necessary Tribal Engagement rules and deny this latest effort outright. The Commission should also take this opportunity to confirm the *Further Guidance* as a guide for eligible telecommunications carriers (ETC) in complying with the Tribal Engagement rules, but that it will be the Tribal governments that ultimately determine how this engagement will proceed.

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on the United States Telecom Association Petition for Reconsideration and Clarification of Certain High-Cost Universal Service Reporting Rules*, Public Notice (DA 13-676), released April 10, 2013

<sup>2</sup> 47 CFR § 54.313(a)(9)

<sup>3</sup> Office of Native Affairs and Policy (ONAP), Wireless Telecommunications Bureau (WTB), and Wireline Competition Bureau (WCB) Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund, Public Notice, DA 12-1165, released July 19, 2012 (*Further Guidance*)

## II. NTTA's OPPOSITION TO THE *PETITION*

NTTA opposes the *Petition* in regards to the demand that the Commission reconsider or clarify its Tribal Engagement requirements<sup>4</sup> and that Tribal Engagement reporting not be included on the Commission's proposed Form 481.<sup>5</sup> This is the third time USTelecom has requested the Commission eliminate, or at the least severely limit, the Tribal Engagement rules adopted in the *ICC/USF Transformation Order*.<sup>6</sup> NTTA filed comments in response to the first petition, and reply comments in response to the second petition. In NTTA's view, the current *Petition* makes no new arguments and thus NTTA's previous position stands. Following is a summary of the points NTTA and others made in response to previous USTelecom *Petitions*.

### A. The Tribal Engagement Rules and Further Guidance are Necessary to Address a Glaring Problem.

NTTA stated previously that "the Commission's Tribal Engagement rules and the ONAP's [Office of Native Affairs and Policy] Further Guidance are designed to correct a serious problem - a 'deep digital divide that persists between the Native Nations of the United States and the rest of the country.'"<sup>7</sup> Again, USTelecom does not address this fact, and instead chooses to rail against the Tribal Engagement rules and *Further Guidance* on largely procedural grounds.<sup>8</sup>

The Tribal Engagement rules benefit the Tribal governments, residents, and ETCs "by engaging in genuine dialogue about the challenges faced by each side."<sup>9</sup> In this way, "ETCs and tribal governments will come to common understandings about the factors necessary to improve services on tribal lands."<sup>10</sup> USTelecom has yet to clearly argue that the Tribal Engagement rules will not have this vital impact. Engaging with one's customers should be one of the basic methods companies use in determining the best way to provide services. This is especially true of providing service in Tribal areas, as the Tribal governments are sovereign in those areas and should have extensive input into how services are provided on Tribal lands. Indeed, as Mescalero Apache Telecom, Inc. (MATI) succinctly stated, "Tribal governments...serve the role of regulator, legislature, judicial, and other executive branches of non-

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<sup>4</sup> *Petition* at 11-14

<sup>5</sup> *Id.*, at 25

<sup>6</sup> See *Petition for Reconsideration for Reconsideration* filed December 29, 2011 and *Petition for Reconsideration and Clarification* filed August 20, 2012 (WC Docket Nos. 10-90, *et al*)

<sup>7</sup> NTTA Reply Comments filed October 11, 2012 (WC Docket Nos. 10-90, *et al*), at 8 (internal references omitted)

<sup>8</sup> NTTA does not agree with USTelecom's procedural arguments, but believes the discussion needs to focus on what is best for Tribal areas, not on the APA or PRA.

<sup>9</sup> *Opposition of The Gila River Indian Community and Gila River Telecommunications, Inc.* (filed September 26, 2012 in WC Docket No. 10-90, *et al*) at 4

<sup>10</sup> *Id*

Tribal state governments. It is difficult to imagine USTelecom members refusing to engage with their state commission or local government in providing current services or in planning future broadband, voice, or other services.”<sup>11</sup>

Finally, the Tribal Engagement rules were adopted in order “to identify and address root causes behind the lack of services on Tribal lands.”<sup>12</sup> In recognition of a historic lack of communication, “this obligation now requires carriers to ‘meaningfully engage’ with the Tribal governments on whose lands they serve, on a series of topical areas and issues critical to the deployment of communications services on Tribal lands.”<sup>13</sup> As ONAP’s report correctly implies, meaningful engagement by non-Tribally owned telecommunications carriers serving Tribal areas has been sorely lacking, and the Tribal Engagement rules, supplemented by the *Further Guidance*, serve as a good step in rectifying the situation.

#### **B. The Tribal Engagement Rules Should Apply to All Carriers Receiving Support for Serving Tribal Areas**

USTelecom again makes the argument that, at most, the Tribal Engagement rules and *Further Guidance* should only apply to those ETCs whose support is not being eliminated or phased-down. Of course, this would eliminate most, if not all, CETCs, and leave compliance to incumbent ETCs whose support is not being eliminated or phased-down. However, in the current *Petition*, USTelecom narrows the field even further by stating that the Tribal Engagement rules should “apply only to Tribal Mobility Fund recipients...”<sup>14</sup> In its previous petition, the universe of ETCs required to comply with Tribal Engagement rules included recipients of both CAF Phase II and Tribal Mobility Fund support.<sup>15</sup> Besides being unreasonable in its initial narrowing of the list of ETCs required to comply, USTelecom has now effectively excluded all price cap carriers. By this statement, USTelecom has demonstrated two things: (1) the only carriers, in its view, required to comply with the Tribal Engagement rules this year are rate-of-return regulated LECs not associated with price cap carriers, and (2) federal funding focused on Tribal areas is now limited to the *unknown* group of companies that will bid on and receive support in the Tribal Mobility Fund auctions.<sup>16</sup> The former point demonstrates a startling imbalance in reporting

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<sup>11</sup> MATI Comments, filed September 26, 2012 in WC Docket No. 10-90 *et al* at 3

<sup>12</sup> Office of Native Affairs and Policy, 2012 Annual Report, at 20-21

<sup>13</sup> *Id*

<sup>14</sup> *Petition* at 12

<sup>15</sup> USTelecom August 20, 2012 Petition at 3

<sup>16</sup> The bidding for Tribal Mobility Phase I support (Auction 902) is schedule to commence on October 24, 2013. The date for Tribal Mobility Phase II is unknown.

requirements where only the smallest carriers would be required to comply.<sup>17</sup> The latter point unfortunately reflects the reality of the Commission's neglect of meaningfully supporting communications on Tribal lands.

The Tribal Engagement rules were clearly meant by the Commission to address ETCs currently providing service as well as those that will provide service in the future.<sup>18</sup> Furthermore, and contrary to USTelecom statements, the Tribal Engagement rules were adopted in relation to voice as well as broadband service.<sup>19</sup> Thus, the Tribal Engagement rules, as supplemented by the *Further Guidance* and as implemented by Tribal governments, must apply to all ETCs currently receiving support for providing service to Tribal areas. USTelecom's claims to the contrary must be ignored by the Commission.

### **C. The *Further Guidance* Should be Considered as Minimum Requirements for Tribal Engagement**

Contrary to USTelecom's statements, the *Further Guidance* should not only be affirmed by the Commission, but should be considered as minimum requirements for compliance with Tribal Engagement rules to be followed by all non-Tribally owned ETCs receiving support for serving Tribal areas. As MATI stated previously, the *Further Guidance* "should be taken a step further and be considered minimum requirements for Tribal Engagement, and that the Tribal governments, as being the sovereign government on Tribal lands, determine the final framework under which engagement with ETCs serving Tribal lands will function."<sup>20</sup>

As has been mentioned previously, the Tribal Engagement rules, as supplemented by the *Further Guidance*, should apply to all ETCs currently receiving support for serving Tribal areas. There is, however, a reasonable basis for exempting Tribally-owned ETCs that are 100% or majority held by the Tribe, such as those represented by NTTA. In the comments filed by San Carlos Apache Telecommunications Utility, Inc., the point is made that Commission does not need to direct Tribally-owned ETCs to perform this type of engagement, as these types of "matters are discussed on a regular, on-going basis."<sup>21</sup> Clearly, by virtue of being owned and operated by the Tribe, such carriers engage in meaningful discussions with Tribal governments as a matter of daily business. Thus, Tribally-owned

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<sup>17</sup> See Comments of Alexicon (filed September 26, 2012 in WC Docket 10-90, et al) at 4; MATI Comments at 3-5

<sup>18</sup> *ICC/USF Transformation Order* at 637

<sup>19</sup> *Id* at 636

<sup>20</sup> MATI Comments at 6

<sup>21</sup> Comments of San Carlos Apache Telecommunications Utility, Inc., filed September 24, 2012 in WC Docket No. 10-90, et al, at 2

carriers should be able to demonstrate compliance with the Commission's Tribal Engagement rules by simply filing an affidavit each year stating the ETC is owned by a Tribe.

### III. CONCLUSION

NTTA will repeat the conclusion it reached in its reply comments filed in regards to USTelecom's previous petition. The issues have not changed, nor has USTelecom offered any further evidence or support that the Tribal Engagement rules should be eliminated or severely curtailed.

"While NTTA appreciates the concerns raised in the *Petition* and by the comments in support of the *Petition*, the fact remains that the Commission's Tribal engagement rules and the ONAP's *Further Guidance* are designed to correct a serious problem – a 'deep digital divide that persists between the Native Nations of the United States and the rest of the country...' Furthermore, not only is the divide digital, but in many cases it includes basic telephone service as well. While there are many reasons this divide exists, the Commission correctly identified the lack of effective communication between ETCs and Tribal governments as a major contributing cause. As a result, the Tribal engagement rules provide a reasonable and rational starting point to frame communications that should be occurring, and the *Further Guidance* provides more concrete ways as to how this framework can work. However, it must be recognized that the Tribal governments, as the sole sovereign government in the Tribal areas, will have the final say in how the Tribal engagement rules work and how all stakeholders will begin the work of bridging the communications divide. NTTA recognizes this is a two-way bridge, and is hopeful, with the immediate adoption of the *Further Guidance*, that serious work can begin."

NTTA respectfully requests the Commission deny USTelecom's *Petition* as it relates to the Tribal Engagement rules and *Further Guidance*.

Respectfully Submitted,

*Godfrey Enjady*  
President  
National Tribal Telecommunications Association

June 3, 2013