THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION POSITION PAPER

Prepared by the National Tribal Telecommunications Association
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Summary

The National Tribal Telecommunications Association (NTTA) represents nine Tribally-owned and operated telecommunications companies. These carriers all depend in varying degrees on the federal universal service support (FUSF) and other programs (such as the intercarrier compensation, or ICC, regime) to bring quality, affordable communications services to Tribal areas. Recent actions by the Federal Communications Commission (FCC) have made the regulatory climate in which NTTA members operate less predictable and stable and in some cases depressed investment in areas served by NTTA members. Due to the adverse effects and financial impacts of these FCC actions, NTTA is herein demonstrating that Tribal areas, and specifically those served by Tribally-owned companies, require additional consideration as to the policies adopted by the FCC and that are harming the stated public policy goal of universal voice and broadband service in all areas.

While NTTA appreciates the efforts the FCC has undertaken to address Tribal-specific issues to date, it has not established a Tribal Broadband Fund to sufficiently augment and strengthen existing support programs. Additional support is needed so Tribally-owned and operated carriers will have access to the capital investment needed to comprehensively resolve the communications needs of Native American communities located in Tribal lands. Thus, consistent with the specific recommendations stated in Section III herein, NTTA hopes the FCC will expeditiously complete these additional and much needed steps.

Contents

I. Universal Service and Intercarrier Compensation Reform

A. FUSF and ICC Policies Have Proven Vital to Tribal Areas

Many NTTA members got their start by first recognizing a serious problem in Tribal areas: a lack of telecommunications service availability. Tribes formed their own telecommunications companies and purchased lines from the incumbent carriers that, for a variety of reasons, would not or could not bring vital communications services to Tribal areas. With the help of federal USF and ICC policies, along with loans from the USDA's Rural Utilities Service (RUS), Tribally-owned carriers were able to quickly bring these forgotten areas into the modern era in terms of communications services.

It cannot be stressed enough how important federal USF and ICC policies are to the historical and continued success of NTTA's members in bringing quality voice and broadband services, at affordable rates, to Tribal areas. On average, NTTA members receive approximately 30% of their total revenues from federal high cost loop support (which is one of the FCC's FUSF programs). Having a stable and predictable FUSF revenue stream is vital in ensuring NTTA members can meet operating needs, invest in the future, and comply with loan (many relating to RUS) covenants.

B. Tribal Areas Require Specific Attention.

Due to the inherent challenges of serving Tribal areas, Tribally-owned carriers and the areas they serve require specific attention in terms of federal telecommunications policy. This problem is succinctly summarized by the FCC's own Office of Native Affairs and Policy in a recent report:

> "The lack of communications services in Indian Country – be it high speed internet or 'broadband', traditional wireline phone service, mobile service, radio broadcast, or TV broadcast service – is well known. As the Commission has observed previously, '[b]y virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.' The lack of robust communications services presents serious impediments to Tribal Nations' efforts to preserve their cultures and build their internal structures for self-governance, economic opportunity, health, education, public safety, and welfare." (internal footnotes omitted)
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> "Understanding the complexity of the digital divide in Indian Country requires an appreciation of the unique challenges facing Tribal Nations, which include deployment, adoption, affordability, and access to spectrum, as well as lack of investment dollars and access to credit and start-up or gap financing. Barriers to the deployment of communications services include rural, remote, rugged terrain, areas that are not connected to a road system, and difficulty in obtaining rights-of-way to deploy infrastructure across some Tribal lands – all of which increase the cost of installing, maintaining, and upgrading infrastructure. Affordability of communications services is affected by often endemic levels of poverty. Because Tribal Nations cannot easily

collateralize assets that are held in trust by the federal government, and cannot easily access investment dollars, the ability to obtain credit and financing is limited."

The FCC itself, in its landmark ICC/USF Transformation Order, recognized that Tribal areas present unique challenges that need to be acknowledged:

> "…the Commission acknowledged the relatively low level of telecommunications deployment on Tribal lands and the distinct challenges on bringing connectivity to these areas. The Commission observed that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population…Tribal lands are often in rural, high-cost areas, and present distinct obstacles to the deployment of broadband infrastructure." (¶479)
>
> "The Commission observed that greater financial support therefore may be needed in order to ensure the availability of broadband in Tribal lands." (¶479)
>
> "We seek comment generally on whether network operation and investment by Tribally-owned and operated carriers is significantly different from non-Tribal conditions to warrant special treatment for purposes of establishing benchmarks for permissible capital and operating costs. We seek comment above on whether the 90th percentile is the appropriate dividing line to disallow recovery of costs, or whether we should establish a lower or higher threshold, such as the 85th percentile or the 95th percentile. We seek comment here on whether a different percentile is appropriate for Tribally-owned and operated carriers, or whether we should otherwise alter the methodology to take into account the unique circumstances of Tribally-owned and operated carriers that are just beginning to serve their communities." (¶1088)

Also recognized in the ICC/USF Transformation Order is the need for ETCs serving Tribal areas, and receiving FUSF to do so, to actively engage with Tribal governments in regards to communications needs. In adopting a set of Tribal Engagement rules, the FCC found:

> "The deep digital divide that persists between the Native Nations of the United States and the rest of the country is well-documented…" (¶636)
>
> "Engagement between the Tribal governments and communications providers either currently providing service or contemplating the provision of service on Tribal lands is vitally important to the successful deployment and provision of service." (¶637)

Finally, the FCC specifically addressed the unique needs to Tribally-owned and operated carriers as it contemplated making changes to the interstate authorized rate of return:

> "Tribal governments, and by extension, Tribally-owned and operated carriers, play a vital role in serving the needs and interests of their local communities, often in remote, low-income, and underserved regions of the country. Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure. Reservation-based economies lack fundamental similarities to non-reservation economies

and are among the most impoverished economies in the country. Tribal Nations also cannot collateralize trust land assets, and as a result, have more limited abilities to access credit and capital." (¶1059)

It is important to note that the FCC has initiated other proceedings and taken other actions specifically to specifically investigate communications needs in Tribal areas, including:

- Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands (WT Docket No. 11-40)
- A Notice of Inquiry to look into ways for improving communications services for Native Nations (CG Docket No. 11-41)
- In the ICC/USF Transformation Order, the FCC established separately-funded programs to enhance the availability of mobile broadband services in Tribal areas - Tribal Mobility Phase I and Phase II funds.

It is therefore clear that while the FCC recognizes that meeting national communications goals on Tribal lands presents unique and distinct challenges, the problem, in NTTA's view, is taking the next step and acting to solve the problems already acknowledged.

1. *The Lifeline Program and Tribal Areas*. Since 2000, the federal Lifeline and Link Up programs have recognized that people living on Tribal lands need additional assistance in order to enjoy the benefits brought about by modern communications services. For people living on federally-recognized Tribal areas, Lifeline support in an amount of up to $35 is available to offset the cost of basic telecommunications services. This additional Tribal lands Lifeline support is correctly seen as necessary by the FCC due to the chronic depressed economies and poverty levels that exist in many Tribal areas, and in recognition of the national goal of universal service for all Americans.

2. *National Broadband Plan and Tribal Areas*. The National Broadband Plan (NBP), generated by the FCC pursuant to the American Recovery and Reinvestment Act (ARRA), provides a general blueprint on how the United States can ensure every American has access to "broadband capability." Tribal lands-specific issues were discussed in the NBP often, including:

    Recommendation 8.18: "Congress should consider establishing a Tribal Broadband Fund to support sustainable broadband deployment and adoption in Tribal lands…"

    Broadband on Tribal Lands: "Available data, which are sparse, suggest that less than 10% of residents on Tribal lands have broadband available… Many Tribal communities face significant obstacles to the deployment of broadband infrastructure…Tribes need substantially greater financial support than is presently available to them, and **accelerating Tribal broadband deployment will require increased funding**." (*NBP, p. 152, emphasis added*)

While broadband deployment in Tribal areas served by NTTA members is generally greater than the figures quoted above, thanks in large part to federal regulatory and lending programs, the fact remains that for all Tribal areas to either accelerate broadband deployment and adoption or to maintain current broadband capable networks, financial support most assuredly cannot decrease. Unfortunately, this is the situation in which many NTTA members find themselves today.

3. *The FCC's Government to Government Relationship with Tribal Governments*. It must not be forgotten that the FCC committed to establish a government-to-government relationship with Indian Tribes via a policy statement released on June 23, 2000. Among other things, the Policy Statement "reaffirmed" the Commission's commitment to "consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources."

   Chairman Tom Wheeler, in remarks made before the National Congress of American Indians (NCAI), recently stressed the importance of the FCC's government-to-government relationship with Tribal governments:

   > "That Statement was adopted 14 years ago, and we could agree that since then it has been utilized quitter successfully, but consistently or comprehensively."

   While NTTA appreciates the efforts the Commission has undertaken to address Tribal-specific issues, one item that has not been adequately addressed is the unique needs of Tribally-owned and operated carriers. Thus, with this summary, NTTA hopes the FCC will expeditiously remedy this lack of action.

C. *Reforms Adopted by the FCC Increase Obligations and Reduce Support Revenues*

The FCC adopted substantial reforms to both the FUSF and ICC systems in November 2011. These reforms affected all areas of the industry, from large ILECs to small competitive carriers - wireless and wireline. Perhaps most affected were small, rate of return (RoR) regulated rural incumbent local exchange carriers (RLECs). While it is beyond the scope of this summary to detail each and every adverse impact of the FCC's FUSF and ICC reform, following is a list of the most harmful:

(1) Implementation of an overall per-line cap on high cost loop support (HCLS). The FCC determined that carrier HCLS should be capped at $250 in monthly per line support ($3,000 per year). This policy could present a problem for some NTTA members in that such a general cap ignores company-specific issues such as

relatively high fixed (and unavoidable costs) associated with serving few customers.

(2) Application of corporate expense limitations to interstate common line support (ICLS). The FCC, prior to the ICC/USF Transformation Order, had limited the recovery of corporate operations expense via HCLS. Now, the FCC has applied the same policy to ICLS, meaning many NTTA members, with relatively high and legitimate corporate expenses, are recovering even less from federal sources. As argued elsewhere, many of the FCC's recent actions have caused compliance costs, which are oftentimes classified as corporate operations expenses, to increase. Prior to the passing of the *Transformation Order*, Tribal ILECs incurred about 800 hours of federal compliance reporting mandates. After the release of the Order and most currently, Tribal ILECs incur almost 1,500 burden hours annually in the preparation of federal regulatory compliance filings

(3) ICC reforms adopted by the FCC included in essence freezing the revenues available to most NTTA members to cover certain access costs (where "access" is a service provided to long distance companies to reach local customers). In addition to freezing these revenues, the FCC decreases such revenues by 5% each year. This process is applied to all RoR regulated carriers, which covers most of NTTA's members, no matter what the company-specific circumstances may be. In other words, even if a company made significant investment during a given period, its recovery would be severely limited by the FCC's ICC reforms.
    - It should be noted that the FCC determined to ultimately phase out practically all forms of intercarrier compensation, meaning most NTTA members will no longer be compensated for the third party use of their networks

(4) The FCC is considering a change to the interstate authorized rate of return for small companies, which is applied to investments made in regulated telecommunications plant. While a final decision has not yet been made, the FCC Staff recommended a sizeable decrease to the current 11.25% RoR.

Unfortunately, the above-listed reforms, which have the overall effect of reducing NTTA member support, were not accompanied by decreases in regulatory obligations or compliance costs. On the contrary, obligations and compliance increased - sometimes dramatically. For example, the FCC decided that certain levels of broadband speeds, performance, and accountability are necessary. Since these are all new policies, and none of the previously existing public interest obligations disappeared, the cost of compliance increased.

D. Tribally-owned Carriers Serve Extremely High Cost Areas

NTTA's RLEC members serve some of the highest cost areas in the continental United States. As a consequence, NTTA members are more reliant on federal support programs and more sensitive to changes in these programs. As an indication of the high cost nature of the areas served by NTTA's RLEC members, consider the following table:

NTTA Member	SACPL	USF Loops	USF Cost
Cheyenne River Sioux	$ 1,474	2,862	$ 4,218,588
Fort Mojave	$ 2,391	943	$ 2,254,713
Gila River	$ 3,097	3,365	$ 10,421,405
Hopi	$ 1,122	1,731	$ 1,942,182
MATI	$ 2,609	1,238	$ 3,229,942
Saddleback - Orig	$ 2,156	1,027	$ 2,214,212
Saddleback - Acquired	$ 377	2,517	$ 948,909
San Carlos	$ 1,276	2,613	$ 3,334,188
TOUA	$ 1,224	3,730	$ 4,565,520
Average (wtd)	**$ 1,654**	20,026	$ 33,129,659
National Avg (pre-cap)	$ 872.50		

(source: NECA 2013 USF filing (2012 data))
(http://transition.fcc.gov/wcb/iatd/neca.html)

As can be seen, NTTA RLEC member cost per loop is, on average, nearly two times the national average. Clearly, this demonstrates some of the challenges facing NTTA's members.

II. Effects of FCC Activity on Investment

While the purpose of the FCC's ICC and USF reforms ostensibly was to "ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation," reality tells a different story. Many of the FCC's reforms reduced available support and other revenues, which were used by NTTA members to provide quality, affordable voice and broadband services to Tribal areas. In addition, many of the FCC's reforms caused an exponential increase in regulatory uncertainty, which in turns leads, logically, to decreased investment and, in some cases, decreased access to capital markets. Some RLECs, including NTTA members, were forced to cut costs, including in some instances by workforce reductions, in order to avoid being within the FCC's arbitrary definition of an unreasonably high cost carrier.

- In its response to the FCC's FNPRM in WC Docket No. 10-90, Mescalero Apache Telecom, Inc. states, "Prior to the *ICC/USF Order*, MATI was operating as efficiently as possible and, as a result, exhibited a high quality of service with few outages or complaints. With 18 fewer employees (approximately 33% of MATI's work force), not only is this high quality of service threatened, but so is MATI's ability to effectively maintain and operate its network. In general, the changes adopted in and uncertainty caused by the *ICC/USF Order* has compelled MATI to shift its planning priorities from expansion of services through continued reinvestment to a desperate attempt to sustain current operations with reduced funding."

- According to The Tri-County Telephone Association (Kansas), "although TCT began fiber deployment in 2009, that effort was the culmination of years of forecasting and planning. By way of example, TCT explained that the process of obtaining loans prior to builds requires at least 18 months of prior work, and that a half-decade of forecasting and planning can precede the loan process. In this context, carriers plan with a ten-to-twenty year horizon. The level of regulatory certainty necessary to foster the confidence necessary to complete those plans, however, is not discernible as the QRA descends upon the industry."

- The RUS informed the FCC that it "remains concerned over network investment in rural communities upon the issuance of the USF Transformation Order in November 2011."

- According to Balhoff and Williams, LLC, a "startling discovery is that rural investment loan activity is down sharply in the wake of the new reforms, both because the companies are gravely concerned about their ability to repay debt and because the lenders are more cautious in lending due to their judgments about industry fundamentals."

Recent FCC actions appear to recognize some of these adverse effects.

III. Solutions for Tribally-Owned Carriers

Tribally-owned and operated carriers exist for one reason: to provide the best possible service to Native Americans. Many NTTA members started providing service relatively recently, and thus depended on then-current USF and ICC rules in formulating long range business plans. With the changes brought about by the ICC/USF Transformation Order, Tribally-owned carriers find themselves in situations that could not have possibly been foreseen. As a result, choices have to be made (such as reducing workforces), which in most cases do not, in any way, benefit the Native Americans served, their culture, or the areas in which they live. NTTA therefore proposes the following solutions in light of this position paper:

- Implement a Tribal Broadband Fund, as recommended in the National Broadband Plan
- Adopt an interstate authorized rate of return that recognizes the unique circumstances faced by Tribally-owned telecommunications carriers. NTTA recommended to the FCC an interstate authorized rate of return of 16.08%.
- Maintain and strengthen the federal Lifeline program, and expand it to include broadband services in Tribal areas. For example, NTTA recommends that residents on Tribal lands be considered a qualifying low-income consumer (under 47 CFR § 54.409(a)(1)) if the consumer's household income is equal to or less than 150% of the Federal Poverty Guidelines, instead of 135% as the rule exists today.
- Grant a blanket waiver for Tribally-owned carriers relating to the ICC frozen baseline and automatic 5% annual reduction
- Grant a blanket waiver to Tribally-owned carriers of the FCC's local residential rate floor rule.

- Grant a blanket waiver for Tribally-owned carriers for the monthly $250 per-line cap on support ($3,000 annually)
- Provide for an expedited and assured process to renegotiate loans with the Rural Utilities Service.
- Amend the requirements necessary for Tribally-owned carriers to participate in Tribal Mobility funds, and in the general Mobility Funds. Requirements adopted by the FCC severely limited Tribal participation in these auctions and have created barriers to entry into this funding mechanism
- Provide for an expedited process to allow for licensing of spectrum necessary to provide wireless broadband services in Tribal areas by Tribally-owned carriers.

Appendix 1 - NTTA Advocacy Efforts (2008-current)

Date	FCC Proceeding	Subject
4/25/2014	WC Docket No. 13-184	Modernizing the Federal E-Rate Program for Schools and Libraries (Ex Parte filing)
4/14/2014	WC Docket No. 10-90	Rural Broadband Experiments (Reply Comments)
4/11/2014	WT Docket No. 11-79	Positive Train Control (Ex Parte)
3/31/2014	GN Docket No. 14-25	FCC Process Reform (Comments)
7/25/2013	WC Docket No. 10-90	Interstate Authorized Rate of Return (Comments)
6/3/2013	WC Docket No. 10-90, et al	USTelecom Petition for Reconsideration, Tribal Engagement rules (Comments in Opposition)
5/28/2013	PS Docket No. 13-75	E911 Reliability
5/10/2013	AU Docket No. 13-53	Tribal Mobility Fund Phase I (Comments)
10/11/2012	WC Docket No. 10-90, et al	USTelecom Petition for Reconsideration and Clarification (Reply Comments)
4/9/2012	WC Docket No. 11-42, et al	Lifeline Program Modernization (Comments)
3/16/2012	WC Docket No. 10-90, et al	Meeting with Commissioner McDowell (Ex Parte), in conjunction with CA Tribal Government Association & Affiliated Tribes of NW Indians
3/16/2012	WC Docket No. 10-90, et al.	Meeting with ONAP (Ex Parte) in conjunction with NNTRC, NCAI, etc.
2/9/2012	WC Docket No. 10-90, et al.	RLEC Petition for Reconsideration on Tribal Engagement Rules (Comments in Opposition)
1/19/2012	WC Docket No. 10-90, et al.	ICC/USF Transformation Order (Comments)
12/5/2011	WC Docket No. 11-42, et al.	USF Low Income Program Disbursement Process (Comments)
10/20/2011	WC Docket No. 10-90, et al.	Ex Parte meeting w/ Genachowski, Copps, McDowell, and Clyburn, in conjunction with NCAI and ATNI
8/25/2011	WC Docket No. 10-90, et al.	ICC/USF Transformation Proceeding (Comments)
6/20/2011	CG Docket No. 11-41	Improving Communications Services for Native Nations (Comments) w/ GRTI
5/20/2011	WT Docket No. 11-40	Spectrum over Tribal Lands (Comments)
5/4/2011	WT Docket No. 10-208	Mobility Fund (Comments)
4/19/2011	WC Docket No. 10-90, et al.	ICC/USF NPRM (Comments)
9/23/2010	WC Docket No. 09-197	Standing Rock Telecommunications ETC in partial rural LEC wire centers (Comments)
7/12/2010	WC Docket No. 10-90, et al.	CAF/National Broadband Plan (Comments)
6/2/2010	WC Docket No. 10-90, et al.	Meeting with WCB and Gov't Affairs Bureau (Ex Parte), in conjunction with OPASTCO
11/25/2008	CC Docket No. 96-45, et al.	USF, ICC, Lifeline FNPRM (Comments)
4/17/2008	CC Docket No. 96-45, et al.	High-Cost Universal Service Support NPRM (Comments)
3/26/2008	WT Docket Nos. 08-27 & 07-71	CMRS Market Competition (Comments)