

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

In the Matter of)	
)	
Rural Digital Opportunity Fund)	WC Docket No. 19-126
)	
Connect America Fund)	WC Docket No. 10-90

**REPLY COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

The National Tribal Telecommunications Association (NTTA) provides these reply comments in response to the Federal Communications Commission’s (Commission or FCC) Notice of Proposed Rulemaking released in the above-captioned proceeding.¹

NTTA consists of Tribally-owned communications companies and broadband providers 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, as well as associate members Nez Perce Tribe and Sacred Wind Communications. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and

¹ *In the Matter of Rural Digital Opportunity Fund*, Notice of Proposed Rulemaking, WC Docket Nos. 19-126 and 10-90 (FCC 19-77, rel. August 2, 2019) (*NPRM*)

assistance to members who are working to provide modern telecommunications services to Tribal lands.

I. SUMMARY

In these reply comments, NTTA will respond briefly to comments filed by Sacred Wind Communications, Inc. and WTA – Advocates for Rural Broadband regarding Tribal areas issues, and will also recommend the Commission consider furthering the commitment to Tribal broadband by prioritizing access to RDOF support available in Tribal areas to native-owned, operated, or affiliated entities.

II. REPLY COMMENTS

In the *NPRM*, the Commission notes the importance of making broadband services available on Tribal lands.² The Commission’s latest broadband progress report presents the problem of the digital divide between rural Tribal areas and the rest of the United States clearly – only 41.3% of the population in rural Tribal areas in the lower 48 states has access to 25/3 Mbps fixed and 5/1 Mbps mobile broadband services, compared to 93.4% nationwide.³ Not noted in the 2019 Broadband Deployment Report or in the *NPRM* is the fact that even this data – that merely 41.3% of the population in rural Tribal lands in the lower 48 states has access to broadband services – is likely overstated.⁴ As a result, the task of ensuring all Native Americans

² *NPRM* at 11

³ *In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2019 Broadband Deployment Report (FCC 19-44, rel. May 29, 2019) at Figure 10 and Figure 3a

⁴ GAO Report: Broadband Report, *FCC’s Data Overstate Access on Tribal Lands*, GAO-18-630, September 2018

living on Tribal lands have the same access to the same broadband services as other Americans is made even more difficult. This leads to the inevitable conclusion that the Commission, and other stakeholders, must make a significantly greater effort to adopt new policies and transform current efforts to make sure this digital divide is as narrow as possible.⁵

A. Tribal Bidding Credit

The Commission proposes a Tribal bidding credit “to incentivize parties in the Rural Digital Opportunity Fund auction to bid on and serve Tribal census blocks” and seeks comment on the appropriate amount of the credit.⁶ NTTA agrees with Sacred Wind that the adoption of a Tribal bidding credit would “incentivize RDOF auction participants to bid on and serve Tribal census blocks, particularly for the higher performance tiers.”⁷ NTTA also notes WTA’s support of a 25% Tribal bidding credit “to create incentives for entities to bid for support to deploy much-needed broadband facilities and services on the Tribal lands included in the RDOF mechanisms.”⁸ NTTA agrees and recommends the Commission adopt a Tribal bidding credit of at least 25%.

B. Tribal Broadband Factor

The Commission also proposes to utilize a “Tribal Broadband Factor” (TBF) to generate more eligible locations in census blocks located on Tribal lands via operation of the Connect

⁵ See e.g., Sacred Wind Communications, Inc. comments at 9-10 “Sacred Wind strongly urges the Commission to closely examine its underlying location data to investigate the extent to which Tribal residences may have been significantly overlooked and omitted from the Commission’s inaccurate data.”

⁶ NPRM at 62-64

⁷ Sacred Wind Comments at 9

⁸ WTA Comments at 22

America Model⁹ and through the calculation of the reserve price for these areas.¹⁰ Both Sacred Wind¹¹ and WTA¹² support these proposals, and NTTA agrees that this use of a “TBF” will serve to enhance the opportunities for carriers serving Tribal areas to participate in the auctions and, presumably, bring broadband services to areas currently lacking access.

C. *Subscribership Milestones*

In the *NPRM*, the Commission requests comment on additional performance targets, including subscribership milestones.¹³ NTTA agrees with Sacred Wind in stating that “[u]nder no circumstances would adopting subscription targets for the RDOF...be in the public interest as they would work against Tribal, rural and remote areas where not merely the absence of broadband availability, but the absence of *affordable* broadband, historically has been a major contributing factor to lower take rates.”¹⁴

NTTA has argued in the past that the Commission should consider increasing the Tribal lands support amount offered by the federal Lifeline program¹⁵ to reflect the addition of broadband to the list of supported services.¹⁶ In the Commission’s 2019 Broadband Deployment Report, the overall adoption rate for 25/3 Mbps fixed terrestrial services on Tribal lands is shown as 38%, which includes both non-urban core (55.4%) and urban core (34.6%) areas.¹⁷ To adopt

⁹ *NPRM* at 52

¹⁰ *Id.*, at 56

¹¹ Sacred Wind Comments at 9

¹² WTA Comments at 22

¹³ *NPRM* at 41

¹⁴ Sacred Wind Comments at 8 (emphasis in original)

¹⁵ 47 C.F.R. § 54.403(a)(3)

¹⁶ See *e.g.*, NTTA Comments filed in WC Docket Nos. 17-287, 11-42, and 09-197 on February 21, 2018 at 8-12

¹⁷ 2019 Broadband Deployment Report at 29 (Figure 12)

subscriber milestones for RDOF support targeted to Tribal areas is premature at best, and at worst will lead ultimately to no improvement in broadband availability in these areas.

III. NTTA RECOMMENDS TRIBAL PRIORITY ACCESS TO RDOF SUPPORT

NTTA commends the Commission's proposals that would tend to increase the opportunities for carriers to obtain support for expanding broadband availability in Tribal areas currently served by price cap carriers. Both the TBF and Tribal bidding credits should help many carriers win some RDOF support in the auction by (1) designating more Tribal areas as eligible for the auction and (2) assisting carriers willing to serve eligible Tribal areas with bidding strategies. However, NTTA believes the Commission can do more.

NTTA urges the Commission to adopt a process that allows for priority access to RDOF support targeted to Tribal areas by Tribally-owned/operated or affiliated carriers. The Commission raises the issue of prioritizing RDOF support to certain eligible areas¹⁸, and at least one commenter supports the idea of extending the priority to Tribal areas.¹⁹ Perhaps more importantly, the Commission itself recognized the need for Tribal priority when it adopted a process for Tribally-owned or affiliated entities to obtain 2.5 GHz spectrum before the available spectrum is released for auction:

"We find that adoption of a Tribal priority window for Tribal entities to obtain EBS licenses on Tribal lands that are located in rural areas is in the public interest...we conclude that opening a priority filing window for rural Tribal Nations will provide Tribal Nations with an opportunity to obtain unassigned EBS spectrum to address the communications needs of their communities and of residents on rural Tribal lands, including the deployment of advanced wireless services to unserved or underserved areas. The Commission has

¹⁸ NPRM at 60

¹⁹ Comments of Muscogee (Creek) Nation at 10

recognized that ‘members of federally-recognized American Indian Tribes and Alaska Native Villages and other residents of Tribal lands have lacked meaningful access to wired and wireless communications services.’”²⁰

In the case of the RDOF and its intended purposes, as well as the goals of the initial offer of CAF support to price cap carriers, adopting a Tribal priority (or right of first refusal) offer for RDOF support represents a reasonable step in the ongoing journey to narrowing the digital divide between Tribal areas and the rest of the United States. Clearly, to the extent there are still Tribal lands in price cap carrier service areas unserved by qualifying broadband services after nearly 5 years and millions of dollars of support, there is a systemic and stubborn problem that needs to be addressed. NTTA suggests it is time to offer the support targeted to these areas to entities with an historical and vested interest in ensuring the wellbeing and prosperity of the Native Americans living in Tribal lands: Tribally-owned, operated and/or affiliated carriers.

NTTA recommends that Tribal priority access to RDOF support targeted to Tribal areas start with those areas – either census blocks or locations within census blocks – that are deemed eligible for the RDOF auction. Then that support can be offered to Tribal entities, or Tribally-owned or affiliated entities²¹ that demonstrate eligibility to receive federal support and satisfy the Commission or Tribal government of the ability to serve Tribal lands (including Eligible Telecommunications Carrier status). The support for the Tribal priority offer should be based on the reserve price established, incorporating the “TBF” revisions to the high cost threshold and per-location cap contemplated in the *NPRM*.

²⁰ *In the Matter of Transforming the 2.5 GHz Band*, Report and Order, WT Docket No. 18-120 (FCC 19-62, rel. July 11, 2019) at 47 (internal footnotes omitted) (*2.5 GHz Report and Order*)

²¹ NTTA suggests defining “Tribally-owned and/or operated” entities similarly to what the Commission adopted in the 2.5 GHz spectrum proceeding. See *2.5 GHz Report and Order* at 49

NTTA firmly believes that by adopting a Tribal priority RDOF support offer, the Commission will give un- and underserved Tribal lands the best chance available for advancing broadband services. Even with the Commission-opined benefits of a competitive auction, there is no guarantee that the Tribal areas in most need of a carrier willing to provide broadband services will bid on and be awarded the RDOF support targeted. A Tribal priority system will at the very least provide some Tribal governments or other related entities the first opportunity to obtain this support for the benefit of Native Americans living and working in those areas.

CONCLUSION

NTTA agrees that the RDOF holds promise for addressing some of the digital divide that currently exists between Tribal areas and the rest of the United States. NTTA supports the proposals made in the *NPRM* – applying the Tribal Broadband Factor and adopting Tribal bidding credits – to enhance the chances Tribal areas will benefit from the RDOF support awarded. However, NTTA urges the Commission to adopt a system of Tribal priority access to any RDOF support allocated to Tribal lands for eligible Tribal entities, governments, and closely-affiliated carriers.

Respectfully Submitted,

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National Tribal Telecommunications Association

October 21, 2019