

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS OF THE NAVAJO NATION PRESIDENT AND THE NAVAJO
NATION TELECOMMUNICATIONS REGULATORY COMMISSION (NNTRC)**

THE NAVAJO NATION

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**NAVAJO NATION TELECOMMUNICATIONS
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Dated: October 21, 2019

SUMMARY

The Rural Digital Opportunity Fund (“RDOF”) represents the last, best hope of closing the Digital Divide. The FCC originally intended it as the vehicle to provide funding to the most difficult places in America to reach. The reverse-auction style approach proposed in *NPRM*, however, promises only further incremental expansion of broadband – by definition only the next, cheapest to deploy, areas of America will benefit. To ensure that significant funds are apportioned to carriers promising to serve Indian Country, the Navajo Nation urges the FCC to adopt changes to the approach outlined in the *NPRM*, as outlined in these comments.

The FCC must create accurate maps that actually show current deployment and current locations. Without such maps, bidders wishing to bring broadband to Indian Country will be hamstrung at best, and penalized at worst. The FCC should establish either a Tribal Priority or set aside some of the RDOF support to recognize the unparalleled challenges of deploying infrastructure on Tribal Lands. The FCC should also, where possible, make bidding areas coterminous with reservation boundaries so that carriers who are licensed only to serve Tribal Lands are not at a disadvantage in bidding. The FCC also should not make available non-Tribal lands that were not bid upon in Auction 903 – such areas alone would eat up virtually all of the RDOF support, meaning that truly rural American will never gain access to broadband.

The Navajo Nation also urges the FCC to consider allowing carriers to bid on an interim 10/1 network solution. In the most rural areas, a 10/1 network in the short term is far preferable to nothing, which is what much of Indian Country now has. To further incentivize carrier to bid on Tribal Lands, the Navajo Nation urges the FCC to use all credits and other means to “level the playing field” in light of the increased costs required to deploy infrastructure to Indian Country.

In meeting both build-out and service milestones, the FCC should also extend those dates for carriers delivering service into Indian Country. Because of the extended time necessary to receive right-of-way and other authorizations to construct on Tribal Lands, a limited extension of the milestones is warranted. Finally, the FCC should retain the ability of Tribal carriers to waive the Letter of Credit requirement to recognize the inability of many Tribal carriers to collateralize their assets for purposes of obtaining an LOC.

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The Navajo Nation Office of the President and Navajo Nation Telecommunications Regulatory Commission (“NNTRC”),¹ through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission’s rules (47 C.F.R. §§ 1.415 & 1.419) submits these Reply Comments in the above-referenced proceedings in response to the Commission’s Notice of Proposed Rulemaking, (“*Rural Digital Opportunity Fund NPRM*” or “*NPRM*”), issued August 2, 2019.² In the *NPRM*, the Commission seeks comments on how to implement an auction under the Rural Digital Opportunity Fund (“RDOF”) to help close the Digital Divide in America. In support of these Reply Comments, the NNTRC submits:

I. BACKGROUND

The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states—Arizona, New Mexico, and Utah. The Nation is comparable in size to West Virginia.

¹ As used in these Reply Comments, the term “Navajo Nation” means the Office of President and the NNTRC.

² *Rural Digital Opportunity Fund NPRM*, FCC 19-77, released August 2, 2019. The *NPRM* appeared in the Federal Register on August 21, 2019, 84 Fed. Reg. 43543, and called for comments to be filed by September 20, 2019 and reply comments by October 21, 2019. These Reply Comments are timely filed.

Were it a state, the Navajo Nation would rank 4th smallest in population density; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.³

The NNTRC was established pursuant to Navajo Nation Council Resolution ACMA-36-84 in order to regulate all matters related to telecommunications on the Navajo Nation.

Telecommunications is defined broadly under the Navajo Nation Code to include broadband and “any transmission, emission or reception (with retransmission or dissemination) of signs, signals, writings, images, and sounds of intelligence of any nature by wire, radio, light, electricity or other electromagnetic spectrum.”⁴ Its purpose is to service, develop regulation and to exercise the Navajo Nation’s inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council and the Navajo Telecommunications Regulatory Act.⁵

II. DISCUSSION

A. Introduction

RDOF represents the last, best hope of closing the Digital Divide. The FCC originally intended it as the vehicle to provide funding to the most difficult places in America to reach.⁶ Unfortunately, as proposed in the *NPRM*, the reverse-auction style approach so enamoring to the

³ Compare http://en.wikipedia.org/wiki/List_of_U.S._states_by_area (states ranked by geographic area) with http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density (states ranked by population density).

⁴ 21 N.N.C. § 503 (V).

⁵ Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529. NNTRC is specifically authorized to act as the intermediary agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission, intervening on behalf of the Navajo Nation on matters pending before the Commission, and filing comments in rule making proceedings.

⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17837-38 (2011) (“*USF/ICC Transformation Order and FNPRM*”) (establishing the Remote Areas Fund with a budget of “at least \$100 million annually” to ensure that even Americans living in the most remote areas of the nation, where the cost of providing terrestrial broadband service is extremely high, can obtain service).

FCC, without significant changes, promises only further incremental expansion of ubiquitous broadband – by definition only the next, cheapest to deploy, areas of America will benefit. The Navajo Nation long has been on the record opposing reverse-auction models because they always favor bidders wishing to expand existing plant to the next cheapest locations.⁷ If the FCC intends on implementing the *NPRM*, it should rename the program the “Next, Least Rural Fund,” because that is what RDOF will become.

B. The FCC’s Approach to Eligible Areas is Wrong

1. The FCC Must Create New Maps Prior to Establishing the Eligible Areas for RDOF

Since their inception, the maps that depict both deployment and locations that are eligible for service have been wrong. Completely wrong. The FCC and others have recognized this.⁸ The Navajo Nation has repeatedly brought this to the FCC’s attention,⁹ yet the FCC has been slow to respond. Sacred Wind, in their comments, have shown there is a wide gap between where the FCC believes people are living on Tribal lands, and the actual “ground truth.”¹⁰ As important as it is to move forward as quickly as possible to close the Digital Divide, doing so

⁷ See, e.g., Comments of NNTRC in GN Docket 13-5, filed March 31, 2014 (“reverse auctions will always be won by the entity proposing to serve the next least expensive unserved area”).

⁸ See, e.g., Report and Order and Second Further Notice of Proposed Rulemaking in WC Docket 19-195, FCC 19-79, released August 6, 2019 (establishing the Digital Opportunity Data Collection Program and acknowledging the fact that relying exclusively on carrier data has resulted in a substantial overstatement of areas actually receiving broadband).

⁹ See, e.g., Comments of NNTRC in Tribal Mobility Fund Phase I Auction (AU Docket No. 13-43), filed May 10, 2013 (challenging the FCC’s eligible areas map); Comments of NNTRC in Support of SBI Petition for Reconsideration in AU Docket No. 13-53, filed September 16, 2013.

¹⁰ Comments of Sacred Wind Communications, Inc., pp. 9-10, filed September 20, 2019. Sacred Wind’s activities on the Navajo Nation are regulated by the NNTRC. Citation to any comments by carriers providing service to the Navajo Nation does not constitute an endorsement of that carrier. Sacred Wind’s comments show that Navajo households are severely underrepresented as locations by the FCC, due to the clustering of multiple homesteads in a single location that should be treated as separate locations, the same way apartment buildings would be treated in an urban environment.

without accurate maps no doubt will leave Indian Country short-changed. The Navajo Nation calls on the FCC to consult with Tribes to establish more accurate maps. Specifically, the FCC should work with Tribes, such as the Navajo, that are undertaking massive efforts in rural addressing to better identify Tribal residences.

2. The FCC Should Establish Either a Tribal Priority or Set Aside a Certain Percentage of RDOF for Tribal Lands

The extent of the Digital Divide in Indian Country is well known.¹¹ Past practices by the FCC have not been successful in bringing high-speed broadband to Indian Country. Other approaches are necessary. While still in process, the FCC's establishment of a Tribal Priority in the 2.5 GHz spectrum could serve as a useful model for RDOF.¹² There is much excitement in Indian Country about the possibility of finally getting spectrum in the hands of Tribes.¹³ The FCC should consider how it could implement a Tribal Priority in RDOF. Such an approach is consistent with the FCC's charge to assist Tribes in bringing services to Indian Country, and is clearly constitutional.¹⁴

¹¹ See NPRM, ¶ 62 (citing *Consolidated Appropriations Act, 2018*, Pub. L. No. 115-141, Div. P—RAY BAUM'S Act of 2018, § 508(a)(1), 132 Stat. 348, 1095-96 (2018) (RAY BAUM'S Act of 2018) (directing the Commission to conduct a proceeding to address unserved Tribal areas); see also *Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018* (CGB/WCB/WTB rel. May 1, 2019), available at <https://docs.fcc.gov/public/attachments/DOC-357269A1.pdf> (*Tribal Broadband Report*).

¹² *Transforming the 2.5 GHz Band*, Report and Order in WT Docket No. 18-120, FCC 19-62, released July 11, 2019.

¹³ At the recent National Tribal Broadband Summit, hosted by the Department of Interior, the FCC's presentation on the 2.5 GHz Tribal Priority was standing room only. See <https://www.doi.gov/tribalbbroadband>.

¹⁴ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, First Report and Order and Further Notice of Proposed Rule Making*, 25 FCC Rcd 1583, 1584-85 (2010) ("Tribal Priority R&O"). As the FCC said there:

[T]he priority established herein for the benefit of federally recognized Tribes is not constitutionally suspect because it is based on "the unique legal status of Indian tribes under Federal law." As the D.C. Circuit explained in 2003, the Supreme Court's decisions leave no doubt that federal government action directed at Indian tribes, "although relating

In the alternative, the FCC should set aside a certain percentage of RDOF for Tribal Lands. The Navajo Nation suggest that at least 15 percent of RDOF should go to carriers serving Tribal Lands. Prior auctions have demonstrated that merely “bumping up” the bids for those seeking to serve Tribal Lands is insufficient to incentivize carriers to bid on Tribal Lands, given the well-established difficulties in bringing broadband to Indian Country.¹⁵

3. Eligible Areas Need to be Coterminous with Reservation Lands

The Navajo Nation generally agrees that the FCC should use the smallest manageable areas to auction.¹⁶ This will get funding into the hands of smaller carriers who have a sharp focus on bringing services to truly unserved areas. Tribal carriers, however, have the added problem of often only being authorized to provide service on Tribal lands. To the extent that eligible areas straddle reservation boundaries, carriers are often precluded from bidding because they know that, by definition, they cannot reach the build-out requirements because they are not

to Indians as such, is not based on impermissible racial classifications.” As set forth above, the Tribal Priority established herein will further our Section 307(b) mandate and other Commission policies by enabling Indian tribal governments to provide radio service tailored to the needs and interests of their local communities. Furthermore, as discussed above, we find that Indian tribal governments are uniquely situated to provide such service to tribal lands. Accordingly, we believe that the Tribal Priority is consistent with the Equal Protection Clause of the Fifth Amendment.

Id. at ¶ 12, quoting *American Federation of Government Works, and AFL-CIO v. U.S.*, 330 F.3d 513, 523 (D.C. Cir. 2003), *cert. denied* 540 U.S. 1088 (2003) (“AFGE”).

¹⁵ See, e.g., *Policies to Promote Rural Radio Service*, Report and Order, MB Docket No. 09-92, FCC 11-190, released December 29, 2011, ¶ 14 (recognizing that Tribal Bidding Credits have not been effective in the FM broadcast spectrum); *Connect America Fund (Reconsideration)*, FCC 17-12, released March 2, 2017, ¶ 52 (declining to adopt a Tribal Bidding Credit for the *CAF Phase II Auction*, questioning its effectiveness).

¹⁶ *NPRM*, ¶ 22.

authorized to provide service throughout the area if it includes off-reservation lands. Because of this, the FCC should make the eligible areas coterminous with reservation boundaries.¹⁷

4. The FCC Should Exclude Areas Not Bid On in Auction 903 that are Directly Adjacent to more Populated Areas

The *NPRM* suggests that the FCC should include in the RDOF auction all CAF II eligible areas that remain unclaimed in Auction 903.¹⁸ These would include areas that are not even “extremely-high cost” locations under the CAM model.¹⁹

In turn, we propose to include at least some census blocks where the CAM suggests the costs of deployment are below the high-cost threshold but deployment has nonetheless not yet occurred. Broadband deployment data indicate that there are 6.3 million locations with costs below the \$52.50 per month benchmark that still lack high-speed broadband (including 3.4 million locations that lack even 10/1 Mbps broadband), suggesting that potential end-user revenue alone has not incentivized deployment despite the model’s predictions.²⁰

If the FCC adopts this approach, then most, if not all, of RDOF funding will go to suburban, or just adjacent, areas that for some reason have yet to be built out. The reverse auction format virtually guarantees this result, and the purpose of RDOF, to bring broadband to truly rural areas, will be defeated. The Navajo Nation urges the FCC to include only Tribal Lands in the CAF II eligible areas that represent anything less than extremely-high cost areas. The rationale for this is obvious – there are factors beyond just population density that drive up the cost to deploy broadband into Indian Country.

¹⁷ If that is not possible to achieve for RDOF, the FCC should establish a goal of implementing such procedures for future auctions. In addition, it should waive the build-out requirement for any Tribal carrier for areas outside reservation boundaries. See *NPRM*, ¶¶ 28-31.

¹⁸ *NPRM*, ¶ 46.

¹⁹ *Id.* at ¶ 50.

²⁰ *Id.* at ¶ 51.

C. The FCC Should Not Hold the RDOF Auction Until After Tribes have had an Opportunity to Acquire 2.5 GHz Spectrum Through the Tribal Priority

As mentioned above, the Tribal Priority established for the 2.5 GHz spectrum provides Tribes with the opportunity, for the first time, to acquire spectrum assets that could be deployed in bringing fixed broadband service to Tribal members. 2.5 GHz spectrum could be used either as a direct-to-home wireless solution, or as wireless backhaul conduits.²¹ Because this spectrum could play such an important part in delivering broadband to rural areas, the Navajo Nation believes that the FCC should not hold the RDOF auction until after Tribes have been able to apply for, and receive authority over that spectrum. Tribes, and carriers proposing to serve Tribal Lands, will be in a much better position to assess the viability of eligible areas (and fine-tune their bids) after it is known whether they will have access to this game-changing spectrum. Holding the RDOF auction before it is clear which Tribes have exercised their rights under the 2.5 GHz spectrum Tribal Priority will again penalize those wishing to provide broadband to Indian Country.

D. The FCC Should Establish a 10/1 Tier For Bidding in Indian Country

Traditionally, as infrastructure has been deployed further and further into rural areas, the first tentacles of such infrastructure have been small. Before superhighways are built, smaller roads are constructed. While the Navajo Nation recognizes that more speed and more capacity is always better, if the choice is between a four lane divided highway and nothing, then the wrong decision is being made, if a two-lane road could be built with the available funds. By jumping to a 25/3 speed requirement,²² the FCC may be setting Indian Country up for failure, because

²¹ *Transforming the 2.5 GHz Band*, Report and Order, ¶ 3 (2.5 GHz spectrum could enable deployment of 5G networks into Indian Country).

²² *NPRM* ¶ 14 (“25/3 Mbps is the Commission’s current benchmark for evaluating whether a fixed service is advanced-telecommunications capable”).

bidders looking at the low population densities, rugged terrain, and added administrative costs of building on reservations may make deploying a 25/3 speed network so unattractive that they fail to bid.²³ As such, the Navajo Nation urges the FCC to allow carriers to deploy 10/1 speed networks to Tribal Lands in the RDOF auction, at no penalty,²⁴ if the carrier also commits, within the ten years covered by RDOF funding, to increase speeds to 25/3.

E. The FCC Should Add a Weight Factor/Tribal Bidding Credit that Incentivizes Bidders to Deploy in Truly Rural Areas

The *NPRM* discusses various weighting factors, bidding credits, and other “tricks” to try to make eligible areas more equal in terms of their attractiveness to bid.²⁵ As is evident from past auctions, however, it is hard to make Tribal Lands more attractive, given all of the characteristics that historically have resulted in a market failure to deploy infrastructure to Indian Country. Arbitrarily “putting a thumb on the scale” to try and equalize Tribal Lands from an economic standpoint does not work when fundamental market disorders abound.²⁶ This is why the Navajo Nation believes that solutions such as a Tribal Priority or set-aside are necessary for RDOF. If the Commission instead will only rely on weighting factors, then the proposed Tribal Bidding Credit must be increased substantially beyond the 25% proposed in the *NPRM*.²⁷ The

²³ See, e.g., Sacred Wind Comments at p. 8.

²⁴ By “no penalty,” the Navajo Nation suggests that for Tribal Lands, a proposed 10/1 network be “scored” the same as a 25/3 speed network.

²⁵ *NPRM*, at ¶¶ 62-64.

²⁶ See, e.g., Robert H. Bates, *Social Dilemmas and Rational Individuals: An Assessment of the New Institutionalism*, in *NEW INSTITUTIONAL ECONOMICS AND THIRD WORLD DEVELOPMENT*, 18 (John Harriss et al. eds., 1995), at 29 (“The study of the conduct of rational individuals under various forms of market failure quickly became a major branch of economics. And the new institutional economics represents an outgrowth of this research.”); Ezra Rossier, *This Land is My Land, This Land is Your Land: Markets and Institutions for Economic Development on Native American Land*, 47 *Ariz. L.R.* 245 (2005).

²⁷ *NPRM*, ¶ 63.

Navajo Nation believes a Tribal Bidding Credit of at least 35% is necessary to put Tribal Lands on anything close to other eligible areas.

F. Other Changes Needed to Incentivize Deployment in Tribal Lands

Below we summarize other changes to RDOF that are necessary to correct market dysfunctions and give carriers a reason to bid for RDOF support to deploy broadband to Indian Country.

1. Extend Build-Out Milestones on Tribal Lands to Recognize the Difficulty in Deploying Infrastructure in Indian Country

The *NPRM* contemplates build-out schedules for RDOF that simply do not square with the realities in Indian Country.²⁸ Adopting the build-out requirements in the *NPRM* will provide a significant disincentive for bidders who are already familiar with the timeframes necessary to gain approvals to deploy on Tribal Lands, and virtually preclude the chance that new entrants might emerge who desire to provide service to Tribes. As evidenced in these comments and elsewhere,²⁹ deploying infrastructure into Tribal Lands is very difficult and takes far longer than

²⁸ *Id.* at ¶ 28 (“we propose that support recipients complete construction and commercially offer voice and broadband service to 40% of the requisite number of locations in a state by the end of the third year of funding authorization, and an additional 20% in subsequent years, with 100% by the sixth year”).

²⁹ See Congressional Research Service, *Tribal Broadband: Status of Deployment and Federal Funding Programs*, R44416, January 9, 2019, available at: <https://fas.org/sgp/crs/misc/R44416.pdf>; Federal Communications Commission, Office of Native Affairs and Policy, 2012 Annual Report, released March 19, 2013, p.7, available at <http://transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf>:

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.

building in the rest of America.³⁰ To recognize this, we suggest that, for Tribal Lands, the FCC extend the first milestone (40% deployment by the end of the third year) by at least a year, and reduce the incremental deployment to 15% each year for years five through nine. Sacred Wind suggests that in order to deliver service to the most difficult locations, it should be allowed to team with a satellite provider.³¹ The Navajo Nation has had bad experience in the past with satellite-delivered broadband service and is wary of such an approach. Nonetheless, the Navajo Nation can support an approach where a carrier would team with a satellite carrier to deliver broadband in the short-term, speeding delivery of service into the most remote areas. The Navajo Nation suggests that bidders be allowed to utilize satellite delivered services to meet half of the build-out milestone requirements, but would phase out support for satellite delivered services at the end of the ten year support period unless new satellite systems are developed to bring the transmission latency down below 100 milliseconds.³²

2. Extend the Time to Deliver Service

The NPRM contemplates enforcing the Commission's requirement that carrier respond, *and deliver service*, to a new customer within ten (10) days.³³ While the Navajo Nation agrees that carriers should respond quickly to customer requests for service, those serving Indian Country must be given more time to actually complete the installation of equipment necessary to

³⁰ For instance, on Navajo, our winters are quite harsh, and building seasons are quite short. During the rainy season, many Navajo roads are washed out or otherwise become inaccessible. See "U.S. Reopens After Wash Out," Navajo-Hopi Observer, October 9, 2018, available at: <https://www.nhnews.com/news/2018/oct/09/us-89-reopens-after-wash-out/>; see also, "In Navajo Nation, Bad Roads Can Mean Life or Death," available at: <https://www.governing.com/topics/transportation-infrastructure/gov-navajo-utah-roads-infrastructure.html>. Because of other inadequate infrastructure, deploying broadband often involves building roads and deploying power to new locations, often for the first time.

³¹ Sacred Wind Comments, pp. 2-3.

³² See NPRM, ¶ 23.

³³ NPRM, ¶ 44.

provide service. Prospective bidders seeing that strict ten day delivery requirement, and concomitant penalties for not meeting that deadline,³⁴ will be hesitant to bid on truly rural areas where delivery to that final mile may take more than ten days for the install. Instead, the Navajo Nation urges the FCC to adopt a requirement that a carrier respond and schedule installation within ten days, and complete that installation within a reasonable time thereafter (30-45 days).

3. Do Not Require Subscribership Thresholds

In addition to the build-out milestones, the *NPRM* contemplates saddling carriers with a minimum subscriber requirement in order to continue to receive RDOF support.³⁵ The Navajo Nation ***strongly*** urges the FCC ***not*** to adopt such a requirement. As the FCC is aware, adoption of broadband in Indian Country has too major factors: availability ***and affordability***. Unless and until the FCC adopts rules clarifying the availability of broadband under the Lifeline program,³⁶ affordable broadband in Indian Country will remain a challenge. So long as carriers fully advertise the availability of their service,³⁷ and work with Tribes to confront the “affordability divide,”³⁸ they should not be punished for slow uptake of their services.

³⁴ *Id.* at ¶ 28.

³⁵ *Id.* at ¶ 41.

³⁶ See *Mozilla Corp. v. FCC*, No. 18-1051, (D.C. Cir., issued October 1, 2019) (remanding the FCC’s *Restoring Internet Freedom Order*, in part, based on its failure to address impact of reclassification on its Lifeline rules; “broadband’s eligibility for Lifeline subsidies turns on its common-carrier status” (Slip Op. at p. 111)).

³⁷ *NPRM*, ¶ 28.

³⁸ See Second Further *NPRM*, Order on Reconsideration, Second Report and Order, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90, FCC 15-71, released June 22, 2015 (“But the sad reality is that millions of our citizens are foreclosed from opportunities, trapped in digital darkness, and stranded on the wrong side of the affordability divide,” Commissioner Clyburn Statement).

4. Mandate Collocation on New Construction

In its comments, Sacred Wind Communications, which provides service to the Navajo Eastern Agency (New Mexico), suggests that any RDOF support come with the requirement that carriers make newly constructed towers and conduits available to other carriers on a non-discriminatory basis.³⁹ The Navajo Nation believes that “dig once/build once” policies can greatly assist in deploying infrastructure, including broadband, into Indian Country. The Navajo Nation therefore supports policies that require collocation and access to existing infrastructure.

5. Continue to Allow Bidders to Waive the Letter of Credit Requirement

The *NPRM* asks whether the Commission should continue to allow Tribal carriers the ability to seek a waiver of the Letter of Credit requirement, especially in light of the fact that some CAF II auction winners have been able to secure Letters of Credit.⁴⁰ While the Navajo Nation applauds the efforts of some Tribally-owned and controlled winning bidders to obtain a Letter of Credit, that appears still to be the “outlier,” and the same inability to secure assets that originally led to the waiver standard still applies in many, if not most situations. That Navajo Nation urges the FCC to maintain its waiver procedure on Letters of Credit for Tribally-owned and controlled carriers.

³⁹ See Sacred Wind Comments, p. 4 (“In Auctions 901 and 902, the Commission established a collocation obligation rule⁵ whereby recipients were required to allow for reasonable collocation by competing service providers on newly constructed towers that the recipient owns or manages in the area for which it receives support during the five-year period following support authorization” *internal footnote omitted*), citing 47 C.F.R. § 54.1006(d).

⁴⁰ *NPRM*, ¶ 88 (“We note that a number of Tribally-owned and -controlled winning bidders were able to obtain letters of credit for the CAF Phase II auction”).

III. CONCLUSION

There was great hope in Indian Country in 2010 and 2011 when the FCC issued the National Broadband Plan, established the Office of Native Affairs and Policy (ONAP), and issued the *Tribal Spectrum NPRM*. Nevertheless, progress has been slow, and innovative regulatory changes have been stalled. Leveraging off the recent 2.5 GHz Tribal Priority, the FCC has a unique opportunity with the RDOF to bring broadband to Indian Country and help close the Digital Divide.

WHEREFORE, the Navajo Nation and NNTRC urge the FCC to adopt the proposals contained in these Reply Comments.

Respectfully submitted,

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