Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Report and Certifications	)	WC Docket No. 14-58
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

REPLY COMMENTS OF NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION

The National Tribal Telecommunications Association ("NTTA")[1] submits these reply comments in response to the Commission's Further Notice of Proposed Rulemaking ("*Notice*") in the above captioned proceedings.[2] The record strongly supports the adoption of the proposals submitted by NTTA. Specifically, to address broadband deployment challenges on Tribal lands, as a result of the demonstrably higher costs to serve such areas, the Commission should (1) exempt or significantly modify the operations expense limitation rule for carriers that predominantly serve locations on Tribal lands and (2) adopt a Tribal Broadband Factor ("TBF") using a 25 percent multiplier to provide additional support to carriers serving Tribal lands for increased broadband investment. Finally, the Commission should continue to rely on the "used and useful" and "prudent" standards when evaluating permitted expenses and be careful not to

---

[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.

[2] *Connect America Fund*, *ETC Annual Reports and Certifications*, *Developing a Unified Intercarrier Compensation Regime*, Report and Order and Order on Reconsideration, And Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 01-92, 31 FCC Rcd 3087 (Mar. 30, 2016) (*Rate of Return Reform Order*).

eliminate support for costs that are reasonably incurred and necessary for the delivery of supported services.

I. CARRIERS SERVING TRIBAL LANDS FACE SIGNIFICANT CHALLENGES AND COSTS NOT FACED BY OTHER RURAL CARRIERS

As NTTA demonstrated in its comments, the Commission and other federal government agencies, as well as numerous Members of Congress, have consistently noted the unique challenges and costs associated with the provision of service on Tribal lands that other carriers do not face. NTTA explained that these costs come in the form of time and expense incurred with gaining rights of way access and easements from the Bureau of Indian Affairs ("BIA"); service to Allotted Lands; obtaining "cultural clearances;" compliance with unique Tribal environmental policies; Tribal 911 system addressing challenges, including the lack of a standard Master Street Address Guide ("MSAG"); hiring polices requiring the employment of Tribal members that increase workforce recruitment and training costs; compliance with Tribal Council reporting and audits; and costs necessary to protect and advance Tribal sovereignty and self-determination.

Sacred Wind Communications, Inc. ("SWC") and Gila River Telecommunications, Inc. ("GRTI") provided a litany of specific real-world examples to bolster this point. As SWC put it, "[t]here are several major differences and expenses that RoR providers on Tribal lands experience that other providers do not. Even beyond the low density characteristics of all rural areas, Tribal lands pose carriers a greater challenge in serving their Tribal membership than found anywhere else in our Nation."[3] SWC provided specific examples of increased costs they face to deploy service on Tribal lands including the necessity of engaging closely with Tribal

[3] Comments of Sacred Wind Communications, WC Docket No. 10-90 *et al.*, at 4, 9-10 (filed May 12, 2016) (SWC Comments).

governments and communities that necessitates a corporate culture that is distinct and multi-layered and influenced by Tribal governments that demand recognition as sovereign nations, extremely poor road conditions, lack of electric power, lower income levels of customers, costs associated with right of way permitting, and a lack of access to middle mile infrastructure.[4] GRTI provided further details and data on the specific costs they face as a result of serving Tribal lands including significant middle mile expenses, costs associated with obtaining rights of ways from BIA, time and expenses related to obtaining Tribal cultural clearance under the National Historic Preservation Act, Archaeological Resource Protection Act, and National Environment Policy Act, time and expenses to secure the permission of private owners of allotted lands, unique 911 system challenges, and various Tribal sovereignty issues.[5] These costs alone accounted for approximately $1.25 million in Tribal-specific operating costs for GRTI in the last year.[6]

The Commission asked in the *Notice*, "is there a need for a separate mechanism for Tribal lands?"[7] The answer is a resounding yes.

II. THE COMMISSION SHOULD EXEMPT OR MODIFY THE OPERATING EXPENSE LIMITATION FOR CARRIERS SERVING TRIBAL LANDS

As demonstrated by NTTA and supported by the comments cited above, carriers serving Tribal lands incur unique costs that other rural carriers do not face, including significantly higher operating expenses. Because of the unique and substantial operating costs associated with serving Tribal lands, NTTA urges the Commission to adopt its proposal to exempt the opex limits for carriers with a majority of locations (51% or more) located in census blocks on Tribal

---

[4] *Id.*
[5] Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90 *et al.*, at 6-9 (filed May 12, 2016) (GRTI Comments).
[6] *Id.* at 9.
[7] *Rate of Return Reform Order* ¶ 375.

lands. Alternatively, if the Commission determines that an exemption from the rule is not warranted, at a minimum, it should modify the application of the rule for carriers with a majority of locations on Tribal lands by comparing such carriers' study area's opex cost per location to a regression model-generated opex per location plus 2.5 standard deviations.

The NTTA proposal received direct support from GRTI who noted that "an opex exemption for a limited number of carriers would have a negligible impact on the overall fund, and would have a substantial positive impact on the ability of carriers serving Tribal lands to maintain and expand their broadband networks."[8] SWC also supported relaxing the operating expense limitations, suggesting that "expense control mechanisms should account for the higher costs of operating on sparsely populated, hard to reach, low income Tribal areas."[9] While multiple parties supported exempting or modifying the opex caps for carriers serving Tribal lands, no parties objected.

III. THE COMMISSION SHOULD ADOPT A TRIBAL BROADBAND FACTOR TO TARGET ADDITIONAL SUPPORT FOR INFRASTRUCTURE INVESTMENT IN INDIAN COUNTRY

Numerous parties commented in direct support of NTTA's proposal to adopt a TBF while others indicated support for the overall framework and the use of Connect America Fund ("CAF") reserves to pay for targeted support on Tribal lands.[10] NTCA indicated that the TBF proposal "would appear to represent a reasonable way of 'superimposing' a relatively straightforward solution to this problem [lack of broadband on Tribal lands] atop now-reformed

---

[8] GRTI Comments at 10.
[9] SWC Comments at 6.
[10] SWC Comments at 6; Comments of the Affiliated Tribes of Northwest Indians, WC Docket No. 10-90 *et al.*, at 3-4 (filed May 12, 2016); Comments of Alexicon Telecommunications Consulting, WC Docket No. 10-90 *et al.*, at 12 (filed May 12, 2016); Comments of TCA, WC Docket No. 10-90 *et al.*, at 8 (filed May 12, 2016); Comments of NTCA – The Rural Broadband Association, WC Docket No. 10-*90 et al*., at 35-36 (filed May 12, 2016) (NTCA Comments).

USF mechanisms…"[11] Thus, the Commission should adopt NTTA's proposal for a TBF and make such additional funding available for carriers to (a) meet the newly adopted broadband deployment obligations at 10/1 Mbps over the next five years[12] or (b) meet enhanced deployment obligations over a longer 10 year period that are above and beyond the baseline buildout requirements. NTTA looks forward to working non-NTTA rate-of-return carriers serving Tribal lands and the associations that represent such companies on the implementation details of a TBF.

No commenters opposed the TBF proposal. However, notwithstanding the proposed "Alaska Plan" designed to address Alaska-specific issues, Alaska Communications ("ACS"), Alaska's sole price cap carrier, suggested that if the Commission adopts a mechanism to provide support in unserved census blocks on Tribal lands, it should include Alaska in that mechanism, specifically including primarily native Alaskan "bush" communities within ACS' service territory.[13] NTTA appreciates ACS' desire to ensure service to such communities, but the NTTA proposal is focused on areas served by rate-of-return carriers and the TBF proposal has been designed to fit within the construct of the high-cost mechanisms in place for such carriers. ACS is a price cap carrier that has elected to receive CAF Phase II frozen support for non-contiguous areas (in lieu of CAF Phase II model-based support).[14] If the Commission wishes to address service to Alaskan bush communities it should do so in consideration of the Alaska Plan. NTTA continues to support the availability of the TBF to rate-of-return carriers serving Tribal lands, not price cap carriers who are receiving CAF Phase II support.

---

[11] NTCA Comments at 35-36.
[12] *Rate of Return Reform Order* ¶¶ 173-77.
[13] Comments of Alaska Communications, WC Docket No. 10-90 *et al.*, at 3-4 (filed May 12, 2016).
[14] Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Jan. 2, 2015); *see also* Letter from Karen Brinkmann, Counsel to ACS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Sept. 22, 2014); Reply Comments of Alaska Communications Systems, WC Docket No. 10-90 *et al.* (filed Sept. 8, 2014); Comments of Alaska Communications Systems, WC Docket No. 10-90 *et al.*, at 16 (filed Aug. 8, 2014) (proposing to exclude "bush" locations from its build-out obligations under CAF Phase II because doing so would "require a substantial and costly mobilization effort.").

IV. THE COMMISISON MUST CONTINUE TO ALLOW THE RECOVERY OF BUSINESS EXPENSES THAT ARE REASONABLY INCURRED AND "USED AND USEFUL"

NTTA appreciates the Commission's desire to reevaluate the types of expenses that should be permitted to ensure that carriers are only recovering costs that are used and useful and prudently incurred, and in the case of high cost support, only costs that are necessary to the provision of interstate telecommunications services.[15] While expressing concerns about some alleged abuses by rate-of-return carriers, the Commission appropriately recognizes that "most rate-of-return carriers properly record their costs and seek support for the intended purposes."[16] As the Commission considers whether certain categories of operating expenses should be eliminated or remain recoverable through High-Cost USF support and/or interstate rates, it must be mindful of the fact that several measures are already in place to help to ensure the reasonableness of costs incurred by carriers. NTTA agrees with NTCA that the Commission should continue to rely on the "used and useful" and "prudent" standards when evaluating permitted expenses.[17] Specifically, NTTA agrees that in its review of permitted expenses, "the Commission should be careful which expenses it determines are not 'used and useful' or 'prudent'" and that the Commission must "avoid subjectively eliminating expenses that, under the eyes of the courts and Commission precedent, are in fact 'prudent' and useful in furtherance of delivering supported services."[18]

V. CONCLUSION

NTTA has suggested previously that the overall cap on high-cost support for rate-of-return carriers is insufficient to meet program goals. We therefore share the concerns raised by

---

[15] *Rate of Return Reform Order* ¶ 330.
[16] *Id*.
[17] NTCA Comments at 2-3.
[18] *Id.* at 5.

NTCA in its Petition for Reconsideration of the *Rate-of-Return Reform Order* that the specific budget for rate-of-return carriers, as ratified by the Commission in the form of a "budget control," is not "sufficient."[19] To ensure sufficiency for carriers serving Tribal lands, we urge the Commission to exempt or significantly ease, the operations expense limitations adopted in the *Rate-of-Return Reform Order* for carriers serving Tribal lands. We also encourage the Commission to adopt the TBF to target badly needed support for carriers to meet or exceed the Commission's buildout requirements on Tribal lands. NTTA remains willing to consider modifications or alternative proposals that will achieve our objective of accelerating broadband investment on Tribal lands.

Finally, as the Commission considers how to proceed in its effort to "to take action before the end of the year to further promote broadband deployment on Tribal lands where it is now lacking,"[20] NTTA urges the Commission to address this issue separate and apart from the other issues raised in the *Notice*. The acceleration of broadband deployment on Tribal lands must be addressed as soon as possible and should not be delayed while the Commission resolves the multitude of additional complex issues raised in the *Notice*.

Respectfully submitted,

By:______/s/________________________________

Godfrey Enjady
President
National Tribal Telecommunications Association
226 Chiricahua Plaza, P.O. Box 229
Mescalero, NM 88340
(575) 464-4039

June 13, 2016

[19] *See* Petition for Reconsideration and/or Clarification of NTCA-The Rural Broadband Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92 (filed May 25, 2016).
[20] *Rate of Return Reform Order* ¶ 162 n. 362.