



NATIONAL INDIAN EDUCATION ASSOCIATION  
Advancing Excellence for All Native Students

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

RE: The National Indian Education Association's Reply Comments in the Matter of Connect America Fund, WC Docket No. 10-90; ETC Annual Reports and Certifications, WC Docket No. 14-58; and Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92.

Dear Secretary Dortch,

On behalf of the National Indian Education Association we respectfully submit these reply comments for the record in support of developing and adopting a Tribal Broadband Factor in the High Cost Fund. The National Indian Education Association ("NIEA") advances comprehensive, culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians. Since 1970, NIEA has worked to improve the systems that serve Native students by bringing educators together to share and develop best practices and by improving policy to better serve Native students at the federal, state and local levels.

The Universal Service Fund (USF) was created by the *1996 Telecommunications Act* to meet the goals of providing affordable and quality telecommunications services across the country. During this time it was estimated that less than ten percent of tribal lands had access to the Internet, with less than 69 percent of tribal households having access to basic landline telephone service. Since the creation of the USF the Federal Communications Commission (FCC) has recognized the disparate levels of telecommunications access on tribal lands and tried numerous methods to address the Digital Divide in Indian Country. Over the past fifteen years telecommunications rates have improved on tribal lands, yet many of our lands lack access to high-speed, affordable broadband services. According to the FCC's *2016 Broadband Progress Report*, 41 percent of residents on tribal lands lack access to advanced telecommunications services, compared to ten percent of the overall U.S. population. Furthermore, rural tribal lands and Alaska Native villages lag considerably behind the nation with nearly 70 percent lacking access to high-speed Internet services.

The development and adoption of a Tribal Broadband Factor in the High Cost Fund is long overdue, and its implementation will ensure that increased funds are available to Indian Country to support telecommunications deployment and maintenance. A number of tribes and tribal organizations have already filed comments for the record in support of establishing this Tribal

Broadband Factor, and National Indian Education Association (“NIEA”) generally supports those filings.<sup>1</sup>

**Establishment of Tribal Specific Support Mechanisms Should Ensure an Adjustment for the cost of Providing Broadband on Tribal Lands, Coverage of Certain Operating Expenses & Eligible Telecommunications Carriers Should be Accountable for Funds**

NIEA agrees with the National Tribal Telecommunications Association’s call for the adoption of a voluntary Tribal Broadband Factor to provide additional capital support for Rate-of-Return carriers serving tribal lands. Extensive evidence for this adjustment is available in the documents cited herein, and the unique trust responsibility that the Department of Education, the Bureau of Indian Education and the federal government has for the education of Native students makes a tribal adjustment a clear priority. This critical tribal-specific adjustment will help promote broadband deployment to tribal lands.

Similarly, NIEA agrees with several comments filed by tribes and tribal organizations that called for the need to ensure certain operating expenses (opex) are covered for an eligible telecommunications carrier (ETC) whose service territory is primarily composed of tribal lands, 50 percent or higher. Comments filed by the National Tribal Telecommunications Association, Gila River Telecommunications, Inc., and Sacred Wind Communications, Inc. outlined certain tribal-specific and unique expenses that ETCs incur from providing and maintaining service on tribal lands.<sup>2</sup> NIEA also agrees with the commenters, and reply comments filed by the National Congress of American Indians, that the FCC should provide either an exemption from the opex limits or an adjustment to the opex limits adopted in the *Report and Order* portion of the March 23, 2016 rulemaking.

NIEA also strongly supports the reply comments filed by the National Congress of American Indians that ETC compliance with the Tribal Government Obligation Engagement Provisions should be required and reported to tribal governments and the FCC to ensure Tribal Broadband Factor funds are being utilized to deploy and maintain telecommunications services on tribal lands.<sup>3</sup> The Tribal Government Obligation Engagement Provisions were established in

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<sup>1</sup> See National Tribal Telecommunications Association. *Comments of the National Tribal Telecommunications Association, WC Docket No. 10-90, WC Docket No. 14-58, and CC Docket No. 01-92*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739675>; Gila River Telecommunications, Inc. *Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, WC Docket No. 14-58, and CC Docket No. 01-92*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739686>; Sacred Wind Communications, Inc. *Comments – Order on Further Notice of Public Rulemaking, Adopted March 23, 2016*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739585>; Affiliated Tribes of Northwest Indians. *Comments of the Affiliated Tribes of Northwest Indians., WC Docket No. 10-90, WC Docket No. 14-58, and CC Docket No. 01-92*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739599>; and the National Congress of American Indians. *NCAI Reply Comments in the Matter of Connect America Fund, WC Docket No. 10-90; ETC Annual Reports and Certifications, WC Docket No. 14-58; and Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92*. June 8, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001993159>.

<sup>2</sup> See National Tribal Telecommunications Association. *Comments of the National Tribal Telecommunications Association, WC Docket No. 10-90, WC Docket No. 14-58, and CC Docket No. 01-92*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739675>; Gila River Telecommunications, Inc. *Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, WC Docket No. 14-58, and CC Docket No. 01-92*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739686>; and Sacred Wind Communications, Inc. *Comments – Order on Further Notice of Public Rulemaking, Adopted March 23, 2016*. May 12, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001739585>.

<sup>3</sup> See National Congress of American Indians. *NCAI Reply Comments in the Matter of Connect America Fund, WC Docket No. 10-90; ETC Annual Reports and Certifications, WC Docket No. 14-58; and Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92*. June 8, 2016. Available at <http://apps.fcc.gov/ecfs/comment/view?id=60001993159>.

the 2011 *USF/ICC Transformation Order* and required an ETC receiving USF support to demonstrate that they have meaningfully engaged with tribal governments whose lands are included in their service areas.<sup>4</sup> ETCs were required, at a minimum, to annually document meaningful discussions held with tribal governments on the following:

1. *A needs assessment and deployment planning with a focus on Tribal community anchor institutions;*
2. *Feasibility and sustainability planning;*
3. *Marketing services in a culturally sensitive manner;*
4. *Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and*
5. *Compliance with Tribal business and licensing requirements.*<sup>5</sup>

Commenters in the proceeding have noted specific expenses associated with exercising meaningful tribal engagement and we would urge the Commission to take those into consideration as it looks to developing tribal-specific mechanisms.

### **The Commission Should Move Forward in Establishing a Tribal Broadband Factor**

NIEA agrees with the Tribal Broadband Factor proposal advanced by the National Tribal Telecommunications Association and proposed in the Commission's March 23, 2016 rulemaking.<sup>6</sup> Implementation of a Tribal Broadband Factor within the High Cost Fund will provide and maintain increased High Cost Fund subsidies to support the deployment and maintenance of telecommunications infrastructure in Indian Country. We agree that certain build-out and certification obligations should be adopted as part of the Tribal Broadband Factor to ensure that Rate-of-Return carriers are held accountable for voluntarily receiving Tribal Broadband Factor support.<sup>7</sup>

For the past 15 years tribes, tribal telcos, and tribal organizations have built the record at the FCC illustrating the unique geographical and economic challenges affecting telecommunications deployment and maintenance in Indian Country; we recommend that the Commission take concerted action to adopt and implement a Tribal Broadband Factor before the end of this year. Additionally, the Commission should consider how the adoption of a Tribal Broadband Factor in the High Cost Fund could support other universal service programs—such as ensuring affordable access to low-income consumers on tribal lands through the Lifeline program. Access and

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<sup>4</sup> See Federal Communications Commission. *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208. Released Nov. 18, 2011. ¶636 and ¶637, pgs. 206-207. Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-11-161A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

<sup>5</sup> *Id.*

<sup>6</sup> See Federal Communications Commission. *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, WC Docket No. 14-58, and CC Docket No. 01-92. March 23, 2016. Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-33A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-33A1.pdf).

<sup>7</sup> *Id.* ¶379, pg. 141. “NTTA supports tying build-out obligations to additional support, and proposes specific build-out obligations tied to a sliding scale based on current broadband deployment levels to ‘meaningfully improve broadband connectivity on Tribal lands...particularly in areas that are unserved today.’ For instance, it proposes that recipients of TBF that currently have deployed 10/1 Mbps to less than 10 percent of their locations be required to provide 4/1 Mbps to at least 25 percent of their locations within three years, and 10/1 Mbps to at least 10 percent of locations within three years; for those that already have deployed 10/1 Mbps to at least 10 percent but not 25 percent of their locations, they would be required to offer 4/1 Mbps service to 50 percent of their locations and 10/1 Mbps service to 25 percent of locations within three years.”

affordability to communications services should remain a top priority for the FCC, since deployment cannot succeed if adoption is not possible due to unaffordability.

NIEA is grateful for the opportunity to provide input on this important matter. The establishment of a Tribal Broadband Factor is long overdue to address the pervasive Digital Divide in Indian Country. We hope that the FCC will engage and consult with tribes in a proactive manner moving forward on this issue and as technology and services continue to advance. If you have any questions please contact Matt de Ferranti, Legislative Director for NIEA, at [mdeferranti@niea.org](mailto:mdeferranti@niea.org) or 202-847-0039.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ahniwake Rose".

Ahniwake Rose  
Executive Director