

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

To: The Commission

**REPLY COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION (NNTRC) TO THE  
FURTHER NOTICE OF PROPOSED RULEMAKING**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), 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) respectfully submits these Reply Comments in the above-referenced proceedings in response to the Commission’s *Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking (RoR FNPRM)*. In support of these Reply Comments, NNTRC submits:

**I. BACKGROUND**

As the largest native nation in the United States (in terms of reservation size), the Navajos have been particularly disadvantaged by Federal and state communications policies. The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). The Navajo Nation is comparable in size to West Virginia. Were it a state, the Navajo Nation would rank 4<sup>th</sup> smallest in population density; only Montana

(6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are less densely populated.<sup>1</sup>

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.”<sup>2</sup> The NNTRC is committed to the protection of the public welfare, regulation and the security of the Navajo Nation and its people with regard to telecommunications. 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.<sup>3</sup>

NNTRC is specifically authorized, pursuant to the Navajo Telecommunications Regulatory Act, 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.

## **II. DISCUSSION**

### **A. The Need for Additional Support to Overcome the Digital Divide in Indian Country is Well-Documented**

The notion that delivering telecommunications and broadband services to Indian Country is more costly and more difficult than delivering comparable services to urban areas is nothing

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<sup>1</sup> Compare [http://en.wikipedia.org/wiki/List\\_of\\_U.S.\\_states\\_by\\_area](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](http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density) (states ranked by population density).

<sup>2</sup> 21 N.N.C. § 503 (V).

<sup>3</sup> Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529.

new. Comments in this proceeding by the National Congress of American Indians (“NCAI”), Gila River Telecommunications, Inc. (“GRTI”), National Tribal Telecommunications Association (“NTTA”), and others all highlight the decades of FCC recognition of the Digital Divide for Indian Country that can be summarized as follows:

- 2000: “Since the passage of the Telecommunications Act of 1996, the Federal Communications Commission has made particular efforts to ensure that all Americans, in all regions of the United States, have the opportunity to access telecommunications and information services. Notwithstanding such efforts to promote ubiquitous service, the Commission has recognized that certain communities, particularly Indian reservations and Tribal lands, remain underserved, with some areas having no service at all.”<sup>4</sup>
- 2010: The *National Broadband Plan* noted the challenges of bring telecommunications and broadband services to Indian Country because of “high build-out costs” and “limited financial resources that deter investment by commercial providers.”<sup>5</sup>
- 2011: *Native Nations Notice of Inquiry*: “Native Nations face unique problems in acquiring communications services, particularly broadband high-speed Internet service. Substantial barriers to telecommunications deployment are prevalent throughout Tribal lands. Those barriers include rural, remote, rugged terrain and areas that are not connected to a road system that increase the cost of installing infrastructure, limited financial resources to pay for telecommunications services that deter investment by commercial providers, a shortage of technically trained Native Nation members to plan and implement improvements, and difficulty in obtaining rights-of-way to deploy infrastructure across some Tribal lands. It is thus not surprising that critical infrastructures rarely have come to Tribal lands without significant federal involvement, investment, and regulatory oversight.”<sup>6</sup>
- 2011: *2011 USF/ICC Transformation Order*: “[v]arious characteristics of Tribal lands may increase the cost of entry and reduce the profitability of providing service, including: (1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction

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<sup>4</sup> *Statement of Policy on Establishing Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd. 4078 para. 1 (2000).

<sup>5</sup> FCC, *Connecting America: The National Broadband Plan*, at 152 (2010) (*National Broadband Plan*).

<sup>6</sup> *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, para. 1 (2011) (*Native Nations NOI*).

over the provision of telecommunications services on tribal lands.”<sup>7</sup>

2016: *GAO Report on Challenges to Broadband Deployment on Tribal Lands*: “Access to Internet on tribal lands varies but challenges to access and adoption remain. The high costs of infrastructure buildout on tribal lands, which tend to be remote and rugged terrain, work in tandem with tribal member poverty to create a barrier to high-speed Internet expansion on tribal lands.”<sup>8</sup>

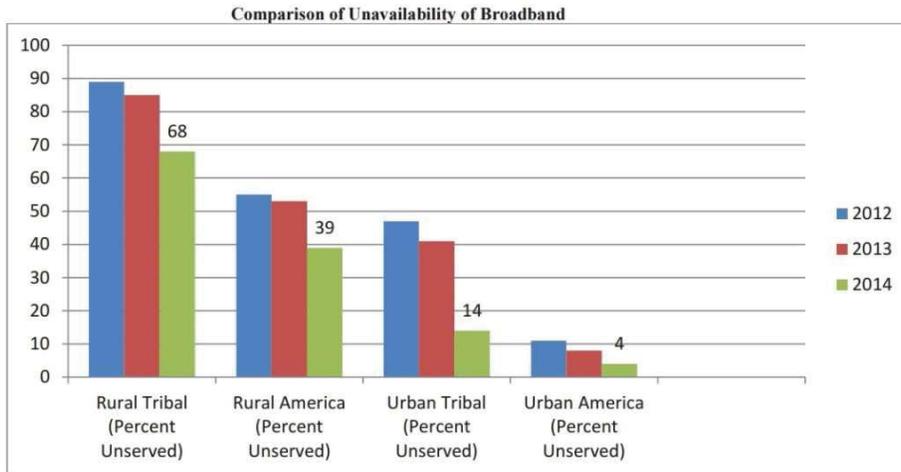
The FCC’s response to its own admissions has been underwhelming. In the five years since the *USF/ICC Transformation Order* was adopted, a mere \$50 million in new money has gone into infrastructure development specifically targeting Indian Country through the Tribal Mobility Fund Phase I reverse auction, and some \$30 million of that went to companies serving Alaska. The result, as graphically illustrated by GTRI, is that Indian Country significantly lags behind the rest of the country (including other rural areas) in both broadband access and adoption.<sup>9</sup>

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<sup>7</sup> *In re 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, 17820, para. 482 (2011) (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12226, para. 32 (2000)).

<sup>8</sup> 9 U.S. Gen. Accountability Off., GAO-16-222, *Telecommunications: Additional Coordination and Performance Measurements Needed for High-Speed Internet Access Programs on Tribal Lands* at 1 (Feb. 3, 2016) (GAO Report) at 29.

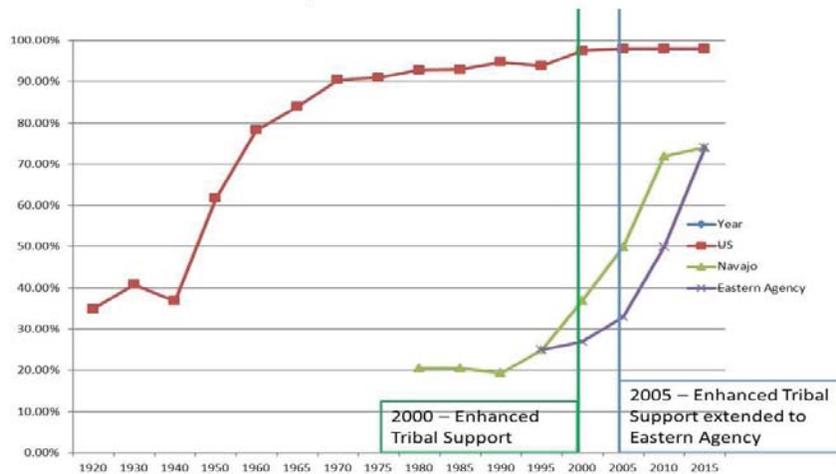
<sup>9</sup> GTRI Comments, p. 1, citing *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All et al.*; GC Docket No. 15-19; 2016 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 31 FCC Rcd. 699, 732 para. 80 (2016) (*2016 Broadband Progress Report*).



But what we also know is that if funding is made available and infrastructure is developed, telecommunications and broadband services will be adopted by Native Americans. The story of telephone penetration in the Navajo Eastern Agency (New Mexico), demonstrates this.

**Chart I:  
Telephone Penetration in U.S. and Navajo Nation by Decade**

**Comparison of U.S. Telephone Penetration and Navajo Nation Telephone Penetration**



This increase in penetration is not due to some sort of awakening on the part of Navajos that telephones are important,<sup>10</sup> but rather is directly tied to Enhanced Tribal Lifeline Support, making telephone service both affordable to individuals, and creating a user base sufficient to support infrastructure investment by carriers to bring service to previously unserved areas of the Navajo Nation.

**B. The High Capital and Operational Costs of Operating in Indian Country Are Well Established**

In addition to the comments of NTTA and GTRI, the comments of Sacred Wind provide strong evidence that carriers serving Indian Country in general, and the Navajo Nation in particular, encounter both capital and operating costs significantly higher than carriers serving other areas, even other rural areas, encounter.<sup>11</sup> While the NNTRC cannot verify the expense numbers submitted by Sacred Wind, it can corroborate that doing business on the Navajo Nation can be expensive, especially as it relates to acquiring Rights-of-Way because of the need to coordinate with both the Navajo Nation, the BIA, and in the case of allotted lands, individual allottees.<sup>12</sup> Similar stories are told by NTTA members in its comments.<sup>13</sup>

**C. Opex Costs for Carriers Serving Tribal Lands Should be Adjusted to Reflect These Higher Costs**

**1. NNTRC Supports an Increase in Opex Limits to allow 2.5 Standard Deviations**

GRTI, NTTA and others urge the FCC to provide more flexibility in operation expenses (Opex) limits to reflect the higher cost of doing business in Indian Country by allowing carriers

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<sup>10</sup> This stands in stark contrast with a GAO study that erroneously concluded that “household demand for telephone service—even among low-income households—is relatively insensitive to changes in the price of the service and household income.” See “FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,” GAO-15-335, released March, 2015, p. 14.

<sup>11</sup> See Comments of Sacred Wind, filed May 12, 2016.

<sup>12</sup> *Id.*, p. 7.

<sup>13</sup> See Comments of NTTA, pp. 7-11.

to increase their Opex using a formula that includes a 2.5 standard deviation factor. NNTRC supports this proposal. Clearly, carriers serving Tribal Lands are on the far edge of the bell curve when it comes to their operating expenses,<sup>14</sup> and this needs to be recognized through the use of a higher deviation factor.

## **2. NNTRC Supports Inclusion of Some Currently Excluded Expenses**

Sacred Wind points to a number of legitimate expenses that must now be excluded from operating expenses to calculate federal support.<sup>15</sup> Sacred Wind first questions why off-road vehicle expenses are excluded. NNTRC can attest to the fact that some 70 percent of the roads on the Navajo Nation are unpaved. Access to geographically challenging areas can only be accomplished by ATVs in the summer and Snowcat snow equipment in the winter months. Excluding these expenses unfairly penalizes the Navajo Nation and should be reinstated.

Similarly, because of the large size of the Navajo Nation, combined with low population density, providing meals and lodging for employees is not a luxury, it is a necessity. Such expenses should be allowed for carriers.

## **3. NNTRC Supports A Tribal Broadband Factor of 25 Percent**

NCAI, NTTA, GRTI and others support an additional Tribal Broadband Factor (TBF) of 25 percent. As the graphic above makes crystal clear, if the funding support is not enough, then nothing gets done. When Lifeline Tier 4 support was extended to the Eastern Agency, telephone penetration expanded rapidly as infrastructure was built out. The same will happen with broadband, but only if sufficient support is received. A 25 percent TBF will not “break the bank” of the USF program, but will make great strides toward narrowing the Digital Divide.

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<sup>14</sup> *Id.* at pp. 7-9 (Sacred Wind operations costs in various categories significantly above similar sized companies according to an industry study).

<sup>15</sup> *Id.* at pp. 3-4.

#### **4. All of these Changes Should be Accompanied by Tribal Engagement Requirements**

The Tribal Engagement Provisions of the *USF/ICC Transformation Order* have helped significantly in requiring carriers to engage with Tribal governments to assess the needs of the Tribe. For those carriers that have taken their obligations seriously, and especially for those carriers which have voluntarily engaged with Tribes, the benefits to both the carriers and Tribes have been significant. Identifying and planning for new Tribal Anchor Institutions have resulted in win-win situations for Tribal governments and carriers. The FCC should do everything it can to encourage and/or require carriers to engage Tribal government more, and provide Tribal governments with better insight into the infrastructure that exists on their lands. Horror story abound in Indian Country of a Tribe constructing a new building, only to find that getting telecommunications services to it are too costly. NNTRC therefore supports imposing increased Tribal Engagement Provisions on carriers that receive the types of relief and additional support advocated herein.

### **III. CONCLUSION**

It has been a mighty struggle to bring telecommunication and broadband services to the Navajo Nation. While the gains of the past decade are impressive, it must be remembered that basic telephone service levels on the Navajo Nation in 2015 are at levels (less than 75%) not seen in the United States as a whole since the Eisenhower administration. There is still much work to be done to bring true universal service to the Navajo people, including broadband. This can only happen if carriers receive support commensurate with the heightened expenses they encounter in serving Tribal Lands. For these reasons, the NNTRC urges the Commission to adopt the proposals set forth in these Reply Comments.

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS  
REGULATORY COMMISSION**

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