

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

In the Matter of

Overcoming Obstacles To Telephone
Service For Indians on Reservations

BO Docket No. 99-11

COMMENTS OF SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

The Salt River Pima-Maricopa Indian Community (“Salt River”)¹ and Saddleback Communications Company (“Saddleback”)² submit the following comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice seeking comments on the issues raised in the Commission’s field hearings on telephone service for Indians on reservations.³

¹ Salt River is a federally recognized Indian Tribe located east of Scottsdale, Arizona. The Salt River community is bounded by the cities of Scottsdale, Tempe, and Mesa, Arizona, which make up part of the Phoenix metropolitan area. The tribe’s population consists of roughly 6,200 people, with approximately 50 percent of the tribe’s members being under the age of nineteen.

² Saddleback is a division of, and has been licensed by, Salt River to provide local exchange services on Salt River lands. In 1997, Saddleback invested in a state-of-the-art digital switching and transmission network. Saddleback contracted with Mountain Telecommunications, Inc. to maintain and operate its network and sell excess network capacity throughout the state of Arizona.

³ FCC Public Notice, *Federal Communications Commission Will Hold A Series of Public Hearings on Telephone Service For Indians on Reservations and Seeks Comment From the General Public on All Testimony and Other Evidence Presented Therein: Reply Comment Date to be Designated, if Necessary, at the Conclusion of the Hearing Cycle.* (BO Docket No. 99-11), DA 99-201 (Corrected) (Jan. 21, 1999); FCC Public Notice, *FCC to Hold Second Public Hearing on Telephone Service for Indians on Reservations: Set for March 23 In Chandler, Arizona.* (BO Docket No. 99-11), DA 99-430 (Correction) (March 2, 1999); FCC Public Notice, *Deadline Extended Until June 28, 1999 For Comments on Overcoming Obstacles to Telephone Service for Indians on Reservations.* (BO Docket No. 99-11), DA 99-1010 (May 27, 1999).

I. INTRODUCTION

The Commission has held two hearings on the subject of overcoming obstacles to telephone service to Indians on reservations.⁴ These hearings explored the reasons for the significantly low telephone service penetration rates in Indian Country.⁵ From the data generated by these hearings, the Commission hopes to devise solutions to the telephone service problem. Salt River supports the Commission's efforts in these proceedings and believes that they are an important first step to ensuring that Native Americans share in the promise of the Telecommunications Act of 1996, which seeks to extend to all Americans affordable basic telephone service and access to advanced services.⁶ In addition, the Commission's efforts demonstrate an understanding by the Commission of its Federal Trust Doctrine responsibilities.⁷

⁴ The first hearing was in Albuquerque, New Mexico on January 29, 1999, and the second was held in Chandler, Arizona, on March 23, 1999.

⁵ The term "Indian Country" was used often in the hearings held by the FCC. The concept of "Indian Country" was given its present definition, for both criminal and civil law purposes, in 1948. 18 U.S.C. § 1151 provides:

[T]he term "Indian Country," as used in this chapter . . . , means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

While this definition is contained in the criminal code, it is also used for civil jurisdiction. *See DeCoteau v. District County Court*, 420 U.S. 425, 427 n.2 (1975).

⁶ 47 U.S.C. § 151 (1996) (stating that the FCC was created to regulate interstate and foreign commerce in wire and radio communications in order to make communications services available to all people in the United States); Advanced telecommunications incentives, Pub. L. No. 104-104, 110 Stat. 153 (1996) (providing for the reasonable and timely deployment of advanced telecommunications capability to all Americans).

⁷ As a result of the unique relationship between tribes and the Federal Government, the United States, and its agencies, are bound to protect the interests of the various tribes. The Federal Trust Doctrine imposes a fiduciary duty on federal agencies to conduct their authority in matters affecting Indian tribes in a manner that protects the best interests of those tribes. *See e.g., United States v. Creek Nation*, 295 U.S. 103, 109-10 (1935) (Governmental power to

The Commission's hearings have shown that there is a tremendous need for efficient, affordable, and effective telecommunications service on Indian reservations. Advanced telecommunications services would provide tribal members the means of receiving improved emergency health care and better educational opportunities for their children. As important, the absence of such services hinders the ability of Indian communities to develop economically because enterprises cannot conduct their business without an adequate communications infrastructure. Salt River urges the Commission, therefore, to take the necessary steps to remove obstacles that prevent Indians from receiving the same level and quality of telecommunications services as all other Americans, including:⁸ (1) developing and implementing a detailed FCC/Tribal government-to-government policy, (2) targeting universal service funding more effectively to areas of high need, like Indian reservations, as well as adjusting the universal funding mechanisms to address affordability in addition to high-cost, and (3) addressing the need for advanced telecommunications as well as "plain old telephone service" ("POTS").

II. THE COMMISSION MUST ESTABLISH A GOVERNMENT-TO-GOVERNMENT POLICY GOVERNING ITS ACTIONS WITH REGARD TO INDIAN NATIONS

As noted above, the Commission's recent efforts with respect to telephone service in Indian Country are an important first step in assuring compliance with its obligations under the Federal Trust Doctrine. They are, however, only first steps. The FCC must also continue to foster a proper government-to-government relationship with the tribal governments as sovereigns.⁹ Specifically, it must develop and implement, with tribal input, a policy statement to manage and control Indian property and affairs is not absolute, but is subject to limitation inherent in a guardianship).

⁸ Salt River by no means suggests, however, that this list is complete. There will be no single solution or set of solutions in Indian Country. The Commission should begin a comprehensive review of its policies and rules to address all facets of the telecommunications issues on Indian reservations.

⁹ See *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 13 (March 23, 1999) (statement of Commissioner Susan Ness, Federal Communications Commission) (recognizing the unique position of Indian tribes as sovereign nations); *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 31,68 (March 23, 1999) (statement of Governor Mary Thomas, Gila River Indian

guide its actions with respect to any decision or action that will affect an Indian tribe or its members. This policy must set out not only broad principles, but also must define specific procedures and practices for working with tribal governments and their representatives to resolve issues.¹⁰ In addition, the policy statement clearly must define the relationships among and responsibilities of the FCC, the tribes, the service providers and, where appropriate, the States.¹¹

Although an FCC Indian policy might not appear to be the kind of “magic bullet” solution to Indian phonelessness for which the Commission has been searching, it would establish the procedures and guidelines by which such solutions might be developed. For example, while, in some cases, the State governments have recognized their lack of authority over Indian telecommunications carriers operating on Indian land,¹² other states have actually blocked tribal telecommunications efforts.¹³ The Commission should take a leadership role in

Community) (“Thomas Statement”) (advocating the adoption of a policy statement recognizing the status of Indian tribes as sovereign entities); *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 38 (March 23, 1999) (statement of J.D. Williams, Cheyenne River Sioux Telephone Authority) (“Williams Statement”) (stating that there is a need for recognition of tribes, tribal lands, and tribal law); *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 47 (March 23, 1999) (statement of Nora Helton, Fort Mojave Indian Tribe) (stating that it is difficult to deal with those that do not understand the sovereign rights of tribes).

¹⁰ See Williams Statement at 35-36 (“The FCC must establish a government-to-government relations policy . . . This policy should be implemented in the FCC’s rules so that any action by . . . the FCC that potentially affects an Indian nation [] will be addressed in a manner that’s consistent with the federal trust responsibility by individuals versed in tribal issues and federal Indian law.”).

¹¹ The United States Congress maintains plenary authority over Indian affairs. As an independent agency operating by authority of Congress, the FCC’s authority over tribal telecommunications issues is superior to that of the states. Indeed, it is questionable whether the various states have jurisdiction over telecommunications operations and issues in Indian Country.

¹² *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 13 (March 23, 1999) (statement of Jim Irvin, Arizona Commerce Commission) (“One of the questions that was asked to me is what jurisdiction does the Arizona Corporation Commission pose over Native American tribal lands and tribal corporations and companies. Basically, none.”)

¹³ See generally, Joint Petition of Cheyenne River Sioux Tribe Telephone Authority’s and U S West Communication, Inc., *The Cheyenne River Sioux Tribe Telephone Authority's And U S West's Joint Petition For Preemption Pursuant To Section 253*, CC Docket No. 98-6 (January 22, 1998;).

such instances and, in addressing Indian issues, must recognize and protect tribal sovereignty. A government-to-government relations policy will assist the FCC in meeting this goal.

III. UNIVERSAL SERVICE FUNDING MUST BE BETTER TARGETED TO MEET THE NEEDS OF UNSERVED INDIANS, AS WELL AS TO ENSURE AFFORDABILITY OF TELECOMMUNICATIONS SERVICES

Providing all Americans with access to affordable telecommunications service has been a long-standing goal of the FCC and was made an explicit federal mandate by Congress in the Telecommunications Act of 1996.¹⁴ Despite the relative success of the FCC's universal service policy in most parts of the country — 95 percent of the American population has telephones — many Indian communities lack even the most basic telephone services.¹⁵ A substantial obstacle to providing telephone service to tribal members has been the significant costs that must be incurred by local exchange carriers (“LECs”) to provide telecommunications services in areas where the density of customers and telecommunications traffic per square mile is extremely low,¹⁶ resulting in excessive, often economically prohibitive, fixed infrastructure costs for telecommunications service providers.¹⁷

¹⁴ See 47 U.S.C. § 254(b)(3) (1996) (stating that “[c]onsumers in all regions of the [n]ation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services...”).

¹⁵ See *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 8 (March 23, 1999) (statement of Chairman William Kennard, Federal Communications Commission).

¹⁶ In his testimony at the Arizona hearing, J.D. Williams, General Manager of the Cheyenne River Sioux Tribe Telephone Authority, noted that “[the tribe has] a population of over 11,000 people in a 4600 square mile area about the approximately size of Connecticut. . . . Very rural.” Williams Testimony at 33. Likewise, Jeff Olson of GTE pointed out that telephone density on the Colorado River Indian Tribe reservation is roughly two lines per square mile compared with approximately 24,000 lines per square mile in a Los Angeles exchange. *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing* (March 23, 1999) (statement of Jeff Olson, GTE).

¹⁷ See *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 131-33 (March 23, 1999) (statement of Walter Purnell, American Mobile Satellite Corporation).

Although designed originally to address the need for monetary support for services in high-cost areas, to date, the universal service fund (“USF”) mechanism has not been adequately targeted to provide sufficient funding on Indian lands. The allocations LECs receive from the USF is currently calculated on the basis of study areas, typically state-wide, in such a way that the significantly lower cost of providing service in suburban and metropolitan areas are averaged with those much higher costs associated with the provision of service to reservations, bringing the total averages down substantially. Because these averages form the basis for the allocation of USF funds, Indian reservations typically receive insufficient funding to cover the true costs of providing service, making extension of service to these areas economically unfeasible.¹⁸

To address the problem of insufficient USF funding, the Commission should establish Indian reservations as their own study areas. Funding would then be based on the average cost of serving the tribe, rather than the average cost of serving the entire state. Redirecting USF funding in this manner would provide telecommunications carriers with the incentive to develop telecommunications service on reservations and increase the competition between service providers.¹⁹ Other mechanisms to encourage infrastructure development might include technology-neutral block grants to carriers for the building of a communications infrastructure²⁰

¹⁸ See *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 20 (March 23, 1999) (statement of Christopher McLean, Rural Utilities Service) (stating that the problems in providing service to reservations are “extreme magnifications of problems with high-cost rural service throughout the nation... [which] cannot be solved without a predictable and sufficient universal service support system”).

¹⁹ See *id.* at 25 (encouraging the Commission to change universal service funding to make telecommunications service more affordable); Thomas Statement at 29 (discussing the problem of universal service funding); Williams Statement, at 36 (advocating that an increase in universal service funding would stimulate telephone companies to invest in the development of communications networks in areas without telecommunications service).

²⁰ See, e.g., *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 49 (March 23, 1999) (statement of Charles Wiese, Tohono O’odham Utility Authority (“TOUA”)). A community block grant was given to TOUA for start-up operating funds. Since the development of a telecommunications network, the Indian community served by TOUA has grown economically.

and even, as proposed by GTE, universal service fund “auctions” designed to encourage carriers to compete for the right to provide service in unserved areas.²¹

The cost of infrastructure deployment for unserved communities does not, however, represent the entire problem. The mere availability of telephone service will not address the low telephone subscribership in unserved areas if the subscribers in those areas cannot pay their monthly telephone bills. Thus, another important issue raised at the hearings was the affordability of service to Indians on reservations.²² Many Native Americans simply cannot afford the cost of telephone service in these high cost areas.²³ Accordingly, the Commission must consider the affordability of service to the end-user. In particular, the Commission should consider mechanisms designed specifically to lower individual low-income family phone bills to an affordable level.²⁴

²¹ See generally Written Testimony of Jeff Olson on Behalf of GTE Service Corporation, *Overcoming Obstacles to Telephone Service to Indians on Reservations*, BO Docket No. 99-11 (Apr. 29, 1999). Any mechanism devised by the Commission that would result in a carrier being selected to serve a tribe must, as a matter of sovereignty and self-determination, include tribal participation not only in selecting the carrier but in defining the level of service required to obtain funding to serve the tribe. Moreover, any such mechanism must not create a barrier to the tribe, should it so choose, providing its own telecommunications services on its own lands or selecting a carrier of its choice at any time.

²² See e.g., Williams Statement at 37; *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 111 (March 23, 1999) (statement of Richard Watkins, Smith Bagley, Inc.).

²³ Indian reservations are some of the poorest communities in America, and the unemployment rate on many reservations is over 50 percent. See Williams Statement at 37-38. Census data from 1990 cited that the per capita income for Native Americans on reservations or trust lands was \$4,478, and 31 percent of Navajo families live below the poverty line. See Benton Foundation, *Native Networking: Telecommunications and Information Technology in Indian Country*, at 9 (1999).

²⁴ One method to achieve this goal might be to increase the federal lifeline subsidy to a higher level based upon reasonable “affordability” formulas.

IV. THE COMMISSION MUST ENSURE THE AVAILABILITY OF BOTH BASIC AND ADVANCED TELECOMMUNICATIONS SERVICES IN INDIAN COUNTRY

The availability of affordable telecommunications services in Indian Country will bring significant benefits to tribal governments and people.²⁵ The Commission must, however, ensure that advanced services are available on Indian reservations: dial-tone only will not be sufficient. Indians, like all Americans, must have access to the advanced services, such as Internet access and high-speed data services, that are becoming a necessity in today's information economy.²⁶ The Telecommunications Act of 1996 mandated that the FCC take affirmative steps to provide the public with affordable, non-discriminatory access to advanced services.²⁷ Therefore, the Commission must support the development and growth of these advanced services as well as the provision of dial tone to areas that are currently without service.²⁸ Any other approach risks sentencing tribes to inferior telecommunications services for the foreseeable future.

V. CONCLUSION

Salt River commends the Commission for taking an active role in helping Indians on reservations receive affordable and efficient telecommunications service. Salt River is hopeful that the Commission's efforts will help to ensure that Indian tribes participate in the economic

²⁵ See *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 53-56 (March 23, 1999) (statement of Ivan Makil, Salt River Pima-Maricopa Community) (discussing the benefits reaped by communities with access to telecommunications services); *Overcoming Obstacles to Telephone Service to Indians on Reservations: FCC Public Hearing*, Tr. at 62 (March 23, 1999) (statement of Vernon James, San Carlos Apache Tribe) (noting some of the opportunities brought by access to telecommunications services).

²⁶ Fixed Wireless Access is one method of providing advanced services to reservations. Salt River reminds the Commission of the pending petition, filed September 30, 1998, for allocation of the 3400-3700 MHz band for fixed wireless access services and urges the Commission to put the petition out on Public Notice for public comment.

²⁷ Advanced telecommunications incentives, Pub. L. No. 104-104, 110 Stat. 153 (1996) ("The Commission... shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans...").

²⁸ Likewise, the Commission must be wary of limited "quick fix" solutions developed by carriers as much or more for obtaining universal service funding as for meeting the full telecommunications needs of tribes.

and social benefits of the telecommunications revolution. Salt River urges the Commission, however, to take all steps, consistent with its Federal Trust responsibilities, to establish proper government-to-government relationships with all Indian tribes. In addition, the Commission should reconsider the allocation of USF support to target unserved and underserved Indian reservations to provide incentives to LECs to develop telecommunications networks in areas that do not receive telephone service, and to ensure affordability of service to low-income Indians on reservations. Salt River urges, however, that the Commission not encourage basic telephone service in Indian country at the expense of advanced services, as mandated by the Telecommunications Act of 1996.

Respectfully submitted,

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June 28, 1999

CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that copies of the foregoing COMMENTS OF SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY were delivered, via U.S. Mail, on this 28th day of June, 1999, to the following:

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