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June 28, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: Fort Mojave Telecommunications, Inc.
San Carlos Apache Telecommunications Utility, Inc.
DA 99-259 released February 11, 1999; and

Gila River Telecommunications, Inc.
Tohono O'odham Utility Authority
DA 99-399 released February 26, 1999.

Petitions for Waiver of Section 54.403(a)
of the Commission's Rules

Ex Parte Presentation

Dear Ms. Salas:

Attached hereto is a copy of Comments of the National Tribal Telecommunications Alliance, filed this date in BO Docket No. 99-11, DA 99-1010. The Comments discuss the proceedings referenced above.

Please refer any questions or correspondence concerning this matter to the undersigned.

Respectfully submitted,

Sylvia Lesse

Sylvia Lesse

cc: Jill Canfield, NTCA

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

In the Matter of	)	
	)	
Overcoming Obstacles to	)	**BO DOCKET NO. 99-11**
Telephone Service to Indians	)	**DA 99-1010**
on Reservations	)	

To: The Commission

COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ALLIANCE

The National Tribal Telecommunications Alliance ("NTTA"),[1] by counsel, hereby responds to the Commission's Public Notice requesting written comments concerning the obstacles to telephone service for Indians on reservations. NTTA commends the Commission for initiating this proceeding and trusts that it will result in reasoned steps toward execution of the Commission's statutory mandate to ensure that all citizens of the United States enjoy the benefits of reliable and reasonably-priced access to the public network and the Information Superhighway.

I INTRODUCTION

NTTA is an association of tribal organizations founded to assist its members in meeting the challenges of providing basic and advanced telecommunications services to Native Americans living on tribal lands. NTTA provides a forum within which its members cooperatively research, develop and implement affordable communications systems to serve their respective tribal

[1] NTTA members are the Cheyenne River Sioux Telephone Authority ("CRST"), Fort Mojave Telecommunications, Inc. ("FMTI"), Gila River Telecommunications, Inc. ("GRTI"), the Hopi Tribe, the Navajo Nation, San Carlos Apache Telecommunications Utility Authority, Inc. ("SCATUA"), and Tohono O'odham Utility Authority ("TOUA").

communities.

The emergence of new technologies and the evolution of new telecommunications services present meaningful opportunities to improve the quality of life on tribal lands. Before reservation residents can benefit from these new technologies and new services, however, basic telecommunications services must first be available. In instituting this proceeding, the Commission has recognized the disparity in the availability of affordable telecommunications services to Native Americans living on reservations compared with the accessibility enjoyed by other Americans. NTTA applauds this first crucial step and welcomes the opportunity to participate in this dialogue.

II TELECOMMUNICATIONS STATUS OF NTTA MEMBER RESERVATIONS

Five of the seven NTTA members currently provide local exchange and interexchange access service to residents and businesses on tribal lands.[2] Together, CRST, FMTI, GRTI, SCATUA and TOUA serve approximately 9,500 tribal residents spread across over 10,000 square miles. These telecommunications authorities have penetration rates ranging from 25% to 86%.

For those reservation residents now accessing basic telephone service, the average monthly residential rate across NTTA member companies is approximately $13.60. Importantly, these rates reflect the current availability of federal universal service funding and federal access charges. Yet, as demonstrated by the penetration rate, even at this modest rate, many residents are not connected to the network.

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[2] The Hopi Tribe (Kykotsmove, Arizona) and the Navajo Nation (Window Rock, Arizona) currently are developing plans for the implementation of tribal-operated telecommunications facilities.

The importance of the tool of residual rate design is highlighted by an examination of the high cost of service to vast and rugged tribal lands. Population generally is sparsely scattered; long loops are the norm. The cost of deployment and maintenance is therefore significantly above the national average of $245.70. The average cost per loop across NTTA member companies is approximately $1,000.

This snapshot of the current delivery of telecommunications services attests to the progress achieved by NTTA member organizations, and also provides a blueprint for necessary Commission actions. The Commission's role in maintaining and enhancing the affordability of basic telecommunications services on reservations will be shaped by this reality and its Congressional mandate.

III SPECIFIC ACTIONS NEEDED BY FCC TO IMPROVE ACCESS TO SERVICE ON INDIAN RESERVATIONS SERVED BY TRIBALLY OWNED TELEPHONE COMPANIES

A. Provide More Certainty For Future Universal Service and Access Revenue Streams

The tribally-owned telephone companies face many of the same issues that all rural telephone companies encounter, with two significant differences of degree. First, the populations served on the reservations tend to be at the extremes of low density, high cost and high levels of poverty. Second, as newly established companies which only recently began operations, they do not have the established subscriber and revenue base or operating experience of companies which have been in operation for 50 or 100 years.

As is the case with other rural telephone companies, the federal universal service and access charge revenue flows are a vital component of the revenue stream needed to recover the

costs of providing service. Despite the rhetoric commonly heard from those who disparage the cost allocation formulas, these revenue streams are not subsidies but are carefully designed simply to recover costs. NTTA fully understands that national universal service and access rules must be made compatible with the 1996 Telecommunications Act and the new competitive environment developing in much of the country. NTTA also understand that Congress did not intend that these changes should make the provision of service in rural areas and Indian Reservations more difficult and expensive.

While the Commission's decisions have acknowledged its universal service obligations under the Act, several of its specific decisions have been entirely inconsistent with these obligations. NTTA is somewhat relieved that the Commission has now repudiated its prior conclusion that federal universal service support should provide only 25% of the support determined to be required. This decision would have required major local rate increases by the tribal companies to a level far beyond what is comparable with urban rates, or affordable, especially by the average member of our reservations. Many other universal service issues remain unresolved or under reconsideration from the 1997 decisions, which leaves NTTA uncertain as to how much and how fast we can invest in the new facilities needed to provide basic, much less advanced, service on the reservations.

The pending plan to base universal service support on a computer model of forward looking costs for non-rural companies is a particular source of concern as to the future support which will be available to rural companies such as those operated by our tribes. Despite the continued assurance that this system is designed only for non-rural companies, we believe that the adoption of such a system for non-rural companies will inevitably lead to a similar rural system,

perhaps with some "tweaking". We have no reason to feel confident that a practical model can be designed which will accurately predict costs in any given location, regardless of the size of the company serving it.

NTTA's lack of confidence stems in part from the strong impression that the FCC staff has been instructed to issue a model to be implemented on January 1, 2000, regardless of whether it can be validated, and that a key factor in the model specification will be that the support produced will not exceed some arbitrary amount close to the present level. We have seen no indication that the validity of the models will be tested against actual cost studies to determine whether they predict what they purport to predict.

The non-rural companies may nevertheless accept the model because they find it an acceptable trade-off with the multitude of other issues they have before the Commission. The tribal companies, however, are focused on the issue of extending service to meet the basic requirements of their members at a level long ago reached for all other Americans. If their universal service support is dependent on a computer model's cost estimate, even where that estimate is demonstrably wrong, the companies cannot be assured that the needed investment in infrastructure can be paid for.

Finally, with so much of our efforts to improve service dependent on interstate access revenues, we cannot understand why the Commission is moving toward converting what were charges to carriers to charges to the subscribers, either directly or indirectly. This is a particular concern where there is no apparent effective effort by the Commission to ensure that the interexchange carriers either pass on any reductions in access charges to ordinary consumers or to ensure that long distance charges are uniform nationwide. The tribal companies are also

concerned that despite all the uncertainty and pressures to increase local rates facing rural telephone companies, the Commission has proposed to further reduce access revenues by reducing the allowed rate of return.

B. Remove the Requirements for State Action in the Lifeline Programs for Tribal Companies.

Four of the Arizona companies have waiver petitions before the Commission which point out that the improvements in the lifeline rules adopted in 1997 have not benefitted them because the rules require action by state commissions, which have no jurisdiction over tribally-owned companies. NTTA trusts that the Commission will act expeditiously on these requests. In the longer run, the FCC should revise these and other rules to recognize that the tribal companies are not subject to regulation by the states.

C. Revise Rules to Eliminate Disincentives for Purchase and Operation by Tribal Authorities

History demonstrates that the large carriers have little incentive to, or interest in, improving the quality of telecommunications services on reservations. Service to tribal lands by these carriers is inferior to the service they provide in more urbanized areas. Tribal authorities, on the other hand, have a vested interest in ensuring the universal availability of high-quality telecommunications services at affordable rates. Under existing FCC rules, however, the "freezing" of USF support levels at the amount received by the selling company effectively prohibits a tribal authority's purchase of exchanges serving reservations.

These high-cost reservations typically are within the larger company's state-wide study area, which includes large urban areas. Consequently, average loop costs currently yield only small per-loop USF support, if any. The FCC's current limitations on USF support levels for

transferred exchanges leaves prospective purchasers, including tribal authorities, facing the prospect of operating high-cost areas without appropriate levels of high-cost support. The ironic result is that universal service support is denied in the areas where it is most needed.

This result is oxymoronic in the context of the Commission's commitment to the improvement of the delivery of quality telecommunications services to tribal lands. In fact, the limitation of universal service funding to any artificial ceiling is counterproductive. The Commission's policies should be reexamined and revised to promote, rather than deter, the transfer of properties to entities which are committed to delivery on the promise of universal service.

D. Revise Rules to Facilitate Access to Radio Spectrum

Radio spectrum can, under certain circumstances, be utilized as an efficient substitute for landline facilities to deliver basic and advanced telecommunications services. NTTA members currently utilize the radio spectrum in a variety of ways, but are concerned that the Commission's Rules impede continued effective access to the spectrum.

Of particular concern to NTTA is its members' inability to expand or initiate Basic Exchange Telecommunications Radio Service ("BETRS"). BETRS technology provides a viable alternative to constructing landline local loop facilities to remote and sparsely populated areas. Unfortunately, the FCC has determined that the current site-by-site, first-come-first-serve licensing will be replaced by an auction for licenses covering a wide geographic area. Adding to the frustration generated by what NTTA views as the Commission's abdication of its spectrum allocation obligations to market forces which are insensitive to sound public policy goals, these auctions are not yet even scheduled. To the extent that tribal authorities would be interested in

participating in auctions which cover huge geographic expanses, and to the extent that tribal authorities could match the economic power of commercial entities anticipating the use of the spectrum for the lucrative provision of nonessential services, the delay in the permanent availability of this spectrum is discouraging.

IV SOVEREIGNTY ISSUES

The Commission has recognized the sovereign status of federally recognized Indian tribes. To affirm its adherence to the principles of government-to-government relations, and to reaffirm its trust responsibility with respect to implementing the Communications Act's commitment to ensure that all portions of this Nation enjoy the benefits of the Information Age, NTTA urges the Commission to concur formally with the Executive Directive requiring, among other things, that government agencies "consult, to the greatest extent practicable and permitted by law, with Indian tribal governments before taking actions that affect federally recognized Indian tribes" and "assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken." To implement these principles, the FCC should consider the cumulative impact of regulatory burdens which may, in the context of provision of service to sparsely-populated reservations, impose more burden than benefits on reservation inhabitants. The Commission should specifically address this issue in the context of rule-making proceedings and assess whether its trust responsibility is fulfilled in the context of regulatory activity. The benefits of federal programs designed to promote the deployment of infrastructure necessary to provide universal service should not be jeopardized by the costs of compliance with burdensome regulatory requirements.

In addition, the Commission could assist in generally clarifying that, for purposes of

application of its Rules, tribal governments are considered equivalent to a State wherever permitted by the Act. In other circumstances, FCC support of legislative action, similar to the effort resulting in the technical amendments to Section 214(e) regarding the authority to designate eligible telecommunications carriers, would be consistent with the FCC's commitment to the principles of universal service.

V CONCLUSION

NTTA supports the Commission's efforts to identify and address the obstacles to ensuring the availability of telephone service to Native Americans living on reservations. NTTA supports those resolutions which will promote the achievement of universal service on reservations within the context of government-to-government relations.

Respectfully submitted,

THE NATIONAL TRIBAL TELECOMMUNICATIONS ALLIANCE

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Its Attorneys

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June 28, 1999

CERTIFICATE OF SERVICE

I, Teresa Rhea, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing Comments of the National Tribal Telecommunications Alliance was served on this 28th day of June, 1999, via hand delivery, to the following parties:

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Teresa Rhea

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