

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Broadband Deployment and Adoption on) **GN Docket Nos. 09-47, 09-51, 09-137**
Tribal Lands) **NBP Public Notice #5**
)
) **DA 09-2093**



INITIAL COMMENTS

The National Telecommunications Cooperative Association (NTCA)¹ responds to the Federal Communications Commission (Commission or FCC) September 23, 2009 NBP Public Notice #5 calling for input on identifying and remedying barriers to broadband deployment and adoption on Tribal lands.² The Commission should collect and analyze more data, and universal support must be provided to help carriers and consumers with deployment and affordability. The Commission should address the cost of providing broadband services to tribal and non-tribal broadband service providers by adopting NTCA’s National Broadband Plan. Affordability issues for tribal area consumers should be examined using the Commission’s \$300 million proposed low-income pilot program for LifeLine and Link-Up tribal area consumers.

¹ NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 585 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² *Pleading Cycle Established for Comment Sought on Broadband and Adoption on Tribal Lands*, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2093, Public Notice (rel. Sep. 23, 2009) (Public Notice).

Furthermore, support for digital education on tribal areas can come through the Stimulus Act and the USF E-rate programs.

I. INTRODUCTION AND SUMMARY.

NTCA represents many rural local exchange carriers (RLECs) who serve tribal areas. Some of these members are tribally owned companies, and some are not tribally-owned but serve residents in tribal areas. Several of NTCA's members serving these areas have been providing innovative, long-term, and quality telecommunications services. However, NTCA is well-aware of the challenges that these areas face in terms of not only broadband deployment, but also plain old telephone service (POTS). NTCA has been attending the FCC's Indian Telecommunications Initiative meetings each summer for the past five years, learning about the issues and getting to know the companies and interested parties involved in telecommunications deployment in Indian Country.

The Commission defines "Indian Country" in the Public Notice as follows:

"Indian Country" refers to: "(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 the original or subsequently acquired territory thereof, and 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." 18 U.S.C. § 1151 (2006). For the purpose of this document, Indian Country also includes Alaska Native Villages, Native Hawaiian Homeland, and Trust lands. Although section 1151 is a criminal statute, its definition of Indian Country applies in the civil context as well.³

The terms "Indian Country," "Tribal lands" and "tribal areas" are used interchangeably in these comments.

One common thread running through each FCC meeting over the past several years is that there is too little reliable quantitative data about broadband deployment in tribal areas.

³ Public Notice, p. 2, fn. 7.

NTCA is encouraged by the Commission's acknowledgement of the need for data on this issue.⁴ Using reliable data is key to understanding the challenges that broadband service providers and tribal communities face as they develop a plan to deploy and adopt new technologies. The need for broadband access is clear: broadband can and will transform most of these communities. The potential for growth is enormous: broadband access is essential to bringing quality, 21st Century education, telemedicine, public safety, and economic growth in these communities.

However, in order to create a roadmap to successful deployment, more data must be collected and analyzed; universal support must be provided to help carriers with deployment; affordability (the cost of broadband services to the consumer) must be considered and supplemented; and digital education initiatives must be adopted.

II. MORE TRIBAL LAND DATA ARE NEEDED.

The Commission acknowledges "the current lack of data on the extent of broadband deployment and adoption on Tribal lands" and requests quantitative data for tribal areas.⁵ The Commission acknowledges the paucity of available data in its Rural Broadband Report.⁶ More granular data are vital components to understanding the current state of broadband deployment in Indian Country. At this time, little or no granular data are being collected, and according to a 2006 Government Accountability Office (GAO) report:

*"...[I]t is difficult to assess progress or the impact of federal programs to improve telecommunications on tribal lands. FCC has asked the Census Bureau to collect data on Internet subscribership... Census Bureau officials told us, however, that the bureau's internal policy is to not include questions on its new survey unless the collection of that data by the Census Bureau is mandated by law. They do not believe that such a mandate exists for the collection of data on Internet subscribership by the Census Bureau."*⁷

⁴ Public Notice, pp. 2-3.

⁵ Public Notice, pp. 2-3.

⁶ *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, FCC Report, GN Docket No. 09-29, DA 09-1211 (rel. May 29, 2009).

⁷ Government Accountability Office Report, GAO 06-189, *Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands* (January 2006), p. 9.

The GAO recommended in the report that Congress should direct the FCC to determine what data are needed and to collect that data.⁸ NTCA agrees with statements by Native Public Media (NPM) and the National Congress of American Indians (NCAI) that federal reports verify that “the data regarding broadband deployment on Tribal lands is grossly inadequate.”⁹ NTCA supports the NPM and the NCAI recommendation to utilize GIS data collection and mapping techniques “to provide accurate information on current last mile and middle mile deployments so that policymakers can base decisions on as complete a picture as possible.”¹⁰

III. UNIVERSAL SERVICE SUPPORT AND OTHER REFORMS ARE NEEDED FOR RURAL TRIBAL LANDS TO ENSURE AFFORDABLE BROADBAND SERVICES.

The Commission observed that “another demand and sustainability factor is the affordability of broadband services to consumers” in tribal areas.¹¹ In order for consumers to be able to afford receiving broadband services, rural carriers must be able to afford providing telecommunications services to tribal areas with reliable and predictable support. The vast majority of Indian Country is very costly to serve and high-cost universal service support is necessary.

A. Rural Tribal Areas, Like Other Rural Areas, Need Support and Reform For Broadband Services.

In order for high cost support to be effective in rural tribal lands, the Commission should implement NTCA’s National Broadband Plan, which includes the following points and applies to tribal and non-tribal areas:

1. Define “broadband” based on high-speed Internet access capabilities during peak-hour or busy-hour load that are generally available in a significant sample of service offerings in urban areas to establish a standard of comparability and affordability in urban and rural areas. As the capability of broadband technology and Internet protocol (IP) applications develop, the definition must evolve to meet consumer, education, business, and public health/safety demands.

⁸ *Ibid.*

⁹ Native Public Media and the National Congress of American Indians Joint Reply Comments, *In the Matter of A National Broadband Plan For Our Future*, GN Docket Nos. 09-51, FCC 09-31 (filed July 21, 2009), p. 8.

¹⁰ *Ibid.*

¹¹ Public Notice, p. 5.

By linking the definition to generally available services, affordability, and comparability, the definition is enduring, technology neutral, and in the public interest.

2. Include “broadband Internet access service” in the definition of “universal service.”
3. Open a proceeding to define and identify “Market Failure Areas” throughout the United States and target these areas for future high-cost broadband USF support in order to ensure consumers living in these areas have access to affordable and comparable broadband service.
4. Define a “Market Failure Area” as an area that does not have the population base or economic foundation for any provider to justify broadband facilities build-out and ongoing maintenance without external monetary support.
5. Reclassify wireline and cable “broadband Internet access service,” as “telecommunications service.”
6. Regulate broadband Internet access service providers under Title II common carrier regulation.
7. Apply a Title II earnings review to all broadband providers who voluntarily receive federal high-cost broadband USF support.
8. Allow rate-of-return (RoR) carriers to receive future federal high-cost broadband USF support through the Interstate Common Line Support (ICLS) mechanism, and price-cap carriers seeking to receive future broadband USF support through the Interstate Access Support (IAS) mechanism, when they voluntarily choose to have their broadband services regulated under Title II and voluntarily provide their total company regulated Title II costs, revenues, and earnings to be used when determining their future broadband high-cost USF support disbursements.
9. Include ongoing operations and maintenance expenses, in addition to construction cost, in the calculation of the future high-cost broadband USF support.
10. Transition all high-cost voice USF support to high-cost broadband USF support over a reasonable time period to avoid rate shock, prevent service disruptions, and provide stability and certainty during the transition.
11. Maintain RoR regulation for rural ILECs throughout the transition period and allow rural ILECs to base their high-cost USF support on each carrier’s study area average costs to ensure affordable and uninterrupted broadband Internet access service to rural, high-cost consumers.
12. Allow RoR rural carriers to provide stand-alone/naked broadband service with the same level of universal service funding as allocated to their bundled voice and broadband service during and after the transition period.

13. Expand the base of USF contributors to include all retail broadband Internet access service providers.

14. Open a proceeding to determine whether other companies that impose significant costs on the public Internet, such as Google, should be required to contribute to the new high-cost broadband USF mechanism.

15. Assess USF contributions based on telecommunications and broadband revenues.

16. Include Internet backbone and special access (middle-mile) transport service costs in the calculation for determining future high-cost USF broadband support.

17. Eliminate the identical support rule and base high-cost USF support on each company's own costs within 5 years.

18. Refrain from capping and/or freezing rural carrier high-cost USF support because this will halt broadband deployment in high-cost areas and leave many rural consumers with substandard broadband service or without any broadband service whatsoever.

19. Require IP/PSTN traffic, specifically interconnected VoIP traffic, to pay applicable tariffed originating and terminating interstate access rates, intrastate access rates, and reciprocal compensation rates, throughout the transitional period and/or until such time as there is no longer a PSTN.

20. Implement intercarrier compensation (IC) reform as part of the National Broadband Plan by allowing state commissions to reduce voluntarily, on a company-by-company basis, intrastate originating and terminating tariffed access rates to interstate tariffed access rate levels within 5 years, and at the same time freeze interstate originating and terminating access rates in order to keep interstate access rates from increasing.

21. Establish a Restructure Mechanism (RM) as part of IC reform that allows RoR carriers to recover lost access revenues not recovered in end-user rates through supplemental ICLS and price-cap carriers to recover lost access revenues not recovered in end-user rates through supplemental IAS.

22. Establish Title II interconnection and network management rules pursuant to Sections 251 and 256 of the Act to allow for the seamless transmission of communications between public broadband Internet access networks.

23. Require vertically-integrated Internet backbone and special access (middle-mile) transport provider rates to be cost-based and non-discriminatory.

24. Expand and make permanent the Universal Service Fund's Rural Health Care Pilot Program. Telemedicine networks made possible by broadband services save lives and will improve the standard of healthcare and life in sparsely populated, rural areas. Telehealth and telemedicine must be a critical component to the National Broadband Plan.

25. Improve the proposed broadband pilot program for low-income customers by setting aside half of the pilot program funds for rural low-income consumers and by clarifying the speed and device availability requirements. Permitting eligible carriers to use the low-income broadband pilot program to offer broadband internet access to part of their service territories, rather than the entire territory, will enhance participation in the pilot program and, consequently, give more rural consumers affordable broadband internet access.

26. Use the Regulatory Flexibility Act (RFA) (5 U.S.C. Section 601 *et seq.*) effectively and adopt alternative rules to reduce the economic burden on small providers of broadband Internet access service, such as RoR rural carriers.

B. LifeLine and Link-Up Low-Income USF Programs Are Critical To Broadband Deployment In Rural Tribal Areas.

Even if the highest speed broadband Internet access were deployed to all of Indian country, affordability will stand in the way of success. Poverty, unemployment and affordability for basic services are key factors that must be considered for a successful broadband plan in Indian Country. The poverty rate of Native Americans is 25%¹² compared to 13.2%¹³ at the national level. Some tribal areas have an estimated unemployment as high as 60-70% compared to the national average of 9%. Furthermore, according to the 2000 Census, Native Americans have incomes that are less than half of the general United States population.¹⁴

Making sure that Native American communities can afford broadband, once broadband is available, is critical. Implementing low-income programs, including LifeLine and Link-up for broadband access could help achieve this goal as it has with telephone penetration. Without LifeLine and Link-Up enhanced support, the vast majority of Native Americans will not be able to afford broadband services and any other efforts for deployment will dead-end at this obstacle.

¹² ^"American Indian and Alaska Native Heritage." Census.gov. US Census Bureau, 1 Sept. 2009. Web. 15 Sept. 2009. <http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/007489.html>.

¹³ <http://www.census.gov/hhes/www/poverty/poverty08/pov08hi.html>

¹⁴ OMHD|Populations|AIAN." Centers for Disease Control and Prevention. Web. 15 Oct. 2009. <<http://www.cdc.gov/omhd/populations/aian/aian.htm>>.

NTCA recommends, as before in its June 8, 2009 National Broadband Plan comments filed in this docket, that the Commission implement the proposed \$300 million per year, three-year pilot program designed to improve broadband Internet access services to low-income Americans by using USF funds through the LifeLine and Link-up programs.¹⁵ NTCA also made several recommendations for this pilot program and how to make it more effective. For example, high demand for the FCC's \$300 million per year for three year program is expected, so the Commission should modify its "first-come, first-served" approach by setting aside half of the funds (\$150 million) for low-income consumers in rural areas. This set-aside will target support more efficiently to rural consumers who may not be sought as quickly and efficiently as their urban counterparts. The first-come, first-served approach will not result in a proportionate distribution to rural consumers due to marketing difficulties.

NTCA recommends that this program be applied and followed in Indian Country as well as in the rest of rural America. If the Commission determines that the low-income pilot program is successful, the Commission should implement a permanent Lifeline/Link-up solution as a part of the Universal Service Fund and the Commission's commitment to deploying affordable broadband access in rural tribal areas.

NTCA's proposed National Broadband Plan for Rural America will benefit rural tribal areas and will allow the Commission to meet its regulatory responsibility, promote the public interest, convenience, and necessity, spur development of new advanced communications technologies and broadband deployment. Most importantly, implementation of NTCA's plan will ensure that consumers living in rural tribal high-cost areas are able to receive evolving high-quality, affordable broadband services throughout the 21st century.

¹⁵ NTCA Comments, *In the Matter of A National Broadband Plan For Our Future*, GN Docket No. 09-51, FCC 09-31 (filed June 8, 2009), pp. 41-48.

IV. SUPPORT IS NEEDED FOR DIGITAL EDUCATION IN RURAL TRIBAL AREAS.

The Commission seeks comment on “what specific tools can the Commission and/or the Tribes utilize to promote digital literacy and education on Tribal lands?”¹⁶ Much like the conversion of analog television to digital television, Native Americans will need education and literacy programs to accompany the “hardware and on-ramps” of connectivity to the Internet. Without an understanding of how broadband technology works or what potential broadband services might offer to build and support healthy, engaged and robust Native American communities, the promise of engagement and participation by Native Americans on issues such as politics, education, economics, health, environment and other civic affairs will remain unrealized. For many it will be the first time they participate in local, Tribal, state or national electoral processes – participation that many already take for granted. NTCA joins NPM and NCAI in supporting the deployment of digital literacy skills as a national priority and encourages the use of funding through the American Reinvestment and Recovery Act of 2009 and the E-Rate universal service fund program for these laudable purposes.

Digital literacy education should not be limited to traditional courses at public or private educational institutions. Also included should be community-centered basic Internet literacy, media production, and e-commerce (how to start a business online) information.

Multimedia skills are essential to the growth, efficiency and responsiveness of the Native-owned radio stations to their listeners both over terrestrial airwaves as well as over the Internet. Assistance with these educational tools will improve broadband adoption rates within tribal areas.

¹⁶ Public Notice, p. 5.

V. CONCLUSION

For these reasons, the Commission should collect and analyze more broadband availability and deployment data on tribal lands. The Commission should address the cost of providing broadband services to tribal and non-tribal broadband service providers by adopting NTCA's National Broadband Plan. Affordability issues for tribal area consumers should be examined using the Commission's \$300 million proposed low-income pilot program for LifeLine and Link-Up tribal area consumers.

Furthermore, support for digital education on tribal areas can come through the Stimulus Act and the USF E-rate programs.

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November 9, 2009

CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Initial Comments of the National Telecommunications Cooperative Association in GN Docket No. 09-47, 09-51, 09-137, NBP Public Notice #5, DA 09-2093, was served on this 9th day of November 2009 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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