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

In the Matter of	)	
	)	
BROADBAND DEPLOYMENT AND ADOPTION ON TRIBAL LANDS	)	GN Docket Nos. 09-47, 09-51, 09-137
	)	
NBP Public Notice # 5	)	

To: The Commission

JOINT REPLY COMMENTS OF NATIVE PUBLIC MEDIA AND
THE NATIONAL CONGRESS OF AMERICAN INDIANS

Native Public Media ("NPM") and the National Congress of American Indians ("NCAI") respectfully submit these Joint Reply Comments in response to the Public Notice released September 23, 2009 ("*Public Notice #5*"). In these Joint Reply Comments, NPM and NCAI formally submit the new study of broadband deployment in Indian Country, entitled "New Media, Technology and Internet Use in Indian Country" ("*NPM New Media Study" or the "Study"*) and also respond to several sets of comments filed in response to *Public Notice #5*.

I. THE *NPM NEW MEDIA STUDY* HIGHLIGHTS BOTH THE DEMAND FOR BROADBAND IN INDIAN COUNTRY AS WELL AS THE CHALLENGES FACED BY TRIBES IN BRINGING BROADBAND TO THEIR PEOPLE

Attached hereto is the *NPM New Media Study*, formally released on November 19, 2009 (after comments were filed in response to *Public Notice #5*). It is the first attempt in history to study the demand for broadband service in Indian Country, and to examine models for broadband deployment on Tribal Lands. Its fundamental findings:

- Contrary to many stereotypes, Native Americans want access to broadband technology, and will go to great and creative lengths to get broadband. Like water, they will find it and find creative and economical ways to use it;
- Broadband usage by Native Americans with access actually outstrips national averages for usage by non-Natives;
- Broadband deployment on Tribal Lands is "community" centric;

- Broadband is most effectively deployed first to major economic anchors in the community that include the Tribal government headquarters, Indian Health Service, Bureau of Indian Affairs, local educational institutions, and computer centers;
- Residential broadband deployment is added once the economic and service core of the community is established; and once the Tribe decides on a plan that is affordable and sustainable to its residents; and
- Therefore, any federal program that emphasizes delivering "last mile" to residential users will fail to meet the community-centric needs on Tribal Lands.

The *NPM New Media Study* is a two-part report, which includes a survey of Native American technology use normed against other national surveys, and case studies of six successful projects exhibiting Digital Excellence in Native America. Part One includes an assessment of existing Internet capacity in Indian Country and was initiated under the direction of NPM in collaboration with the New America Foundation.[1]

The Survey collected basic demographic information about respondents and posed questions about multimedia and internet technology use in order to understand Tribal broadband usage. Questions sought to determine use of the Internet for such purposes as driving directions, political research and blogging. The survey also gathered information regarding access to and cost of various communications services including telephone, computer and cell phone. Respondents were asked about other internet technology and media use, including the posting of music, videos, digital photos, and text messaging.[2] The Survey captured respondents from over 120 Tribes living in 28 states. In total, 196 surveys were completed; 182 of the 196 surveys (93%) were fully

[1] The 54-question survey was administered via Survey Monkey on the internet, beginning in October 2008 and continuing through September 2009. NPM staff also surveyed random conference attendees at the National Congress of American Indians Annual Conference and at the National Indian Gaming Conference, both held in Phoenix, Arizona in 2009.

[2] These data were compared ("normed") with samples from the Pew 2008 Spring Tracking Survey, the Pew Internet and American Life Project's Annual Gadgets Survey, Pew Internet and American Life Project's December 2006 Tracking Survey, and the Pew Internet and American Life Projects Consumer Choice Survey.

completed. Overall, participants were extremely tech savvy. Usage of digital multimedia and communications technologies was much higher than national norms.[3]

Part Two of the *NPM New Media Study* consists of six case studies at exemplar sites that have demonstrated successful use of broadband. Based on these data, the Study recommends replicable models for other Native communities. The case studies compare existing resources, technology use and infrastructure, Tribal involvement in development of technology resources, funding resources, Internet access, and community involvement. Successful projects were characterized by: commitment from Tribal Council, strong leadership, planning, investment in human capital and community technology centers. Each is discussed below.

- **Commitment from Tribal Council.** A key commonality among the successful case study projects was that each evolved organically from the ground up, but with the approval and input from respective Tribal Councils. All project leaders expressed the need for commitment and endorsement from the Tribal Council, yet, for various reasons, sought limited or no involvement from the Tribe in the implementation and the day-to-day operations of the project. Tribal Council involvement is important not to administer the project but because an endorsement from the Tribe is essential to the recognition of the project as an asset to the community. Without approval from the Tribal Council or local governing bodies, it is also difficult if not impossible for projects that require massive towers and prominent hardware to secure the clearances and necessary right-of-way approvals.

- **Strong Leadership.** Driven by project leaders with an understanding of community needs, the projects reviewed in this Study were able to make a substantial progress towards digitizing Native America. The project leader usually understood the community and its needs, the local challenges and players, the technology and infrastructure, and was capable of implementing the vision. In many cases, the leader had the technical expertise to make the project feasible. Where indigenous technical expertise was lacking, communities hired consultants with technical expertise to work with community members. Often these experts, whether consultants or original visionaries, later migrated into positions within the Tribal IT structure.

[3] Respondents spanned a variety of educational backgrounds: Nine percent of survey respondents had a high school degree or less; 41 percent had technical/vocational or some college education; 23 percent had completed college; and 27 percent had an advanced degree or post-graduate training. 69 percent of respondents were employed full-time with an additional 7 percent employed part-time, 6 percent were self-employed, 4 percent were retired and 4 percent were students. The respondent sample was middle income, with a median yearly household income of $40,000-50,000; however, one in three respondents had a total family income of less than $40,000 per year, and one in five respondents had a total family income of less than $30,000 per year.

- **Planning.** Although many of the projects developed organically with little time for due diligence or phased development, the project leaders interviewed strongly recommended substantial early planning for new projects. Even so, each of these projects greatly benefited from a sudden opportunity to which a quick response was required. In some cases, this response meant aggressively seeking funding opportunities, working to provide needed services quickly, or to connect their communities in exciting ways for special events. The need for specific planning based on community need, expertise and funding opportunities is integral to the process of developing a successful network.

- **Investment in Human Capital.** In all of the communities studied, community members implemented the networks. The communities invested in human capital, by investing in their own people. This is nation building at its finest. By investing in their community, especially the youth, communities keep their money local, create new jobs, train members for those jobs, and build physical and human infrastructure, a vibrant Native community and Tribal capacity. This point goes hand-in-hand with the development of community technology centers. Tribes understand that building the technology highway is not enough; digital literacy training results in a trained workforce, leading to substantial community buy-in, support and the use of technology.

- **Community Technology Centers.** In many of the surveyed communities, the establishment of a community technology center has been essential to bridging the digital divide by promoting community engagement and stimulating adoption of the Internet. The community technology centers serve as the hub of project leadership, technical expertise, as well as a planning and meeting place for Tribal citizens. The case studies demonstrate that the community centers provide gateways to the rest of the world for community members. Everyone in the community uses the technology centers, young and old alike, providing ideal locales to teach digital literacy skills. Arguably, community technology centers are the most important component of implementing Internet access and driving use and adoption in Indian Country.

These cases paint a compelling picture of the potential for Native American broadband deployment and adoption of technology. Successful networks highlight a long history of Native self-sufficiency and of creative solutions to the needs of their communities. Faced with limited resources and means, motivated individuals have provided their communities with new ways to connect and communicate with each other. These networks have decreased the costs of providing services to areas where community needs were largely ignored by non-Tribal service providers.

The case studies undermine any ill-conceived assumption that Native communities are uninterested in technology and the Internet. The findings demonstrate that Native America wants access to the communication tools of the 21st Century and will take advantage of available

technology in their community. This study is foundational and contains the first valid and credible data on Internet use among Native Americans. Overall, participants were extremely tech savvy, utilizing digital multimedia and communications technologies at rates that are much higher than national norms. This is particularly impressive given that residents on Tribal Land are being charged more for their Internet Services than the national average. Findings should not be misconstrued to mean that broadband is widely available on Indian lands, but rather that the selected participants have managed to find ways to access broadband resources against difficult odds. Tribal communities that have successfully deployed the Internet in areas unserved by non-Tribal providers provide a model for adoption and deployment. Community-centric approaches are the most successful in Indian Country.

The *NPM New Media Study* recommends that the Federal government:

- Implement a new and robust strategic initiative targeting Tribal communications development.
- Create a Tribal Broadband Plan within the National Broadband Plan.
- Create new means of effectuating consultation and coordination with Tribal governments.
- Undertake Universal Service Fund Reform to recognize the unique characteristic of both Tribal Lands and Tribal cultures.
- Increase access to spectrum and remove barriers to use of spectrum by Tribal Entities.
- Undertake greater federal funding and education, and the creation of a new federal program mechanism to support further connectivity and adoption within Native Nations.
- Support future additional research and analysis.

II. RESPONSE TO OTHER COMMENTS FILED

The NPM New Media Study, as well as the experience of other Tribes, makes a few things quite clear: First, traditional (dominant) telecommunications carriers do not adequately serve Indian Country. There is a much higher reliance on wireless solutions in Indian Country,

especially for receiving important news, weather, and safety alerts.[4] "Always on" Internet is a luxury, not a given, in Indian Country. Cellular service (as predecessor of or analog to wireless broadband) is far from universal in Indian Country. Finally, broadband deployment in Indian Country is far more expensive than in the rest of the United States.

The comments filed by the Nemont Telephone Cooperative, Inc. ("Nemont") bear out many of the findings of *The NPM New Media Study*. Nemont serves the Fort Peck and Crow Reservations in Montana. Nemont randomly surveyed 32 percent of the residents of Brockton, MT. Of those who responded, 89 percent said they were interested in using broadband, and 84 percent were interested in receiving training on broadband use. On the flip side, however, 80 percent of the participants who didn't use broadband indicated that it was because they didn't own a computer. Of those with no computer, 90 percent said they couldn't afford it. 45 percent of those surveyed said they would use Internet services for educations purposes. 24 percent would use Internet services for health-related activities if broadband were available and affordable.[5] The Nemont survey underscores the fact that there is great interest in using broadband in Indian Country, but access and affordability are real barriers.[6]

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[4] Although *The NPM New Media Study* shows that currently much of Indian Country only receives broadband service via wireless solutions, NPM and NCAI in no way support wireless as the optimal solution. NPM and NCAI are technology agnostic, in that we believe that there is no one solution that meets the needs of every broadband deployment on Tribal Lands. Rather, NPM and NCAI support regulatory solutions that ensure that the best approach is taken, rather than the current situation where Tribes are at the mercy of service providers who are often forced into solutions based on regulatory mandates rather than technical merit.

[5] Nemont Comments, p. 5.

[6] NPM and NCAI note the comments of the South Dakota Telecommunications Association ("SDTA"), and its claims that its members cover between 95 and 100 percent of the following Tribal Lands: Yankton Sioux, Sisseton-Wahpeton Sioux, Crow Creek Sioux, Lower Brule Sioux, Cheyenne River Sioux, Standing Rock Sioux, Pine Ridge, and Rosebud Reservations. This penetration cannot be extrapolated to the rest of Indian Country, where broadband deployment on average is far lower. NCAI and NPM also recognize the ongoing efforts of the Tribes of South Dakota to deploy Tribally-owned and operated modern state of the art telephony and broadband services themselves to their communities, including services to their Tribal government and community institutions, as described herein. Several Tribal Nations in South Dakota have

Kodiak Kenai Cable Company ("KKCC") and General Communications, Inc. ("GCI") highlight the current situation of broadband for Alaskan Natives. "KKCC's analysis of available broadband speeds in 139 communities of its proposed service area in western and northern Alaska reveals that, with the possible exception of a handful of regional centers, none of these communities has access to even the minimum upload and download speeds that NTIA and RUS have adopted for the BIP/BTOP broadband infrastructure funding programs they are administering."[7] The cost of bringing broadband to Alaska Natives is staggering. "Ultimately, GCI estimates that bringing terrestrial-based broadband service to even 50 of the rural and remote Alaska communities will require approximately $300 million in capital investment over the next five to ten years."[8] Both KKCC and GCI look to the Federal government, either through the BIP/BTOP or USF programs to assist in this effort, positions NPM and NCAI support.

Qwest and PCIA contend that commercial operators are willing to provide broadband service if the economics can be worked out, and if the FCC were to intervene to allow them better and quicker access to Tribal Lands. NPM and NCAI submit that both are wrong both from a legal and policy standpoint. First, the "last mile" residential service characterized by traditional commercial broadband providers does not work in Indian Country, as demonstrated in *The NPM New Media Study*. Tribal-centric solutions in which carriers work with Tribal Governments and anchor Tribal institutions do work. Unfortunately, that is not how commercial carriers maximize their profits, nor how existing programs such as USF are structured (other than some portions of

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undertaken to address the lack of services to their lands. Of note, the ongoing efforts of the Standing Rock Sioux Tribe, Oglala Sioux Tribe, and Rosebud Sioux Tribe are to be commended. In particular, the Cheyenne River Sioux Tribe Telephone Authority, the oldest Tribal telecommunications company in the nation, in operation for over 60 years, is a paramount example of a successful Tribally owned and operated communications company.

[7] KKCC Comments, p. 4.

[8] GCI Comments, p. 23.

the E-rate Schools and Libraries program). Just throwing money at existing commercial carriers to bring their brand of what they think Indian Country wants benefits only their bottom lines, not the interests of the Federal government or Indian Country. New approaches are needed.

Second, NPM and NCAI strongly object to the notion that the Federal government should intervene to take away from Tribes the ability to protect their sites of religious and cultural significance—their sacred places. The majority commercial communications industries, and their associations would do much better to work directly with Indian Country, increasing their awareness and sensitivities to the needs and cultural priorities of Native Nations in order to develop new success oriented methods of business modeling and deployment planning. Indian County would welcome the opportunity to work directly with communications industry leaders who would be able to genuinely envision a complete new future for Tribal lands in the modern technological world, as the Tribes themselves do. Such a sharing of knowledge and purpose could achieve great and important objectives.

Fundamentally, the protections guaranteed by Section 106 of the National Historical Preservation Act (NHPA)[9] and the National Programmatic Agreement (NPA), should not be eliminated in the name of commercial expediency. NCAI has coordinated with many Tribal institutions on these issues in the past, including with the United South and Eastern Tribes, Inc. (USET), who over the last decade has become a recognized leading inter-Tribal government organization on wireless communications infrastructure related Section 106 matters and the protection of Tribal sacred sites. They worked directly with the Commission in 2003 and 2004 on many similar issues related to Section 106 and commercial mobile radio and broadcast communications tower siting, including a Tower Construction Notification System, a Nationwide

[9] 16 U.S.C. 470f .

Programmatic Agreement for tower siting, and the negotiation and promulgation of a FCC-USET Best Practices Agreement, (Voluntary Best Practices for Expediting the Process of Communications Tower and Antenna Siting Review pursuant to Section 106 of the National Historic Preservation Act) all designed to streamline and effectuate the deployment of communications services nationwide. NCAI coordinated with USET to support their efforts at that time. Recently, several Tribal organizations have expressed concern to NCAI about several elements of a draft conceptual plan related to the current BIP/ TOP ARRA program, including the short time frames in which a new Nationwide Programmatic Agreement is to be finalized and the short time frames within the plan for tribal consultation. Whereas NPM and NCAI wholly support a streamlined, efficient and consistent approach to the deployment of broadband infrastructure undertakings, both on and off Indian Lands, any changes to the implementation of Section 106 cannot impinge on the sovereignty of Tribes, nor undercut the government-to-government consultation envisioned in the NHPA or in the development of this new Nationwide PA. Attached hereto is relevant NCAI Resolution #PSP-09-087c which addresses this matter.

III. CONCLUSION

NPM and NCAI have demonstrated American Indians and Alaska Natives want to utilize technology and that stereotypes to the contrary are bogus. Having endured a past that involved national industries in often misguided federal policies that resulted in the eradication of so much history, culture, heritage and property of the Native Nations, Indian Country cannot support any policy framework that could result in a revisit of such actions in modern mechanisms. NCAI and NPM applaud the many efforts of the Commission, and those of certain communications industry entities, during the past ten years to work with Native Nations to bring their peoples into the modern communications world through regulatory methods that respect and support Tribal self-

determination and cultural protection, while aimed at attracting and supporting potential renewed efforts of the communications industries to work with Native Nations on new deployment strategies and community priorities. NPM and NCAI reiterate the historic steps the FCC should take in this regard:

- Create a formal joint Native Nations/FCC Broadband Taskforce;
- Create a Tribal Office at the Federal Communications Commission;
- Create seats upon the Federal State Joint Board on Universal Service for Tribal Government Representatives;
- Create Under the Universal Service Fund an Enhanced Tribal Lands Broadband Fund Program;
- Revise the E-Rate and Rural Health Care Programs;
- Increase access to spectrum and remove barriers to use of spectrum by Tribal Entities;
- Adopt a Tribal Priority for Spectrum and revise the Tribal Lands Bidding Credit;
- Resolve the White Spaces barrier to entry in International Exclusion Zones; and
- Encourage and fund additional research, data collection, and analysis of broadband deployment in Indian Country.

Respectfully submitted,

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Dated: December 9, 2009