

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket 05-337
To: The Commission		

**COMMENTS OF THE NAVAJO NATION  
TELECOMMUNICATIONS REGULATORY COMMISSION**

The Navajo Nation Telecommunications Regulatory Commission (“NNTRC”), through undersigned counsel, respectfully submits these Comments in response to the Notice of Inquiry and Notice of Proposed Rulemaking, released April 21, 2010 (“CAF NOI/NPRM”). In support of these Comments, NNTRC submits:

**I. BACKGROUND**

The Navajo Nation consists of 17 million acres (26,111 square miles) in portions of three states (Arizona, New Mexico, and Utah). As the chart below indicates, it is comparable in size to West Virginia, which is considered a rural state, ranked 29<sup>th</sup> in population density. The Navajo Nation, were it a state, would rank 48<sup>th</sup> in size; only Montana (6.5 persons per square mile), Wyoming (5.4) and Alaska (1.2) are more rural.<sup>1</sup>

<i>Table 1: Geographic and Pop. Comparison</i>	Navajo Nation	West Virginia
Size (miles squared)	26,111	24,231
Population (in area)	~180,000	1,818,470
Pop per square mile	6.9	75

<sup>1</sup> See [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).

Unemployment consistently hovers at 40 percent on the Navajo Nation, and over 50 percent of the population exists below the poverty line, with per capita incomes just over \$7,000 per year.<sup>2</sup> The Navajo Nation does not know what percentage of its people have basic telephone service, although in 2000 less than 40 percent of the population was estimated to have basic telephone service.<sup>3</sup> Access to reliable and affordable residential broadband service on the Navajo Nation is much less. The best estimate is that less than 10 percent of the population currently subscribes.<sup>4</sup> The Navajo (Diné) people clearly reside on the far side of the “digital divide.”

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>5</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

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<sup>2</sup> See <http://www.navajobusinessdevelopment.com/information/navajo-nation-demographics.html>.

<sup>3</sup> See <http://www.publicagenda.org/files/pdf/CAPE%20Working%20Paper%20Providing%20Support%20to%20Digitally%20Isolated%20Communities.pdf>.

<sup>4</sup> See, National Broadband Plan, p. 23 (“Those living on Tribal lands have very low adoption rates, mainly due to a lack of available infrastructure. What little data exist on broadband deployment in Tribal lands suggest that fewer than 10% of residents on Tribal lands have terrestrial broadband available.” See also, National Broadband Plan, p. 146 (“The Government Accountability Office noted in 2006 that “the rate of Internet subscribership [on Tribal lands] is unknown because no federal survey has been designed to capture this information for Tribal lands.”<sup>133</sup> But, as the FCC has previously observed, “[b]y virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.”)

<sup>5</sup> 21 N.N.C. § 503 (V).

service, develop regulation and to exercise the Navajo Nation's inherent governmental authority over its internal affairs as authorized by the Navajo Nation Council pursuant to NNTRC's Plan of Operation and the Navajo Telecommunications Regulatory Act.<sup>6</sup>

The NNTRC is authorized to establish methods, procedures, schedules, permits, respective fees and reasonable rates of compensation for telecommunication services on the Navajo Nation. The NNTRC is further authorized to establish hearing procedures, investigation procedures and impose fines and other sanctions according to established schedules for violations of all telecommunications law, regulations, rules, orders, and policies on the Navajo Nation. The NNTRC works in collaboration with states, including their Public Regulatory Commissions, to discuss their roles, responsibilities, and respective jurisdictions.

The Telecommunications Regulatory Commission 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. THE HIGH COST, LIFELINE AND LINK-UP PROGRAMS ARE CRITICAL TO THE NAVAJO NATION**

As the Commission considers an overhaul of the Universal Service Fund ("USF"), it must carefully balance the old and the new. Because of the high cost of delivering basic communications service to the Navajo Nation, the High Cost, Lifeline and Link-Up programs are critical to the Navajo. In its efforts to reform USF to support broadband, the FCC must not inadvertently "cut the only wire" going into the Navajo Reservation and undermine Plain Old

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<sup>6</sup> Codified at 2 N.N.C. §§ 3451 -55; 21 N.N.C. §§ 501-529

Telephone Service (POTS). Simply eliminating current telephone programs to provide funding for broadband could further widen the communications gap and the Digital Divide.

The absence of USF funding or the capping of USF on the Navajo Reservation will undermine build out of telecommunication infrastructure into very remote and economically impoverished areas. These areas are the last bastions for traditional Navajo lifestyles and are revered for cultural significance. Providing basic communication services to these areas is essential for safety and quality of life if the Navajos are to retain the Navajo's cultural distinctiveness. If pure economic pressures dictated how service was provided to these areas, the traditional Navajo lifestyle could not be sustained. A dramatic change in USF funding for tribal lands would place significant pressure on the population choosing to live traditionally, and deprive that population of basic communication services needed to preserve a traditional Navajo culture.

The Navajo Nation has developed a strategy for long range sustainable development of telecommunication and broadband for all regions of the Navajo Nation. The initial infrastructure for the strategy has been funded by the NTIA/BTOP middle/last mile grant. The strategy is based on redundant fiber optic and wireless backbone operated by a middle mile nonprofit utility enterprise fully owned by the Navajo Nation. Upon deployment of functional middle mile infrastructure, then private/for-profit last mile carriers can deploy infrastructure to reach end users without middle mile infrastructure costs and risks. That abatement of costs and risks, coupled with the Lifeline and Linkup program, should create an economically viable communications system that will attract a diverse set of providers and provide competition and choice for the Navajo people.

In the *CAF NOI/NPRM*, the Commission seeks input on how to cap legacy high-cost support as it transitions to a Connect America Fund.<sup>7</sup> Whatever route the Commission takes to reign in the costs of the USF program, it must continue to exclude providers of services to Indian Country from such as cap, consistent with prior FCC precedent.<sup>8</sup> To this end, the NNTRC supports the continued exemption from the cap established in the *Interim Cap Order* for carriers providing service to Native Reservations through the *Covered Location Waiver Order*. Until such time that telephone penetration (and eventually, broadband penetration) in Indian Country is on par with the rest of America, the Navajo Nation and other Tribes need the full support of the USF fund.<sup>9</sup> Similarly, any move to eliminate Eligible Telecommunications Carrier (ETC) high-cost support should equally exempt carriers providing services to Indian Country.<sup>10</sup> ETCs, and especially new entrants in Indian Country (including those owned or operated by Tribes or Tribal-controlled corporations), play a vital role in bringing telecommunications services to Indian Country.

### **III. THE COMMISSION SHOULD IMPLEMENT THE PORTIONS OF THE NATIONAL BROADBAND PLAN CONCERNING THEIR TRUST OBLIGATIONS TOWARD TRIBES**

NNTRC supports the Commission's National Broadband Plan ("NBP") in its recognition of tribal sovereignty and the unique trust relationship that exists between the FCC and tribal governments.

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<sup>7</sup> *CAF NOI/NPRM*, ¶¶ 51-52.

<sup>8</sup> *See CAF NOI/NPRM*, n. 115.

<sup>9</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd. 8834, 8850 (¶ 32) (2008) ("*Interim Cap Order*"), *aff'd*, *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009). *See also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 24 FCC Rcd 3369, 3372 (¶ 10) (2009) ("*Covered Location Waiver Order*").

<sup>10</sup> *CAF NOI/NPRM*, ¶ 60, *et seq.* The NNTRC does agree that ETC support should be based on its own costs, and not the costs of the incumbent telephone company.

Tribes are inherently sovereign governments that enjoy a special relationship with the U.S. predicated on the principle of government-to-government interaction. This government-to-government relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands in extending the benefits of broadband to everyone. Any approach to increasing broadband availability and adoption should recognize Tribal sovereignty, autonomy and independence, the importance of consultation with Tribal leaders, the critical role of Tribal anchor institutions, and the community oriented nature of demand aggregation on Tribal lands.<sup>11</sup>

In particular, the NBP calls for coordination with Tribes in USF reform: “Throughout the USF reform process, the FCC should solicit input from Tribal governments on USF matters that impact Tribal lands.”<sup>12</sup> This is because of the fundamental challenges Tribes face in having telecommunications services delivered to its population.

Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high buildout costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding.<sup>13</sup>

In order to turn the NBP into more than just laudatory words, the Commission must follow its own guidance in undertaking USF reform and consult with Tribes. As the regulatory body of the Navajo Nation, the NNTRC stands ready to work with the FCC in this regard.

#### **A. The Navajo Nation Must Have a Larger Say in how Telecommunications Services are Delivered Within Its Lands**

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The Navajo Nation government, and NNTRC in particular, have long been frustrated by their lack of control over the delivery of telecommunications services (including broadband) within the boundaries of the Navajo Nation. While we recognize the critical importance of the

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<sup>11</sup> National Broadband Plan, p. 146 (Box 8-3).

<sup>12</sup> National Broadband Plan, p. 136 and p. 146 (Recommendation 8.5).

<sup>13</sup> National Broadband Plan, p. 146 (footnotes omitted).

USF program in general, and the High Cost and Lifeline/Link-Up programs in particular, we also recognize that reform is necessary. Consistent with Federal policy and the recommendations contained in the NBP, this reform must include the recognition that Tribes have a “place at the table” in the decisions that affect tribal lands.

In the past, FCC regulations have granted substantial subsidies to telecommunications carriers to incentivize them to bring telecommunications services to the Navajo Nation – without including the Navajos in the process. Other than exercising its jurisdiction over telecommunications rights-of-way and other zoning issues, the Navajo Nation has had little say over the services offered, or whether such services are being undertaken in an efficient and economic way.<sup>14</sup> Federal monies have gone directly to carriers who then build, own and control those facilities to their competitive advantage. Meanwhile, the Navajos are left out of the process, without any ownership interest or ability to design those facilities. One of the goals of USF reform must be to restore the sovereign right of the Navajo people to communicate effectively among themselves and with the rest of the world.

#### **B. The Navajo Nation Must Be Able to Enforce Its Collocation Requirements**

It is the policy of the Navajo Nation to collocate antennas on towers wherever possible, both to provide greater efficiency, and to minimize the scarring (and sometimes desecration) of sacred Navajo lands. Carriers receiving USF funds have been largely unwilling to allow collocation on their towers, either to competing carriers, or even to Navajo government facilities, such as Public Safety. These agencies desperately need access to towers to place antennas.

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<sup>14</sup> Indeed, one of the reasons why many telecommunications carriers complain of the high cost of obtaining rights-of-way on Indian lands is precisely because this is the only point in the regulatory process where a Tribe has a say in the project. NNTRC is confident if additional power and jurisdiction were granted by the FCC in the overall licensing process, the rights-of-way process would become much smoother and cheaper for carriers.

In amending the USF program, the FCC must recognize the rights of tribal regulatory bodies, such as the NNTRC, to regulate all aspects of towers located on their lands, including the ability to require carriers to collocate towers and pay reasonable rates. Further, given that these facilities are being paid for with Federal dollars, the Navajo Nation should be granted the right to reserve adequate space and usage rights on these towers as public rights of way, free of charges that only increase the profits of these carriers. This could be accomplished either by granting Tribal governments an ownership interests in all towers erected on their lands, or in the alternative, an easement for governmental use.

**C. The Navajo Nation Must Have Access to Subscriber Data To Determine Whether the Public Interest of the Navajo People are Being Served**

As noted in several places in the NBP, data simply do not exist to determine what basic telephone subscriber rates are in Indian Country, let alone broadband penetration. The reason is that the telecommunications providers who have been the recipients of USF funds have treated that information as proprietary, and have been unwilling to share it with Tribes. NNTRC therefore urges the Commission to condition the grant of any additional USF funds for infrastructure on Indian lands with a carrier's agreement to provide both service availability (accurate mapping) and subscriber data to Tribal governments.<sup>15</sup> Such requirements will also better allow the FCC to consult with Tribes and coordinate the delivery of services to ensure that carriers are meeting their obligations in order to receive USF funds.

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<sup>15</sup> To protect the privacy of its citizens, such data could be aggregated such that personal information is not divulged. However, such data must have sufficient granularity to allow for a full analysis of the areas served and the subscribership patterns. For the Navajo, that would mean that the data must be broken down *at least* to the Chapter House level (the 110 areas within the Navajo Nation that constitute the local Navajo governments).

#### **D. Ultimately, the Navajo Nation Needs Access to Spectrum**

The NBP recognizes the unique challenges faced by many Tribes to ensure that adequate telecommunications services are delivered to their peoples.<sup>16</sup> As the largest single Tribe in the United States in both terms of population and geographic land mass, and whose land consists of rugged terrain and tremendous topographical challenges, the Navajo epitomize this problem. In particular, while the results of the ongoing mapping and “dashboard” efforts may show theoretical availability of terrestrial broadband services on the Navajo Nation, the average Navajo cannot readily purchase broadband service from a local provider. To this end, NNTRC urges the FCC to examine actual build-out patterns of carriers as quickly as possible. If the FCC finds that service is not actually available on tribal lands, it should reclaim that portion of the spectrum that is not being utilized.

The FCC should consider providing additional flexibility and incentives for the build-out of facilities serving Tribal lands. For example, if a licensee has fulfilled its construction requirement but has failed to provide service to Tribal lands, the FCC should consider alternative mechanisms to facilitate Tribal access to such unused spectrum. These mechanisms might include developing rules for re-licensing the unused spectrum to the Tribal community for the provision of services, mandating partitioning or disaggregation of the spectrum, and encouraging the use of secondary market mechanisms for the purpose of deploying services to Tribal areas.<sup>17</sup>

Such a policy would go a long way to ensure that more than just theoretical service is available to Indian Country. NNTRC stands ready to assist the FCC in implementing such a policy as a major driver to deliver actual service to its people.

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<sup>16</sup> National Broadband Plan, p. 97 (“the FCC should evaluate its policies and rules to address obstacles to greater use of spectrum on Tribal lands, including access to spectrum by Tribal communities”).

<sup>17</sup> *Id.*

#### **IV. CONCLUSION**

The NBP for the first time used words like “tribal-centric business models” and “core community institutions” when it discussed deploying broadband to Indian Country. More important, the NBP fully recognized the sovereign rights of Tribes to manage telecommunication infrastructure on their lands. The NNTRC urges the FCC to implement the policies set forth in the NBP by according entities like the NNTRC the authority and jurisdiction necessary to regulate telecommunications services within its borders, as set forth in these Comments.

Respectfully submitted,

#### **NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION**

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