

**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 No. 05-337
_____)	

**COMMENTS OF THE CHEYENNE RIVER SIOUX TRIBE TELEPHONE
AUTHORITY REGARDING NOTICE OF PROPOSED RULEMAKING
REGARDING UNIVERSAL SERVICE REFORM**

I. INTRODUCTION.

On April 21, 2010, the Federal Communications Commission (“Commission”) issued a notice of inquiry and notice of proposed rulemaking seeking comments on reforms for the Universal Service Fund (“USF”) proposed by the Commission in the *Connecting America: The National Broadband Plan* (“National Broadband Plan”). *Notice of Inquiry and Notice of Proposed Rulemaking* ¶ 1 n.2, at 2, *In re Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, WC Dkt. Nos. 10-90, 05-337, GN Dkt. No. 09-51, FCC 10-58 (Apr. 21, 2010) (“NOI and NPRM”). The Commission seeks comment on: 1) controlling the size of the high-cost program, and the imposition of a cap on that program at 2010 levels; and 2) specific steps identified in the National Broadband Plan to cut legacy high-cost support. *See* *Connect America Fund, A National Broadband Plan for Our Future, High-Cost Universal Service Support*, 75 Fed. Reg. 26,906 (May 13, 2010) (“NOI Summary”). The Commission is particularly interested in the views of Indian tribes and their governmentally established entities which deploy telecommunications services within Indian reservation

boundaries. NOI and NPRM ¶ 13, at 9.¹ The Cheyenne River Sioux Tribe Telephone Authority (“CRSTTA”) respectfully submits these comments addressing the NOI and NPRM and the questions posed by the Commission.

II. BACKGROUND.

The CRSTTA is a governmental entity created by the Cheyenne River Sioux Tribe (“Tribe”) by tribal ordinance. Cheyenne River Sioux Tribal Ordinance No. 24 (Sept. 10, 1974); *Memorandum Decision* at 7-8, *Cheyenne River Sioux Tribe Tel. Auth. v. Public Util. Comm’n of S.D.*, Civil No. 95-288 (S.D. Cir. Ct. Feb. 21, 1997), *aff’d*, 595 N.W.2d 604 (S.D. 1999). As such, the CRSTTA has the same governmental attributes as the Tribe, including immunity from suit. Cheyenne River Sioux Tribe Telecommunications Ordinance No. 73, § 5 (June 7, 2007); *Cheyenne River Sioux Tribe* at 28-30 (improper to deny approval of telephone exchange sales to CRSTTA based on its refusal to waive its sovereign immunity); *see also Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 890 (1986) (“The common law sovereign immunity possessed by the Tribe is a necessary corollary to Indian sovereignty and self-governance.” (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978))).

Currently, the CRSTTA maintains 3,051 access lines, which serve 4,600 square miles, including 20 communities. In 2010, the CRSTTA received \$916.68 per loop in USF funding, for

¹The Commission should also include Native Hawaiians with American Indians and Alaska Natives for purposes of this NOI and NPRM because the needs of Native Hawaiians also require high-cost support. Broadband services should be available to all Indian tribes, Alaska Natives and Native Hawaiians at affordable rates in order to achieve higher penetrations rates for these historically under-served people.

a total of \$2,796,790.60 of USF funding for this year. The subsidy has permitted the CRSTTA to maintain its commitment to regular system and technology upgrades, described below.

The CRSTTA has always strived to provide state-of-the-art telecommunications services that are currently available to the customers served by those access lines. In 1999, the company upgraded all five of the telephone exchanges it operates to new Nortel digital switches to be Y2K compliant. In 2000, the CRSTTA added services such as caller identification, Integrated Services Digital Network (“ISDN”) features, and other SS7 offerings. The CRSTTA has installed over 250 miles of fiber optic cable to carry local and long distance traffic throughout the service area. The CRSTTA has installed over 1,800 miles of buried underground copper cable that enabled continuous and reliable service even during the harsh winter weather of 2010 in the South Dakota plains. *See infra* Part III(B). Additionally, the CRSTTA offers internet service, is an authorized Cellular One dealer, provides paging service, and continually works on fiber optic expansion. Through the provision of these diversified services, the CRSTTA has developed working relationships with firms such as AT&T, Qwest, and Western Wireless. The CRSTTA is affiliated with national, state and local industry associations, including the National Telephone Cooperative Association, South Dakota Telephone Association, and National Tribal Telecommunications Association.

The CRSTTA was the first Indian telecommunications company to utilize the loan process from the Rural Electric Administration, now known as the Rural Utility Service (“RUS”). Since the 1970’s, the CRSTTA has utilized the RUS loan process to access millions of dollars of working capital to finance system and infrastructure upgrades. As recently as 2010, and relevant to the instant Broadband Plan comment proceedings, the CRSTTA is in the process of

securing a RUS loan in the amount of \$38 million to facilitate broadband build-out on the Cheyenne River Indian Reservation (“Reservation”). The CRSTTA’s broadband build-out is currently underway. The CRSTTA shares the Commission’s goal of making broadband-based services available to all customers.

III. COMMENTS ON NOTICE OF PROPOSED RULEMAKING.

The CRSTTA supports investment in broadband infrastructure build-out, so long as those services that are critical to tribal health, safety and economic welfare remain available through broadband-based technology, and so long as the Commission continues to provide high-cost support to Indian reservations and Indian country. Tribal telecommunications service providers are unique; they do not rely on market analyses or economic profitability projections as the justification for serving their customers. *See* NOI and NPRM, ¶ 2, at 2 (Indian reservations are “areas where there is no private sector business case to provide broadband and voice services”); *id.* ¶ 50, at 21 (seeking comment on “unique circumstances in Tribal lands that would necessitate a different approach”). Rather, tribal telecommunications service providers serve the Indian reservation communities because tribal governments have determined that the utility is necessary for the health, safety and economic welfare of tribal members, and other providers do not serve the generally remote areas where reservations lie. By definition, Indian reservations do not have sufficient numbers of customers in order to achieve economies of scale that would justify the expenditure of funds for infrastructure build-out. USF and high-cost support, therefore, have been critically important to the provision of telecommunications services in Indian country. Any changes to those funds will have an impact on Indian country telecommunications services.

The experiences of individual Indian tribes are unique, and it is not possible to develop a one-size-fits-all solution to the problem of inadequate telecommunications and data services in Indian country. Federal Communications Comm'n, *Expanding Telecommunications Access in Indian Country* at 3 ("Expanding Access in Indian Country"), available at <http://www.fcc.gov/indians/itibooklet.pdf> ("The FCC recognizes the rights of tribal governments to set their own communications priorities and goals for the welfare of their membership."). Thus, the Commission should consult with individual Indian tribes on a government-to-government basis in order to determine how best to address the Commission's policy determination to make broadband-based services available to the greatest number of American citizens as possible as that decision affects individual Indian tribes. See *In re Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, FCC 00-207 (rel. June 23, 2000). To the extent that the Commission seeks to change the provision of funding assistance from voice-based services only to broadband-based services, it must consult with each Indian tribe that will be affected by such a dramatic change to ensure that critical voice services are not adversely affected thereby.

A. INDIAN SELF-DETERMINATION.

Federal law sets a foundation for Indian self-determination, on both governmental as well as economic levels. Accordingly, Indian tribes, as providers of telecommunications services to their members, are different than other, privately-owned providers because federal law defers to tribal decision makers regarding the provision of services within a particular reservation. Such tribal determination is a critical aspect of tribal self-governance and self-determination, a policy which the federal government has embraced:

It is hereby declared to be the policy of Congress . . . to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.

Indian Financing Act of 1974, 25 U.S.C. § 1451; *see also* Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-62, 463, 464-65, 466-70, 471-73, 476-78, 479; Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450-450n; Indian Health Care Improvement Act, 25 U.S.C. §§ 1601(a)-(b), 1602. Congress has acknowledged that, Indians “will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.” 25 U.S.C. § 450(a)(2); *see id.* § 2501(e) (congressional commitment to “Federal relations with the Indian Nations”).

The Commission also has acknowledged the special deference to tribal self-determination:

We believe it is important at the outset to recognize the special relationship between the federal government and Indian tribes, as set forth in the Constitution of the United States, treaties, statutes, Executive Orders and court decisions. Historically, the United States has recognized the unique sovereign status of Indian tribes, the special trust relationship between the federal government and Indian tribes, and the federal obligation to guarantee the right of Indian tribes to self-government.

Notice of Proposed Rulemaking, ¶ 4, at 3, *In re Extending Wireless Telecommunications Services to Tribal Lands*, WT Dkt. No. 99-266, FCC 99-205 (rel. Aug. 18, 1999) (citing *Memorandum Opinion and Order, In re AB Fillins*, 12 F.C.C.R. 11755, 11759 (1997)).

Clearly, improvements in the provision of telecommunications and data services to Indian people residing in Indian country are beneficial. However, consistent with federal law and the Commission’s own findings, Indian tribes are entitled to substantial deference in the

determination of how to provide those improved telecommunications and data services to their members. Rather than dictate that telecommunications and data services providers must switch to broadband-based services, the Commission should engage in government-to-government consultations with Indian tribes to determine the appropriate technology to serve individual Indian reservations and tribal populations, and also ensure that the proper funding assistance remains available to tribal telecommunications services providers. The CRSTTA has always taken opportunities to improve services, and as stated, has undertaken a substantial broadband build-out on the Reservation. However, the determination to transition to broadband-based services may not be appropriate for other Indian tribes and they may not have made the same decisions that the CRSTTA and the Tribe have. Government-to-government consultation on this critical issue should be, therefore, a fundamental requirement as the Commission pursues its National Broadband Plan.

B. SOCIAL DISPARITY ON INDIAN RESERVATIONS REQUIRES CONTINUED USE AND HIGH-COST SUPPORT BY THE COMMISSION.

Poverty conditions generally characterize the Reservation. Unemployment is 88%, and of the 12% of the tribal population that is employed, 100% has income levels below national poverty guidelines. United States Dep't of the Interior, Bureau of Indian Affairs, Office of Indian Services, *2005 American Indian Population and Labor Force Report* at 8, available at <http://www.bia.gov/idc/groups/public/documents/text/idc-001719.pdf>. Nevertheless, the penetration rate on the Reservation is 92%, meaning that 92% of the households (or 3,051 access lines) on the Reservation receive telecommunications services. Of that, 26.2% (536 DSL subscribers and 264 dial-up subscribers for a total of 800) also receive data services from the CRSTTA.

The CRSTTA's well-developed copper wire infrastructure, which covers 1,800 miles and, therefore, most of the Reservation, has enabled it to provide reliable telephone service even during the worst of environmental conditions. During January 2010, the Reservation experienced severe storms consisting of wind, rain and subzero temperatures creating ice storms which left thousands of Reservation residents without electricity, heat or drinking water. Yet, during the span of two weeks when Reservation residents lacked these basic necessities, because of the CRSTTA's consistent effort to provide state-of-the-art telecommunications services to its customers, Reservation residents never lost telephone service. Because there was no interruption in telephone service, Reservation residents were always able to communicate with other family members and governmental officials. The continuity of the communications system on the Reservation made it possible for Reservation residents to call for help.

The winter of 2010 on the Reservation illustrates the very basic importance of telecommunications services to the Reservation community. Any changes in USF or high-cost support must acknowledge the central role that telecommunications services play in ensuring the health, welfare and economic security of Indian tribes and their members. Accordingly, as the Commission seeks to carry out its National Broadband Plan, it should adopt a program to enable the provision of tribal Lifeline Assistance Program and Link Up America services² using broadband technology in order to ensure that Indian individuals have access to

²Link-Up America helps qualified low-income consumers to access the telephone network, with special programs for consumers on tribal lands. The Lifeline Assistance Program provides qualified telephone subscribers with discounts on monthly charges, including a waiver of the federal subscriber line charge and additional federal support. Low-income consumers on tribal lands are able to receive federal support, and most customers on tribal lands receive basic local telephone service for \$1 per month. Federal Communications Comm'n, <http://www.fcc.gov/indians/internetresources/usac.html> (last visited July 7, 2010).

telecommunications and data services via broadband transmission to the same degree as other American citizens residing elsewhere. Stated another way, the programs designed to ensure that all individuals have access to means of communications for health and safety purposes should apply equally to broadband-based services as they now do to current telecommunications services.

C. HIGH-COST SUPPORT.

The Commission seeks comment on the impact of capping high-cost support at 2010 levels on carriers' rates, and their ability to upgrade infrastructure and technology. NOI Summary, 75 Fed. Reg. at 26,907-08. There is no question that in order to enable the continued provision of state-of-the-art telecommunications and data services on the Reservation specifically, and in Indian country generally, the Commission must continue to provide high-cost support to tribal providers. Such support is the only mechanism by which the Commission can continue to encourage infrastructure investment, such as the transition to broadband-based services. Indian reservations are less populated than other communities, and, therefore, achieving economies of scale to justify infrastructure and technology improvements is not possible. Indian reservations are, therefore, the epitome of "areas that would be unserved without such support or that depend on universal service support for the maintenance of existing broadband service." NOI and NPRM ¶ 1, at 2.

Capping high-cost support will have the effect of stifling continued investment in improved technology in the telecommunications field. Because the increases in USF funding and high-cost support has approximated the increases in the costs of technology improvements, the CRSTTA has been able to maintain its commitment to providing state-of-the-art

telecommunications and data services to its customers. Costs will continue to escalate each year; capping high-cost support will be detrimental the CRSTTA's ability to invest in up-to-date technology to better serve its customers. Accordingly, the CRSTTA does not support capping high-cost support at 2010 levels.

With respect to the provision of telecommunications in Indian country, there is an alternative to capping high-cost support. The establishment of a Tribal Broadband Fund that would provide high-cost support to providers of broadband-based services on Indian reservations and Indian country, Alaska Native villages and corporations, and Native Hawaiian lands would accomplish the Commission's goal of improving penetration rates in Indian country by ensuring the subsidization of telecommunications and data services for Indian, Alaska Native and Native Hawaiian people. *See Expanding Access in Indian Country*; Federal Communications Comm'n, *Get Connected: Promoting Telephone Subscribership in Indian Country*, <http://www.fcc.gov/cgb/consumerfacts/tribalfactsheet.html> (last visited July 7, 2010). The Tribal Broadband Fund would be carved out of the current USF monies and would be dedicated to assisting in the provision of tribal telecommunications and data services. This fund could be increased each year to match increases in the cost of investment in technology improvements, without depriving those providers who serve Indian country the assistance they need, since there is "no private sector business case" incentive in much of Indian country. Tribal telecommunications and data services providers are a small proportion of the total number of telecommunications and data services providers countrywide. Thus, setting aside a Tribal Broadband Fund would not be detrimental to the Commission's overall effort to cut costs in USF and high-cost support, and

would be consistent with the Commission's stated goal to improve the penetration rates and the provision of telecommunications and data services in Indian country.

IV. CONCLUSION.

The CRSTTA supports the Commission's goal of transitioning to broadband-based telecommunications and data services. However, that transition must include government-to-government consultation with individual Indian tribes and must not seek to impose a uniform system on all tribes. In addition, it is critical that a broadband-based system include the funding assistance that tribal telecommunications services providers require in order to ensure that tribal members and reservation residents receive quality services and all services necessary to protect the health, welfare and economic security of Indian tribes and their members. Capping support to tribal providers is not warranted because the providers will not be able to invest in new technology which improves service, and the Commission should consider setting aside a Tribal Broadband Fund to enable continued infrastructure and technology investment on tribal, Alaska Native and Native Hawaiian lands.

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Respectfully submitted,

/s/ Alice E. Walker

By: _____

Alice E. Walker
McELROY, MEYER, WALKER &
CONDON, P.C.
1007 Pearl Street, Suite 220
Boulder, Colorado 80302
Tel: 303- 442-2021 Fax: 303-444-3490
awalker@mmwclaw.com

*Attorneys for the Cheyenne River Sioux
Tribe Telephone Authority*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 12th day of July, 2010, a true and correct copy of the foregoing *Comments of the Cheyenne River Sioux Tribe Telephone Authority Regarding Notice of Proposed Rulemaking Regarding Universal Service Reform* was served via electronic mail on the following:

Best Copy and Printing, Inc.
fcc@bcpiweb.com

/s/ Daryl Ann Vitale
