EX PARTE OR LATE FILED

The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION
PHONE (208) 478-3700
FAX # (208) 237-0797

FORT HALL BUSINESS COUNCIL
P.O. BOX 306
FORT HALL, IDAHO 83203

FILED/ACCEPTED
APR 20 2011
Federal Communications Commission
Office of the Secretary

April 8, 2011

Honorable Julius Genachowski, Chair
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

I am writing in my capacity as Chairman of the Fort Hall Business Council, Shoshone-Bannock Tribes, to respond to the Federal Communications Commission notice of rulemaking FCC-11-13. These are comments of the Shoshone-Bannock Tribes which Council directed our Telecommunications Task Force to develop, and which Council has reviewed and approved by resolution.

The subject of this rulemaking, the Universal Service Fund, is a matter of great interest to those Tribes wishing to exercise self-determination through owning the means of communication on their reservations. You will probably hear from other tribes, as well as inter-tribal organizations. Our comments are attached to this letter. Thank you for the chance to participate in this rulemaking. If you have questions or need more information, you or your staff may contact the coordinator of the Tribes' Telecommunications Task Force, Mr. Jon Norstog, at (208) 478-3934.

Sincerely,

Nathan Small

Nathan Small, Chairman
Shoshone-Bannock Tribes

CC: Chrono/Files
Jon Norstog
Telecom Task Force
Attorneys
Geoffrey Blackwell, FCC Office of Native Affairs and Policy.

No. of Copies rec'd 0
List ABCDE

Comments of the Shoshone-Bannock Tribes on FCC proposed rulemaking FCC-11-13

General

The Shoshone-Bannock Tribes take the position that it is proper and necessary for Tribes as sovereign entities, to exercise control over their lands and resources, and to protect and promote the lives, health and well-being of their members as well as all other people living within their borders. Self-determination and economic development are furthered when Tribes are able to provide and/or regulate communications services within the areas of their jurisdiction.

We feel that the FCC, by acknowledging its government-to-government relationship with Indian tribes, has undertaken to support tribal goals and aspirations to the maximum extent consistent with its own mission, rules and the legal constraints under which it operates. The Shoshone-Bannock Tribes' comments on this proposed rule are directed at making the rule flexible in ways that support Tribal goals for sovereignty and for self-determination in ownership of the means of communication.

The Fort Hall Reservation, like much of Indian Country, is characterized by low personal and family incomes, low population and dispersed settlement patterns. These conditions create a situation in which large telecommunications providers have no incentive to deliver more than the minimum level of service required by federal rules. These are the conditions that would make tribally-owned telcos equally unprofitable. The subject of this proposed rule, the Universal Service Fund, is the key to survival for tribal telcos. The outcome of this rulemaking could make or break the Sho-Ban Telecom enterprise.

The Shoshone-Bannock Tribes based their decision to develop a Tribal telecommunications enterprise on the level of support provided by the Universal; Service Fund through its High-cost loop support, Local Switching Support, and Interstate Common Line Support. These funds were primarily available to small Incumbents operating in rural areas, although some funds were available to competitive ETCs as well.

In making the transition to the Connect America Fund, we take this position: FCC must provide Tribally-owned telcos operating on Indian reservations with at least the level of support provided under the Universal Service Fund. We also support extending this level of support to telcos having a majority ownership by members of the tribe(s) whose reservation they serve. Because of the reality that most Indian reservations are already served by well-entrenched Incumbent carriers, we support the provision of support funding to tribal or Tribal member-owned competitive ETCs at a level comparable to what would be provided to similarly situated Incumbent carrier.

Section-specific comments:

101 Should there be additional requirements placed on ETCs serving Tribal lands?

We support action by FCC to ensure that ETCs serving Indian Reservations are in full compliance with all applicable Tribal laws and regulations, as well as with federal laws governing rights of way.

136 Should there be different timetables for deployment of broadband infrastructure and services on Tribal land? What about tribal land use and permitting requirements?

Telcos and communications service providers are required to comply with the laws of the jurisdictions in which they operate. Problems encountered in complying with tribal law should not be used as an excuse to skirt FCC regulations or seek exceptions to FCC rules.

151 What 'Public Interest' requirements should be placed on carriers operating on Indian lands?

Since each Indian tribe's situation and requirements are different, FCC should take a case-by-case approach in which public interest requirements are set by the affected tribes.

155 Should states be responsible for enforcing federal requirements on Indian lands, or should this be a federal responsibility? Should Indian Tribes be able to impose additional regulatory requirements?

Indian tribes function at a level of sovereignty that does not admit of state regulation. While individual Indian tribes may agree to state regulation as a matter of convenience, such regulation should be an option rather than a requirement. The federal government should be authorized and prepared to enforce all utility regulations on Indian lands, including regulations that may be imposed by Indian tribes. Additionally, FCC should work with Indian tribes, individually or in regional coalitions to develop their own regulatory and enforcement structures.

211 Should carriers on Tribal lands be exempt from the proposed $3,000 per service line cap on Universal Service Fund reimbursement?

Carriers serving only tribal lands or operating entirely within an Indian reservation may require a higher level of reimbursement to break even. The Shoshone-Bannock Tribes therefore supports an exemption form the proposed $3,000 per service line cap to Tribally-owned or Tribal member-owned carriers. We do not support such an exemption for other carriers that happen to serve Tribal lands or Indian reservations.

259 Should support be provided and maintained for competitive ETCs owned, operated or partnering with Tribal governments?

Because many Indian reservations are served by outside-owned Incumbents, it may be necessary for a tribally-owned carrier to begin operation as a competitive carrier. Support should be provided at a level that allows such carriers to operate and to negotiate for acquisition of tribal lands and reservation service areas from non-tribal or non-Indian-owned Incumbent carriers.

For that reason, we also support the concept of a "safety net" as advanced by the Native Telecom Coalition for Broadband. The purpose of the "safety net" is to preserve and advance the interests of Tribal carriers and small, local carriers serving Tribal lands during the transition from Universal Service Fund support to whatever comes afterward.

303 Should there be a setaside for Tribal areas?

If there is a setaside it should be at a level that allows Indian tribes to develop and maintain fully-functioning ILECs.

303 What measures should be put in place to ensure that Universal Service Fund moneys provided to Tribally-owned carriers are used efficiently?

What measures does FCC employ to determine whether non-Tribal carriers are using Universal Service Fund moneys efficiently?

305 How can FCC design a Connect America Fund (CAF) program that responds to the special needs of Indian country and engages Tribal governments as sovereigns?

A CAF that supports Tribally-owned or tribal member-owned carriers, including startup funding, would provide those Tribes desiring to express their sovereignty through ownership of the means of communication with the opportunity to do so.

315 Should Tribes be permitted to establish public interest obligations for CAF recipients.

Yes. With all due respect to the Commission, Indian Tribes may have unique needs based on compelling cultural realities of which a federal commission may be unaware.

320 Should carriers serving Tribal lands be required to have Tribal authorization to provide the required services in order to receive CAF?

Without the ability to withhold authorization, Tribes would be reduced to the role of bystander. The default position of FCC should be that Tribal approval is required before CAF can be awarded to carriers serving Indian lands.

411 Should CAF support be provided to more than one carrier in Tribal lands?

If CAF support is being provided to a non-Indian owned or non-Tribal carrier, CAF support should be available to Tribally-owned or Tribal member-owned carriers from startup.