

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Improving Communications Services for  
Native Nations

CG Docket No. 11-41

**COMMENTS OF AT&T INC.**

AT&T Inc., on behalf of itself and its affiliates (collectively, AT&T) respectfully submits the following comments in response to the Commission’s Notice of Inquiry concerning the challenges faced by Native Nations communities living on Tribal lands regarding the availability of, and subscribership to, broadband and other communications services.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

AT&T supports the Commission’s goal of ensuring broadband access for, and enabling broadband adoption by, every American. This support applies with particular emphasis to those communities in our country whose broadband access and adoption rates lag significantly behind national averages. In this regard, Native Nations communities are no exception: AT&T supports the Commission’s efforts to bring these communities on-line so that they can become full participants in our digital broadband society.

In the *NOI*, the Commission postulates a “unique[ly] problem[atic],” persistent and “deep digital divide” between Native Nations communities on Tribal lands and “the rest of the

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<sup>1</sup> *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, FCC 11-30 (rel. March 4, 2011) (*NOI*).

country.”<sup>2</sup> The Commission states that these “lands . . . usually lack broadband access and many Tribe members lack even basic telephone service,” and that by “virtually any measure,” the communities on Tribal Lands “have historically had less access to telecommunications services than any other segment of the population.”<sup>3</sup> Citing these and similar concerns, the Commission seeks comments on various ideas for closing this gap.

AT&T commends the Commission for highlighting these important issues, but we are nonetheless concerned that there may be a significant disconnect between the concerns expressed in the *NOI* about broadband availability and subscribership on Tribal lands and the actual availability and subscribership data giving rise to those concerns. While there is some data to suggest that broadband availability and subscribership on Tribal lands is lagging national averages, that data has thus far been mostly anecdotal (and in some cases contradictory) and sheds little light on both the extent of the lag and the underlying causes for it. Thus, AT&T believes the Commission’s first step in addressing broadband availability and subscribership issues on Tribal lands should be to publish a more complete and refined analysis of the data it has at its disposal. Armed with such information, policymakers could gain a better understanding of where the most significant availability and subscribership gaps exist, which will then allow them to begin crafting appropriate solutions to address those gaps.

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<sup>2</sup> *NOI* at ¶¶ 1, 2.

<sup>3</sup> *NOI* at ¶ 1 (citations omitted). Citing data from the 2000 Decennial census, the Commission states that “only 67.9 percent of households on Tribal Lands have basic telephone service, compared to the national average of approximately 98 percent.” *Id.* Relevant data from the 2010 decennial census is not yet available; thus, it is not presently known whether, in the decade since the data cited by the Commission was developed, the percentage of households on Tribal lands with basic phone service is higher, lower or the same as 2000. If the data is significantly different, particularly if it indicates higher adoption, the data might yield useful insights about the efficacy of certain Commission programs that have been employed to improve telephone service subscribership on Tribal lands.

In addition, as the Commission continues to address issues relating to communications services on Tribal lands, it should bear in mind that some of the underlying causes for lags in availability or subscribership are not necessarily unique to those communities. To the extent a particular Tribal land is located in a large rural area that covers rugged terrain with a low population density, the costs of providing communications services are likely to be significantly higher than in other areas of the country, which could deter deployment. Similarly, to the extent the population on a given Tribal land has certain demographic characteristics that fall significantly below national averages (e.g., income, education, computer ownership, digital literacy), those characteristics may pose a challenge to increased subscribership.

In many cases there will be common solutions to these challenges (e.g., high-cost and low income universal service support, digital literacy education and training). Although these solutions may need to be tailored to address the needs of specific communities (particularly on the adoption side of the equation), the Commission should exercise caution in creating brand new, stand-alone programs to address broadband on Tribal lands when existing or planned programs can be adapted for those areas. While well meaning, such stand-alone programs require significant time and resources to operationalize, are often susceptible to unforeseen administrative delays and costs, and may produce less effective and less timely solutions to the immediate challenges facing the intended beneficiaries.

## DISCUSSION

### **I. The Commission Should Develop More Comprehensive Data About Broadband Availability and Subscribership on Tribal Lands Before Addressing Perceived Gaps in Those Areas.**

Approximately 4.3 million American Indians and Alaska Natives are living in the United States today.<sup>4</sup> The Native Nations communities of which these persons are a part consist of more than 565 federally recognized Tribes, each with their own separate governance structure, sovereignty and political integrity.<sup>5</sup> Roughly one-third of this population (*i.e.*, around 1.3 million people) live on certain portions of approximately 56 million acres of U.S. terrain (excluding Alaska) described as “Tribal lands.”<sup>6</sup>

Despite the significant number of people living in these Tribal lands, there is little publicly available information about the availability of, and subscribership to, broadband services in these areas. In paragraph 1 of the *NOI*, for example, the Commission states that, although there is “no solid data on broadband deployment on Tribal lands, availability is estimated at less than ten percent.”<sup>7</sup> The underlying data upon which the Commission relied to arrive at this “estimate,” however, do not appear to support the 10 percent figure cited in the *NOI* for at least two reasons.

First, the Commission and certain commenters upon whom it relies, may have inadvertently conflated penetration data (which is a measure of broadband adoption) with

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<sup>4</sup> *We the People: American Indians and Alaska Natives in the United States*, U.S. Census Bureau, at 1 (Feb. 2006).

<sup>5</sup> *NOI* at ¶ 4.

<sup>6</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rulemaking, FCC 10-24, ¶ 8 (released Feb. 3, 2010).

<sup>7</sup> *NOI* at ¶ 2. Despite a lack of “solid data” the Commission later declares that the “broadband availability rate” on Tribal lands “*is less than 10 percent.*” *Id.* at ¶ 17 (emphasis added).

availability data (which is a measure of broadband deployment). Specifically, the Commission cites the National Broadband Plan (NBP) as support for the 10 percent Tribal lands broadband availability figure.<sup>8</sup> The NBP, in turn, cites comments of various parties who either use the term “penetration” to describe the 10 percent figure (or a similarly low percentage), or use the term “penetration” in conjunction with the term “deployment,” so as to create confusion as to which metric they are referring.<sup>9</sup>

In particular, one commenter cited by the Commission describes a “broadband *penetration*” rate on Tribal lands as being “as low as five percent (5%).”<sup>10</sup> Another commenter cited by the Commission states that “Broadband deployment on Tribal Lands is at less than a 10 percent *penetration* rate.”<sup>11</sup> And yet another commenter cited by the Commission states that “broadband deployment in Indian Country is at less than a 10 percent *penetration* rate.”<sup>12</sup> Thus, it appears that the commenters cited by the Commission may, in fact, have been referring to the adoption of broadband services on Tribal lands, not the availability of those services.<sup>13</sup>

Second, in its most recent report on the status of broadband deployment in the U.S., the Commission observed that the subscription rate for “768kbps/200kbps” broadband service is 21.5% on Tribal lands.<sup>14</sup> This subscription rate, which is based on Form 477 data combined with

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<sup>8</sup> *NOI* at ¶¶ 1, 17.

<sup>9</sup> *Connecting America: The National Broadband Plan*, Federal Communications Commission, at 152, Box 8-4; 163 n. 132 (March 14, 2010) (NBP).

<sup>10</sup> NBP at 163 n. 132 (emphasis added).

<sup>11</sup> NBP at 163 n. 132 (emphasis added).

<sup>12</sup> NBP at 163 n. 132 (emphasis added).

<sup>13</sup> Based on our own internal analysis of the Census-designated Tribal lands in our wireline service territory, AT&T estimates that it makes wireline broadband Internet access service available to a substantial majority of the living units on those Tribal lands.

<sup>14</sup> *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data*

population data from the Census Bureau, varies significantly depending on which type of Tribal land is at issue – from a low of 17 percent on federally recognized American Indian reservations that have associated off-reservation trust lands to a high of 44.6 percent in Alaskan Native Village Statistical Areas.<sup>15</sup> Considering that the national broadband subscription rate lags *behind* the national broadband availability rate by approximately 30 percentage points,<sup>16</sup> it seems highly implausible that the broadband subscription rate on Tribal lands would *exceed* the broadband availability rate on Tribal lands, let alone by such a large margin.

In light of the ambiguity and inconsistency in the broadband data for Tribal lands discussed in the *NOI*, it would be premature for the Commission to make definitive policy decisions regarding efforts to increase broadband availability and subscription on Tribal lands at this juncture. Instead, the Commission should first analyze and publish the data it already has at its disposal in order to provide interested parties with a more comprehensive view of broadband availability and subscribership on Tribal lands, which, in turn, will facilitate a more informed policymaking effort by the Commission. Specifically, the Commission has access to (i) availability data from the National Telecommunications and Information Administration’s broadband mapping program, (ii) subscribership data from the Commission’s Form 477 data

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*Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, FCC 11-78, at Table 8 (released May 20, 2011) (Seventh Broadband Report). Although not clear from Table 8 itself, AT&T understands this Table to be describing the percentage of subscriptions on Tribal lands to broadband services with the speeds at *or faster than* the speeds listed in the individual columns in the chart. Our understanding is based on two observations. First, a similar chart immediately preceding Table 8 (Table 7), which covers all areas of the country, includes the phrase “or faster” in the description. Second, if Table 8 were not interpreted in this same fashion, it would suggest that broadband subscription rates substantially exceed 100% in the U.S. *See* Table 8, Line 1 (listing subscription rates for only the three lowest speed tiers as totaling 106.7 percent).

<sup>15</sup> Seventh Broadband Report at Table 8.

<sup>16</sup> NBP at 20 (observing that 95 percent of households have access to broadband Internet access service); NBP at 23 (stating that approximately two-thirds of adults have adopted broadband at home).

collection program, (iii) population and other demographic data from the Census Bureau, and (iv) other data collected in the *National Broadband Plan* proceedings. While such data may not be 100 percent accurate or complete in every area, it should at least provide a general sense of the *relative* differences in availability and subscribership between different Tribal lands, and between a given Tribal land and national averages. Moreover, when combined with Census Bureau demographic data, such comparisons should also yield important insights about the key characteristics of Tribal lands that fall below the national average, and those that are at or above the national average. Those insights, in turn, can lead to appropriately tailored responses to address availability and/or subscribership gaps on Tribal lands.

## **II. The Broadband Challenges Facing Native Nations Have Many of the Same Root Causes Found in Other Communities in the U.S.**

As part of its effort to close the broadband gap on Tribal lands, the Commission is considering multiple options, including the establishment of a new, specially designed universal service fund to support broadband deployment in those areas. While the Commission's desire to increase broadband availability and subscribership on Tribal lands is commendable, AT&T encourages the Commission to keep in mind that many of the broadband challenges facing communities on Tribal lands are not unique to those communities and, thus, the appropriate solutions need not await the creation of Tribal-specific programs.

Tribal land-based communities largely reside on "rural, remote, rugged terrain and areas that are not connected to a road system that increase the cost of installing infrastructure."<sup>17</sup> Like other rural areas of the country, the difficult terrain and low population densities in these Tribal lands result in higher costs to build and maintain broadband networks. Similarly, the populations living in these communities, like other rural communities, often have key demographic

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<sup>17</sup> *NOI* at ¶ 2.

characteristics that fall below the national averages for other communities that have higher broadband subscription rates (e.g., income, education, computer ownership).<sup>18</sup>

Thus, while the broadband challenges on Tribal lands may be more acute than in some other rural areas of the country, the most effective solutions to those challenges are likely to involve the same kinds of programs used in other rural areas. For example, as the Commission's experience has shown, providing targeted universal service support in high-cost areas of the country can be an effective way to increase the deployment of communications services to rural populations. Likewise, providing targeted Lifeline and Link-up support to low-income consumers can be an effective way to increase subscription to communications services among lower income populations.

While broadband challenges on Tribal lands may, in some cases, require the Commission to increase the magnitude of universal service support and other assistance in order to address particular localized issues, AT&T would encourage the Commission to work as much as possible within the framework it adopts for encouraging broadband deployment and adoption in rural areas more generally.<sup>19</sup> Although well-intentioned, the creation of new, stand-alone programs to

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<sup>18</sup> See, e.g., *We the People: American Indians and Alaska Natives in the United States*, U.S. Census Bureau, at 3 (comparison of median income for American Indian and Alaska Native households to all households); *Digital Nation: Expanding Internet Usage*, NTIA, at 8-11 (Feb. 2011) (data showing home Internet usage by race, income, and education); *Are We Really A Nation Online? Ethnic and Racial Disparities in Access to Technology and Their Consequences*, Robert W. Fairlie (Sept. 20, 2005) (examining income, education and computer ownership in relation to Internet usage by Native Americans and other ethnic and racial groups), at <http://www.civilrights.org/publications/nation-online/digitaldivide.pdf>.

<sup>19</sup> See, e.g., AT&T's *National Broadband Plan* Comments (June 8, 2009) at viii ("Even in the best economic environment, there will be some remote areas of the nation where the private sector alone will not be able to shoulder the financial burdens of deploying broadband facilities required to achieve 100 percent broadband access. In those circumstances, the government should provide targeted assistance to ensure that every potential user has access to at least a baseline level of broadband capability. . . . As AT&T and others have urged, the Commission should act on pending proposals to reform the universal service program (and the related intercarrier compensation regime) to provide support for broadband

address the needs of particular populations are likely to result in additional complexity and administrative delays as the programs are created, operationalized, and overseen (e.g., audited) by policymakers at the Commission and/or in Congress. The net result is that the support and other assistance afforded by these programs may not reach its intended beneficiaries in a timely or cost-effective manner.

For similar reasons, AT&T urges the Commission to pursue “a single definition of Tribal lands [and Native Nations] for all communications-related regulation.”<sup>20</sup> The numerous federally recognized definitions identifying various Native Nations and Tribal lands makes it challenging for communications service providers to understand and navigate the complex jurisdictional, political and governance issues associated with providing service in these areas. Those challenges may become even more pronounced if the Commission were to use multiple different definitions of Native Nations or Tribal lands in adopting various universal support mechanisms and/or other programs to address broadband availability and subscribership in those areas. Accordingly, AT&T recommends that, to the greatest extent possible, the Commission should adopt a single definition of Tribal lands for all communications-related regulation.

Respectfully submitted,

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deployment. . . . [T]he Commission’s E-Rate and rural health-care programs can both be modified to enhance their roles in promoting broadband adoption and deployment.”)

<sup>20</sup> *NOI* at ¶¶ 21-22.