

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

In the Matter of)
)
Improving Communications Services for) CG Docket No. 11-41
Native Nations)
)
)

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS**

On March 4, 2011, the Federal Communications Commission (FCC or Commission) released a Notice of Inquiry seeking comment on a wide range of issues related to improving communications services for Native Nations, including a Native Nations Priority, a Native Nations Broadband Fund, adoption and utilization of communications services on Tribal lands, the need for a uniform definition of Tribal lands to be used agency-wide in rulemakings, and the need to strengthen consultation and coordination with Native Nations.¹ On April 5, 2011, a summary of the *Native Nations NOI* was published in the Federal Register.² Later on May 15, 2011, the FCC revised the comment deadlines to June 20, 2011 for initial comments and August 4, 2011 for replies.³ Approximately 27 sets of initial comments were filed.⁴

¹ *In the Matter of Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (*Native Nations NOI*), available online at: http://transition.fcc.gov/Daily_Releases/Daily_Digest/2011/dd110307.html.

² See 76 Fed. Reg. 18759 (April 5, 2011), online at: <http://edocket.access.gpo.gov/2011/2011-7961.htm>.

³ See, *Improving Communications Services for Native Nations*, Order, DA 11-873, CG Docket No. 11-41, (rel. May 16, 2011), available online at: <http://www.fcc.gov/document/comment-deadlines-extended-notice-inquiry-improving-communications-services-native-nations>.

⁴ Warm Springs Telecommunications (6/24/11); Matthew R. Rantanen TDV (6/23/11); USDA Rural Utilities Service View (6/20/11); South Dakota Telecommunications Association (6/20/11); Satellite Broadband Providers (DISH, EchoStar, Hughes, ViaSat, WildBlue) Joint Comments (6/20/11); Robin Danner CNHA (6/21/11); PCIA-The Wireless Infrastructure Association (6/20/11); Native Public Media and the National Congress of American

Subsequently, on July 20, 2011, the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution relevant to the *Native Nations NOI* titled ***“Resolution Supporting a Low-Income Broadband Service Adoption Program.”***⁵

NARUC respectfully submits the following reply comments, based on that resolution.

DISCUSSION

NARUC is a nonprofit organization founded in 1889. Its members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,⁶ energy, and water utilities. Congress and the courts⁷ have consistently recognized NARUC as a proper entity to represent the collective interests of the State public utility commissions. In the Federal Telecommunications Act,⁸ Congress references NARUC as “the national organization of the

Indians (6/20/11); National Tribal Telecommunications Association NTTA (6/20/11); CenturyLink (6/20/11); Mark Plank(6/20/11); Keola (6/20/11); Information Satellite Industry Association (6/20/11); Native Telecom Coalition for Broadband View (6/20/11); LightSquared Subsidiary LLC (6/20/11); Globalstar, Inc. (6/20/11); Gila River Telecommunications, Inc. (6/20/11); Information Association of Public Television Stations (6/20/11); American Library Association View (6/20/11); Alexicon Telecommunications Consulting (6/20/11); AT&T (6/20/11); Alapaki Nahale-a (6/20/11); Iowa Tribe of Oklahoma Office of Native Affairs and Policy (6/20/11); Keith Modglin (5/31/11); Colville Business council (5/12/11); Winnebago Tribe of Nebraska (5/11/11); Patricia M Zell (5/6/11); and Montana Telecommunications Association (5/03/11).

⁵ A copy of the resolution is appended to this letter. It is also available online at: <http://www.naruc.org/Resolutions/Resolution%20Supporting%20a%20Low-Income%20Broadband%20Adoption%20Program.pdf>.

⁶ NARUC’s member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competing local exchange carriers (LECs). These commissions are obligated to ensure that local phone service supplied by the incumbent LECs is provided universally at just and reasonable rates. They have a further interest to encourage LECs to take the steps necessary to allow unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. See, e.g., 47 U.S.C. § 252 (1996).

⁷ See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff’d 672 F.2d 469 (5th Cir. 1982), aff’d en banc on reh’g, 702 F.2d 532 (5th Cir. 1983), rev’d on other grounds, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

⁸ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁹

The *Native Nations NOI* asked for input on a number of critical issues, including (1) a new Native Nations Broadband Fund to support communications deployment-related priorities and needs in Native Nations, (2) sustainable Native Nations deployment models and whether there are specific characteristics and needs within Native Nations that would reveal potential best practices and/or successful techniques for broadband adoption and utilization, (3) specific broadband-based opportunities to address the public safety and interoperability challenges on Tribal lands, such as the broad lack of 911 and E-911 services, (4) obstacles and specific cost, equipment, and market entry issues related to satellite-based communications services for Native Nations, and (5) needs and challenges faced by persons with disabilities on Tribal lands and ways in which to include Native persons with disabilities in all matters critical to providing access to broadband and other communications services on Tribal lands.

Significantly, the FCC’s *2010 Broadband Consumer Survey*¹⁰ found that about one-third of Americans do not use broadband Internet access service at home; and that a variety of factors drive non-adoption, including initial costs of equipment, monthly service costs, digital literacy, and relevance.

⁹ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.)

¹⁰ See, John Horrigan, *Broadband Adoption and Use in America* (OBI Working Paper Series No. 1, Feb. 2010), available online at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296442A1.pdf.

In the related FCC Notice of Proposed Rulemaking, released in the proceeding captioned *In the matter of Lifeline and Link-Up Reform and Modernization*, FCC 11-32 (rel. March 4, 2011), online at http://transition.fcc.gov/Daily_Releases/Daily_Digest/2011/dd110307.html, the FCC proposes to launch multiple Lifeline/Link-Up Broadband Service Pilot Program projects supported by the \$1.2 billion federal Universal Service Fund's Low-Income Program, and suggests that these pilot program projects may be able to play an important, if limited role, in enabling public-private partnerships to help address the national broadband service adoption challenge. NARUC has long endorsed increasing broadband service adoption among low-income consumers through "the establishment of a three-year federal Lifeline and Link-Up Pilot Program for broadband Internet access services and enabling access devices."¹¹ However, participants in such Lifeline/Link-Up Broadband Service Pilot Program could incur additional costs or otherwise be penalized if required to obtain local telephone service only from Pilot Program-eligible broadband service providers.

The *Native Nations NOI* raises similar issues. There, the FCC asks if it should implement a recommendation (#8.18) from the 2010 National Broadband Plan that called on Congress to establish a Tribal Broadband Fund to be used for a variety of purposes, including "to provide small, targeted grants on an expedited basis for Internet access and adoption programs." The

¹¹ See, NARUC's February 18, 2009 *Resolution on Lifeline and Link-Up Program Support for Broadband Internet Access Services and Devices*, which asks the FCC to assure that: (1) the Pilot Program will be open to all broadband Internet access service providers, irrespective of whether they are an ETC for existing Lifeline and Link-Up programs, and that they will not be automatically designated as ETCs for other universal service support programs; (2) any broadband Internet access service provider which receives universal service support for other FCC broadband programs within a State will also be required to participate in the Pilot Program within that State; and (3) all broadband Internet access service providers which are eligible to participate in any FCC broadband program, including the Pilot Program, be required to make equitable financial contributions to support such programs. It also asks the FCC to direct the Federal-State Joint Board on Universal Service to conduct an evaluation of the Pilot Program and that because of the States' significant experience in administering Lifeline and Link-Up programs for local telephone service the FCC should modify its proposed Pilot Program to allow States to administer the eligibility and verification procedures for low income participants in the Pilot Program. The resolution is online at: <http://www.naruc.org/Resolutions/TC%20Resolution%20on%20Lifeline%20and%20Link-Up%20Program%20Support%20for%20Broadband%20Internet%20Access%20Services%20and%20Devices.pdf>.

FCC did not propose a means to finance the Native Nations Broadband Fund, however, some NOI commenters have assumed that the FCC intends to draw financial support for the new Fund from the federal Universal Service Fund.

Lifeline/Link-Up Broadband Service Pilot Program participants must not be required to change local telephone service providers, purchase bundled broadband and voice services or otherwise are penalized in order to obtain Lifeline and Link-Up broadband services and enabling access device. Such penalties can only decrease the likelihood of a successful deployment initiative and discourage those who need the assistance the most from even applying to participate.

Moreover, the Lifeline/Link-Up Broadband Service Pilot Program should distribute Universal Service Fund financial support to service providers in a similar manner to the distribution procedures of the current Lifeline/Link-Up Program for local telephone service. By using that technologically neutral approach, the FCC will not favor any particular service provider. The FCC should take the steps necessary to assure the existing Lifeline/Link-up consumer protections and program integrity elements are also integrated into each pilot program.

As the most recent economic news, and the debate over the debt ceiling illustrates, this is no time to increase the costs of any federal program. NARUC's resolution, therefore, specifically urges the FCC, on behalf of the Native Nations, and States to work within the existing federal Universal Service Fund's budget for these programs.

Finally, to gain the full benefits that pilots can convey, there should be more than one experiment. NARUC respectfully suggests that the FCC, working with the States "jointly establish at least one Lifeline/Link-Up Broadband Service Pilot Program project in each of the five NARUC affiliated regulatory conference regions that will include digital literacy and

outreach components and that will defray a meaningful amount of the program participants' average cost for the installation/activation and monthly charges for broadband service and acquisition of enabling access devices.”

CONCLUSION

The FCC should expedite broadband lifeline linkup pilot programs in at least five regions of the country, assure that there are no impediments for the targeted customers to participate, work with States to implement the programs, utilize the existing program as a model for the pilots to assure that existing consumer/program integrity protections are included, utilize the expertise of the Joint Board to evaluate these programs, and work within the existing federal universal service program budget.

Respectfully Submitted,

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August 4, 2011

Resolution Supporting a Low-Income Broadband Service Adoption Program

WHEREAS, The Federal Communications Commission’s (FCC) 2010 Broadband Consumer Survey found that about one-third of Americans do not use broadband Internet access service at home; and that a variety of factors drive non-adoption, including initial costs of equipment, monthly service costs, digital literacy, and relevance; *and*

WHEREAS, As stated in the FCC’s Notice of Proposed Rulemaking on Lifeline and Link-Up Reform and Modernization (Released: March 4, 2011; FCC 11-32; “Lifeline NPRM”), the Pew Internet Research Center’s “Home Broadband 2010 Report” found that the rate of broadband service adoption has slowed dramatically; *and*

WHEREAS, The Lifeline NPRM proposes to launch multiple Lifeline/Link-Up Broadband Service Pilot Program projects supported by the \$1.2 billion federal Universal Service Fund’s Low-Income Program, and suggests that these pilot program projects may be able to play an important, if limited role, in enabling public-private partnerships to help address the national broadband service adoption challenge; *and*

WHEREAS, The Lifeline/Link-Up Broadband Service Pilot Program participants may incur additional costs or otherwise be penalized if required to obtain local telephone service from the Pilot Program-eligible broadband service providers; *and*

WHEREAS, The FCC sought comment in a Notice of Inquiry (Released: March 4, 2011; FCC 11-30; “Native Nations Broadband Fund NOI”) about whether the FCC, pursuant to existing statutory authority, should implement a recommendation (#8.18) from the 2010 National Broadband Plan that called on Congress to establish a Tribal Broadband Fund to be used for a variety of purposes, including “to provide small, targeted grants on an expedited basis for Internet access and adoption programs;” *and*

WHEREAS, The FCC did not propose in the Native Nations Broadband Fund NOI a means to finance the Native Nations Broadband Fund, however, some NOI commenters have assumed that the FCC intends to draw financial support for the new Fund from the federal Universal Service Fund; *and*

WHEREAS, The Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2009 Winter Committee Meetings in Washington, D.C., adopted a Resolution that fully supports increasing broadband service adoption among low-income consumers through “the establishment of a three-year federal Lifeline and Link-Up Pilot Program for broadband Internet access services and enabling access devices;” *now, therefore be it*

RESOLVED, That NARUC urges the FCC, on behalf of the Native Nations, and the States to work within the existing federal Universal Service Fund’s budget in order to improve broadband service adoption in urban and rural areas and for Native Nations communities located on Tribal lands through coordinated Lifeline and Link-Up Broadband Service Pilot Program projects; *and be it further*

RESOLVED, That the FCC should require that Lifeline/Link-Up Broadband Service Pilot Program participants are not required to change local telephone service providers, purchase bundled broadband and voice services or otherwise are penalized in order to obtain Lifeline and Link-Up broadband services and enabling access devices; *and be it further*

RESOLVED, That the FCC, on behalf of the Native Nations, and the States jointly establish at least one Lifeline/Link-Up Broadband Service Pilot Program project in each of the five NARUC affiliated regulatory conference regions that will include digital literacy and outreach components and that will defray a meaningful amount of the program participants' average cost for the installation/activation and monthly charges for broadband service and acquisition of enabling access devices; *and be it further*

RESOLVED, That the Lifeline/Link-Up Broadband Service Pilot Program will distribute Universal Service Fund financial support to service providers in a similar manner to the distribution procedures of the current Lifeline/Link-Up Program for local telephone service, recognizing that such approach should be technologically neutral and provide similar consumer protections as those provided currently to participants in the Lifeline/Link-Up Program for local telephone service.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors July 20, 2011