

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

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

**REPLY COMMENTS OF THE  
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

Richard D. Coit  
Executive Director / General Counsel

Benjamin H. Dickens, Jr.  
Mary J. Sisak  
Salvatore Taillefer, Jr.

South Dakota Telecommunications  
Association  
P.O. Box 57  
Pierre, SD 57501

Blooston, Mordkofsky, Dickens,  
Duffy, & Prendergast, LLP  
2120 L Street NW, Suite 300  
Washington, DC 20037  
(202) 659-0830 (Tel)  
(202) 828-5568 (Fax)

Filed August 4, 2011

## Table of Contents

Executive Summary .....	iii
I. Accurate and Comprehensive Data on Broadband Availability Should Be Developed Before Proceeding Further .....	1
II. The Current Record Does Not Sufficiently Support the Establishment of Separate and Unique Broadband Programs for Native Nations .....	4
III. Lifeline and Linkup should be Expanded to Broadband Service .....	6
IV. Expanding Tribal Authority in the ETC Designation Process Conflicts with the Act .....	7
V. The Definition of Tribal Land Should Not Be Expanded.....	8
VI. Conclusion .....	9

## Executive Summary

SDTA believes that comments filed in this proceeding do not provide a factual basis for proceeding further relative to many of the Notice of Inquiry (NOI) proposals. The comments generally show that a number of the Commission's central conclusions in the *NOI* concerning the extent to which broadband facilities and service are available on Tribal lands are not supported by the data. Even a cursory review of the data underlying the National Telecommunications and Information Administration's (NTIA) "National Broadband Map" (NBM) indicates that the access to broadband on Tribal lands is far greater than the 10 percent access or availability number referenced in the NOI.

The data in the current record gives reason to question whether the problems with broadband access and subscribership on Tribal Lands are sufficiently unique to justify the establishment of completely separate and unique universal service programs. In many respects, the Native Nations face many of the same broadband challenges that are faced generally within rural America. The existing high-cost universal service funding mechanisms, contrary to what is portrayed by some parties, have helped tremendously in making broadband services available throughout Tribal areas and SDTA believes that continued sufficient funding under these mechanism would be the best approach to not only providing for further broadband deployment in these areas, but also to maintaining the already existing networks and services. Furthermore, although there are vast differences existing among Native Nations relative to the extent of broadband availability and other characteristics, these differences go virtually unrecognized in the NOI. The determination of how best to ensure broadband access for Native Nations is complex yet the proposals outlined in the NOI seem to be based on an assumed unified approach for all Native Nations or Tribal areas.

Regarding programs to increase broadband subscribership for Native Nations, SDTA believes much could be achieved by simply expanding the scope of the existing Lifeline and Link-Up programs to include funding for broadband service discounts. In most reservation areas in South Dakota, broadband service is available but is not used because the services or equipment needed to utilize broadband services are not deemed affordable. These affordability issues could in large part be addressed by expanding the Commission's Lifeline and Link-Up assistance programs to include broadband services.

SDTA continues to believe that imposing a requirement that each of the SDTA member companies also submit their eligible telecommunications carrier (ETC) related operations to the jurisdiction of the Tribal government directly conflicts with the provisions in the Act. Congress expressly placed the authority to designate ETCs within the jurisdiction of the State commissions or, in the case of a common carrier that is not subject to the jurisdiction of a State commission, the FCC's jurisdiction. The South Dakota Public Utilities Commission has authority over the SDTA member companies as ETCs, for the entirety of their service areas.

Finally, SDTA believes it is premature to change the definition of Tribal lands in the universal service context. The Commission has not yet analyzed the available broadband mapping data (either the NTIA NBM, or any of the existing state maps) or obtained sufficient other data to draw any reliable conclusions about the extent of broadband service on Tribal lands or the nature of any problems in connection with broadband service unique to Native Nations. While SDTA generally supports efforts to promote administrative ease, in this case, an expansion of the definition of Tribal lands could have unintended consequences that outweigh any benefit of administrative ease.

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

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

**REPLY COMMENTS OF THE  
SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

The South Dakota Telecommunications Association (SDTA)<sup>1</sup> hereby files reply comments in connection with the Commission’s Notice of Inquiry (*NOI*)<sup>2</sup> concerning communications services for Native Nations. As shown herein, SDTA supports the comments filed showing that additional information is needed before proceeding further relative to any of the proposals in the *NOI*. SDTA also responds to a number of the proposals concerning eligible telecommunications carrier (ETC) designation, which, SDTA contends, are contrary to the Communications Act of 1934, as amended (the Act).

**I. Accurate and Comprehensive Data on Broadband Availability Should Be Developed Before Proceeding Further**

Although the Commission requested commenters to provide data on a number of issues, most commenters did not provide any data concerning the availability and nature of broadband services on Tribal lands. Accordingly, the comments do not provide an adequate factual basis for proceeding further relative to the Notice of Inquiry (NOI) proposals. Moreover, the

---

<sup>1</sup> SDTA is an association of rural incumbent local exchange carriers that provide telephone exchange and exchange access services and broadband services throughout rural service areas within the State of South Dakota.

<sup>2</sup> *In the Matter of Improving Communications Services for Native Nations*, CG Docket No. 11-41, FCC 11-30, Notice of Inquiry, released March 4, 2011.

comments generally show that a number of the Commission's central conclusions in the NOI concerning the extent to which broadband facilities and service are available on Tribal lands are not supported by the available data. Chief among these, the Commission's estimate in the *NOI* that the broadband availability rate on Tribal lands is less than ten percent is not supported.<sup>3</sup> In fact, the 10% availability rate is even contradicted by the Commission's Seventh Broadband Progress Report,<sup>4</sup> in which the Commission concludes that the subscription rate for broadband service on Tribal lands is 21.5%.<sup>5</sup>

The data provided by SDTA in its' initial comments also does not support the Commission's estimate. As shown, broadband service is widely available to consumers living and working in the Tribal lands served by SDTA's member companies, including part or all of the Tribal lands found within the following reservation areas: Crow Creek Sioux, Sisseton Wahpeton Sioux,<sup>6</sup> Yankton Sioux, Pine Ridge, Rosebud, Lower Brule Sioux, Cheyenne River Sioux, and Standing Rock Sioux. For most of the reservation areas served by the SDTA member companies, broadband service is available to 100% of the existing households. For the remaining Tribal areas, access to broadband service is available to approximately 95% or more of the existing households. Further, the SDTA member companies provide essential and advanced communications services to Tribal community institutions, such as Tribal housing, finance, emergency services, social services, courts and schools, and have also undertaken

---

<sup>3</sup> Comments of AT&T at 4-5.

<sup>4</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 Improvement Act*, GN Docket No. 10-159, Seventh Broadband Progress Report and Order on Reconsideration, FCC 11-78 (released May 20, 2011) (Seventh Broadband Report).

<sup>5</sup> Comments of AT&T at 5-6.

<sup>6</sup> In the NBM, the Sisseton Wahpeton Sioux is listed as the Lake Traverse reservation.

outreach efforts to increase awareness and adoption of the services offered by the companies, including broadband.

In the past, it appears the Commission has dismissed data provided by SDTA concerning broadband services provided by its member companies on Tribal lands on the basis that the companies did not serve the entirety of the identified Tribal areas and that the data provided was not complete. In regards to this past data and SDTA's prior claims regarding broadband availability in South Dakota Tribal areas, it should be noted that the widespread availability of broadband service within the Tribal lands in South Dakota is also evidenced by the data underlying the National Telecommunications and Information Administration's (NTIA) national broadband map (NBM). Although SDTA has some general concerns with the accuracy of the NBM data and its depiction of broadband availability in South Dakota, the NBM does show the following rates of broadband access for the following Tribal areas:

	Wireline Broadband Access	Wireless Broadband Access
Lake Traverse	94.7%	100%
Crow Creek	94.5%	100%
Lower Brule <sup>7</sup>	92.2%	100%
Yankton	96.9%	99.5%
Rosebud	90.5%	99.7%
Pine Ridge	84.4%	99.5%
Standing Rock	89.3%	71.8%
Cheyenne River	66.3%	89%

Based on its knowledge of the areas served by its member companies and the fact that additional broadband investments have been made since the above NBM data was collected, SDTA believes that the NBM data actually understates the percentage of wireline broadband access for these Tribal lands. In any case, clearly, the Commission's estimate that only 10% of

---

<sup>7</sup> The NBM indicates that the broadband record set is not complete for this reservation.

Tribal lands have access to broadband service has no factual basis with respect to the Tribal lands served by SDTA member companies.

Even a cursory review of the data underlying the NBM for other Native Nation or Tribal areas shows that substantial access to broadband services is not unique to the Tribal lands served by the SDTA member companies and appears to show that, on the whole, access to broadband on Tribal lands is far greater than 10 percent.<sup>8</sup> While there are some issues with the NBM data – for example, the NBM states that the broadband record set is not complete for some reservations – the data is certainly more accurate and comprehensive than that which is referenced by the Commission in the *NOI*. SDTA also notes that the Commission has stated that it will rely on the NBM data in its general broadband universal service proceeding.<sup>9</sup> SDTA believes the Commission should also consider the NBM data in making its decisions in this proceeding and that it should also take into account the broadband availability and subscription data that is collected at the State level and used in the creation of state broadband maps. The South Dakota Broadband Map (as developed by the South Dakota Bureau of Information and Telecommunications) and data related to broadband access in South Dakota can be found at <http://broadband.sd.gov>. The data illustrated within this South Dakota Broadband Map also

---

<sup>8</sup> According to the NBM, on one of the largest, most populated, remote and poor reservations, the Navajo Nation reservation, 24.6 percent of 197,416 tribal members have access to wireline broadband and 59.8 percent have access to wireless broadband. SDTA notes that the Navajo Nation received an NTIA broadband award totaling \$32.2 million to deploy 550 miles of fiber-optic cable and 59 microwave towers, so the percentage of access to broadband service should increase.

<sup>9</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Dockets No. 10-90, 07-135, 05-337, 03-109; CC Dockets No. 01-92, 96-45, GN Dockets No. 09-51, FCC 11-13, released February 9, 2011, at ¶¶24, 261.

clearly indicates that the general broadband availability percentage(s) for Tribal areas referenced in the NOI is not correct for South Dakota. It is essential that this Commission in this process, in reviewing and evaluating the nature and extent of broadband services in Native Nation or Tribal areas also take into account all of this available mapping data.

In light of the poor record relied on by the Commission in the *NOI*, the lack of data provided in the filed comments, and the contradictory evidence indicated by the NBM, the South Dakota Broadband Map, and by other sources, SDTA supports the comments of AT&T concerning the need for the Commission to develop more comprehensive and current data about broadband availability and subscribership on Tribal lands before making policy decisions to address these issues. At a minimum, this should include a thorough review and analysis of the data in the NBM and the data that is now available at the state level through the individual state mapping efforts.

## **II. The Current Record Does Not Sufficiently Support the Establishment of Separate and Unique Broadband Programs for Native Nations**

The data in the current record also does not support the Commission's contention that there are problems unique to Native Nations that require separate and unique programs to ensure broadband access and subscribership on Tribal lands. In many respects, the Native Nations face many of the same broadband challenges faced generally within rural America. The existing high-cost universal service funding mechanisms, contrary to what is portrayed by some parties, have helped tremendously in making broadband services available throughout Tribal areas and SDTA believes that preservation of and continued sufficient funding under these mechanisms would be the best approach to not only providing for further broadband deployment in these areas, but also to maintaining the already existing networks and services.

The data in the NBM is instructive on this point, as well. A cursory review of the data shows that there are vast differences among Native Nations in connection with broadband availability and other characteristics, and these differences argue against a separate and unified approach for all Native Nations. For example, the broadband availability on Tribal lands runs the gamut from the 483 tribal members on the Havasupai reservation in Arizona (occupying an area close to the south rim of the Grand Canyon), who have no access to either wireline or wireless broadband service to the 1,473 tribal members on the Mohegan reservation, who have 100 percent access to two wireline broadband providers and 100 percent access to three wireless providers and the 354 tribal members on the Seminole reservation, who have 100 percent access to two wireline providers and 100 percent access to four wireless providers.

Not all Native Nations are poor or located in remote areas, with few subscribers per square mile. The members of the Mohegan, Barona, and Agua Caliente reservation, among others, all have median incomes well above the nationwide average. And, according to the NBM, the Agua Caliente reservation encompasses 209 square miles and has 49,172 members and the Cabazon reservation encompasses 8 square miles and has 9,282 members.

Some Native Nations, like those served by the SDTA member companies, have exceptional access to broadband services, even though they are located in remote, sparsely populated areas, with difficult terrain, and where the median income is well below the national average. As shown by SDTA in its comments, any proposal intended to subsidize alternative infrastructure providers in Tribal areas where networks and facilities already exist would have negative, rather than positive, impacts in meeting universal broadband goals. Specifically, any effort to subsidize multiple providers and duplicative infrastructure on Tribal lands where the existing carrier is an RUS borrower and a recipient of high cost universal service support, would

create universal service funding inefficiencies and could strand the tremendous financial investments that have already been made in those areas. Further, since the service areas of existing carriers extend beyond Tribal lands and include non-Tribal members on Tribal lands, as in the case of the SDTA member companies, all consumers residing within the rural ILEC service areas would be affected. All consumers would bear the financial burden of any resulting stranded investment costs. These additional economic burdens should not be ignored in this process.

Accordingly, the determination of how best to ensure broadband access for Native Nations clearly is much more complex than the simplistic one-size-fits-all approach presented in the *NOI* and supported by some commenters. The Commission has much more work to do before any conclusions can be reached supporting the establishment of separate and unique broadband funding mechanisms for Native Nations.

### **III. Lifeline and Linkup Should be Expanded to Broadband Service**

A number of commenters argue in favor of programs to increase broadband subscribership for Native Nations. SDTA supports this goal and believes that much could be achieved by simply expanding the scope of the existing Lifeline and Link-Up programs to include funding for broadband service discounts. As demonstrated, with respect to much of reservation lands in South Dakota, broadband availability or an inability to access broadband services is not the central issue. Rather, in most reservation areas within the State, the service is available but is not used because the services or equipment needed to utilize broadband services are not deemed affordable. This appears to be the case for other Tribal lands, as well and this

affordability issue could be substantially addressed by expanding the Commission's Lifeline and Link-Up assistance programs to include broadband services.

#### **IV. Expanding Tribal Authority in the ETC Designation Process Conflicts with the Act**

A number of commenters argue in support of extending certain rights in connection with the ETC designation process to Tribal governments, including the right to determine who provides ETC service on Tribal land; a requirement that ETC applicants consult with the Tribe before being designated; and the right to impose additional requirements on ETCs. One commenter even suggests that a Tribal government should have the right to buy-out an incumbent LEC. All of these proposals are contrary to the Act and should be rejected.

As shown in SDTA's comments, pursuant to Section 214(e)(2) and (6) of the Act, Congress expressly placed the authority to designate ETCs within the jurisdiction of the State commissions and, in the case of a common carrier that is not subject to the jurisdiction of a State Commission, Congress placed the authority to designate such carrier as an ETC within the FCC's jurisdiction. As shown, the South Dakota Public Utilities Commission (SDPUC) has jurisdiction over the operation of the SDTA member companies, including their operation on Tribal lands, pursuant to South Dakota law. Further, pursuant to both the Act and applicable state statutes, the SDPUC granted ETC designation to each of the SDTA member companies for the entirety of their service areas, including those areas resting within reservation boundaries. Accordingly, the SDPUC has authority over these companies as ETCs, for the entirety of their service areas. This includes determining whether the carrier meets the requirements of Section 214(e)(1)<sup>10</sup> and

---

<sup>10</sup> Section 214(e)(1) specifies that an ETC "shall, throughout the service area for which the designation is received --(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another

whether the public interest is served by the designation of the carrier as an ETC. This also includes the SDPUC's annual review of the use of universal service funds by the SDTA member companies and the certification, to this Commission, that each of the carriers is appropriately using federal universal service fund distributions. Any requirement that each of the SDTA member companies also submit their ETC related operations to the jurisdiction of the Tribal government directly conflicts with the provisions in the Act and should be rejected.

#### **V. The Definition of Tribal Land Should Not Be Expanded**

A number of commenters support a single, expanded definition of Tribal lands. Although AT&T does not support any particular definition of Tribal lands, it also supports a single definition for administrative ease. SDTA believes it is premature to change the definition of Tribal lands in the universal service context.

As shown herein, the Commission has not yet analyzed the available broadband mapping data (either the NTIA NBM, or any of the existing state maps) or obtained sufficient other data, to draw any reliable conclusions about the extent of broadband service on Tribal lands or the nature of any problems in connection with broadband service unique to Native Nations. At this point, therefore, it simply is not known what, if any, problem in connection with broadband service on Tribal lands can or should be addressed by expanding the definition of Tribal lands.

Further, while SDTA generally supports efforts to promote administrative ease, in this case, an expansion of the definition of Tribal lands could have unintended consequences that outweigh any benefit of administrative ease. Specifically, an overly broad definition could commit universal service funds to areas and people who do not need those funds to obtain

---

eligible telecommunications carrier); and (B) advertise the availability of such services and the charges therefor using media of general distribution."

broadband service. Therefore, SDTA believes it is premature to change the definition of Tribal lands in the universal service context.

## **VI. Conclusion**

In light of the poor record relied on by the Commission in the *NOI*, the lack of data provided in the comments, and the contradictory evidence indicated by the NBM and other sources, the Commission must develop more comprehensive and current data about broadband availability and subscribership on Tribal lands before making policy decisions in this important area. Accordingly, SDTA urges the Commission to focus its efforts on reviewing existing data and obtaining additional information, if necessary, to understand the nature of the problem before devising the cure.

Respectfully submitted,

**SOUTH DAKOTA  
TELECOMMUNICATIONS  
ASSOCIATION**

By:



Benjamin H. Dickens, Jr.  
Mary J. Sisak  
Salvatore Taillefer, Jr.

Richard D. Coit  
Executive Director/General Counsel

South Dakota Telecommunications Assn.  
P.O. Box 57  
Pierre, SD 57501

Blooston, Mordkofsky, Dickens,  
Duffy, & Prendergast, LLP  
2120 L Street NW, Suite 300  
Washington, DC 20037  
(202) 659-0830 (Tel)  
(202) 828-5568 (Fax)

Its Attorneys

Dated: August 4, 2011

### Service List

On August 4, 2011, a copy of the forgoing **Reply Comments of the South Dakota Telecommunications Association** was served on each of the following via U.S. Mail, postage prepaid, or electronic mail, as indicated:

Rod Flowers  
Office of Native Affairs and Policy  
Federal Communications Commission  
445 12th Street, SW  
Room 4-C487  
Washington, DC 20554

Best Copy and Printing, Inc.  
Portals II  
445 12th Street, SW  
Room CY-B402  
Washington, D.C. 20554  
[fcc@bcpiweb.com](mailto:fcc@bcpiweb.com)

Jack S. Zinman  
AT&T Services, Inc.  
1120 20th Street, N.W.  
Suite 1000  
Washington, DC 20036