

**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 COMMNET WIRELESS, LLC

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SUMMARY

Commnet commends the Commission for its ongoing efforts to increase the deployment and adoption of voice and broadband services in Tribal areas. Commnet has a keen interest in these initiatives because it provides mobile wireless service across many Tribal areas in Arizona, New Mexico, Nevada, Colorado and Utah, and actively collaborates with Tribal organizations in these states to improve the level of access to affordable and high-quality mobile services in Tribal communities.

Commnet agrees with the FCC and most commenters that many Tribal lands lag far behind other rural areas in the availability and adoption of voice and broadband services. However, Commnet is wary of implementing new and potentially duplicative programs. Commnet believes that the fastest and most effective means to increase deployment and adoption in Tribal areas is to enhance the levels of support available to these areas under the current high-cost and low-income programs.

Commnet notes that the Commission is currently engaged in three other important proceedings—the Connect America Fund, the Mobility Fund, and Spectrum for Tribal Lands NPRM -- that present opportunities to advance further the Commission's goals to promote and accelerate the deployment and adoption of voice and broadband communications services in Tribal areas. Commnet urges the Commission to seize the opportunity presented by these proceedings to increase the levels of funding targeted for the deployment and adoption of voice and broadband services, including the provision of those services via mobile wireless networks in Tribal communities. The CAF, Mobility Fund, and Spectrum for Tribal Lands NPRM provide the Commission with an opportunity to develop coordinated and complementary solutions to im-

prove access to telecommunications services, including mobile wireless services, in Tribal communities.

Commnet also believes that the current FCC and state ETC designation processes work reasonably well, and that disruptive changes are not necessary, and would likely be counterproductive. If anything, further streamlining is required so as to reduce the cost to ETC applicants and accelerate the decision-making process. High costs and long delays discourage new entrants, and thus, reduce competition and the introduction of new and improved services.

Native Nations can and should actively participate in the proceedings where these applications are considered. In addition, the public interest determination to be made by the FCC or the relevant state commission should take into account the needs of all residents in the proposed service area, including the residents of Tribal lands. If the record shows that the current level of Native Nation participation in ETC designation proceedings is inadequate to convey the special needs of Tribal lands, the FCC should make specific proposals to undertake a comprehensive education program to instruct Tribal authorities on the importance of active participation in these proceedings.

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Commnet Wireless, LLC (“Commnet”)¹ hereby submits these Reply Comments pursuant to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding.²

Commnet commends the Commission for its ongoing efforts to increase the deployment and adoption of voice and broadband services in Tribal areas. Commnet agrees with the FCC and most commenters that many Tribal lands lag far behind other rural areas in the availability and adoption of voice and broadband services. Commnet believes that the fastest and most effective means to increase deployment and adoption in Tribal areas is to enhance the levels of support available to these areas under the current high-cost and low-income programs. Commnet also believes that the current FCC and state ETC designation processes work reasonably well, and that disruptive changes are not necessary, and would likely be counterproductive. If the record shows that the current level of Native Nation participation is inadequate to convey the

¹ Commnet is a wholly owned operating subsidiary of Atlantic Tele-Network, Inc. and, as described in more detail below, provides telecommunications services to rural, niche, and other underserved markets in several states.

² *Improving Communications Services for Native Nations*, WT Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672 (2011) (“*Notice of Inquiry*” or “*NOI*”). See also *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (“*Tribal Spectrum NPRM*”).

special needs of Tribal lands, the FCC should make specific proposals to undertake a comprehensive education program to instruct Tribal authorities on the importance of active participation in these proceedings.

I. COMMNET’S PROVISION OF WIRELESS SERVICE TO TRIBAL AREAS

Commnet is the leading Commercial Mobile Radio Service (“CMRS”) carrier’s carrier in the United States. Its network comprises over 600 base stations that provide mobile wireless service to millions of end users who live in or pass through remote areas—customers who would otherwise be without voice and data service. Commnet operates both CDMA and GSM systems, enabling large, mid-size and small CMRS carriers to add areas within Commnet’s coverage footprint to their own coverage areas.

Commnet concentrates its operations principally in remote and rural areas throughout the United States, including Tribal lands located in Arizona, Colorado, Nevada, New Mexico, and Utah. Commnet’s wholesale operations enable retail carriers served by Commnet to ensure quality mobile voice and broadband services to their customers in these remote areas.

Commnet is now expanding its business to provide retail commercial services. In Nevada, Commnet has been designated as a competitive Eligible Telecommunications Carrier (“ETC”) by the Nevada Public Utilities Commission,³ and Commnet is offering retail services – services that cover Tribal lands – in Nevada. Commnet also has pending an application for ETC

³ See *Application of Commnet of Nevada, LLC to be designated as an Eligible Telecommunications Carrier in the state of Nevada pursuant to NAC 704.680461 and Section 254 of the Telecommunications Act of 1996*, Compliance Order, Docket No. 08-12017 (Mar. 2, 2009); see also *Application of Commnet of Nevada, LLC to expand its designation as an Eligible Telecommunications Carrier in the state of Nevada pursuant to NAC 704.680461*, Compliance Order, Docket No. 10-01011 (Apr. 6, 2010).

designation in New Mexico. Commnet's plan is to launch retail services to Tribal lands and other rural areas in New Mexico and Arizona.⁴

Commnet has entered into a joint venture arrangement with NTUA to deliver 3G mobile wireless service and 4G broadband service to residents of the Navajo Nation. This project, which will provide both fiber middle-mile and wireless last-mile service, is funded in part by a broadband grant to NTUA from the U.S. Department of Commerce under the American Reinvestment and Recovery Act of 2009,⁵ and will serve the interests of the Navajo Nation both through the advanced services that will be deployed as well as the majority-ownership stake of the Navajo.⁶ Commnet also has plans this year (1) to construct tower facilities for telemedicine services and wireless coverage for the Kaibab Band of Paiute Indians in Arizona; and (2) to work through the Indian Health Board of Nevada to provide connectivity from Reno to twenty-three bands of Shoshone-Paiute Indians remotely located across the state.

Commnet's core focus is to maintain and improve the quality and features of wireless services, including mobile broadband, which subscribers on both Tribal and non-Tribal lands have come to expect and even require. In bringing wireless services to Tribal communities,

⁴ Commnet provides the facilities for the provision of mobile wireless voice and data services to Tohono O'odham, San Carlos Apache, Hopi, Mescalero Apache, and the Navajo Nation.

⁵ Pub. L. No. 111-5 ("ARRA").

⁶ The project "will benefit the people of Navajo Nation [by] deliver[ing] the advanced telecommunications services that are vital for ensuring economic equality and opportunity[,] [a]nd[,] . . . because it is majority Navajo-owned, its success will directly benefit the Navajo people." ATN, "Navajo Tribal Utility Authority and Atlantic Tele-Network Announce Partnership To Deliver Rural 4G Service," Press Release (Apr. 4, 2011) at 1 (quoting Navajo Nation President Ben Shelly) (internal quotation marks omitted) (accessed at http://files.shareholder.com/downloads/ABEA-2WOFJF/1214121724x0x456439/8481370d-a902-4ecc-924c-1a0a7fd92f37/ATNI_News_2011_4_4_General_Releases.pdf). Commnet will contribute wireless equipment, assets, and management and operational expertise to support the project. *Id.* at 1-2. The project is one of only a few public-private partnerships funded under ARRA that include the provision of both fiber and wireless service.

Commnet's policy has been to work with local Tribal organizations and Tribal governments in developing projects that are targeted to meet community needs identified by these Tribal entities.

II. FCC EFFORTS TO ENCOURAGE DEPLOYMENT AND ADOPTION OF VOICE AND BROADBAND SERVICES ON TRIBAL LANDS

The Commission has consistently sought to improve the quality of life for residents on Tribal lands throughout the Nation, by designing and implementing a range of programs and initiatives to promote deployment and adoption of voice and broadband services in Tribal areas. Commnet joins other commenters in this proceeding in endorsing the Commission's efforts.

The urgent need for Commission action to promote the availability of affordable telecommunications and broadband services in Tribal communities is underscored by the fact that "Americans living on Tribal lands ... usually lack broadband access and many lack even basic telephone service."⁷ Specifically, the Commission has recognized in its Connect America Fund ("CAF") rulemaking proceeding that "Tribal areas may need explicit support to maintain service because there may be no private business case to serve such areas."⁸ Commnet encourages the

⁷ *Notice of Inquiry*, 26 FCC Rcd at 2673 (para. 1). *See also*, NTTA Comments, WC Docket No. 10-90, *et al.* (filed Apr. 18, 2011) at 11-12 ("Native communities are the worst-served in the United States, with an average service rate twenty to thirty-five percent below non-tribal communities.") and *Tribal Spectrum NPRM*, 26 FCC Rcd at 2624-25 (para. 3) (footnote omitted) (stating that connectivity in many Tribal areas "remains at significantly lower levels" than in other areas, and that "[e]stimates indicate that 80% of the overall population on Tribal lands is covered by current generation (3G) wireless technologies, which permit mobile voice and internet services, compared to nationwide coverage of over 98%").

⁸ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4702 (para. 492) (2011). The Commission has also acknowledged in the *Tribal Spectrum NPRM* that "funding is a critical problem for deployment of infrastructure on Tribal lands where often there is no private sector business case for such deployment." *Tribal Spectrum NPRM*, 26 FCC Rcd at 2629 (para. 15) (footnote omitted).

Commission to take actions in the CAF rulemaking that will accurately target sufficient levels of CAF support to carriers, including mobile wireless carriers, seeking to serve Tribal areas.

In addition, the Commission has proposed to establish a Mobility Fund to provide one-time support for the deployment of current generation or better mobile wireless services in areas in which such services currently are not available.⁹ To the extent the Mobility Fund serves as a test bed for expediting the deployment of mobile broadband networks, Commnet encourages the Commission to explore alternative means for stimulating and funding the deployment of these networks in Tribal areas. For example, Commnet favors the reservation of some Mobility Fund support for purposes of developing a funding program that is separately targeted for Tribal areas, as discussed in the *Mobility Fund Notice*.¹⁰

Because both CAF and Mobility Fund support will be critical in facilitating, and providing incentives for, mobile broadband network deployment in Tribal areas, Commnet urges the Commission to increase, to the extent practicable, the levels of funding targeted for the deployment of infrastructure and the provision of both voice and broadband services in Tribal communities. Further, Commnet urges the FCC to recognize the invaluable role that wireless services can play in extending voice and broadband services to remote, sparsely populated Tribal areas. Wireless services can – and do – provide cost effective broadband service to geographic areas with low population densities. Not only are wireless services much less expensive to deploy, but they provide the critical additional benefit of mobility.

⁹ See *Universal Service Reform, Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) (“*Mobility Fund Notice*”).

¹⁰ *Id.* at 14727 (para. 33). The Commission also has recently sought “comment on ways to afford Tribal governments an opportunity to identify their own priorities” *Further Inquiry into Tribal Issues Relating to Establishment of a Mobility Fund*, WT Docket No. 10-208, Public Notice, 26 FCC Rcd 5997, 5998 (para. 3) (2011).

III. DISCUSSION

A. ETC Designations for Service Areas Covering Tribal Lands

The FCC seeks comment on a broad range of issues regarding the ETC designation process for service areas that include Tribal lands. Among other questions, the FCC asks (1) what role should Tribal authorities play in the ETC designation process; (2) should carriers be required to obtain specific ETC designations for Tribal areas; and (3) should additional requirements be imposed on carriers seeking ETC designation on Tribal lands.¹¹

Commnet believes that the current FCC and state ETC designation processes work reasonably well, and that disruptive changes are not necessary, and would likely be counterproductive. If anything, further streamlining is required so as to reduce the cost to ETC applicants and accelerate the decision-making process. High costs and long delays discourage new entrants, and thus, reduce competition and the introduction of new and improved services.

The current processes follow carefully designed, long-established FCC or state commission rules to determine the qualifications of an applicant to be designated as an ETC. The FCC's rules specifically require an applicant "for any part of tribal lands [to] provide a copy of its petition to the affected tribal government and tribal authority, as appropriate, at the time it files its petition with the [FCC]."¹² Further, the FCC itself is required to "send the relevant public notice seeking comment on any petition for designation as an [ETC] on tribal lands ... to the affected ... tribal authority"¹³

¹¹ *Notice of Inquiry*, 26 FCC Rcd at 2686 – 2687 (paras. 28 – 32).

¹² 47 C.F.R. §54.202(d).

¹³ *Id.*

Native Nations can and should actively participate in the proceedings where these applications are considered. In addition, the public interest determination to be made by the FCC or the relevant state commission should take into account the needs of all residents in the proposed service area, including the residents of Tribal lands. If the record in this proceeding shows that the current level of Native Nation participation in ETC designation proceedings is inadequate to convey the special needs of Tribal lands, the FCC should make specific proposals to undertake a comprehensive education program to instruct Tribal authorities on the importance of active participation in these proceedings.

Commnet agrees that Native Nation participation in the ETC designation process is desirable so that their special concerns will be heard. However, adding layers of complexity to the existing process will be counterproductive, resulting in increased costs and interminable delays for the very carriers seeking financial support to provide better service to Tribal lands. Further, it is essential that the ETC designation be the final determination of a single entity, not multiple entities.

The FCC should not require specific authorizations to serve Tribal lands, nor should the FCC (or the states) impose additional requirements on carriers serving Tribal areas. Such authorizations and additional requirements are unnecessary and unduly burdensome. Commnet notes that specific authorizations or additional requirements to serve Tribal areas would likely result in unintended, and undesirable, consequences. For example, an ETC authorized by the State commission to serve all geographic areas within a state would be unlikely to incur the financial and administrative burden of filing at the FCC to serve small Tribal lands within that State. Likewise, an ETC applicant before the FCC would be highly unlikely to incur the burdens of seeking FCC approval to be designated as an ETC in each and every Tribal area within its service area, if

specific authorizations were required for each Tribal area and if such ETC authorizations imposed additional (and possibly differing) requirements. The smaller tribes would be harmed the most, since carriers would lack adequate financial incentives to seek ETC designation for these Tribal areas.

The current ETC designation process already provides strict requirements for ETCs, including requirements that such ETCs serve all customers within their designated areas, submit multi-year service improvement plans, demonstrate their ability to remain functional in emergency situations, and widely advertise their services.¹⁴ If carriers do not comply with the applicable FCC or state requirements, the FCC or the state commission, as appropriate, can revoke that carrier's ETC designation.

The FCC should be *encouraging* carriers to seek ETC designation for Tribal areas, not adding hurdles and discouraging applications to serve such areas. Commnet urges the FCC to take several steps to facilitate ETC designation for Tribal areas. First, the FCC should adopt a strong presumption that applications for ETC designation in Tribal areas are in the public interest. Second, the FCC should adopt a "fast track" process for reviewing ETC applications for Tribal areas. Commnet recommends that the FCC or the state commission involved complete its review of such applications within six months of the date on which they are filed. In its *Twelfth Report and Order*, the FCC sought comment "on whether to approve a rule that would require resolution of the merits of any request for designation under Section 214(e) within a six month period, or some shorter period."¹⁵ The FCC noted its concern "that lengthy delays in addressing

¹⁴ 47 C.F.R. §§54.202(a), 54.405(b), and 54.411(d).

¹⁵ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Re-

requests for designation may hinder the availability of affordable telecommunications services in many high-cost areas”¹⁶ In fact, FCC review can often take several years – thereby delaying the benefits of high-cost and/or low-income support to carriers serving Tribal areas – and more importantly, denying the benefits of such support to the residents of such Tribal areas. Thus, a “fast-track” approach for processing ETC applications for Tribal lands would clearly serve the public interest.

The FCC should not require multiple ETC designations for any given geographic area. There is no good reason, and in fact it would be counterproductive, to require separate authorizations for (1) low-income and (2) high-cost support. An ETC designated for low-income support may only receive low-income support. An ETC designated for high-cost support must also provide low-income support. This is a good requirement, since it forces carriers seeking high-cost support to also provide low-income support. The FCC should be encouraging carriers to provide low-income support to Tribal areas, and the imposition of additional requirements would be counterproductive.

Commnet opposes Gila River’s self-serving proposal to limit the number of ETCs in any given tribal area to (1) a wireline provider and (2) either a wireless provider or a competitive local exchange carrier.¹⁷ In essence, Gila River is proposing an anti-competitive set-aside for the incumbent wireline local exchange carrier. Artificially limiting the number of ETCs in any given area reduces competition, and thus, reduces the incentive for existing carriers to provide better

port and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 (para. 152)(“*Twelfth Report and Order*”).

¹⁶ *Id.* at para. 151.

¹⁷ Gila River Comments at 19 - 20. Gila River is the incumbent wireline local exchange area in a number of Tribal lands.

service at lower prices to end-user consumers. Further, Gila River's proposal flies in the face of long-established FCC policy to ensure competitive and technology neutrality.

B. Native Nations Broadband Fund

The FCC asks whether a Native Nations Broadband Fund should be established, and if so, what level of funding is necessary, what should be the purposes of such a fund, and how funding should be allocated and administered. Commnet submits that the establishment of a Native Nations Broadband Fund may require Congressional legislation.

A faster and more efficient means to achieve the worthy goals of the Native Nations Broadband Fund would be for the FCC to enhance support to Tribal lands within the existing high-cost and low-income support funds. Such enhanced support would not require Congressional approval, and can be accomplished within the context of the on-going CAF and Mobility Fund NPRM proceedings. In June 2000, recognizing that telecom subscribership on Tribal lands fell far below the national average, the FCC "adopt[ed] amendments to [its] universal service rules [to] provide additional, targeted support under [its] low-income programs to create financial incentives for [ETCs] to serve, and deploy telecommunications facilities in [tribal areas]."¹⁸ Commnet strongly supports FCC actions that would further enhance low-income support to residents of Tribal lands.¹⁹

If the FCC were to establish a Native Nations Broadband Fund, it must be very careful to do so in a manner that will not undermine existing private investment in Tribal lands -- and that encourages new private investment. Further, a Native Nations Broadband Fund must not dupli-

¹⁸ *Twelfth Report and Order* at para. 5.

¹⁹ *See* Petition for Rulemaking Regarding the Expansion of Support Available Pursuant to the Fourth Tier of the Universal Service Lifeline Program, filed March 27, 2009 by Smith Bagley, Inc.

cate existing support programs. Instead, if such a fund is established, it should be narrowly tailored to provide support for programs separate and apart from the existing high-cost and low-income programs. For example, Gila River proposes that the Native Nations Broadband Fund could be used a safety net for tribally-owned carriers at risk of defaulting on Rural Utility Service loans.²⁰ Commnet could support such a proposal so long as the safety net was extended to any carrier serving Tribal lands, and not limited to tribally-owned carriers.

C. Native Nations Adoption and Utilization

The FCC seeks comment on the challenges faced by Native Nations in achieving broadband adoption and utilization. The FCC also seeks comment on the appropriate role of government in spurring broadband adoption on Tribal lands.

Comment supports enhanced low-income support for residents of Tribal lands. As set forth above, Commnet supports enhanced Tier 4 Lifeline support for residents of Tribal areas. In addition, Commnet supports enhanced Link Up support, including support for broadband CPE, such as smartphones, dongles, tablets and laptops. 3G and 4G wireless services support broadband, and must be eligible for any such support in the same manner as broadband CPE used with wireline broadband.

Commnet also supports certain important exceptions and clarifications to the proposed “one-per-residence” rule proposed in the Lifeline and Link Up Reform proceeding.²¹ First, for

²⁰ Gila River Comments at 15 - 16.

²¹ *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket No. 11-42, 76 Fed. Reg. 16,482 (March 23, 2011)(“*Lifeline and Link Up Reform NPRM*”).

those tribal residents who can demonstrate income at or below the federal poverty guidelines, the Lifeline program should provide one Tier 4 credit per adult.²²

“Many low income households require more than one connection to the telecommunications network. When one person leaves home carrying a mobile phone, which is vitally needed when traveling in remote areas, those remaining at home require the ability to communicate.”²³

Second, the FCC should clarify its one-per-residence rule by indicating that, in the case of multi-generational or separate nuclear families living in a single residence, each separate nuclear family is eligible for Lifeline assistance (assuming all other qualifying criteria are met).²⁴

More generally, Commnet urges the FCC to continue to provide strong support for wireless CETCs, particularly those serving Tribal lands, and not to phase-down support for wireless services in high-cost areas. Although Commnet generally supports the FCC’s proposals to transition universal service support from voice services to broadband services, Commnet urges the FCC not to lose sight of the continuing need to increase subscribership to basic telephone services on Tribal lands, certainly not until the FCC includes the provision of broadband as a supported service. Fortunately, 3G and 4G wireless services can support both voice and broadband. As a result, continued strong support of wireless services will facilitate adoption on Tribal lands of both voice and broadband.

²² Comments of Smith Bagley, Inc., filed April 21, 2011 in the *Lifeline and Link Up Reform* NPRM, at p. 8.

²³ *Id.*

²⁴ *Id.* at p. 13. Commnet has no objection to the proposed FCC requirement for appropriate certifications under penalty of perjury when a subscriber initiates service.

