

August 18, 2011

Marlene Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

RE: Notice of Ex Parte Presentation- Connect America Fund, WC Docket No. 10-90; Improving Communications Services for Native Nations, CG Docket No. 11-41

Dear Ms. Dortch:

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, governing permit-but disclose proceedings, this letter serves to notify the Federal Communications Commission (FCC or Commission) of a Native Nations Broadband Task Force (NNBTF) meeting that took place at the FCC on May 24-25, 2011. As a part of the initial meeting of the NNBTF, Commission staff from the appropriate bureaus and offices presented overviews of items currently open at the Commission and dialogued with NNBTF members and their alternates on relevant Tribal issues. These discussions were subject to public disclosure under section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206 (b)(2)(current version, 47 C.F.R. § 1.1206(b)(1), amended Feb. 1, 2011). Excerpts from the NNBTF meeting minutes and NNBTF transcripts relevant to the above-referenced docket are included below with lists of NNBTF members/alternates in attendance.

NNBTF Minutes Excerpt:

Discussion on issues raised in the *Connect America Fund Notice of Proposed Rulemaking, FCC 11-13 (CAF NPRM)*

- ***Overview of CAF NPRM:*** The NPRM seeks comment on reforming the Universal Service Fund (USF) and intercarrier compensation (ICC). Joe Cavender of the Wireline Competition Bureau provided an overview of the following principles contained in the *CAF NPRM*: (1) modernizing USF and ICC for broadband; (2) fiscal responsibility; (3) accountability; and (4) market-driven policies.
- ***Topics of concern for Tribal Leaders:*** Topics of concern include: Native entities using CAF to establish broadband in their anchor institutions and/or in their homes; ETCs meeting their service obligations in Tribal communities; Tribes participating in the ETC designation process; and developing a mapping process that coordinates with Tribal communities for accurate Tribal land data.

Comments

Topic I: Under the Connect America Fund, whether to focus broadband auctioning on anchor institutions and/or individual households.

NNBTF Transcript Excerpt:

Matt Rantanen: First of all, yes, there should be a Tribal set-aside in there [Connect America Fund] and second of all, yes, [to both] homes and Tribal anchor institutions. Because if you have the anchors and the institutions connected - which we've had connected since 2001 in our

reservations because we've taken it upon ourselves to do this - you get some buy-in but you don't get a huge penetration rate. We have some 1600 transient users that come in and out; most of those are kids that are already getting computer access and broadband access at school. They go to the anchor institution; they get after-school programs and such; and hopefully they can get their homework done when they're there because, if they go home and have no access to the Internet, they have no access to the resources to compete with the other kids on doing research for reports and the proper education follow-up that homework requires these days. Plus, in San Diego County - which is where these Tribes are located - homework is coming home through the Internet now, and a lot of these kids don't even have it. So if they don't have some set aside time at an after-school program or they don't set aside a period at school where they can do their online homework, they can't do that homework and therefore cannot compete or therefore get educated at the right level. Every community has got to be different, especially with 565 federally-recognized Tribes; every situation is different. Tribe knows best. For our scenario, you know we've been doing this since 2001, deploying broadband since 2001, and we hooked up the anchor institutions as early as 2001. So you have 86, 87 Tribal community buildings connected on 17 different reservations. It was great for the first year or so, and then people were like, when are you going to get to the Tribal home. Well, about a year and a half ago, we were able to finally build our network to the point where it's, we believe, like carrier-grade style where it's reliable; it's not quite five nines yet but it's right around four. Most of the time, everything's good, as long as there's no natural disaster action. We're starting to deploy to Tribal homes, and we have about 10% of our Tribal homes connected, which is not the standard for the United States. We have about 34% of our Tribal homes actually have access to broadband and that penetration rate is at 10% at this point. So we've done this all because nobody else is gonna. We believe that if we have access to a fund like this, we could present you with a scenario that could deliver 2,000 more Tribal homes under - let's see our cost per home when I did the BIP application was \$289 per home. So I mean, I could provide you with an option to fund something that's very valuable, and I know everybody else in this room also has a model that is probably similar. It's not gonna look exactly like mine, but they know their community best; they know how to serve that community best. And maybe on one of the reservations, it's really that anchor institution needs to be connected, that after-school program for the kids needs to be connected, because a lot of the homes on certain reservations don't have power. So maybe they're not going to have Internet because they don't have the other resources they need to keep that up and running; but if they have an after-school program that can run until 9:00 at night where they can go do their homework and do their stuff, that's the key facility that needs to be connected. I think on a Tribe-by-Tribe basis we're going to have a better understanding of how to serve our community than somebody coming in off the street saying "this is the way." I don't know how you build that into an application but maybe there's, like you said, price per customer connected, or price per entity or something to that effect.

Honorable Joe Garcia: The important thing is not just to cut it [CAF] off, I think they'd be open to whatever is realistic for each community and so, it could be one [anchor institutions], it could be the other [individual households]. It could be a combination. So let's not shut it off because somewhere we're gonna catch a Tribe that's not going to benefit from it, so we are doing them a disfavor I guess, and so some of the closer knit communities it may be easier to do something like this. An anchor institution and you can get to all the homes or to a lot of them but for larger land masses where they have a difference in community structures might be harder. That won't work, so you might want to do the other [individual households].

Michael White: But it does beg the point that we may need some kind of attestation that the Tribes says that they say they're providing service. And part of the role of the governing body would not only be to say what kind of service they want - to the home or to the anchor institutions

- but also to be a form of attestation to say “oh yes, they are providing service, they’re not just telling you that.”

Comments

Topic II: Accurate Tribal land data for the National Broadband Map

NNBTF Transcript Excerpt:

Matt Rantanen: We’ve never been contacted except for one of us, or two of us.

Carroll Onsa: They contacted us and we didn’t want to participate because, a couple of things. First, they’re a state organization or they’re representing the state and wanted to protect Tribal {MISSING TEXT} So those were the two things that prompted us not to participate. But in the end, I’ll have to say this, that group was going to publish something anyway on Hopi. So what I finally did was I had one of my managers contact this organization and say “hey, let me look at what you have and at least correct it, or add something to it, or take something out from the data that may be misleading” because that mapping information, that data will have huge implications down the road for us if it’s not correct. That’s what we did, at minimum to at least be a player and give the data some credibility.

Bruce Holdridge: I believe we were all back here for the week of March 3rd which was a kick-off to some of this and at that time we had also gone over to NTIA. We informed NTIA that the National Broadband Map is a complete fallacy, and totally incorrect when it comes to serving Native Nation communities. They were surprised by that but we were quite frank with them. I think you were there with me, Carroll, as were a few others. And we asked for NTIA to contact us and work with us directly, that we would rather work with the FCC or the NTIA rather than through a government organization at a state level that offered no support mechanism but yet received funding from the federal government, wouldn’t distribute it to Native America and then proceeded to inadequately and inaccurately represent us in the National Broadband Map to the point where maybe there should be a subpoena to some of these state organizations that does a discovery of how this information was obtained representing Native Nations, especially when it is wrong or inaccurate or incomplete. I further think that we can get beyond it, provided that we can go back and work through a federal agency at some Native Nation to government-to-government organization level and we’d be happy to work with you. But I can tell you right now the State of Arizona does not play fair with, at least, the Gila River Indian Community, and I think I’m being diplomatic.

Honorable Joe Garcia: [On State Broadband Data and Deployment Grant Program] ...it also matters on how the states are commissioned to or how they’re organized in terms of what companies do they regulate and if it’s under the state, the direction of the state, the state has a lot of say-so in how that data is gathered. So the state has data, but as we all know the data is probably either skewed or incorrect or completely absent, if you will, on Tribal lands. So it’s very important to understand what data we’re talking about and how that relates to each one of those Tribes, the 565 Tribes; in this case, they supposedly collected data from 314 Tribes.

Comments

Topic III: Fleshing out the concept of “reasonable” in the Commission’s rules that an eligible telecommunications carrier must provide service throughout its proposed designated service area to all customers making a reasonable request for service.

NNBTF Transcript Excerpt:

Honorable Joe Garcia: What may be reasonable to the requester (in this case, the Tribe) may be unreasonable from the service provider's perspective.

Debby Gallenberg: I really find the importance of that because our local telephone provider says that we cannot expect any better service than what we are getting because of our location. I agree with fine-tuning what they find reasonable because they think the inconsistency in our service is acceptable or reasonable because they cannot afford to do it any better.

Michael White: Instead of trying to find a way to define a reasonable request, maybe the answer is to say that they should respond to requests for service: requests for access to services that providers already sell. If they are already providing services to everybody else that is not in Indian country, then by definition if we are in their service area, they should respond to our requests for access. I think that is a better definition. We are not asking them to give us better technology than they give to other people; we are asking them to give us the same thing that they give to other people in their service area.

Honorable Susie Allen: I would like to respond to what Debby stated about her territory because we have the same issue. We had another twelve families pop up that have been without phone service for forty-seven years. In the 1960s when we first got phone dial tone to our reservation, we partnered with Qwest and our local electrical utility program to get thirteen residents phone line in an area, which was thirteen families. Now we have twelve families that have been identified through the merger information that we have been gathering with CenturyLink. NTTA had filed comments on the reform of the Universal Service Fund and the Connect America Fund, and I think it is critical either way if whatever type of technology we need to get dial tone, to get broadband, because we know that there is a huge disparity on our reservations. I think that I just wanted to read this last paragraph because I think it's critical for my Task Force members to know we need to support these efforts. I am just going to read the last paragraph: "The Commission should undertake corrective action and create a new Universal Service program for Native Americans, that is, a separate Native Broadband Fund within the Universal Service Fund, for dual purposes: One, ensuring the extension of broadband networks' connectivity to Tribal lands, Indian country, Alaska Native Regions, and Hawaiian Homelands; and two, sustaining the continuing efforts of carriers that deliver voice and emerging, evolving broadband services to the Native groups: American Indians, Alaska Natives, and Native Hawaiians. This serves a solution offered that could readily help Native Nations across America." So I think that is key and it needs to be considered by the Commission, because we could all readily provide examples. Again, it goes back to that data collection that we so desperately need: if we are going to be the voice for nations across America, we need to have that information. I thank you, Debby and Michael, for bringing that information.

Carroll Onsa: Speaking from the telco side, when the Hopi Tribe applied for ETC status and received it, it is my understanding that there are certain responsibilities that the telephone companies have when they receive the support. And one of them is the carrier of last resort responsibility: that any time a customer requests telephone service, you have to provide it. I guess the difference here is that if a telephone company is coming from within the community, in this case, Hopi Telecom, they are more rooted in the community and are more likely to provide services to those individuals who request it. A story that I have is that before we became a telephone company, we found a request that went back probably ten years or even more that was not fulfilled by this telephone company. Part of the reason was cost: it needed to have two or three telephone poles placed and so forth, and I think that the reason the request was not fulfilled was because of those costs. When we came in, in order to fulfill our responsibilities as an ETC,

we fulfilled that request even though it cost us a bunch of money, albeit some of those costs were recovered through cost settlements through the USF formulas. But if the CAF is to be implemented through reverse auctions, the ingrained telephone companies would not win those auctions, because they would include in their costs these marginal costs that perhaps a company coming in from the outside would not incur. It is important that those types of differences be taken into consideration when we are talking about these reforms.

James Williams: If there is a reasonable request made and it is denied by the carrier, is there an appeal process? If there is an appeal, who would adjudicate that appeal? How would we push that through? We can not just let carriers off the hook.

Bruce Holdridge: A couple of things: Your adjudication question brings into point something that I have wanted to bring into the record since earlier this morning. I believe it applies to licensing, I believe it applies to spectrum, and I believe it applies to everything. The Tribal government - if you have an application for service or an appeal process or a spectrum allocation or a licensing issue, if it in my opinion goes to, through, or over the community, the Council has the right to be involved in order to allocate a business license or some kind of approval process since it does cross on Tribal land. I see that as a government-to-government sovereign right and respect to doing business with Council government. And I want to preserve that in the record so that if you have ETCs, if you've got an appeal process, if you need an adjudication, if you've got spectrum that's going over, if you've got radio, if you've got media, if you've got licensing, I think the Council has the right to be involved and exercise either a business license and/or an approval process. The second thing I thought I should comment on is regarding the definition of reasonable. I don't know if this is an effort around it, but I think the single biggest barrier for people having phones is cost, not cultural. That's bunk. I'll put that in the record: B-U-N-K. Second of all, I think that if we can define reasonable as a national average, something for both cost (meaning price) as well as throughput or standard of service, a national average should be a reasonable standard on which you hold a carrier or carrier of last resort to standard. There are national averages that define the quality of telephone service and the cost of telephone service, and if you want to get into it, broadband service as well. And to the extent that it is necessary, we heard earlier this morning that if we are to develop spectrum deeper into Indian country, it's going to be imperative that we have high-speed, digital services become qualifiers for the Connect America Fund or for Universal Service subsidy support. That is the only way you are going to get service to a tower, even if the community builds the tower and the customer will be willing to put a radio on it so that you can then interconnect it to the public switch transporter or public switched telephone network. Thank you.

Comments

Topic IV: Reforming High Cost into the Connect America Fund and reauctioning methods for providing broadband service.

NNBTF Transcript Excerpt:

Brian Tagaban: I would like to also try to remind you as you go forward that we will be reminding you of the diverse applicability of your reform. Folks, this is critical, due to the Mobility Fund and the reformed USF fund. I want to say that one of the major reasons that the Navajo Nation got the first-round broadband award is because we tackled the issue of sustainability first and foremost. We made some very tough decisions in that application process. Sustainability is critical as you put an application forward. I would like to remind you that the reservations are very unique areas. As I thought about this in the past, you do not have the mobility or the populations abandoning the reservations. You have young people moving out,

and you may have tough economic times, but in Arizona, we have the longest-inhabited village in North America, and that is in Hopi. You do not see people abandoning it. You do not see ghost towns on the reservation. People will stay there. But service is getting tough. We have taken the steps now to try to classify telecommunication as an essential service, along with water and electricity. That was our first step—to get into that mindset. As you come to the reservation, telecommunications may not be the highest priority. We just had a series of town halls on our reservation—five of them—and their main concerns are housing, water, electricity, and roads, and then veterans came up, and telecommunications was very far down the list. But in communities where the other needs have been satisfied, broadband comes up. This Mobility Fund, or Connect America Fund, as you move forward, has a chance to help us preserve our culture. It is an attraction to bring back what you get in the cities. You can now enjoy a lot of those programs on television, or internet, or phone service—all of these other things you can now come back and enjoy and then share the unique aspects of your Tribe. YouTube has been a phenomenal forum for Tribal entities to be able to save songs and other things—that is happening—so to create this fund specifically for Tribes: I encourage that. A Tribal Connect America Fund might be a strategy. I think there is going to be a lot of education involved. Matt, you made a comment that you did not understand it, and a lot of us are in the same boat. I did not understand, but in this last year, I have learned a lot about USF. It is the deep end of the pool, right? But you know, if we understand it, and if we all start understanding it, we understand that we need to participate in this. And there is going to be an education back to us, because we have a couple roles that we play. Geoffrey Blackwell had mentioned that the FCC is an economic regulator, but in our Tribal hats we are not only an economic regulator trying to bring jobs and spur our economy: we are also a cultural regulator in the fact that we have cultural relevance that we have to protect. You hear us use terms like sovereignty because this is our bastion. The reservation is the bastion for our culture, our Native ways, our practice on the earth, our land. So don't let the industry persuade you that Tribal lands need to be treated like any other. We are trying to extend that. I think a regulatory government-to-government relationship, however we are going to do it, beginning with this group, and then sharing it with other Tribes: how best to achieve this is where we need to go. Thank you.

Honorable Susie Allen: I just wanted to add that we need unregulated and regulated. Whatever technology we choose, however we choose to have that technology delivered, we should have the ability to have access to those funds. That is what we are asking for. Whatever technology each Tribe uses, we should have the ability to help subsidize that technology to keep it growing and going, because it is going to be a need. We are in the twenty-first century. We deserve twenty-first century technology. And we need the ability to make sure that our elders and especially our youth go and grow with the technology. If they go out to get their education in a technology field and come back to help us with that technology, that is what we are looking toward. Elders who live in remote areas need the telemedicine connectivity back to our clinics. If they have an emergency, we need to have the ability to do that. Thank you.

Honorable Joe Garcia: Part of the battle that the Tribes face in this country is that a lot of laws and a lot of statutes and a lot of executive orders have been put into place without full consultation is not the issue. It's that this is the way the state of the nations is: the Tribes are sovereign entities. As such, if it were left up to us, if every Tribe was ready, I think they would create the authorities whereby regulation could be put into place. What we are dealing with right now is the fact that that law exists, the statutes exist, and so we're trying to find a mechanism by way of policy (not law, but policy), which ties hand-in-hand with the law. The policy is how do we get designated [as an ETC], how to choose to be designated? If that is part of the law, then there's got to be a way that we can overcome that barrier, which is a barrier at this point in time. But if it leads to a point where we need to change the legislation, then so be it: that is where we would go. And so that becomes a new law, and so if we are up to that level, we should know how

to proceed to do that. But on the other hand, right now we're talking about policy. What can we do administratively, policy-wise and otherwise, to overcome that barrier? So it is almost like evolution in the process of trying to get to where we need to get to. And so we are dealing with that, and the creation of this Task Force is a piece of evolution, I guess you call it, in the federal government, and at least with the FCC, this Task Force being here today—the members being here—is a creation, and it's an evolution to how we get to that point. And I think all of it was because we want to provide for our people. Brian, you brought up a really important point about the cultural and the traditional side, and you tie into that the educational anchor of the institutions. We'd better have a priority for our educational institutions on Tribal lands to have broadband, because that's part of technology as well as the healthcare—telemedicine and whatnot—and because there's no other way around it, and if we don't move forward in those efforts, then we are missing the boat. And I bring that to the attention to the board, the Task Force members, so that we don't drop the sense of urgency, but there are ways to get to that level. And we're moving in the right direction, so I feel good about that.

Matt Rantanen: ...we don't provide plain old telephone service at all. We provide high-speed wireless internet connections through fixed, point-to-point microwave wireless infrastructure to Tribal homes, to Tribal buildings, and we do not provide a phone service, so we will not qualify to receive this funding under its current [ETC] status. So if there is not a mechanism to change that qualification or acceptability to receive these types of funds, you are essentially leaving out nineteen reservations in southern California that would be deploying this to their own people themselves because no one else is there to do it. And as the track record has shown, the incumbents still have not delivered the phone service to all the reservations; the electric companies have shown that they still haven't delivered the power to all the facilities and people on the reservations; so I am pretty much going to guarantee that the broadband is not going to get there unless it goes through a mechanism like ours, which is there to deploy to the Tribes for the Tribes.

Carroll Onsa: I think I've heard around the table that the Tribes need to be involved in terms of movement on this particular, on these reforms because you need to know what their needs are, what their wants are, what their conditions are so that you can make the appropriate decisions on the reforms. A lot of Tribes have gone and organized or formed their own telephone companies for a lot of reasons. Some of the reasons are that the current telephone companies that are there were not operating their equipment, they were not providing good quality service, but yet they were receiving these USF funds and so the Tribes then decided "hey, we're gonna do this ourselves and make it good." Our Tribe for example, the Hopi Tribe, there was no broadband on the reservation in 2007 and, beginning in 2008, when the Hopi Tribe started to operate their own telephone company, they upgraded all of the equipment – the switches, switched out their copper lines to fiber, installed broadband loop carrier equipment and so increased their signal to come off the reservation. By doing that, they were able to provide DSL at minimum, to provide Internet, broadband. And then there are other Tribes who are only interested in receiving quality signal from non-Tribal companies that do business on their reservations. So these two things are on the reservations, so I think these reforms should take each of those situations and maybe there are others, and take account for why are they there, for what purpose are the Tribes satisfying and to help the Tribes make these decisions for themselves.

Michael White: If the Commission is going to change the purpose and move toward a Connect America Fund that is broadband-centered, it very clearly makes sense that the definition of who can receive those services must also change. You are using an ancient definition based on that connectivity being provided only through traditional telephones—plain old telephone service. That excludes a large number of providers who are already giving high-speed internet services to customers all over America today. So that definition has to change, and if it is changed

appropriately, it will include Tribal providers, but it will also include other carriers that are already being excluded by that definition. If I just want to be the transport—I don't want to compete with Skype, I just want to be the transport, that's all I want to do—then I'm still not providing voice.

Debby Gallenberg: I think there needs to be some definite requirement when you are stating bandwidth. We have issue here where they say that they are delivering us three mg, that's what we are paying for, but by the time it gets to us, it is a whole different ball game.

Bruce Holdridge: I would also suggest that since [Tribal] Council often holds an equal authority to a Tribal government, sovereign nation, that maybe Council should be granted the authority to grant ETC status as well. Since right now it is at the state or FCC level, we do not necessarily recognize a state level of authority, as granting us the equivalent to that, maybe Council should hold the equivalent authority to a state public service commission or utility authority and be able to grant an ETC status as well at the Council level. We talked earlier regarding 4 mg and 1 mg. In my opinion, I am buying a service of throughput. Whether I put that over copper, fiber, or tin can and a string, regardless, I am paying for 4 mg. Give me 4 mg. How you do it is your responsibility, and the way you qualify that is by picking the closest speed site to them. They are across the country, they are in Scottsdale and Phoenix, Oklahoma City and Tulsa, they are in remote locations, and they are in downtown locations. That is how you hold the accountability or reasonable standard as to what a throughput is and what the response time is that you get measured to, that you're buying. Short of that, you are providing service that does not meet a standard, and I am not an attorney, but I believe that is fraudulent.

Please contact Cynthia Bryant at (202) 418-8164 if you have any questions. Thank you.

Sincerely,

/s/

Hon. Joe Garcia
Co-Chair, FCC-Native Nations Broadband Task Force
Councilman, Ohkay Owingeh Pueblo

/s/

Geoffrey C. Blackwell
Co-Chair, FCC-Native Nations Broadband Task Force
Chief, Office of Native Affairs and Policy
Federal Communications Commission

NNBTF Native Nations Leaders or Alternate

Honorable Susie Allen
Confederated Tribes of the Colville
Reservation

Valerie Fast Horse
Coeur d'Alene Tribe

Howard Brown (alternate)
Tulalip Tribes

Debby Gallenberg
Sokaogon Chippewa Community

Honorable Joe Garcia
Ohkay Owingeh Pueblo

Pearl Mikulski
Kawerak

Honorable Jeffrey Harjo
Seminole Nation of Oklahoma

Carroll Onsaie
Hopi Tribe

Honorable Bill Kekahbah
Kaw Nation

Matthew Rantanen
Pala Band of Mission Indians

Bruce Holdridge (alternate)
Gila River Indian Community

Brian Tagaban
Navajo Nation

Honorable Jim Shakespeare
Northern Arapaho Tribe

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