

August 18, 2011

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

RE: Notice of Ex Parte Presentation- Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands, WT Docket No. 11-40; 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.

Comments - March 24, 2011

NNBTF Minutes Excerpt:

Discussion of issues raised in *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands Notice of Proposed Rulemaking, FCC 11-29 (Spectrum Over Tribal Lands NPRM)*

- ***Overview of Spectrum Over Tribal Lands NPRM:*** The NPRM seeks comment on promoting the greater use of spectrum over Tribal lands. Jane Jackson, Bill Huber, Margaret Weiner, and Susan McNeil of the Wireless Telecommunications Bureau provided an overview of the following issues proposed in the *Spectrum Over Tribal Lands NPRM*: (1) expanding the current licensing priority; (2) using the power of secondary markets to allow Tribes to work with incumbents for access to spectrum over unserved or underserved Tribal lands; (3) using spectrum currently lying fallow through an innovative build-or-divest process that would allow Tribes to build out in areas where current licensees have met their construction requirement, but are not serving the Tribal lands within their service areas; (4) establishing a Tribal lands construction safe harbor for wireless service providers; and (5) modifying the Tribal lands bidding credit.

NNBTF Transcript Excerpt:

Bruce Holdridge: Yes, I recognize that I represent the community today but I would think that it would be important to, that you have some sort of last right of refusal that's done before awarding the spectrum, or any spectrum that touches or crosses Tribal lands, and that last right of refusal maybe is done at the [Tribal] Council level rather than at the telecom level. Just because the

funding within our own organizations as well as cross-compete issues that I might look at as a business man whereas a Governor may look at or a Council Member may look at and say “yeah, well they don’t have the money but we might as a community and we want a second chance to come in and try to compete with the big guys – Verizon, or the powerhouses that are out there. And it just might be something that you need to take into consideration - that contact at a Council level would be important in some type of last right of refusal concept.

Brian Tagaban: As it stands here, one of the frustrations that I have is that we’re unable to delineate the frequencies over Tribal lands using the spectrum dashboard. You know I’ve tried to use it several times but there’s no Tribal **{tape skips}** to get a designation, or to find out what spectrums are actually designated over Tribal lands. So when you say to a builder, that divest process, that’s a very expensive process for us. We’d have to go out and hire an engineer to do a study which can be cost prohibitive for a lot of us. Even if we get into some of these proposals that you get into here, it would be a very expensive process for us to even get our foot in the door, maybe just helping Tribes and giving the Tribes some technical ability out in the field to be more successful in these programs. With respect to my friend in Hopi, Navajo and Hopi have had a land dispute a while back and we may be getting into a spectrum dispute [laughter], but we want to work that out to where we want Hopi to be successful in implementing their wireless strategy. The Navajo land, I don’t know if you know this, surrounds Hopi, so Navajo, we’re not using our own 700 megahertz, we’re leasing that from someone who won the spectrum using bidding credits. But still we’re in a situation even us and Navajo didn’t retain ownership of the spectrum because it was just cost-prohibitive for us. So as we get into a lot of these, that’s one thing I want to make aware of. The other thing, I think we were hesitant to the reverse auction mechanism, because we didn’t actually learn enough about it and how that actually works. The comments you made about the units, I had to read that over and over again to understand actually how you want to make that work. So I guess a lot of it is education, outreaching to us again, if there’s a mechanism for us to inquiry directly - to take the baby steps into understanding this so we can better embrace what you’re doing and help you work out the details in that.

Michael White: I’d like just for a second jump in here and be the voice of the smaller Tribes because I feel like that’s my role here. For the Iowas and the Sac and Fox and the Potawatomis, we know how expensive it is to try and build these facilities. We’re not interested in building the facilities, we’re just interested in service. And what we have on most of our land is because we happen to be adjacent to somebody that the carriers wanted to provide good service to, you know where we cross a major highway or an interstate or something. Other than that, we don’t have good service and my fear is that the fourth and fifth items you listed here about giving us safe harbor or other things that would try to encourage build out on our lands, don’t really look to me like they would grab the attention of the wireless carriers. It appears to me that most of this is focusing on us building it ourselves to get the service that we need. I’m more interested in the other side, because like I said, of the smaller Tribes aren’t going to have the resources to do that. I have business committee members who work just fine when they’re going through town, but as soon as they get home I can’t get a hold of them. I’m in Oklahoma, it’s almost all rural. But what I’ve been experiencing is that there, when they are doing rural build outs and I look at the BTOP and BIP and I contacted everyone who had Oklahoma on their application or read it, there was a big area of Tribal land that they all avoided. They hit rural areas, they hit a ton of rural areas on Oklahoma, which isn’t hard because there’s a lot of rural area, as I said - but they avoided this big section that is the Sac and Fox, the Iowas, the Potawatomis. They avoided it.

Carroll Onsa: Spectrum, being a public good from the beginning, was distributed and then auctioned, not that that gave a high value to spectrum through this auctioning process. The highest bidder got the spectrum so, in turn, the spectrum became a high cost commodity which

then affected Indian Tribes, because they just couldn't afford the spectrum. And the people who do buy these come to the reservation and, of course, they place their towers among the densely populated sections. But I think most Tribal communities are looking at more than that. These companies are coming in to make a profit, but the communities are looking at things like law enforcement, public safety, education, these type of things that they may not have ready access to. So if the FCC could help the Tribal communities to accomplish those goals, then I think we would make some significant progress.

Comments – March 25, 2011

NNBTF Minutes Excerpt:

Discussion of Licensing Issues

- The Task Force discussed the licensing needs of Native Nations, including the use of wireless or other spectrum opportunities, signal strength, and the desires in Indian country.
- ***Topics of concern for Tribal Leaders:*** Topics of concern include: lack of communications services in Indian country; establishing communications services best suited for individual Tribal communities; often a lack of non-Tribal build out to Indian country where the Tribe builds the necessary tower; applying a Tribal Priority and how to administer it; enforcing carrier obligations to provide services on Tribal lands; and addressing carrier protectionism and allowing new Tribal entrants to provide services in their communities.

NNBTF Transcript Excerpt:

Matt Rantanen: I'd just like to say that specific to each of our scenarios everyone has a different solution for serving their community both for broadband and for phone services – cellular roaming services and things like this – but specific to southern California, the Tribal Digital Village network which operates out of Pala uses fixed microwave point-to-point and point-to-multi-point wireless gear to do this. We have seventeen inhabited reservations in San Diego County. We have several reservations in Riverside County that we service and building infrastructure to support the communities - there's only 2,700 homes on these reservations - so clearly the incumbents looks at this as a “no go” opportunity. There's not enough money out there to make sense to drop a bunch of infrastructure though they were, as we understand it, paid by the Universal Service Fund to provide Lifeline telephone service and things like that to us and we know the national statistic is still below 70% penetration to Tribal homes. So wireless in our community makes a big difference. We're actually servicing community members that do not have telephones and don't have electricity wired - they run on generators - but they still have broadband Internet services from us. So the spectrum that is a very valuable commodity to us is the fixed microwave point-to-point spectrum where we can do big backhaul stuff using our backbone, using microwave that will carry 300 megs to 600 megs, sometimes a gigabyte. If we can get access or have a priority, a Tribal priority, or have an opportunity to use the spectrum especially around our Tribal lands for that use that would be very helpful. Also, the secondary market license issue, we have some incumbents that hold the treasure chest pretty close with all the different licensing that they've gotten over San Diego County. And San Diego County is two different communities for sure - there's a bunch of urban and there's a bunch of really rural even though we're not that far apart. So it would be really nice to be able to have an easy path to some of that - I won't say squandered, but controlled - spectrum that is out there in some of the cool bandwidth areas like the 700s, the 900s, the things like that where we can start to shoot through

trees and start to get down to communities and support communities with Internet where we don't have direct line of sight. It would be really helpful to have some of that opportunity, at least to be able to have a path here at the FCC to go about obtaining that when the person that already has the license to that is unapproachable without coming out of pocket really heavy for lawyers and things like that. The Cellular Mobility Fund issue that, the cellular spectrum if you will, is really valuable and having the Tribes being able to influence the relationships between the cellular companies that are deploying for Tribal access is big because we don't have a lot of phone access. We don't have a lot of cell phone access on several of our reservations and we also have relationships with several of these companies. And a lot of the Tribes have tried in the past to put a cell tower on their reservation in conjunction with a company or working with a company to try to advance their cellular possibilities and had that deal go really sour. And then they have a very good working knowledge with at least one of the carriers and would like the opportunity to bring in a carrier that's more responsive to their needs rather than just trying to place a tower on Indian land. I think my reference to a deal going sour was actually a relationship that Pala had with Nextel. They actually had a cell tower on their land and that relationship had gone bad with the lease of the land, and that was the "gone sour" part. But the actual attempts that were made early on in the Tribal Digital Village project to obtain bandwidth from the bigger corporations like the AT&Ts and Verizons that hold the licensing over the top of San Diego was almost impossible without suiting up a bunch of lawyers to even get in the door to talk to the right person. We made several calls, as a person, like myself and the previous director, tried to just engage them in conversation on how to go about moving into this space. Because we realized that without the line of sight, we needed some sort of technology and ten years ago we weren't talking white spaces. We weren't talking some of these other technologies that are out there that are available to us or are becoming available to us today and we were looking for an opportunity to shoot through trees and kind of bend around a hill so that we could serve our community. And we couldn't get anybody to even come to the table without suiting up some lawyers which we didn't have the funding to manage. So, the conversations just went dead because we couldn't get a responsive person on the other side to help us out in even bringing it to the table for a real discussion. Several attempts were made and I think without the right suit and the right legal approach, I don't know that you can get to the table with those corporations, I'm not sure. Maybe now that we've been on the map for ten years, doing this, we may have a little bit more leverage coming in the door. But we certainly didn't in year two and it would be nice to have at least a "shepherd" or at least a "liaison" with the FCC that could help you get the two parties to the table without coming out of pocket heavy.

Lewis Christman: I can understand where you're coming from with that Matt, we've had the same issue. We tried to reach out to the local wireless providers in our area and they were just completely non-responsive. The only one we did talk with was Sprint and they sent a guy out, but they couldn't fulfill what we wanted to do - to provide service all the way in and out of our particular areas, not just for our community members but for visitors and everybody else that would have cellular service in the event that they ran into an emergency or situation. But I understand what Matt is talking about, we can't get anyone to come out and talk with us, to visit the site and see what we need and it's been that way for a number of years.

Honorable Susie Allen: As well as the Spokane Tribe, they went as far as to say they would build the infrastructure for Unicef at the time. Now we have AT&T, so there are some major issues for us Tribal nations trying to get the wireless or the fiber infrastructure to our reservations. So I think it's critical that the FCC is aware of this and that we need to hold the wireless providers accountable in some way through the Commission, that the Commission does an annual review of "have they reached out to Indian country; what was the barriers?" A lot of it is that they don't want to make that investment on our lands because we don't have the customer base. But yet we

have AT & T, as you know Geoff, leasing three major mountaintops on our reservation which they're capturing the monopoly of the population off the reservation which is their bigger customer base. So there has got to be some mechanism that we can get them to the table and work maybe towards joint ventures or to get emergency communications up. A lot of our reservations have major forest fires; we need emergency public communications for our reservations, to have that ability when we have major disasters.

Michael White: I think that what everyone is saying is what we were discussing yesterday. And that is that when it comes to some of those things when we don't want to build it ourselves, they are not interested in bringing us service. Even when we have put a good foot forward and have tried to provide infrastructure and lower the cost for them to bring service to our lands by building a tower and trying to initiate discussions, building fiber optics et cetera, we're still unable to get them to come in and provide service. And I think that it's important if the Commission puts in place different things to encourage them to provide service that Indian country have the ability to respond and to provide attestation to say "Yes, they did, they are not just claiming they brought us service, they did bring us service." I think there needs to be some type of fine or something associated with them failing to do so and trying to say the opposite. If they're trying to claim that they have provided us service and Indian country comes back and says "no, all they're doing is covering this part in our northern territory because there is a highway there," there needs to be some kind of fallback for that.

Pearl Mikulski: Communication and technology is real important to our rural communities; they're remote, they're isolated and communication is a lifeline, life or death matters. I don't think we have the problems that they have in California with spectrum. We have very few providers up there and they're not competing for the spectrum, but we would be for getting more providers to bring more radio stations, more Internet providers. So we want to see it easier to get the spectrum for the people that are doing it, whether it be commercial or Tribal. We'd like to see an easier application process, a licensing process. A lot of our individual Tribes do not have the resources to build out like he said. But Kawerak stepped forward and applied for AARA money because the local providers were not providing what we call adequate service and we have vital anchor institutions like the VPSO program, which is the Village Police Officer program, the Headstart, and we have eight e-Commerce centers in our villages. And we support the Tribal office, which does all the bookkeeping for the Tribes and their grants and all of those grants now have electronic requirements. So Kawerak was willing to step out and try to get the funding to improve the infrastructure and most of that AARA money went to larger organizations, it didn't go to the neediest places.

Honorable Jim Shakespeare: The licensing agreement and what not, just reading up on some of the issues that actually face the Rocky Mountain region covering Montana, Idaho, parts of South Dakota - I think that what I see is identifying the served and unserved areas and actually identifying those areas and whatever the commercial arena is not taking up, maybe we could use the Tribal Priority on some of them areas. Our area's pretty much commercial-based; we have three cell providers in Wyoming, and Montana is pretty much the same way. But there is a lot of unserved blocks, areas where you feel like the Verizon guy going down the road and then "What?" It gets to be that point where "I'll call you back" but it's really choppy. And just sitting down with the other Tribal leaders and identifying the unserved and underserved areas and then coming to the table and figuring out where, if there's availability in the area as far as spectrum and then moving forward with seeing if it's available there and then prioritizing it from an economic standpoint. Or like Carroll was saying, if we're going to use it for basic safety and health in our communities and that's kind of what I'd like to throw out there as far as the licensing if it's available, you know if we can compete in that market as Tribal organizations.

Carroll Onsaë: On the Hopi reservation, it seems to me that the companies or the people that hold the spectrum either come in and try to snuff out the little guys, you know, the little companies, or they don't do anything at all. It's one or the other. I guess I have a question where if when a company that has a spectrum, is there any enforcement on those companies to either use it or give it up to the Tribes, in this case, to be able to use it? I don't know if there is any enforcement along those lines. It seems to me that the companies that hold the spectrum are in control and the Tribes, in the case of Hopi, they seem to be under their control. I don't know if that is right or wrong; it just seems that the Hopi Tribe has their hands tied and are almost bowing to the companies that have the spectrum over our areas.

Honorable Joe Garcia: I think pretty much everyone here probably has a cell phone. ... You see what I'm saying is that we're talking at different levels and what we're really concerned about is the people that do not have that service. And even the cell phone service is something that no matter where we go, I have Verizon and so everywhere I've gone, except in Alaska, I have services with Verizon. Those are not the issues; the issues are the other thing where our phone companies and service providers are obligated to provide phone service to those that are in need. And the answer is yes, they are obligated because that is what they are licensing agreements as in that's what their, if they receive Universal Funds, then they are obligated to help bring up that coverage for the basic telephone needs for the people who have that need. And if they're not doing it, then they're in violation of something, I think, and so, that's one level of change that needs to be made. The other has to do with the next level of phone coverage which is a different arena, and that is the cell phone coverage. But that might not be as big of an issue as we think it is; but related to wireless is high speed Internet. I don't know who in here has high speed Internet at home or in their communities. If you have high speed Internet, someone is providing that Internet service for you so it's not a big issue, but there are a lot of Tribal lands out there that do not have that kind of a service. And I think this is what Matt just brought up, that even though the Tribes themselves have stepped up to have an impact for their own communities and Tribal members to improve the services provided, they're seeing those stumbling blocks and why are there stumbling blocks? Part of it is spectrum, part of it is monopoly, and part of it is other things and to know exactly what it is for each of those regions is probably an important factor so we find the right solution. Otherwise, we do get caught up, Geoff, in trying to find one fix for the entire Indian nation and that's the wrong approach to take; so I think that's where we've been stuck in the past. Policy has to be guided in that way so we know exactly what it is we're trying to attack and improve; otherwise we'll be spinning our wheels. It might be Navajo is a little bit different, because if you go to Window Rock you probably don't have a need for all those services. I mean you have them already, but if you go out to remote parts of Navajo you don't have any of that; so that's a dilemma and I think that's the scenario in a lot of Indian country, especially the most remote areas and you see that in Wyoming, Montana, North Dakota, South Dakota, Alaska, and even where I'm at. We're not "remote" remote, but we still have that lack of service on the high speed Internet, not self coverage, but Internet services. No matter where you go it's going to be a different scenario and a different environment and different conditions. So how we get all of that together is the important piece that I think this Task Force can help with.

Honorable Bill Kekahbah: I think, as far as my perspective, as the way we are around, where our Tribal members, the majority of them, are is there high speed Internet available, there is cell phone service available, but at what cost. You know you've got a lot of low-income, underemployed people and they can get broadband service, but it is \$99.95 a month. They can get cell phone service, but if they stand in their front yard by a certain tree and if they hold the phone just right, then they can talk. I know that I've got AT&T, and if I go to Tribal headquarters I can't sit in the Council Chambers of my Tribe and talk on the phone. I have to go out and

basically go out and bounce a signal off the building a little bit to do it. And there is a pretty large town about 20 miles away - Ponca City, Oklahoma - and they've got good coverage, but we're 20 miles away and we're on a hill and we still can't get cell phone service out there. We've talked to four or five people about coming out there and putting a tower up, so that we can talk on our cell phone and stuff at the Tribal grounds or wherever, and they're not going to do it because it costs too much to build a tower for the amount of subscribers they're going to gain. We've talked to them about "we'll put a tower up" and then it's you do that and then "we'll have to enter into an agreement for us to put antennas on it," and you go through all the regulatory stuff for that and nobody wants to fight that battle to go down that road.

Honorable Joe Garcia: It's an economic battle there. It's not, economy-wise, good for the company.

Honorable Bill Kekahbah: Yeah. We just had some T-1s brought in to our Tribal headquarters and we're paying \$1750 a month for a T-1. So it's affordable stuff.

Matt Rantanen: Exactly. The other thing is you can offer to build the tower and they won't hang the radios on it. You can build the tower to their specs and provide them with free power and they still won't hang the radios on it or come to the table for negotiations on getting the Tribes set up.

Honorable Bill Kekahbah: Because they've got to get fiber to that tower. You can put a tower up and they can put an antenna on it, but there's nothing feeding that signal into there. And it's the construction costs of them building that fiber line out there that is just, it's, they go "nope, not going to do it because we're not going to make our money back."

Honorable Joe Garcia: We're still talking about cell phones, and the big issue is, but is cell phone maybe more viable than having to run wire or fiber to those places that don't have that basic phone service. It probably is but, but it's not my say so. In Alaska, I'm not sure what the infrastructure looks like, but I imagine that wireless is probably a way to go for Alaska and a lot of those remote areas to do wireless. But how you get that infrastructure built is a big dilemma.

Honorable Susie Allen: We need a Tribal Mobility Fund so we have a priority for Tribes if they choose the wireless build-out option. We need to have that type of funding mechanism set aside for us so that we as a Task Force can collectively, our one major thing that we talked about internally yesterday was gathering inventory information, the data from the 565 Tribes so it's our information, it's the correct information that the FCC needs, that the USDA needs for funding mechanisms. But in speaking with speaking with Jeff and Pearl, they need satellite communications because of their weather conditions. What Brian was talking about, you have to get the carrier to bring the fiber line to connect to your wireless network; if you don't have that then you don't have nothing. It's all connected to their backbone; if they can't provide that means of communication then we're still at a standstill. But I think our biggest thing is that we're still advocating for a Tribal Mobility Fund in the wireless arena. I'm not too sure about satellite; satellite is very expensive. I pay \$69 a month just to have connectivity to my home because I don't have DSL to my home. I do have it into my little community within 2500 ft. of Inchelium Town - we call it Inch Town, so we have a long ways to go. But I think if we advise the FCC that we do need that Tribal Mobility Fund set aside; that if we want to take over ETC designation we should have that opportunity; if the people with that ETC designation is not providing that service to us then we need to ask the Commissioners to consult with us Tribes, 565, and revoke their licensing; let us have the spectrum, let us build out.

Matt Rantanen: I think because some of our people and communities have been without phone service on copper line for so long that the cellular phone service does look like an easier and alternative solution. Because they see the cell towers coming out and they've got service that is close to your home and sometime it will leak onto that reservation. And they do have access so they're relying on that alternative service because they don't think that they're ever going to get that copper line, for the 30% of Tribes that don't have access to that. Also we're seeing a huge influx of things like the Magic Jack and stuff like that as we're providing broadband to these folks on a reservation that don't have reliable phone service; they're jumping to voice-over IP off the shelf, sometimes really budget solutions, but they're getting phone service where they don't have phone service. So they're looking at every alternative because the copper's not there; they don't know if the copper's ever going to come; it's been forever; why isn't the copper there? So they're looking at every opportunity that they can. So every time something like the Mobility Fund comes up, Tribal priority and Tribal influence on getting solutions to the reservation is key.

Michael White: I want to try to drive home a point that was just made by Matt. In order to do this, we still have to have broadband connectivity; you've got to have fiber to the cell tower. You've got to have, in Matt's case where he's saying that they're moving to voice-over IP. It would seem that even if you want to go cellular, the key thing we still have to get, we have to get high speed connectivity into Tribal lands. It starts there and from that we can put the other services on top of it. So I think wireless is important and we're going to need those things; but we have to have the underlying foundation of broadband or high speed connectivity first. And that is expensive to do and something that very few seem to be interested in providing for us.

Matt Rantanen: That is what the Tribal Digital Village is doing for the 19 communities of the Southern California Tribal Chairmen's Association. We are providing that broadband service and we're doing it through fixed microwave point-to-point and point-to-multi-point wireless; that's what they're using the voice-over IP on. And we're doing that from wherever we can find fiber in relation to those reservations so we have one access point to fiber; so we've got fiber coming in to a data center there and we're using wireless to get it everywhere else.

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
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NNBTF Native Nations Leaders or Alternate

Honorable Susie Allen
Confederated Tribes of the Colville
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Valerie Fast Horse
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Honorable Jeffrey Harjo
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Honorable Bill Kekahbah
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