Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
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

COMMENTS OF THE
NATIVE TELECOM COALITION FOR BROADBAND

The Native Telecom Coalition for Broadband[1] ("NTCB") files its Comments in this proceeding pursuant to the Public Notice issued by the Commission on August 3, 2011 (DA 11-1348). In the Further Notice of Proposed Rulemaking at paragraph G of the section entitled "Universal Service," the Commission invites comments on various proposals of support for Alaska, Hawaii, Tribal lands, U.S. Territories, and other lands.

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[1] The NTCB is composed of the entities listed on Appendix A. Each of these entities represents entities interested in improving the availability, quality and adoption rates of voice, mobile, broadband and Internet Access services on Tribal lands, Alaska Native Regions and the Hawaiian Home Lands.

The following Comments of NTCB state that consistent with various federal treaties and acts, it is the intent of Congress to provide Native Americans with a communications platform that fosters economic advancement and quality-of-life enhancement on Tribal lands. The plan advocated by NTCB for a Tribal/Native Broadband Fund (TBF) will favorably resolve the universal service funding (USF) issues for Native Americans, whether American Indian, Alaska Native, or Native Hawaiian. The plan encourages broadband infrastructure deployment and will ensure that participating eligible telecommunications carriers (ETCs) have access to capital for broadband infrastructure expansion on Tribal lands. And if properly implemented and administered, a new "Native American" USF program will achieve the four primary USF/ICC reform goals of this Commission.

The record clearly shows that service penetration for both voice and broadband on Tribal lands lags far behind that for other Americans. Parity of communications services remains a distant goal. This result is due to a lack of communications infrastructure, which in many cases is linked to a lack of business focus and motivation to serve these remote Tribal land areas. Geographic isolation and related income disparity are real barriers prohibiting Native Americans from experiencing the quality-of-life enhancements and economic opportunities that have become available to most Americans through advanced communications technology.

The proposed "Native American" USF program holds the promise of finally delivering many of the commitments embedded or implied in treaties and acts of Congress that have been languishing for over a century. A broadband communications platform will provide the 21st century foundation that is needed to work toward Native American participation in socio-economic advancement, while enhancing their ability to preserve and pass on to future generations longstanding cultural traditions and values.

I. THE PROPOSED TRIBAL LANDS UNIVERSAL SERVICE FUNDING SOLUTION ADDRESSES LONGSTANDING CONGRESSIONAL OBLIGATIONS

Various treaties and other acts of Congress have promised Native Americans an opportunity to experience a quality-of-life similar to that of other Americans. The broadband technology available now offers help in achieving that goal. It erases critical economic, education, health, personal and public safety challenges affecting Native Americans that are isolated from the world on remote Tribal lands. To further the realization of many longstanding Congressional mandates, this Commission must give special consideration to improving broadband deployment and adoption levels on Tribal lands, including the Hawaiian Home Lands.

The proposed TBF will facilitate meeting the broadband communications needs of Native Americans, whether they are American Indians living on reservations in the lower 48, Alaska Natives living in small isolated villages throughout Alaska, or Native Hawaiians resettling the Hawaiian Home Lands that are scattered across the Hawaiian Islands.

The TBF solution, which requires adopting a set of proposed Part 54, Subpart L rules for a new "Native American" Universal Service program, will resolve the funding needs for small rate-of-return RLECs in Alaska, Hawaii, and the lower 48. These are the carriers that have been and continue to be dedicated to delivering broadband services to Native Americans, i.e. American Indians, Alaska Natives, and Native Hawaiians. Infrastructure is needed to help these Native Americans connect with the world -- develop economic opportunities, preserve cultural traditions and values, utilize advanced medical technology, educate their children, and protect their families and property.

II. THE PROPOSED TRIBAL LANDS SOLUTION WILL PROMOTE ACCESS TO CAPITAL FOR NEEDED RURAL BROADBAND INVESTMENT

The National Tribal Telecommunications Association (NTTA) has amplified the success achieved by the current embedded cost, rate-of-return USF/ICC model for rural America with the following statement: "Many of the large-scale [FCC] regulatory proposals are based on incorrect policy assumptions. Foremost is the assumption the existing high-cost support mechanism has been Inefficient. Yet as Rate of Return carriers have entered into isolated rural areas without existing networks and market competition, independent carriers have grown the Public Service Telecommunications Network and increased broadband deployment while meeting all the carrier of last resort responsibilities to rural customers. Cost support based on actual network and service investment has proven an efficient model for evolving networks in market vacuum areas. Financing for these efforts requires a financing method that reflects real costs and a long-term, stable and predictable method of recoveries to sustain broadband expansion. *A mechanism predicated on cost realities, financial certainty and long-term investment recovery is essential to financing broadband deployment in rural areas.*"[2] (*emphasis added*)

If the existing universal service programs for rural carriers were not in place, it is unlikely that any Native American communities on Tribal lands would have the quality of

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[2] National Tribal Telecommunications Association (NTTA), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed April 18, 2011, at 4.

communications services they have today. Seizing on this fact, the proposed TBF assures that a floor of USF support continues after USF/ICC reform is implemented and until such time as further public policy consideration determines that a better regulatory solution should be constructed. TBF will keep small rate-of-return ETCs that serve Tribal lands financially viable, thereby ensuring that carrier of last resort responsibilities are fulfilled for Native Americans by their participating ETCs.

From a lender perspective, TBF removes regulatory uncertainty that is prevalent in the current environment and which makes loans for expansion of broadband infrastructure on Tribal lands questionable today. Clearly the costs to build and operate networks on Tribal lands are very high even when compared to other rural areas. So it is particularly important that the regulatory regime applied to ETCs serving Tribal lands provide "specific, predictable, and sufficient" USF support.

To meet this requirement the TBF is designed to specifically satisfy a lender's loan criteria. The TBF provides additional revenue, if needed, to a participating ETC, so that the "times interest earned ratio" (TIER) required by its loan documents is met. The amount provided is revenue and cost-based and is "sufficient" – no more, no less than is financially justified. It is determined annually by a neutral third party administrator, USAC. And it is based on Part 32 audited financial (both revenues and expenses) data specific to each participating ETC. Because the lender has confidence that a participating ETC will consistently make TIER, loans will be granted for what is deemed to be necessary broadband infrastructure expansion on Tribal lands.

III. THE PROPOSED TRIBAL LANDS SOLUTION COMPORTS WITH THE FOUR USF AND ICC REFORM PRINCIPLES GUIDING THIS COMMISSION

A. Modernize USF and ICC for Broadband

The NTTA expresses the concern that much remains to be done to achieve communications parity (both voice and broadband services) among Native and non-Native communities. In recognition of this disparity NTTA states, "Given the historic under-service in tribal areas, the Commission must accommodate the build-out costs in Tribal and Native areas . . ."[3] NTTA asserts that due to a lack of infrastructure (lack of multiple communications technologies) those native communities that are served have only minimal service choices available to them.

To turn this situation around will require the Commission to adopt a USF program unique to the needs of Native American communities that adequately recognizes and addresses Native challenges, and enables deployment of broadband infrastructure on Tribal lands. The TBF will encourage expansion of broadband networks on Tribal lands by providing access to capital. As was explained above, one of the primary deterrents to additional broadband investment has been the regulatory uncertainty prevalent today. Tribal lands are remote, sparely populated, and generally do not represent markets that can be financially sustained without significant USF infusion. The TBF opens the opportunity for small rate-of-return ETCs focused on serving these communities within their Study Areas to obtain loans and provide the needed investment in broadband infrastructure.

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[3] National Tribal Telecommunications Association (NTTA), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed April 18, 2011, at 23.

B. Fiscal Responsibility

The existing small rate-of-return ETCs serving Tribal lands have generally done a very good job meeting the broadband service requirements of their communities. However, additional infrastructure will be deployed as technology improves, new projects are engineered that extend broadband connectivity at higher speeds, and new Tribal lands infrastructure loans are approved.

Initially, the TBF is first a "safety-net" for participating ETCs. The majority of these ETCs appear to be achieving TIER as a result of current rural USF distributions and ICC pooling/tariffing arrangements. Which means for these existing ETCs, essentially no new USF would be required,[4] even if the Commission USF/ICC reform reductions were offset by a TBF addition that brings support back up to current levels during the transition to a CAF, and under the final CAF program. The "safety-net" aspect of TBF is critically important to the stability of Tribal land service providers.

Until such time as the Commission implements a "Native American" USF, the ETCs serving Tribal lands should be exempted from USF/ICC reform changes so current revenue levels can be maintained.[5] Continued viability of existing ETCs serving Tribal lands is particularly important so that existing service adoption levels for Native Americans do not further decline. And it is also necessary to signal other American Indian tribes in the lower 48

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[4] Currently, about 24 small rate-of-return ETCs serving Tribal lands could fully participate in a "Native American" USF program, if it were in place. A review of 2010 financial statements for 16 of the 24 disclosed a shortfall of approx. $150,000, which would have been the additional USF required to fund the TBF payment.

[5] The small rate-of-return ETCs serving Tribal lands should be exempt from any reduction in USF, including the proposed elimination of support where an unsubsidized competitor also serves Tribal land. Removing support from ETCs that are truly committed as Carriers of Last Resort throughout their high-cost Study Areas, including Tribal lands, would be a step backward and not further the goals outlined in the National Broadband Plan.

that it is possible to operate their own telecommunications companies with the help of effective regulatory policy.

Since passage of the Telecom Act of 1996, only three new tribal telecommunications companies have been formed. The lack of new carriers speaks to the challenges of serving Tribal lands. Establishing the TBF and further considering NTTA's other more comprehensive 10-Title Native Broadband Plan[6] elements will be a necessary next step to stimulate significant additional investment on Tribal lands. The TBF is designed to limit the amount of additional TBF support provided to participating eligible ETCs whose Study Area customer base is comprised of a non-Native majority.

C. Accountability

To participate in the "Native American" USF program, eligible ETCs must provide certification to the Commission and the Administrator that they provide access to FCC minimum broadband speeds on Tribal land service areas. Participating ETCs will also provide the Administrator with both projected and final annual accounting data (externally audited revenue and expense data) to establish interim and final TBF payment amounts. Most small rate-of-return ETCs participating in the program will utilize outside consulting engineers and the RUS telecom lending programs to obtain financing for planned broadband infrastructure expansion. This process typically entails 2-3 years of engineering review and financial evaluation prior to the RUS agreeing to initiate a loan for a specific broadband construction project. Significant professional engineer and government agency oversight is accomplished utilizing this "gatekeepers" process.

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[6] National Tribal Telecommunications Association (NTTA), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed April 18, 2011, pp 32-37.

D. Market-Driven Policies

Because Tribal lands are generally remote and high-cost to serve, they do not typically represent markets that can independently function through the exercise of competitive choice. However, the winning offset is that participating RLEC ETCs have an established local presence in these tribal/native "markets." They live and work in the native communities they serve. These small RLECs, therefore, intimately know the needs of their reservations, native villages, or native developments. RLEC managers work closely with tribal/native leaders to jointly identify and provide the infrastructure and resources needed by the community. The community interest in economic development, telemedicine, distance learning, public and personal safety coincides with the RLEC interest, as well.

Efficiency is a meaningless term unless a desired outcome is accomplished -- unless, for example, rural Americans have access to broadband services that truly improve their quality-of-life in small rural American communities. The successes achieved by the small rate-of-return RLEC ETCs in utilizing current USF programs and ICC to deploy broadband capable infrastructure in rural America is evidence of their collective efficiency.

IV. CONCLUSION

The Commission must create a separate "Native American" USF program. Support funds, including an explicit "safety-net" payment from a Tribal/Native Broadband Fund (TBF) will be distributed, if needed, to existing and future participating ETCs that serve Native Americans on Tribal lands. This new USF program will provide "specific, predictable, and sufficient" support funds (net gap approach) to meet the TIER requirements of lenders. Only

after regulatory certainty is achieved through new Commission policy and rules specific to Native Americans will capital be made available for much needed infrastructure deployment on Tribal lands, including the Hawaiian Home Lands.

This Commission and our industry recognize the promise of broadband communications. It is critical to the survival of the nation. Native Americans are significantly behind the communications curve and are struggling to obtain quality-of-life and economic opportunity equivalent to non-Native communities. Parity of broadband service will help create an equal footing for Native Americans. The Commission adopting a "Native American" USF program will denote a significant step toward fulfilling the many treaties and acts of Congress that were intended to establish the means by which Native Americans can become self-sufficient and self-sustaining on their Tribal lands.

Respectfully submitted,
Native Telecom Coalition for Broadband

By Alan W. Pedersen
GVNW Consulting, Inc.

August 24, 2011

Appendix A

NATIVE TELECOM COALITION FOR BROADBAND

August 24, 2011 Comments in WC Doc. No. 10-90 et al.

John Badal
CEO
Sacred Wind Communications, Inc.

Frank Demolli
Tribal Judge/General Counsel
Pueblo of Pojoaque

David Dengel
CEO/General Manager
Copper Valley Telephone Cooperative, Inc.

Godfrey Enjady
General Manager
Mescalero Apache Telecom, Inc.

Linda Gutierrez
General Manager
Fort Mojave Telecommunications, Inc.

Al Hee
President
Sandwich Isles Communications, Inc.

Paul Kelly
CEO/General Manager
Cordova Telephone Cooperative

James Roger Madalena
Director
Five Sandoval Indian Pueblos

Steve Merriam
CEO/General Manager
Arctic Slope Telephone Association Cooperative, Inc.

Doug Neal
CEO/General Manager
OTZ Telephone Cooperative

Brenda Shepard
CEO
TelAlaska, Inc.

Nathan Small
Chairman
Shoshone-Bannock Tribes

Marsha Spellman, JD
Regulatory Director
Warm Springs Telecommunications Company