**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 | ) | WC Docket No. 07-135 |
| Local Exchange Carriers | ) | |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Developing an Unified Intercarrier | ) | CC Docket No. 01-92 |
| Compensation Regime | ) | |
| | ) | |
| Federal-State Joint Board on | ) | CC Docket No. 96-45 |
| Universal Service | ) | |
| | ) | |
| Lifeline and Link-Up | ) | WC Docket No. 03-109 |

**REPLY COMMENTS OF THE**
**NATIVE TELECOM COALITION FOR BROADBAND**

The Native Telecom Coalition for Broadband[1] ("NTCB") files its Reply 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.

---

[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 NTCB includes several small Alaska carriers and takes interest in the Comments filed by General Communication, Inc. (GCI), a large, predominantly wireless CETC also operating in the State of Alaska. GCI states that the Commission's USF/ICC reform should include unique provisions that GCI offers up and that are tailored to the State of Alaska. However, NTCB believes the needs of GCI are distinctly different from the needs of small, rate-of-return (ROR) ETCs operating in Alaska. And that the benefits from a new "Native American" USF program and TBF mechanism should not be withheld from small, ROR ETCs, including those in Alaska, providing voice and broadband services to Native Americans residing on Tribal lands.

The following Reply Comments of NTCB address several concerns expressed by GCI in their filed Comments. Further clarification and justification is provided to support the Commission's adoption of a new "Native American" USF program and TBF mechanism. The program holds the promise of delivering a broadband communications platform to Tribal lands that will provide the 21st century foundation needed to work toward Native American participation in our nation's socio-economic advancement, while enhancing their ability to preserve and pass on to future generations longstanding cultural traditions and values.

## I. THE PROPOSED TRIBAL/NATIVE BROADBAND FUND (TBF) IS TARGETED FOR WIRELINE ELIGIBLE TELECOMMUNICATIONS CARRIERS (ETCs)

In its filed Comments GCI states, "It is not even clear that it is feasible for wireless carriers to participate in this proposal. . ."[2] GCI is correct in its inference that wireless CETCs are not eligible for this particular cost-based proposal. As a class, they could be eligible for a wireless, cost-based support mechanism, named WiPan, if adopted by the Commission to succeed CETC Identical Support.

Wireline ETCs have embraced the responsibilities of Carrier of Last Resort (COLR). This is particularly true throughout Alaska where over a dozen small rate-of-return (ROR) ETCs serve remote Alaska Native villages. Many of these ETCs are local cooperatives that have been formed by the community to provide critical communications services throughout a designated service area. Everyone's needs are considered and met in the most reasonable, effective and efficient manner possible. Every elected coop Board member lives in the community he/she represents and personally knows and understands the needs of the community and is personally concerned with the quality and cost of the communications services provided.

In contrast, CETCs are free to enter and withdraw from markets they chose to serve. They have no COLR obligation, and can crème skim low cost business and residence customers that offer attractive revenue margins. Profitability is the only reason a CETC can exist. GCI is a textbook example of an effective and successful CETC. It has become one of Alaska's largest carriers and has entered many of Alaska's most remote markets in the name of offering a

---

[2] General Communication, Inc. (GCI), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed August 24, 2011, at 29.

competitive choice, which has enabled it to reap windfall profits from CETC Identical Support. CETC Identical Support is an arbitrary payment of USF to the CETC that requires no showing of its costs. Simply serving a customer with a billing address in a remote Alaska village entitles GCI to the same per line USF support as the small ROR ETC that serves every customer desiring service throughout the community and expanded service area.

Many Congressmen critical of current USF programs frequently use the term "waste, fraud, and abuse" in connection with the rise in CETC payments. The growth of USF over the last 10 years, which is glaring evidence of a "broken USF," is a reflection of CETC USF payments rising from $0 to $1.2B, without ever a showing of cost or other justification of need. USF payments to the ETCs that must show cost have remained static over this same period.

Undoubtedly, there are CETCs that provide useful communications services. However, in high-cost to serve areas, it would seem appropriate to require CETCs to show their cost, if they intend to enter a market as only a non-COLR competitor and draw USF support. GVNW Consulting has developed a simple cost algorithm that can be used by all wireless CETCs, including subsidiaries of wireline ETCs *and* GCI, to justify any support they might receive based on a showing of the cost to provide wireless communications infrastructure and operate the wireless service. The cost model, named WiPan, was previously filed with this Commission. Also, within a one-month period of time a wireless CETC in Kansas, Westlink, was able to populate the model and demonstrate with actual cost data from its own accounting records what could be a parallel wireless CETC support payment.

## II. THE TRIBAL/NATIVE BROADBAND FUND (TBF) IS A "SAFETY-NET," NOT A "MAKE WHOLE" FUND

In its filed Comments, GCI makes the statement, ". . . a group of GVNW carriers ("GVNW") has proposed a long-term, separate Tribal/Native Broadband Fund ("TBF") under which an ETC would be guaranteed support sufficient to ensure that it maintains a Times Interest Earned Ratio ("TIER") of 1.5."[3] The correct understanding is that an "earnings floor" will be maintained, regardless of the USF/ICC reform impacts. The TBF is a "safety-net," not a "make whole" fund. And it is targeted to achieve the specific TIER assigned an individual ETC, or a default TIER of 1.5. The proposed industry plan that addresses USF/ICC reform, coupled with adoption of the "Native American" USF, would not likely bring regulated earnings to current levels for the 24 ETCs serving Tribal lands. Essentially all of these carriers are exceeding minimum TIER lender requirements.

The TBF ensures only that an "earnings floor" is achieved. Each of these carriers, if they were included in an industry CAF transition, would see earnings reductions as a result of declining USF and access revenue. The TBF would only ensure that TIER was made, but not that current regulated earnings levels would continue. However, by providing the certainty that minimal regulated earnings levels will consistently be maintained, continued access to capital should be made available. The result will be deployment of needed broadband infrastructure on Tribal lands.

The proposed TBF mechanism meets the letter of the law to a "T." It is support that is "specific, predictable, and sufficient" (revenue and cost-based). No unintended consequences of

---

[3] General Communication, Inc. (GCI), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed August 24, 2011, at 28.

USF/ICC reform could trigger a precipitous loss that would bankrupt an ETC serving Tribal lands. It 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.

## III. THE FCC PART 32 UNIFORM SYSTEM OF ACCOUNTS IDENTIFIES REGULATED INVESTMENTS, REVENUES, AND EXPENSES

In its filed Comments, GCI makes the statement, "GVNW's proposal appears to be based only on an ETC's regulated revenues. This seems to create a situation in which USF would be used to "fill the gap" created by an ETC's non-regulated and non-supported activities."[4] In actuality, the intent of the proposal is to provide only regulated services "net gap" support.

The Part 32 accounting data represents the regulated investment used, and the revenue and expenses incurred to provide regulated communications services. Section 32.14(c) requires that subsidiary records be established to identify investment used and revenue and expense incurred solely to provide nonregulated services, solely to provide regulated services, and those incurred jointly or in common for the provision of both regulated/nonregulated services. This last group of jointly or in common costs are allocated to regulated/nonregulated accounts. In FCC Part 64, Miscellaneous Rules Relating to Common Carriers, Subpart I – Allocation of Costs, the basis for assigning jointly or in common costs is identified. TBF, which is support

---

[4] General Communication, Inc. (GCI), Comments in the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., filed August 24, 2011, at 28.

funds solely for the provision of regulated services, can be calculated from audited Part 32 accounting data.

In addition, the FCC has the authority to periodically reconsider the definition of "Universal Service." As communications services evolve, and the penetration level of those services change, the FCC may determine that new broadband services should be included among those defined as "Universal Service." Data submissions to USAC utilizing standardized forms may also be altered to identify assets, revenues, and expenses associated with the provision of "Universal Service." For example, the current RUS Form 479 is filed annually. It contains Part 32 financial information that is used by RUS to determine whether TIER is made.

The regulated ILEC community has a longstanding process/history of showing cost to justify any support funds received. Although larger Price Cap carriers are moving away from this showing-of-cost requirement, small ROR ETCs continue to justify rates and USF support through a demonstration of cost. This is consistent with the social compact and regulatory policy of receiving support in turn for the provision of regulated services at affordable rates and the assumption of COLR obligations. ETCs have no freedom to enter or exit the market without fully complying with a regulatory framework that ensures all consumers will receive communications services. Part and parcel of this regulatory framework is the goal to provide consumers with access to affordable "Universal Service." On the other hand, it could never be reasonably argued that this same framework should provide CETCs with windfall profits. Fiscal responsibility and accountability have always been key concerns in the formulation of USF programs and rules.

## IV. CONCLUSION

In its Comments in this and other FCC NOI and NPRM proceedings, the NTCB has explained that the proposed TBF assures a "specific, predictable, and sufficient" payment to a participating wireline ETC that provides a floor of USF support. These minimal, revenue and cost-based USF support amounts should continue during and after USF/ICC reform is implemented, and until such time as further public policy consideration determines that a better regulatory solution should be constructed. A "Native American" USF program that offers TBF will keep small rate-of-return ETCs that serve Tribal lands financially viable, thereby ensuring that COLR responsibilities are fulfilled for Native Americans by their participating wireline 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.

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.

September 6, 2011

**Appendix A**

**NATIVE TELECOM COALITION FOR BROADBAND**

**September 6, 2011 Reply 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