

**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

**REPLY COMMENTS OF SMITH BAGLEY, INC.**

Smith Bagley, Inc. (“SBI”), by counsel, hereby submits these Reply Comments, pursuant to the *Public Notice* issued by the Wireline Competition Bureau in the above-captioned proceeding.<sup>1</sup> These Reply Comments are limited to discussing how to address the unique challenges of serving Tribal areas.

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<sup>1</sup> See *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, Public Notice, DA 11-1348 (rel. Aug. 3, 2011), 76 Fed. Reg. 49401 (Aug. 10, 2011) (“*Public Notice*” or “*Notice*”), Erratum (rel. Aug. 8, 2011). The due date for reply comments in response to the *Public Notice* is September 6, 2011. *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, Order, DA 11-1471 (rel. Aug. 29, 2011) (granting in part and denying in part motions for extension of the deadline for reply comments).

## I. INTRODUCTION

As evidenced in the initial comment round, there is broad consensus among tribal carriers and associations, as well as among ETCs serving Native American lands, that tribal areas merit special consideration as the FCC develops its broadband programs and considers reforms to the USF. The depressed economic conditions, low population density, and challenging geography all contribute to very low telephone and broadband penetration rates compared to the country as a whole. Commenters with tribal interests generally agree that these factors warrant the exclusion of tribal areas from phase-outs and other proposed USF reform measures that would reduce existing support levels.

## II. DISCUSSION

### A. Commenters Widely Agreed That Tribal Lands Present Unique Challenges Warranting a Carve-Out From Support Phase-Downs or Reductions.

Associations of tribes and tribal carriers, as well as non-tribal ETCs serving Native American tribal lands, echo SBI's prior comments, emphasizing that tribal areas have unique characteristics presenting challenges in deploying telecommunications and broadband service.<sup>2</sup> These unique circumstances include high infrastructure construction and maintenance costs, as well as depressed economic conditions demonstrated by low per capita incomes and high unemployment and poverty rates.<sup>3</sup>

As SBI has previously noted, all of these problems contribute to very low telephone and broadband penetration rates in tribal areas compared to the rest of the country.<sup>4</sup> As one

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<sup>2</sup> See, e.g., General Communication, Inc. ("GCI") Comments at pp. 8-12; Gila River Telecommunications, Inc. ("GRTI") Comments at pp. 3-7; Standing Rock Sioux Tribe and Standing Rock Telecommunications, Inc. ("Standing Rock") comments at p. 2

<sup>3</sup> See GRTI Comments at p. 4.

<sup>4</sup> See *id.*

commenter noted, “[t]ribal communities are among the least served by 21<sup>st</sup>-century telecommunications networks, or even 20<sup>th</sup>-century telecommunications networks.”<sup>5</sup> The Native Telecom Coalition for Broadband (“NTCB”) pointed out that “[g]eographic 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 telecommunications technology.”<sup>6</sup>

Tribal associations and carriers serving tribal areas agreed that in light of these difficulties, great care must be taken to provide sufficient support under both the High Cost and Low Income programs. As Standing Rock put it:

In considering the reallocation of subsidies toward broadband, the FCC should make sure tribal areas are not harmed and continue to receive much-needed support for basic telecom’s services and mobile networks, in addition to newer broadband technology. Existing tribal exemptions and levels of support, such as the Tribal lands exclusion from the current cap on high-cost support, should be preserved to the greatest extent possible. Critical Lifeline and Link Up support must not be diminished in underserved tribal areas, because access to even basic services in these areas is still sorely lacking.”<sup>7</sup>

There is also a consensus among such commenters that the America’s Broadband Connectivity Plan (“ABC Plan”),<sup>8</sup> the RLEC Plan<sup>9</sup> and the Joint Letter<sup>10</sup> (collectively referred to as the

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<sup>5</sup> Standing Rock Comments at p. 2.

<sup>6</sup> NTCB Comments at p. 2.

<sup>7</sup> Standing Rock Comments at p. 3.

<sup>8</sup> Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream (“Price Cap Carriers”), to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011).

<sup>9</sup> Comments of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association (“NTCA”), Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and Western Telecommunications Alliance (“WTA”) (the “Joint Rural Associations”), WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) (“RLEC Plan”).

<sup>10</sup> Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J.

“Wireline Industry Proposals”) are particularly ill-suited to tribal areas. Indeed, other than the carriers who sponsored and would profit from the Wireline Industry Proposals, there’s scant support for them in the record for non-tribal lands.

General Communication, Inc. (“GCI”) noted that the ABC and RLEC Plans “would severely curtail Alaskan telecommunications infrastructure development and operations and leave Alaska with a fractured and only partially-constructed telecommunications network.”<sup>11</sup> GRTI emphasized that “telephone penetration rates and broadband adoption rates on tribal lands would likely decrease as a result of higher subscriber rates necessitated by revenue losses under the Three Reform Plans.”<sup>12</sup> The National Tribal Telecommunications Association (“NTTA”) has proposed the exemption of tribal areas from any of the Wireline Industry Proposals in favor of the establishment of a “Tribal Broadband Fund” and a “Native Safety-Net” mechanism.<sup>13</sup>

As SBI noted in its initial comments, SBI has used its high-cost support to build towers, microwave backbone facilities, switching equipment, hardware and software needed to operate a modern telecommunications network. In the tribal areas it serves, there is no business plan that supports a high-quality stand-alone wireless network throughout the service area. Without high-cost support, SBI would not be able to build facilities on tribal lands, and without low-income support, many tribal residents would not be able to afford telephone service. Accordingly, reforms to the USF mechanism must ensure the continued availability of sufficient support for the construction and deployment of high-quality telecommunications networks in tribal areas.

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Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011) (“Joint Letter”).

<sup>11</sup> GCI Comments at p. 2.

<sup>12</sup> GRTI Comments at p. 3.

<sup>13</sup> *See* NTTA Comments at p. 2 (document not paginated).

**B. The GVNW Proposal Would Undermine the Core Principle of Competitive Neutrality and Encourage Inefficient Spending.**

The Tribal Broadband Fund proposal set forth in an ex parte submission by GVNW, Inc., a consulting firm typically retained by rural ILECs, (“GVNW Proposal”)<sup>14</sup> would not be competitively neutral, nor would it promote the efficient investment of support in critical infrastructure. As GCI notes, the Proposed Subpart L included in the GVNW Proposal only makes support available to carriers that use Part 32 accounting.<sup>15</sup> As such, the GVNW Proposal would exclude wireless carriers outright. This would violate the Commission’s core principle of competitive and technological neutrality, which requires all explicit support be made available to all eligible carriers, not reserved for one class of carrier.<sup>16</sup>

By excluding wireless carriers, the GVNW would fail to address the lack of access to telecommunications and broadband service in tribal areas and completely undermine the critical need for mobile connectivity on tribal lands, especially in areas like those served by SBI. As SBI has previously noted, high-cost support has enabled SBI to bring service to tribal residents

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<sup>14</sup> See Letter from Jeffrey H. Smith, GVNW, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al., Proposed Subpart L (filed Aug. 8, 2011) (“GVNW Proposed Subpart L”).

<sup>15</sup> See GCI Comments at p. 28.

<sup>16</sup> The Commission has explained that:

[F]ederal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and . . . that the same amount of support . . . received by an incumbent LEC should be fully portable to competitive providers. A competitive eligible telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any “new” lines that the competitive eligible telecommunications carrier serves in high-cost areas. To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line . . . Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.

*Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20480 (para. 90) (1999) (footnotes omitted) (“*USF Ninth Report and Order*”), reversed in part and remanded in part, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

who never had access to wireless telephone service – or, in many cases, any telephone service – before.<sup>17</sup> Given the critical role of wireless technology in bringing telecommunications service to tribal communities, any proposal that limits funding to wireline technology would impede the further improvement of telecommunications access in tribal areas.

In addition, the GVNW Proposal would not contain any effective mechanisms to limit spending by wireline carriers. The stated purpose of the TBF support would be to “provide participating ETCs with ‘net gap’ support sufficient to recover any revenue shortfall related to the provision of regulated communications services to American Indians, Alaska Natives, and Native Hawaiians.”<sup>18</sup> Yet, as GCI points out, the GVNW Proposal appears to be a revenue assurance plan that would “fill the gap” created by a carrier’s non-regulated and non-supported activities.<sup>19</sup> This raises the likelihood that TBF support would be used in an unrestrained fashion, with no incentive to streamline expenses or invest in non-regulated activities.

To the extent that such a proposal removes support from efficient carriers such as SBI, it would further exacerbate the inequality of telecommunications access in tribal areas compared with the rest of the country. The better course is to focus on tribal citizens by ensuring that they have access to modern mobile broadband technology and that carriers who are willing to invest risk capital in tribal lands have a fair opportunity to access support to accelerate infrastructure investments.

### **C. The NTTA Proposal Will Not Assure Sufficient Support on Tribal Lands.**

NTTA’s proposal (“NTTA Proposal”) to establish a Native Broadband Fund (“NBF”) similarly fails to recognize the crucial role of mobile wireless networks in increasing access in

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<sup>17</sup> See SBI Comments at p. 8.

<sup>18</sup> Proposed Subpart L at § 54.1005(a).

<sup>19</sup> See GCI Comments at p. 28.

tribal areas that severely lag in telecommunications service penetration. In relevant part, NTTA proposes to “limit USF/CAF recipients to one provider in each service area as the Carrier of Last Resort.”<sup>20</sup> By providing support to only one carrier, the NTTA Proposal would only cement the historical advantages accorded by incumbency and lock out competitive carriers.<sup>21</sup> This would have the effect of impeding the successful deployment of competitive wireless service, which has been so instrumental to increasing telephone subscribership on tribal lands.<sup>22</sup>

Furthermore, the NBF would ensure continued current levels of high-cost support to tribal carriers, while providing that non-tribal ETCs would “receive support under their own auspices under the USF or CAF.”<sup>23</sup> By exempting only tribal carriers from phase-downs and other support reduction measures, the NTTA Proposal would impede the efforts by wireless providers like SBI that have, to date, used high-cost support to achieve significant gains in access to telecommunications service on tribal lands. With conditions so obviously poor on tribal lands, it

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<sup>20</sup> NTTA Comments at p. 3.

<sup>21</sup> See *Federal-State Joint Board on Universal Service, In The Matter Of Western Wireless Corporation Petition For Preemption Of Statutes And Rules Regarding the Kansas State Universal Service Fund Pursuant to Section 253 of the Communications Act of 1934, Memorandum Opinion and Order*, 15 FCC Rcd 16227, 16231 (“We would be concerned about a universal service fund mechanism that provides funding only to ILECs. A new entrant faces a substantial barrier to entry if its main competitor is receiving substantial support from the state government that is not available to the new entrant. A mechanism that makes only ILECs eligible for explicit support would effectively lower the price of ILEC-provided service relative to competitor-provided service by an amount equivalent to the amount of the support provided to ILECs that was not available to their competitors. ... Further, we believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. In fact, such a carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its state government- imposed competitive disadvantage.”)

<sup>22</sup> See *High-Cost Universal Service Support, Federal-State Joint Board on universal Service; ALLTEL Communications, Inc. et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc., and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment, Order*, WC Docket No. 05-337; CC Docket No. 96-45 (rel. May 1, 2008) at ¶ 37 (“Because many tribal lands have low penetration rates for basic telephone service, we do not believe that competitive ETCs are merely providing complementary services in most tribal lands, as they do generally.”)

<sup>23</sup> *Id.* at p. 13.

is counterproductive to attempt to set aside support for incumbent carriers when other carriers are having significant success at improving telephone penetration and service quality.

In addition, the NTTA Proposal appears to provide severely limited support for wireless broadband deployment, and suggests that Mobility Fund support be used for fixed wireless public safety networks (although this is not clear). Specifically, the NTTA Proposal would “start with the one-time mobility fund to target Tribal and Native communities that have been bypassed regarding wireless service to design an emergency mobile fixed wireless network to fill in where PSTN network has not reached.”<sup>24</sup> SBI has previously explained in detail why a one-time broadband mobility fund makes no sense for tribal areas.<sup>25</sup>

#### **IV. CONCLUSION**

The Commission should first ensure that tribal lands do not lose access to critical connectivity. Then, the Commission should design support mechanisms on tribal lands which accelerate broadband deployments, ensure accountability by program participants, and provide much needed certainty for carriers who are today making substantial investments in these areas.

SBI urges the Commission to adopt proposals set forth in its comments: (1) cap support on tribal lands on a per line basis; (2) affirm the Commission’s “no barriers” policy to provide

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<sup>24</sup> NTTA Comments (April 18, 2011) at p. 37.

<sup>25</sup> SBI Comments in WT Docket no. 10-208 (May 5, 2011).

immediate certainty that wireless carriers can use support to build dual purpose networks; and (3) create a separate tribal broadband fund using a forward-looking cost model which is administered in a competitively neutral fashion.

Respectfully submitted,

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