Ex Parte Filing: Meeting with Commissioner McDowell on Tribal issues, Friday, March 9, 2012

Attendees: Shirley Ortiz, General Manager, San Carlos Apache Telecommunications Utility Incorporated; Steven Kramer, Chief Financial Officer; San Carlos Apache Telecommunications Utility Incorporated; Bill Bryant, General Manager, Saddleback Communications & Vice Chair, National Tribal Telecommunications Association; Luke Johnson, Chairman, Ft. Mojave Telecommunications, Inc; William Micklin, CEO of the Ewiiaapaayp Band of Kumeyaay Indians and Executive Director of the California Tribal Governments Association (CATG), also First Vice-President of the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA), which is a member tribe of the Alaska Federation of Natives (AFN) and Affiliated Tribes of Northwest Indians (ATNI); Eric Jensen, Policy Counsel, National Tribal Telecommunications, Inc. FCC: Commissioner McDowell; Christine Kurth

The National Telecommunications Association, the Affiliated Tribes of Northwest Indians and the California Tribal Governments Association met with Commissioner McDowell to discuss Tribal access to Broadband service and the impact of the USF and ICC reform Order and the proposed Low-Income Support Order on Tribal Telecos and Tribal communities.

NTTA conveyed the concerns of the Rural Utilities Service—with whom it had just met--that then entire business case for rural rate of return carriers will be destroyed by the FCC's proposed USF and ICC rules.

The Tribal telecos related their past as "unserved" areas and cited their record of improving connectivity in unserved communities to garnering 700 to 900 percent improvement in connectivity for their communities both in voice dialtone and in access to broadband. NTTA said while becoming a Tribal teleco is not a solution embraced by every Tribe, nevertheless the examples of the 8 regulatory fully operational companies offers up a shining model of success and demonstrated high efficiency of USF funds when looking at the metrics of results.

NTTA stated it wanted to address several concerns.

NTTA talked about the impact of the proposed USF and ICC rules on Tribally-owned telecos. With the proposed cuts in the Order, several Tribes will be harmed, with one Tribe needing to shut down its regulatory services to its community.

NTTA underscored that Tribally owned telecos were unique in how they operate compared to commercial vendors. Tribally owned telecos are essentially public interest services provided to an entire community with little room to change their service style or client services. The Tribally provided services must serve the entire needs of Tribal communities from public safety, to supporting education, provisioning governmental offices, to provisioning anchor institutions and are established with the proviso that they must remain self-sufficient and will not turn to the Tribe to augment their operations—RUS has strong partitioning requirements for limited liability separation from Tribal finances. So unlike commercial ETCs that are more nimble and deep-pocketed and can change with market and regulatory trends, Tribes are fully committed to the level and quality of service they are providing. Any shift of funding source and levels will affect the scope and quality of service provided to the remote communities, though not as quantifiable as the Commission may demand.

NTTA also outlined the concern that there is the government-to-government exchange of expectations that have now been upset. Only three out of 564 Tribes have become their own regulatory provider since the Telecom Act of 1996. This difficult arc of becoming a regulatory provider has not been an easy process for any of the Tribes. Yet the sense is that if a Tribal government commits to adherence to the regulatory requirements of the FCC they would be able to receive predictable support in exchange for the full adherence to the federal rules. Yet in this round of rule changes, the Tribes are caught mid-stream in their obligatory provisioning of carrier-of-last-resort services and investments and financial obligations and told they would take such cuts mid-stream as deemed necessary for all telecos. (NTTA has provided comments that a rough estimate of the amount of funding necessary to enable Tribally owned telecos at their previous funding levels would be no more than $3-4 million annually in previously unserved and underserved areas that still require continued support to attain parity with non-Indian communities.)

NTTA added that the prospect of de-stabilizing financial predictability and potential cuts that might require Tribal assistance beyond their expectations of self-sufficient services will have a decided "chilling affect" on other Tribes embracing this difficult but highly proven model of changing lack of access to advanced service to Tribal lands.

Commissioner McDowell asked we have spoken to the Chairman about these concerns. NTTA responded that it has met with the Wireline Bureau and ONAP

and found the Bureau non-responsive except to propose the waiver process for Tribes. NTTA commented that the waiver process appears untenable and highly burdensome for Tribes.

NTTA addressed a broader concern: That the Commission's Order and general policy will fail to address Native lands' need for broadband and close the disparity gap between Native and non-Native communities. NTTA raised specific concerns about Tribes not getting assistance from the FCC rules and resources. First, the first and only response to the 90 percent lack of broadband access in Native lands is the Mobility Fund proposal to target $50 million (that actually is funded by wireless merger set-aside contributions) and then $100 million annually to deploy 3G and 4G throughout Native lands is upside down in meeting the very pronounced and fundamental needs of Native lands for Broadband public infrastructure.

NTTA raised a strong that the proposed price cap carrier option to decline serving unserved areas will set off a series of competitive (reverse) auctions that will create turmoil for Tribes with the uncertainty which ETCs will serve the Tribe and how cheap a network or service this will yield for Tribes. NTTA outlined its counter proposal that Native governments be able to serve their own Native area—and preferably not have to engage in competitive bidding to step into that regulatory role.

NTTA's last topic was to address the need for a low-income program to support Broadband access in an Enhanced Broadband Lifeline and Linkup program for Native communities. NTTA pointed The reality is if 84 percent of subscribers in Gila River, if 65 percent of subscribers in San Carlos, and if 700 families in Hopi cannot afford basic phone service, which range between $18.00 to $23.00 per month, how can Native residents possibly afford residential broadband service without a similar consumer support program. NTTA understands the need to transition into a Broadband Lifeline and Linkup program through a pilot project to right-size and determine the underlying administrative mechanism, NTTA is also concerned that the FCC may not have a commitment to help Native consumers beyond the pilot program being proposed.

NTTA's larger ask with the Commission is for a greater inclusion by Native governments, Tribally-owned telecos, and Native advocates, in the development of policy and solutions for Native lands.