



NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band of Mission Indians

RECORDING SECRETARY
Edward Thomas
Central Council of Tlingit & Haida
Indian Tribes of Alaska

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Bill Martin
Central Council of Tlingit & Haida
Indian Tribes of Alaska

EASTERN OKLAHOMA
S. Joe Crittenden
Cherokee Nation

GREAT PLAINS
Robert Shepherd
Sisseton Wahpeton

MIDWEST
Matthew Wesaw
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Fawn Sharp
Quinault Indian Nation

PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh

WESTERN
Ned Norris, Jr
Tohono O'odham Nation

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

May 7, 2012

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Petition for Reconsideration filed by the United States Telecom Association on April 2, 2012 under the following dockets:

Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42
Lifeline and Link Up, WC Docket No. 03-109
Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23

Dear Ms. Dortch,

On behalf of the National Congress of American Indians (NCAI), the oldest and largest representative congress of American Indians and Alaska Natives in the United States, I respectfully submit this Opposition to the United States Telecom Association's (USTelecom) Petition for Reconsideration (Petition) on *Lifeline and Link Up Reform and Modernization*.

In their Petition USTA objects to certain tribal provisions that were included in the *Lifeline and Link Up Reform and Modernization Report and Order and Further Notice of Proposed Rulemaking*. NCAI, as a leading national advocate for the protection of American Indian and Alaska Native interests, is concerned with those objections, as described herein. Specifically, NCAI objects to Petitioner's arguments in Section VII of the Petition under the heading: "The Commission Should Clarify the Requirement for the Acceptable Documentation of Program Eligibility".¹

In their Petition, USTelecom requests the Commission to reconsider its rules requiring ETCs to provide reports to tribal governments. USTelecom suggests, alternatively, that the Commission should require a carrier to "provide tribe-specific information to tribal governments upon reasonable request. ETCs do not have contact information for each particular tribe. Even where they have such information

¹ See USTelecom, 'Petition for Reconsideration' (WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23). Pages 16 – 17. Filed and published in the FCC ECFS on April 2, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021906157>.

it may not be clear to an ETC which tribal representative should receive the information.”²

The reporting requirements USTelecom is objecting to in this proceeding are similar to the ‘Tribal Engagement Provisions’ outlined in the Connect America Fund (CAF) Order.³ USTelecom and others filed Petitions for Reconsideration in that proceeding, also citing objections to Commission requirements for the inclusion of tribes in reporting and decision-making efforts when tribal lands and tribal citizens are involved.

In the CAF proceeding, NCAI and Native Public Media (NPM) filed a joint Opposition to the Petition for Reconsideration filed by the ‘Rural Local Exchange Carriers Serving Tribal Lands’ on January 9, 2012, which addresses many of the issues USTelecom and others have raised regarding Tribal Engagement Provisions and similar FCC requirements.⁴ In their joint Opposition NCAI and NPM stated that the Tribal Engagement Provisions are:

- 1) Fully Supported by the Record;
- 2) Consistent with Federal Indian Law;
- 3) Fully Supported by the Constitution of the United States; and
- 4) Not Overly Burdensome

Those same arguments apply to the tribal engagement requirements USTelecom is objecting to in its Petition for Reconsideration in this proceeding.

NCAI Supports the FCC’s Creation of the Tribal Engagement Provisions for ETCs and Encourages the FCC’s Recognition of Tribal Governments as well as its Extension of Consideration for Tribes and Tribal Citizens to the Lifeline and Link Up Programs.

NCAI, NPM, and numerous Tribal Nations and organizations have been involved with and participated in numerous proceedings at the FCC over the last several decades. As highlighted in the parties’ joint filings in other recent dockets, “the [National Broadband Plan] is replete with evidence of the unique status and needs of Tribes...”⁵ and, “[a]fter recognizing the dire situation in Indian Country in the [National Broadband Plan], the FCC opened several proceedings and received hundreds of comments related to the special telecommunications needs of Tribes.”⁶ This record has been acknowledged and advanced by the FCC and has resulted in promulgation of the FCC’s Tribal Engagement Provisions.

² *Id.*

³ See United States Telecom Association. *Petition for Reconsideration and Clarification* (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, WT Docket No. 10-208). Filed in the FCC ECFS on December 29, 2011. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021752209>.

⁴ See Native Public Media and the National Congress of American Indians. *Opposition to Petition of Reconsideration*. (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, WT Docket No. 10-208). Published in the FCC ECFS on January 10, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021753060>.

⁵ *Id.* Page 4.

⁶ *Id.* Page 5.

The argument that USTelecom has made stating that the Tribal Engagement Provisions are unconstitutional has been previously addressed by NCAI, NPM, and numerous other Tribal Nations and organizations.⁷

USTelecom attempts to use a similar argument to object to the reporting requirements outlined in the *Lifeline and Link Up Reform and Modernization* proceeding. Although USTelecom does not claim that this reporting requirement is ‘unduly burdensome’, the language used in the Petition suggests that is their position. As mentioned above, USTelecom claims that, “ETCs do not have contact information for each particular tribe. Even where they have such information it may not be clear to an ETC which tribal representative should receive the information.”⁸ This position is not supported by any evidence.

In fact, while an ETC may claim it does not have contact information for a tribe it is serving, that should not preclude the ETC from actively attempting to reach out to tribal governments, especially where the ETC is serving a tribe or its citizens. Tribes across the country maintain websites and social media pages, which contain contact information to tribal headquarters and government offices. NCAI also maintains a publically-available tribal directory of the 566 Federally Recognized tribes in the United States on its website⁹. Finally, and most importantly, if ETCs are uncertain which tribal governmental representative they should be reporting information to, then they should discuss this issue with the relevant tribes they are serving. This is the entire goal of the Tribal Engagement Provisions and similar FCC requirements – to create meaningful dialogue between providers and tribes.

NCAI applauds the FCC for encouraging tribal participation to bridge the Digital Divide in Indian Country and is hopeful that the FCC will protect and strengthen the Tribal Engagement Provisions outlined in the CAF Order as well as similar engagement provisions required in this proceeding to encompass protections for American Indians and Alaska Natives participating in the Lifeline and Link Up programs. Although the ETC reporting requirements have not explicitly included the Tribal Engagement Provisions of the CAF Order, NCAI encourages the FCC to continue to

⁷ See Gila River Indian Community and Gila River Telecommunications, Inc. Opposition and Comments to Petitions for Reconsideration. Published February 10, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021859409>.

See Hopi Telecommunications Inc. Comments. Published January 19, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021754440>.

(cont'd from previous page)

See National Tribal Telecommunications Association Opposition to Petition for Reconsider the Commission's Tribal Engagement Requirements. Published February 10, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021859526>.

See Navajo Nation Telecommunication Regulatory Commission Opposition to Petition for Reconsideration. Published January 10, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021753040>.

⁸ See USTelecom, ‘Petition for Reconsideration’ (WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23). Pages 16 – 17. Filed and published in the FCC ECFS on April 2, 2012. Accessed May 7, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021906157>.

⁹ See National Congress of American Indians, Tribal Directory. Available at <http://www.ncai.org/tribal-directory>.

promulgate language that acknowledges the ongoing need for telecommunications providers to engage tribal governments and to meet the needs of tribal customers providers are serving.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Jacqueline Johnson Pata". The signature is written in a cursive, flowing style.

Jacqueline Johnson Pata
Executive Director
National Congress of American Indians

cc: Geoffrey Blackwell
Chief
Office of Native Affairs and Policy
Federal Communications Commission
445 12th Street SW
Washington, DC 20554