

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

In the Matter of)	
)	
Tribal Mobility Fund Phase I Auction)	AU Docket No. 13-53
Scheduled for October 24, 2013)	
)	
Comments Sought On Competitive)	
Bidding Procedures For Auction 902)	
And Certain Program Requirements)	

COMMENTS OF THE OGLALA SIOUX TRIBE

The Office of Economic Development of the Oglala Sioux Tribe (“Oglala Sioux Tribe”) submits these Comments on the Commission’s *Tribal Mobility Fund Auction 902*.¹ The Oglala Sioux Tribe commends the Commission for recognizing the unique and compelling need for telecommunications and advanced broadband services on tribal lands, but the long awaited Tribal Mobility Fund provides little or no opportunity to address the lack of affordable basic telephone and advanced broadband service on the Pine Ridge reservation and other tribal lands. This point is highlighted by the following facts about the Pine Ridge reservation:

- According to US Census data,² the Pine Ridge reservation consists of 4,835 census blocks (and 18,830 people) covering 4,341 square miles of some of the most rural and remote areas of the country without reliable mobile wireless service.
- The *Tribal Mobility Fund Auction 902* identifies only one (1) census block (and 14 people) covering 50.54 square miles that is eligible for universal service support.

Clearly, the Tribal Mobility Fund will have little or no impact on deployment of

¹ FCC Public Notice, *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013, Comment*

² See <http://www.census.gov/main/www/access.html>.

basic telephone and advanced broadband service on the Pine Ridge reservation. The Oglala Sioux Tribe recognizes that universal service support is not the exclusive (or even primary) vehicle for driving economic development and the establishment and operation of tribally-owned telecommunications systems on reservations, and the Oglala Sioux Tribe has taken steps outside of universal service to address the lack of affordable and reliable telecommunications services on the Pine Ridge reservation. However, the Oglala Sioux Tribe believes that, if properly structured, Tribal Mobility Fund could be an important funding mechanism for deploying mobile wireless broadband service on tribal lands, including on the Pine Ridge reservation where basic telephone service (let alone advanced broadband service) is not available in many areas of the reservation and is unreliable in other areas of the reservation.

I. THE TRIBAL MOBILITY FUND FAILS TO MEET THE NEEDS OF THE TRIBES

A. THE TRIBAL MOBILITY FUND INEXPLICITLY DOES NOT PROVIDE ANY UNIVERSAL SERVICE SUPPORT FOR TRIBAL LANDS ON THE PINE RIDGE RESERVATION AND OTHER INDIAN RESERVATIONS

The Commission's *Tribal Mobility Fund Auction 902* identifies the tribal lands eligible for universal service support in the auction scheduled for October 24, 2013. There are 5,554 eligible census blocks on tribal lands in Auction 902, but only one (1) eligible census block on the Pine Ridge reservation, even though the Pine Ridge reservation is one of the largest land based tribal areas in the country. Attachment A-2 to the Commission's *Tribal Mobility Fund Auction 902* identifies one census block in Shannon County on the Pine Ridge reservation eligible for universal service support. This census block (46113940900) has a population of 14 and a total

geographic area of 50.54 square miles. According to U.S. Census data,³ the Pine Ridge reservation consists of 4,835 census blocks (and 18,830 people) covering 4,341 square miles of some of the most rural and remote areas of the country without reliable mobile wireless service.

Pine Ridge reservation is currently served, in part, by only two mobile wireless carriers – AT&T and Verizon Wireless. In total, these carriers have only 8 cell sites on the Pine Ridge reservation to cover 4,341 square miles of some of the most rural and remote areas of the country. In contrast, the state of Rhode Island, which is less than 1/3 the size of the Pine Ridge reservation, consists of 1,212 square miles, numerous mobile wireless carriers, and hundreds of cell sites. Clearly, the residents of the Pine Ridge reservation are not receiving comparable service – basic telephone or advanced broadband – to residents of urban areas. Making things worst is the fact that the Tribal Mobility Fund does not make any funding available (except for one census block) to address the lack of affordable reliable mobile wireless service on the Pine Ridge reservation. The lack of universal service funding on tribal lands is not unique to the Pine Ridge reservation. The Crow Creek reservation does not contain any census blocks eligible for universal service support, but yet is served by only one cell site on the reservation.

The Oglala Sioux Tribe urges the Commission to redefine areas eligible for universal service funding in Auction 902 to include all tribal lands without access to reliable affordable basic telephone and advanced broadband service.

³ See <http://www.census.gov/main/www/access.html>.

B. THE COMMISSION SHOULD TAKE ADDITIONAL STEPS TO ENCOURAGE AND FACILITATE THE PARTICIPATION OF TRIBALLY OWNED ENTITIES IN AUCTION 902

The Oglala Sioux Tribe supports the following points made by other tribally owned telecommunications carriers:⁴

- tribally-owned assets are held in trust by the federal government for federally-recognized tribes and cannot be used as collateral with private banking institutions to obtain an irrevocable Letter of Credit for participation in the auction; the Letter of Credit requirement should be eliminated for tribally-owned entities;
- the Commission should take steps to make unused spectrum available to Tribes; and
- the Commission should establish an enforcement mechanism to ensure that all carriers, especially non-tribally owned carriers operating on tribal lands, comply with tribal requirements and the Commission’s tribal engagement rules.

II. THE COMMISSION HAS A RESPONSIBILITY TO THE TRIBES TO PROMOTE TRIBAL SELF-SUFFICIENCY AND ECONOMIC DEVELOPMENT

A. THE FCC’S TRUST RELATIONSHIP WITH INDIAN TRIBES IS CRITICALLY IMPORTANT TO THE ESTABLISHMENT OF TRIBALLY OWNED TELECOMMUNICATIONS SYSTEMS

As the Commission has recognized, “the federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in

⁴ Gila River Telecommunications, Inc., Gila River Indian Community and Mescalero Apache Telecom, Inc. Ex Parte Presentation, AU Docket No. 13-53, WT Docket Nos. 11-40, 10-208, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, April 26, 2013.

various federal statutes.”⁵ It is critically important for the Commission to continue to support Indian Tribes, like the Oglala Sioux Tribe, who are taking initiatives to address “the relatively low level of telecommunications deployment on Tribal lands and the distinct challenges in bringing connectivity to these areas” and the fact that “communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.”⁶

B. FCC RULES AND POLICIES RECOGNIZE THE TRIBES’ JURISDICTION AND AUTHORITY OVER THE PROVISION OF TELECOMMUNICATIONS SERVICES ON TRIBAL LANDS

There are eleven tribally-owned telecommunications carriers in the United States, including Native American Telecom – Pine Ridge, LLC (“NAT-PR”) by the Oglala Sioux Tribe. Each of these tribally-owned telecommunications carriers have come into existence, and continue to successfully operate, as the result of policy initiatives by the Commission that: (1) recognize the Tribes’ jurisdiction and authority over the provision of telecommunications services within the exterior boundaries of their reservations; (2) provide Tribes with access to the necessary resources to promote tribal self-sufficiency and economic development, such as spectrum for new wireless initiatives;⁷ (3) make universal service support available for the provision of basic and advanced communications services on rural reservations; and (4) provide rural allowances based upon the higher costs of providing service.

⁵ *In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207, June 23, 2000 (“*Tribal Consultation Policy Statement*”).

⁶ *In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161 at para. 479, released November 18, 2011 (“*Connect America Fund Order*”).

⁷ *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, FCC 11-29, March 3, 2011. The Oglala Sioux Tribe urges the Commission to adopt final rules providing Tribes with access to unused spectrum.

In the *Connect America Fund Order*, the Commission reformed universal service and intercarrier compensation to eliminate implicit and explicit subsidies relied upon by many carriers serving rural areas. At the same time, the Commission established specific funding mechanisms for universal service support on tribal lands and required all carriers serving tribal lands to consult with the Tribes on the provision of service and meet all tribal requirements applicable to the provision of service on tribal lands.⁸

Taken together, these initiatives by the FCC go a long ways towards addressing the lack of affordable telecommunications services on tribal lands, and the Oglala Sioux Tribe recognizes that it must also pursue its own initiatives, including tribal-private partnerships, to address economic development and telecommunications issues on the Pine Ridge reservation.

C. THE OGLALA SIOUX TRIBE HAS TAKEN STEPS CONSISTENT WITH FCC RULES AND POLICIES TO ADDRESS TELECOMMUNICATIONS ISSUES ON THE PINE RIDGE RESERVATION

The Oglala Sioux Tribe recently established a tribally-owned telecommunications carrier, NAT-PR, that is currently providing affordable advanced broadband and basic voice telecommunications services on the Pine Ridge reservation, along with free Internet and computer access at its new Internet Library and Technology Center.⁹ As a fixed wireless competitive local exchange carrier, NAT-PR is not eligible for universal service support under the Commission's new funding mechanisms, which are currently limited to mobile wireless carriers and incumbent local exchange carriers.

⁸ See 47 C.F.R. 54.313(a)(9); *see also Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance On Tribal Government Engagement Obligation Provisions of the Connect America Fund*, Public Notice, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, GN Docket No. 09-51, DA 12-1165, July 19, 2012.

⁹ See Attachment A for a further description of NAT-PR.

The Oglala Sioux Tribal Utilities Commission has also informed Eligible Telecommunications Carriers (“ETCs”) operating on the Pine Ridge reservation of the Tribe’s expectations for engagement with the Oglala Sioux Tribe, consistent with the Commission’s tribal consultation rule, 47 C.F.R. § 54.313(a)(9).¹⁰ This tribal engagement process requires entities providing service on the Pine Ridge reservation to comply with tribal requirements governing the provision of telecommunications services.

D. IT IS IMPERATIVE THAT THE COMMISSION TAKE ACTION TO SUPPORT TRIBAL TELECOMMUNICATIONS INITIATIVES

The federal trust relationship between the Commission and Indian tribes is critically important to the ability of tribes to establish telecommunications systems to meet the communications needs of the tribes and its members. The Commission has recognized that the tribes are in the best position to address telecommunications issues on reservations, but this can only happen with the support of the Commission.

The Oglala Sioux Tribe commends the Commission for establishing the Tribal Mobility Fund, which is the first universal service fund dedicated to the provision of basic telephone and advanced broadband services on tribal lands. However, as explained herein, the Oglala Sioux Tribe urges the Commission to make the necessary adjustments to the Tribal Mobility Fund to enable the provision of mobile wireless service by tribal entities on their own reservations.

In addition, the Oglala Sioux Tribe urges the Commission to support tribes, like the Oglala Sioux Tribe, who have established tribally-owned telecommunications carriers

¹⁰ Attachment B is a copy of notice sent by the Oglala Sioux Tribal Utilities Commission to all ETCs on the Pine Ridge reservation dated September 10, 2012.

consistent with all applicable rules, but find themselves in jurisdictional disputes with carriers unwilling to accept, and comply with, tribal jurisdiction and authority.¹¹

III. CONCLUSION

The Oglala Sioux Tribe respectfully submits these Comments on the Commission's *Tribal Mobility Fund Auction 902*. As explained herein, the Oglala Sioux Tribe urges the Commission to take the actions identified herein to further support the establishment and operation of tribally-owned telecommunications systems.

Respectfully submitted,

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¹¹ See Attachment C, *Oglala Sioux Tribe Call For Action*, December 6, 2012.