

agency between the Navajo Nation and the Federal Communications Commission, including representing the Navajo Nation in proceedings before the Commission.

II. INDIAN COUNTRY CANNOT BE FORGOTTEN IN THE IP TRANSITION

The Commission has described the upcoming transition from a network based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to an all-Internet Protocol (IP) network using copper, co-axial cable, wireless, and fiber as physical infrastructure as “historic.”² The Commission further concludes that “Americans have come to expect secure, reliable, and innovative communications services.”³ Yet if one were to place “Native” in front of “Americans” in the preceding sentence, one would have to insert “**NOT**” between “have” and “come” – the deployment of telecommunications services to Indian Country in general, and the Navajo Nation in particular, has had a far different history. As recognized further down in the *IP Transition Order*:

[T]he circumstances described above [challenges of getting advanced services to rural areas which are geographically dispersed, with lower population density] are frequently exacerbated on Tribal lands. Tribal Nations face unique problems in acquiring communications services, with substantial barriers to deployment prevalent throughout Tribal lands. The resulting digital divide that persists between Tribal Nations and the rest of the country is well-documented.⁴

As this country strives to revolutionize its communications system, the Commission cannot forget America’s first peoples, and the fact that so much of Indian Country still lags so far behind the rest of the country when it comes to communications services. The same market forces that made it unprofitable for telecommunications providers to bring voice, then data, and then broadband

² *IP Transition FNPRM*, at ¶ 1.

³ *Id.*

⁴ *Id.* at ¶ 89, citing *Eighth Broadband Progress Report*, 27 FCC Rcd at 10371-72, paras. 50, 52 (noting that the percentage of Americans residing on Tribal lands without access to fixed broadband at a speed of 4 Mbps/1Mbps is approximately five times the national average, while the percentage of unserved Americans living on Tribal lands without fixed broadband access at those speeds in rural areas is more than eight times the national average).

to Indian Country will be at work in the IP Transition as well. Most carriers, left to their own devices, will only bring services to areas that are profitable. Without incentives, rural areas will be left behind. Without *significant* incentives, Indian Country will continue to be the last place where new services are deployed, and the Digital Divide becomes wider.⁵ Special and continuing attention must be paid, therefore, to what is happening in Indian Country.

III. BETTER MAPPING IS REQUIRED IN ORDER TO DETERMINE ELIGIBLE AREAS FOR EXPERIMENTS

NNTRC, along with a number of advocacy groups such as the National Congress of American Indians (NCAI), have pointed out for years that the Commission's maps of where service is available are wrong.⁶ The recent experience in the Tribal Mobility Fund Phase I (Auction 902) is just the latest evidence of this. Both the NNTRC and carrier Smith Bagley sought to increase the number of census blocks eligible for Tribal Mobility Fund support based on its experience in the Eastern Agency (New Mexico) of the Navajo Nation. While the Commission ultimately added some additional eligible areas for Auction 902,⁷ the NNTRC remains convinced that maps, especially those for wireless coverage, significantly overstate actual service on the Navajo Nation.⁸

The NNTRC therefore submits that the FCC should set aside resources as part of the current proceeding to produce better and more accurate maps before determining where resources should be expended on experiments. Accurate maps cannot be accomplished by merely asking carriers to

⁵ Indeed, because TDM-based services and IP-based services are fundamentally incompatible (analog vs. digital), it is possible that there will come a time in the IP Transition that even the basic phone service that has reached Indian Country will no longer work. The Digital Divide will become permanent.

⁶ See, e.g., Comments of NCAI/NPM in AU Docket 13-53, filed May 24, 2013; Comments of NNTRC in GN Docket 11-121, filed September 6, 2011; Comments of NNTRC in WT Docket 11-40, filed June 20, 2010; Comments of NCAI/NPM in WT Docket 11-40, filed June 20, 2010.

⁷ *Public Notice* DA 13-1986 in AU Docket No. 13-53, released September 27, 2013.

⁸ As the NNTRC has previously pointed out to the FCC, service availability consists of more than a theoretical signal being available for wireless service, and a designated service area for wireline providers. If a provider doesn't market its services to the local population, or offers services at unaffordable prices, or otherwise makes clear that it is not interested in serving a local population, then that service is not available.

submit their theoretical coverage maps and service areas. This effort will require “boots on the ground.” There are a number of tools available to better assess broadband availability.⁹ If fully deployed, these tools would provide a much more accurate picture of the availability of services in Indian Country. This should be a top priority for the Commission in this proceeding.

IV. THE IP TRANSITION AND THE EXPERIMENT PROCESS SHOULD BE USED CREATIVELY

The term “one size fits none,” has been used often in describing the challenges of deploying advanced communications services in Indian Country. Yet the Commission’s entire Universal Service Fund is an exercise in “one size fits all,” with its four separate programs (High-Cost, Lifeline, Schools and Libraries (E-rate), and Rural Health Care), each with its own eligibility criteria, crushing bureaucratic overhead, and limitations on services provided. The Commission has recognized this “stove pipe” problem, and the fact that anchor institutions play such a vital role in Native American society and economy.¹⁰ Against this backdrop, however, the FCC has not proposed any significant reforms to the USF structure to address these issues.¹¹

Navajo Chapter Houses are a prime example of multi-use facilities. They serve as the equivalent of county government headquarters, libraries, rural health clinics, community centers, rallying point for emergency first responders, and many other uses. Yet under the current USF setup, Chapter Houses must contract for multiple sets of services under multiple programs, making applying for, and complying with, such support a nightmare. Experiments that try to break down these “stove pipes” should be looked upon favorably. Some funding should also be set aside for not

⁹ See, e.g., the Indian Country Broadband Mapping Initiative (<http://www.nativeamericancapital.com/broadband-mapping-initiative>).

¹⁰ See *Generally, Improving Communications Services for Native Nations*, Notice of Inquiry, CG Docket 11-41, released March 4, 2011.

¹¹ The NNTRC recognizes that some of these questions and problems have been articulated in Docket 11-41, *Improving Communications Services for Native Nations*, Notice of Inquiry, FCC 11-30, released March 4, 2011.

only bringing the connection to anchor institutions, but also providing education and technical support and training to these anchor institutions. Fast broadband connections cannot be used successfully without a fully trained IT support structure.

V. THE IP TRANSITION MUST FACTOR IN THE IMPACT ON 911 SERVICE

The Navajo Nation does not host a modern PSAP facility that is capable of handling the modernization of 9-1-1 capabilities of wireless carriers. Wireless carriers sometimes refer to the Navajo Nation PSAP status as “Phase Zero.” The Navajo Nation has taken steps to mitigate the Phase Zero status and is in the planning phases for instituting a modern PSAP, taking into consideration the rulemakings undertaken by the FCC for Next Generation 9-1-1 (NG-911). In order to avoid costs from transitioning from a traditional PSAP built with on a TDM trunk and Selective Router to a Next Generation System, based on NENA i3 Standards, the NNTRC has adopted the strategy not to implement the traditional PSAP or E-911, and plans to implement a cloud-based NG-911 with Text-to-911 being top a priority. The NNTRC therefore urges the FCC to take into consideration the impact “jumping” to NG-911 will have on the IP Transition, and consider funding experiments to assist entities that go from no PSAP to a NG-911 PSAP.

VI. COMMENTS TO SPECIFIC QUESTIONS IN THE FNPRM

A. Eligible Areas

At paragraph 209 of the *FNPRM*, the Commission asks what the minimum geographic size should be when considering an experiment:

We propose to allow proposals in areas where the incumbent is a rate-of-return carrier to be made at the census block level in lieu of the census tract level in recognition that smaller providers may wish to develop proposals for smaller geographic areas.¹²

¹² *FNPRM*, ¶ 209.

The NNTRC agrees with the FCC. Eligible areas should be the smallest possible to allow the greatest flexibility to propose experiments as well as provide incentives to new and innovative providers to propose experiments. Because of the highly rural nature of much of the Navajo Nation, even the smaller census blocks can occupy many square miles. The NNTRC further supports proposals to serve partially-served census blocks.¹³ Carriers often serve small geographic portions of a census block that contain population clusters, or with regard to wireless service, roadways that traverse Indian Country, leaving large portions of census blocks unserved. Without breaking those areas down further, outlying areas may never have the chance of service being provided to them.

B. Selection Criteria

At paragraphs 212-218 of the *FNPRM*, the Commission seeks input on the selection criteria it should employ when considering the experiment proposals (with well over 1,000 expressions of interest already on file in the docket).

1. Quantitative Scale – Applying a Tribal Priority

First, the Commission asks whether it should adopt a quantitative scale of 1-100 in evaluating experiments.¹⁴ If the FCC does adopt a 100 point quantitative evaluation scale, the NNTRC submits that it should award a Tribal Priority in the amount of the Tribal Bidding Credit, or 25 points (percent). This is consistent with the FCC's discussion at paragraph 216.¹⁵ This Tribal Priority should be enhanced by up to an additional 10 points if the experimenter demonstrates that it

¹³ *Id.* at ¶ 221.

¹⁴ *FNPRM*, ¶ 212.

¹⁵ *Id.* at ¶ 216 (“A fourth potential criteria could be whether applicants propose to offer high-capacity connectivity to Tribal lands. If we were to adopt this criteria, how much weight should be given to applications that propose to serve Tribal lands?”)

will provide new service to Tribal anchor institutions.¹⁶ This takes into account the acknowledged importance of Tribal anchor institutions:

We seek comment on any additional rules or requirements we should adopt in the context of rural broadband experiments. For instance, should a condition of participation be offering discounted broadband services to low-income consumers? For applicants whose service areas include Tribal lands, should a condition of participation be offering service to residents and anchor institutions on Tribal lands? Should a condition of participation be to offer to connect community-based institutions, such as schools, libraries, and health care providers, within the project area with high-capacity services appropriate for educational or healthcare activities?¹⁷

Granting of a Tribal Priority is critical to the extent that the FCC adopts cost effectiveness as the “primary criteria” for selection.¹⁸ Quantitatively evaluating experiments based on “cost effectiveness” sounds much like the reverse auctions the FCC has held in Auctions 901 and 902. Such reverse auctions will always be won by the entity proposing to serve the next least expensive unserved area. Using “cost effectiveness” as a significant scoring factor will mean, yet again, that the last few percentage of population who are without broadband will continue to remain unserved, possibly forever. If the Commission truly seeks to satisfy the “core value” of “universal service,”¹⁹ it must begin now, with these IP Experiments, to incentivize carriers to find ways to bring broadband service to the *most rural*, and *least served*.²⁰

¹⁶ See *FNPRM*, ¶¶ 218, 221 (discussions of service to anchor institutions).

¹⁷ *Id.* at ¶ 222.

¹⁸ *Id.* at ¶ 213.

¹⁹ *FNPRM*, ¶ 37.

²⁰ In this regard, the NNTRC also disagrees with the Commission’s tentative conclusion that it should reject or severely downgrade any proposal that exceeds the model-calculated support for a given geographic area. *Id.* at ¶ 220. The NNTRC is not convinced that the Commission’s models are accurate enough to calculate the necessary support in Indian Country, where “one size fits none.”

A Tribal Priority is also critical if the Commission awards points to proposals that seek to leverage non-federal monies, which may not be available to Tribes.²¹ Many Tribes, Navajo included, lack “matching funds” for federal subsidy programs, and therefore are often left out of programs that require significant non-federal monies. Given the Navajo unemployment rate, poverty rate, and other economic measures of need, coming up with such funding is often impossible. Giving credit to those proposals which least need the money (because they can leverage more non-federal dollars), discriminates against those most desperately need the economic stimulus bringing broadband to a community can provide. A Tribal Priority to counteract this discrimination is therefore in order.²²

2. Rewarding Scalable Networks

At paragraph 214 of the *FNPRM*, the Commission seeks comment on choosing experiments that propose “to build robust, scalable networks.”²³ The NNTRC is concerned that the term “scalable network” may mean something different in Indian Country than it does in urban settings. From the *FNPRM*, it appears that the “scale” the Commission is focused upon is speed to individual users.²⁴ The NNTRC suggests, instead, that “scalable networks” means things other than speed, such as the ability: 1) to grow geographically to reach more and more remote locations; 2) to add additional subscribers without service to previous subscribers being degraded; 3) to provide service

²¹ See, *FNPRM*, ¶ 215.

²² Although not addressed in the *FNPRM*, the NNTRC would urge the FCC not to adopt a requirement of any proposal involving a Tribally-owned entity that it provide a standby letter of credit in order to receive funding. Auction 902, while providing almost \$50 million in support for wireless broadband into Indian Country saw *no* Tribally-owned entities win (and very few were even eligible to bid). One reason pointed out in comments in that proceeding was the letter of credit requirement, and the difficulties Tribally-owned entities have in obtaining such financing instruments, because they are unable to provide collateral, since so many Tribal assets are held in trust by the federal government.

²³ *Id.* at ¶ 214.

²⁴ *Id.* (“The Commission adopted an ‘initial minimum speed benchmark’ for recipients of Connect America of 4 Mbps downstream/1 Mbps upstream, but it also specified that some number of locations would receive at least 6 Mbps downstream and at least 1.5 Mbps upstream by the end of the five-year term of Phase II.”)

first to anchor institutions, and then to businesses and residences in the same area; and 4) to overlay Public Safety (FirstNet) and Emergency Services IP Network (ESINet) without degrading service to all customers. These are the types of “scaling” the FCC should consider.

3. The Commission Should Reward Proposals that Seek to Collect Data on Price Elasticity and Adoption

One issue that still remains an open question in Indian Country is the elasticity of demand for broadband services. Is adoption lower in Indian Country because of unavailability of broadband, affordability of broadband, adoption barriers to broadband (culture and/or language), or a combination of all three? The FCC should place a high priority on granting proposals that attempt to develop data to answer this fundamental question.

4. The Commission Should Reward Proposals that Provide Sufficient Up Speed to Support Telemedicine

The NNTRC supports the Commission’s tentative conclusion to reward proposals that provide capabilities for telemedicine support.²⁵ Healthcare services in the most remote portions of the Navajo Nation remain a huge challenge. Community Health Representatives (CHR) visit their clients in the most remote areas to monitor them and report any serious issues to a medical expert, but such reporting is difficult and time-consuming, and real-time telemedicine is impossible without high enough broadband speeds in homes visited by CHRs. The NNTRC would support granting a priority for experiments that seek ways to bring better connectivity to CHRs in the field.

5. The Commission Should Consult with Tribes Concerning Any Experiment Proposed on Their Lands

The FCC has recognized that Tribes must have a say in the provision of telecommunications services in Indian Country. In response to the Commission’s request for input as to the evaluation

²⁵ *Id.* at 224.

of experiments, and what information formal proposals should contain,²⁶ the NNTRC submits that any proposal seeking support for the provision of service to Indian Country must contain a showing that the proposer has fully engaged with the Tribe in a manner consistent with the Tribal Engagement Provisions of 47 C.F.R. Section 54.313(a)(9). Further, the Commission, through the Office of Native Affairs and Policy (ONAP), should consult with any Tribe impacted by a proposed experiment as to all of the proposed evaluation criteria set forth in Paragraphs 218 through 222. Tribes know their lands far better than does the FCC, and Tribal input could be especially helpful in evaluating a proposed experiment in terms of whether it meets a priority need of the Tribe, or is engineered in such a way that it meets the scalability needs of the Tribe.²⁷ Further, better consultation with Tribes could speed the ETC designation process which the Commission points out moves far too slowly at present.²⁸

Respectfully submitted,

**NAVAJO NATION TELECOMMUNICATIONS
REGULATORY COMMISSION**

By: _____ /s/
James E. Dunstan
Mobius Legal Group, PLLC
P.O. Box 6104
Springfield, VA 22150
Telephone: (703) 851-2843
Counsel to NNTRC

By: _____ /s/
Brian Tagaban
Executive Director
P.O. Box 7740
Window Rock, AZ 86515
Telephone: (928) 871-7854

Dated: March 31, 2014

²⁶ *Id.* at ¶ 218.

²⁷ For instance, there could be experiments that propose placement of infrastructure in key areas of Tribal lands as that the Tribal government could identify or corroborate based on the Tribe's knowledge of the area, present, and future needs.

²⁸ *FNPRM*, ¶ 222. The NNTRC suggests that in the event that a carrier seeks ETC status from a state to serve a Tribal area and the state fails to act within 60 days, if the Tribe supports the designation, and the carrier agrees to be subject to Tribal jurisdiction, then the FCC should move in and approve the ETC designation pursuant to Section 214(e)(6).