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

In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	

To: The Commission

FURTHER COMMENTS OF THE NAVAJO NATION TELECOMMUNICATIONS REGULATORY COMMISSION (NNTRC)

The Navajo Nation Telecommunications Regulatory Commission ("NNTRC"), through undersigned counsel, and pursuant to Sections 1.415 and 1.419 of the Commission's rules (47 C.F.R. §§ 1.415 & 1.419) respectfully submits these Further Comments in the above-referenced proceeding in response to Public Notice, released March 6, 2014.[1] In support of these Reply Comments, NNTRC submits:

A. The FCC Should Direct USAC to Begin Collecting Data on Tribal Participation in the E-rate Program

From the comments filed in this proceeding by NNTRC, the National Congress of American Indians (NCAI), and other Tribal advocacy groups, it is becoming increasingly clear that Tribal schools and libraries are participating in the E-rate program in very small numbers, and those that do receive support generally receive slower (T-1 or worse) connections.[2] This is

[1] *Public Notice*, DA 14-308, released March 6, 2014 (hereinafter "*E-rate Public Notice*"). The Commission set April 7, 2014 as the date for filing comments and April 21, 2014 for filing reply comments. These Comments are therefore timely filed.

[2] *See, e.g.*, Comments of NNTRC, filed September 16, 2014 (describing how its Chapter Houses were supported by the E-rate program for several years until USAC ruled that they could not function as libraries); Comments of the National Indian Education Association (NIEA), filed September 16, 2013; Comments of the Bureau of Indian Education (BIE), filed April 1, 2014.

especially true for Tribal libraries where participation in E-rate is very low, and many (if not the majority) of Tribal library administrators are not even aware of the existence of the E-rate program.[3]

What is equally clear is that most of the evidence that exists as to Tribal school and library support under E-rate is anecdotal. Unlike with the Lifeline Program where USAC collects data on Native Americans participating in that program, there is no similar data collection under the E-rate program. The FCC should direct USAC, therefore, to begin collecting data on Tribal school and library usage of E-rate support by including questions on the relevant USAC Forms. USAC should also collect data on the prices paid and connectivity speeds received by Tribal schools and libraries in order to determine how much more expensive it is to provide broadband to Indian Country under the E-rate program than it is to urban areas.[4] Only by collecting the relevant data can the FCC determine whether E-rate is reaching Indian Country, or whether E-rate may be increasing, rather decreasing, the Digital Divide.

B. The FCC Should Direct ONAP to Develop Training Materials and Further Direct USAC to Appoint a Tribal Liaison for E-rate

One of the key factors as to why participation in the E-rate program is so low in Indian Country is the lack of education and training for Tribes. The fact that 50% of Tribal librarians do not even know about the program demonstrates a total failure of the government to get the

[3] *See* Miriam Jorgensen, "Sustaining Indigenous Culture: The Structure, Activities, and Needs of Tribal Archives, Libraries, and Museums," Association of Tribal Archives, Libraries, and Museums, Oklahoma City, OK, 2012, p. 10, and ATALM, 2013. ATALM is a non-profit, Native-led organization that provides culturally relevant training and services to the nation's 519 tribal libraries, archives, and museums. ATALM was established in 2010 with support from the Institute of Museum and Library Services.

[4] Such data, if shared with Tribes, could be extremely helpful in determining whether Tribes are overpaying for broadband services because of lack of competition for the provision of broadband service in Indian Country.

word out to these eligible institutions.[5] To combat this, the FCC should direct ONAP to develop educational materials as part of the FCC's Native Learning Lab, "which uses an arrangement of special low-cost, scaled down but still state of the art laptops, wireless routers, and printers, all set up in a separate meeting room at training venues and used to acquaint participants with the Commission's web-based resource systems and applications."[6] Currently, the Native Learning Lab does not contain materials related to the E-rate program or E-rate compliance. Adding such materials would be of great help to Tribes in introducing them to the E-rate program and navigating the difficult E-rate regulatory waters.

Second, the FCC should direct USAC to appoint a formal Tribal Liaison, whose job it would be to assist Tribes. The USAC Tribal Liaison should attend significant national and regional Tribal meetings where Tribal school and library administrators are present. The USAC Tribal Liaison should be directed, in coordination with ONAP, to develop the educational materials that will be part of the Native Learning Lab, but also have the ability to deliver these materials directly to Tribes, through the Web or via hard copy where necessary.

The USAC Tribal Liaison should also be charged with assisting Tribes in complying with the E-rate regulations and be available to Tribes to answer questions during critical times of the annual funding cycle. The tight time frames of many of the E-rate procedures are difficult to comply with for Tribes, such as the Navajo, which have their own internal layers of government procurement regulations. Most important, the USAC Tribal Liaison must be someone whom Indian Country can trust to assist them, and not be viewed as an enforcement officer, eager to pull funding for a minor compliance lapse. Indian Country has come to trust the staff of ONAP.

---

[5] *See supra,* n. 3.

[6] *See, Federal Communications Commission, Office of Native Affairs and Policy 2012 Annual Report,* p. 59 (available at: http://transition.fcc.gov/cgb/onap/ONAP-AnnualReport03-19-2013.pdf).

There is no similar level of trust with USAC, and a key role of the USAC Tribal Liaison would be to work with Indian Country to gain its trust.

C. The FCC Should Look to Break Down the "Stove Pipe" Funding Mechanisms That Predominate USF Funding, and The Policies that Penalize Multi-Function Buildings Like Navajo Chapter Houses

The term "one size fits none," has been used often in describing the challenges of deploying advanced communications services in Indian Country.[7] 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.[8] Against this backdrop, however, the FCC has not proposed any significant reforms to the USF structure to address these issues.[9] The restrictions on what E-rate support connectivity can be used for remain the same.

Navajo Chapter Houses are a prime example of multi-use facilities, and is an institutionalized world view of government service delivery. 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. USAC has ruled that these institutions do

---

[7] *See, e.g.,* Federal Communications Commission. Prepared Remarks of Tom Wheeler, Chairman, Federal Communications Commission: National Congress of American Indians, Washington, DC. March 12, 2014. Available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0318/DOC-326092A1.pdf ("We know that in Indian Country no "one size fits all," especially when it comes to sustainability. So we don't view success as coming up with one or two standalone Tribal projects, issuing a press release and declaring success; success is when we have Tribal opportunities directly infused into all of our relevant policy making decisions based on direct input from Tribal Nations").

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

[9] 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.

not qualify as libraries and are not eligible for E-rate support as libraries on the Navajo Nation. The result is a confused and frustrated Navajo Nation looking for fixes to qualify the Chapter Houses for a much needed service for their local communities. Worse, the local Chapter officials are not able to comprehend the complex regulations that apply to the various USF programs, let along understand why a single telecommunications and broadband solution can't serve the single building/multi-functional use Chapter Houses. 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.

The Navajo Nation, as a large land based tribe, has a diverse set of political levels that rival midsize states. At the highest level of the Navajo government, the need for affordable Broadband is a top priority and the need for publicly available Broadband cannot be overstated. The fundamental problem is the lack of infrastructure at the local level. At the grassroots level, Navajo governance is vested in the Navajo Chapters and their Chapter Houses, where Navajo Language is the primary language for discourse, and where the seemingly illogical policies of the federal government are not well understood. This broad spectrum of governance is the Navajo Nation's major challenge. As the U.S. Government proposes programs, it must recognize the reality of how the Navajo Nation is constructed, both from a geographic and political standpoint.

The Navajo Nation, through its prior experience with the E-rage program, recognizes the difficultly of administering the program in its current form for all 110 Navajo Nation Chapters. Some Chapters do not yet have a Chapter House, some have a Chapter House but it has been condemned, while other Chapters have computer centers and some access to broadband. The Navajo Nation is committed to working with USAC to reform the E-rate program for the benefit of the Navajo Nation and for other tribes that may not have been able to participate in this

proceeding but yet experience the disquieting realization that broadband for their local community is still out of reach.

Experiments that try to break down these "stove pipes" should be looked upon favorably. Some funding should also be set aside for not 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. Finally, the USAC Tribal Liaison could also help bring down recurring costs,[10] by assisting Tribes in evaluating the cost and proposed services in response to FRP's.

Respectfully submitted,

NAVAJO NATION TELECOMMUNCATIONS 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

By: _____/s/_____
Kandis Martine
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
Counsel to NNTRC

Dated: April 7, 2014

[10] *E-rate NPRM*, ¶ 89.