

July 6, 2014

VIA ELECTRONIC FILING

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

Re: WC Docket No. 13-184

Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, please consider the following written ex parte submission in the above referenced docket.¹ On behalf of Smith Bagley, Inc. ("SBI"), we write to urge the Federal Communications Commission ("FCC or "Commission") to adopt reforms to the E-rate program that will meaningfully address the challenges faced by the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo located in Native American lands in Arizona, New Mexico, Utah and Colorado. Chairman Wheeler has recognized the special importance of E-rate for tribal areas² and we urge the Commission to reflect this special importance in the modernized E-rate program.

SBI operates a commercial mobile wireless network in Arizona, New Mexico, Utah and Colorado. SBI has extensive wireless coverage throughout Native American lands, providing service to over 100,000 customers, approximately 60,000 of whom are low-income residents on the Navajo, Hopi, White Mountain Apache, Zuni and Ramah Navajo lands.

SBI provides broadband service to a number of schools and libraries on Tribal Lands through the current E-rate program and intends to participate in the E-rate program going forward. SBI urges the Commission to make certain that residents of Tribal Lands do not lose the ability to access E-rate funds for schools and libraries because their resources are insufficient to meaningfully participate in the E-rate program.

¹ *Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization*, Public Notice, WC Docket No. 13-184, DA 14-308 (Mar. 6, 2014) ("PN"); *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket 13-184, Notice of Proposed Rulemaking, FCC 13-100.

² See, Posting of FCC Chairman Tom Wheeler to Official FCC Blog, *New Opportunities in New Mexico's Indian Country*, <http://www.fcc.gov/blog/new-opportunities-new-mexico-s-indian-country> (June 30, 2014); New Mexico Media Literacy Project, *Neustras Voces/Our Voices: A Youth Dialogue with FCC Chairman Wheeler* (June 30, 2014) (<http://www.ustream.tv/channel/nuestras-voces-our-voices>); Posting of FCC Chairman Tom Wheeler to Official FCC Blog, *Modernizing E-rate for Indian Country*, <http://www.fcc.gov/blog/modernizing-e-rate-indian-country> (Apr. 10, 2014).

Low-income citizens on Tribal Lands that SBI serves face challenges much greater than do citizens living in most other parts of the United States. Many Navajo citizens live in remote areas, spread across a geography that is larger than the state of West Virginia. The population density in these areas is less than 10 people per square mile, and in many remote areas it is 1 person per square mile. Citizens often travel more than an hour each way to reach necessities, including schools and libraries.

According to the National Congress of American Indians (“NCAI”), “the reality is that Indian reservations have . . . the highest poverty rate of any ethnic grouping in America. . . . [T]he vast majority of tribes continue to be mired in a severe economic depression caused by decades of marginalization.”³ President Obama has committed “to make sure that the first Americans get the best possible chances in life in a way that’s consistent with [their] extraordinary traditions and culture and values.”⁴ A recent White House report notes that “Building strong, prosperous Native American communities is a priority for President Obama and his Administration and education is key to unlocking economic growth on reservations.”⁵

Our specific observation is that schools and libraries serving Native Americans in areas of extreme poverty will find it difficult to afford a minimum 20% match requirement proposed for Wi-Fi support.⁶ Extreme poverty will effectively prevent full participation by these schools in the reformed program, thereby jeopardizing the Chairman’s goals for Wi-Fi deployment. Based on our long experience serving such communities, a minimum 5-10% match requirement would be more appropriate and will assure the communities fully benefit from these important E-rate reforms. With this important qualification, SBI fully supports Chairman Wheeler’s plan to adopt new E-rate rules intended to address the nationwide Wi-Fi deployment gap in time to have an impact on the 2015 school year.

To the extent that the Commission wishes to ensure that scarce E-rate funds are targeted to areas of extreme poverty, relevant data from the U.S. Census provides ample guidance concerning which Tribal Lands experience the kind of extreme poverty that would warrant special treatment with respect to E-rate funding. For example, here are some 2012 Census Bureau statistics broken out for the Navajo Nation, which are also representative of the other Tribal Lands SBI serves:

³ NCAI, Economic Development, accessed at http://www.ncai.org/Economic_Development.45.0.html.

⁴ President Barack Obama, Remarks at the Closing of the Tribal Nations Conference (Nov. 5, 2009), accessed at <http://www.whitehouse.gov/the-press-office/remarks-president-closing-tribal-nations-conference> .

⁵ 2012 WHITE HOUSE TRIBAL NATIONS CONFERENCE, CONTINUING THE PROGRESS IN TRIBAL COMMUNITIES, at 47 (2012), available at http://www.whitehouse.gov/sites/default/files/wh_tnc_accomplishments_report_final.pdf.pdf.

⁶ See FCC Fact Sheet, Chmn. Wheeler Proposes Updating E-rate for Wi-Fi in Schools, Libraries (June 20, 2014) (indicating that draft rules provide for a maximum 4 to 1 match, *i.e.*, 80% to 20%).

- The poverty rate is 43.6%,⁷ compared to 15.3% for the general population.⁸
- The unemployment rate is 21.9%.⁹
- 24.7% of households receive less than \$10,000 in annual income and benefits.¹⁰
- 49.7% of households receive less than \$25,000 in annual income and benefits.¹¹
- 32.4% of households have no health insurance coverage, compared to 15.5% nationwide.¹²
- Median household income is \$25,166¹³ compared to \$50,046 nationwide.
- Per capita income is \$10,235¹⁴ compared to \$28,051 nationwide.
- Only 83.2% of households have telephone service.¹⁵

Using the above data, or the substantial amount of additional data available from the Census Bureau, the Commission can define special circumstances of extreme poverty on Tribal Lands, and declare that areas meeting the special circumstances will qualify for a 90% or 95% subsidy. To provide just a few possible examples of metrics the FCC could use to define extreme poverty circumstances:

- Any tribal land where the per capita income, as defined in the latest Census, is less than half the nationwide average.
- Any tribal land where the poverty rate, as defined in the latest Census, is more than double that of the general population.
- Any tribal land where residential telephone penetration, as defined in the latest Census, is less than 90% of the national average.

⁷ 2012 American Community Survey, at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03&prodType=table

⁸ <http://www.census.gov/prod/2012pubs/acsbr11-01.pdf>

⁹ 2012 American Community Survey, at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP03&prodType=table

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ 2012 American Community Survey, Selected Housing Characteristics, at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_1YR_DP04&prodType=table

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Any metric such as those suggested above, that is verifiable, simple, and easy for the Commission to adjust going forward will effectively target support to areas of greatest need.

What the Commission cannot afford is for tribal schools and libraries in extreme poverty areas to be left behind because they cannot meet the 20% match envisioned for the rest of the nation.

We hope you will find this information to be helpful. Should you have any questions, please contact undersigned counsel directly.

Respectfully submitted,



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