

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
FCC Process Reform) GN Docket No. 14-25

**COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION AND SUMMARY

The National Tribal Telecommunications Association (NTTA) provides these comments regarding the Report on FCC Process Reform, issued by the Federal Communication Commission (FCC) Staff Working Group.¹

NTTA consists of Tribally-owned communications companies including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

NTTA applauds the FCC’s critical examination of its own processes and procedures with the goal of improving how it interacts with and regulates a vital part of the American economy. As with most processes as complicated and wide-ranging as that involved with the everyday business of the FCC, improvement not only can be, but must be, made - especially in this era of rapidly advancing technology and those who provide the related services. NTTA will offer the FCC with several suggestions for improvement from a Tribally-owned telecommunications carrier perspective.

¹ *Report on FCC Process Reform*, From the Staff Working Group led by Diane Cornell (February 14, 2014) (*Report*); see also *FCC Seeks Public Comment on Report on Process Reform*, Public Notice (DA 14-199, rel. February 14, 2014)

II. Increasing the Speed and Transparency of FCC Decision-making

The *Report* contains a number of recommendations under the heading “Increasing the Speed & Transparency of FCC Decision-making.” Of those, recommendation 1.1 (*Improve Tracking Across the FCC - Efficient Intake Analysis and Relevant Timelines*), contains a statement “For example, if a waiver petition is unopposed, it should be possible to shorten the timeline for drafting an item.”² This exemplifies one of NTTA’s most pressing concerns with current FCC processes -the length of time taken to address Petitions for Waiver under Section 1.3.³ Section 1.3 allows for the suspension, amendment, or waiver of rules:

“The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedures Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”

Obviously missing from this section is a timeline under which the Commission or Bureaus must act. As implied in the *Report’s* discussion under Recommendation 1.1, some level of improvement in addressing waiver petitions is being contemplated.

As the Commission process for addressing waiver petitions relates to rules adopted in the *USF/ICC Transformation Order*⁴, the timeliness for Commission action has, by and large, been generally lacking. For example, Laurel Highland and Yukon Waltz Telephone Companies filed a joint waiver petition related to section 54.917(b)(4) of the Commission’s rules on April 11, 2013.⁵ The Wireline Competition Bureau sought comment on the joint petition, with reply comments due June 17, 2013.⁶ No comments or reply comments were received.⁷ Considering that no comments were received in opposition to the petition, and that the state regulator with jurisdiction over the Petitioners supported the relief sought, there is no apparent reason that a petition filed almost a year ago has not been ruled upon.

NTTA therefore recommends the Commission adopt concrete, enforceable timelines for addressing waiver petitions in instances where the petitioner has met the burden spelled out by section 1.3 (and subsequent applicable precedent), oppositions have not been filed, and the subject matter is

² *Report* at 6.

³ 47 CFR § 1.3

⁴ Report and Order and Further Notice of Proposed Rulemaking (FCC 11-161), WC Docket No. 10-90, et al, released November 18, 2011

⁵ Laurel Highland Telephone Company and Yukon-Waltz Telephone Company, Petition for Limited Waiver of 47 CFR § 51.917(b)(4), filed April 11, 2013 in WC Docket No. 10-90, et al.

⁶ Public Notice (DA 13-980, rel. May 2, 2013)

⁷ The Pennsylvania Public Utility Commission (the state commission with jurisdiction over the petitioners) filed an Ex Parte communication on August 16, 2013 in support of the petition.

relatively noncontroversial. For example, requiring a decision on a waiver petition within 120 days does not seem to be unreasonable, especially considering the granting of the relief sought is likely to be of extreme importance to the petitioner (or it would not have undertaken the time and expense of filing the petition).

In addition to the speed of decision making, especially as decisions relate to non-controversial waiver petitions, NTTA is concerned about the transparency surrounding these, and other, proceedings. Specifically, and as implied in the *Report*⁸, the status of open proceedings is nearly impossible to determine without tracking down the responsible party or parties within the Commission, trying to contact these people via email or phone conversation, and then getting a clear and concise status report. NTTA does not believe this is the fault of the Commission's employees, but rather a systemic issue with the processing of open cases. Therefore, NTTA agrees with the *Report's* recommendation that "the status of all petitions received is readily available to the public. Status information should include the name of the Bureau or office to which the item has been routed and the number of days since the petition was received"⁹ and urges the Commission to adopt this as soon as possible. In addition, the status information should include contact information for the Commission staff person (or people) responsible for ensuring petitions are addressed on a timely basis.

Finally, NTTA notes that the "45 day shot clock", adopted in the USF/ICC Transformation Order¹⁰, may not be operating as intended or as necessary. In brief, review of waiver petitions filed by providers serving Tribal lands is to be prioritized such that the review of such petitions is completed within 45 days of the record closing. While NTTA recognizes that some petitions may, depending on the subject matter addressed, require additional time for a complete review, in large part petitions filed that affect Tribal areas should be resolved and acted upon within this time frame. NTTA is aware of petitions filed by two companies - Sandwich Isles Communications¹¹ and Windy City Cellular/Adak Eagle Enterprises¹² - that have exceeded the 45 day shot clock. If the concept of the shot clock is to work properly and reasonably, the time frame must carry with it some amount of certainty, and not be able to

⁸ *Report* at 9

⁹ *Id.*

¹⁰ *USF/ICC Transformation Order* at 544

¹¹ Sandwich Isles Communications, Inc. (SIC) filed a waiver petition related to the Commission's \$250 monthly per-line cap on universal service support on 12/30/2011. The Commission denied SIC's on 5/10/2013, well in excess of the 45 day shot clock.

¹² Windy City Cellular (WCC) filed a waiver petition related to the Commission's CETC support phase down rule on April 3, 2012; Adak Eagle Enterprises (Adak) filed a waiver petition related to the Commission's \$250 monthly per-line support cap on May 22, 2012. To date, the relief sought in the petitions has yet to be finally addressed (although interim orders have been issued): See February 19, 0214 Ex Parte communication filed by WCC and Adak in WC Docket No. 10-90 and WT Docket No. 10-208

be extended indefinitely. As a result, NTTA strongly urges the Commission reassess the 45 day shot clock as it relates to petitions affecting Tribal areas, and consider codifying in the rules, or otherwise make it a real, enforceable procedural schedule.

III. Rework Essential Processes - The Commission's Tribal Policy Statement

As the Commission is aware, it is operating under a Tribal Policy Statement adopted in 2000¹³, pursuant to which the Commission committed to interact with Tribal governments in a certain way. This interaction is meant to recognize the peer-to-peer relationship that exists between the United States Government and the various governing bodies covering sovereign Tribal nations. As part of its process reform, the Commission should ensure the tenants of the Tribal Policy Statement are adhered to in regards to any policy decision that affects Tribal areas. A recent statement by Chairman Wheeler captures the importance of this issue to NTTA's members, and Tribal governments across the country in general:

“That [Tribal Consultation Policy] Statement was adopted 14 years ago, and we could agree that since then it has been utilized quite successfully, but not consistently or comprehensively.”¹⁴

NTTA recognizes that efforts have been made to ensure the needs of Tribal areas are considered through consultation with Tribal governments and their representatives, such as NTTA and the National Congress of American Indians (NCAI). But more can, and must, be done.

In the Tribal Policy Statement, the “Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions.”¹⁵ The Commission also committed to “consult with the Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources”¹⁶ in order to recognize “the rights of Indian Tribal governments to set their own communications priorities and goals for the welfare of their membership.”¹⁷ To accomplish this goal, the Commission should “welcome submissions from Tribal governments and other concerned parties as to other actions the Commission might take to further the goals and principles”¹⁸ presented in the Tribal

¹³ Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes (rel. June 23, 2000)

¹⁴ Prepared Remarks of Tom Wheeler to the National Congress of American Indians, March 12, 2014

¹⁵ Tribal Policy Statement at 3

¹⁶ *Id.*, at 4

¹⁷ *Id.*

¹⁸ *Id.*, at 5

Policy Statement. To NTTA's knowledge, a formal process has yet to be established to ensure the commitments made in the Tribal Policy Statement are met.¹⁹ Given the subject matter of the *Report*, now is the time to rectify this situation.

There have been several recent instances of Commission policy changes adversely affecting NTTA members and their Tribal service areas that may have been moderated had NTTA and other Tribal government representatives been contacted. One example relates to the Commission's efforts to revise the interstate authorized rate of return (RoR).²⁰ In the *RoR Report*, the Wireline Competition Bureau (WCB) recommended a range of interstate rates of return, which was in large part determined by the use of a group of "proxy companies" whose data was used in the calculations. As noted by NTTA previously²¹, this group of companies bore little or no resemblance to NTTA members, therefore calling into question the RoR results as they relate to NTTA member companies. Also as noted by NTTA, the RoR Report clearly ignored a key statement made in the USC/ICC Transformation Order in regards to Tribally-owned carriers and the proper RoR to adopt.²² Had the Bureau consulted with NTTA, these two issues could have been better addressed from a Tribal government and Tribally-owned carrier perspective.

Another recent example of a lost opportunity for Tribal consultation is in regards to the implementation of the Tribal Mobility Phase I and Phase II funds. While NTTA participated in the implementation process via the normal comment cycle, the tenants of the Tribal Policy Statement go beyond just filing comments along with other interested parties. Instead, the Commission committed to consult directly with Tribal governments on issues of importance, and few have been more important recently than the efforts to increase mobile broadband services in Tribal areas represented by Tribal Mobility Phase I and Phase II. However, so far very few Tribally-owned carriers have participated and, in the case of Phase I, none were successful bidders.²³ For many Tribally-owned carriers, two main impediments were noted that foreclosed participation - the irreversible letter of credit, and the lack of spectrum.²⁴ While NTTA brought these issues up during the comment cycle, a more efficient and effective approach would have been for the Commission/Bureaus and Tribal government

¹⁹ NTTA recognizes and appreciates the role the FCC's Office of Native Affairs and Policy (ONAP) can and often (but not always) plays in regards to the Tribal Policy Statement.

²⁰ See *USF/ICC Transformation Order* at 1045; Also see *Prescribing the Authorized Rate of Return*, Wireline Competition Bureau Staff Report, WC Docket No. 10-90 (rel. May 16, 2013) (*RoR Report*)

²¹ Comments of NTTA on the RoR Report, filed July 25, 2013 in WC Docket No. 10-90, at 5-7

²² *Id.*, at 2-4

²³ *Tribal Mobility Phase I Auction Closes, Winning Bidders Announced for Auction 902*, Public Notice (DA 14-253), released February 28, 2014.

²⁴ See NTTA comments, AU Docket No. 13-53, filed May 10, 2013 at 2-4

representatives (such as NTTA member companies) to work together to identify and resolve such issues prior to any proposed procedures being released.

A further example of a missed opportunity for Tribal consultation under the Tribal Policy Statement relates to the National Broadband Plan's recognition that Tribal areas will require more support if universal and sufficient broadband service is to become a reality.²⁵ In general, the impacts of the reforms adopted in the *USF/ICC Transformation Order* have been to reduce support going to NTTA members, in direct opposition to the findings of the National Broadband Plan. The Commission had (and still has, in large part) a good opportunity to consult with the Tribal governments and their representatives to determine the proper steps to take in ensuring the goals of the National Broadband Plan were accomplished in all Tribal areas. To date, this has not occurred on any large scale, although the FCC-Native Nations Broadband Task Force²⁶ holds some promise.

Finally, the Wireline Competition Bureau's recent announcement regarding the residential local rate floor increase²⁷ is worth mentioning in regards to legitimate circumstances for Tribal consultation. As a result of the Bureau's analysis of the data provided by the urban rate survey for voice services, the residential local rate floor²⁸ will increase, absent any further action by the Commission, by 46% to \$20.46 effective July 1, 2014. For many customers living in Tribal areas, this will mean an increase in the rate paid for basic local service at a time when those customers can very likely not absorb such an increase. Even in light of the enhanced Tribal Lifeline discount²⁹, there are still many customers living in Tribal areas that do not qualify for Lifeline service, and now may face up to a 46% rate increase - which, by all accounts, fits squarely within the definition of "rate shock." As Commissioner Pai so aptly put it: "This is bad news in tough times."³⁰ Had the Commission and/or the Bureau consulted with Tribal governments or their representatives (e.g., NTTA), information could have been shared as to the unique impacts to Native Americans living on Tribal lands, where discretionary income is scarce and asking these consumers to pay more for nothing in return is counterproductive to universal voice and broadband service goals. NTTA is optimistic that the Commission is taking a careful and measured

²⁵ See Federal Communications Commission - *Connecting America: The National Broadband Plan* at 152 (Box 8-4)

²⁶ See FCC Seeks Nominations for Tribal Government Representatives to Serve on the FCC-Native Nations Broadband Task Force, *Public Notice* (DA 14-342), released March 12, 2014

²⁷ *Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time to Comply with New Rate Floor*, WC Docket No. 10-90, Public Notice (DA 14-384) released March 20, 2014 (*Rate Floor Notice*)

²⁸ 47 CFR §54.313(h)

²⁹ 47 CFR §54.403(a)(2)

³⁰ *Statement of Commissioner Ajit Pai Opposing FCC-Initiated Increase in Rural Americans' Phone Bills*, News Release (March 20, 2014)

approach to this issue: (1) comment is being sought on a joint petition filed by a group of national associations asking that the deadline for compliance with the 2014 local rate floor be extended from July 1, 2014 to January 2, 2015³¹, and (2) Chairman Wheeler, in recent comments, expressed agreement that perhaps additional consideration needs to be paid to the proposed 46% increase to the local rate floor.³²

The Commission has a decent tool in the Tribal Policy Statement to help improve and rework essential processes in regards to Tribal areas and Tribally-owned carriers. However, it is NTTA's opinion that the Tribal Policy Statement and the commitments contained therein are oftentimes overlooked when major policy changes are adopted that clearly affect Tribal areas. While NTTA appreciates ONAP's efforts to bridge some of this gap, the fact remains that more can be done. NTTA also believes that Tribally-owned carriers, NTTA members and others, should be given priority when any issues arise concerning the provision of service in Tribal areas. This can only be accomplished if the Commission, Bureaus, and Tribally-owned carriers make a concerted effort to uphold the commitments adopted nearly fourteen years ago in the Tribal Policy Statement.

IV. Elements Critical to Success

Chapter 4 of the *Report* covers "elements critical to success", which include such items as internal management and information technology-specific collaborations. Recommendations 4.25 through 4.27 relate to improving the FCC.gov website and new media outreach. Several NTTA members agree with statements made in the *Report* and have experienced frustration with the website's search and navigation functions. Furthermore, since the Commission and Bureaus seem to be relying more and more on strictly electronic communications, it is vital that the Commission's website be as easy to navigate as possible. Due to the wide variety of entities and people accessing the website to make important filings, to find information, and to ascertain the status of certain items of interest, the information should be organized around topics of interest and important compliance issues. For example, the Commission website should contain a one-stop source for information on the latest CPNI (customer proprietary network information) certification issues, various filings due to the Commission (such as the upcoming international circuit status reports and the accessibility certifications), and other items (such as eligible telecommunications carrier reporting).

³¹ *Rate Floor Notice* at 2-3

³² Oral Comments of Chairman Wheeler in front of the House Subcommittee on Financial Services and General Government on Appropriations (March 27, 2014)

V. Conclusion

NTTA commends the Commission on the process it is undertaking in order to operate more efficiently and effectively. The Commission should take this opportunity to ensure its internal processes work to produce a product that is useful for its stakeholders - namely, the entities it regulates and the customers served by those entities. To this end, NTTA urges the Commission to recognize, in its internal processes, the unique position occupied by Tribal governments and Tribally-owned carriers by better incorporating the commitments made in the Tribal Policy Statement. NTTA's members stand ready to fully participate in the Commission's processes as the industry moves forward in ensuring all Americans, including those living in Tribal areas, receive the best broadband service possible.

Respectfully Submitted,

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