

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

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90

**REPLY COMMENTS OF  
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

**I. INTRODUCTION AND SUMMARY**

The National Tribal Telecommunications Association (NTTA) provides these reply comments in response to the Further Notice of Proposed Rulemaking in this proceeding regarding the rules for implementation of rural broadband experiments.<sup>1</sup>

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 generally supports the ideas behind the rural broadband experiments adopted in the Report and Order, including the goals of ensuring that new technologies reach all areas but that this transition from legacy technologies does not threaten public safety, ubiquitous and affordable access, competition, and consumer protection.<sup>2</sup> Two NTTA members filed

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<sup>1</sup> *Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 13-5, et al (FCC 14-5, rel. January 14, 2014) (FNPRM)

<sup>2</sup> *Id.*, at 1

expressions of interest in participating in the rural broadband trials<sup>3</sup>, and other NTTA members are monitoring this process with interest. However, NTTA offers these reply comments in order to supplement the record in this proceeding from a Tribally-owned carrier perspective. Specifically, NTTA will offer comment on (1) the need for prospective rural broadband experiment participants to engage with Tribal governments; (2), the “right of first refusal” implied in the FNPRM and (3) establishing Tribal priority for any experiments taking place in Tribal lands. These recommendations should be seen as a three-tier Tribal broadband experiment analysis process, meaning they are interconnected and dependent on one another.

## II. Tribal Engagement

The Navajo Nation Telecommunications Regulatory Commission (NNTRC) states that the FCC “should consult with Tribes concerning any experiment proposed on their lands.”<sup>4</sup> NNTRC goes further and ties this recommendation to the Tribal Engagement rules adopted by the FCC in the *USF/ICC Transformation Order*.<sup>5</sup> NTTA fully agrees with the NNTRC’s comments in this regard - any non-Tribally owned entity, whether it be an incumbent ETC or non-incumbent ETC, should have to make a showing that it complied with the Tribal Engagement rules as a prerequisite for having any rural broadband experiment application considered.

As the Commission is aware, it is recognized that Tribal governments have the right “to set their own communications priorities and goals for the welfare of their membership.”<sup>6</sup> In order to do this, the Commission has 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.”<sup>7</sup> Clearly, allowing a non-Tribally owned carrier to undertake broadband experiments on Tribal lands will “significantly or uniquely affect Tribal governments, their land and resources.” The Tribal Engagement rules, including the Further

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<sup>3</sup> See Expressions of Interest filed by Warm Springs Telecom (March 7, 2014) and Mescalero Apache Telecom, Inc. (March 5, 2014) in WC Docket No. 10-90

<sup>4</sup> NNTRC comments, filed in WC Docket 10-90, et al, on March 31, 2014 at 9

<sup>5</sup> See 47 CFR § 54.313(a)(9)

<sup>6</sup> Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes (FCC 00-207, rel. June 23, 2000) (*Tribal Policy Statement*) at 4

<sup>7</sup> *Id.*

Guidance issued<sup>8</sup>, includes a reasonable tool to ensure the level of Tribal participation necessary to make any rural broadband experiments in Tribal areas a success. For instance, the Tribal Engagement rules require carriers to market services in a culturally sensitive manner, and discuss with Tribal governments rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes, and compliance with Tribal business and licensing requirements.<sup>9</sup> Requiring prospective experimenters to comply with these items would allow the Commission to demonstrate Tribal consultation and ensure any carrier is optimally equipped to serve Tribal areas.

### **III. Right of First Refusal in Tribal Areas**

For rural broadband experiments proposed to take place in areas served by rate-of-return (RoR) regulated LECs (RLECs), the FCC proposes “to use a two-stage application process for applications from entities wishing to participate in experiments to extend next-generation networks...”<sup>10</sup> The FCC requests comment on an industry proposal to allow the affected RoR carrier to in essence respond to any non-RLEC experiment proposals and “undertake the same deployment proposed by a non-incumbent for the same or a lesser amount of support.” One commenter took no position on this matter.<sup>11</sup> NTCA stated that such a right of first refusal in RoR areas is reasonable due to the RLECs’ “locally situated operations and its service as a carrier of last resort to the broader study area.”<sup>12</sup> NTTA is in basic agreement with the Commission’s proposal, but recommends the Commission strengthen it for areas served by Tribally-owned carriers.

If any application for a rural broadband experiment affecting Tribal areas submitted by a non-Tribally owned carrier is under consideration, any Tribally-owned carrier serving that Tribal area should have the opportunity to respond to such an application within a reasonable time frame. Specifically, this Tribally-owned carrier “right of first refusal”, which is not unlike the

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<sup>8</sup> See *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligations of the Connect America Fund*, Public Notice Docket No. 10-90 et al (DA 12-1165), rel. July 19, 2012 (*Further Guidance*)

<sup>9</sup> 47 CFR § 54.313(a)(9)(iii) - (iv)

<sup>10</sup> *FNPRM* at 207

<sup>11</sup> Comments of The Rural Competitive Alliance, filed March 31, 2014 in WC Docket No. 10-90, at 7

<sup>12</sup> NTCA Ex Parte Notice, WC Docket 10-90, et al, filed January 17, 2014

process used to determine how Connect America Fund (CAF) Phase II support for price cap areas will be distributed<sup>13</sup>, should allow the Tribally-owned carrier the opportunity to undertake the same type of experiment no matter the required level of support. For instance, if a Tribally-owned carrier can undertake a rural broadband experiment, but may require additional support due to it being better able to design an experiment 1) with a higher likelihood of providing more valuable information, and 2) that better meets the unique circumstances of its community members, then such a Tribal-specific experiment should be accepted by the Commission. Tribally-owned carriers have better knowledge of the areas served, the unique challenges facing Tribal areas, and the needs of the customers living in Tribal areas, and would therefore be in a much better position to analyze proposed experiments. In this way, the Tribal government would be able to retain sovereignty over possibly disruptive events occurring on its land.

#### **IV. Tribal Priority**

To the extent, after taking into account the Tribal Engagement and Tribal Right of First Refusal recommendations NTTA makes above, the Commission determines that a rural broadband experiment application for a Tribal area qualifies to move forward, NTTA recommends the Commission adopt strict Tribal priority rules in the selection criteria. In the FNPRM, the Commission states a “fourth potential [selective] criteria could be to offer high-capacity connectivity to Tribal lands.” NNTRC ties this statement to an overall Tribal priority in relation to the FCC’s proposed 100 point scale by recommending an amount equal to the Tribal bidding credit.<sup>14</sup> NTTA agrees with the NNTRC, but also suggests the Commission go a step further.

In addition to providing Tribal priority in relation to experiments that look at high-capacity connectivity in Tribal areas, an additional type of Tribal priority should be considered. Specifically, if, in a particular Tribal area there ends up being competing rural broadband experiments, any Tribally-owned entity should receive the award provided that it meets all

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<sup>13</sup> See Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, et al (FCC 11-161, rel. November 18, 2011) (*USF/ICC Transformation Order*) at 166

<sup>14</sup> NNTRC Comments at 6

other aspects of the Commission's ultimate selection criteria. In addition, the Tribal government, in all situations where an experiment is to be awarded, should be involved in the scoring of the selection criteria. As stated above, Tribally-owned carriers, by virtue of being in existence in order to serve Tribal areas, are best equipped to meet, within the short time frame assumed by the Commission<sup>15</sup>, any and all unique circumstances that come with serving these areas.

## **V. Conclusion**

NTTA welcomes the Commission's focus on ensuring that never ending technological changes not threaten the core statutory values established by Congress including, most importantly for Tribal areas, ubiquitous and affordable access to broadband services. All too often these types of "technology transitions" leave many Tribal areas on the wrong side of the digital divide. While NTTA's members have historically done and will continue to do what they can to ensure Tribal areas enjoy the same level and types of services seen elsewhere, the fact remains that recent reforms have made it more difficult for Tribally-owned carriers to uphold the ubiquitous and affordable service core value. These rural broadband experiments have the potential to assist the Commission and Tribal governments in navigating across and around the digital divide, but must be performed properly and with Tribal sovereignty and the unique conditions exhibited in Tribal areas in mind.

Respectfully Submitted,

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*President*  
**National Tribal Telecommunications Association**

April 14, 2014

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<sup>15</sup> *FNPRM* at 207 "in what is intended to be a short-term experiment in 2014"