

April 7, 2014

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

**RE: *IN THE MATTER OF MODERNIZING THE E-RATE PROGRAM FOR SCHOOLS AND LIBRARIES,*
WC DOCKET NO. 13-184**

**JOINT COMMENTS FILED BY TRIBAL TELECOMMUNICATIONS COMPANIES, AND TRIBAL
ORGANIZATIONS**

Dear Secretary Dortch,

On March 6, 2014, the Federal Communications Commission (FCC) released a Public Notice (“PN”) seeking focused comment on certain proposals to modernize the E-rate program.¹ A number of tribal entities filed comments during the initial E-rate Notice of Proposed Rulemaking (“NPRM”) and highlighted the importance of the program to tribal lands and their residents.² Of the over 1,500 comments received by the FCC, there was a resounding acknowledgement that the technological advancements in telecommunications have created a critical need to update the E-rate program’s focus.

As technology has evolved, however, access to it on tribal lands has lagged behind the rest of the country – a fact the FCC has acknowledged.³ The President’s goal in the ConnectED

¹ See Federal Communications Commission. *Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization*. Public Notice. WC Docket No. 13-184. Released March 6, 2014. Available at <http://apps.fcc.gov/ecfs/document/view?id=7521088708>.

² See Navajo Nation Telecommunications Regulatory Commission (NNTRC) Comments Filed September 16, 2013, Reply Comments Filed November 8, 2013 (WC 13-184); National Indian Education Association (NIEA) Comments Filed September 16, 2013 (WC 13-184); National Congress of American Indians (NCAI) Reply Comments Filed November 8, 2013 (WC 13-184).

³ Prepared Remarks of Tom Wheeler, Chairman, Federal Communications Commission, to National Congress of American Indians, http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0318/DOC-326092A1.pdf at 2 (Mar. 12, 2014).

initiative is to connect 99 percent of America's students to the Internet through high-speed broadband by 2018.⁴ To prevent tribal nations and their citizens from becoming the one percent, the FCC must address barriers that hinder participation in the E-rate program by tribal governments. It is in that regard that the undersigned tribal telecommunications companies, and tribal organizations ("Tribal Commenters") respectfully submit these comments, which offer solutions to many of the obstacles that tribal governments face in participating in the current E-rate program.⁵

Available Data Underscores Disparity in Tribal School and Library Participation

What limited data there are suggest that the overall funding for schools and libraries on tribal lands is low. For example, the Department of the Interior, Bureau of Indian Education (BIE) reported 130 to 140 BIE schools applying for and receiving E-rate funds over the last nine years – out of a total 183 BIE entities.⁶ However, of the E-rate funds committed for these BIE schools over the past nine years, only 60 percent was actually spent.⁷ Furthermore, many eligible BIE schools did not apply because they did not meet the 80% threshold to receive a discount.⁸ These statistics illustrate persistent gaps in E-rate adoption among BIE schools that are similarly prevalent in other Native-serving institutions due to their geographical isolation and inability to meet Universal Service Administrative Company (USAC) guidelines.

⁴ President Obama's ConnectED initiative is striving to bring high-speed services to 99 percent of the nation's students by 2018. Available at <http://www.whitehouse.gov/blog/2013/06/06/what-connected>.

⁵ 'Tribal Commenters' include: Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Telecommunications, Inc., San Carlos Apache Telecommunications, Inc., Tohono O'odham Utility Authority, Association of Tribal Archives, Libraries, & Museums, Tribal Digital Village – Southern California Tribal Chairman's Association, Native Public Media, the National Indian Education Association (NIEA), and the National Congress of American Indians (NCAI).

⁶ According to a recent filing by the Bureau of Indian Education, "Currently, the Bureau of Indian Education (BIE) oversees a total of 183 elementary, secondary, residential and peripheral dormitories across 23 states. 126 of these schools funded by the BIE, but are directly managed by tribes. The BIE operates the remaining 57 schools." See Department of the Interior, Submission for the Record (WC 13-184). April 1, 2013. Available at <http://apps.fcc.gov/ecfs/document/view?id=7521096460>.

⁷ Source Department of the Interior, Bureau of Indian Education. American Indian Education Study Group, FCC Briefing. February 19, 2014.

⁸ *Id.* As a result of USAC 2012 guidelines.

The statistics are alarming when, overall, just over 50% of Native students are graduating high school compared to nearly 80% for the majority of the national population. For the seven percent of Native students attending BIE schools, these rates are even lower. According to the latest results from the National Assessment of Educational Progress (NAEP), approximately 120 BIE tribally controlled schools are among the lowest academic performing schools in the nation. While these low performance rates are a result of many issues, the historic lack of financial resources for these schools continues to remain a predominant concern. If BIE schools are, on average, spending just 60 percent of E-rate awarded funds then there needs to be further collaboration between the FCC and BIE to ascertain these reasons.

Additionally, the Association of Tribal Archives, Libraries, & Museums (ATALM) conducts periodic surveys and studies regarding tribal cultural institutions.⁹ A 2011 ATALM study found that at most, 15 percent of reporting tribal libraries received E-Rate discounts;¹⁰ a 2013 follow-up study found that only 17 percent had ever *applied* for them.¹¹ The reasons tribal libraries did not apply for E-rate funds were relatively unchanged across the two-year gap between ATALM’s surveys, as demonstrated in the chart below.

| Our tribal library does not access E-Rate funds because: | 2011 (n=71) | 2013 (n=118) |
|---|------------------------|-------------------------|
| We have never heard of it | 52% | 50% |
| The E-Rate application is too complicated | 11% | 13% |
| We are unsure if the library is eligible for E-Rate | 42% | 28% |
| The time needed to participate in the program is not warranted | 6% | 3% |
| We were denied funding in the past and are now discouraged | 1% | 1% |

⁹ The Association of Tribal Archives, Libraries, and Museums (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.

¹⁰ Association of Tribal Archives, Libraries, and Museums, Needs Assessment Survey for Tribal Archives, Libraries, and Museums,” data files, Oklahoma City, OK, 2011.

¹¹ Association of Tribal Archives, Libraries, and Museums, “Digital Inclusion in Indian Country: The Role of Tribal Libraries,” data files, Oklahoma City, OK, 2013.

| | | |
|--|----|----|
| We applied for E-Rate in the past, but no longer find it necessary | 1% | 1% |
|--|----|----|

Sources: ATALM 2011, 2013

It is clear that the top three barriers to tribal library participation are the lack of awareness, uncertainty of eligibility, and a complicated application process.

Support for Designation of a USAC Tribal Liaison¹²

The FCC has continually emphasized that Indian Country represents some of the most unserved and underserved areas of the U.S..¹³ The aforementioned data regarding tribal participation in the E-rate program has provided just a glimpse of this disparity. Part of this can be attributed to the rural nature of many tribal lands and the difficulty of broadband deployment to tribal schools and libraries, but we also believe that there is a prevalent lack of knowledge about the E-rate program. Additionally, there is a pervasive absence of training for tribal schools and libraries that would assist in the application process and reporting requirements needed by USAC.

The Tribal Commenters assert that resources should be expended to close this education gap for tribal school and library administrators. First, the FCC should direct its Office of Native Affairs and Policy (ONAP) to develop educational materials as part of the FCC's Native Learning Lab. These Native Learning Labs are instrumental in "acquaint[ing] participants with the Commission's web-based resource systems and applications."¹⁴ Many tribes have found the Native Learning Lab to be an important tool for educating themselves about FCC policies and programs. Currently, the Native Learning Lab does not contain resources to assist in E-rate

¹² See Navajo Nation Telecommunications Regulatory Commission. Further Comments (WC 13-184). Filed April 7, 2014. Available at <http://apps.fcc.gov/ecfs/document/view?id=7521097235>.

¹³ See, *Improving Communications Services for Native Nations, Notice of Inquiry*, CG Docket 11-41, released March 4, 2011, ¶¶ 1-3.

¹⁴ 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>.)

compliance, and adding such materials would introduce tribes to the program while providing essential guidance on the application and reporting processes.

Second, the FCC should direct USAC to appoint a formal “Tribal Liaison” for the sole purpose of assisting tribes in E-rate matters. This assistance must take multiple forms. In partnership with ONAP the USAC Tribal Liaison should be charged with the following:

- Conducting outreach to tribes, especially those having not participated in the E-rate program previously;
- Provide basic training and develop such modules for the E-rate program;¹⁵
- Attend significant national and regional tribal meetings where tribal school and library administrators are present;
- Develop educational materials that will be part of the Native Learning Lab, and provide these material directly to tribes via web portal or physical hard copy;
- Provide assistance to tribal school and library awardees to comply with E-rate regulations; and
- Ensure accessibility to tribes during critical times of the annual funding cycle to answer questions and provide additional assistance as needed.

The tight time frames of many of the E-rate procedures are difficult to comply with for many tribes, which have their own internal layers of government bureaucracy. Tribal administrators who have participated in the E-rate program in the past report the stress of meeting those deadlines, and how frustrating it can be to not receive quick responses from USAC regarding certain programmatic questions.

¹⁵ Some NCAI members have said that the USAC training sessions they have attended do not cover the basics – the USAC representatives conducting the training assume a familiarity with the E-rate program, its vocabulary and form numbers, that simply is lacking in Indian Country.

Most importantly, the USAC Tribal Liaison must be someone whom Indian Country can trust to assist them. Throughout the years, Indian Country has come to trust that the staff of ONAP are there to provide assistance on all USF matters. It is important that the USAC Tribal Liaison also be committed to working with Indian country in a respectful manner.

Clarify Eligibility for Tribal Library Participation in the E-rate Program

There are also ongoing issues with tribal library participation in the E-rate program. Tribal libraries in many instances must seek the approval of a State Library Administrative Agency (SLAA) in order to fully participate in the E-rate program. This requirement undermines the government-to-government relationship that exists between tribal governments and the federal government.

On February 7, 2014, the Institute of Museum and Library Services (IMLS) filed comments recognizing the barriers to tribal libraries accessing funding to E-rate.¹⁶ In IMLS's comments they highlighted issues surrounding tribal eligibility for funding under the Library Services and Technology Act (LSTA), which must receive approval from a State Library Administrative Agency (SLAA). IMLS's states that:

The LSTA, however, has two library grant programs that relate primarily to governmental entities: one through which funding is provided to each SLAA to support libraries throughout the state; and one through which funding is provided to federally recognized Native American tribes and organizations that primarily serve and represent Native Hawaiians to support library services in these entities. See 20 U.S.C. § 9141 and 20 U.S.C. § 9161. As the LSTA includes separate provisions for funding to Native American tribes, tribal libraries do not necessarily receive funds through an SLAA, and may not be eligible for support under some laws governing state library programs...¹⁷

While these issues are primarily legislative proposals to amend the LSTA, the FCC should voice its support for such an amendment to increase tribal library participation in the E-rate program.

¹⁶ See Institute of Museum and Library Services Comments. *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184. February 7, 2014. Available at <http://apps.fcc.gov/ecfs/document/view?id=7521071592>.

¹⁷ *Id.* Pgs. 3-4.

Additionally, reply comments filed by NCAI stated that, “Tribal ‘libraries’ are usually located in multi-service buildings that provide programs and services to tribal members.”¹⁸ The FCC should include these recommendations in their reports to Congress to support the need to amend the LSTA, or remove the requirement that tribal libraries be eligible for LSTA under state programs and instead restore them to being treated as agencies of sovereign tribal nations.

Develop a ‘Tribal Priority’ for E-Rate Funding

During the initial E-rate NPRM, two tribal organizations supported the creation of a ‘tribal priority’ to E-rate funding.¹⁹ Both NIEA and NCAI argued that the establishment of a ‘tribal priority’ for E-rate would focus funding to tribal lands that have historically been unserved or underserved. The FCC should analyze possibilities to develop certain criteria and listing eligible programs for ‘tribal priority’ funding to include:

- Tribal households participating in the USDA Food Distribution Program on Indian Reservations (FDPIR);
- Participation of Indian students/households in the Supplemental Nutrition Assistance Program (SNAP);
- School districts receiving Department of Education Impact Aid funding;
- Participation of Indian students/households in the Temporary Assistance for Needy Families (TANF/Tribal TANF) program;
- Tribal language and cultural immersion schools and programs; and
- Tribal libraries that are the only source for free public computers and Internet access in their communities.

¹⁸ See National Congress of American Indians Reply Comments. *NCAI Reply Comments in the Matter of Modernizing the E-rate Program for Schools and Libraries*; WC Docket No. 13-184. Pg 4. Available at <http://apps.fcc.gov/ecfs/document/view?id=7520957211>.

¹⁹ See NIEA Comments, WC-13-184, filed September 16, 2013. NCAI Comments, WC 13-184, filed November 8, 2013.

The FCC should also address the method for determining discount rates for tribes, which is skewed because a large percentage of tribal youth attend off-reservation public schools that may have a very small footprint of National School Lunch Program participation. E-rate discount rates could then be reduced to an amount that is not economically feasible. The FCC in coordination with USDA and consultation with tribal nations must analyze better ways to determine the discount rates in these instances.

Certain modifications to E-rate Priority 1 and Priority 2 funding should also fall under a ‘tribal priority’. For instance, miscellaneous components currently not eligible for these types of funding include:

- Initial planning to determine the technology and/or components to be deployed;
- Network architecture design;
- Development of technology plans; and
- End-user training, such as training of teachers and staff in the use of covered services in their programs of instruction or for professional development.²⁰

The FCC should look at expanding E-rate funding to support these miscellaneous components for tribal schools and libraries. Additionally, end-user training should also be expanded to include staff working at tribal libraries.

Support Demonstration Projects in Indian Country

One of the proposals the FCC is seeking further comment on is how to provide focused, time-limited funding for demonstration projects.²¹ We recommend that the FCC should develop specific tribal demonstration projects to gather information and improve the transition of E-rate

²⁰ See Federal Communications Commission. *Schools and Libraries Universal Service Support Mechanism: Eligible Services List*. CC Docket 02-6; GN Docket 09-51. “Other Miscellaneous Components that are NOT eligible pg. 21. Released October 22, 2013. Available at http://www.usac.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList-2014.pdf

²¹ See FCC Public Notice. *Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization*. ¶s 55-62.

to support broadband capabilities. Demonstration projects will increase the program's effectiveness and provide opportunities to discover 'best practice' scenarios. During the reform and modernization of the Lifeline program the FCC proposed a series of 12 month pilot projects to provide focused funding to determine how the program could best support broadband access and adoption for low-income consumers.²²

Of the 14 pilot projects awarded, two were tribal recipients.²³ Gila River Telecommunications, Inc. (GRTI) was awarded \$323,100 in Lifeline support to study the effects of varying subsidy amounts for broadband plans with different choices for speed; Hopi Telecommunications, Inc. was awarded \$226,752 in Lifeline support to study the effects of varying end-user charges based on speed and access to discounted equipment.²⁴ Although these pilot projects were authorized through certain cost-saving reforms adopted under the *2012 Lifeline and Link Up Order*, the FCC should examine opportunities to provide focused funding to improve programmatic E-rate functions.

The FCC has included a number of proposals for demonstration projects including: ¶57 bulk purchasing of eligible services and equipment; ¶58 information collection on technical assistance program; ¶59 American Library Association proposal for temporary increase in discount levels for targeted libraries; ¶60 link last mile infrastructure to BTOP funded networks, consortia experimentation, projects targeting rural areas. The Tribal Commenters, in line with aforementioned recommendations to develop a 'tribal priority', suggest adoption of these proposals while allowing tribal entities to put forward specific demonstration project proposals to be considered by the FCC.

²² See Federal Communications Commission. Report and Order and Further Notice of Proposed Rulemaking, WC 11-42; WC 03-109; CC 96-45; WC 12-23. Adopted January 31, 2012. Released February 6, 2012. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021898542>.

²³ See Federal Communications Commission. Lifeline and Link Up Reform and Modernization Order, WC 11-42. Released December 19, 2012. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-2045A1.pdf.

²⁴ *Id.* Pg. 11.

As Chairman Wheeler recently stated to tribal leaders and attendees at NCAI's 2014

Executive Council Winter Session in Washington, DC:

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.²⁵

Proposal to Phase Down or Phase Out Voice Service Support on Tribal Lands

The FCC is requesting additional comment regarding proposals to shift E-rate support away from voice services, thereby supporting the Commission's goals for focused funding of broadband services.²⁶ The phase down or phase out of these traditional analog services has been a point of discussion at the FCC for many years. However, many tribal lands and communities still rely heavily on these services and have consistently argued for “safety-net” funding for voice telephony networks to support public safety communications. Voice services continue to be the most reliable and affordable services in high-cost areas, especially those with above national average economic disparities.

As voice becomes an application that runs on broadband, we understand the desire to phase out support for stand-alone analog voice service and we support the FCC efforts to explore this further. The potential phase out, or phase down, of voice services for tribal schools and libraries is an area the FCC needs to explore further. The previously highlighted barriers to tribal library participation in the E-rate program under current laws and regulations present additional layers of complication regarding this issue. Access to voice telephony services for tribal libraries will undoubtedly provide those existing in extremely rural areas with first time voice connections.

²⁵ See 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

²⁶ See FCC Public Notice. *Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization.* ¶s 40-49.

However, field visits to Indian Country and ongoing consultation with tribal nations will provide the FCC with a better understanding of these issues as they exist currently on tribal lands.

Enable Funding for End-User Equipment and Internal Connections

The Tribal Commenters agree that the FCC should examine additional means for providing E-rate recipients funding for internal connections. As others have commented in this proceeding, increased flexibility in the award of funding would go a long way to addressing internal connection issues that exist under the current program. As Microsoft notes in its filing, it is important that reform revisit dated assumptions about, “how best to deliver broadband capacity to schools and libraries and how students and teachers can make the greatest use of the broadband resource”, and, “relegating internal connections to a second tier promotes waste and inefficiency by reducing the ability of schools to utilize their bandwidth in an efficient manner.”²⁷

We urge the FCC to consider providing greater flexibility for applicants to use funding in a way that is conducive to achieving not only the bandwidth that they need to and in the school, but achieving it in a way that is most efficient.

E-rate funding to support Wi-Fi and other wireless capabilities in tribal schools and libraries will also need to ensure these networks are able to handle high volumes of subscribers. Funding for internal wiring, switches and routers, wireless access points, and necessary software to support these devices should be granted increased eligibility for tribal schools and libraries.

Examine Opportunities for Tribal Schools & Libraries to Leverage Federal Funds

There have been suggestions to fund tribal schools and libraries at 100% of E-rate levels. However, the inability to match federal funds with federal funds is not permitted unless

²⁷ See Letter from Paula Boyd, Director Government and Regulatory Affairs for Microsoft Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-184, at Attachment at pgs. 5-6, and pgs. 12-13 (Feb. 24, 2014). Available at <http://apps.fcc.gov/ecfs/document/view?id=7521079243>.

authorized by Federal statute.²⁸ Therefore, tribes are unable to leverage federal programs to fulfill matching requirements, such as but not limited to the USDA Community Connect Grant Program or the Distance Learning & Telemedicine Grant Program. The FCC should examine possibilities of eliminating these matching fund criteria for ‘high-priority’ tribal cases, if not allowing 100% funding available for tribal schools and libraries.

E-Rate for the 21st Century

Currently there are no substantial reporting mechanisms in place to determine E-rate penetration for tribal schools and libraries, or those serving high populations of Native individuals in rural and urban areas. This lack of reporting, and subsequent data, provides a problematic obstacle in determining actual E-rate availability and usage. While a lack of data is a consistent issue regarding overall telecommunications in Indian Country, the proposed transition of E-rate to provide broadband services will necessitate increased determination of schools where E-rate supported services are absent. Creation of better reporting mechanisms will ensure future availability of vital universal service funds for tribal nations.

The undersigned Tribal Commenters appreciate the opportunity to provide these additional recommendations on the modernization of the E-rate program. We are hopeful that the FCC will address the many barriers to tribal school and library participation in the program. A tailored approach recognizing tribal-centric and tribally-driven solutions will address these many issues. As Chairman Wheeler previously stated before the General Assembly at NCAI’s Executive Council Winter Session - no “one size fits all,” especially when it comes to sustainability.

Indian Country is eager to fully utilize E-rate funding to support tribal education and cultural programs in our schools in libraries.

²⁸ See Circular A-110 “Uniform Administrative Requirements”. Available at http://www.whitehouse.gov/omb/circulars_a110#23.

Sincerely,

/s/ Derek E. White
General Manager
Gila River Telecommunications, Inc.

/s/ Carroll Onsaie
General Manager
Hopi Telecommunications, Inc.

/s/ Godfrey Enjady
General Manager
Mescalero Apache Telecommunications, Inc.

/s/ Shirley Ortiz
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