

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket 05-337
	)	
To: The Commission		

**JOINT COMMENTS OF NATIVE PUBLIC MEDIA AND  
THE NATIONAL CONGRESS OF AMERICAN INDIANS**

Native Public Media (“NPM”) and the National Congress of American Indians (“NCAI”), through undersigned counsel, respectfully submit these Joint Comments in response to the Notice of Inquiry and Notice of Proposed Rulemaking, released April 21, 2010 (“*CAF NOI/NPRM*”). In support of these Comments, NPM and NCAI submit:

**I. BACKGROUND**

As an organization dedicated to community broadcasting and expanding the voice of Native Americans through multi-platforms, NPM represents the interests of thirty-four Native owned public radio stations that serve Native nations as well as non-Native listeners throughout the United States.<sup>1</sup> Since its launch in 2004, NPM’s principal focus has been on supporting existing Native American public radio stations, promoting ownership for more Native communities, and advocating for broadband in Indian Country by serving as an advocate, national coordinator, and resource center.

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<sup>1</sup> NPM, formerly known as the “Center for Native American Public Radio,” is a project of the National Federation of Community Broadcasters, supported in part by a grant from the Corporation for Public Broadcasting. A list of the NPM member stations can be found at [http://www.nativepublicmedia.org/index.php?option=com\\_content&task=view&id=26&Itemid=48](http://www.nativepublicmedia.org/index.php?option=com_content&task=view&id=26&Itemid=48).

Advocating on behalf of member Tribes from across the entire United States, in consensus based decision making, NCAI is a forum for federal-tribal policy on major issues confronting Native peoples, including the myriad challenges of communications access and deployment. NCAI continues to coordinate with the Federal Communications Commission (“Commission”) on a number of Tribal outreach and education efforts. NPM and NCAI have co-hosted several of the Commission’s Indian Telecommunications Initiatives or “ITI” regional workshops and roundtables. NCAI co-hosts with the Commission the annual high level consultation “FCC-NCAI Dialogue on Increasing Tribal Telecommunications,” between Commission officials and members of the NCAI Telecommunications Subcommittee.

Since the creation of NCAI’s Telecommunications Subcommittee in 2001, NCAI has adopted many resolutions articulating national Tribal policy positions and prerogatives on the deployment of telecommunications, broadcast and broadband services throughout Indian Country. NPM is a frequent and active participant in the NCAI Telecommunications Subcommittee.

## **II. THE HIGH COST, LIFELINE AND LINK-UP PROGRAMS ARE CRITICAL TO INDIAN COUNTRY**

As the Commission considers an overhaul of the Universal Service Fund (“USF”), it must carefully balance the impact of USF reform on legacy USF programs. Because of the high cost of delivering basic communications service to Indian Country, the High Cost, Lifeline and Link-Up programs are critical to Native Americans. In its efforts to reform USF to support broadband, the FCC must not inadvertently “cut the only wire” going into Indian Country as it looks to transition the USF program to support broadband as well as Plain Old Telephone Service (POTS). Simply eliminating current telephone programs to provide funding for broadband could widen the communications gap and the Digital Divide in Indian Country.

In 2000, the FCC created changes to the USF programs aimed at Tribal lands, implementing a new federal method for Eligible Telecommunications Carrier (“ETC”) designations and creating the Enhanced Tribal Lands Lifeline and Link-Up Support programs. Over the past decade these changes have been of great importance and value to those who have increasingly deployed telephone service on Tribal lands, including Tribal Entities themselves. In particular, the Tribal Lifeline and Link-Up programs have been critical to service in many areas of Indian Country. As the government enters an era of re-examination of the USF for broadband support, it should take necessary certain steps to again directly address Tribal lands.

### **III. REFORM OF USF MUST RECOGNIZE TRIBAL SOVEREIGNTY**

NPM and NCAI were active participants in the Commission’s various proceedings leading up to the adoption of the National Broadband Plan (“NBP”). NPM and NCAI support the NBP, and especially its recognition of tribal sovereignty and the unique trust relationship that exists between the FCC and Tribal governments.

Tribes are inherently sovereign governments that enjoy a special relationship with the U.S. predicated on the principle of government-to-government interaction. This government-to-government relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands in extending the benefits of broadband to everyone. Any approach to increasing broadband availability and adoption should recognize Tribal sovereignty, autonomy and independence, the importance of consultation with Tribal leaders, the critical role of Tribal anchor institutions, and the community oriented nature of demand aggregation on Tribal lands.<sup>2</sup>

In particular, the NBP calls for coordination with Tribes in USF reform: “Throughout the USF reform process, the FCC should solicit input from Tribal governments on USF matters that

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<sup>2</sup> National Broadband Plan, p. 146 (Box 8-3).

impact Tribal lands.”<sup>3</sup> This is because of the fundamental challenges Tribes face in having telecommunications services delivered to its population.

Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high buildout costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding.<sup>4</sup>

Changes to the USF program thus must take into account the complexity and tensions between balancing tribal sovereignty and participating in the larger U.S. society. In the United States, the nation building approach to sustainable economic development in Indian Country is the practical application of tribal sovereignty. According to Stephen Cornell and Joseph P. Kalt,<sup>5</sup> *Two Approaches to the Development of Native Nations: One Works, the Other Doesn't*, Native Nations take different approaches to economic development by both asserting their rights to self-governance while simultaneously building the foundation and institutional infrastructure to exercise those rights. The Native Nation building approach to sustainable economic development includes, but is not limited to, strengthening governmental institutions in order to effectively assert sovereignty, diversifying tribal economic ventures, creating innovative social policies for the community, and developing cultural resources of all kinds.

Putting sovereignty in practice means that Native Nations are best able assert their sovereign powers, when they are backed up by their respective tribal governmental institutions,

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<sup>3</sup> National Broadband Plan, p. 136 and p. 146 (Recommendation 8.5).

<sup>4</sup> National Broadband Plan, p. 146 (footnotes omitted).

<sup>5</sup> Cornell, Stephen and Joseph P. Kalt. *Two Approaches to the Development of Native Nations: One Works, the Other Doesn't* in *Rebuilding Native Nations: Strategies for Governance and Development*. Ed. Miriam Jorgenson. University of Arizona Press, Tucson 2008.

and when Native governmental institutions are a cultural match with their respective indigenous political cultures. These cultural matches often center around making both immediate strategic decisions, as well as, long term sustainable planning. Within this context tribal leaders often lead the Nation building efforts and lead by mobilizing the community.

#### **IV. THE UNIQUE NEEDS OF INDIAN COUNTRY MUST BE RECOGNIZED WITHIN THE CONTEXT OF USE REFORM**

The 565 federally recognized tribes, including 4.1 million Americans, are characterized by economic conditions that necessitate distinctive regulatory approaches. On Tribal lands, critical infrastructures have not historically been deployed, or grown through market competition, as they have elsewhere in the nation; critical infrastructure does not come to Tribal lands without significant federal involvement, investment, and regulatory oversight. Terrain, poverty, distance and historic periods of failed federal policies towards Native peoples and their lands have created a modern atmosphere that requires special economic regulatory creativity.

When the Tribe itself is engaged, and its institutions and families are central to the planning, chances increase for the success of robust broadband networks. The federal Government should recognize this fundamental fact: placing Tribes at the center of the process on Tribal lands, and implementing actions that prioritize Tribes in planning, regulation and deployment as a necessary first step in achieving successful and enduring solutions to the deplorable and long standing lack of communications technologies in Tribal communities nationwide.

#### **V. SPECIFIC RECOMMENDATIONS FOR USE REFORM**

##### **A. Create a Universal Service Enhanced Tribal Lands Broadband Program**

NPM and NCAI support the creation of a new USF program supporting low-income broadband services on Tribal lands. Such a fund would have direct positive results on the

deployment and adoption of broadband in Tribal communities. In creating such a program it is important for the FCC to recognize and draw upon the important successful elements of the existing Enhanced Tribal Lands Lifeline and Link-Up programs for basic telephone service, but not eradicate the operations of that important program to address the ongoing challenge of deploying basic telephone service on Tribal lands.

Related to this recommendation, on September 22, 2009, the FCC's Federal Advisory Committee on Diversity for Communications in the Digital Age adopted a recommendation that the "Government should consider modifying the Universal Service Fund's Lifeline and Linkup programs, which help eligible low-income consumers establish and maintain telephone service, so that these programs include a subsidy for broadband hardware, connection and service." The Committee stated that, "in addition, as part of its consideration with respect to modifying the Universal Service Fund's Lifeline and Linkup programs, the Government should recognize the success of the Enhanced Tribal Lands programs and create similar programs for broadband services to Tribal Lands." In October, 2009, at its Annual Convention, the National Congress of American Indians adopted a resolution with a similar request of the government, calling upon the FCC "to create a Enhanced Tribal Lands Broadband Program within the Universal Service Fund programs," and "...set a initial eligibility requirement to those communities and areas lacking in basic telephone service as Tribal lands communities in critical need of communications services."<sup>6</sup>

#### **B. Revise the E-Rate, Rural Health Care Programs and USF**

Currently, the Schools and Libraries or "E-Rate" program and the Rural Health Care program have been beneficial in providing broadband connectivity to public schools, libraries,

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<sup>6</sup> Available at: [http://www.ncai.org/fileadmin/resolutions/PSP-09-084c\\_final.pdf](http://www.ncai.org/fileadmin/resolutions/PSP-09-084c_final.pdf).

healthcare and other institutions on Native lands as well as providing operational support to commercial or Native telephone companies. However, E-Rate and the Rural Health Care Program are prohibited from leveraging the broadband connection to provide connectivity in the rest of the community. This is a counter-intuitive restriction when community technology centers in tribal communities such as Coeur D'Alene are integrated into the Native education system and the center provides vital supplemental technological education. The USF program should also recognize the demand aggregation needs on Tribal lands. Further, USF could also support broadband access, both in the last-mile components as well as extending critical middle-mile infrastructures to ensure Native networks have a high-capacity connection to and from the Internet backbone. However, any USF reform must make certain that an analog safety net remains in place until all of Native America is connected to telephone service and broadband.

### **C. Tribes Must Have a Larger Say in how Telecommunications Services are Delivered Within Indian Country**

Most Tribes have long been frustrated by their lack of control over the delivery of telecommunications services (including broadband) within their nation boundaries. Consistent with federal policy and the recommendations contained in the NBP, as well as the current Administration's declaration in this area, government-to-government consultation is required.<sup>7</sup> Any USF reform thus must include the recognition that Tribes have a "place at the table" in the

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<sup>7</sup> See <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between federal officials and tribal officials has greatly improved federal policy toward Indian tribes. Consultation is a critical component to creating a sound and productive federal-tribal relationship." The federal government must take the lead in coordinating among the various agencies with responsibilities vis-à-vis tribes, and establishing lines of communication with those tribes so that broadband access is available to every person in the United States.

decisions that affect Tribal lands. Under the current USF program, substantial subsidies have been awarded to telecommunications carriers to incentivize them to bring telecommunications services to rural America (including Indian Country), yet those same regulations do not require any consultation or approval from Tribes (other than in rights-of-way and local zoning issues). Tribes have virtually no say over the services offered, or whether such services are being undertaken in an efficient and economic way. Fundamentally, federal monies are going directly to carriers, who then build facilities on Tribal lands, and end up owning and controlling those facilities, often to their competitive advantage, leaving Tribes with no access to the infrastructure paid for with federal dollars, and no ability to provide for the critical needs of their citizens (including public safety communications), a fundamental goal of tribal sovereignty.

#### **D. Indian Country Must Remain Exempt from the Interim High Cost Cap**

In the *CAF NOI/NPRM*, the Commission seeks input on how to cap legacy high-cost support as it transitions to a Connect America Fund.<sup>8</sup> Whatever route the Commission takes to reign in the costs of the USF program, it must continue to exclude providers of services to Indian Country from such as cap, consistent with prior FCC precedent.<sup>9</sup> NPM and NCAI therefore support the continued exemption from the cap established in the *Interim Cap Order* for carriers providing service to Native Reservations through the *Covered Location Waiver Order*. Until such time that telephone penetration (and eventually, broadband penetration) in Indian Country is on par with the rest of America, Tribes need the full support of the USF fund.<sup>10</sup> Similarly, any

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*Id.* at p. 184.

<sup>8</sup> *CAF NOI/NPRM*, ¶¶ 51-52.

<sup>9</sup> *See CAF NOI/NPRM*, n. 115.

<sup>10</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, 23 FCC Rcd. 8834, 8850 (¶ 32) (2008) (“*Interim Cap Order*”), *aff’d*, *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095 (D.C. Cir. 2009). *See also High-Cost Universal Service*

move to eliminate ETC high-cost support should equally exempt such carriers providing services to Indian Country.<sup>11</sup> ETCs, and especially new entrants in Indian Country (including those owned or operated by Tribes or Tribal-controlled corporations), play a vital role in bringing services to Indian Country.

#### **E. Ultimately, Tribes Nation Need Access to Spectrum**

The NBP recognizes the unique challenges faced by many Tribes to ensure that adequate telecommunications services are delivered to their peoples.<sup>12</sup> In particular, while the results of the ongoing mapping and “dashboard” efforts may show theoretical availability of terrestrial broadband services to many Tribes, the ability of the average Native American to subscribe to actually available and affordable broadband service is far less proven. To this end, NPM and NCAI urge the FCC to implement, at the earliest stage possible, its recommendation to examine actual build-out patterns of carriers. If the FCC finds that service is not actually available on Tribal lands, it should reclaim that portion of the spectrum that is not being utilized.

The FCC should consider providing additional flexibility and incentives for the build-out of facilities serving Tribal lands. For example, if a licensee has fulfilled its construction requirement but has failed to provide service to Tribal lands, the FCC should consider alternative mechanisms to facilitate Tribal access to such unused spectrum. These mechanisms might include developing rules for re-licensing the unused spectrum to the Tribal community for the provision of services, mandating partitioning or disaggregation of the spectrum, and encouraging the use of secondary market mechanisms for the purpose of deploying services to Tribal areas.<sup>13</sup>

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*Support; Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, 24 FCC Rcd 3369, 3372 (¶ 10) (2009) (“Covered Location Waiver Order”).*

<sup>11</sup> *CAF NOI/NPRM, ¶ 60, et seq.*

<sup>12</sup> National Broadband Plan, p. 97 (“the FCC should evaluate its policies and rules to address obstacles to greater use of spectrum on Tribal lands, including access to spectrum by Tribal communities”).

<sup>13</sup> *Id.*

Such a policy would go a long way to ensure that more than just theoretical service is available to Indian Country.

**VI. CONCLUSION**

The NBP for the first time used words like “tribal-centric business models” and “core community institutions” when it discussed deploying broadband to Indian Country. More important, the NBP fully recognized the sovereign rights of Tribes to manage telecommunication infrastructure on their lands. The Commission should continue on this path in USF reform.

Respectfully Submitted:

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