

(and possibly all funds) would go to carriers seeking the least subsidy. As NPM and NCAI pointed out in Comments and Reply Comments, use of reverse-auctions will not bridge the Digital Divide in Indian Country.² Other commenters agree that a “race to the bottom,” is inevitable if a reverse-auction is used,³ and that reverse auctions are not the best means of assuring that high quality service will be delivered to new service areas.

Although carefully crafted reverse-auctions may serve other projects, rewarding carriers that seek the least subsidy on a nationwide basis will ensure that mobile broadband is extended only to areas where infrastructure already exists (e.g. fill-in service), or to areas that provide the largest profit potential (e.g., along major highways where carriers can extract roaming charges). Only by prioritizing deployment projects that will best serve the public interest based on input from Tribal governments,⁴ will the FCC will spend the Tribal Mobility Fund on the best, not the cheapest projects.⁵ The goal of the Tribal Mobility Fund should be to serve Tribal Lands, not to reward carriers.

The Commission’s proposal to use a single, nationwide reverse-auction for the Mobility Fund dramatically underscores the need for a separate Tribal Mobility Fund. Where the need is

² See NPM and NCAI Joint Comments, p. 8; NPM and NCAI Joint Reply Comments, p. 5.

³ See, e.g., Comments of National Exchange Carrier Association, p. 4. See also Comments of United States Cellular Corporation; Comments of Joint Center for Political and Economic Studies; Comments of T-Mobile; Comments of Rural Telecommunications Group, Inc; Comments of Rural Cellular Association; Comments of Cellular South; Comments of Blooston Rural Carriers; Comments of National Exchange Carrier Association.

⁴ See I. Wu, “*Maximum Impact for Minimum Subsidy: Reverse-auctions for Universal Access in Chile and India*,” FCC Staff Working Paper 2, October 2010, p. 19 (identifying and prioritizing projects on technical merit involving local input critical to ensuring that money went into projects actually needed in India).

⁵ The following analogy illustrates the problem. If a homeowner needs to make house repairs, the first step should be to identify the areas needing repair (e.g. a new roof), prior to putting out repairs for bid. The Commission’s proposed approach is equivalent to announcing that it has \$10,000 for home repairs and will spend that based on the lowest bids. The result of those bids will have no relation to the most needed repairs. Rather than getting a new roof, the homeowner is likely to get new outlet covers, a few throw rugs, and maybe new screens for the windows.

greatest, in Indian Country, buildout costs will be higher, and carriers providing service to entire reservations will always lose to carriers who need less money to serve only the most densely populated areas.⁶

Moreover, use of reverse-auction bidding eliminates the best tool the FCC has yet established to rectify centuries of abuse, the Native Nations Priority. In the *Further Inquiry*, the Commission submits that use of a reverse-auction scheme effectively precludes the adoption of a Native Nations Priority.

We note that the establishment of an absolute Tribal priority, as proposed in the mobile spectrum context and adopted in the context of the Tribal Priority for radio broadcast licensing, may not be appropriate here. This is because in the reverse-auction mechanism proposed for the Mobility Fund, an award would not be made for each area, but instead support would be granted only for those areas where the per-unit bids are lowest.⁷

To sacrifice a powerful legal principle based on Tribal sovereignty to a dubious economic theory is poor public policy that contradicts the National Broadband Plan's conclusion that broadband will come to Indian Country only if deployed through tribal-centric approaches.⁸

The Commission's proposal to utilize "Priority Units"⁹ as a way of providing Tribal governments with an opportunity for input does little to level the playing field. Unless such "Priority Units" are given extremely high values, the Mobility Fund will stimulate mobile broadband in the areas cheapest to build and operate, not the areas of greatest need. NPM and NCAI can easily see carriers bidding to deploy service along the major interstate highways

⁶ See NPM Comments and Reply Comments.

⁷ *Further Inquiry*, ¶ 7.

⁸ See National Broadband Plan, p. 145.

⁹ *Further Inquiry*, ¶ 5.

traverse rural reservations, with nary an electronic off-ramp for Tribal members.¹⁰ A separate Tribal Mobility Fund that does not rely on an economic theory that rewards only low cost/high return applicants has the greatest potential to bring new broadband service to Tribal Lands.

II. Issue 2: Topics for Engagement with Tribal Governments.

The second issue raised in the *Further Inquiry* is whether the FCC should require applicants to engage Tribal governments prior to accepting bids or awarding grants from the Mobility Fund.¹¹ Specifically, the Commission seeks comment on whether the topics of engagement with Tribal governments should include:

- (1) needs assessment, deployment planning, and inclusion of Tribal anchor institutions and communities;
- (2) feasibility and sustainability planning;
- (3) marketing supported services in a culturally sensitive manner;
- (4) rights-of-way processes, land use permitting, facilities siting, and cultural preservation review processes; and,
- (5) compliance with Tribal business and licensing requirements.¹²

NPM and NCAI agree that consultation on all topics listed is essential. Too often, the only opportunity Tribes have to engage carriers is over issues of land use and rights of way. The result is often a lengthy and tumultuous process, based upon an adversarial relationship with carriers that have not previously coordinated with Tribal governments in assessing needs and addressing specific cultural sensitivities. The right-of-way process encourages disputes, not a dialog between carriers and Tribes. If carriers were required to consult with Tribes about the

¹⁰ See NPM and NCAI Joint Comments, p. 7. Combining highway deployment with Tribal deployment through the use of Priority Units would be possible, but only if the build-out mandates for carriers required deployment in the Priority Units first, or at least in parallel with deployment along highways crossing Indian Country.

¹¹ *Further Inquiry*, ¶ 6.

¹² *Id.* (formatting changed).

Tribal interests to be served before seeking permission to use Tribal Land, land use proceedings in Indian Country could be more efficient and productive.¹³

NPM and NCAI propose that as part of the long-form application to receive funding from the Mobility Fund, applicants seeking to serve Tribal Lands be required to submit a resolution or order from a Tribal government with jurisdictional authority, indicating that the applicant's proposal is supported by the Tribe. The Commission's Office of Native Affairs and Policy (ONAP) should be tasked with and properly funded to assist Tribal governments in issuing such orders on a government-to-government consultative basis.

III. Issue 3: Preference for Tribally-Owned and Controlled Providers

The *Further Inquiry* seeks comment on NPM and NCAI's proposal to provide additional bidding credits for Tribally-owned or controlled providers.¹⁴ As noted above, the Commission's approach is premised on the conclusion that it cannot apply a Native Nations Priority to mobile broadband as it has for broadcast services.¹⁵ As has been documented repeatedly, Tribal governments are in the best position to understand the telecommunications needs of their members, and in the best position to help deliver those services with Tribal-centric approaches. Instead of awarding funds to carriers whom the Commission believes will provide the cheapest service to Tribal Lands, the Commission should consult with Tribes, and select the carrier that will best serve Tribal Lands. The Commission should reject the use of reverse-auction bidding

¹³ This is not to say that the only cause of land use problems in Indian Country is the lack of prior dialog. Because of the complex trust relationship between Tribes and the Federal government, land use issues are inherently complex, and involve multiple layers of Federal and Tribal governments. Nonetheless, one route to begin to overhaul the rights-of-way problem would be for carriers to engage Tribal governments earlier in the process.

¹⁴ *Further Inquiry*, ¶ 7, citing NPM and NCAI Comments at p. 11.

¹⁵ *Id.* See *infra*, p. 3.

for the Tribal Mobility Fund and instead adopt the Native Nations Priority for the Tribal Mobility Fund. The Native Nations priority should not be limited to broadcast spectrum, but should be extended to other services whenever possible.

IV. Issue 4: Timing of the Tribal Mobility Fund Auction

The *Further Inquiry* seeks comment on whether the Tribal Mobility Fund should be placed on a separate “track.”¹⁶ The Commission appears concerned that a Tribal Mobility Fund could prejudice other pending Tribal issues.¹⁷ Even if the Tribal Mobility Fund does not take the form of a one-time, one-round reverse auction, it is a fund that should be distributed swiftly as a stimulus to broadband deployment. For the reasons discussed above, the mechanism for distributing funds in the Tribal Mobility Fund should be consistent with the FCC’s government-to-government relationship with Tribes, but should not preclude the FCC from developing general principles of law in other proceedings. Implementation of the Tribal Mobility Fund should not have to wait for the full vetting of issues raised in the *Tribal NOI*, which may take years to be resolved. The *Tribal Spectrum NPRM* can move in parallel with this proceeding. It is possible to establish the Tribal Mobility Fund separate from the general Mobility Fund and move forward with its implementation in conjunction with other tribal proceedings. Many commenters in this proceeding have called for fundamental USF reform before implementing a Mobility Fund, including establishing the Connect America Fund.¹⁸ That would be the ultimate “slow track.” The Tribal Mobility Fund should not await USF reform.

¹⁶ *Further Inquiry*, ¶ 9.

¹⁷ *Id.*

¹⁸ *See, e.g.* Comments of Windstream, at p. 4; Comments of Centurylink, at pp. 1-2; Comments of SouthernLINC Wireless; Comments of Texas Statewide Telephone Cooperative, Inc.; Comments of Communications Workers of America.

V. Conclusion

NPM and NCAI are encouraged that the *Further Inquiry* seeks comment on issues related to the Mobility Fund as it applies to Indian Country. The comments in this proceeding underscore the vital need for funding to deploy mobile broadband to Native Americans. The Commission’s current trajectory, however, has strayed from notions of tribal-centric deployment, advocated in the National Broadband Plan, toward a economic theory that ignores the unique status of Tribal Lands and that favors proposals that are merely the cheapest to serve. The Digital Divide would be widened by such an approach. NPM and NCAI therefore request that the Commission “go back to the drawing board” when it comes to applying reverse-auctions to Indian Country, and instead adopt a Tribal Mobility Fund that better serves the needs of Native Americans through the engagement and empowerment of Tribal governments.

Respectfully submitted,

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May 4, 2011