



NATIONAL CONGRESS OF AMERICAN INDIANS

NATIVE PUBLIC MEDIA

April 26, 2013

Ms. Judith B. Herman  
Office of Managing Director  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**RE: PAPERWORK REDUCTION ACT COMMENTS OF THE NATIONAL CONGRESS OF  
AMERICAN INDIANS AND NATIVE PUBLIC MEDIA**

**OMB CONTROL NUMBER 3060-0986: *COMPETITIVE CARRIER LINE COUNT REPORT AND  
SELF-CERTIFICATION AS A RURAL CARRIER***

Dear Ms. Herman:

The National Congress of American Indians (NCAI) and Native Public Media (NPM) respectfully submit these comments in support of the information collection requirements related to the Tribal Government Obligation Engagement Provisions ("Tribal Engagement Provisions") adopted by the Federal Communications Commission ("FCC") as part of its Connect America Fund.<sup>1</sup>

NCAI is the largest and oldest representative organization of American Indian and Alaska Native tribal governments. Since 1944, NCAI has represented the interests of tribal nations and their citizens to advance and promote the advancement of tribal sovereignty and self-determination. NPM is a non-profit organization which encourages Native people across the United States to participate actively in all forms of media. NPM promotes healthy, engaged, and independent Native communities through media access, control, and ownership.

NCAI, on behalf of tribal governments, and NPM, on behalf of tribal media and radio interests, firmly believe that the Tribal Engagement Provisions are necessary for the FCC to implement essential telecommunications policies and that the information collection requirements are modest. For over a decade NCAI, NPM, and numerous other tribal organizations and

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<sup>1</sup> *USF/ICC Transformation Order*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

governments have participated in proceedings at the FCC to assist in development of policies for bridging the Digital Divide in Indian Country. Much of this work was incorporated into the 2010 *National Broadband Plan* (NBP). The NBP provides guidance on initiatives that would spur economic growth and job creation while improving national capabilities in communications, education, healthcare, and public safety. The Tribal Engagement Provisions were one such initiative.

The *USF/ICC Transformation Order*, which created the Connect America Fund, included the Tribal Engagement Provisions. The Tribal Engagement Provisions require ETCs receiving High Cost support to document and annually report *meaningful* conversations with tribal governments on the following:

- (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements.<sup>2</sup>

On July 19, 2012, the FCC's Office of Native Affairs and Policy ("ONAP"), the Wireless Telecommunications Bureau, and Wireline Competition Bureau released the *Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund* ("Further Guidance") to provide eligible telecommunications carriers (ETCs) and tribes a practical framework for sharing information and improving telecommunications services on tribal lands. The Further Guidance is thus designed to increase the efficiency of communications between carriers and tribal governments and lessen the modest burdens imposed by the Tribal Engagement Provisions.

## **RECOGNITION OF THE FEDERAL TRUST RELATIONSHIP WITH TRIBAL NATIONS**

American Indians and Alaska Natives have a unique political and legal relationship with the United States. This trust relationship, established by the Commerce Clause of the U.S. Constitution, recognizes that tribes should be accorded a political status analogous to the status accorded states and foreign nations. That status has been repeatedly affirmed by Presidential treaties; by agreements with tribal nations adopted and ratified by the U.S. Senate; by acts of Congress recognizing inherent tribal sovereignty; and by rulings by the U.S. Supreme Court upholding the federal governments fiduciary trust responsibility to tribal nations. The FCC articulated its commitment to advancing this trust relationship in its 2000 *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*.<sup>3</sup> Since adopting this Statement, the FCC held a series of Indian Telecommunications Initiatives workshops, created

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<sup>2</sup> See Federal Communications Commissions. *USF/ICC Transformation Order*. ¶ 604, pgs. 194 – 195. Available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-11-161A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf).

<sup>3</sup> See Federal Communications Commission. *In the Matter of: Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes*. Adopted by the FCC June 8, 2000. Released June 23, 2000. Available at <http://www.fcc.gov/Bureaus/OGC/Orders/2000/fcc00207.doc>.

by the Office of Native Affairs and Policy, and developed new FCC policies that recognize the unique status of tribal nations. Among these policies is the “Tribal Priority,” now used for the allocation of broadcast frequencies and proposed for use in the allocation of other spectrum.

The NBP recognizes tribes as, “...inherently sovereign governments that enjoy a special relationship with the U.S. predicated on the principle of government-to-government interaction. The 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.”<sup>4</sup> The NBP concluded that, “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>5</sup> The reporting requirements imposed by the Tribal Engagement Provisions enable the FCC to ensure that carriers receiving High Cost funds adequately serve the unique needs of tribal lands and adequately account for the use of High Cost support funds. An annual report is a small burden to bear for the receipt of substantial federal funds and the provisions of communications services to historically underserved and, in many cases, unserved areas.

The 1996 Telecommunications Act directed the FCC to ensure that *all* Americans have access to affordable telecommunications service. Since the 2000 adoption of the *Statement of Policy Establishing a Government-to-Government Relationship with Indian Tribes*, the FCC has increasingly recognized that “all Americans” must include American Indians and Alaska Natives. The Tribal Engagement Provisions offer accountability for carriers receiving High Cost funds and provide tribes with an ability to communicate their needs to communications providers who serve tribal lands.

The Tribal Engagement Provisions recognize that tribal nations are sovereign entities that have insight into the unique communications needs of their people and their own lands. High Cost subsidies are appropriate only for carriers willing to coordinate in good faith with their tribal governments to document their efforts to address telecommunications needs on tribal lands.

### **RECORD OF SUPPORT FOR THE TRIBAL ENGAGEMENT PROVISIONS**

The regulatory record fully supports the need for the Tribal Engagement Provisions. That record includes FCC filings by NCAI and NPM, letters from NCAI President Jefferson Keel, and a Resolution adopted by tribal leaders at NCAI’s 2012 Annual Convention in Sacramento, California. NCAI and NPM also addressed the issue in depth in their joint Opposition to a Petition for Reconsideration filed by the Rural Incumbent Local Exchange Carriers Serving Tribal Lands (“Rural LECs”).

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<sup>4</sup> See Federal Communications Commission. *Connecting America: National Broadband Plan*. Box 8-3: Tribal Input. Page 146. Available at <http://download.broadband.gov/plan/national-broadband-plan-chapter-8-availability.pdf>.

<sup>5</sup> *Id.*

The Rural LECs argued that “...the requirement imposed on wireline ETCs to ‘meaningfully engage’ Tribal governments is not supported by the record and, therefore, it is arbitrary and capricious.”<sup>6</sup> NCAI and NPM quickly responded:

The Tribal Engagement Provisions are fully supported by the record, which itself relies heavily on the work performed by the FCC on the National Broadband Plan, proceedings which NPM and NCAI participated in. Petitioners ignore the record and completely discount the work of Tribal groups to highlight the depth and breadth of the digital divide, instead citing as proof of full deployment eight cases representing barely one percent of the Federally-recognized Tribes in the United States.<sup>7</sup>

Opposition from the Rural LECs stimulated support for the Tribal Engagement Provisions from additional tribal filers such as the Navajo Nation Telecommunications Regulatory Commission (NNTRC), National Tribal Telecommunications Association (NTTA), the Gila River Indian Community and Gila River Telecommunications, Inc. (GRIC & GRTI), and additional filings by NCAI and NPM.<sup>8</sup> Additionally, tribal leaders from across the country gathered at NCAI’s 69<sup>th</sup> Annual Convention in Sacramento, California to discuss issues affecting tribal nations, and to develop policies and recommendations to guide NCAI’s work for the protection of tribal sovereignty.

Tribal leaders in attendance at the NCAI’s Telecommunications Subcommittee unanimously announced their support for the Tribal Engagement Provisions by adopting Resolution# SAC-12-019.<sup>9</sup> Specifically, the Resolution states that “...the procedures established by the *Further Guidance* are timely due to the critical need to improve communications services on Tribal

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<sup>6</sup> See Federal Communications Commission, Electronic Comment Filing System. *Petition for Reconsideration*, by Rural Incumbent Local Exchange Carriers. WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No.07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208. Filed December 29, 2011. Published December 29, 2011. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021752116>.

<sup>7</sup> See Federal Communications Commission, Electronic Comment Filing System. *Opposition of Native Public Media and the National Congress of American Indians*. WC Docket No. 10-90, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No.07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208. Filed January 9, 2012. Published January 10, 2012. Pg. ii. Available at <http://apps.fcc.gov/ecfs/document/view?id=7021753060>.

<sup>8</sup> See FCC, Electronic Comment Filing System. Tribal filings: NNTRC, available at: <http://apps.fcc.gov/ecfs/document/view?id=7021753048>. NTTA, available at: <http://apps.fcc.gov/ecfs/document/view?id=7022033098>. GRIC & GRTI, available at: <http://apps.fcc.gov/ecfs/document/view?id=7021859427>, <http://apps.fcc.gov/ecfs/document/view?id=7021916708>, <http://apps.fcc.gov/ecfs/document/view?id=7022022370>, <http://apps.fcc.gov/ecfs/document/view?id=7022033309>. NCAI & NPM, available at: <http://apps.fcc.gov/ecfs/document/view?id=7021753060>, <http://apps.fcc.gov/ecfs/document/view?id=7022022247>.

<sup>9</sup> See National Congress of American Indians. *Resolution# SAC-12-019, Request that the Federal Communications Commission Uphold the Tribal Government Engagement Obligation Provisions for Telecommunications Providers Serving Tribal Lands*. Adopted October 26, 2012. Available at [http://www.ncai.org/attachments/Resolution\\_nlpfJvcVXjrfPhHPYELtrOtSpQuGEHpNRuIEGRUYgMMZOMXyJUT\\_SAC-12-019.pdf](http://www.ncai.org/attachments/Resolution_nlpfJvcVXjrfPhHPYELtrOtSpQuGEHpNRuIEGRUYgMMZOMXyJUT_SAC-12-019.pdf).

Lands immediately...”, and that, “...The Tribal Government Engagement Obligation Provisions and the Federal Communications Commission’s *Further Guidance by Public Notice* are constitutionally sound because such procedures are intended to address the lack of communications services on Tribal Lands...”<sup>10</sup>

### **PRESERVE AND IMPLEMENT THE TRIBAL ENGAGEMENT PROVISIONS**

For too long, tribal lands were used to isolate Native Americans and limit their access to the rest of the country. That policy has no place in the “Digital Age.” The NBP and the Tribal Engagement Provisions are a unique opportunity to establish a new policy of inclusion and truly universal access. Under prior telecommunications policies, many tribes saw communications providers “cherry pick” densely populated areas surrounding tribal lands to ensure returns on investment. Tribal lands often received telephone and Internet access only along major highways crossing through tribal lands or areas that served other priorities of communications providers.

These practices effectively excluded many tribal members across the country from receiving basic analog and broadband digital services. Now, as the NBP correctly states, “Congress directed the Federal Communications Commission (FCC) to develop a National Broadband Plan to ensure every American has ‘access to broadband capability.’”<sup>11</sup> Since development of the *NBP* the FCC has proposed and adopted rules to increase access and opportunity for tribal nations. The Tribal Engagement Provisions are an effort to remediate communications policies that excluded tribal lands from the benefits of these technologies.

While the Universal Service Fund (USF), High Cost Fund was essential, and in many cases successful, in providing new opportunities to connect tribal lands, more work needs to be done. As the High Cost Fund is modified to accommodate new, digital technologies, the FCC must ensure that accountability measures are implemented to guarantee that carriers receiving these funds to serve tribal lands actually use federal dollars for that purpose. As the FCC’s ONAP, Wireless Telecommunications Bureau, and Wireline Competition Bureau stated in the *Further Guidance*:

The broad goal of the guidance provided today, and future efforts to establish best practices, is to ensure the effective exchange of information that will lead to a common understanding between Tribal governments and communications providers receiving USF support, on the deployment and improvement of communications services on Tribal lands. The Tribal engagement obligation is intended to benefit Tribal government leaders, service providers, and consumers living on Tribal lands, ultimately providing greater connectivity to 21<sup>st</sup> century economic opportunities, education, health care, and public safety. This obligation is related to the very essence of universal service... Requiring Tribal engagement is intended to begin and, in some cases, to strengthen, the dialogue between communications providers and Tribal governments. We anticipate that genuine

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<sup>10</sup> *Id.* Pg. 2

<sup>11</sup> <http://www.broadband.gov/plan/executive-summary/#executive-summary>.

dialogue and common understanding will ultimately lead to improvement of communications service on Tribal lands.<sup>12</sup>

While industry communications providers have opposed the Tribal Engagement Provisions, we firmly believe that they create an opportunity to foster new relationships between carriers and tribal governments. The goal of Universal Service is to ensure that *all* Americans have access to these technologies. That ideal should not exclude the “First” Native Americans.

We urge OMB to recognize that the Tribal Engagement Provisions of the *USF/ICC Transformation Order* impose very modest information collection and reporting requirements on carriers that receive federal funds to provide services to tribal lands, and that the collection of this information is necessary for an essential function of the FCC.

Sincerely,



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<sup>12</sup> See Federal Communications Commission. *Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*. Released July 19, 2012. Available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-12-1165A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1165A1.pdf).