

From: [Andrea Alexander](#)
To: [BOCrfc2015](#)
Cc: ["Harris, Randell"](#)
Subject: Broadband Opportunity Council Comments
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Attachments: [ATNI BOC Comments -final 6.10.2015.docx](#)

Good morning, enclosed please find comments from the Affiliated Tribes of Northwest Indians Telecommunications Committee.

We appreciate the opportunity to respond to the newly formed Broadband Opportunity Council and would like to remain on the information list.

We serve over 57+ tribes in OR, WA, ID, Western Montana, Northern CA and eager to bring new broadband to rural, reservation communities.

Thank you for your time and attention.

Yours in Spirit,

Andrea Alexander (Makah) Energy Innovation Foundation
OneNet WA Tribal Outreach Coordinator
ATNI Energy & Telecommunications Co-Chair
425-501-0042
Aalexander795@gmail.com
www.energyinnovationfoundation.com

"Supporting Native Led Community and Economic Development"



June 10, 2015

Mr. Larry Strickling, Administrator
National Telecommunications and Information Administration

Ms. Lisa Mensah, Under Secretary for Rural Development
United States Department of Agriculture

**“WAYS TO FURTHER EXPAND AND PROMOTE BROADBAND DEPLOYMENT,
ADOPTION AND COMPETITION”**

**COMMENTS OF THE
AFFILIATED TRIBES OF NORTHWEST INDIANS**

To the Co-Chairs of the Broadband Opportunity Council:

The Affiliated Tribes of Northwest Indians (ATNI) was formed in 1953 by a farsighted group of tribal leaders in the Northwest dedicated to promoting tribal sovereignty and self-determination. Today, ATNI is a nonprofit organization comprised of American Indians/Alaska Natives representing 57 northwest tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California, and western Montana.

ATNI is an organization whose foundation is composed of the people it is meant to serve – the Indian peoples. ATNI is focused on preserving for its people and their descendants the rights secured under Indian Treaties, Executive Orders, and the benefits to which they are entitled under the laws and the constitution of the United States.

ATNI appreciates this opportunity to provide comments to the Council. Ironically, the Federal Communications Commission (FCC), an independent federal agency, is not a member of the Council, although it authored and has responsibility for implementing the National Broadband Plan, released five years ago. The Commission does come under the oversight of the Department of Commerce, so we are hopeful that the thrust of our comments, being directed at FCC policy, rules, and regulations, will be relayed through this process. Certainly ATNI believes there is much more to be done by the FCC in promoting broadband deployment on Tribal lands.

That said and with that goal in mind, Sections 254 and 706 of the 1996 Telecommunications Act were enacted by the Congress to ensure that all Americans, regardless of where they live, will have access to voice and advanced communications services at reasonable and affordable rates. These universal service principles that are reflected in FCC policies and support mechanisms have proven valuable in bringing voice and broadband communications services to some Tribal lands. However, much remains to be done.

Generally speaking, there are some very fundamental issues that stand in the way of many ATNI tribes entering the process of applying for funds to deploy broadband infrastructure on Tribal lands.

- **The lack of funds available to rural communities from federal or state sources leave native communities with little means for broadband development.** The limited resources that are available only fund a portion of the infrastructure necessary to serve the entire community. For example, funds may only be available for one aspect of the network or service, e.g. middle mile, last mile, equipment, adoption, training or ongoing monthly service fees. This creates a confusing and disjointed process for rural/native community development.
- **The USDA Community Connect program funds are insufficient to meet the need.** For example, the total budget for this next round of funding is only \$10 million. Applications for over \$100,000 million of funds were submitted during the last round. This past year, only eight organizations qualified for funds and none of the grants went to ATNI member tribes.
- **In addition to the lack of available funding options, the existing grants are difficult to secure.** Application processes are complex, especially for tribes and small communities that do not have the local technical staff needed to prepare an application. Many funding programs require sophisticated, expensive engineering studies or research, as well as local matching funds to successfully develop a competitive application. The inaccuracy of data used to determine eligibility (i.e., National Broadband Map, Census Tract/Bloc data) often limits applications from tribes which have the greatest need. The federal agencies need to do a better job of coordinating and communicating with each other so policy and procedures do not conflict between various agencies. Everyone has a stake in this final success.
- **Technical assistance from federal agencies to identify and complete funding applications is extremely limited and does not provide the level of help needed for many tribal and rural communities.** Obstacles arise from the inconsistency in definitions (broadband, rural, etc.) across agencies. This makes it even more difficult to be successful in securing necessary funds to deploy infrastructure and provision broadband services. Specific funds are needed to support local and regional capacity building and training around technology. Deals are done locally with local private/public partnerships and the success is building a sustainable self-help network.

In addition to the concerns identified above, the following additional points will be discussed within this letter in more detail. These comments are intended to shed light on how access to quality broadband services can be improved on ATNI member Tribal lands:

- **Large price cap carriers designated as incumbent Local Exchange Carriers are responsible for underserving much of Indian country, including ATNI Tribal lands;**
- **Fiber/significant bandwidth capacity in the network is required to adequately meet the broadband needs of ATNI native communities;**
- **Lifeline voice and broadband rates are important for ATNI peoples, and**
- **Quality broadband could be expanded more rapidly throughout ATNI Tribal lands if broadband service providers had favorable regulation that promoted sharing of infrastructure.**

ATNI TRIBES ARE UNDERSERVED BY LARGE PRICE CAP CARRIERS

The ATNI tribal members generally reside on reservations that are remote, sparsely populated, and high-cost to serve. The support funds provided to large price cap carriers that serve much of Indian country have not been used to bring fiber networks and robust broadband to Tribal lands. Tribal lands are underserved. And, as yet, the penalties levied by the FCC for underservice are not stiff enough to cause these carriers to walk away from Tribal service areas, which leave the Tribes without access to federal universal service funds (USF).

The FCC National Broadband Plan released in 2010 acknowledged that Tribal lands were underserved and more support funds would be needed to deploy needed broadband infrastructure. Fast forward 5 years and another report, the FCC 2015 Broadband Report, confirms that nothing has changed to improve access to broadband services on Tribal lands. More support funds have not been directed to these areas. In fact, rather than address this recognized need more specifically within FCC rules and regulation, Tribal lands continue to be subject to the same regulatory policies and programs that apply to all of rural America. The result is that we now have a “rural-rural” divide that is getting wider in rural America between non-tribal and Tribal lands.

Providing additional funds to large price cap carriers would not solve this problem. These large carriers are focused on maintaining or increasing market share in urban markets and new markets, because they represent a long-term financial incentive. Managerial resources are committed to these lucrative markets that have the potential to generate significant earnings for shareholders. Realistically, the national policy to enhance competition in a communications marketplace of converged technology has ensured that Tribal lands will remain forever underserved by large price cap carriers.

Proposed Corrective Action: To improve the quality of broadband, service providers must be truly interested in engaging the ATNI tribes to identify and meet the specific communications needs of ATNI native communities and peoples. The FCC should adopt new programs to incentivize small rural local exchange carriers, new entrants, or the tribes themselves to take up the challenge of providing reasonably comparable broadband service on Tribal lands. Reformed USF programs should provide a specific fund, a “Tribal Broadband Fund,” to be used exclusively for the build-out of Tribal lands.

The FCC should also adopt new rules through a proposed rulemaking that establishes an expedited process for the removal of an incumbent eligible telecommunications carrier (ETC) that has not demonstrated its willingness to adequately serve an ATNI member. Rules should be established by the FCC that allow the tribe, or another ETC designated by the tribe, to replace the incumbent ETC and embark on a mission to improve broadband service for the tribe. Putting in a new service provider

would allow the tribe to gain access to universal service funds that will finally be used for the intended purpose of bringing the benefits of broadband to the members of ATNI.

FIBER IS NECESSARY IN THE NETWORK TO SERVE NATIVE “ANCHOR INSTITUTIONS”

The primary goals of ATNI are promotion of health, education, welfare, public and personal safety, and economic and employment opportunities for its people. From a communications network perspective, all of these basic needs are associated with high bandwidth requirements, i.e. Gigabit speeds. The large price cap carriers have linked their expansion of service in rural areas to deployment of 4G wireless networks. This is an important step in moving out broadband to rural America, but wireless has its limitations, and the FCC speeds that have evolved in recent years, i.e. 4/1, 10/1, and 25/3 Mbps are keyed only to robust residential application. To serve the bandwidth need of “anchor institutions” a fiber connection offering Gigabit speed is required.

The “anchors” are the source of quality-of-life in any community. ATNI has formed committees within the organization to maintain a continual focus on these the basic needs of the tribes. It has become very apparent to ATNI that broadband brings with it the promise of improving the tribe’s ability to make significant advancement in all of these areas. In this 21st century a robust broadband network has become the platform for sharing information and applying new technology. To participate in the gains resulting from the rapid development of broadband applications, investment in fiber backbone is essential. The large carriers have crisscrossed the nation with such networks reaching into urban Northwest locations, including the Seattle/Puget Sound corridor, the Spokane Inland Empire, and the Portland Metropolitan vicinity. But none found their way to Warm Springs, Oregon, until the Confederated Warm Springs Tribes tackled its communications needs. We need more success stories like this but unable to due to the lack of funds available for infrastructure to implement services.

Proposed Corrective Action: Constructing fiber networks on Tribal lands will require access to capital. Corporate charters of federally recognized tribes typically contain a provision restricting the tribe from mortgaging property. This is an obvious hurdle that prevents borrowing of funds from banks. Thus, the USDA Rural Utilities Service (RUS) has essentially become the only lender available to tribes. To enable the tribes to move forward in establishing their own telecommunications companies, RUS regulations should include specific provisions to ensure access to and extension of low interest federal government loans to tribes. RUS has at its discretion the ability to use the Substantially Underserved Trust Area (SUTA) provisions incorporated within the Farm Bill to grant 2% loans.

Another opportunity to obtain capital funding occurred with the recent FCC Rural Broadband Experiments. Unfortunately, the FCC bidding rules were designed to shut out tribal bidders. Unreasonably expensive Letters of Credit (LOC) were required from a Top 100 bank that were to remain in place for over 10 years and offset the total amount of funds awarded by the FCC. Tribes were unable to obtain a LOC. In addition, start-up companies were disqualified from participating because they could not produce 3 years of audited financial statements, a requirement literally impossible to meet.

The FCC did not grant waivers of these requirements. One provisionally selected company that intended to serve Tribal land was disqualified for not meeting the above requirements, even though the 4 principles of the company had over 120 years of combined telephony and business management experience, including building out Atlanta, Georgia for the 1996 Olympic Games.

With the CAF II Auctions on the horizon, the FCC should utilize bidding rules that do not shut out tribal bidders, including the 3 years audited financials and the LOC. The Tribal Bidding Credit should remain available, since this additional incentive should help to attract broadband providers interested in serving Tribal lands.

DEEP DISCOUNT TRIBAL LIFELINE RATES SHOULD APPLY TO BOTH VOICE AND BROADBAND SERVICES

Most tribal lands are home to a high percentage of poverty level income households. This is true for the ATNI tribes, as well. Consequently, the affordability of voice and broadband service, if available, is a key factor in determining the service penetration level on Tribal lands. For example, several tribally owned telecommunications companies report that 75-80% of their tribal residents qualify for and receive Lifeline service.

Proposed Action: The FCC is currently studying reform of its Lifeline program. The Commission should not disrupt the application of this program for the tribes. The current poor level of voice and broadband penetration speaks to the importance of retaining Lifeline rates. If these discounted rates were taken away, the already documented low subscription rates on Tribal land would undoubtedly suffer severely.

As the FCC contemplates whether to establish, or at what level to establish broadband Lifeline rates, it should consider the lack of penetration and adoption levels on Tribal lands. Granted, this poor performance is actually a function of lack of broadband infrastructure deployment on ATNI Tribal land, for example. However, the issue of poverty level income should not be lost in this rulemaking. Bringing broadband to Indian country and pricing it at extremely discounted rates will be necessary if penetration and adoption levels on Tribal lands are to see reasonable movement toward nationwide averages.

INFRASTRUCTURE SHARING AMONG TRIBES COULD IMPROVE BROADBAND PENETRATION

The communications business is becoming more complex and sophisticated as technology convergence drives change in the industry. The business remains highly capital intensive, as well. The result is shorter useful lives for each generation of technology, and an increasingly higher demand for capital to keep up with technological innovation. A competitive communications industry, even in rural America, amplifies the effects of technological advance. All of these factors create a tremendous need for funding in the most high-cost to serve areas of the nation, especially on Tribal lands.

Interestingly, as these pressures for capital mount, the FCC has determined that budgeted USF funds should be capped annually at about \$8 billion. This puts a strain on the distribution mechanisms in place to adequately fund service providers in rural America. There the challenge remains to keep up the pace with the rest of America, while support funds are frozen or declining.

Keeping up the pace is necessary for rural American communities to survive and thrive. The socio-economic health of rural America is tied to the level of communications advancement and adoption in urban America. It is there that the national quality-of-life and economic opportunity “standards” for communications/broadband networks are set.

The dilemma for ATNI tribes is even more critical. The urban-rural divide is emerging because access to communications services on Tribal lands has not kept pace. And now when FCC policies

require cost containment and consolidation of operations, the future of broadband on already underserved ATNI Tribal lands becomes cloudier.

Technology advance can be viewed as a blessing in this instance. For example, soft-switch technology has opened the way for remote management of gateways to the network. Established service providers can use this switch technology to provide operational support for start-up companies located in neighboring states. Start-up companies can actually avoid the cost of a soft switch (over \$250,000) by electing to have a “neighbor” company perform the service. Such a decision introduces “scope and scale” immediately into the operation of a remote, start-up communications provider.

Proposed Corrective Action: An outdated FCC rule in the NECA Interstate Access Tariff FCC No. 5 requires that outsourced switching services be acquired from a service provider located in the same LATA. The reason for this rule was to avoid the Interexchange Carrier (IXC) from incurring costs to rehome its switch locations. However, in a “greenfield” situation, the opposite is true. The IXC is able to avoid cost by utilizing existing connection points in the network, rather than building out to a new switch location. This is a win-win solution for all parties. An ATNI member stepping up to provide needed communications services for its tribe could establish its own tribally owned carrier, and by agreement utilize the infrastructure and technical expertise of one of the existing tribally owned companies to provide switch functionality.

The cost benefit of this arrangement extends beyond the initial start-up of service. A start-up service provider not only avoids the initial capital cost of a switch, but it also avoids future upgrade costs and change out of technology. Operating costs are avoided too, since specially trained technicians are not required in-house to maintain a switch.

The FCC should revisit the existing tariff rules and allow rural service providers to share infrastructure without regard to LATA location.

CONCLUSION

When one considers the daunting task of deploying broadband in rural America, the challenges only become greater for the ATNI Member Tribes. If the existing universal service programs were not in place, it is unlikely that any native communities on Tribal lands would have the quality of communications service they have today. And what has been accomplished is small, when compared with the need that continues to exist today. Lack of infrastructure is the primary reason the FCC and RUS must coordinate needed corrective action to facilitate ATNI tribes and all of Indian country catching up with the rest of America. In addition to other steps outlined in this letter, the Commission should create a new universal service program, a “Tribal Broadband Fund,” specifically and exclusively for the dual purposes of 1) funding broadband infrastructure deployment on Tribal lands, and 2) sustaining affordable broadband services for the residents of native communities on Tribal lands.

Respectfully submitted,

Andrea Alexander (Makah)
Affiliated Tribes of Northwest Indians
Energy & Telecommunication Committee
425-501-0042 Aalexander795@gmail.com

Randell Harris, (Tlingit) IT Director Quinault Nation
Affiliated Tribes of Northwest Indians
Energy & Telecommunications Committee
360-581-5013 rharris@quinault.org

CC: ATNI Technology Committee and ATNI Member Tribes
Senator Maria Cantwell
Senator Patty Murray
Representative Suzan DelBene
Representative Derek Kilmer
Governor Jay Inslee, Washington State

www.atnitribes.org