

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Establishing a 5G Fund for Rural America) GN Docket No. 20-32
)

REPLY COMMENTS OF CTIA

CTIA provides these reply comments in response to the Commission’s Second Further Notice of Proposed Rulemaking in the above-captioned docket.¹

I. INTRODUCTION AND SUMMARY.

CTIA supports effective engagement with Tribal entities to ensure that mobile wireless facilities supported by the 5G Fund for Rural America (“5G Fund”) are deployed on Tribal lands in a manner that is consistent with Tribal sovereignty and meets community needs. The initial comments on the FNPRM demonstrate that the Commission can accomplish this goal—and promote consistency with Tribal engagement requirements in other Commission universal service programs and the National Telecommunications and Information Administration’s (“NTIA”) approach in the Broadband Equity, Access, and Deployment (“BEAD”) program—by adopting clear and specific requirements and structuring any 5G Fund Tribal engagement obligations in a targeted way so that they do not become a barrier to the authorization of 5G Fund support in Tribal areas that currently lack advanced mobile service.

In addition, although not an issue upon which comment was sought in the FNPRM, CTIA observes that the comments of the Virginia Office of Broadband (“VOoB”) strongly support CTIA’s recommendations in this docket that the Commission align the 5G Fund with other

¹ *Establishing a 5G Fund for Rural America*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, FCC 24-89 (rel. Aug. 29, 2024) (“Order” or “FNPRM,” as appropriate).

funding programs administered by NTIA and the states to ensure that the 5G Fund focuses on areas that will not otherwise receive 5G service.²

II. 5G FUND TRIBAL ENGAGEMENT REQUIREMENTS SHOULD ADDRESS TRIBAL NEEDS AND SOVEREIGNTY CONSIDERATIONS WITHOUT IMPOSING UNNECESSARY BARRIERS TO DEPLOYMENT ON TRIBAL LANDS.

Commenters agree that expanding 5G coverage on Tribal lands is an important goal to ensure that Tribal residents can obtain the benefits of 5G service, including improved access to telemedicine, education, and commercial opportunities, and that cooperation between providers and Tribal authorities can help ensure these goals are realized.³ The record also shows that the Commission should ensure that any 5G Fund Tribal consent requirements do not interpose unnecessary burdens that could delay or prevent deployment to Tribal communities.⁴ Incorporating these principles also will help provide structure and needed specificity to the proposed requirements.⁵

As the FNPRM correctly notes, the requirements for the Tribal Lands Bidding Credit in the Commission's spectrum auction rules can provide a useful framework for a Tribal consent

² Comments of Virginia Office of Broadband, GN Docket No. 20-32 (filed Sept. 9, 2024) (“VOoB Comments”).

³ *See, e.g.*, Comments of The Southern Ute Indian Tribe, GN Docket No. 20-32, at 3-5 (filed Oct. 17, 2024) (“Southern Ute Comments”); Comments of National Tribal Telecommunications Association, GN Docket No. 20-32, at 2-4 (filed Oct. 17, 2024); Comments of Competitive Carriers Association, GN Docket No. 20-32, at 2 (filed Oct. 17, 2024) (“CCA Comments”); Comments of Oglala Sioux Tribe, GN Docket No. 20-32, at 2 (filed Oct. 17, 2024) (“Oglala Sioux Comments”); Comments of Navajo Nation Telecommunications Regulatory Commission, GN Docket 20-32, at 4-5 (filed Oct. 17, 2024) (“Navajo Nation Comments”); Comments of Smith Bagley Inc., GN Docket No. 20-32, at 2 (filed Oct. 17, 2024) (“SBI Comments”).

⁴ *See, e.g.*, SBI Comments at 3-4; CCA Comments at 2-3.

⁵ The FNPRM does not include specific proposed rules, and the text of the FNPRM does not provide a complete proposal that could be operationalized. *See generally* FNPRM ¶¶ 164-173.

requirement in the 5G Fund support auction,⁶ and the record supports this approach.⁷ Further, consistent with the FNPRM’s proposal, any 5G Fund Tribal consent requirements should be targeted at “any necessary access to deploy network facilities using ... 5G Fund support on Tribal lands within the area(s) of its winning bid(s).”⁸ That is, the consent requirement should apply to *facilities* physically located on Tribal lands that are built with 5G Fund support.⁹ This approach is consistent with preserving Tribal sovereignty over the “deployment of 5G infrastructure ... [that] involves significant decisions about land use, environmental impacts, and cultural preservation.”¹⁰ Targeting the consent requirement to facilities sited on Tribal lands also is consistent with NTIA’s policy in the BEAD program, where the agency found that a Tribal consent requirement for deployment in areas “near, adjacent, or contiguous to reservations” raised “serious administrability challenges” such that it was “in the best interest of the Federal Government” to waive such requirements.¹¹ As such, some of the language proposed or discussed by commenters, modeled on obligations in programs for supporting fixed broadband service to specific locations, would be inappropriate.¹² To facilitate compliance with any Tribal engagement requirement adopted for the 5G Fund, the Commission should specify the biddable

⁶ *Id.* ¶ 170 (citing 47 C.F.R. § 1.2110(f)(3)(ii)(A)).

⁷ *See, e.g.*, SBi Comments at 2-3; CCA Comments at 4-5.

⁸ FNPRM ¶ 164.

⁹ *See, e.g.*, Navajo Nation Comments at 4 (emphasis added) (supporting a requirement for 5G Fund support applicants to receive Tribal consent “to deploy on tribal lands”).

¹⁰ Oglala Sioux Comments at 2.

¹¹ NTIA, Notice of Programmatic Waiver of Subpoint (E) of BEAD NOFO Definition of Tribal Lands (Mar. 7, 2024), https://broadbandusa.ntia.gov/sites/default/files/2024-03/BEAD_Program_-_Waiver_of_Subpoint_E_of_the_Definition_of_Tribal_Lands.pdf.

¹² *See, e.g.*, Comments of New Mexico Office of Broadband Access and Expansion, GN Docket No. 20-32, at 1 (Oct. 17, 2024) (consent requirement in state program applies to any projects “to provide service on Tribal lands”).

hex-9s within which the siting of facilities would be subject to the Tribal consent requirement,¹³ and address situations where only a portion of a census tract or biddable hex-9 falls within Tribal land. For example, the Commission could divide such areas into Tribal and non-Tribal bidding units, and/or adopt a de minimis exception to the 5G Fund Tribal consent requirements for such areas.

The record also shows that any 5G Fund Tribal consent requirements need to account for the time and uncertainties involved in obtaining Tribal consent. For example, SBi, which operates extensively in Tribal areas, states that, in its experience, “obtaining consents within 180 days can be challenging” due to some Tribes’ lack of “regular dockets for processing consent requests” and the need for executives to “travel well over 100 miles to attend one or more planning meetings or Tribal governmental proceedings in order to secure consents.”¹⁴ SBi’s proposal—that the Commission extend the 180-day deadline for winning bidders to obtain Tribal consents upon demonstration of good-faith efforts to obtain them¹⁵—is the minimum needed to ensure that any consent requirement does not result in the needless exclusion of Tribal areas from 5G Fund support authorizations.¹⁶ The Commission should also consider whether Tribal entities’ consent may be presumed after a certain period of good-faith efforts by the 5G Fund applicant. In no event, however, should a winning bidder be placed in default or otherwise subject to penalties if the winning bidder demonstrates good-faith efforts to obtain consent in accordance with the rules.

¹³ See FNPRM App. A 102-03 (Final Rules 47 C.F.R. § 54.1012(c)).

¹⁴ SBi Comments at 3. See also, e.g., Southern Ute Comments at 7 (appropriate Tribal consent documents vary because the “laws under which each Tribe operates are different”).

¹⁵ SBi Comments at 3-4.

¹⁶ Moreover, the 180-day period should not start until after the long form is submitted and the auction’s quiet period ends.

III. THE RECORD SHOWS THE IMPORTANCE OF ENSURING THAT THE 5G FUND FOCUSES ON DIRECTING LIMITED RESOURCES TO AREAS WHERE 5G WILL NOT OTHERWISE BE DEPLOYED.

As CTIA has explained, ongoing work by NTIA and states to finalize implementation of the BEAD program, as well as the Commission’s own work to refine the mobile broadband maps, will provide information that is relevant to the scope of the 5G Fund.¹⁷ The VOOB’s comments on the FNPRM state that it has identified over 35,000 locations in the state lacking 4G LTE coverage and is “exploring the potential of utilizing available Non-Deployment Funding under the [BEAD] Program to expand cellular connectivity to these unserved regions.”¹⁸ VOOB therefore urges the FCC to ensure that its deduplication provisions ensure that areas that will receive service through other programs not be included in the 5G Fund auction.¹⁹ In addition to such direct deployments, as CTIA has noted, BEAD “may result in the deployment of fiber broadband backhaul facilities that will facilitate unsubsidized 5G deployment and increased availability of Fixed Wireless Access broadband in rural areas.”²⁰

CTIA therefore reiterates that the Commission’s plans to establish areas eligible for 5G Fund support should ensure that the 5G Fund focuses on directing limited resources to areas where 5G service would not otherwise be deployed.²¹

IV. CONCLUSION.

CTIA appreciates the Commission’s ongoing commitment to implementing the 5G Fund as a dedicated universal service funding mechanism for advanced mobile wireless service for all

¹⁷ Reply Comments of CTIA, GN Docket No. 20-32, at 2-3 (filed Nov. 21, 2023) (“CTIA 2023 Reply Comments”).

¹⁸ VOOB Comments at 1.

¹⁹ *Id.* at 1-2.

²⁰ CTIA 2023 Reply Comments at 2-3.

²¹ *See id.*

Americans. Data show that some Tribal areas are likely to benefit from 5G Fund support, and a targeted Tribal coordination requirement can ensure that Tribal sovereignty is respected regarding facilities sited on Tribal land. Any Tribal coordination requirements should be clearly specified and tailored to ensure that they do not become a barrier to the award of 5G Fund support to extend service into Tribal areas. The record also shows the importance of directing limited 5G Fund resources to areas where 5G service would not otherwise be deployed.

Respectfully submitted,

/s/ Amy E. Bender

Amy E. Bender

Vice President, Regulatory Affairs

Scott K. Bergmann

Senior Vice President, Regulatory Affairs

Courtney F. Tolerico

Director, Regulatory Affairs

CTIA

1400 Sixteenth Street, NW

Suite 600

Washington, D.C. 20036

(202) 736-3200

www.ctia.org

November 1, 2024