



COALITION OF LARGE TRIBES

Blackfeet Tribe of Montana • Cheyenne River Sioux Tribe • Crow Nation • Eastern Shoshone Tribe
Fort Belknap • Mandan, Hidatsa & Arikara Nations • Navajo Nation • Northern Arapaho Tribes
Oglala Sioux Tribe • Rosebud Sioux Tribe • Sisseton Wahpeton Sioux Tribe
Shoshone Bannock • Spokane Tribe • Ute Indian

Coalition of Large Tribes (COLT)

Comments on the Development of a National Spectrum Strategy

Docket NTIA – 2023-0003

INTRODUCTION

The Coalition of Large Tribes (COLT) welcomes the opportunity to submit comments in the National Spectrum Strategy proceeding being conducted by the National Telecommunications and Information Administration (NTIA) of the US Department of Commerce.

COLT was established in April 2011 to provide a unified advocacy base for tribes that govern large trust land bases and provide full service in the governing of their members and reservations. COLT member Tribes consist of Tribes that have 100,000 acres or more of land and of the 574 only 51 meet this criteria and these 51 Tribes control 95 percent of the Tribal lands in the lower 48 states. Since its establishment, COLT has been an active voice on Indian land, energy, and other areas important to large tribes.

We also advocate for legislative, regulatory and policy reforms to improve issues unique to tribes that govern large land bases and identify statutory, regulatory, fiscal and policy barriers to Indian land developments, and recommend ways to eliminate or lessen such barriers.

COLT applauds the work that NTIA has done in getting much needed federal funds for broadband deployment to the Tribes. We recognize the immensity of the task in making funding decisions and remain hopeful that many of the Tribes who submitted requests will be approved; allowing them to deploy broadband and be able to provide broadband education, awareness, training, access, equipment and support to key tribal institutions, affordable broadband service to the home and the use of broadband to access telehealth, remote learning, and workforce development.

Today, however, we are weighing in on some of the questions NTIA poses in the Request for Comment as it relates to a much-needed National Spectrum Strategy. Recognizing that we are not telecom engineers nor experts on the business side of telecommunications companies, our comments will not be delving into the technical reasons that a National Spectrum Strategy is

imperative. Rather, we will provide a broader narrative to provide an overall context to the importance of respecting tribal sovereignty and fulfilling the treaty obligations of the United States to indigenous communities throughout the country.

GENERAL DIRECTIVE

Let's start by commending NTIA for the work you have done to date reaching out to Indian Country to ensure that we have a seat at the table. Beginning with much appreciated in person appearances from NTIA staff at our Regional Meetings to the Consultations and Webinars you have provided to assist our members in securing broadband deployment funds and now to ensure that we have a voice as a National Spectrum Management plan is put in place.

Most importantly, we respectfully ask as tribal sovereign nations, that the NTIA provide Tribal governments access to spectrum over their Tribal lands as an integral part of the National Spectrum Management plan. We have been advocating for this request for years knowing that the federal government has long-standing tribal-federal treaty obligations as well as solemn trust obligations to Tribal Nations and their citizens.

RECOMMENDATIONS FOR NEXT STEPS

We understand that the 3 Pillars you have identified in the Notice are important building blocks for devising a National Spectrum Strategy. However, COLT feels strongly that an implicit part of that strategy are directives focused specifically on Tribal access to spectrum.

Included in these directives are:

- White House-level policy clarification on Tribal broadband/spectrum priorities
- Tribal-specific priority windows
- Tribal set-aside of all spectrum over Tribal lands, and
- First right of refusal and mandatory tribal consultation/consent/comments

Taking these actions would demonstrate transparency and communications related to spectrum allocation decisions to be improved to increase Tribal Nations' trust in the process.

There are other ways as well.

As we noted above, the outreach from NTIA and the tribal consultation process are important first steps but more needs to be done to not only develop confidence that the Federal government is looking out for the Tribes Treaties and Trust responsibilities, while recognizing and protecting their Sovereignty, but to create a level of trust that will spur Tribes into action once ground rules (aka National Spectrum Strategy) are created.

The National Spectrum Plan should identify that spectrum is a natural resource that needs to be managed by tribal nations as such. Failure to recognize this in the Plan is not an option. Tribes

have never given up their treaty rights to spectrum and unlike reserved mineral or natural resource rights, Tribes should be allocated and provided access to the spectrum over their Tribal lands. Clearly, the best outcome for Tribes would be outright ownership via the auction process but a reasonable spectrum sharing paradigm can work as well.

Let's look at the current auction system first. Tribes have identified that the current process eliminates their ability to compete because the larger telecommunications companies have access to enormous financial resources that have been budgeted for just this purpose. An additional frustration comes from the fact that despite making their feelings known, Tribes have had no meaningful input into the drawing of boundaries for the area in which the spectrum is being auctioned.

Adding to our collective angst is the fact that once the spectrum has been awarded our calls for accountability have been largely ignored. We have repeatedly requested that "use or lose" requirements be imposed on spectrum awardees. Interestingly, we have seen those restrictions imposed on Tribes who were awarded spectrum in the 2.5 GHz band who are concerned that their spectrum will be returned to the Federal pool if actual development plans are not introduced. At a minimum, this development requirement must be applied universally to all parties and not just tribes.

We know that others will be weighing in with more specifics on auctions so we will leave it at that and move on to another important part of any National Spectrum Strategy and that is spectrum-sharing.

COLT is a strong proponent of spectrum-sharing to better utilize the resources without preventing other parties from building networks to serve multiple constituencies.

We know that the NTIA will work together with the Federal Communications Commission (FCC) to manage the spectrum. From a practical perspective, the Department of Defense has historically held a lot of valuable spectrum for national security use, making the DoD an incumbent user in many spectrum bands.

NTIA Administrator and Assistant Secretary of Commerce Alan Davidson said that he has "a deep appreciation for federal usage." But he said the NTIA also recognizes "the imperative that the United States must continue to lead the world in innovative uses of wireless spectrum."

We are not naïve and recognize that currently, there are myriad organizations lobbying for more spectrum. The most immediate concern is the 3.1-3.45 GHz band. Some companies, such as the big wireless carriers, want this spectrum auctioned for exclusive, licensed use while other organizations prefer spectrum-sharing.

Because there are federal incumbents in the 3.1-3.45 GHz, the NTIA would be in the best position to ensure that the spectrum is shared properly and that the band is best utilized.

Anything could happen with the 3.1-3.45 spectrum, including making all of it available for auction; making all of it available for spectrum sharing; or striking some kind of compromise where some of it is freed up for spectrum sharing and some of it is auctioned with the Tribes as important players. Harmonizing the lower 3 GHz band – the top priority bands both internationally and domestically – for mobile service while ensuring the protection of critical federal systems should be an important part of the spectrum plan.

Further, identifying the full 3.3-3.8 GHz range would enable flexibility for the U.S. to expand the spectrum pipeline to include the lower portion of the band for 5G operations. Given the unique characteristics of this spectrum, this is widely supported by the wireless industry and is consistent with bipartisan Congressional efforts to identify spectrum across the 3.1-3.45 GHz band that we referenced above for terrestrial wireless use. Additionally, the FCC should remain focused on its ongoing effort to free up other critical tranches of mid-band spectrum necessary to maintain U.S. competitiveness in the mobile and fixed wireless space keeping the ability for Tribes to fairly compete for this resource at the forefront and consistent with the above referenced treaty and trust obligations of the federal government.

These bands represent significant opportunities to free up substantial spectrum for licensed use in already harmonized and contiguous ranges. Prioritizing their allocation as part of the development of a robust mid-spectrum pipeline will help meet increasing consumer demand and hopefully provide a meaningful avenue for Tribal participation in the support of the National Spectrum Strategy.

Recognizing the importance a dynamic U.S. leadership role plays in this area, we reiterate the importance of the NTIA including the Tribes when making decisions about this valuable resource.

Finally, Tribes call upon the federal government to establish requirements for any spectrum holders over Tribal lands to:

- Continue to hold pre-decisional tribal consultations to support President Biden’s commitment and Executive Orders to uphold the government’s federal trust responsibility to Native Americans;
- Obtain Tribal consent for proposed uses of spectrum over Tribal lands;
- Annual reporting to Tribes by the spectrum holder; and
- Federal data-share and transparency with Tribes.

CONCLUSION

The Coalition of Large Tribes reiterates its appreciation to NTIA for introducing this Request for Comment and for providing us with the opportunity to participate.

The Tribes that COLT represents are keenly aware of the importance high-speed Internet access plays in all our lives. Those who have it rejoice and the multitudes who are without it are left behind in too many ways to mention.

We applaud President Biden and the U.S. Congress for recognizing these inequalities by creating the Tribal Broadband Connectivity Program and for requiring that state entities include Tribes in their application for Broadband, Equity, Access, and Deployment (BEAD) funding.

Those programs will enable a few Tribes to begin the process of building the infrastructure necessary to bring Internet to all their residents.

The same process and effort should logically be followed by access to spectrum. Access to spectrum is a critical means to achieve ubiquitous broadband on Tribal lands. COLT members and many Tribes are poised to take advantage of the opportunities spectrum and the attendant high-speed Internet access will provide. It is now up to the NTIA to ensure that we are not left behind as you develop the National Spectrum Strategy. We are confident that you have a keen understanding of the needs of Indian Country and will continue to work in lockstep with us to achieve our collective mission.

We look forward to working with you going forward and welcome any feedback or guidance that you care to provide.

Respectfully submitted.

Oliver J. Semans Sr. _____

Executive Director

Coalition of Large Tribes

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