

NTIA Government-to-Government Tribal Consultation: National Spectrum Strategy

South Bend, Indiana
Wednesday, April 20, 2023

Introductory Remarks

Will Micklin, Vice President of the Central Council of Tlingit and Haida Indians and CEO of the Ewiiapaayp Band of Kumeyaay Indians of Alaska, opened the meeting with an invocatory prayer.

Scott Blake Harris, Senior Spectrum Advisor and Director of the NSS, introduced the representatives from NTIA: Paul Ransom, Senior Technical Expert at the Office of Spectrum Management (OSM) and Technical Lead for the NSS, and Derek Khlopin, Deputy Associate Administrator for Spectrum Planning and Policy in OSM. He also introduced Austin Bonner, the Assistant Director for Spectrum and Telecom Policy at the Office of Science and Technology Policy at the White House. The White House's Pearl explained that tribal equity and the NSS were both priorities for the Biden administration.

NTIA's Harris provided background on the NSS. He spoke about the importance of spectrum for wireless communications, weather forecasting, location services, space exploration, aviation safety, national defense, and many other critical areas. He explained that increasing demand for spectrum in the public and private sectors motivated the creation of the NSS. He said that the NSS aims to identify spectrum bands that can be studied for more intensive use and to improve coordination with federal, tribal, and private entities.

Questions

NTIA's **Khlopin** described the process for making statements to NTIA in answer to questions from the NSS outreach process.

Question 1: Question 1: How could transparency and communications related to spectrum allocation decisions be improved to increase Tribal Nations' trust in the process?

Nicholas Kager, Tribal Historic Preservation Officer (THPO) of the Coeur D'Alene Tribe (Idaho), stated that his main concern is about liaisons as roadblocks. Liaisons are always sent to tribes, but they have no real actual power. For example, they cannot change where a cell phone tower is, nor can they immediately disclose spectrum. He believes that the process would be greatly improved if tribes were put in the same room with decision makers. Spectrum usage needs to benefit his tribe in a way that benefits them and increases use of their language. He claimed AT&T "steps on our spectrum," and then uses FirstNet as an excuse to put their project through. He made clear he was speaking about both liaisons from the FCC and from AT&T.

Mr. Harris clarified that it should be NTIA, rather than the FCC, who the tribes should be dealing with directly. He also pledged that he will be bringing this matter up in a future meeting with the FirstNet Authority. **Heidi Todacheene** of the BIA, Department of Interior added that her Department is setting up its own Office of Indigenous Connectivity and Technology and hopes to conclude that by the end of the year.

Question 2: What actions or recommendations would promote the deployment and availability of next-generation products and services to Tribal lands?

Moke Simon, Tribal Chairman of the Middletown Rancheria, first wished to say he thought Mr. Kager was absolutely correct in saying that dealing directly with the tribal nations as they are trying to deploy this technology for their next generation is so important. He said that as a tribal leader, he is not always asking for a ‘handout’ from NTIA funds, but rather the funds and the opportunities to do the projects to take their next seven generations into a competitive market and to continue to compete in this world that we live in. They had a \$4.5 million dollar project that would've brought fiber to every home, built a wireless backup system, and for some reason, which still perplexes him, his tribe was denied the funding to do this project. Small tribes like his need direct communications and explanations from Washington decision makers.

NTIA representatives queried Chairman Simon as to which program was involved in this denial, with Mr. Khlopin saying he believes that it is the NTIA TBCCP program being referenced. As a follow-up question. He asked Chairman Simon if one of the ways that we should be looking at promoting the next generation of products or services is through an education lens—did he think that that is a good space to be exploring when we are talking about how these next generation of products might be used or tested or considered for tribes? Chairman Simon said this was absolutely correct.

James Phoenix, Chairman of the Pyramid Lake Paiute Tribe said that earlier consultations included discussions about regionally trying to establish workshops with one-on-one time to introduce the new products and the next generations and demonstrations. These communications need *continuity*--to survive turnover both with BIA personnel turnover and between tribal elections of different officials.

Mr. **Kager** spoke again, citing the need for the passage of the Digital Reservations Act, which would prohibit the FCC from selling tribal spectrum licenses at private auctions to for-profit corporations, permanently eliminating the public availability of spectrum over tribal lands. American Indians, Alaska natives, and native Hawaiians living on tribal lands would then have access to wireless digital services and network infrastructure for the first time. Such legislation would better recognize the tribes as sovereign and treat them as such.

Mr. Kager also recommended that the transition of ownership of broadband assets or towers should not be allowed to be conveyed to somebody else without the tribe’s knowledge or consent when it is on tribal land or it is attached to a tribe’s facility like a casino.

Melissa King, Manager, Department of Information Systems for the Nez Perce tribe, stated that the current bid process does not allow tribes to gain access over tribal lands because they are not able to compete against national carriers who are able to bid large sums of funding.

Jeremy Brown, IT Project Manager of the Eastern Band of Cherokee Indians said he has experienced similar challenges to Ms. King's previous comment: they have an ISP that deploys services to their citizens and to the region, but every time they go to expand, they lose funding opportunities because the RDO and other funding agencies decline them based on the larger carriers coming into the areas. The tribe knows the region, and knows what it costs, so he wished to see if NTIA can assist in those criteria, helping the legislators to understand these tribes are not just trying to benefit themselves but rather trying to benefit their regions, and actually know what it takes to deploy broadband and spectrum-based services in their area, in their footprint.

Asked to elucidate on that experience, Mr. Brown said that his tribe lost out on the first round TBCP after having submitted requests for \$45 million worth of grants and was offered \$500,000 Equitable Distribution instead. Moreover, the tribe received no explanation for the denial.

Adam Geisler responded in his capacity as the day-to-day manager for the Tribal Broadband Connectivity Program and said he would be happy to follow up with Mr. Brown offline about the specifics of the application. He added that if a tribe is a recipient of the equitable distribution, it would not have received a rejection letter because it was awarded through the program, though not all the amount that it requested.

Larry Jacques, Director of Strategic Planning for the Sault Ste Marie Tribe of Chippewa Indians, said he wondered if NTIA could provide maps that would be accessible to and also first verified by the tribes, showing the states which areas that the tribes are going to be eligible for. He said that States would be more comfortable with understanding all the options for Tribes. He also added that while a project has to be financially sustainable, that sustainability is difficult to achieve unless they go off reservation to serve tribal members elsewhere (only 8% of his tribe actually lives on-reservation). Looser wording would be appreciated with respect to such requirements.

NTIA officials noted that, while mapping is specifically an FCC responsibility, Mr. Jacques seems to be alluding to a problem far broader than maps alone.

Question 3: What initiatives on Tribal lands (e.g., testbeds) or partnerships with Tribal governments should be considered that would enable more robust and quicker implementation of spectrum sharing to meet spectrum access needs?

Chairman **Simon** spoke again, citing pilot programs as an area for initiatives, even though, he added, pilot programs are good but only are a bandaid on trying to get things completed. He cited a home hardening program, one of three in the state of California, as an example of such a successful pilot program.

Ms. **King** spoke again, noting that there is no use or lose clause in any spectrum auction. Once the license is granted, there is no obligation to sublease or build out requirements over a period of time. She said this allows spectrum to be held over tribal lands, even when there is no plan to build out due to low population density.

Mr. Harris noted that this very point came up repeatedly in the first Tribal listening session, and is at the very top of issues that need to be addressed in the NSS.

Mr. **Kegger** took the floor again, saying that initiatives on Tribal lands should force agencies to build out on tribal lands with tribal authorities' participation, putting tribes in the driver's seat. He said he will continue to deny and hold up outside agency cell phone towers and their use of spectrum within the exterior boundaries of our reservation, if it is not directly benefiting us to the fullest extent possible. They have towers up there that disrupt their traditional stories, that change the way that they tell their children about the world, which changes them as a people. And if they cannot tell their tribe how it is benefiting them directly, then all it does is take from them.

Question 4: What, if anything, can NTIA do to develop, strengthen, and diversify the spectrum workforce within Tribal Nations to ensure an enduring, capable, and inclusive workforce?

Mr. **Phoenix** spoke again, asking what is NTIA thinking about developing and strengthening diversity of the spectrum workforce in tribal nations and building a capable, inclusive workforce? He simply wanted to listen

NTIA's Harris said, while it was a good question, he did not have an answer. The deliberations among agencies for this summer will process inputs from just such listening sessions. Mr. Phoenix said he understood, and Mr. Harris followed up saying that he has noticed that the workforce needs are tackled differently depending on what part of the country that he is in. There is a circuit writer program, for example, that folks are doing up out of Alaska related to utility power and even broadband. And they're using a model that works for them up there. What is being used in Nevada? Is it a resource for the Intertribal Council of Nevada or others? What resources are you using right now to train, more broadly, the workforce? Where do you plug in when your tribal members, your community members, and citizens are looking for assistance?

Chairman Simon said that each tribe is different. The internship programs are really good as most of the business they start, as we usually hire non-tribal folks to come in, train, and then replace them ultimately with tribal members. It works well. Everybody understands what the process is, but everything we do or create here with our tribal nation is for the next generation to look and see at those new opportunities. Ultimately, that sustainability issue is key. The new generation of their young folks just need to be trained.

Question 5: Are there any other questions raised by our Request for Comments that are of interest to Tribal Nations?

Jill Wagner, co-THPO with Nicholas Kager, asked if NTIA is aware of the House bill being led by Russ Fulcher that would categorically exclude any broadband infrastructure from NPA and NHPA review if it is in an existing right of way? This does not, she said, refer to previously disturbed soils, but existing ROWs that are often entirely undisturbed in the western and rural areas throughout the country. Can NTIA nullify this effort, should the bill pass?

NTIA's Harris said he was not aware of the specifics of the legislation she was bringing up.

Francis Goly, representing the Shoba Tribes wanted to bring up that, during the FCC 2.5 GHz rulemaking, in the tribal priority window, her tribe was one of the seven tribes that were denied. Therefore, during the pandemic, her tribal community was unable to deploy an emergency

wireless. However, she noted, one ISP has a monopoly and has purchased multiple licenses during the auction, and provides subpar service to their tribal community. Therefore, this makes it very difficult for them to deploy their upcoming broadband project because now they will have to lease licenses from a third-party company.

NTIA officials again had to stress that these auctions were run by the FCC, but that they will bring these issues to the Commission's attention while the NSS is being worked on.

Joseph Carella, also working with the Saint Marie Tribe of the Chippewa Indians and the Wipo Band of Kumeyaay Indians, said he wanted to compliment the FCC on the 2.5 GHz tribal spectrum--for normalizing the obligations for utilization of the 2.5 GHz spectrum to match the non-tribal, as in his recollection, the tribal obligations for performance and utilization were much shorter, but were modified that to match the non-tribal items. He wanted to suggest that tribes be given an opportunity for utility at a discounted rate, not a market rate to use commercially-owned spectrum over their lands. Not exclusive use, but for a preference at a discounted rate so that the tribes do not have to pay commercial market rates. A third point he raised was that the precedent that was set in 2.5 GHz in allowing the tribes to seek a preferential claim on new spectrum should be followed in any additional spectrum in the 1.5 additional gigahertz bands that you are looking to make available--that should be followed as well in the higher ranges at millimeter wave, et cetera.

Brian Miracle, working with the Ana Intertribal Resource Commission which represents eight tribal communities in Alaska asked if the national strategy would include executing any spectrum allocation or relocation to follow the FCC tribal priority window process for any new spectrum that is reallocated or allocated to additional uses or future uses.