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UNIVERSAL SERVICE FUND REFORM: ENSURING A SUSTAINABLE AND CONNECTED FUTURE FOR NATIVE COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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UNIVERSAL SERVICE FUND REFORM: ENSURING A SUSTAINABLE AND CONNECTED FUTURE FOR NATIVE COMMUNITIES

THURSDAY, JUNE 7, 2012

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. This Committee will come to order.

Aloha and welcome, everyone, to the Committee's oversight hearing on Universal Service Fund Reform and its impact on Native Communities.

Native communities suffer from the poorest access to telecommunication services in the Country which impacts their health, safety, education and potential for economic development. More than 90 percent of Tribal residents lack access to broadband and one out of three Tribal residents still lack even basic telephone service.

Universal service, which has been a core priority of Federal telecommunications policy since the 1930s, is the primary reason that Native residents have even limited access to basic services. For years, these critical funds have provided a lifeline and allowed companies that want to serve Native communities to do so even though they operate in the highest cost markets in the Country.

The FCC has recently started issuing a number of major reforms to the modern Universal Service Fund which will have disproportionate and potentially dangerous impacts on Native communities. Tribally-owned and operated telecom companies may see as much as a 33 percent revenue reduction which will mean an initial loss of over $600,000 annually per company.

For companies that operate on slim margins in high-cost Native areas, this could mean the end to their business and a major step back for Native broadband connectivity. Most of the companies that serve Native residents also borrow significantly from the Rural Utilities Service, whose administrator we will hear from today.

USF funds are critical to secure these important capital loans and their clients' ability to repay these loans may now be in question.

We will also be hearing today from Tribal leadership and the Native companies themselves about why these funds are critical to keeping their business open and growing in their communities. It is absolutely necessary that the Federal Government honor its unique relationship with Native communities across the U.S. and ensure that these companies that provide broadband do not have to shut their doors.

In most of these communities, these companies are the only ones available to provide critical services that enable better health care, education and economic development. And now I would like to call on our Vice Chair, Senator Barrasso, for his opening statement.

STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you, Mr. Chairman. Thank you for holding this hearing. I do appreciate your opening statement. What you are saying is so very important.

As you know, communications technology has evolved significantly over the years, and quick and effective internet access is vital for many purposes, for commerce large and small, for health care, for public safety, for weather information, for education, for news, the list just goes on and on. So the Universal Service Fund has supported many telecommunication and internet service providers in serving rural and Indian communities.

The Federal Communications Commission has taken steps to increase the efficiency of that Federal support to expand communications, to expand internet access. These are very laudable goals. The Universal Service Fund was developed with Wyoming communities, including reservations, in mind. I do, however, have some concerns about how the proposed reforms might affect some rural and Tribal providers in those communities.

So I have joined several Senators from rural States in urging the Commission to carefully evaluate the reforms that are being proposed before actually implementing them. So I hope today that we will hear more about that process and the evaluation that has been conducted up to date.

So thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Vice Chairman Barrasso.

Now I would like to call on Senator Tom Udall for his opening statement.

STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO

Senator UDALL. Chairman Akaka, thank you very much, and Senator Barrasso, good to be here with you.

Thank you for holding this hearing on an issue of such great importance to Native American and Native Hawaiian communities. I want to thank you for inviting the RUS administrator and the FCC commissioner who will be testifying today. Both the FCC and the RUS have an essential role in tackling the digital divide challenge on Tribal lands.

I am especially pleased that we have Secretary Alfred LaPaz from Mescalero Apache Tribe, and Mr. Godfrey Enjady from the Mescalero Apache Telecom, here with us today. They are an example of a Tribally-owned telecom that is bringing service to people who otherwise would have no telephone or broadband access. That is precisely what universal service is for.

Most people probably cannot imagine life without a telephone. Yet today 30 percent of households in Indian Country do not have access to basic telephone service.

But statistics do not really have the story. Not having a land line or cell phone reception can mean the difference between life and death. Imagine not being able to call an ambulance when you or a loved one is in medical danger.

Members of this Committee know how essential it is that our Nation's Tribal lands are not bypassed when broadband networks are built out across the Nation. I am pleased that FCC Commissioner Clyburn is paying particular attention to this communications crisis. In fact, all the FCC Commissioners have pledged their support for addressing this appalling digital divide affecting Native Americans.

The new FCC Office of Native American Affairs and policy is helping build better government to government relations between the FCC and the Tribes. This is a good moment to achieve more progress.

Despite spending more than $8 billion last year, the current Universal Service program has failed Indian Country when it comes to ensuring basic telephone service. We cannot fail again when it comes to building modern broadband networks. So I am concerned when I hear from communications providers serving Tribal lands in New Mexico that they are deeply worried about the direction of USF reform. Companies like Mescalero Apache Telecom and Sacred Wind are working on the ground to bridge the digital divide.

I am also concerned when I learn that the Rural Utilities Service loans to telephone cooperatives could be at risk of default due to USF changes. However, I know we need USF reform. The USF framework is outdated and needs to focus on broadband, not just telephone service. The status quo is unacceptable for too many Native American households that still do not have access to affordable broadband.

That is why this hearing is so important. I hope this process helps highlight where USF reforms are going to work well. We also need to pay special attention to where some issues and concerns may have been overlooked. So I look forward to hearing from our witnesses and want to thank the Chairman again for holding the hearing. Thank you.

The CHAIRMAN. Thank you very much, Senator Udall.

Senator Murkowski, your opening statement, please.

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. To the Vice Chairman, I appreciate that you have called this hearing on Universal Service Fund reform. I appreciate the comments of my colleague, Mr. Udall, in recognizing that in far too many of our very

rural, very remote communities, things just aren't measuring up. And I think we hear of them and we recognize that when they don't measure up, our communities suffer, the families that live there suffer. And we all talk about even playing fields out there. I think we recognize exactly how uneven that playing field is.

I think we recognize that there are very serious implications for the people in my State of Alaska as well as around the Nation, particularly in our rural areas. In this day and age of increased dependency on technology, having equal access to the technology and the opportunity to participate in the global market place is critical.

I would like to acknowledge the presence of Steve Merriam, who has traveled all the way here from Alaska to offer his testimony to the Committee. He will be here on the second panel. He is the CEO and the general manager of Arctic Slope Telephone Association. This is a pretty successful co-op serving 92,000 square miles. I won't tell you how many customers within that area, I will leave that to him. We have to have some surprise here.

But it certainly speaks to the size of the magnitude of what we are dealing with up north. Thank you, Steve, for being here.

I am always telling people that Alaska is very unique. And certainly when it comes to the issues that we will be discussing today, it is no exception. I think it is a testament to the Native people of Alaska and all Alaskans that with all of the challenges that we face, the high energy costs, the limited access to quality health care, education issues, that despite all that, they are strong, resilient and many of our communities are very vibrant.

But we have situations where our rural citizens clearly need and deserve better access to the infrastructure that I think many in other parts of the Country absolutely take for granted. For Alaska, for so many of our rural communities, we are talking about the most basic connectivity to the outside world. Even the most basic phone and internet infrastructure provides a rural area with a multitude of different benefits that they would not otherwise have.

There is opportunity for them to join the global marketplace, to buy and sell goods online, ELearning through distance education is a critical way to provide rural Alaskans with the opportunity to stay in their community, but yet have that critical link to the outside. With access to tele-medicine, rural health care providers can reduce the extraordinarily high cost of services that are already so limited in so many of our communities. When your nearest medical facility is hours away by plane or by boat, no road out there, telemedicine can really be that critical lifeline.

We could talk all day about the benefits that the infrastructure provides, the urgent need to close the digital divide that denies so many the opportunities of accessing information and participating in the growing global economy. While critical reform can help to address financial waste and inefficiency, we have to be careful. We must be mindful not to create a situation where unintended consequences end up hurting the people who reform was really directed to help. I think we are going to hear today some of those concerns spelled out more clearly.

I look forward to hearing from our distinguished panel and the witnesses who will join us throughout the afternoon. I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

I just want you to know that Senator Inouye is unable to be here due to another important commitment. But he has given me a series of detailed questions for the record, which I will set in the record.

I welcome the witnesses. I appreciate that you have all traveled to be with us today and I look forward to hearing your testimony on this very important matter. I ask that you limit your oral testimony to five minutes. Your full written testimony will be included in the record.

Also, the record for this hearing will remain open for two weeks from today. So we welcome written comments from any interested parties. Thank you very much.

I would like to introduce our panel: Ms. Mignon Clyburn, Commissioner at the Federal Communications Commission in Washington, D.C. and Mr. Jonathan Adelstein, Administrator for the Rural Utilities Service in the U.S. Department of Agriculture in Washington, D.C.

Ms. Clyburn, will you please proceed with your testimony?

STATEMENT OF MIGNON L. CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Ms. CLYBURN. Thank you, Mr. Chairman. Chairman Akaka, Vice Chair Barrasso and members of the Committee, I am grateful for the opportunity to provide an update on the Federal Communications Commission's process in reforming the Universal Service Fund and our continued effort to ensure a sustainable and connected future.

I respectfully request at this time that you enter my full written statement into the record.

In the spirit of the unique trust relationship the Commission shares with Tribal nations, we have undertaken an unprecedented level of coordination and have extensive consultative outreach efforts in consideration of our reforms. As a result, the unique circumstances of providing service on Tribal and Native lands has been recognized and we are taking critical steps to directly address any challenges that may arise.

The Commission takes very seriously our statutory responsibility to advance the deployment of voice and broadband services on Tribal lands, both of which significantly lag behind the rest of the Country.

The FCC also takes very seriously the special government-to-government relationship that we share with federally-recognized American Indian Tribes and Alaska Native villages and our responsibilities to the Hawaiian Homeland. It is in this spirit that we took a momentous step to reform the $4.5 billion high cost portion of the Universal Service Fund last year. We transformed it from a program that explicitly supports voice telephone service to one that will also support the deployment of broadband capable networks.

The communications needs of our Nation have evolved due to technological advancement and the Fund desperately needed to be reformed to reflect those changes. The old Fund's mechanisms were not designed to target support to areas where the private sector

will not build broadband. As a result, our Nation remains digitally divided.

More than 18 million Americans lack access to robust broadband capable networks at home. Citizens and communities are significantly disadvantaged, for it is hard to find a job, complete an application, open a small business or finish homework without it. Ubiquitous broadband will enhance opportunities in health care, education, public safety, and jobs on Tribal lands. And these facts were foremost in my mind as I weighed issues in the USF reform proceedings.

We worked with many interested parties, including the Rural Utilities Service at USCA, public interest and consumer advocates, industry, State governments, and Tribal governments, among others, on this effort. We held workshops both inside and outside of the beltway, met with numerous parties multiple times. And I am proud to report that we put in place reforms that will make a significant dent in the digital divide.

In our two phases of reform, we directly target funds to unserved locations, including places where over one million unserved consumers on Tribal lands reside. This year in phase one, up to $300 million is being distributed to carriers who serve 83 percent of unserved Americans for the sole purpose of building broadband. For example, Alaska Communications Systems has been allocated almost $4.2 million and Hawaii Telecom will receive just over $400,000 to extend broadband to unserved consumers.

In addition, Century Link, which serves most Tribal lands, the most Tribal lands of any price-capped carrier, has been allocated almost $90 million in phase one. This year, we designated $350 million to a mobility fund, $50 million of which will be designated for the delivery of service to unserved Tribal lands. We included specific considerations, such as bidding credits and flexibility for obtaining certain required statutory designations for Tribally-owned carriers to participate in the auctions that will be used for distributing this funding.

In phase two of our reforms, up to $1.8 billion will flow to unserved areas each year to ensure that consumers have access to fixed broadband in their homes. And mobility fund phase two will be allocated up to $500 million annually, with $100 million specifically for mobile broadband in Tribal lands.

We have preserved $2 billion for small companies serving rural America, including eight Tribally-owned carriers, and have added special Tribal and Alaska variables in the reform of rate return mechanisms. A waiver process is in place for these carriers who cannot adjust to these reforms. These reforms recognize the need for predictability by avoiding slash cuts, and providing several years for transitions so that they may adjust to the changes.

The USF programs Lifeline and Link Up, which ensure that low-income consumers can afford the cost of monthly phone service, are other important sources of revenue for carriers. Earlier this year, we reformed and modernized these programs and took several steps to reserve this stream of funding on Tribal lands. We maintained Link Up on Tribal lands. We continued our provision of additional monthly support for monthly service to low income consumers on Tribal lands. We expanded the list of Lifeline-qualifying

programs for Tribal consumers and established a Lifeline broadband adoption pilot program. It is our intent to include at least one pilot project on Tribal lands, to further learn how the transformation of the Lifeline program into a broadband program can overcome adoption barriers.

As we implement our reforms, our Office of Native Affairs and Policy continues to engage with Tribal nations and Native communities to explain changes, hear about any adjustments that may be needed and coordinate on the opportunities that these reforms offer. Our work to improve communications services on Tribal lands has been a priority of Chairman Genachowski's administration, all of which I wholeheartedly support. Extending broadband to every corner of this Nation will help us achieve a more equal opportunity for all Americans. If we work collectively to completely and perfect these reforms, we can ensure that the transition of Universal Service Fund from voice only to broadband opens the door for every citizen to become a part of the digital economy. When that occurs, the decades-long struggle to achieve these reforms will have been well worth the effort.

Thank you for the opportunity and the indulgence you have given me this afternoon. I look forward to answering any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

PREPARED STATEMENT OF MIGNON L. CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, it is a pleasure to be here before you representing the Federal Communications Commission. I am grateful for the opportunity to provide updates on the Commission's process in reforming the Universal Service Fund and our continued efforts to collaborate with Tribal Government and Native Community leaders to ensure a sustainable and connected future for Tribal Nations and Native Communities.

Twice last year, Geoffrey C. Blackwell, Chief of the Commission's Office of Native Affairs and Policy, testified before you about our agency's monumental task to reform an outdated and broken Universal Service Fund.[1] In addition, he provided you an overview of other proceedings where the Commission is working on improving the connections to Tribal Nations and Native Communities. I would like to incorporate his earlier testimony due to its extensive coverage of our ongoing work and focus my testimony solely on the topic of concern for today's hearing: Our implementation of USF reform and the progress we have made since December of 2011.

First, I will discuss the Commission's implementation of the high-cost fund portion of USF reform. I then wish to turn to our reform of the low-income programs supported by USF called Lifeline and Link Up, which the Commission adopted in January. Finally, I will provide an update on the Commission's adoption of a Further Notice of Proposed Rulemaking in April to reform the USF contribution system.

In all of these reforms, and in the spirit of the unique trust relationship the Commission shares with Tribal Nations, the Commission has undertaken an unprecedented amount of internal coordination and focus on Tribal issues and has organized extensive consultative outreach efforts and coordination with Tribal Governments, Tribally-owned carriers, and Native Community representatives. As a result, our reforms recognize the unique circumstances and challenges of providing service on Tribal Lands and take steps to directly address these challenges. In summary, among other things, our reforms, for the first time:

[1] Written Statement of Geoffrey C. Blackwell, Chief, Office of Native Affairs and Policy, Federal Communications Commission, Before the United States Senate Committee on Indian Affairs, "Deficit Reduction and Job Creation: Regulatory Reform in Indian Country," Dec. 1, 2011; Written Statement of Geoffrey C. Blackwell, Chief, Office of Native Affairs and Policy, Federal Communications Commission, Before the United States Senate Committee on Indian Affairs, "Internet Infrastructure in Native Communities: Equal Access to E-Commerce, Jobs and the Global Marketplace," Oct. 6, 2011.

- Require all recipients of USF high-cost support serving Tribal Lands to provide detailed annual reports and to directly and meaningfully engage with Tribal Governments on several key issues critical to the deployment of broadband service on Tribal Lands. Recognizing the important role that all parties play in expediting services to Tribal Lands, these include:
  - A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
  - Feasibility and sustainability planning;
  - Marketing services in a culturally sensitive manner;
  - Rights-of-way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
  - Compliance with Tribal business and licensing requirements.
- Target funds directly to locations with unserved Americans, including the over one million unserved consumers on Tribal Lands.
- Dedicate hundreds of millions of dollars in support to address the significant mobile broadband gap on Tribal Lands.
- Include specific considerations specifically for Tribally-owned carriers; for example, through bidding credits in the first phase of the Mobility Fund, special Tribal and Alaska variables in the reform of our legacy rate-of-return mechanisms, and in the waiver process outlined for the Connect America Fund.
- Recognize the unique challenges of serving remote areas of Alaska by including a two-year delay in the reforms to competitive eligible communications carriers in remote Alaska starting on July 1.
- Maintain the Tribal Link Up program, while otherwise eliminating Link Up on non-Tribal Lands, recognizing that Tribal consumers should continue to be eligible for enhanced Lifeline and Link Up support above levels on non-Tribal Lands.
- Expand the list of Lifeline qualifying programs for Tribal consumers; and
- Establish a Lifeline Broadband Adoption Pilot Program, with the intent to include at least one pilot project on Tribal Lands.

While this is not an inclusive list of steps we have taken to address consumers on Tribal Lands and Tribally-owned carriers, I hope it shows that the Commission and I personally, take our statutory responsibility to advance the deployment of voice and broadband service on Tribal Lands very seriously. The Commission also takes very seriously the special government-togovernment relationship that we share with federally recognized American Indian Tribes and Alaska Native Villages, and exercising our responsibilities with respect to the Hawaiian Home Lands.

High-Cost USF Reform—The Connect America Fund

As you are aware, on October 27, 2011 the FCC took a momentous step to reform the high-cost portion of the Universal Service Fund in order to transform it from a program that supports voice telephone service, to one that will also explicitly provide for the deployment of broadband-capable networks, in high-cost areas. This vote was a long time coming. It was a reflection of the fundamental fact that the communications needs of our nation have evolved over time due to technological advancements, and that the Fund desperately needed to be reformed to reflect those significant changes.

Since its inception, the Fund has been instrumental in providing affordable phone service to most Americans; however, as you are well aware, there still exists an unacceptable gap in Indian Country. The Fund has helped achieve an overall higher telephone penetration rate in our nation, which currently stands at 95.6 percent[2] and while that remarkable achievement of the Fund should not be overlooked, technology has rapidly progressed in the last decade. More Americans are using mobile service than ever before, and broadband access is now the gateway by which most Americans obtain critical information and services. As such, it is hard to deny the fact that every American needs access to both voice and broadband services. And while the Commission permitted phone companies to invest USF monies in broadband-capable networks, the Fund's mechanisms were not designed to target

[2] FEDERAL COMMUNICATIONS COMMISSION, WIRELINE COMPETITION BUREAU, INDUSTRY ANALYSIS AND TECHNOLOGY DIVISION, TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES at 2 (Dec. 2011).

support to areas where the private sector will not go, areas where broadband is not being built.

Sadly, our nation remains digitally divided. More than 18 million Americans lack access to robust broadband-capable networks at home. Over a million of those Americans live on Tribal Lands. While approximately six percent of all Americans are unserved by broadband, it is well known that Tribal Nations and Native Communities lag well behind the nation as a whole. These Americans are the "have nots" of the broadband world, and they are denied access to some of the most basic features of modern life, that you or I take for granted: Optimally navigating your bank account in real time, accessing late breaking news, or quickly sending an email to a friend.

Citizens and communities are significantly disadvantaged without high-speed Internet. Whether you are in urban or rural America, it's hard to find a job, complete an application, operate a small business, or finish your homework without broadband. In fact, we know that 80 percent of Fortune 500 companies require that you apply online, and high school students with access to broadband at home have higher graduation rates. So those Americans who lack broadband access at home and on the go, were first and foremost in my mind as I considered the issues in the USF reform proceeding.

For Tribal Nations, access to broadband is particularly critical. For Tribal Governments themselves, the benefits of broadband infrastructure, both fixed and mobile, will enable new opportunities for the provision of quality healthcare, education, public safety, and jobs. Broadband must be available, accessible, and affordable to meet its great promise for Tribal Nations and Native Communities. Perhaps most importantly, the foundation of robust and viable broadband infrastructure brings Tribal Nations the ability to create opportunities for economic empowerment and to build systems of governance that engage industries, demonstrate stability, and encourage the deployment of other services.

FCC Chairman Genachowski crafted a plan that transforms the way we spend the $4.5 billion of the high-cost portion of USF each year. The Commission's proceeding to reform USF was unprecedented. We worked with many interested parties, including our sister agency, the Rural Utilities Service at USDA, public interest and consumer advocates, industry, State governments, including State PUCs, and Tribal Governments, among many others. We held workshops both inside and outside the Beltway, and met with numerous parties multiple times. The reform plan drew from many competing ideas, to form a balanced framework that the Commission unanimously approved because it makes the Fund more efficient and effective and will promote significant broadband deployment, as quickly as possible, to millions of unserved consumers in our nation.

We set out five goals for the Fund: (1) to preserve and advance universal availability of voice service; (2) to ensure universal availability of modern networks capable of providing voice and broadband services to homes, businesses, and community anchor institutions; (3) to ensure universal availability of modern networks capable of providing mobile voice and broadband service where Americans live, work , and travel; (4) to ensure that rates are reasonably comparable in all regions of the nation, for voice as well as broadband services; and (5) to minimize the universal service contribution burden on consumers and businesses.

In Phase I, the reform plan provides for speedy broadband deployment to unserved consumers with an injection of $650 million in capital in 2012, for both fixed and mobile technologies. While we begin to transition legacy support from those areas that don't need assistance, we can begin to make a difference in those areas that are lacking broadband service. Of that amount, $50 million is reserved for mobile service to be extended to currently unserved roads on Tribal Lands. We expect that hundreds of thousands of consumers will be served with fixed broadband networks as a result of Phase I, and tens of thousands of miles of unserved roads will be covered by mobile networks.

The reform plan preserves about $2 billion in funding for those rural carriers that currently operate under the rate-of-return regulatory regime. These carriers serve less than five percent of all telephone access lines in the U.S. and have about 17 percent of Americans who are not served by broadband in their territories. Our reform recognized the unique nature of these providers—most of which are small businesses. As such, rather than making extreme changes, as some interested parties had called for in the proceeding, we focused instead on modifying their current funding mechanisms in a targeted manner to better address our new goals for universal service. For each carrier, the reforms will have a different impact. Some carriers will obtain additional funds, while others will see a decrease in funding. For example, in 2012, we estimate that five of the nine tribally-owned carriers currently receiving USF high-cost support will experience no change or ever a slight increase

in funding, while three of these carriers will see decreases between one and five percent of their total high-cost USF support. One will see a decrease just shy of ten percent.[3] What is most significant is that our reform carefully balanced the need for certainty and predictability for carriers by avoiding flash cuts and providing transitions so they could adjust to the changes.

In addition, our Order recognized the fact that there could be instances when we will need to specifically review the impact of the total reforms on a particular provider and the consumers it serves through a waiver process. To date, the Commission has received five waiver requests from rate-of-return companies, which are currently under review. The waiver process we have set out will give the Commission an opportunity to use a safety net in order to ensure consumers aren't inadvertently harmed by our reforms. Of course, given our role as the steward of the public's money, the waiver process will focus on the financial health of the providers and whether reform jeopardizes their ability to provide service to consumers. Our reform establishes for the first time, the explicit goals to preserve and advance the availability of voice service and the modern networks capable of delivering both voice and broadband services; as such, we will certainly consider the impact of our reforms on achievement of those goals.

In Phase II of the reform, which will begin in 2013, we have allocated up to $1.8 billion to reach consumers who currently have no broadband service in price cap companies' territories and to maintain existing service. The Commission found that over 80 percent of the unserved Americans live in the areas served by price cap carriers. As a result, Commission staff is now engaged in a process that will culminate in the adoption of a cost model to determine the amount needed for each carrier to reach those consumers who do not benefit from Phase I. In order to qualify for that money, each price cap carrier will need to make a state-wide commitment to build broadband and serve for five years in its areas where no other provider offers broadband service. Where a commitment is not made, those funds will be available for other providers to offer service and build broadband to unserved consumers through a reverse auction.

Finally, for the first time, the Commission has determined that mobility service should be funded. We have provided for up to $500 million of ongoing support through the Mobility Fund, of which up to $100 million is exclusively for support on Tribal Lands, to ensure we have covered as many roads as possible where mobile carriers will not serve without financial assistance. We also have set aside at least $100 million for the Remote Areas Fund. This will help bring broadband to those Americans who cannot be reached through any of the other high-cost mechanisms.

By phasing out the identical support mechanism, as many had called for, we are able to focus our limited funds from supporting multiple networks in a geographic area to ensuring that a broadband-capable network reaches as many Americans as possible. We are shifting money from areas that do not need support (or as much support) to areas where a broadband network is still needed. We also are requiring that providers meet firm deadlines with appropriate accountability and reporting for the money spent and oversight by the FCC, State Commissions, and Tribal Governments. Moreover, by setting a budget we are helping to stabilize the contribution factor and minimize the burden on consumers and businesses who pay into the fund.

Of great importance to me, is the beneficial impact this reform will have on consumers and their communities, including those living and/or working on Tribal Nations and in Native Communities. It is a universally accepted principle that we all benefit more when everyone is connected. As such, our reform recognizes that broadband, both fixed and mobile, are the services consumers are demanding and that the Fund should support the networks that offer such services where there is not a private sector business case to be made. And as a condition for receiving high-cost USF assistance, all recipients must deploy broadband-capable networks, in addition to offering voice service to consumers. Accordingly, we expect that millions of consumers will get fixed and mobile broadband coverage where they live, work, and travel as a result of our reform over the next six years.

Recent Steps for Implementing High-Cost USF Reform

There are numerous steps the agency must take to implement reform. For rate-of-return carriers, the Wireline Competition Bureau completed work at the end of April on its benchmark analysis for high-cost loop support (HCLS), using a quantile regression. By way of background, HCLS provides close to $800 million annually to help offset high capital and operating expenses faced by rate-of-return carriers.

[3] Our staff's projections (based on the carrier's 2010 cost data) indicate that support amounts will be similar for 2013 and 2014.

However, under the old system, HCLS lacked benchmarks for determining whether subsidies were warranted, and it fully subsidized high expense levels, effectively punishing efficient operations. The new benchmarks impose reasonable limits on subsidized capital and operating expenses by comparing spending among similarly situated companies. The net effect is that more funding is freed for hundreds of small rural carriers, which in turn will help connect more Americans. Carriers serving 705 study areas across the country will receive more funding for broadband as a result of the benchmarks, and carriers serving 129 study areas that have unusually high expenses will have to take steps to bring their operations more in line with their similarly situated peers.

The agency conducted hundreds of meetings and had ongoing dialogue with and input from all interested parties which led to a significantly improved analysis. For example, the benchmarks now take into account a number of additional factors regarding a carrier's territory, including whether a carrier serves Tribal Lands and whether a carrier serves Alaska. In addition, the Bureau modified the timeline so carriers will have more time to adjust to the changes, over an 18-month period. For the tribally-owned carriers, only one was capped—and its changes will be phased in, as I mentioned. The remaining seven of the eight tribally-owned carriers receiving HCLS will see no reductions in their HCLS, and indeed should see a little more HCLS over the next 18 months.[4]

In addition, the Wireline Competition Bureau announced Connect America Fund Phase I amounts for price cap carriers. CAF Phase I allocates $300 million to extend broadband for up to 400,000 currently unserved homes, businesses, and community anchor institutions in rural America, including unserved locations on Tribal Lands. For example, Alaska Communications Systems has been allocated almost $4.2 million for building broadband to unserved consumers in the State of Alaska, while in Hawaii, Hawaiian Telecom has been allocated just over $400,000 to extend broadband to unserved consumers in its area. In addition, CenturyLink, which serves the most Tribal Lands of any price cap carrier, has been allocated almost $90 million. Price cap carriers have until July 24 to notify the Commission the amounts of money they plan to use, and the census blocks they will commit to build broadband in for receiving CAF Phase I support. While carriers are not required to participate, the Commission anticipates that hundreds of thousands of Americans will gain access to broadband even if carriers only accept a portion of the available money. We are committed to using whatever amounts are not accepted to further our broadband goals for the nation.. We expect that the expansion of broadband facilities during the CAF Phase I potentially will impact Tribal Lands, and we will keep you apprised of the building commitments we receive from the carriers in and around Tribal Lands.

Mobility Fund Phase I

Earlier this year, the Wireless Telecommunications Bureau scheduled the Mobility Fund Phase I reverse auction for September 27, 2012. Deemed Auction 901, it will determine (1) which providers will receive Mobility Fund Phase I support to deploy 3G or better wireless service, (2) the specific geographic areas that the providers will cover in exchange for support, and (3) the level(s) of support the providers will receive. Eligible areas will include census blocks unserved today by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to cover. The auction will maximize coverage of unserved road miles within the budget, and winners will be required to deploy 4G service within three years, or 3G service within two years, accelerating the migration to 4G. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

The Wireless Bureau completed the final auction procedures in May, including finalizing the list of census blocks eligible to receive support in the auction. Over 50 interested parties commented on the procedures and/or census block eligibility. The Bureau anticipates rolling out a tutorial for prospective bidders prior to opening the short-form filing window on June 27th. In order to participate in Auction 901, a prospective applicant must file a short-form application by July 11, 2012. After the auction, each winning bidder will be required to submit a long-form application to qualify for Phase I support. The Commission anticipates making the first disbursement of Phase I support by early 2013.

The Bureau is also currently considering petitions by three carriers for designation as eligible telecommunications carriers (ETCs) in order to be eligible to receive USF support and participate in the Mobility Fund Phase I auction. In addition, the

[4] Carriers are now required to invest their USF support in broadband-capable networks.

Bureau has received information from state commissions about new ETC designations for carriers interested in receiving Mobility Fund support.

Connect America Fund Phase II

Staff also has begun the crucial work for moving to Phase II of our reforms. I will refer you to a recent report released on June 1st that describes the Agency's efforts to develop the cost model for the price cap territories for Phase II.[5] Last week, Commission staff also initiated a process to gather data regarding wire center boundaries for price cap carriers, which is necessary to determine where support should be targeted. This week, Commission staff will be soliciting public input on the key questions that need to be resolved in order to develop such a model.

It is no secret that I have a deep connection to rural America, and I believe our reforms will allow us to come even closer to achieving Congress' goal of providing all Americans access to affordable voice and advanced communications services. But I also recognize that these efforts to modernize the Fund—a decade in the making—may not resolve all the issues that were raised in the proceeding, and our agency has been working very hard to hear all parties' concerns and address them in a timely fashion. For example, we have received numerous Petitions for Reconsideration and/or Clarification, and the Commission has already addressed numerous issues in three separate Commission-level decisions. Moreover, our staff has issued multiple Orders that have offered clarifications that have been requested, and have spent hours on conference calls with state commission staff and other parties, including several visits to Tribal Lands specifically focused on USF reform since the Order was released, answering questions about implementation details. At all times, we have had an open door policy to hear from all interested parties, and we have worked diligently towards resolutions that benefit consumers and help us achieve our universal service goals.

Lifeline and Link Up Reform

At the end of January, the Commission comprehensively reformed and modernized the Lifeline and Link Up programs. For the past 25 years, Lifeline helped tens of millions of low-income Americans afford basic phone service, and the percentage of low-income households with phone service has increased from 80 percent in 1985, when Lifeline began, to nearly 92 percent last year. However, the program was facing significant challenges that needed to be addressed, including the fact that consumers now have numerous providers from which to choose as compared to when Lifeline first began. This had the inadvertent result of some consumers obtaining more than one Lifeline benefit. In addition to addressing this issue by creating a National Lifeline Accountability Database to prevent multiple carriers from receiving support for the same subscriber, the Commission also made a number of other changes to ensure that the Lifeline program is as efficient and effective as possible, while meeting the Commission's newly instituted goals for the program to: (1) ensure the availability of voice service for low-income Americans; (2) ensure the availability of broadband service for low-income Americans; and (3) minimize the contribution burden on consumers and businesses.

The priorities for me as we worked on these programs were that eligible families who needed phone service could sign up for and participate in the program; that we continued to allow families to choose the service that makes sense for them—whether that is mobile or wireline phone service; that we addressed the waste, fraud and abuse in the programs and set a savings target tied to those reforms; that we accommodated the exceptional needs facing Tribal and Native Communities; and that we begin to reorient the program towards tackling the broadband adoption gap low-income consumers face.

In its Lifeline Reform Order, the Commission continued to recognize the unique challenges facing consumers on Tribal Lands. In the past, the Commission acknowledged the low subscribership to telecommunications services and low-income needs on Tribal Lands and provided enhanced Lifeline and Link Up support to address those unique challenges. For example, in 2000, only an estimated 47 percent of Tribal households had phone service compared to 94 percent of all American households.

In reforming the Lifeline program, the Commission set a uniform Lifeline discount amount at $9.25 per month on non-Tribal Lands, but recognized that low-income consumers living on Tribal Lands should continue to be eligible for enhanced Lifeline support—up to an additional $25 per month in Lifeline support. The Commission eliminated Link Up support (which off-sets the cost of commencing service) on non-Tribal Lands due to the evidence that Link Up was no longer needed, but main-

[5] Wireline Competition Bureau Issues Progress Report On The Connect America Fund (CAF) Phase II Model, Public Notice (rel. June 1, 2012).

tained the enhanced Link Up program on Tribal Lands for carriers receiving high-cost support, due to the significant telecommunications and connectivity challenges on Tribal Lands. As a result, to initiate phone service on Tribal Lands for qualifying low-income consumers, Link Up provides up to $100.

We also took steps to further advance the availability of Lifeline support for low-income consumers living on or near Tribal Lands. First, we amended our rules to clarify that low-income residents of Tribal Lands may be eligible for program support based on either income or participation in certain federal or Tribal assistance programs. Second, we amended our rules to expand program-based eligibility to participants in the Food Distribution Program on Indian Reservations (FDPIR), a federal program that provides food to low-income households living on Indian reservations and to Native American families residing in designated areas near reservations and in the State of Oklahoma. Third, we established a process for Tribal Governments to seek designation of off-reservation lands as Tribal Lands for the purpose of receiving enhanced Lifeline support, and we clarified that low-income residents of Tribal Lands may self-certify as to their residency on Tribal Lands to receive additional support.

The Lifeline and Link Up support received by those carriers serving Tribal Lands can be a significant portion of their total USF support and further supports the business case for carriers on Tribal Lands. For example, in 2010, $102.7 million of additional support was given to carriers to reimburse them for providing phone service to low-income households on Tribal Lands.[6] Thus, the low-income programs not only ensure that phone service is available for consumers, they also support the carriers' ongoing ability to offer service in their territories.

The Commission also recognizes that the Lifeline program can play an important role in helping to close the broadband adoption gap, while improving the business case for carriers to serve communities in Tribal Lands. As part of its plan to modernize the Lifeline program, the Commission recently launched a Broadband Pilot Program and will be accepting applications on July 2nd. We are very interested in receiving applications for pilot projects on Tribal Lands, and provided some additional flexibility for Tribally-owned carriers to participate, and we look forward to continuing our work with Tribal communities to learn more about what drives broadband adoption.

Contribution Reform

At the end of April, the Commission launched a proceeding to reform and modernize how Universal Service Fund contributions are assessed and recovered. The current contribution system has given rise to uncertainty, inefficiency and market distortions, with consumers and businesses, who ultimately pay for the USF, bearing the brunt of stresses on the contribution system. Reform of how funding is collected to support universal access to voice and broadband is the next step in the Commission's continuing efforts to overhaul and modernize the Universal Service Fund.

Building upon the Commission's sweeping reforms to modernize the high-cost and lowincome components of the Fund to help bring broadband and voice service to all Americans, while increasing fiscal responsibility and limiting the overall contribution burden, the Further Notice seeks comment on a variety of alternatives to reform the system by which the Commission's universal service programs are funded to promote efficiency, fairness, and sustainability. In particular, the Notice asks: (1) what services and service providers should contribute to the Fund; (2) how should contributions be assessed—on revenues, the number of connections, by phone numbers, or a hybrid approach; (3) how to reduce the cost, promote transparency and increase clarity of the contribution system; and (4) whether consumers could benefit from increased transparency and limitations on how providers recover their USF costs. In undertaking contributions reform, the Commission is guided by its overarching goal of ensuring the delivery of affordable communications to all Americans, while safeguarding core Commission objectives, including the promotion of broadband innovation, investment and adoption.

As the Commission embarks upon this next phase to modernize the Universal Service Fund for the 21st century by addressing the contributions side of the equation, the Commission is encouraging detailed input from all stakeholders, including Tribal Governments who play a crucial role in overseeing communications services provided on Tribal Lands. I look forward to working with all interested parties to complete this proceeding in a timely fashion.

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[6] 2011 UNIVERSAL SERVICE MONITORING REPORT, CC DOCKET NO. 98–202 (Data Received Through October 2011) at Table 2.2. This amount is in addition to the basic support levels for Lifeline and Link Up offered to carriers serving Tribal Lands.

Continued Engagement with Tribal and Native Communities

As we implement our reforms, our Office of Native Affairs and Policy continues to engage with Tribal Nations and Native Communities to explain the changes, hear from them about what adjustments we may need to make, and coordinate with them on the opportunities that these reforms offer them. I want to underscore the unprecedented level of engagement and analysis that Tribal Nations and Native Communities are experiencing at the Commission.

In this High-Cost Reform Connect America Fund proceeding alone, dozens of Tribal specific questions were presented in the proposed rulemaking, and the Commission engaged Tribal Governments and associations, Native institutions and community leaders, throughout the nation. An open and direct dialogue was established through ONAP and the Bureaus. On two separate occasions, both in the spring and fall of 2011, the National Tribal Telecommunications Association, the association of Tribally-owned telephone companies, had rounds of meetings with the Chairman and each of the Commissioners. They were joined by two major national inter-Tribal Government organizations, the National Congress of American Indians and Affiliated Tribes of NW Indians. Moreover, the Bureau's and Offices met several times with the individual Tribes and Tribal Nations and companies. The Office of Native Affairs and Policy took its very first beyond the Beltway trip as a new office in late 2010 to a quarterly meeting of the Tribally-owned telcos, and has consistently worked these regulatory priorities into virtually every effort they undertake on the ground in Indian Country.

We also just recently launched, in May, the next generation of Tribal Nation and Native Community field training programs. These new "Tribal Communications 101" meetings and consultations respond to the specific interests and needs of key regional partner organizations. Focused on delivering granular, specific information to Tribal leaders and their staffs at the Tribal Planner and IT Director level, these regional training workshops have proven to be exceptionally well-received. Along with wireline, wireless, and broadcast opportunities, the Universal Service Fund reform and the new programs and opportunities for Tribal Nations and Native Communities have been a key feature in this training, and will continue to be. As part of these sessions, our new FCC Native Learning Lab provides hands-on instruction in an "Internet café classroom" setting to effectively teach the Commission's web-based systems and applications, thereby enhancing coordination with the FCC, improving information flow to Tribal Nation and Native Community decision makers, and ultimately increasing the quality of our consultation with Tribal Nations and the involvement of Native voices within our proceedings.

A positive outcome of these regional training sessions has been the development of formal and informal Tribal working coalitions, where leaders and managers from Tribal Nations in varying states of telecom and broadband deployment work together, learning from each others' experiences and mentoring others who are just starting the journey within their area. Our first two of these targeted meetings were held on the Swinomish Indian Reservation in Washington with the Affiliated Tribes of NW Indians, and on the Pala Indian Reservation in California with the Southern California Tribal Chairmen's Association. Several other regions and partners are targeted. Our new regional, scalable training workshops will expand to other regions throughout the nation, and we will aim to make a tangible difference in helping Tribal Government and Native Community officials work with the Commission, interact with the communications industries, and lead their people to the myriad benefits of new communications capabilities.

This work has been a priority of Chairman Genachowski's administration, which I wholeheartedly support. I know we have much work to do, and we are committed to meeting the modern communications needs of Tribal Nations and Native Communities.

Conclusion

Broadband is one of this generation's most important challenges because it presents one of our most monumental opportunities. Extending broadband to all corners of this nation will help us achieve a more equal opportunity for all Americans. If we work together to complete and perfect these reform efforts, we can ensure that the transition of the Universal Service Fund from voice to broadband, opens the door for every citizen to become a part of the digital economy. When that occurs, the decade-long struggle to achieve these reforms will have been well worth the effort.

Thank you for the opportunity to offer you this update, and I look forward to answering your questions.

The CHAIRMAN. Thank you very much, Ms. Clyburn.

Mr. Adelstein, will you please proceed with your statement?

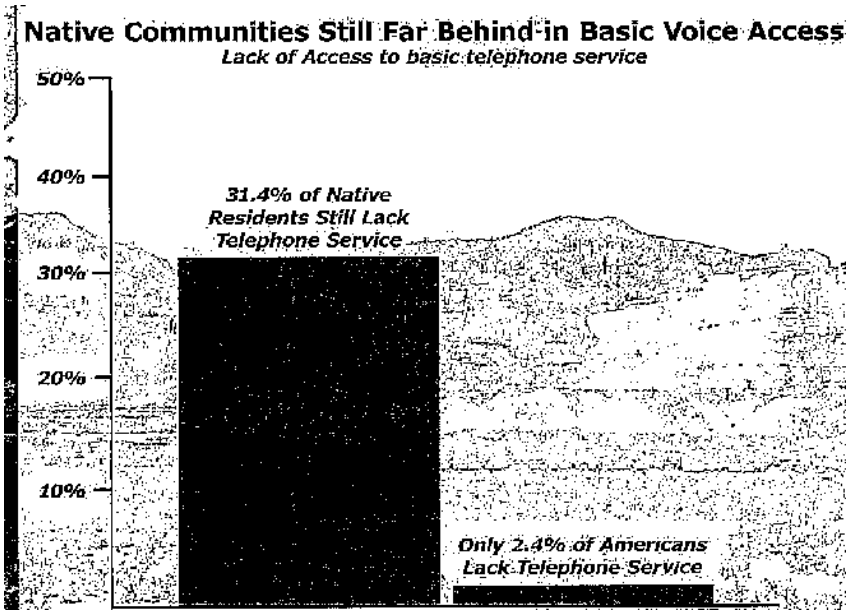
STATEMENT OF JONATHAN ADELSTEIN, ADMINISTRATOR, RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

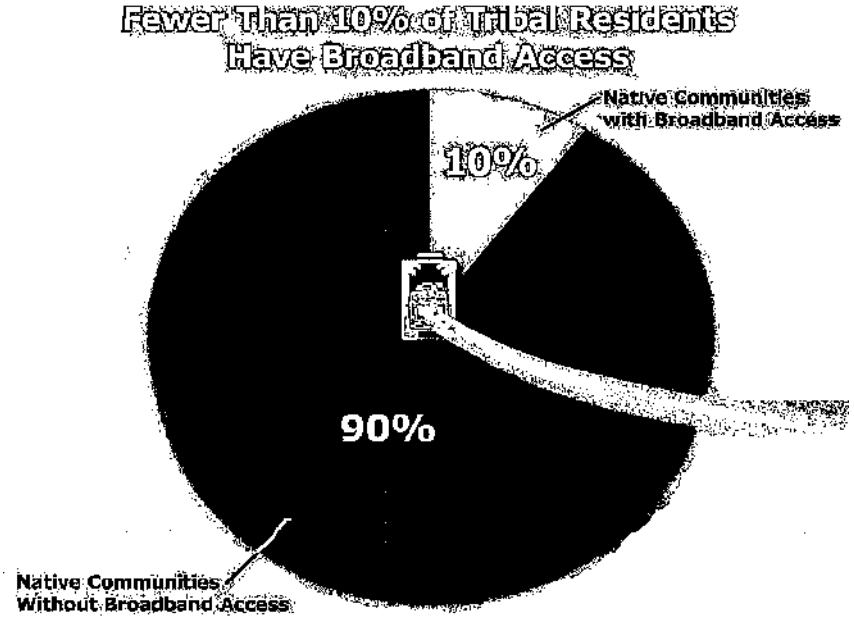
Mr. ADELSTEIN. Thank you, Chairman Akaka, Vice Chairman Barrasso, Senator Murkowski, Senator Udall. It is a pleasure to be here with you today. I appreciate the opportunity.

I have been to all of your States and I have seen Tribal telecom, I have seen rural telecom, I have really got into the heart of it. There are a lot of challenges ahead of us. So I certainly appreciate this opportunity to testify on behalf of USDA's RUS about the need to expand broadband to rural and Native communities and the role that Federal Universal Service Fund plays in our telecommunications programs.

It is a special pleasure to be here with one of my successors at the FCC, Commissioner Mignon Clyburn, South Carolina, South Dakota, we are both from a State named South, but only one of us is really from the South. But both of us are from rural America and we share a deep commitment to rural communities and to making sure that underserved communities are taken care of.

I think these charts tell the whole story, as you said in your opening statement, Mr. Chairman. A third of Native Americans lack telephone service, only one-tenth have broadband access. This is just unacceptable. It has to be changed and I really appreciate you focusing the Committee's efforts, and so many of you who are members of this Committee that have focused on this. I have been at a broadband summit with you, Senator Udall, I have been to your State, Senator Murkowski, many times to get to the bush and really see the difficulties of getting broadband out there. This has been a long struggle.





The FCC was created in 1934. My agency, formerly the Rural Electrification Administration, was created in 1935. Both agencies have a very long and storied history and a shared mission of encouraging infrastructure investments in all of rural America, in-

cluding those who live outside the big cities. RUS and the FCC have had a long and enduring and successful partnership.

Some of the best examples of the power of that synergy working together is in Indian Country. RUS, for example, has provided loans and grants to eight of the Nation's ten Tribally-owned and regulated telecommunications carriers. We are going to hear from today some of them. Tribes have received state of the art telecommunications services and a chance to join the digital economy with that financing.

RUS also provides major financing to non-Native telecommunications service providers that offer service to Tribal communities. Those investments by RUS would not have been possible without revenue from Universal Service. Those funds are distributed to carriers pursuant to FCC rules. Working together, RUS and FCC policies have given millions of rural Americans broadband service that they otherwise wouldn't have, and service that is comparable to that enjoyed by residents of rural areas, as required by statute.

Without USF revenues, many RUS loans would not be feasible. Without affordable long-term financing, large capital investment would not be made. I compare it to building a house. You don't build your house based on your salary alone. You take out a mortgage and you build a house or you buy one. Same thing with these huge capital-intensive projects that require a lot of money up front. The stream of revenues from USF alone wouldn't get it done without RUS loans.

The alternative to these system-wide investments would be incremental, patchwork buildouts that a smaller revenue stream could fund. It would be like building your house with each paycheck, putting a new little room on whenever you get enough money together. Piecemeal purchases of equipment similarly in the telecommunications context, based on annual revenue streams alone, would be inefficient and ineffective for economic development.

RUS looks forward to continuing that historic, successful partnership as the FCC works to reform universal service and inter-carrier compensation rules. And reform is absolutely needed to modernize USF and inter-carrier comp, and to address legitimate concerns about potential waste and lack of accountability by some USF recipients.

I worked on this long and hard when I was at the Commission and we tried to get it done. As a matter of fact, we had four out of five members that agreed to some major reforms. The problem was the fifth one was the chairman. So that kind of slowed it down.

[Laughter.]

Mr. ADELSTEIN. So the reform effort has been underway for a long time. It is still very much a working progress. RUS continues to examine the specific change in USF and ICC on rural carriers and Tribally-owned carriers. RUS has asked pending RUS applicants to re-estimate their revenues based on the USF order by the FCC. RUS will continue to remain vigilant over revenue changes on individual companies within our portfolio.

Last week I was part of a conversation with the Secretary of Agriculture and the Chairman of the FCC along with other USDA and FCC staff. We discussed the effects to the reform effort on

rural consumers and on RUS borrowers. And we agreed to continue what has been a very constructive dialogue on these issues.

We are working very closely with the FCC to address the challenges presented by reform and to achieve our common goal to bring broadband to all rural communities, including Native communities. We are working together on our shared objective of protecting taxpayers and service to consumers. RUS is proud of its investments in telecommunications, electric, water and sewer systems serving Native American communities, and its direct relations with Tribal governments. RUS has engaged in unprecedented efforts of consultation, especially in implementing the substantially underserved trust area, or the new SUTA provisions in the 2008 Farm Bill that gave our agency new discretionary authority to make our programs more accessible to Native American communities.

The consultations honor the agency's special government to government relationship with the Tribes and Alaskan Native villages and our commitment to Hawaiian Home Lands. RUS Recovery Act investments in broadband are creating all kinds of high-skilled, high-wage jobs. Recovery Act broadband projects will provide additional service to 31 distinct Tribal lands in the lower 48 States and 125 persistent poverty counties, including many Native American communities.

Our core programs are also improving the lives of Native Americans. Since 2009, RUS has helped provide broadband to nearly half a million rural Tribal subscribers. Since its creation, the Community Connect Grant Program has made 49 awards to completely unserved Tribal communities for $25 million. The RUS Distance Learning and Tele-medicine Grant Program is changing the lives of Native Americans. Since its creation, 230 awards for $100 million went to improve educational or health care services to Native communities.

RUS is committed to serving Native communities and looks forward to using all the tools Congress gave us to improve the lives of people in Indian Country. Rural service is hard. I have seen that first-hand, I have seen it in your communities. Providing modern services to Tribal communities are among the most difficult I have ever seen. But that is why an agency like RUS was created by Congress. I thank you for your interest in RUS and your support of our agency and our mission.

[The prepared statement of Mr. Adelstein follows:]

PREPARED STATEMENT OF JONATHAN ADELSTEIN, ADMINISTRATOR, RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Chairman Akaka, Vice Chairman Barrasso and Members of the Committee, I appreciate this opportunity to discuss the efforts of the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS), to encourage broadband deployment to rural and native communities, as well as the role the federal Universal Service Fund (USF) plays in our telecommunications programs, including those projects financed under the American Recovery and Reinvestment Act.

The RUS is a policy, planning and lending agency of the USDA. The agency makes loans, loan guarantees and grants available to finance rural electric, telecommunications and water and wastewater infrastructure. These investments are necessary to build sustainable local and regional economies and to attract and leverage private capital in rural and tribal areas.

RUS is one of three USDA Rural Development (RD) agencies. The Rural Housing Service offers programs in housing and community facilities. The Rural Business Service offers business development and finance programs. Together, RD agencies work very hard to help communities improve their quality of life and assemble the building blocks of long term economic growth.

Nowhere is this RD assistance more needed than in America's native communities. RD is fully committed to improving the flow of investment into tribal lands and underserved areas. Our first Americans deserve a quality of life comparable to that of all Americans. Our President, Secretary and Undersecretary have made improving program delivery to native communities a very high priority, as our programs generally place the highest priority on communities in the greatest need. At RUS, thanks to the leadership of many members of this Committee, we have a renewed and special emphasis on financing critical infrastructure services to un- or underserved native communities.

RD agencies have a long history of investing in tribal economies—RD investments exceeded $3.2 billion from 2001 to 2011, with $1.5 billion of that total delivered through investments since 2009, under the current Administration. Each state-level USDA Rural Development office maintains a Native American Tribal Coordinator to assist tribes by providing technical assistance and programmatic knowledge throughout the application process.

RD agencies and staff also work in cooperation with tribal governments and partner with other federal agencies such as the Department of Health and Human Service's Indian Health Service, the Department of the Interior's various Bureaus and Offices, the Department of Homeland Security, Department of Commerce, the Environmental Protection Agency, the Small Business Administration, the Department of Housing and Urban Development and of course the Federal Communications Commission.

As a result of these combined efforts, the RUS is committed to helping American Indian, Alaska Native and Native Hawaiian communities obtain affordable and robust broadband services needed to attract investment capital and new business ventures unique to native cultures.

The RUS is very proud of its record in working directly with tribal communities. We are especially pleased that RUS has provided loans and grants to 8 of the nation's 10 tribally-owned regulated telecommunications carriers. RUS also provides financing to non-native telecommunications service providers offering services to tribal communities. Because the RUS understands the importance of our government-to-government relationship with tribal elected officials, it has provided innovative legal solutions, loan documents and security arrangements which recognize tribal sovereignty, while still providing for tax dollar accountability.

Recovery Act investments in broadband are creating high-skilled, high-wage jobs and will pay dividends to their communities and the nation in terms of further job creation and faster economic growth for years to come. RUS Recovery Act investments, known as the Broadband Infrastructure Program (BIP), remain a key component to the Obama Administration's economic recovery strategy. I am pleased to report that the program is working, with projects that are on schedule, on track and creating jobs in tribal communities and across rural America. Recovery Act financed networks will create jobs when projects are planned and built, when they become operational and again as new networks are used by communities to create digital-era jobs, open new markets, and expand tourism.

The Recovery Act represented an unprecedented opportunity for long un-served communities to gain new or expanded broadband service. In two rounds of funding, service to the most underserved received priority points. I am pleased that a number of excellent projects serving tribal communities took advantage of this once in a lifetime opportunity. Still, a number of worthy projects, including some that would have benefitted tribal communities, could not be funded given the tremendous demand and competition for Recovery Act dollars.

More than $2.33 billion in grants and $1.19 billion in loans were made to 320 projects totaling over $3.5 billion. Of those 320 projects, 36 infrastructure and technical assistance awards were to entities serving American Indian and Alaska Native communities, totaling investments just over $214 million. Tribal communities did very well, for example, in competing for the technical assistance grants where tribes won 12 of 19 grants awarded along with 8 BIP infrastructure awards to tribes and tribally owned enterprises. The RUS also set aside $100 million for satellite awards, which help reduce costs of satellite delivered broadband to those Americans lacking any broadband access, even after all Recovery Act awards are taken into account.

When complete, Recovery Act broadband investments will connect nearly 7 million rural Americans, along with more than 360,000 businesses and more than 30,000 critical community institutions like schools, healthcare facilities, and rural public

safety agencies, to new or improved service. The projects funded will bring broadband service to 2.8 million households, spanning across more than 300,000 square miles in 45 states and 1 U.S. territory.

Recovery Act broadband projects are estimated to create more than 25,000 immediate and direct jobs for rural workers in a variety of industries. The projects will provide service to 31 distinct tribal lands in the lower 48 states and 125 persistent poverty counties.

Making BIP awards was only part of the agency's Recovery Act work. Getting BIP projects built and across the finish line in the timeframe provided is no small feat, especially in native communities. As part of our Recovery Act efforts, RUS identified all BIP projects on Indian lands that needed additional agency coordination for completion. To ensure that the Recovery Act investments comply with historic preservation, land use and cultural resource requirements under the National Environmental Policy Act and Section 106 of the Historic Preservation Act, the RUS worked closely with the Department of Interior's Bureau of Indian Affairs (BIA) and Office of the Special Trustee (OST) to advance these projects through the review process. The United States has a special relationship with tribes regarding lands held in trust for tribes and their members that require extra attention. The RUS works to assist our borrowers and grantees in following the proper procedures in accessing trust lands. We maintain open lines of communications with BIA and OST so that Recovery Act projects are completed and tribal communities can finally receive the benefits of expanded broadband.

One example of the RUS working proactively to assist our BIP borrowers/grantees with projects crossing Indian lands took place in the fall of 2011, when the agency offered training on rights-of-way acquisition and land process associated with trust land. This training was developed with the help and knowledge base of the Department of Interior's OST and the BIA. RUS' Environmental Team members also participated in this training and have become adept at identifying tribal issues that might require the agency and USDA's Office of Tribal Relations (OTR) to work with our colleagues at BIA to resolve.

I raise this example because this simple training initiative developed by RUS has led to further assistance provided to BIP recipients who were not familiar with some of the procedures necessary for working on Indian lands. It also is a living example of President Obama's instruction to executive branch agencies to work together to coordinate Recovery Act implementation. Working with BIA over the past year has provided multiple success stories, such as the Kit Carson Electric Education Foundation project in New Mexico which will cross two pueblos, when complete. This project was awarded $19 million in loan and $44 million in grant resources. By facilitating dialogue between the two Departments and the developers on complex rights of way issues, a much needed project is moving toward completion.

The RUS has long focused on the need to connect native and rural communities to a broadband future. The RUS has several standing programs which support broadband deployment. Our traditional telecommunications infrastructure loan program, authorized in 1949, was created to ensure rural areas had access to reliable and affordable telecommunications systems that were comparable to those in urban communities.

Beginning in the 1990s, RUS required that telecommunications borrowers to build broadband capable networks to facilitate the use of advanced services. Since 2009, this program has provided broadband service to nearly half a million rural tribal subscribers. For example, in December of 2010, RUS provided a $37.9 million loan to the Cheyenne River Sioux Tribe Telephone Authority in South Dakota to complete a fiber-to-the-premises buildout, providing broadband services to homes and businesses necessary to meet growing demand, create jobs and spur economic development. More recently, a Telecommunications infrastructure loan helped Sacred Wind Communications secure new and improved broadband service throughout Navajo Nation Chapters within New Mexico. This investment continues to expand access to education, health care services, job opportunities and small business marketing tools within those Navajo communities.

The RUS Broadband Loan Program, first authorized under the 2002 Farm Bill, and revised by the 2008 Farm Bill, makes broadband network financing in rural areas a reality for providers seeking to build high capacity systems in rural underserved areas.

The RUS also administers the Community Connect grant program. While relatively small, applicants seeking to serve tribal communities have done very well under this program, which provides grant funding to communities with no access to broadband service. This program has made 49 awards to tribal communities totaling $25.6 million since the implementation of the program in FY 2002. Funds are used to build broadband infrastructure and awardees are required to establish com-

munity centers that offer free public access to broadband as well as connect community anchor institutions to free broadband services for two years. On May 3, the RUS announced over $10 million in funding is available for new applications in FY 2012.

An excellent example of a project funded by the Community Connect program is the Sacred Wind Communications project in New Mexico. They were awarded a $436,461 grant to provide phone and Internet service to residents in Huerfano. The grant resulted in a new computer training center for public use. The grant also resulted in the installation of telephones in all community buildings, broadband service in the tribal school and other facilities and a new computer training center for public use. As a result of these investments, educational programs are available for all residents, health care services and job information is accessible, and the community can communicate with the rest of the world.

Another RUS program that is changing the lives of Native Americans is the Distance Learning and Telemedicine (DLT) grant program. This week, Agriculture Secretary Tom Vilsack announced awards for over 50 distance learning and telemedicine projects that will increase access to health care and enhance educational opportunities to rural communities and tribal areas in 29 states. With these awards, over the life of the program, USDA will have provided half a billion dollars in Distance Learning and Telemedicine program funding to benefit rural communities and Tribes nationwide. A substantial portion, 230 awards for $100 million, went to improve educational or health care services to native communities.

With a combined portfolio of over $6 billion in telecommunications investments alone, the RUS has a deep understanding of the costs, challenges of distance, density and geography to build out these systems. We also have witnessed lives transformed, communities enlivened and futures secured when affordable, reliable and robust utilities services finally arrive to communities that have been asked to wait far too long to enjoy the benefits of modern life and the rewards of the digital economy.

A good example of how USDA Rural Development programs can improve the economy and quality of life in native areas is the Warm Springs Indian Reservation in central Oregon. About 10 years ago, the leadership of the Confederated Tribes of Warm Springs realized that their community severely lacked telecommunication services. Tribal leaders commissioned an assessment of the community's needs and formulated a strategic plan, which identified the present telecommunications services and the capabilities needed to upgrade services on the tribal land. The report identified Public Safety Radio, basic telephone service, and broadband Internet access as the most critical priorities. It also highlighted the fact that only 63 percent of tribal members had basic telephone service and that even fewer had broadband Internet access.

The overwhelming task of bringing broadband Internet access and basic telephone service to the reservation was made easier when the Confederated Tribes of Warm Springs discovered the USDA Rural Development Community Connect grant program. In 2002, the Tribes received a grant for $695,832 to build a small fiber network on the reservation that now links together the Health and Wellness Center, the Community Counseling Center, the Head Start/pre-school building, many schools, and other tribal administration buildings. The grant also funded the creation of a technology center that allows tribal members to access the Internet 24 hours a day.

Next, the Warm Springs Telecommunications Company (WSTC) was created. As the WSTC was designing their network and exploring potential funding options, RUS began the BIP program under the Recovery Act.

In 2010, WSTC was selected for a $5.4 million award to construct a hybrid fiber/wireless network throughout the reservation to connect critical facilities, including the administrative buildings, schools, health care facilities, all police/fire and public safety radio towers, and Kah Nee Ta (the tribal resort). When this project is complete, broadband service will be available to all residents, government agencies and businesses. Additionally, the WSTC was awarded a $200,000 Technical Assistance grant in 2010, also under BIP, to continue the planning process of building the new telecom network.

The new network will provide students with access to school assignments and allow them to submit homework online from their homes. College students will be able to live on the reservation and conduct research or take distance learning courses without having to travel great distances. Broadband Internet access can help reduce the chronic unemployment that faces the residents. The new network continues to indirectly contribute to employment growth by allowing community members to pursue new, previously unavailable career opportunities, such as selling their artwork online or starting other online, home-based businesses.

New telemedicine applications, which rely on broadband, will allow for quick and easy consultations with medical professionals. Tribal members will be able to meet with specialists at Oregon Health Sciences University in Portland. Diabetics will be able to connect to clinics for monitoring.

The new broadband network will support and improve the interoperable public safety radio network that has been upgraded with U.S. Department of Homeland Security grants. The network will link together the funded towers with new radio equipment so that police and fire departments can better protect the people of the Confederated Tribes of Warm Springs as well as the citizens of Oregon who visit Kah Nee Tah, the Tribes' resort. The moral of the story is that with work, commitment, planning, persistence and partnership with RUS and other public and private entities great things can happen and entire communities can be transformed.

Since the start of this Administration, the RUS has placed a specific focus on expanding outreach to and expanding service across tribal communities. RUS has taken historic measures to make its utility loan and grant programs are more accessible to those serving and residing in tribal areas through the implementation of the Substantially Underserved Trust Area (SUTA) provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). I know members of this Committee have been advocates of the SUTA provisions in the 2008 Farm Bill, and I thank you for your leadership.

The RUS published a proposed rule implementing the SUTA provisions in the federal register in October 2011 and accepted comments through December 14th. The final SUTA rules are slated for publication very shortly and will apply to the agency's main programs.With the publication of the final rule, SUTA provisions will be available in following RUS programs:

- Rural Electrification Loans and Guaranteed Loans, and High Cost Energy Grants;
- Water and Waste Disposal Loans, Guaranteed Loans, and Grants;
- Telecommunications Infrastructure Loans and Guaranteed Loans;
- Distance Learning and Telemedicine Loans and Grants and:
- Broadband Loans and Guaranteed Loans.

The SUTA provisions include the three discretionary tools: (1) The Agency may make loans and guarantee loans with interest rates *as low as* 2 percent and with extended repayment terms, (2) it may waive non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant program to facilitate construction, acquisition or improvements of infrastructure, and (3) agency may give highest priority to designated projects in substantially underserved trust areas.

Like all of RUS's lending programs, the agency can and will only make loans or guarantee loans that are financially feasible and that provide eligible program benefits. It is our hope that the SUTA authorities will help make programs in substantially underserved trust areas more affordable and more likely to be financially feasible.

The SUTA rulemaking was historic because it was crafted based on a 2 year tribal consultation effort that included over 33 government to government consultations with native nations and tribal communities as well as all relevant federal agencies and Departments. Several of the 33 consultations were held in Alaska, Hawaii and the Western Pacific (Guam, Saipan and American Samoa), hosted by the Rural Development State Directors in each region.

RUS is proud to have hosted the first USDA Rural Development consultation with the Department of Hawaiian Homelands (DHHL) on January 27, 2011, on the SUTA provisions. The consultation included participants from all the Hawaiian Homelands.

As a lender, RUS must look at all available revenue streams to establish loan feasibility. Even with 2 percent interest, as would be possible under the new SUTA provisions, the ability to repay loans in remote, sparsely populated, low income areas is difficult. There are only three basic streams of revenue available to build a business case for broadband deployment; the rates paid by subscribers, the compensation received from other service providers when they use the rural network and payments from the Federal Universal Service Fund (USF). Many of the examples outlined in today's testimony demonstrate what is possible when those three revenue streams sync up to make advanced services available at affordable rates.

Last November, the FCC adopted new rules that begin to restructure existing federal Universal Service support mechanisms and Inter-carrier Compensation (ICC) rules. These reforms affect the distribution of high cost support under the Federal

USF and the rates carriers may charge each other for use of each others' networks. They will also affect the rates carriers will charge their customers.

The FCC reform order also seeks to implement new USF rules which are directed toward those underserved areas of the US which are within the service territories of non-rural local exchange carriers. A significant number of tribal communities are within those service territories.

Some of the reforms have taken effect, others are expected to be effective later this summer and much of the reform effort remains subject to a notice of further rulemaking. It is still very much a work in progress. That said, USF support has been a vital revenue source for both rural telecommunications providers and tribally owned carriers.

Native and non-native rural local exchange carriers in tribal areas depend heavily on both USF and ICC revenues to maintain and upgrade existing networks.

At RUS we have a significant interest in the reform effort, and have been engaged in a continuing and productive dialog with the FCC about the financial and policy implications of the changing USF landscape.

Out of the 487 active borrowers in the RUS Telecommunications Infrastructure loan program, 99 percent receive federal USF support.

RUS is the primary lender to 9 of 12 tribally owned local exchange carriers in the U.S. today, as well as a number of entities which service tribal communities. About 65 percent of RUS' Broadband Initiatives Program (BIP) awardees under the American Recovery and Reinvestment Act (ARRA) receive federal or state USF support and about 10 percent of the one hundred or so active RUS broadband loan recipients receive USF support.

At the FCC's request, RUS submitted a presentation into the FCC's USF reform docket in August 2011 outlining the potential impact of reductions in federal USF to the existing telecommunications loan portfolio as well as lending decisions going forward for borrowers seeking to build broadband infrastructure in rural high cost areas. A copy of that presentation is provided for the record. RUS continues to examine the specific changes in USF and ICC on rural carriers and tribally owned carriers. We have asked RUS borrowers with pending loan applications to re-estimate their revenues based on the FCC order and the agency will continue to remain vigilant over revenue changes on individual companies within our portfolio.

The RUS, on behalf of the Administration, recommended that the FCC include a "safety net" or waiver process to give entities which made obligations to government based on a good faith reliance on the USF rules an opportunity to seek a restoration of support to avoid a default. A copy of that filing is also provided for the record.

And most recently, on Tuesday May 29th, I was part of a conversation that the Secretary of Agriculture and the Chairman of the FCC and other USDA and FCC staff had regarding the effects of the reform effort on rural consumers and the RUS telecommunications loan portfolio and program. A copy of the *ex parte* filing outlining that discussion is provided for the record. We agreed to continue our constructive dialog on these issues.

The RUS is proud of its investments in tribal communities and with the full implementation of the new SUTA provisions, looks forward to using the tools the Congress gave us to help bring broadband to every corner of rural America.

But make no mistake. Rural service is hard. Providing modern services to tribal communities are among the most difficult. That is why an agency like the RUS exists. I thank you for your interest in the RUS and thank you for your support of our agency and its mission.

The CHAIRMAN. Thank you very much, Mr. Adelstein.

Ms. Clyburn, a significant and unique cost of doing business in Hawaii is the cost of transportation. How is FCC taking costs like these into account when comparing companies serving our Native Home Lands to other rural companies in the Country?

Ms. CLYBURN. Again, thank you for that question. The FCC is taking each request or each company on a case by case basis. We are looking and reviewing all applications. We are looking at all of this by way of reform and engagement in as responsible and interactive way as possible.

We are looking at the entire portfolio, not just transportation costs, but that is a part of it. So we are looking at high costs, all of those variables that may be particular or unique to your home-

land. We are taking all of those into consideration when we have that engagement as it relates to high costs.

So transportation is but one variable. We are taking all of that into consideration.

The CHAIRMAN. Thank you.

Mr. Adelstein, many of the loans you have already made in Native telecom were invested many years ago and relied on current USF funding as guarantee for repayment by your clients. How do the new proposed reforms affect your older, long-term loans, and investments with this funding in question?

Mr. ADELSTEIN. Well, as you noted, Mr. Chairman, our loans are very long-term. We do loans of up to 20 years' maturity, and that does take a very long horizon. That is why they have relied on USF. Of course, the statute requires that it be predictable and sufficient. Ninety-nine percent of our telecommunications borrowers are dependent on USF. They built the broadband with the support of universal service, and they counted on it to do it. It is a very fragile industry because inter-carrier compensation has been declining and it is projected to continue to decline in the context of reform.

So the industry is in a little bit of a difficult situation and not very strong to be able to survive additional reductions in revenue. I think the risk of the proposed reforms is determined by a number of factors that remain undecided. The FCC has a number of policy issues that it is still considering in a further notice of proposed rulemaking. It has waivers that it can consider that could avoid default in certain cases. We have yet to see how much ability some of our carriers will have to recover inter-carrier compensation from some of the mechanisms provided in the FCC's order.

Some of our borrowers gain under it, some lose substantially. Some lose little. It varies among companies. So we are carefully evaluating the impact on our portfolio in light of these considerations.

The CHAIRMAN. Thank you.

Ms. Clyburn, it is required by statute that USF funding be predictable and sufficient. How do these new rules satisfy that requirement when businesses and investors can't predict their future business operations and budgets?

Ms. CLYBURN. One of the things that we are most proud of, as I put forth in my testimony, is the engagement. We have had ongoing engagement with companies throughout this process, even before the order was submitted, so that there were some issues but very few surprises in this process. So therein, we started on a path that we think would lay down the groundwork for predictability.

Also as my colleague mentioned, we have a waiver process in place. It is a very detailed process, but it is a very fair and open and engaged process. So we think by putting forth a number of steps that we in fact are preserving the fund and that in itself is the very foundation for predictability. Because it was on a path where the current path was not sustainable. We recognized that and we had to make some difficult decisions.

The CHAIRMAN. Thank you.

Mr. Adelstein, you have recommended a safety net as an alternative to the current waiver proposed by the FCC. Can you explain

why this is more predictable and efficient for your borrowers, especially those in the middle of long-term investments?

Mr. ADELSTEIN. If a borrower knows that if reductions in USF alone would result in its inability to repay its loans, then it would be in a better position going forward in its business. So the more secure that safety net is, the more assurance there is, I think the more predictability there is that they are not going to be put in a position where they are unable to pay their loans and are forced into bankruptcy or other types of disruption to their business.

So we have suggested that the waiver be as streamlined as possible, that it be linked to broadband service and not voice service, so that people can peg it to something that they are very familiar with, and that the order is designed to promote.

The CHAIRMAN. Thank you.

Senator Barrasso, your questions.

Senator BARRASSO. Thank you, Mr. Chairman. I just have a follow-up. It is interesting, you look at the big poster over there, Native communities are still far behind in basic voice access, even 33 percent Native residents still lack telephone service. So there is a lot of work that needs to be done. We know that public safety, health care, education, economic development, all rely to some extent on Internet services, specifically the broadband services.

So Indian Country has a long way to catch up to the rest of the Country in terms of broadband access and others. Could you elaborate a little bit on how your agencies work with carriers and Tribes to integrate the services along with public safety, health care, and infrastructure to together increase broadband access?

Ms. CLYBURN. One thing that we have done that was very explicit was to open ONAP, the Office of Native Affairs. That particular office is working hand in hand with Native communities to guide them through whatever processes they are unfamiliar with.

We have been very explicit, and I think that is my word for the day, explicit in the types of programs and opportunities and focus that we have. Case in point, the mobility fund. We know how reliant, especially in communities where landline deployment is an issue, mobility often is not. But we recognize that there are roads that, there are places where there is not connectivity. Fifty million dollars will immediately go and be targeted to Tribal communities to connect those roads and highways.

So that is one very explicit way in which we are addressing some of those issues. And we can speak further on that. I don't want to take too much time.

Senator BARRASSO. Did you want to add anything?

Mr. ADELSTEIN. These Tribal communities are the toughest to serve, in many cases. They are the most expensive, they are the last ones to get served. That is why you see these statistics. There is no way it can be done without the partnership that the FCC and USDA have had together in these programs. Without Universal Service, we wouldn't have made the little progress that we have made. It is not enough. We have a long way to go.

Like I said, eight of the ten little Tribal telecom that have managed to serve themselves in their sovereignty have been as a result of that partnership. The only way we are going to continue to develop that is to continue the working relationship that we have

now to have those revenues pay for loans so these capital investments can be made.

Senator BARRASSO. Commissioner Clyburn, on April 3rd, about two months ago, 18 other Senators and I sent a letter to your chairman urging the Commission to evaluate the impacts of the Universal Service Fund reforms before actually implementing them. I understand that a response is still in the works. It may include some modifications, a few reforms as a result of the evaluation. Can you tell us a little bit about how the Commission has evaluated the impact of the reform on the telecommunications providers serving Indian Country, and if there are certain additional reforms that you are considering based on that evaluation?

Ms. CLYBURN. One of the things that should be obvious with us playing tag team is that we have been in constant engagement with RUS. We know that those reforms were needed, that reforms would have impact. So we made sure that it was clear that the loans, that portfolio and all the other variables that we put forth will be a part of any consideration if companies feel that they are at risk.

There are a number of noticing requirements and the like that we have put in place that are part of an explicit engagement with companies in terms of filing and the like that we will put in place. We streamlined the waiver process through a whole host of things that we put in place as a result of collaboration and conversations with the agencies and with the companies. It is an ongoing process that I am glad to be a part of.

Senator BARRASSO. I was just reading the testimony of this panel and the next panel. What I noticed in the written testimony from Ms. Bloomfield, who is on the next panel, is that she refers to the Commission's new regression analysis cost model for the Universal Service Fund. She notes that this model, and I quote, "Contains admittedly erroneous data and is subject to frequent and unpredictable changes." We will have a chance to visit with her on the next panel.

But while you are here, it says, "contains admittedly erroneous data and is subject to frequent and unpredictable changes. As a result, a carrier can't determine whether an expansion or upgrade might actually cost them future subsidies." What is your response to that concern?

Ms. CLYBURN. My response is that we, our office, our doors are open. If there are issues or concerns as it relates to the regression analysis, we are in continual conversation with that. So whatever concerns or discomfort the companies or she has, again, our office is open and we are addressing those on a case by case basis.

Senator BARRASSO. Do you think there was erroneous data in some of this analysis?

Ms. CLYBURN. I am not in a position to answer that with specificity. If there is erroneous data by chance, I assure you, if and when it is brought to our attention, we will incorporate that and make the necessary modifications.

Senator BARRASSO. One of the rural companies from my home State, and I am running short on time, Mr. Chairman, one of the rural companies in my home State, Silver Star Communications, in Freedom, Wyoming, recently filed an application for review and a

petition. They have some particular concerns with some of the data sets that are used. And in their case, the data fails to include two of their exchanges and fully excludes 15 percent of their service area.

So if we can perhaps just address those sorts of concerns as they come up, I would appreciate it. We will submit this in writing.

Ms. CLYBURN. Thank you, we absolutely will. Thank you, sir.

Senator BARRASSO. Thank you.

The CHAIRMAN. Thank you very much. We will have a second round.

Senator Udall?

Senator UDALL. Thank you, Chairman Akaka.

Both of you probably read the testimony of the second panel, and seen some of the comments they have. I would be interested in your response in terms of addressing some of the concerns that these telephone cooperatives, the Arctic Slope in Alaska, the Mescalero Apache Tribe telecom out there, Sandwich Islands Communications, do you all have any answers to their specific concerns they have raised in their testimony?

Ms. CLYBURN. I can tell you that we are constantly reviewing and are in communications with organizations or entities and are addressing concerns. We are in the business to do so.

We have done a number of things to affirm our flexibility. We included Alaska's specific variable to reflect a different cost within that area. We have a Tribal variable to reflect the cost in those areas. We have a waiver process, which we have streamlined as a result of engagement with companies. We had 12 subsets, now it is down to two.

So there are a number of things, a number of engagements, and I don't want to speak to, you mentioned one entity, I don't want to speak to that particular entity, because that is an open exchange. But we have been, this has been a most open and engaged process that I am familiar with in regulations in large part because it is one of the most significant things that this agency has done. We had to do it, we had to perform triage.

And that is what I call it, it was triage. But triage as we know, the simple triage is targeted and ultimately everybody gets served. And at the end of the day, that is our objective and how we best get there is going to be through an ongoing engagement. And whatever concerns need to be addressed, I assure you the Commission is open for business to do so.

Senator UDALL. Commissioner Clyburn, given some of those concerns of the witnesses and some of their comments about not having enough meaningful consultation with Tribes, how can the FCC do more to improve its outreach to Tribes, and does the Office of Native American Affairs and Policy need more resources in order to help the FCC achieve its mission of bringing telecommunications services to all the people of the United States?

Ms. CLYBURN. It would not surprise you that I would say to you that more resources are always welcome. But aside from that, I can affirm to you that ONAP has had some upwards of 250 meetings with persons, individuals and companies from Native communities. There has been engagement. Part, of course, when we go through

monumental change, as we have, and as we are, not everybody is going to be happy with the pace of change.

Everybody wants change, but when it affects them, then it is uncomfortable. And we were, to be honest with you, we would not be responsible stewards to the persons or people, to money, their money. Each month you see that line item that says USF. We are responsible for the efficient and effective delivery of service with those individuals' monies.

So we had to make a decision, we had to get this fund on a sustainable path. That required change. But we again, the Office is open for engagement. And if we are deficient in any way, I assure you that tomorrow we will correct that and do better.

Mr. ADELSTEIN. I would say that USDA and RUS have reached out to every single Tribally-owned telecommunications company to tell them they need to be engaged in this process, to let them know that it could have an impact on them. We have reached out to leadership as well as the telecom companies themselves to try to say this is something that matters to you. We didn't necessarily give them guidance on what to do, but we said that the Commission and the Chairman and Commissioner Clyburn and the others have asked for input and we have encouraged folks to make sure that whatever concerns they have are expressed. We work very closely and intimately with our borrowers and we have looked at their finances. When they come in with concerns like these, we take them very seriously.

Senator UDALL. Great. And I would just echo what Senator Barrasso said in terms of the loans that are taken out, and I think the Chairman had this in his opening, the loans that were taken out were expecting the amount of revenue coming in. So when you changed that, you changed the whole equation for a lot of these smaller rural electric cooperatives. So we need to keep an eye on that.

Thank you, Mr. Chairman.

Ms. CLYBURN. Yes, sir, and in the five seconds we have left—

Senator UDALL. Go ahead.

Ms. CLYBURN. I want to assure, one of the things that we put in place that I was not going to be supportive of, I was not going to be supportive of a slash cut. So we have a glide path, a number of years to calibrate and to engage. If by chance that time frame is not sufficient, we have an open and engaged waiver process that I encourage everyone to take advantage of.

Senator UDALL. Thank you.

The CHAIRMAN. Thank you. Thank you for your questions. We will have a second round.

Senator Murkowski, your questions, please.

Senator MURKOWSKI. Thank you.

This is a very important hearing, of course, just based on the issue. But I think as you have pointed out, Senator Udall, there are concerns that seem to be across the board here regardless of where you are from, whether it is up in Alaska or down in the lower 48 here, concerns about the waiver process being burdensome and costly. You say that there is a way around that.

The issue of the regression analysis, and you are saying that the door is open, that sounds good. But the meeting that I had before

lunch today to understand a little bit more about what was going on with Arctic Slope Telephone, the data seems to suggest that there is 2,000 miles of road up in the Arctic Slope telecom area. I was stunned to learn that, because in fact there is not. It may be closer to 200 if it is that.

So it seems clear that there are some issues here that need to be addressed, that there are data errors that need to be followed up with. And so I appreciate your very open door policy. But in the meantime, you have some small telecom, at least in my State, that are feeling like they are on the ropes right now, that when they don't have the level of predictability that they clearly need, they are concerned, they are coming to us and saying, how are we going to be able to hold on.

So for me to be able to tell them, well, I hear that the FCC has an open door, that is not giving most of my folks much comfort. So we need to figure out how we are going to get through this.

Let me ask a couple questions of you here, Ms. Clyburn. With the Alaska telecom, how much do you figure they would lose due to reform and if the answer is, we don't know at this point in time, how can we expect these companies to sustain their businesses without access to the projected financials? And this goes to what the Chairman was discussing about the lack of predictability? How can we help them out there?

Ms. CLYBURN. Well, many, numerically, broadly speaking, many of the companies will either see no or a bit more of an infusion of dollars, because again, of the savings and the predictability that we put forth.

Senator MURKOWSKI. How do they know whether it is a little bit or a lot?

Ms. CLYBURN. We have some, I have some enumerated figures at this point that I could submit to you that, maybe my nerves are getting the best of me, that I can't put my hands on right now. But there is, again, ongoing engagement, a lot of these entities do know exactly, I think I put forth that a number of companies will get an infusion. So if you give me a second, I will be able to get that exact figure. Again, I apologize for not having it. But most of the entities that we have been engaged with, the worst case scenarios are around a 10 percent impact as it relates to this. Those are among the worst figures that I have seen.

Senator MURKOWSKI. Well, I think what is important is to have a clear understanding in terms of what we are dealing with. They need to have those projected financials upon which to base sound business decisions.

I guess the question would be, what the FCC intends to do then to protect the investment of our small rural carriers, many of whom have taken on quite substantial long-term debt to build our services. Mr. Adelstein, I know I am running out of time, but I want to ask you the same question here. As we deal with the issue of these loans that, I think we have demonstrated, have been proven to be a pretty effective tool for our rural telecom to gain access to capital. But how do we protect this investment here that again, these are small carriers. These are small carriers that have some pretty considerable costs. Now you inject the uncertainty in.

Ms. CLYBURN. Well, one of the things that the high costs, a support fund that we did was, even though the numbers don't synch up numerically, you are right, we recognized that those small carriers serve an important role. They serve consumers that deserve no disruption. So $2 billion of the high cost will go to ensure that there is sustainability and predictability from that point.

I did have my figures here. In terms of Alaska rate of return carriers, only two carriers were capped. Only two carriers were capped. And we expect that the remaining 15 of the 17 rate of return carriers will actually see an increase in their high cost support during this year. And so I know again there is some worry and worry does come with what we have.

Senator MURKOWSKI. It is beyond worry, it is fear.

Ms. CLYBURN. No, no, well, concerns. Significant concerns. Because again, we are talking about monumental change here. But again, there are protections in place if the companies believe that their service delivery will be adversely impacted. We have a waiver process that is engaged in an open process that we have streamlined that we encourage them, all along the way, with engagement from us, to take full advantage of.

And again, I know there is frustration. I know there is uncertainty. But we had to embark upon this path in order to sustain a system that everybody agreed was broken.

Senator MURKOWSKI. Well, I would agree that it was broken. But I think what we are hearing from the smaller companies is that the big guys are never going to serve the folks out in the service area.

Ms. CLYBURN. And that is why that $2 billion, half of that high cost fund, will remain at this point in time in those areas where, in those rate of return areas, even though numerically most of the people who are unserved are outside of those areas.

Senator MURKOWSKI. I think it sounds wonderful on paper. I am not convinced, and I don't think our smaller telecom in Alaska are convinced that this waiver process is going to be there, that what you are suggesting will be adequate to serve the needs of those who are so desperate in their needs. And they have been long ignored, they have been taken care of by these smaller telecom. And now I think everybody is feeling like they are on the ropes.

My time is expired, I understand we will have a chance for another round. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

Ms. Clyburn, you mentioned a wavier process to Senator Murkowski as well as Senator Udall. What is the cost of the waiver process? What kind of assistance is the FCC willing to give to Tribal communications companies in order to complete the waiver?

Ms. CLYBURN. The actual waiver process, sir, is the cost for application is $8,000. The information that is needed, that is required that should be contained within the waiver, that is information that the companies generally should have if they practice GAMP, generally accepted accounting principles. So that is the cost. I am not going to say there are not any more costs. But in terms of what the cost for application is $8,000, sir.

The CHAIRMAN. Thank you.

Mr. Adelstein, fixing the *Carcieri* decision is one of my top priorities. In the past 13 months, this Committee has received a broad

range of testimony regarding the negative impacts of that decision, including the significant impacts on economic development, lending and also financing.

What is the USDA doing to address the negative impacts the *Carcieri* decision has had on agencies' ability to issue loans to Tribes and Tribal members?

Mr. ADELSTEIN. Finding a fix for the *Carcieri* decision is a very high priority for the Obama Administration. Land tenure across Indian Country can make it difficult for any lender to find adequate security, whether they are lending on fee allotted, or Tribal land. *Carcieri* provides further uncertainty for Federal lenders like us at RUS, trying to ascertain business taxes, taxation, adequate security on land with property status in flux like that.

So we have been very flexible in working with our borrowers in Indian Country to retain adequate security for our loans. RUS generally utilizes revenues and equipment for loans. SUTA, which we are about to announce shortly, we are on the border of having the regulation finalized, will give us further flexibility to determine what adequate security would constitute.

The rule's imminent release, I think, will really help us out. We are working in the interim to be as flexible as we can and not using land necessarily for security.

The CHAIRMAN. Thank you. Senator Barrasso, any further questions?

Senator BARRASSO. Thank you, Mr. Chairman, for having this second round. I think we are hearing across the board concerns, from as far north as Alaska to New Mexico. And it all relates to the waiver situation.

What I hear back home is what we are hearing here as well, don't worry, just apply for a waiver. Just apply for a waiver. And as Senator Murkowski said, it is burdensome and it is costly, $8,000 to seek a waiver. It is not just like filling out a postcard and sending it in. When I talk to people, it is complicated, it is cumbersome, it is challenging, it is very detailed. Then the question is, what happens to a company like the Silver Star Company and the small community in Wyoming, come around 2014 if the waiver process fails them, and the flawed data isn't corrected? They know that the data is flawed now. And if it doesn't accurately reflect the reality that they know on the ground and whether it is 200 miles as opposed to 2,000 miles of roads, whether it is what is happening with 15 percent of the service area and two of the exchanges not included.

I guess that is the question that so many of us have here, Mr. Chairman, why we are looking for answers, because we want to be able to go back home and tell the people that we have asked you the questions and here is the answer. So is the process sufficient to fully deal with the impact and the reforms? And how can we make sure that all happens?

Ms. CLYBURN. Sir, I do believe it is. As I mentioned prior to us submitting the final series of steps, we had 12 things that we were looking at, 12 different sections that we were looking at. We narrowed that down to two particular sections.

Most of the information that the companies need to submit to us can be found, if you practice GAMP, that should be relatively, basi-

cally all that you need to submit to the agency. So we have streamlined, we heard those types of concerns through the exchanges. And we acted. It is an $8,000 filing fee. It is not inconsistent in terms of cost, not inconsistent with some of the other filings. That money doesn't come to us, goes straight to the U.S. Treasury.

But first and foremost—

Senator BARRASSO. I would rather it went to you, I think.

[Laughter.]

Ms. CLYBURN. Well, you can take care of that in other ways. But again, we are speaking about people's money. On that we can agree. We want, and we need, and I think we have on a pathway, we need an efficient process and an effective, more effective process that will serve, help serve those 18 million Americans that are not receiving adequate broadband delivery. It is not going to be the most comfortable of processes. I do admit that.

But we do have an agency, if and when, if things are cumbersome or too burdensome, we will do all that we can, and have acted in a number of ways to do all that we can to make that process easier. But the books will have to be opened. The need has to be proven. We cannot afford to have a system with multiple providers in small areas. We cannot have a system that is not efficient and answerable and will deliver service where it is not, where it doesn't exist.

Senator BARRASSO. Mr. Chairman, that is the concern. You want to make sure that service gets to the people who need it. And our concerns are that if for some reason these small companies find themselves in this situation come 2014, that the waiver process has failed them and that the flawed data isn't corrected to accurately reflect the reality, do they just close shop? And then we are just in the same situation that we are in now and services still aren't provided and we are still looking at a situation years from now, like the two big poster boards that you brought in? That is what we are trying to prevent.

Ms. CLYBURN. This remains, this will remain an interactive process. If we are all engaged, and I can commit that we will be, then that prediction that you have should be minimized. I can't sit here and affirm to you that no door will close. No one can do that. I can assure you that I will do everything in my power to ensure that no citizen has disruptive service.

Senator BARRASSO. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Barrasso.

Senator Udall, any further questions?

Senator UDALL. Thank you, Mr. Chairman.

Commissioner Adelstein, the U.S. unemployment rate is about 8 percent, which we all know is a terrible rate. But getting unemployment down to 8 percent for some Tribal communities would be significant progress. We need to find more economic development opportunities for Tribal communities and rural areas more generally.

I am wondering, you mentioned how the RUS community connect grant has helped Sacred Wind Communications bring service to New Mexico. Are there areas where Tribes are not taking advantage enough of RUS assistance when it comes to promoting economic development?

Mr. ADELSTEIN. We have been very successful with getting Tribal entities to get involved in our programs. Community Connect has gone disproportionately to Tribal areas. Our technical assistance grants we did under the Recovery Act went, 12 out of 19, to Tribal areas, because we made it especially easy for them to get that. Some of our non-Tribal awardees, like in Alaska, GCI is covering many different Tribal communities.

We still need to do more. I think that sometimes the communities that need the help the most are at least able to get it for themselves. So we have done extensive outreach, consultation, honoring the nation to nation relationships that we have in an unprecedented fashion under this Administration. And we have seen jobs being created. Sacred Wind is considered one of the best small businesses in America. We have many great success stories that, without them, there wouldn't be the opportunity for jobs. And of course, C.B.O. came out yesterday and identified the Recovery Act has indeed created millions of jobs and helped keep the unemployment rate from going any lower.

I have seen that myself, I have seen the hard hats out there in Indian Country that are building this plant, over $200 million in the Recovery Act is going to serve Tribal areas.

So we are seeing it working. But I think there is a heck of a lot more to do, and very limited resources to do it with.

Senator UDALL. Good, and we appreciate you working hard to push it out there.

Commissioner Clyburn, my understanding is the vast majority of the Navajo Nation, which encompasses an area the size of West Virginia, would be ineligible for the mobility fund support in upcoming auctions because the Commission finds that this area already has 3G service. This would surprise me, since many parts of the Navajo Nation still lacks cell phone service.

Would you look into this to see if one of the least-served areas of the Country could potentially be excluded from the mobility fund support in these auctions?

Ms. CLYBURN. Yes, I will.

Senator UDALL. And if there is uncertainty or controversy over whether service exists in these areas, should the Commission's default position be to keep these Tribal lands eligible for mobility fund auction?

Ms. CLYBURN. I will answer that this way. We have made a lot of, many provisions to recognize the unique needs of Native nations. One of the things that sticks out in my mind is if you apply to be an eligible, under ETC, an eligible telecommunications carrier, you don't have to have approval to get consideration. That is one of the things, in terms of when we talk about this process, that sometimes is complicated for smaller companies. That is one of the things that we put in place to ensure that there is a significant pathway for engagement.

So the answer is of course yes on the first, and if there are any disconnects, ONAP and the Commission as a whole will look into that to ensure quality service.

Senator UDALL. Thank you very much. Thanks, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Udall.

Senator Murkowski, your questions.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I am told that while the waiver application fee is $8,000, as you have indicated here, that the total predicted cost for going through this process to get a waiver with the fee and your consultants is somewhere between $100,000 to $180,000. Now, I don't know if that is accurate, that is what I have been told. But for some of our smaller operations up north, that is a pretty tough financial load for them to bear. So when we are talking about the cost, I think we need to keep in mind, it is not just the fee for the waiver.

I would be curious to know also, just in terms of the waivers, if you file your waiver with the FCC, what is the likelihood that waivers is going to be granted? What are the parameters? How many waivers will be granted? If you are going to take the limited resources of a small telecom and basically bank on getting a waiver here and then we find out, well, there is a very limited number that can be granted, that is something I think we want to understand a little bit more.

Administrator Adelstein, I wanted to ask you, and I hinted at this in the last round, talking about the loans, the outstanding RUS loans. In Alaska, I understand there are over $200 million in outstanding RUS loans and they have been a pretty effective tool for us in terms of gaining the access to capital, helping to develop out the infrastructure.

So from your perspective as administrator there at RUS, what effect will the Connect America fund and then these changes to the high cost fund have on these rural telecom?

Mr. ADELSTEIN. It is really variable according to the company. Some companies, as the Commissioner indicated, gain, others lose. Obviously we are most concerned about those that lose and lose substantially. Because those are the ones that are at the greatest risk. That is where they may end up in this waiver process that you have talked about.

So it really depends on the particular borrower. I know Arctic Slope is going to be here in the next panel, and we have a number of awards, over $100 million, went to Alaska in the Recovery Act. So we have a lot more loans coming to Alaska as the build out and GCI builds out. And some of the other companies, Copper Valley is here today, Dave Dangle is here from Copper Valley.

We are very concerned about all these carriers and what the impact is. So we are looking at them on a case by case basis, because it does vary from company to company. To the degree there are major issues, we will work closely with the FCC to resolve those issues that we find.

Senator MURKOWSKI. Well, let me ask you, though. You kind of had them on your watch list, it sounds like, working with them. But if it does not look good, what do you do? Again, I am concerned, as some of my colleagues have said here, that if we get to 2014 and the waiver hasn't worked out, then where are you? Because you are not going to see any of these big guys really stepping into these smaller markets to come and help.

So when you say that they are, and these are my words, but when they are on your watch list, what can they expect in terms of any level of assistance, or are we all just watching together?

Mr. ADELSTEIN. We do work with our borrowers when they get into trouble. Usually there is a way out. Traditionally we have an extremely low default rate. Our default rate is .6 percent for our programs, because we have been very careful in underwriting them. They have had a predictable revenue stream coming in.

Senator MURKOWSKI. They have had a predictable revenue stream?

Mr. ADELSTEIN. That is right. So we have been able to manage the portfolio very carefully. Occasionally there are issues that come up, we work with them, we are not able to handle given our small, little staff that we have, a large number of those issues. We will run down the street, the FCC is only three blocks away, so we may be occasionally making the trip down there to talk to them. We have already discussed the broader issues. And of course, we will work with our companies on the waiver process if it comes down to that. We have limited tools at our disposal. If they go into a default situation, then we can rework the loans. But what you find is that the amount of debt service isn't usually the issue, although that can be helpful.

We can't do that prospectively without assistance from Congress. We can't look at our whole portfolio and say we are going to have to adjust these loans because there is less revenue than we anticipated because that would be, that would require an appropriation, which in this budget environment we don't anticipate being very likely.

So we do have limited tools but we will use everything we have to be as flexible as we can.

Senator MURKOWSKI. I have one final question, Mr. Chairman, if I may. This is directed to Commissioner Clyburn. And this relates to satellite. Most of rural Alaska is served by satellite. And it suffers from these latency issues, the slow download speeds. Under the National Broadband Plan, minimum upload/download speeds for broadband that are specified for funding in the order are not attainable in Alaska. I am told that the Commission is working to correct this so that the Alaska telecom will not be impacted by these unattainable speeds.

Can you tell me where the Commission is in addressing this?

Ms. CLYBURN. We recognize how expensive the middle mile is. We are working and have had an opportunity to visit your fine State. I love Cordoba, we will be there in the summer, let me affirm, it will be in the summer, and Gayana. So again, I recognize how expensive it is to serve. We do recognize all of that.

So flexibility, we have allowed for flexible build-out requirements. You have expenses, including influenced by, if not made clear, the weather. So we have clarified that State commissions like yours can consider these middle mile costs of all these variables into consideration to ensure optimal outcome. And please forgive me for saying this, I really want to say back to your first statement, there is no requirement for companies to go and hire outside experts in terms of this type of review. They can do so, of course, that is their prerogative. But there is no requirement. If they practice GAMP, the majority of the information that they need, that we need, should be at their disposal.

Senator MURKOWSKI. Thank you, Ms. Clyburn. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Murkowski.

I want to thank my first panel very much for your presence here and especially I want to commend you for working together on some of the issues that we are concerned with and urge you to continue to do that. I also want to thank you for your testimonies and your responses to our questions. Thank you.

Ms. CLYBURN. Aloha.

The CHAIRMAN. Aloha.

Now I would like to invite the second panel to the witness table: the Honorable Alfred LaPaz, Councilman for the Mescalero Apache Tribe in Mescalero, New Mexico, accompanying Councilman LaPaz is Mr. Godfrey Enjady, General Manager of Mescalero Apache Telecom, Inc., in Mescalero, New Mexico; Mr. Steve Merriam, Chief Executive Officer and General Manager of the Arctic Slope Telephone association Cooperative in Anchorage, Alaska; Mr. Albert Hee, President of the Sandwich Isles Communications in Honolulu, Hawaii; and Ms. Shirley Bloomfield, Chief Executive Officer of the National Telecommunications Cooperative Association in Arlington, Virginia.

Welcome to all of you. Councilman LaPaz, will you please proceed with your statement?

STATEMENT OF HON. ALFRED LAPAZ, SECRETARY, MESCALERO APACHE TRIBAL COUNCIL; ACCOMPANIED BY: GODFREY ENJADY, GENERAL MANAGER, MESCALERO APACHE TELECOM, INC. AND JOHN WHEELER, GENERAL COUNSEL, MESCALERO APACHE TRIBE

Mr. LAPAZ. Good afternoon, Chairman Akaka, I see Vice Chairman Barrasso has left, and members of the Committee.

My name is Alfred LaPaz, and I serve as Secretary of the Mescalero Apache Tribal Council. I am also a member of the Board of Directors of the Mescalero Apache Telecom and with me is Mr. Godfrey Enjady, General Manager of MAGI. Also Mr. John Wheeler, the Tribe's General Counsel.

I want to thank you for the opportunity to testify before the Committee about the impacts of the FCC's reforms on the Mescalero Apache Tribe and MAGI. Our Tribe is very concerned about the pending July 1st deadline to implement the FCC order. While we support the goal of extending broadband to underserved communities, we believe that the FCC order will actually have the opposite effect on the Mescalero unless some revisions are made.

Indian Country and Mescalero in particular is different and the current FCC order doesn't reflect that fact. The Mescalero Apache Tribe's 460,000 acres is located in the mountains of rural south central New Mexico. A large portion of our reservation has rugged and rocky terrain, and our elevations range anywhere from 5,000 to 12,000 feet. As you can see from the pictures on the board here to my left, our reservation is extremely rural. Our telecommunications infrastructure is built over great distances and very tough terrain.

At the left corner is MAGI's headquarters, the top left of the board. It consists of six double-wide trailers that we lease. MAGI's

priority is to reinvest its money in state of the art technology instead of costly non-essentials.

Our reservation is home to approximately 5,000 residents, most of whom are Tribal members. Like many reservations, we suffer high unemployment and poverty rates. With a low population density, high infrastructure costs and a relatively low income community, we don't meet the typical business model of your average telecommunication company.

In the mid-1990s, only 48 percent of our reservation's residents had access to telecommunication services. To address this gap, the Tribe established MAGI with the sole purpose of bringing quality communications to our residents. Since 2001, we have transformed communications services on the Mescalero Reservation. Today all of our residents have access to basic voice service and broadband internet. That is an extraordinary feat, and I want to acknowledge Mr. Enjady's work in achieving these goals.

MAGI's success in our business model has relied on both USDA's rural lending program and the FCC subsidy programs. Both of these programs have enabled MAGI to provide our customers with access to available services. Unfortunately the FCC order has the potential to undo this success. For example, we estimate the November order would have resulted in an $800,000 cut in Federal funding annually from MAGI.

This is close to one-third of our total Federal support. We would have been cash flow negative within four years. Thankfully, FCC amended the order to reduce the negative impact on Tribal telecom like MAGI. While we are grateful for this change, problems remain. For example, we estimate that MAGI will still have a reduction of $90,000 for just the high cost loop support portion of the subsidy. We estimate that MAGI will suffer an annual loss of $137,000 from the interstate common line support. Most importantly, the total USF cap will prevent MAGI from future expansion of services. And there are more reductions than we have time to list here. Again, these cuts will have a devastating impact on MAGI and our Tribal members.

In response to these concerns, the FCC offers the waiver process. However, this waiver process remains unclear and uncertain. Not much has been disclosed about how the waiver process will apply to Tribal government-owned entities like MAGI. We are concerned that the process may require the disclosure of sensitive information of the Tribe or Tribally-owned enterprises. We also believe that the waiver process may be highly expensive and cumbersome to small Tribal providers.

To address these concerns, we urge the FCC to consider an alternate process that respects Tribal government, honors the treaty and trust obligations of the United States to the Tribe and acknowledges the unique challenges facing Tribes and Tribal telecommunication providers.

We are also troubled that the FCC failed to conduct meaningful consultations with our Tribal governments to engage in discussions with senior officials. Recently FCC officials informed me that because Indian Tribes are not referenced in the Communications Act of 1934, the FCC has no legal obligation to honor its trust responsibility to Tribes.

While the FCC is an independent agency, it is still a part of the Federal Government that holds a unique legal obligation to all Tribes. As a result, we urge the FCC to engage in government to government consultation with all impacted Tribes before moving to implement the order.

In conclusion, while the Tribe appreciates the goal of the FCC to modernize and reform the USF, we don't believe that the order takes in account the Federal Government's obligations to Tribes. We urge the Committee to take action now by working with the FCC and authorizing committee to delay implementation of the order to ensure that Tribal governments have access to a connected future.

Thank you again for this opportunity. I appreciate being able to be up here and provide my comments today. At this time, if we have any questions, I would like to have Mr. Enjady here beside me entertain any questions that the Committee may have. Thank you.

[The prepared statement of Mr. LaPaz follows:]

PREPARED STATEMENT OF HON. ALFRED LAPAZ, SECRETARY, MESCALERO APACHE TRIBAL COUNCIL

Introduction

Good afternoon, Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. My name is Alfred LaPaz and I serve as Secretary of the Mescalero Apache Tribal Council. I am also a member of the Board of Directors of the Mescalero Apache Telecom, Inc. (MATI). I am accompanied today by Godfrey Enjady, General Manager of MATI. Thank you for the opportunity to testify today before the Committee about the impacts of the Universal Service Fund (USF) reforms on tribal communities and tribally-owned telecommunications providers like MATI.

This hearing is timely as the Mescalero Apache Tribe (Tribe) is greatly concerned about the pending July 1, 2012, implementation of the Federal Communications Commission's (FCC) Connect America Fund (CAF) Order (Order). The purpose of the Order is to modernize and reform USF and intercarrier compensation (ICC) programs to address the broadband gap in rural and underserved communities. We believe that, unless our concerns are addressed, the Order will actually have a detrimental, and even opposite, effect on reservations.

Background

The Tribe entered into a treaty with the United States on July 1, 1852. This treaty, known as the Treaty with the Apaches, promised the Tribe a permanent homeland in its aboriginal territory. The Mescalero Apache Reservation (Reservation), located in the White and Sacramento Mountains of rural south-central New Mexico, was created by a succession of Executive Orders in the 1870s and 1880s. The Reservation spans approximately 720 square miles across south-central New Mexico. Our elevation ranges from 5,400 to over 12,000 feet above sea level. The Reservation is home to approximately 4,500 tribal citizens and approximately 200 non-Indian residents.

Like many reservations, the Tribe suffers some of the most challenging socioeconomic conditions, including high unemployment and poverty. The poverty rate on the Reservation is 18.2 percent, compared to 15 percent for the rest of the Nation. In addition, 84 percent of MATI customers qualify for FCC's Lifeline program, which provides monthly discounts for low-income customers, compared to 21.8 percent for the rest of the Nation.

Throughout the 1900s, the Reservation had limited access to telecommunications and information services. Our Reservation, like many others throughout Indian country, has a low population density, faces high costs to build communications infrastructure, and has residents with little means to pay for high cost services. These circumstances simply do not fit into the business model of a private telecommunications company. In the mid-1990s, the Tribe recognized that only 48 percent of its residents had access to telecommunications and information services. To address this gap, the Tribe established MATI, which is a telecommunications enterprise wholly owned by the Tribe. MATI's sole purpose is to bring quality communications

services to the Tribe's residents. Since 2001, MATI has transformed the communications service landscape within its 720 square mile service area. Today, 97 percent of tribal residents have basic local service available to them, and 92 percent of these residents have access to broadband-based Internet. Closing the service gap by essentially doubling the level of service in the decade since MATI began providing services to tribal residents is an extraordinary achievement.

MATI's success is due, in part, to the help of two important federal programs—USF and USDA's Rural Utilities Service (RUS) lending program. Through RUS, MATI was able to obtain low-cost financing to assist in building the network that is in use today. USF, through its cost support programs, ensures that MATI's customers have access to affordable telecommunications services in our remote tribal area. MATI, like all tribally-owned telecommunications providers, serves an area that is historically underserved, lacks population density, exhibits chronic economic troubles, and has scarce labor resources. These factors provide little or no incentive for other providers to serve our Reservation. Without MATI and without the assistance from RUS and USF, the Mescalero Apache people would be relegated to low quality voice services and would have little or no quality Internet access service. The Reservation could easily go back to below 50 percent service availability.

FCC Order and USF

The FCC Order Leaves Indian Country Behind as a Result of Reductions in USF Revenues

Last month, FCC Chairman Julius Genachowski testified before the Senate Committee on Commerce, Science, and Transportation that the Order would "spur wired and wireless broadband build-out to hundreds of thousands of rural Americans." He said that the Order would set a path forward in order to achieve "universal broadband by the end of the decade."

The Order sets forth an ambitious implementation schedule to accomplish its goal. The Tribe supports FCC's goal to address the broadband gap for all Americans but is deeply concerned that USF reform efforts will leave Indian country behind as it moves the rest of the country into the 21st century. For example, the Order would reduce and eliminate support mechanisms for MATI and other tribally-owned providers. This result is in direct conflict with the goals established by the National Broadband Plan, which reads in part:

> Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning. Current funding programs administered by NTIA and RUS do not specifically target funding for projects on Tribal lands and are insufficient to address all of these challenges. *Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding.* (Emphasis added)

Perhaps most troubling is the lack of meaningful consultation by the FCC with tribes during development of the Order. While the FCC sought input from tribally-owned providers before and after the Order was released, the FCC did not conduct formal tribal consultations where affected tribal governments could engage in discussions with senior officials. We urge the FCC to initiate tribal consultations before implementing the Order. This request is consistent with the FCC's Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, which reads, in part, that the FCC, "in accordance with the federal government's trust responsibility . . . will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments.." Engaging in meaningful consultation also falls within the spirit of Executive Order 13175, "Consultation and Coordination with Tribal Governments. . . ." that requires all federal agencies to consult on matters that have significant impacts on tribes.

Further, while the FCC does maintain a policy of government-to-government relationship with Indian tribes, the Tribe is deeply troubled that some at the FCC question the Commission's obligation to Indian tribes because the protection of tribal sovereignty and the Federal Government's obligations to Indian tribes are not expressly referenced in the Communications Act of 1934. While it exists as an independent agency, the FCC is part of the Federal Government. The Federal Government, in hundreds of treaties with Indian tribes, and in hundreds of federal laws and court decisions, has acknowledged that it incurs a legal obligation to improve conditions on Indian reservations. These federal obligations stem from the hundreds

of millions of acres of tribal homelands that were ceded to or taken by the United States to help build this great Nation. As a result, the Tribe urges the FCC to recognize its existing duty to engage in government-to-government consultation with all federally recognized Indian tribes that will be impacted by the proposed policy. That consultation has not yet taken place with regard to the Order.

Impacts on MATI Based Upon USF Reforms

On October 27, 2011, the FCC adopted the Order to modernize and reform USF and ICC. As originally devised, the Order would have had significant negative impacts on MATI and many other tribally-owned providers servicing Indian country. MATI estimated that the initial cost mechanism (the Quantile Regression Analysis [QRA]) contemplated in the Order would have resulted in a massive reduction in USF annual support of over $800,000, representing 27 percent of MATI's total federal support and 15 percent of its total revenues. Under this scheme, MATI would not have been able to meet its RUS loan repayment and other obligations.

On April 25, 2012, after hearing from a number of tribal telecoms, the FCC issued a clarifying order on the cost mechanism related to High Cost Loop Support (HCLS), a major component of USF, that contained new factors that has reduced the Order's impact on federal HCLS funding levels for tribal telecoms. MATI now estimates the annual reduction in federal support to be $90,000 using FCC'S QRA methodology. This revision alone caused an 80 percent *upward* swing in MATI's federal support, unmistakably showing the unpredictable outcomes of the QRA. While the April order made adjustments to mitigate the potential devastation to tribal telecoms, it still equates to a significant reduction for MATI's HCLS.

Moreover, there are other significant aspects of the Order that still have not been addressed and could be equally damaging to MATI. For example, the Order extends the corporate expense limitation to Interstate Common Line Support (ICLS), which is a support mechanism for improving subscriber-based basic and broadband services. MATI estimates that this modification will result in an annual loss of $137,000.

In addition, we are concerned about other features of the Order that eliminate and phase out support mechanisms such as the Local Switching Support (LSS) and Safety Net Additive (SNA) programs, which will negatively impact rural Incumbent Local Exchange Carrier (ILEC) communities and the customers they serve. To date and resulting from the Order, the FCC has not adopted a long-term plan for getting broadband services out to consumers served through small, traditionally-regulated, rural ILECs. The Tribe is concerned that FCC's short-term solutions will have a drastic impact on tribally-owned companies, which are located in rural areas. The uncertainty created in the area of universal service support will erode the confidence needed in companies, lenders, and customers to provide, invest in, and purchase broadband-capable services. We urge the FCC to carefully consider the unique challenges of tribally-owned providers servicing Indian country as it continues to make decisions about the USF support mechanisms.

Finally, the FCC continues to offer the waiver process as a relief mechanism available to providers who fear financial ruin as a result of the Order. However, the waiver process remains unclear and uncertain. According to the Order, the waiver application will be subjected to a "rigorous, thorough and searching review comparable to a total company earnings review." The Tribe is concerned that this process may require disclosures of tribal government finances and other wholly tribally-owned enterprises and businesses. Further, given the importance of the waiver and its uncertain requirements, a waiver application may be highly expensive and cumbersome for small tribal providers, like MATI, to complete. Without some certainty and transparency in the waiver process, the threshold to obtain a waiver seems unattainable as there is no guarantee that the FCC will grant the requested relief. We urge the FCC to consider an alternate process that respects tribal governments and honors the legal treaty and trust obligations of the United States to the Tribe and all of Indian country as well as acknowledges the unique challenges facing tribes and tribal telecommunications providers.

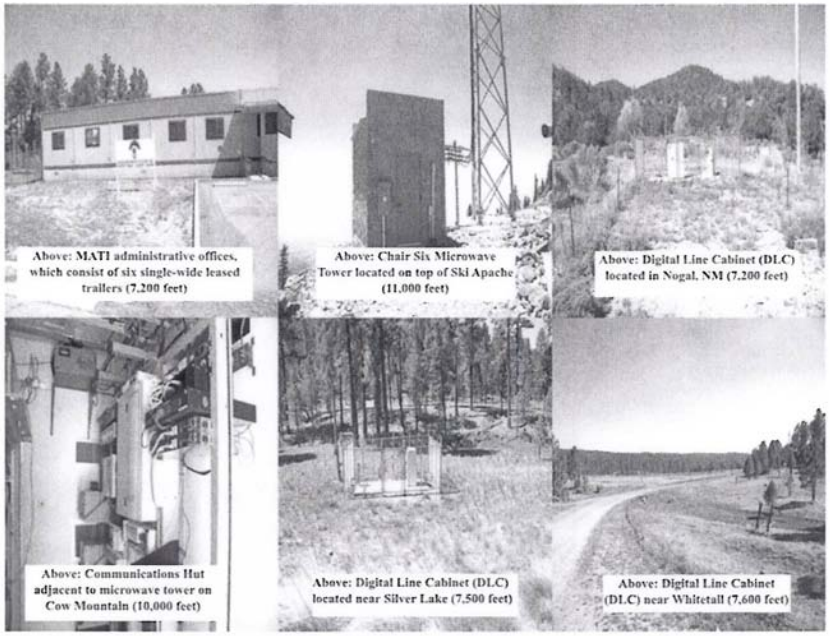
In general, the uncertainty created by the Order has compelled MATI to shift its planning priorities from expansion of services through continued reinvestment to a system of sustaining current operations with reduced funding. Taking steps to reduce costs and develop solutions to mitigate the adverse impacts of the Order will put an end to MATI's reinvestment program as it halts plans to build-out its broadband capable network and ceases upgrades on its existing network, which will result in a degradation of service quality on its current network. This scenario will severely limit the Tribe's plans for economic growth, lead to less capital, likely lead to substantial loss of employment opportunities, and possibly shutter business operations altogether.

Conclusion

While the Tribe appreciates the goal of the FCC to modernize and reform USF to address the broadband gap in rural and underserved communities, we do not believe that the Order takes into account the gaps that will be created in Indian country as a result of many of the reforms. Instead of increased investment in broadband-capable networks, there is likely to be less. Instead of increased availability of quality broadband-capable services, customers in many areas will be lucky to maintain the current level of services and affordable costs. Without adequate support and relief mechanisms in place, which is what Congress clearly contemplated in Section 254 of the Telecom Act of 1996, some tribal communities run the risk of becoming an under- or even unserved area, which ironically, is at odds with FCC's goals. The Tribe urges the Committee to take action now by working with the FCC and the authorizing Committee to ensure that Native Americans have access to a connected future. If the FCC's Order remains intact without any further modifications, the lofty goals of the National Broadband Plan will be unreachable.

Thank you again for the opportunity to provide these views on behalf of the Tribe. I welcome any questions that the Committee may have at this time.

Attachment



The CHAIRMAN. Thank you very much for your testimony.

Mr. Merriam, will you please proceed with your testimony.

STATEMENT OF STEPHEN MERRIAM, CEO, ARCTIC SLOPE TELEPHONE ASSOCIATION COOPERATIVE, INC.

Mr. MERRIAM. Chairman Akaka, Vice Chairman Barrasso, members of the Committee, good afternoon. My name is Steve Merriam. I want to thank you for the opportunity to testify today before this distinguished Committee on the subject of Universal Service Reform, Ensuring a Sustainable and Connected Future for Native Communities.

I serve as the Chief Executive Officer and General Manager of Arctic Slope Telephone Association Cooperative, or ASTAC, the

local exchange carrier serving the North Slope region of Alaska. I have worked in rural telephony for the past 17 years and hold a bachelor of science degree in business administration from the University of Vermont and an MBA specializing in telecommunications management from Alaska Pacific University.

ASTAC serves seven Inupiat Eskimo villages, the oil fields of Prudhoe Bay and Barrow, a land mass of 92,000 square miles, which is slightly larger than Minnesota and part of North Dakota. Our entire serving area is Arctic, where we face rugged challenges due to extreme cold, harsh inclimate weather, lack of roads, and sparsely populated and widely dispersed communities.

Despite these challenges, we have digital switching in all exchanges and offer 2G wireless voice and data service as well as DSL. Yet, it wasn't always that way. As late as 1980, our seven villages were served by one pay phone for the entire village. Every call was long distance and people stood in line, sometimes for hours, for a less than a private call.

At the time, no one was interested in serving these communities, which eventually led the people to form a cooperative to provide local telephone service. With the assistance of an RUS loan, digital switches were installed in newly-constructed central offices and local networks were built out, creating local service for the very first time and connecting the communities of the North Slope to each other and the world.

The steady progress the cooperative has made would not have been possible without the covenant of Universal Service and the support it provides to the highest cost to serve areas of rural America. While the transformation orders stated intent, to bring access to broadband for all Americans is a laudable goal, the reality is there are unintended negative consequences for Alaska Natives because of the broad brush approach taken by the FCC in the order, consequences that would raise costs for consumers, diminish or eliminate existing services and will lead to the loss of jobs.

Most egregiously, it will penalize Native youth in numerous ways. There will be lost opportunities to participate in the digital world as a result of the FCC's decision to use alternative middle mile technology, specifically satellite, in rural Alaska. The lack of broadband capacity on Alaska-serving satellites will extinguish the dream of a good education, whether through earning an online degree or through vocational certification.

Tele-health and tele-work will never be fully realized without robust broadband, nor the economic stimulus of good wages brought back to a traditional subsistence community by an educated and skilled workforce. Communities will continue to stagnate relative to the rest of America and hopelessness and depression will continue to plague Alaska Natives, who have a suicide rate five times the national average.

As part of my written testimony, I will provide an engineering report commissioned by Tel-Alaska that examines Alaska-serving satellite capabilities. In the interest of time, I will summarize the findings as they relate to the transformation order. Minimum upload and download speeds for both fixed and wireless broadband specified for funding in the order are unattainable via Alaska-serving satellites due to severe lack of capacity. Alaska-serving satellite

costs for middle mile transport alone will cause both fixed and mobile pricing to fail the comparable pricing to urban areas test and latency over satellite well exceeds the threshold for enabling real-time applications, such as voice over IP.

My testimony highlights two problems facing Alaska Natives, one short-term and the other more long-term. As noted above, satellite-served communities in Alaska will fail all criteria to receive both Connect America and mobility funding. While the FCC has created a waiver process to provide possible relief, the process is extremely burdensome and expensive to use, particularly when the waiver is universal to rural Alaska because of misguided standards.

A needed short-term solution that would save both the FCC and rural Alaska-served companies time and resources is for the FCC to adjust speed and latency requirements to match the limitations inherent to Alaska-serving satellites. This would allow those companies to continue to invest their services in members rather than waste those scarce resources on addressing a universally identified error specifically affecting rural Alaska.

It would also acknowledge that satellite service in Alaska is not an alternative service as it is being characterized by the FCC in its order, it is an inferior service. Disparity must be acknowledged before it can be corrected.

Likewise, service standards for mobility phase two should be lowered in Alaska to reflect the absence of satellite capacity to provide 3G or 4G service. A good 2G wireless service exists in much of Alaska today, but is set to be defunded by the phase-down of identical support in two years. This will eventually drive these wireless services out of business and take away a safety margin for Native Alaskans. Allowing 2G service standards in the short term to reflect the reality of satellite limitations will prevent the eventual elimination of wireless service for Native Alaskans in rural communities as well as avoid the political firestorm that will ensue. Identical support could be phased down in Alaska on the proposed schedule consistent with how the order is written today.

At the beginning of the phase-down, competitive eligible telecommunication carriers may show their costs. Phase-down of support would cease when it reaches the cost for the company to provide wireless service. Companies who decline to show their costs should be phased down on an accelerated schedule. This would provide scarce dollars and mobility phase one and two options to other rural areas where there is no service today.

The longer term problem quite obviously is that Alaska Natives are being left behind absent government intervention to solve the middle mile bottleneck and achieve the broadband speeds being achieved by much of the rest of the Country. The Administration and the FCC proclaim that all Americans have a right to access broadband. In Alaska, we believe all Americans must include the First Americans.

For too many years, Native Alaskans have been marginalized with substandard services that much of the rest of the Country takes for granted. Having identified both the problems and some solutions, I urge you to act boldly and decisively in your leadership capacity to drive change and to do what is just, so in the future when the Congress and the FCC says all Americans must have ac-

cess to broadband, it rings true and truly is consistent with our Nation's communications goals.

Thank you again for the opportunity to testify in front of this distinguished Committee.

[The prepared statement of Mr. Merriam follows:]

PREPARED STATEMENT OF STEPHEN MERRIAM, CEO, ARCTIC SLOPE TELEPHONE ASSOCIATION COOPERATIVE, INC.

Chairman Akaka, Vice Chairman Barrasso, Members of the Committee:

Good afternoon. My name is Steve Merriam. Thank you for the opportunity to testify today before this distinguished Committee on the subject "Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities."

I serve as the Chief Executive Officer of Arctic Slope Telephone Association Cooperative (ASTAC), the local exchange carrier serving the North Slope Region of Alaska. I have worked in the rural telephony field for the last seventeen years and hold a Bachelor of Science degree in Business Administration from the University of Vermont and a MBA, specializing in Telecommunications Management from Alaska Pacific University.

ASTAC serves seven Inupiat Eskimo villages, the oilfields of Prudhoe Bay and Barrow, a land mass of over 89,000 square miles which is slightly larger than Minnesota and part of North Dakota. Our entire serving area is arctic, where we face rugged challenges due to extreme cold, harsh inclement weather, lack of roads, and sparsely populated and widely dispersed communities. Despite these challenges, we have digital switching in all exchanges and offer 2G wireless voice and data service as well as DSL.

It wasn't always that way. As late as 1980, our seven villages were served by *one* pay phone shared by the entire village. Every call was long distance and people stood in line, sometimes for hours, to have a less than private conversation. At the time, no one was interested in serving these communities, which eventually led the people to form a Cooperative to provide local telephone service. With the assistance of a RUS loan, digital switches were installed into newly constructed central offices and a local network was built out, creating local service for the first time and connecting the communities of the North Slope to each other and the world.

The steady progress that the Cooperative has made would not have been possible without the covenant of universal service and the support it provides to the highest cost to serve parts of rural America. While the Transformation Order's stated intent, to bring access to broadband to all Americans, is a laudable goal, the reality is that there are unintended negative consequences for Alaska Natives because of the broad brush approach taken by the FCC in the Order, consequences that will raise costs to consumers, diminish or eliminate existing services, and will force the loss of jobs.

Most egregiously, it will penalize Native youth in numerous ways. There will be lost opportunity to participate in a digital world as a result of the FCC's decision to use alternative middle mile technology, specifically satellite in rural Alaska. The lack of broadband capacity on Alaska serving satellites will extinguish the dream of access to a good education, whether through earning an on-line college degree or vocational certification. Telehealth and telework will never be fully realized without robust broadband, nor the economic stimulus of wages brought back to a traditional subsistence community from an educated and skilled workforce. Communities will continue to stagnate relative to the rest of America, and hopelessness and depression will continue to plague rural Alaska Natives, who have a suicide rate five times the national average.[1]

As part of my written testimony, I will provide an engineering report[2] commissioned by TelAlaska that examines Alaska serving satellite capabilities. In the interests of time, I will summarize the findings as they relate to the Transformation Order:

- Minimum upload/download speeds for both fixed and wireless broadband specified for funding in the Order are unattainable via Alaska serving satellites due to a severe lack of capacity.

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[1] *http://www.nytimes.com/2007/05/14/world/americas/14iht-alaska.1.5699923.html*

[2] *See* Appendix A for the complete report. In the TelAlaska study, that company's 1,552 DSL customers would exhaust approximately 26 percent of all available satellite bandwidth in Alaska in order to meet the "relaxed" FCC mandate for throughput from satellite, at a yearly cost of thirty million dollars.

- Alaska satellite costs for middle mile transport alone will cause both fixed and mobile pricing to fail the comparable pricing to urban areas test.[3]
- Latency over satellite well exceeds the threshold for enabling real time applications such as VoIP.

My testimony highlights two problems facing Alaska Natives, one short term and the other more long term.

As noted above, satellite served communities in Alaska will fail all criteria to receive both CAF and Mobility funding. While the FCC has created a waiver process to provide possible relief, that process is extremely burdensome and expensive to use, particularly when the waiver is universal to rural Alaska because of misguided standards. *A needed short term solution,* that would save both the FCC and the rural Alaska satellite served companies time and resources, is for the FCC to adjust speed and latency requirements to match the limitations inherent to Alaska serving satellites. This would allow those companies to continue to invest in services for their members rather than waste those scarce resources on addressing a universally identified error specifically affecting rural Alaska. It would also acknowledge that satellite service in Alaska is not an alternative service as it is being characterized by the FCC in its Order, it is an inferior service. Disparity must be acknowledged before it can be corrected.

Likewise, service standards for Mobility Phase II should be lowered for Alaska to reflect the absence of satellite capacity to provide 3G or 4G service. A good working 2G wireless service exists in much of Alaska today but is set to be defunded by the phase down of identical support in two years. This will eventually drive these wireless services out of business and take away a margin of safety for Native Alaskans. Allowing 2G service standards *in the short term,* to reflect the reality of satellite limitations, will prevent the eventual elimination of wireless service for Native Alaskans in rural communities, as well as avoid the ensuing political firestorm. Identical support could be phased down in Alaska on the proposed schedule, consistent with how the Order is written today. At the beginning of the phase down, competitive eligible telecommunications carriers (CETC's) may show their costs. Phase down of support would cease when it reaches the cost for the company to provide the wireless service. Companies that decline to show their costs should be phased down on an accelerated schedule.

These actions would redirect scarce dollars in the Mobility Phase 1 & 2 auctions to other rural areas that have no service today and would maintain some level of competition, and the service quality that competition brings, to rural Alaska and its people.

The longer term problem quite obviously is that Alaska Natives are being left behind, absent government intervention to *solve* the middle mile bottleneck and achieve the broadband speeds being received by much of the rest of the country. The FCC and the Administration proclaim that all Americans have a right to access broadband. In Alaska, we believe all Americans must include *the first Americans.*

For too many years, Native Alaskans have been marginalized with substandard services that much of the rest of the country takes for granted. Having identified both the problems and some solutions, I urge you to act boldly and decisively in your leadership capacity, drive change, and do what is just, so when in the future the Congress and the FCC say "all Americans must have access to broadband," it rings true, and is truly consistent with our nation's communications goals.

Thank you again for the opportunity to testify in front of this distinguished Committee.

APPENDIX A—SATELLITE INTERNET REVIEW—JANUARY 30, 2012

Purpose of Review

To determine if there were any satellite providers that can supply 1 Mbps download and 256 Kbps upload sustained data rates to each data subscriber in the Mukluk and Interior exchanges where Satellite is the only method of access.

Mukluk and Interior Locations Considered in This Review

The locations with satellite services include: Cold Bay, Glena, Fort Yukon, Nome, Brevig, Teller, Shishmaref, St. Michael, Stebbins, Shaktoolik, white Mt, Little Diomede, Wales, Golovin, Elim, Unalalaska and Koyuk.

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[3] *See http://assets.gci.com/tariffs/1544mbpst1speed.pdf* or Appendix B for an appended version for ASTAC's middle mile costs, which are quoted at $14,447.00 per month for 1.544 Mbps middle mile transport.

Satellite Spectrum Analysis

There are 1552 Internet subscribers in the Mukluk and Interior exchange locations served by satellite. To determine how much spectrum is needed we used the following calculations:

- 1552 users at 1 Mb/s down at 36MHz/per transponder Telalaska will require 17 transponders to serve this portion of the bandwidth requirement
- 1552 times 256 kb/s at 36 MHz per transponder, the required return transponder space is estimated to be 10 transponders
- To serve the 1552 customers will require 27 transponders
- This traffic will be terminated at the Teleporter location

Rough order of cost for 27 transponders on a C-band and/or KU Band satellite is estimated to be 30 Million per year or $4000 per user per month.

Satellites Available to Serve Mukluk and Interior Communities

There are only a couple of satellites serving the majority of the northern Telalaska communities.

The first satellite system to be considered is the Telesat Satellite systems which operate three satellites, the Anik F1R, Anik F2 and Anik F3, which serves northern Canada and Alaska on the fixed-service satellite band.

Only Anik F2 and Anik F3 provide broadband Internet service. The F2 satellite, serves Canada's northern territories through providers like SSI Micro and Northwestel. The Anik F3 satellite supplies broadband Internet to providers in northern Ontario, Quebec and Alaska.

The Telsat organization has indicated if F2 falls out of the sky, every community in northern Canada would go dark. They have reserved bandwidth on Anik F3 in case of an F2 failure and would point all those F2 customers to Anik F3.[4]

The Anik F3 satellite is the primary satellite serving Telalaska needs today. It is presently 80 percent utilized today.[5]

Another satellite system to consider is the Galaxy 18 satellite which can serve the Mukluk and Interior communities. Galaxy 18 is a Space Systems/Loral (SS/L) 1300-series hybrid communications satellite owned by Intelsat and located in geosynchronous orbit at 123° W longitude, serving the continental United States, Alaska, Hawaii, Mexico, and Canada with 24 C-band, and 24 Ku band transponders.[6]

Galaxy 18 is the home of many free-to-air television channels used by several national TV stations. This satellite is also used by other wireless carriers such as Clear Channel and GCI in Alaska.

Intelsat's quarterly report completed in 2011 indicated that the private broadband networks for global organizations continue to see increased demand for their capacity. In the second quarter of 2011, Bell Canada, Canada's largest communications company, renewed and expanded an agreement with Intelsat to provide a global IntelsatONE network broadband solution for a widely-dispersed civilian government network.[7] This means transponder space is in high demand in Canada and other northern markets. This increased demand will make it difficult for one carrier to obtain a large portion of transponder space.

We also discover these satellites have limited transponder capacity and there is no near term plan to upgrade bandwidth on Anik F3 and Galaxy 18 in the near future.[8] This means there is a finite amount of transponder space.

The newest satellite launched to meet the growing data demands was the Viasat 1. The ViaSat-led project was developed by Loral to propel a series of satellites into space which was meant to enter the mainstream of broadband access choices alongside DSL and cable. This satellite was put into space on October 19th 2011.

Because Viasat-1 satellite was just launched late last year, there are limited coverage maps on this satellite. The only one we could find was on Satbeams.com. It indicates the satellite should be able to serve most of Alaska:[9]

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[4] Excerpts from a 2010 report *http://www.fridgefta.info/forums/printthread.php?tid=14640.*

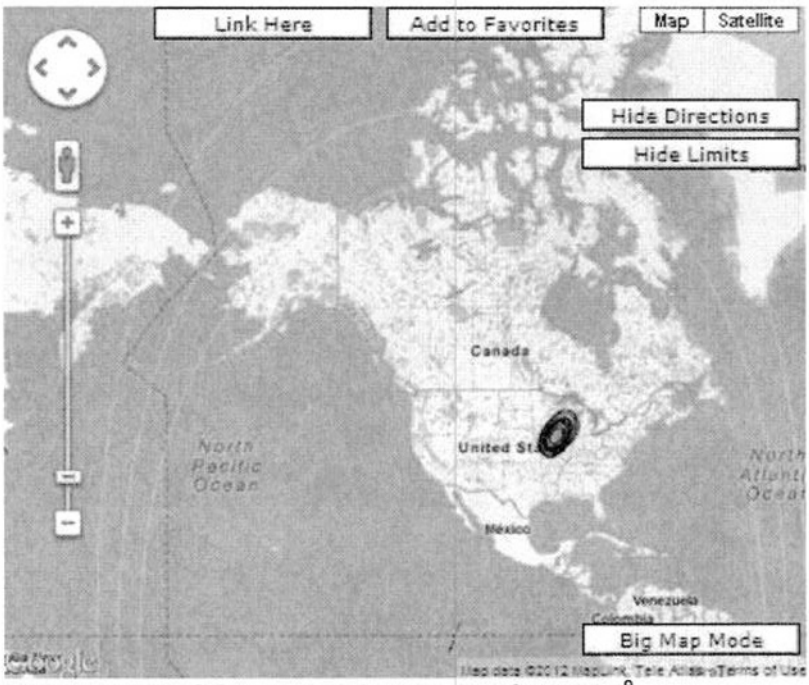
[5] This was indicated by Suzanne Palmini of X2Nsat in January 2012.

[6] *http://en.wikipedia.org/wiki/Galaxy__*18.

[7] *http://www.intelsat.com/__*files/investors/financial/2011/2011–2Qer.pdf.

[8] Anik F3 has 24 transponders in the C band and 32 transponders in the KU band. Galaxy 18 has 24 transponders in C band and 24 transponders in Ku band.

[9] *http://www.satbeams.com/footprints?beam=6554*



Here is a map of the expected coverage of Viasat-1[9]

The concern should be not whether the satellite can provide service to the communities but if the companies supplying the signal can support the local residence and businesses in those areas. This support doesn't just stop with the just providing a signal to the residence and businesses in the communities but should be able to meet the local service and support needs to the residence, businesses, schools, libraries and the community.

When we tried to contact a Wild Blue representative the website identify a local reseller out of Anchorage. We contacted that person. He did not indicate he represented Wild Blue directly but indicated he worked with several satellite carriers and indicated he could provide service to the above mention location. He also indicated they would install the system but service would come out of the lower 48. They indicated an engineer would contact me to discuss installation options. As of this writing, I have not had another follow-up call.

Again wanting to understand what Wild blue plans to offer, I looked further on their web site to see if I could get a more definitive answer. I found this FAQ page:

Will Wild Blue be available in Alaska, Hawaii or Puerto Rico?

Answer. Wild Blue is planning to start offering high-speed Internet services in Hawaii and southern Alaska (Anchorage and most of the Kenai peninsula) in early 2012.[10]

I also tried to find a support person from Hughes. I did find installation crews in Fairbanks and a new company just getting started in Anchorage to serve the Kenai and southern areas of the state. I called and they both indicated they only did installation work. Service would come from the Hughes service line in the lower 48. They would only respond to a problem if dispatched by Hughes.

Satellite Teleport Resource Considered in this Analysis

We solicited three Satellite providers to find out if they could serve the communities outlined above.

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[10] *http://www.wildblue.com/overview/faqs#3__3*

1.	Globecomm Systems 45 Oser Avenue Hauppauge, NY 11788 Tel: (631) 231-9800	Contact: Steve Spreizer (VP - Network Eng.) Phone: (631)457-1127 Email: sspreizer@globecommsystems.com
2.	X2nSat 1333 N. McDowell Blvd. Suite A Petaluma, CA. 94954 Tel: (707) 283-8000	Contact: Suzanne Palmini (Sales Executive) Phone: (707) 283-8012 Email: suzanne@x2nsat.com
3.	Satcom resources PO Box 1639 101 Eagle Rd., Building 7 Avon, CO 81620-1639	Contact: Chris Weathers Phone: (970) 748-4255 Email: chris.weathers@satcomresources.com
4.	SATELLITE ALASKA	Contact: John MacPherson (only contact in Alaska for Wild Blue) Phone: 907 243-7475

We asked each Satellite company:

1. If they could provide 1Mbps/256KBPS guaranteed sustained throughput from each data consumer in each community and terminate all users to a data access peering point in Anchorage Alaska?
2. If they could provide the service, what would it cost?

Satellites Providers Responses

Globecomm Response

Spreizer, Steve—*sspreizer@globecomm.com*—Jan 24

Hi,

Thanks for sending me the information. Unfortunately we are not in a good position to address it. As I mentioned on the phone we do not have a facility in Anchorage to terminate the traffic. I checked and the only coverage we have for Alaska would actually terminate back here at our NY facility and then it would have to be routed back to Anchorage via terrestrial circuit/public Internet. This would not be a good technical solution or cost effective for you.

I think you also need to revisit your bandwidth calculations. Satellite bw is very expensive. 137 Mbps of dedicated capacity will easily cost >$1M per year.

On January 30

We pressed Steve to tell us if there was transponder space today to serve TelAlaska needs. This was his final response, "This type of capacity is not readily available today for Alaska. However if someone is really willing to pay this amount of money, a solution can be found."

X2nSat Response

Suzanne Palmini—*suzanne@x2nsat.com*—Jan 25

Terry—Please find, attached, our findings. The conclusion is it is NOT feasible to dedicate 1M x 512 per subscriber. But, it is doable if you oversubscribe the network and gamble not everyone is "always on" thus freeing up bandwidth. Feel free to correspond directly with Phil should you have any questions. Thank you.

This was the suggested design with Overbooking from X2nSat (Still Costly)

10:1 Overbooking scheme for 607 Users with 5 Mb/s max Down & 1 Mb/s max Up

25 Gbyte/month Down max & 5 Gbyte/month Up, then charge extra

Need one 36 MHz transponder for our DVB–S2 at 90 MB/s and 12 MHz for the Upload Returns

Each Remote sites combines the Upload of it's users into a constant carrier back to hub

example 50 users x 30 kb/s avg = 1.5 Mb/s return carrier shared, minimum would have to be 1 Mb/s to meet spec if BW is $150,000/month over 600 = $250/month per user, if too much go 20:1 overbook for $125/month/user.

Satcom Response

Chris Weathers—*chris.weathers@satcomresources.com*—Jan 26

Hi,

The most spectral efficient satellite link we've seen runs about 6 Mbits/MHz. So for 137Mbps, that would require over 23 MHz of space segment just for the downstream bandwidth. Satellite Space Segment is selling for $4,500 to $5,000 per MHz, that's a monthly bill of over $103,000. This is the best case scenario. Of course, there are startup fees and Teleport fees and backbone termination feeds on top of the monthly cost but I wanted to hear if this is worth looking into further or not.

Conclusion of the Discovery

The three main hub providers, after reviewing their established resources, came to the same conclusion. Today none could guarantee they could provide the transponder spectrum required to serve Mukluk and Interior data users based on the sustain rates required by their interpretation of the new FCC ruling.

The three main hub providers also indicated the costs for the service would be extremely expensive. The cost per subscriber would be upward of $4000 per sub per month—just for the cost of the service. This doesn't include the costs of over head support and management, as well as ongoing customer care, billing and Internet access. These additional costs would increase the month rate by at least $500 per month per subscriber.

The hub respondents indicated an overbook ratio as an alternative. They indicated this could be designed to give the end user the perception that they will have the full bandwidth available to them on a *demand* basis because it is assumed all users will not consume all of their bandwidth at the same time.

The primary advantage of overbooking is to lower transport service cost. It is estimated overbooking will lower the cost of the service by as much as 50 percent. Studies on Internet access using overbooking can yield a 300–500 percent improvement in costs of access, while still providing useful resource guarantees to applications.[11] Another study completed by Rutgers University in 1999 focused on how the airline industry uses overbooking strategies to manage seat occupancy control while improving revenue streams.[12]

Exhibit A

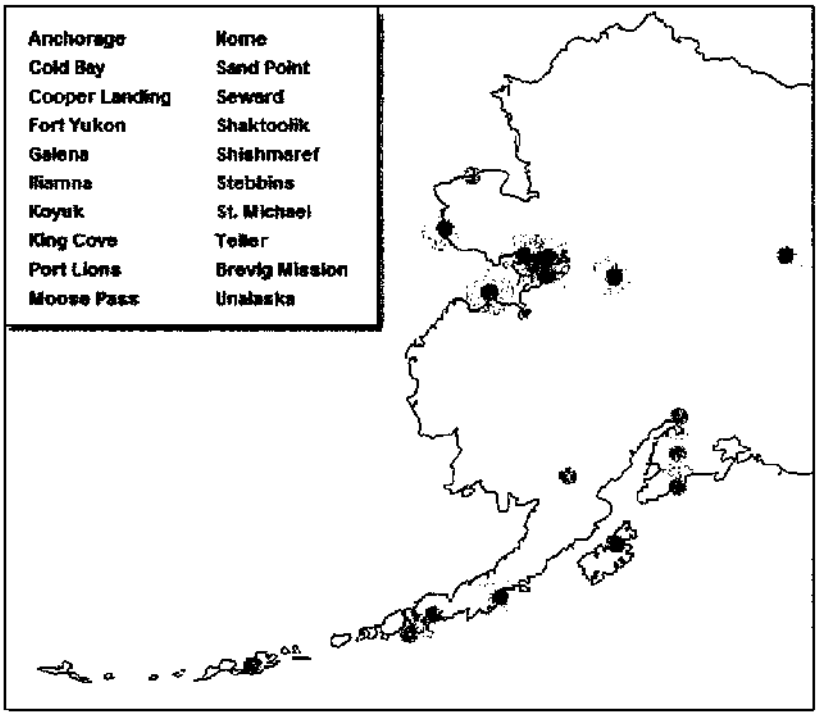
TelAlaska Locations served by Satellite and the Number of DSL Customers Per Location

Cold Bay	47
Galena	142
Fort Yukon	83
Nome	137
Brvig/Teller	47
Shishmaref	34
St. Michael	18
Stebbins	28
Shaktoolik	22
Koyuk	23
Unalaska	695
King Cove	180
Wales	12
Little Diomede	8
Golovin	20
Port Lions	34
White Mt	20
Elim	20
Total number for users	1552

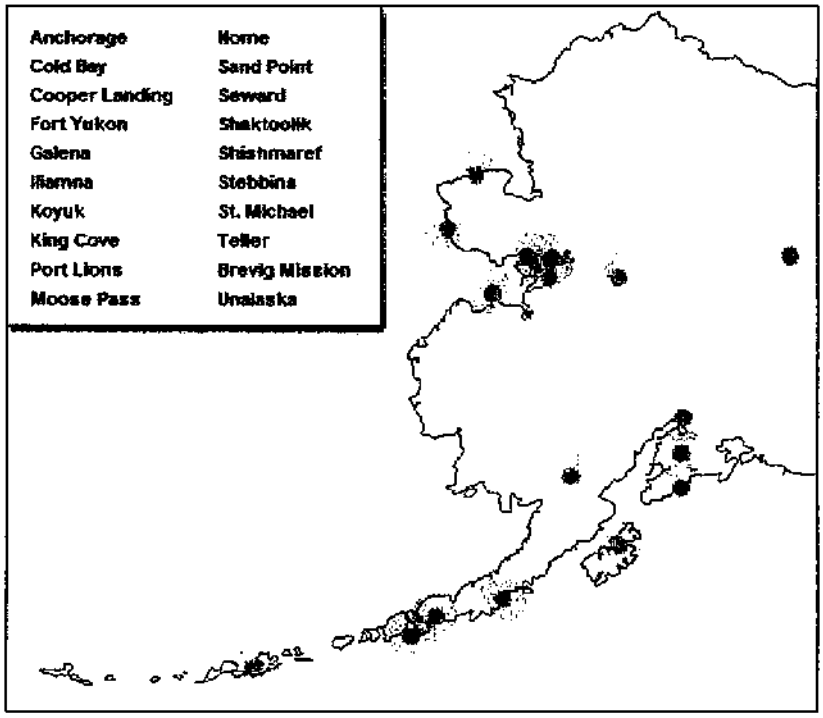
[11] 1A*http://people.inf.ethz.ch/troscoe/pubs/TOITS09.pdf*; another is on revenue management: *http://en.wikipedia.org/wiki/Revenue_*management; another report presented to Globecom in 1998: *www.cs.ucla.edu/nrl/hpi/papers/1998-globecom-2.ps.*

[12] *http://ben-israel.rutgers.edu/711/McGill-VanRyzin.pdf*

A General Map Layout of all Mukluk and Interior Locations



A General Map Layout of all Mukluk and Interior Locations



APPENDIX B

1.544 Mbps RATES

Description

GCI Private Line service provides data service between specific points suitable for use in any manner compatible with the channel's technical characteristics.

Local Exchange Facilities

Local Exchange Facilities for terminating GC1 Digital Private Line Service will be obtained from the appropriate exchange carrier at its tariffed rate.

Rates and Charges

Rates quoted below are monthly recurring charges (7 days/Week, 24 hrs/day), do not include local channel access charges, and apply to each section of an interexchange channel, i.e.; between each pair of points, on all types of channels.

Installation Charge :

$
200.00

Monthly Rates :

The pricing chart refers to "DAMA Villages". Please see, below the chart, the listing of cities considered 'DAMA Villages".

1.544 Mbps

	BETWEEN	Month to Month	Monthly Recurring Charge
Barrow	Bethel	Satellite	$14,447
Barrow	Cordova	Satellite	$14,447
Barrow	Dillingham	Satellite	$14,447
Barrow	Dutch Harbor	Satellite	$14,447
Barrow	Eagle River	Satellite	$14,447
Barrow	Fairbanks	Satellite	$14,447
Barrow	Juneau	Satellite	$14,447
Barrow	King Salmon	Satellite	$14,447
Barrow	Kotzebue	Satellite	$14,447
Barrow	Nome	Satellite	$14,447
Barrow	Prudhoe Bay	Satellite	$14,447
Barrow	Seattle	Satellite	$14,447
Barrow	DAMA Villages	Satellite	$14,447
Prudhoe Bay	Barrow	Satellite	$14,447
Prudhoe Bay	Bethel	Satellite	$14,447
Prudhoe Bay	DAMA Villages	Satellite	$14,447
Prudhoe Bay	Dillingham	Satellite	$14,447
Prudhoe Bay	Dutch Harbor	Satellite	$14,447
Prudhoe Bay	Ketchikan	Satellite	$14,447
Prudhoe Bay	King Salmon	Satellite	$14,447
Prudhoe Bay	Kodiak	Satellite	$14,447
Prudhoe Bay	Kotzebue	Satellite	$14,447
DAMA Villages	Barrow	Satellite	$14,447
DAMA Villages	Bethel	Satellite	$14,447

DAMA Villages	Cordova	Satellite	$14,447
DAMA Villages	Dillingham	Satellite	$14,447
DAMA Villages	Dutch Harbor	Satellite	$14,447
DAMA Villages	Eagle River	Satellite	$14,447
DAMA Villages	Fairbanks	Satellite	$14,447
DAMA Villages	Juneau	Satellite	$14,447
DAMA Villages	Kenai	Satellite	$14,447
DAMA Villages	Ketchikan	Satellite	$14,447
DAMA Villages	King Salmon	Satellite	$14,447
DAMA Villages	Kodiak	Satellite	$14,447
DAMA Villages	Kotzebue	Satellite	$14,447
DAMA Villages	Nome	Satellite	$14,447
DAMA Villages	North Pole	Satellite	$14,447
DAMA Villages	Prudhoe Bay	Satellite	$14,447
DAMA Villages	Seattle	Satellite	$14,447
DAMA Villages	Seward	Satellite	$14,447
DAMA Villages	Sitka	Satellite	$14,447
DAMA Villages	Valdez	Satellite	$14,447

<u>Term Discounts</u> :

Term Commitment	Discount
1 year	3%
2 year	4%
3 year	5%
5year	10.00%

DAMA Villages:

Barrow Region

Anaktuvuk Pass*

Atqasuk*

Kaktovik*

Nuiqsut*

Point Hope*

Point Lay*

Wainwright*

EFFECTIVE: December 13, 2005

At the request of Chairman Akaka, I am providing additional written responses corresponding to Commissioner Clyburn's testimony on the subject "Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities." My responses will address misunderstanding of the facts pertaining to the Quantile Regression Analysis, the Petition for Waiver process and throughput standards for Alaskan satellite served companies.

Quantile Regression Analysis (QRA)

At 49:49 of the recorded hearing, in reference to a question on data errors in the QRA, Commissioner Clyburn stated "If there is erroneous data by chance, I assure you, if and when it is brought to our attention, we will make the necessary modifications." At 51:40, the Commissioner stated, "We included an Alaska specific variable to reflect the different costs in that area." At 54:25, Commissioner Clyburn reaffirmed the Commission's willingness to act quickly if data errors are brought to their attention, stating, "If we are deficient in any way, I assure you that tomorrow we will correct that and do better."

We appreciate the candor of Commissioner Clyburn and her willingness to act upon data errors which the Commission has acknowledged publicly. As a company which was going to be a recipient of additional support when the QRA was first calculated, and after modification of the model, saw our capped support reduced by over half a million dollars with full phase in on January 1, 2014, we have struggled with trying to understand how we became an outlier. While parts of the regression model are not easily deciphered, some input variable data and regression coefficients can be observed. In the Arctic Slope Telephone Association Cooperative (ASTAC) serving area, the FCC had listed our road miles at 2,429 miles. The actual number is closer to 300 miles of road. Since road miles carry a significant negative coefficient, it negatively impacted our allowable Capex and Opex regression capped funding. Alaska was given its own "dummy" variable to acknowledge the different costs we experience. Unfortunately, the Capex coefficient assigned to Alaska is negative, which is counter intuitive to what we believe the Commission was trying to achieve. Certainly, no one can reasonably think that building outside plant in the arctic is less expensive that doing so in much of the lower 48 states? Similarly, the Bureau of Indian Affairs has ruled that all of Alaska is tribal lands, yet the regression input "percent tribal land" is only 23.4 percent. Climate, which is broken down into 16 zones, is used to account for minimum temperatures. It is a predictor of time the ground isn't frozen; seemingly short construction seasons due to permafrost raise costs for companies serving these areas.

Again, it appears that logic got inverted in the model when ASTAC compares itself to another company operating in south central Alaska who have higher minimum temperatures but received a greater positive input variable. We intend to follow up with the Wireline Competition Bureau before the implementation of the capped support and appreciate the willingness of the FCC to "get it right."

Petition for Waiver

When questioned about the burdensome and expensive waiver process, Commissioner Clyburn stated at 68:31, "Most of the information that companies need to submit to us can be found if you practice GAAP that should be relatively, basically all you need to submit to the Agency." Appendix A lists the entire waiver requirements. While we do not disagree that part of what is being requested falls under GAAP, the data request is, as promised, "subject to a rigorous, thorough and searching review comparable to a total company earnings review"[1] and much of what is being asked for will have to be generated at great expense. "Failure to provide the listed information shall be grounds for dismissal without prejudice. In addition to the above, the petitioner shall respond and provide any additional information requested by Commission staff."[2] The FCC has taken a talking points position that companies negatively impacted by the Transition Order do not need to hire consultants and lawyers to help them with the waiver and should instead address any questions they may have to the FCC. Given the importance of possible relief a waiver might bring to an impacted company and the ease with which a waiver can be dismissed, we do not think it is prudent strategy to try to submit a waiver without expert outside counsel. It is analogous to being a defendant in a capital case and having the prosecutor suggest you should ask him your questions about your defense.

[1] Paragraph 540, FCC 11–161.
[2] Paragraph 543, FCC 11–161.

High Cost of Satellite Backhaul

At 80:57, Commissioner Clyburn acknowledged the high cost of satellite middle mile transport, stating, "We recognize how expensive the middle mile is.So flexibility, we have allowed for flexible build out requirements." Yet, in their Third Order on Reconsideration, the FCC denied the Alaska Rural Coalition's request for a more relaxed throughput standard due to the insufficiency of available throughput on Alaska serving satellites and the extremely high cost of that bandwidth. In their decision, the FCC wrote, The Alaska Rural Coalition asks that we reconsider these requirements in two respects. First, the Alaska Rural Coalition objects to the requirements imposed on carriers reliant on satellite backhaul, claiming that it "is not convinced that current satellite offerings can reliably meet" the relaxed speed requirements for such carriers. The Coalition asks that "further consideration . . . be given to the cost and realistic capacity of the satellites serving Alaska." But the Alaska Rural Coalition provides no information about satellite capacity limitations. Indeed, the Coalition does not even actually assert that meeting the relaxed requirements will, in fact, pose a challenge at all. On this record, we are not convinced that we should modify these requirements.[3]

Note that the issue of satellite middle mile cost, raised by the Alaska Rural Coalition, is absent in the response by the FCC. Additionally, four Alaska Rural Coalition members, Arctic Slope Telephone Association Cooperative, Inc., Copper Valley Telephone Cooperative, Interior Telephone Company Inc. and Mukluk Telephone Company Inc. have provided the FCC and Wireline Competition Bureau staff with an engineering study that clearly shows the lack of capacity on Alaska serving satellites as well as the extraordinary expense. The findings were part of ex parte briefings which occurred prior to the release of the Third Order on Reconsideration.[4] This information was not refuted by the FCC nor did they provide any contrary data. Instead, they ignored the record in their decision not to grant a more relaxed speed and remained silent on the issue of cost that the study also raised as an issue. Absent regulatory relief, companies unable to certify they meet the throughput standard of 1Mbps download/256Kbps upload due to limited capacity and high cost could be denied support.

APPENDIX A—PETITION FOR WAIVER REQUIREMENTS—FCC 11–161, PARAGRAPHS 540–544

540. We do not, however, expect to grant waiver requests routinely, and caution petitioners that we intend to subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review. In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well.902 The intent of this waiver process is not to shield companies from secular market trends, such as line loss or wireless substitution. Waiver would be warranted where an ETC can demonstrate that, without additional universal service funding, its support would not be "sufficient to achieve the purposes of [section 254 of the Act]."903 In particular, a carrier seeking such waiver must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative. We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.904 We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service to consumers using the same or other technologies that provide the functionalities required for supported voice service. We will also consider whether the specific reforms would cause a provider to default on existing loans and/or become insolvent. For mobile providers, we will consider as a factor specific showings regarding the impact on customers, including roaming customers, if a petitioner is the only provider of CDMA or GSM coverage in the affected area.

541. Petitions for waiver must include a specific explanation of why the waiver standard is met in a particular case. Conclusory assertions that reductions in sup-

[3] Paragraph 44, FCC 12–52, Third Order on Reconsideration.

[4] *See https://prodnet.www.neca.org/publicationsdocs/wwpdf/22712gvnw.pdf; https://prodnet.www.neca.org/publicationsdocs/wwpdf/22812gvnw.pdf; and https://prodnet.www.neca.org/publicationsdocs/wwpdf/22912gvnw.pdf.*

port will cause harm to the carrier or make it difficult to invest in the future will not be sufficient.

542. In addition, petitions must include all financial data and other information sufficient to verify the carrier's assertions, including, at a minimum, the following information:

- Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area's high costs.
- Information regarding existence or lack of alternative providers of voice and whether those alternative providers offer broadband.
- (For incumbent carriers) How unused or spare equipment or facilities is accounted for by providing the Part 32 account and Part 36 separations category this equipment is assigned to.
- Specific details on the make-up of corporate operations expenses such as corporate salaries, the number of employees, the nature of any overhead expenses allocated from affiliated or parent companies, or other expenses.
- Information regarding all end user rate plans, both the standard residential rate and plans that include local calling, long distance, Internet, texting, and/or video capabilities.
- (For mobile providers) A map or maps showing (1) the area it is licensed to serve; (2) the area in which it actually provides service; (3) the area in which it is designated as a CETC; (4) the area in which it is the sole provider of mobile service; (5) location of each cell site. For the first four of these areas, the provider must also submit the number of road-miles, population, and square miles. Maps shall include roads, political boundaries, and major topographical features. Any areas, places, or natural features discussed in the provider's waiver petition shall be shown on the map.
- (For mobile providers) Evidence demonstrating that it is the only provider of mobile service in a significant portion of any study area for which it seeks a waiver. A mobile provider may satisfy this evidentiary requirement by submitting industry-recognized carrier service availability data, such as American Roamer data, for all wireless providers licensed by the FCC to serve the area in question. If a mobile provider claims to be the sole provider in an area where an industry-recognized carrier service availability data indicates the presence of other service, then it must support its claim with the results of drive tests throughout the area in question. In the parts of Alaska or other areas where drive testing is not feasible, a mobile provider may offer a statistically significant number of tests in the vicinity of locations covered. Moreover, equipment to conduct the testing can be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions. Testing must examine a statistically meaningful number of call attempts (originations) and be conducted in a manner consistent with industry best practices. Waiver petitioners that submit test results must fully describe the testing methodology, including but not limited to the test's geographic scope, sampling method, and test set-up (equipment models, configuration, etc.). Test results must be submitted for the waiver petitioner's own network and for all carriers that the industry-recognized carrier service availability data shows to be serving the area in which the petitioner claims to be the only provider of mobile service.
- (For mobile providers). Revenue and expense data for each cell site for the three most recent fiscal years. Revenues shall be broken out by source: end user revenues, roaming revenues, other revenues derived from facilities supported by USF, all other revenues. Expenses shall be categorized: expenses that are directly attributable to a specific cell site, network expenses allocated among all sites, overhead expenses allocated among sites. Submissions must include descriptions the manner in which shared or common costs and corporate overheads are allocated to specific cell sites. To the extent that a mobile provider makes arguments in its waiver petition based on the profitability of specific cell sites, petitioner must explain why its cost allocation methodology is reasonable.
- (For mobile providers) Projected revenues and expenses, on cell-site basis, for 5 years, with and without the waiver it seeks. In developing revenue and ex-

pense projections, petitioner should assume that it is required to serve those areas in which it is the sole provider for the entire five years and that it is required to fulfill all of its obligations as an ETC through December 2013.

- A list of services other than voice telephone services provided over the universal service supported plant, e.g., video or Internet, and the percentage of the study area's telephone subscribers that take these additional services.
- (For incumbent carriers) Procedures for allocating shared or common costs between incumbent LEC regulated operations, competitive operations, and other unregulated or unsupported operations.
- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years. Specifically, the cash flow statement, income statement and balance sheets. Such statements shall include information regarding costs and revenues associated with unregulated operations, e.g., video or Internet.
- Information regarding outstanding loans, including lender, loan terms, and any current discussions regarding restructuring of such loans.
- Identification of the specific facilities that will be taken out of service, such as specific cell towers for a mobile provider, absent grant of the requested waiver.
- For Tribal lands and insular areas, any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities.

543. Failure to provide the listed information shall be grounds for dismissal without prejudice. In addition to the above, the petitioner shall respond and provide any additional information as requested by Commission staff. We will also welcome any input that the relevant state commission may wish to provide on the issues under consideration, with a particular focus on the availability of alternative unsubsidized voice competitors in the relevant area and recent rate-setting activities at the state level, if any.

544. We delegate to the Wireline Competition and Wireless Telecommunications Bureaus the authority to approve or deny all or part of requests for waiver of the phase-down in support adopted herein. Such petitions will be placed on public notice, with a minimum of 45 days provided for comments and reply comments to be filed by the general public and relevant state commission. We direct the Bureaus to prioritize review of any applications for waiver filed by providers serving Tribal lands and insular areas, and to complete their review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing on such waiver petitions.

The CHAIRMAN. Thank you very much.

Mr. Albert Hee, will you please proceed with your testimony.

STATEMENT OF ALBERT S.N. HEE, PRESIDENT, SANDWICH ISLES COMMUNICATIONS, INC.

Mr. HEE. Thank you, Mr. Chairman and members of this Committee.

It gives me great honor to appear before one kanaka maoli (Native person) to another.

As you are aware by my written testimony, my name is Albert Hee. I am a Native Hawaiian. We are the first and only rural local exchange carrier in Hawaii. We serve exclusively and have been mandated by the FCC to only serve those areas of Hawaiian Home Lands that are unserved or underserved.

I think it may be helpful at this point to understand the significance of what the Universal Service Fund really is and what Congress intended it to be. The Universal Service Fund is to prevent red-lining. Pure and simple, it is to prevent Americans from being red-lined by the large telecommunications companies because it is uneconomical or for whatever reason, they do not want to serve. The Communications Act of 1934 as amended by the Telecommunications Act of 1996 reaffirmed that all Americans deserve this. The

momentous change in rules that the FCC has done puts this in jeopardy. And it puts it in jeopardy very simply first and foremost by not grandfathering the obligations that we have incurred with RUS and with other lenders and with other contractors to provide the service that we have provided under the old rules.

There is no grandfather clause in the new rules. Without a grandfather clause, we are essentially doing zero base budgeting. While the FCC has tried very hard and the Commissioners have been very accommodating as far as working with us on trying to get through this process, I am probably uniquely qualified to talk about the waiver process and to talk about the safety nets that the Commissioners believe exist but do not.

Sufficient and predictable as this Congress put into the 1996 Act, under the old rules, is no longer good enough. Under the new rules the waiver process simply allows us an opportunity to ask, beg, for the ability to continue to do business as we were doing business under the old rules. I fail to see how a waiver process is sufficient or predictable. We should be within the body of the rules. We should not be asking for a waiver to the rules. That alone tells you that we are not included in the rules.

I filed a waiver, I was the first to file a waiver in December. I met numerous times with the staff. And I want to make sure this Committee understands. The waiver process under the new rules gives complete and unfettered discretion to the bureaucrats running the wire line bureau. It is not overseen by the Commissioners until and if we have to appeal the wire line bureau's decision.

The open communication that Commissioner Clyburn spoke of, and I must tell you, she has been very open, you saw an example of the open communications with the wire line bureau in last night's Communication Daily. I met with my attorneys, with the wire line bureau yesterday. We filed our last set of answers to their questions on April 19th. My attorney has been in contact with them weekly, asking if there are any problems or if there is any more information that we need to provide.

At this meeting, we were told you will get a new set of questions. This is from April 19th to yesterday. Nothing. And then we go and meet and they say, we have another round of questions. We say, can we have them. They say they will be forthcoming.

We did not understand that forthcoming meant I would get a call from a reporter within two hours of that meeting, asking me to comment on the letter that the FCC released with the questions to me. That is what is considered open dialogue at the FCC.

The problem of grandfathering, and while Commissioner Clyburn is very correct and she is, like I say, she is and I have found all of the Commissioners to be open, we have been in business for 15 years. We were late to this game, as far as utilizing these programs. Hawaiians and the citizens of Hawaii have been paying long distance charges since the 1930s, since the program's inception. We did not utilize any of these Universal Service funds until 1995.

We have been late to the game, we come into this and we get audited every year, all of our books are open. To say that we need to start from zero, we have been found compliant all of these 15

years with the rules, and now we are going to start from zero. And the attitude is that we are guilty until proven innocent.

But additionally, we are not told how to prove ourselves innocent.

In Hawaii, the island of Molokai is the perfect example of what happens when you allow red-lining in the communications field. Despite having a monopoly for 100 years, which eventually ended up with GTE and Verizon, when the incumbent telephone company put in an inter-island cable, they bypassed the island of Molokai, because the island of Molokai is predominantly Native Hawaiian. They had no access to inter-island cable.

Thank you. I see I have extended my remarks.

[The prepared statement of Mr. Hee follows:]

PREPARED STATEMENT OF ALBERT S.N. HEE, PRESIDENT, SANDWICH ISLES COMMUNICATIONS, INC.

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee, thank you for holding this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund Order (Order) on native communities across the country. My name is Al Hee and I am President of Sandwich Isles Communications, Inc. (SIC), a Rural Local Exchange Carrier (RLEC) serving Hawaii's indigenous people on Hawaiian Home Lands (HHL), Hawaii's "tribal lands", which were created by Congress through the Hawaiian Homes Commission Act of 1921 (HHCA). It is especially an honor for me to sit before you, as I am also a beneficiary of the HHCA. Thank you for this opportunity to share the devastating, albeit unintended, impacts the FCC's Order will have on the native Hawaiians who have come to rely on advanced telecommunications service since 1995.

On March 3, 2011, the FCC adopted a Notice of Inquiry (NOI) In the Matter of Improving Communications Services for Native Nations (CG Docket No. 11–41). In this filing, the FCC Chairman Julius Genachowski stated for the record that, ". . . communications services like broadband, wireless communications and radio aren't just valuable as a means to deliver entertainment and diversions. They are vital platforms for community-building, cultural preservation, and the promotion of public health, education and economic opportunity in Native Nations."

We agree and believe that broadband is the great equalizer for our people. It will allow native Hawaiians to leapfrog the digital divide that has historically held us back, enabling us to succeed in the 21st century and beyond. Success and self-sufficiency in today's environment means native Hawaiians must have access to broadband technology so they can fully participate in a capitalist society. Affordable broadband helps native Hawaiians to overcome their geographic isolation by providing access to healthcare, education, commerce, public safety, and social interaction. It also provides native Hawaiians with an unprecedented opportunity to further our cultural revitalization—preserving, protecting, and promoting our culture for generations to come.

Unfortunately, the rule changes adopted in the FCC's Order have effectively created an environment where small RLEC's, like ours, serving Native Americans on tribal lands cannot participate and, therefore, will quickly face bankruptcy with the implementation of strict limits on support funds beginning July 1, 2012. And while facing the potential for bankruptcy is daunting as a businessman, what I fear most, as a native Hawaiian, is the possibility that I may be forced to tell the more than 6,400 native Hawaiians who have come to rely on my company for life-saving telephone service and life-changing broadband connectivity that we can help them no more. This is what really brings me here today, the concern that all the progress we have made and will continue to make as a people may be at risk. Ubiquitous broadband isn't just a buzz word anymore, reserved for policymakers and technology pundits, it is fast becoming a reality in urban America and I humbly ask for your support to ensure it becomes a reality in rural, tribal America as well—where the need is greatest.

Technology has evolved, so the need has shifted from plain old telephone service to broadband access. However, what has not changed is the need is still greatest in America's rural/tribal areas. What has also not changed is the driving force behind the decisionmaking in America's large carriers. While companies like AT&T and Verizon, may want to do the right thing and serve the rural/tribal areas, history

has proven that when faced with a choice between social responsibility and economic interests, economic interests consistently prevail. If this were not the case, Congress would never have felt compelled to enact legislation that created the Universal Service Fund programs.the need would not have existed. The brutal reality is that after many years of waiting for the large national carriers to do the right thing and serve ALL Americans, Congress came to the stark realization that without government intervention, rural/tribal areas would be left behind. I fear Congress' visionary mandate is now in jeopardy and I fear that history is repeating itself. I believe that when the large national carriers are once again faced with decisions on what areas they will and will not serve, economic interests will far outweigh any sense of social responsibility to ensure all Americans have access to reliable and affordable telecommunications services. And our native people will suffer.

Furthermore, while Congress' clear mandate in the Telecommunications Act of 1996, has not changed, the FCC has changed its rules. These rule changes violate the Telecommunications Act of 1996, in that they do not provide Universal Service support funds that are "predictable and sufficient," as required by Section 254(b)(5). SIC has been operating and borrowing monies based on the support being "predictable and sufficient", as interpreted under the old rules. The new rules do not allow for the building of a robust communications platform on tribal lands to meet some critical longer term goals of Native peoples, including, public safety, healthcare, and education. Broadband holds the promise of resolving the many problems faced by Native peoples and providing our people with the opportunities to become contributing members of society. Needless to say, time is of the essence to stay the initial and calamitous effects of the Order as it relates to Native Americans.

So in the interest of providing constructive and meaningful feedback that can offer immediate relief, I respectfully provide an immediate solution to preventing the loss of critical telecommunications services Hawaiian homesteaders have come to rely on. An automatic approval of the FCC's waiver for tribal RLEC's, like SIC, with current obligations incurred following the FCC's old rules. Even changes to laws provide for grandfathering, recognizing that new laws are meant to be prospective, not punitive. In this situation, the FCC's rule changes are punishing our native Hawaiian customers, even though we followed the rules. In the true spirit of Universal Service, we borrowed millions of dollars to build-out infrastructure to the areas no one else would serve-to serve the customers no one else would serve. We did this after rigorous financial and technical planning and analysis, concluding that the FCC's rules, at the time, provided adequate recovery to ensure we could recover our costs and pay back our debt. We now cannot meet our current obligations and service to our customers is threatened, because the FCC changed their rules without a grandfather clause. The unintended consequence is that, without a grandfather clause, the FCC's new rules are punitive, not prospective. The immediate solution is to grant automatic waivers for tribal RLEC's with current obligations incurred following the FCC's old rules. We are not asking for a blank check in perpetuity. We are simply requesting that the FCC help ensure native Hawaiians continue to have access to reliable and affordable telecommunications services by allowing us to meet our current obligations, obtained lawfully and in full compliance with FCC's rules.

While this will address our immediate needs, we have an ongoing obligation to provide reliable and affordable telecommunications service to our indigenous people. So we must figure out how we'll be able to continue serving native America into the future. The FCC has created a Mobility Fund. However as it stands, despite tribal priorities outlined to give preference to tribally owned telecommunications companies, our small rural telecoms will have a difficult time even participating. The auction process outlined by the FCC includes a requirement to obtain a letter of credit equal to the amount bid. For small rural telecoms, like ours, this is a nearly impossible proposition, as we would be required to maintain liquid assets equal to the amount guaranteed in the letter of credit. Furthermore, we must wait a full year to even participate in the Tribal Mobility Fund. And even if we could bid, what good will the wireless towers and infrastructure do without spectrum to reach our native customers?

Furthermore, tribal governments should be allowed to maintain authority over decisions that impact tribal areas. While the FCC's new rules include a tribal engagement obligation, tribal governments should be allowed to maintain their sovereignty, specifically as it relates to the Tribal Mobility Fund. Moreover, any large telco with vast resources could easily under bid a small RLEC and earn the right to serve tribal areas, despite their utter lack of experience serving rural and remote native nations and cultural understanding. Meeting the distinct challenges and unique needs of native peoples should be at the heart of any decision affecting tribal lands. For these reasons, tribal governments should have the ultimate decision-

making authority with regard to the Tribal Mobility Fund, and specifically as it relates to what companies can best meet their tribal needs.

Indigenous Americans cannot sustain themselves on reservations and other Tribal land areas without a robust communications platform to help overcome the geographic isolation that frequently comes with these set-aside lands. Our company provides broadband communications services that in addition to promoting economic development, facilitate the long term economic needs of our native Hawaiian communities, provide growth of businesses and job creation on HHL. The Order will extinguish our ability to provide these services to our communities.

It may be helpful for this Committee to have additional background information regarding SIC's unique circumstances, which must be factored into any analysis of SIC's USF requirements.

SIC's Unique Geographic Service Area

If you draw a rectangle around the main Hawaiian Islands and immediate ocean area, you will encompass an area of 79,625 square miles, which is roughly the size of the state of Nebraska (77,354 sq miles). This is SIC's geographic service area. This territory has unique and historic antecedents that are relevant to SIC's service obligations.

In 1920, in an effort to redress the rapidly declining economic, social and health status of native Hawaiians, Congress placed 200,000 acres of federally-owned lands into a trust to be administered by the Hawaiian Homes Commission, a subdivision of the new territorial government. See Hawaiian Homes Commission Act, 42 Stat. 108 (1921). Hawaii law defines "native Hawaiian" as any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778. See Hawaiian Homes Commission Act ⧫ 201(7). This land is now known as Hawaiian Home Lands. Upon Hawaii's admission to statehood in 1959, the United States Congress transferred responsibility for the 200,000 acre land trust to the State of Hawaii to continue the Hawaiian homesteading program, with federal oversight, requiring the new State to adopt the provisions of the HHCA into its constitution. See Act of Mar. 18, 1959 (Admission Act), Pub. L. No. 86–3, 73 Stat. 4 (providing for the admission of the State of Hawaii into the United States).

HHL is now made up of approximately 203,500 acres of land located on six of the eight main Hawaiian Islands and consists of more than 70 non-contiguous parcels. Located primarily in the most remote rural areas with few in urban areas, HHL properties are separated by both private and government owned properties and open-ocean.

Hawaii's "tribal lands" have unique geographic features that create difficulties for service providers: their remoteness, accessibility, geological makeup, archaeological and historical findings, environmental concerns, terrain conditions, lack of proximity to existing utility infrastructure and right of way availability; all such features play a significant role in creating higher costs for service providers such as SIC. Hawaii is an archipelago and coordination and collaboration between its own counties is more challenging than any other state as counties themselves are islands or groups of islands separated by miles of open-ocean.

SIC's Uniquely High Cost Considerations

Building infrastructure of any type in Hawaii is a time consuming and high cost activity; these burdens are greater still throughout HHL. The difficulty of doing business in Hawaii begins with its unique geographical situation. It is the only state that is not located on the North America continent and is also one of only two states that do not share a border with another state. These unique geographic factors create higher construction costs due to high labor rates, high material costs (all materials are imported), ocean freight costs (inter-state and inter-island transshipment of all materials), higher utility costs (electricity is more than three times the national average) and highest fuel costs compared to other states.

Obtaining permits in Hawaii is time consuming and costly; the process is especially difficult throughout SIC's unique service areas. Construction permitting is subject to very stringent federal and state regulatory processes that have been put in place to protect natural and historical resources. According to the Bishop Museum, Hawaii is the endangered species capitol of the world, with hundreds of species of plants and animals listed as endangered and more than 270 species extinct. Hawaii is also a very rich ground for archaeological preservation laws since native Hawaiians populated the entire state at one time. As an island state, the population and major roads are located within a few miles of the coastline. The proximity to the coastline adds another layer of regulatory laws not typically found in other states. The premium added to the average cost of construction in Hawaii, ranges from 30 percent to 100 percent, depending on the specific activity or material. For

example, there is a 35 percent increase between the average continental United States cost of constructing a single concrete 10′ x 18′ shelter slab foundation ($5,795) and the Hawaii cost ($7,850). See Figure 1 (at the end of this testimony).

Today, Hawaii's population has grown to approximately 1.4 million people, and 20 percent of the population is Native Hawaiian. Approximately 9,800 families currently reside on HHL properties with another 25,000 waiting for the Department of Hawaiian Home Lands (DHHL) to deploy the basic infrastructure necessary for homesteaders to move in. Much like other indigenous people in the continental United States, Native Hawaiians are over-represented with respect to many negative socio-economic indicators—lack of education, low-income, single parent households, homelessness, prison populations and harmful health statistics. Historically low deployment and unique obstacles make cost a significant challenge requiring large financial support to deploy affordable broadband capable of delivering effective, or even minimal public safety and emergency communications services.

The Nature and History of Telecommunications Service in Hawaii

Historically, Hawaii has been served by numerous small telephone companies beginning in 1878, two years after Alexander Graham Bell's invention. Consolidation of telephone service began in 1884 on Oahu under the Mutual Telephone Company, four years before Hawaii was annexed by the United States. In 1918, the islands of Maui and Hawaii were consolidated under Mutual Telephone, with Kauai in 1928 and Molokai in 1931. Since that time Hawaii was served by a single monopoly telephone company. In 1954, Mutual Telephone Company changed its name to Hawaiian Telephone Company. Hawaiian Telephone Company was eventually purchased by GTE in 1976 and changed the company name to GTE Hawaiian Telephone. In 2000, GTE merged into Verizon Communications resulting in another name change to Verizon Hawaii. Verizon sold the Hawaii wireline telephone operations in 2005 to an investment group headed by the Carlyle Group which renamed the company to Hawaiian Telecom and then later gave up its ownership interest allowing Hawaiian Telcom to emerge from bankruptcy (2008–09). During the relatively brief period of time in which SIC has been in business, three of the four facilities-based wireline telephone companies in Hawaii have gone either bankrupt or out of business (an RLEC-TelHawaii (1999), competitive local exchange carrier (CLEC)–GST Hawaii (2000), and the ILEC–Hawaiian Telecom (2008)).

SIC's Origins as a Telecom Carrier for native Hawaiians; Unique Service Obligations

The last fifteen years have been arguably the most dynamic period in the communications industry. Two major regulatory changes occurred with the Telecommunications Act of 1996 and the new Connect America Fund (FCC 11–161). Evolutionary technology changes became revolutionary with electrons giving way to light, copper to fiber, circuit switching to Internet protocol, and wireline to wireless. Monopolies gave way to competition and competition now included new industries, cable and wireless. Performance measurements such as the "five nines (99.999 percent)" gave way to mobility and speed. Industry stalwarts, ATT, Bell Atlantic, Bell Labs, Nortel, etc., survived by changing or went bankrupt and were replaced by the likes of Verizon, Alcatel-Lucent and Cisco. Values of telecommunications companies experienced a meteoric rise and a precipitous plummet when the "bubble" burst. Total Universal Service Funds (USF) also rose with the market driven by new programs (health, schools and libraries, low income, competitive eligible telecommunications carrier (CETC)). However, without new contributors the contribution factor nearly tripled. When the market burst, the contributors sought relief. This is the period in which SIC began. In addition to the turmoil and uncertainty created by these changes, SIC also dealt with (i) an ILEC that has changed ownership three times and gone bankrupt, (ii) turmoil in the insurance and financial industries, and (iii) Hawaii's high cost of doing business and low population density. All of the above factors, along with a century old monopoly ILEC that had very little, if any, interest in serving those areas that were financially marginal, resulted in areas outside the Honolulu urban core, especially HHL, having demonstrably inferior communications infrastructure with no hope of improvement.

The FCC's National Broadband Plan identified a significant lack of broadband infrastructure serving tribal lands. The situation in Hawaii emulates these problems with 87 percent of HHL without any service infrastructure. The rural and remote nature of HHL properties means higher costs to construct any type of network facilities, with no means to recover these expenses. Carriers cannot make a business case to invest in communications infrastructure throughout virtually all areas of HHL, absent government financial support. The ILEC did not land its inter-island cable on the island of Molokai where 60 percent of the population is Native Hawaiian.

The ILEC was unwilling and unable to provide modern communications service to HHL at reasonable rates. GTE was aware of the Rural Utilities Service of the United States Department of Agriculture (RUS)–USF programs when it took over Hawaiian Telephone, and used the RUS program to fund its Micronesian Telephone Company subsidiary, but chose not to utilize these programs in Hawaii. In 1990, DHHL wanted to build 12 homes in Maku'u an area on the island of Hawaii. As was its practice, the ILEC, GTE Hawaiian Telephone, demanded payment for its facilities ($1,000,000.00) plus land rights to locate a central office, merely to obtain party line service. Party line is not suitable for fax, direct-dial long distance or dial up Internet access. It was not until the late 1990s that the Hawaii Public Utilities Commission (HPUC) ordered party line service in Hawaii eliminated. DHHL was unable to come up with the money and deferred building, denying native Hawaiians another opportunity for rehabilitation.

After no other carrier stepped forward to provide comprehensive communications services to HHL, as a native Hawaiian, HHCA beneficiary, I accepted the challenge to carry out Congress's mandates, as expressed in the HHCA and the Communications Act of 1934, for native Hawaiians living on HHL. Pursuant to "License Agreement No. 372" (License), an exclusive license was awarded by DHHL on May 9, 1995 to Waimana Enterprises, Inc. (Waimana). Waimana was granted an exclusive right and privilege to build, construct, repair, maintain and operate a broad band telecommunications network to serve all lands under the administration and jurisdiction of the DHHL. In May of 1996, that authorization was assigned in part to SIC, a wholly-owned subsidiary of Waimana, to satisfy the wireline voice requirements of the License.

Working closely with RUS, SIC designed a 20-year plan to bring universal service to all areas of HHL not currently being served. This plan was markedly different from the sort of universal communication service plan a typical RLEC would undertake. Bringing universal communication service to all unserved areas of HHL required a transport network that would include undersea cables as well as terrestrial cables connecting each HHL. Although the number of customers would be comparatively small, because of the lack of adequate existing transport, and the time needed to build transport, each island would need to have its own central office(s) and numerous remotes until adequate transport could be built. The lack of adequate transport from the ILEC (Hawaiian Telcom and its predecessors) and the high cost to build transport, especially on the neighbor islands, was extensively verified by the ILEC (Hawaiian Telcom) in its Waiver Application to obtain High Cost USF filed with the FCC on December 7, 2007.

Due to the magnitude and complexity of the plan, SIC sought and received RUS approval for its entire plan to bring universal service to all HHL areas. SIC did this primarily to mitigate the risk of not being able to complete its plan and to make sure everyone involved understood the plan's enormity and significance. As a lender, RUS approved the entire plan and loans after intense and comprehensive engineering, financial and legal review and based on FCC's then-current rules, providing adequate USF support to recover costs and repay the loans. Completion of the plan would be the best opportunity to be financially self-sustaining after the capital costs were paid for, while not completing the plan would necessitate continued financial support from the government. Ultimately, as the plan would be implemented, the architecture of the system would allow minimized operating costs through the retirement of most central offices and redundant loops reducing the need for people, equipment and inventory on each island to make costly emergency truck rolls to restore service until a permanent repair could be made.

This plan to ensure a universal level of communications service would be available to those who live and/or work on HHL and was unlike any undertaking by another RLEC. When measured in miles of network, scope of facilities, advanced technology that would be deployed, environmental and regulatory agencies needed to be coordinated to construct the facilities in one of the most high cost, sensitive environments in the United States and the hundreds of millions of dollars needed to be borrowed and managed to complete this project, this plan was one of the most complex and difficult.

Since the inception of the RUS-approved network construction plan, SIC has borrowed and/or invested more than $400 million on telecommunications infrastructure to serve more than 2,400 access lines throughout Kauai, Oahu, Molokai, Maui, Lanai and Hawaii Island. SIC now provides homesteaders with access to local and long distance telephone service as well as high speed Internet access. To accomplish all of this, SIC had to: (i) install 504 miles of terrestrial and undersea fiber optic conduit consisting of nearly 26,000 miles of fiber strands connecting the isolated parcels and islands, (ii) construct 24 remote Digital Loop Carrier (DLC) sites on six islands, (iii) build 12 Central Offices that house 12 switches and DLCs on five is-

lands, and (iv) erect nine microwave towers with 12 dishes and seven radios on two different islands.

SIC has been reviewed and audited by independent auditors as well as various regulatory agencies. Each year RUS requires SIC to provide an independent auditor's report. Additionally, RUS, NECA and USAC have each audited SIC several times. None of the audits have found a reportable problem or have required SIC to change its organization or the way it is doing business.

Again, despite the dramatic changes to the industry itself, the regulatory rules governing the industry, and the significant increase in the size of the Universal Service Fund, Congress has not changed its mandate that all Americans are entitled to a universal level of communications service as expressed in the Communications Act of 1934 and reaffirmed in both the Telecommunications Act of 1996 and the FCC's recent Connect America Fund Order (FCC 11–61). Congress has also not changed its mandate that USF support shall be sufficient and predictable. The fact that SIC's plan met the law and rules at the time, was affirmed by RUS's approval of SIC's plan and by the FCC's granting SIC a study area waiver. The law has not changed, and SIC's plan and method of operation has not changed. The only change has been in the rules implementing the law. Absent a waiver to ensure preservation of existing service as provided for under the Connect America Fund Order (FCC 11–61), SIC cannot survive, this means the native Hawaiian customers who rely on our service will be left stranded.

SIC believes that equity and hardship and the harmful effects of the FCC's Order on native Hawaiians ability to receive reliable, affordable and consistent telecommunications service should compel the Committee to support SIC's recommendations for immediate relief—automatic approval of the FCC's waiver for tribal RLEC's, like SIC, with current obligations incurred following the FCC's old rules. This relief is contemplated in the FCC's Order and provides the best immediate solution to prevent the loss of service to our native Hawaiian customers, while a long-term solution is developed.

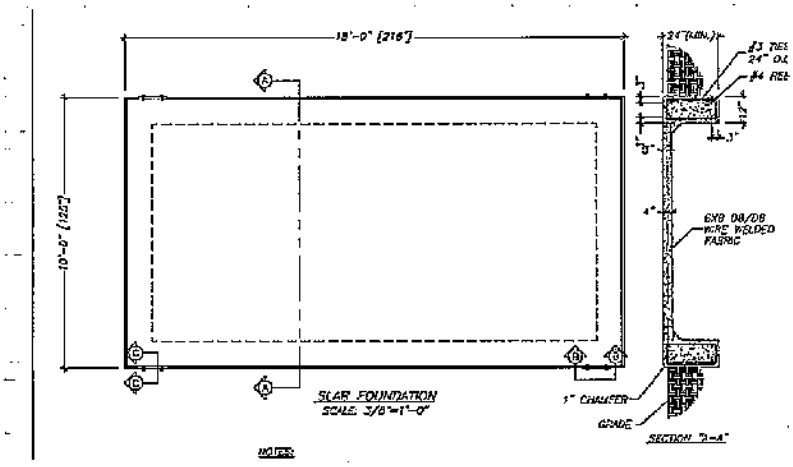
Sandwich Isles Communications stands ready to work with the Federal Communications Commission and this Committee to achieve meaningful solutions for indigenous people in Hawaii and across the country.

Thank you for the opportunity to provide testimony.

Figure 1: EXAMPLE COST COMPARISON – HAWAII vs CONTINENTAL US

Supporting Cost Detail for the fact that all systems cost significantly more in Hawaii than US Mainland

STRUCTURAL CONCRETE	QUANTITY		HAWAII UNIT COST	HAWAII EXTENDED COST	US NATIONAL AVG UNIT COST	US NATIONAL AVG EXTENDED COST
4000 PSI						
35.03 PER CUBIC YARD	5.3	CY	$ 244.00	$ 1,293.20	$ 116.00	$ 614.80
FORMING						
65.2000 COST/SQ FT CONTACT AREA	351	SQ FT	$ 16.30	$ 5,737.60	$ 12.40	$ 4,364.80
STEEL REINFORCING WIRE 6X6 W2.9XW2.9						
50.0400 PER HUNDRED SQUARE FEET	180	SQ FT	$ 93.00	$ 167.40	$ 96.00	$ 172.80
STEEL REINFORCING IN PLACE						
03.60.0900 PER TON	325	LBS	$2,975.00	$ 483.44	$3,125.00	$ 507.81
PLACING CONCRETE	5.3	CY	$ 19.60	$ 103.88	$ 16.05	$ 85.07
70.4600 PER CUBIC YARD						
MANUAL SCREED FINISH						
03.30.0010 PER SQUARE FOOT	180	SQ FT	$ 0.36	$ 64.80	$ 0.29	$ 52.20
				$ 7,850.32		$ 5,797.48



ADDITIONAL TESTIMONY OF ALBERT S.N. HEE

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee, thank you for the opportunity to appear before you at this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund Order (Order) on native communities across the country. It was valuable to hear directly from my fellow tribal telco and telecommunications industry witnesses as well as from the FCC and the Department of Agriculture's Rural Utilities Service (RUS). I am also grateful for this chance to further clarify important issues brought up at the hearing, for the record.

Historically, a Rural Local Exchange Carrier (RLEC) had no other option but to seek financing for its infrastructure needs from the RUS. As part of RUS's loan approval process, the RLEC's proposal would undergo a rigorous engineering, legal and financial review. This is confirmed in a May 31, 2012 Notice of Oral Ex Parte Contact from Mr. Jonathan Adelstein, RUS Administrator, to Ms. Marlene Dortch, FCC Secretary, attached hereto as Exhibit "A". The letter states, "The Administrator noted that RUS only finances capital infrastructure, and that every RUS loan

and grant dollar is scrutinized by program and field staff, and that each dollar spent in the RUS program is tied to specific purchases that are audited. RUS does not tolerate waste, fraud or abuse, ensuring that dollars are prudently spent." The financial review and ultimate loan approval was based on predictable and sufficient Universal Service Fund (USF) revenues for the term of the loan, which can exceed 20 years. In the true spirit of Universal Service, the RLEC invested this capital to build infrastructure to serve its rural and remote customers. These investments were made under then-current rules with the understanding that the USF revenues would be necessary to recover costs and repay RUS loans. With its new rules, the FCC is severely and negatively impacting RLECs' current and future obligations in the following ways:

1. Current obligations: The FCC is subjecting RLECs to an after-the-fact review of their eligibility for USF. Specifically, the FCC is questioning the eligibility for USF on facilities that have already been built using long-term loans that rely on USF funding for repayment. The FCC's new rules allow this discretionary, after-the-fact review to occur at any time and as many times as the FCC's Wireline Competition Bureau sees fit.
2. Future obligations: There is no assurance that USF funding will be predictable and sufficient to meet current and future obligations, as required by law. This is because of the FCC's new rules and its reliance on an entirely discretionary waiver process. A process that from year to year, and bureaucrat to bureaucrat, could yield differing results. No lender would consider providing capital loans based on an uncertain and unpredictable USF income stream. No predictable access to capital loans jeopardizes an RLECs ability to maintain and/or expand its network serving rural/tribal customers.

With its new rules, the FCC is changing a process that has been successfully implemented for more than 60 years. While we question the need to "fix" this process, at a minimum, the FCC must ensure any new process they implement be:

1. Proactive, in that an RLEC would receive FCC approval of USF funding before it incurs capital expenses and not after;
2. Clearly outlined and carefully vetted with all stakeholders, eliminating bureaucratic discretion;
3. Efficient and timely;
4. Ensure USF funding be specific, predictable, and sufficient, as required by law; and
5. Not duplicative of the highly successful process RUS has in place.

The aforementioned principles must be assured before the FCC abolishes a highly successful process in place of its own.

Beginning July 2, 2012, the FCC will implement a presumptive $250 per line cap on universal service support for all carriers. According to the FCC, the cap "will affect companies serving approximately 5,000 customers, many of whom live in extremely remote and high cost service territories." Connect America Fund, Report and Order, paragraph 278 (November 18, 2011). This new per line price cap contradicts the statutory intent and purpose of the USF law. The USF was created specifically to ensure that ALL Americans have equal access to telecommunications services. The USF was clearly intended for high-cost-to-serve, tribal areas. However, the new cap automatically red-lines tribal lands in America due to the inherent high costs to serve indigenous lands. The FCC's new rules will cut funding to the very citizens that live in remote, rural and tribal areas, areas that are too costly to serve without USF support. The FCC has access to and therefore knows precisely which tribal lands are historically high-cost-to-serve areas, where costs to serve Native Americans exceed the newly imposed price cap.

Because of the geographic and infrastructure challenges, among other reasons outlined in our original written testimony, serving native Hawaiians on Hawaiian Home Lands is extremely costly. Therefore, Sandwich Isles Communications, Inc. (SIC) is one of those RLECs whose costs to serve exceed the FCC's new price cap. As repeatedly stated during this hearing, the FCC's solution to this dilemma faced by SIC and many other tribal RLECs serving indigenous people across the country is to apply for a waiver. To ensure the record clearly reflects the inherent flaws in the FCC's so-called solution, we offer the following timeline of our waiver process:

1. December 30, 2011—SIC files waiver petition with FCC's Wireline Competition Bureau (WCB)
2. March 13, 2012—WCB sends SIC questions

3. April 11, 2012—Upon SIC counsel's request, WCB meets with SIC counsel. WCB poses more questions.
4. April 16 & 17, 2012—SIC answers both rounds of questions from the WCB.
5. June 6, 2012 (one day before SIC is scheduled to testify at this Senate hearing)—WCB releases another set of questions to the media before SIC has an opportunity to receive its letter. Despite the fact that SIC and FCC were in a face-to-face meeting the same day. This letter and SIC's response are attached hereto as Exhibits "B" and "C".
6. SIC will answer third round of questions from the WCB before the end of June 2012.

More than 285 thousand dollars and 174 days later, SIC has yet to receive a ruling on its waiver application. This is well past the 45 day "shot clock" established in the Connect America Fund order. Meanwhile, our company faces a July 2 implementation date, when we will lose the funding needed to continue serving our native Hawaiian customers.

Furthermore, during this hearing, the FCC's witness stated that the FCC's waiver process does not require telco's to hire outside consultants as long as they follow Generally Accepted Accounting Principles (GAAP) and provide the FCC with their GAAP financials. However, it is important to note that while telco's are required by the FCC to follow GAAP for their company financials, cost accounting (not GAAP) is required in the telco's monthly reports submitted to obtain USF recovery. Furthermore, cost accounting and GAAP do not readily reconcile; which is why we were forced to hire outside consultants and accountants, at great expense, to help us correlate the two very different accounting principles.

The aforementioned June 6, 2012 letter from the WCB to SIC (Exhibit "B"), questions SIC's corporate structure and relationship with its affiliated companies. As previously outlined in my written testimony in this matter, SIC has been reviewed and audited by independent auditors as well as various regulatory agencies. Each year RUS requires SIC to provide an independent auditor's report. Additionally, RUS, the National Exchange Carrier Association (NECA) and the Universal Service Administrative Company (USAC) have each audited SIC several times. None of the audits have found a reportable problem or have required SIC to change its organization or the way it is doing business. Despite this, the WCB is causing a delay in SIC's waiver process by questioning an organizational structure that is legal. This is just one example of what can happen when RLECs are forced into a waiver process that provides full discretion to the WCB.

USF programs are critical to ensuring the progress that has been made to provide equitable telecommunications services to those in rural and tribal areas of our country continues. Likewise, a proactive, clearly outlined, carefully vetted, efficient, and timely, USF approval process is essential to preventing red-lining of native people. So we humbly ask this Committee to question why the FCC is abandoning a highly successful process that has, not only facilitated the build-out of telecommunications infrastructure to America's rural and tribal areas, but also made money for the federal government by way of interest income.

Mahalo (thank you) for the opportunity to shed additional light on this critical matter. I stand ready to work with the FCC and this Committee to bridge the digital divide that threatens to further separate America from its indigenous people.

Attachments

Exhibit "A"

United States Department of Agriculture
Rural Development

May 31, 2012

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20544

Notice of Oral Ex Parte Contact

Re: ***Rural Utilities Service*** **notice of oral** ***ex parte*** **contact involving the proceedings captioned:** ***In the Matter(s) of the Connect America Fund,*** **WC Docket No. 10-90,** ***National Broadband Plan for Our Future,*** **GN Docket No. 09- 51,** ***Establishing Just and Reasonable Rates for Local Exchange Carriers,*** **WC Docket No. 07-135,** ***High-Cost Universal Service Support,*** **WC Docket No. 05-337,** ***Developing an Unified Intercarrier Compensation Regime,*** **CC Docket No. 01-92,** ***Federal-State Joint Board on Universal Service,*** **CC Docket No. 96-45,** ***Lifeline and Link-Up,*** **WC Docket No. 03-109,** ***In the Matter of Universal Service Reform Mobility Fund,*** **WT Docket No. 10-208.**

Dear Secretary Dortch:

On Tuesday, May 29, 2012, the Honorable Tom Vilsack, the Secretary of the Department of Agriculture (USDA), Lindsay Daschle, Senior Advisor to the Secretary, and I met with the Honorable Julius Genochowski, the Chairman of the Federal Communications Commission (FCC), Zac Katz, Chief of Staff to the Chairman, and Michael Steffen, Advisor to the Chairman, for a discussion about the importance of broadband to the rural quality of life.

The Secretary expressed appreciation for the Chairman serving on the Rural Council, his openness to hearing rural concerns, and specifically his willingness to consider USDA's perspective on the impact of the FCC's reform of the Federal Universal Service Fund (USF) and inter-carrier compensation (ICC) rules on rural providers and their consumers. The Secretary and I discussed the long, successful history of the cooperative efforts between the USDA, RUS and the FCC to improve rural telecommunications service. The Secretary expressed an interest in building on existing coordination efforts through continued dialogue, data sharing and outreach to maximize the benefits of USF and ICC reforms for rural consumers. The goal is to promote the mutual commitment of both agencies to deliver on the President's goal of closing the digital divide.

Ms. Marlene Dortch

The USDA has policy, planning and lending responsibilities in all of rural America, including areas served by telecommunications providers that do not participate in USDA/RUS telecommunications loan and grant programs. USDA also has an institutional interest in the FCC reform efforts. Changes to the federal USF and ICC can have a direct impact on the ability of existing RUS borrowers to repay their outstanding loans and complete the construction of wireline broadband systems. These systems provide backhaul needed to facilitate wireless 4G deployment in rural areas, which are also critical to public safety. Robust broadband networks are essential to the future of rural economic development and the vitality of rural communities.

The Secretary noted that the RUS makes loans to finance the construction and upgrade of high capacity broadband networks whose terms can exceed 20 years. He noted these investments were made under then-current rules with the understanding that the revenues would be necessary to recover costs and repay loans to lenders including RUS. He noted that consumers and lenders need certainty and predictability in their investment horizon. The Secretary noted that the regression analysis model can affect long term revenues and USF predictability.

The Administrator noted that RUS only finances capital infrastructure, and that every RUS loan and grant dollar is scrutinized by program and field staff, and that each dollar spent in the RUS program is tied to specific purchases that are audited. RUS does not tolerate waste, fraud or abuse, ensuring that dollars are prudently spent.

The Secretary suggested that the waiver process could be improved by incorporating key elements of the "safety net" process, which was suggested in the October 11th filing by the RUS Administrator which recommends *inter alia* that the standard for relief should be tied to a default on an obligation to government, not the loss of voice service.

The Secretary underscored the need for USDA and the FCC to continue to work together to address the communications needs of rural America. That way, the partnership that has succeeded for so long in facilitating the build-out of state-of-the-art rural telecommunications networks can continue successfully into the future.

Sincerely,

Jonathan Adelstein

Jonathan Adelstein
Administrator
Rural Utilities Service

Exhibit "B"

REDACTED – FOR PUBLIC INSPECTION

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DA 12-893

June 6, 2012

Mr. Albert S.N. Hee
President
Sandwich Isles Communications, Inc.
1003 Bishop Street, 27th Floor
Honolulu, Hawaii 96813

Re: Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208

Dear Mr. Hee:

The Wireline Competition Bureau of the Federal Communications Commission is continuing to evaluate the petition of the Sandwich Isles Communications, Inc. (Sandwich Isles) for waiver of section 54.302 of the Commission's rules, which establishes a total limit on high-cost universal service support of $250 per line per month.[1] In the *USF/ICC Transformation Order*, the Commission established the $250 per line per month limit as part of its fiscally responsible reform of the universal service fund and mandated that the limit be phased in over three years. The Commission permitted affected carriers to seek a waiver of that restriction by providing specific information in its petition and also required any requesting carrier to provide additional information as requested by staff.[2]

The Bureau has reviewed the information Sandwich Isles provided with its petition, the record received in response to the petition,[3] and Sandwich Isles' response to the Bureau's March 13, 2012 letter seeking additional information.[4] Together, these materials raise additional questions regarding Sandwich Isles' projected revenues and expenses.

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[1] Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Dec. 30, 2011); *see also Connect America Fund* et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); 47 C.F.R. § 54.302.

[2] *USF/ICC Transformation Order*, 26 FCC Rcd at 17842, para. 543.

[3] *See* Comments of Hawaiian Telcom, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 9, 2012); Comments of US Telecom, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 9, 2012).

[4] *See* Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Albert N. Hee, President, Sandwich Isles Telecommunications, Inc., WC Docket No. 10-90 and WT Docket No. 10-208 (Mar. 13, 2012); Letter from Frederick M. Joyce, Counsel for Sandwich Isles

In particular, the overwhelming majority of Sandwich Isles' expenses – many millions of dollars – consist of significant payments to a number of affiliated companies, including ClearCom, Waimana, [REDACTED], and Paniolo,[5] each of which appears to be owned and/or operated by Mr. Hee, CEO of Sandwich Isles, or his family members. In its initial waiver filing and in its submissions since, Sandwich Isles has failed to be forthcoming regarding its affiliates, the finances of these affiliates, the basis of Sandwich Isles' payments to these affiliates, and the details of Sandwich Isles' agreements with these companies. As a result, the Bureau still lacks basic information necessary to evaluate these affiliate transactions. The Bureau reminds Sandwich Isles that, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.[6] Accordingly, it is incumbent on Sandwich Isles to be as forthcoming as possible so that the Bureau has necessary and complete information before it when acting on the waiver petition.

Moreover, the information available to us raises significant questions about whether Sandwich Isles could be obtaining the services it receives from its affiliates at much lower rates from unaffiliated sources. These affiliate payments also appear to reflect very significant and unexplained corporate expenses, and raise concerns that Sandwich Isles may be using universal service funds to cross-subsidize competitive services outside of its service territory.

Accordingly, the Bureau requests additional information related to these issues. This additional information is necessary for the Bureau to complete its analysis of whether there is good cause to grant the requested waiver.

Please provide full and complete responses to the following questions:

1. In its response to the Bureau letter, Sandwich Isles projects revenues and operating expenses for the period 2012 through 2016. Please detail the major components of Sandwich Isles' projected revenues and operating expenses for each of the projected years.

    a. Please separately identify projected revenue, if any, for HCLS, ICLS, Connect America Fund ICC/CAF Recovery, Access Recovery Charges, intercarrier compensation showing separately cost recovery from NECA pools related to the Paniolo network and other cost recovery from NECA pools, revenues from leasing the Paniolo cable to other users, and any other major components of projected revenues. Please also provide projected customer revenues for each year by type of service.

    b. Please separately identify detailed projected operating expenses in each of the following expense categories, including but not limited to:

Communications to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 16, 2012) (Apr. 16 Response).

[5] *See Streamlined Submarine Cable Landing License Applications Accepted for Filing*, Report No. SCL-00083S, Public Notice (rel. March 25, 2009) (noting that control of Paniolo was transferred to Blue Ivory on March 31, 2008 and that "Blue Ivory is wholly owned by and controlled by Blue Ivory Hawaii Corp.", which "is held equally by three private trusts, the Adelanne H.R. Hee Irrevocable Trust, the Breanne E.R. Hee Irrevocable Trust, and the Charlton E.R. Hee Irrevocable Trust.").

[6] *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

i. Plant specific
   1. Paniolo lease expense[7]
   2. Payments to each affiliate of Sandwich Isles
   3. Payments to non-affiliates

ii. Plant Non-specific
   1. Payments to each affiliate of Sandwich Isles
   2. Payments to non-affiliates

iii. Corporate operations
   1. Waimana management fee
   2. [REDACTED]
   3. Payments to ClearCom, if any
   4. Payroll/Labor
   5. Other

2. Payments to [REDACTED] Insurance Company, [REDACTED] from 2008 to 2011. Provide details for all insurance policies purchased [REDACTED] for those years, including type of insurance and premiums. Please provide copies of all insurance contracts and agreements [REDACTED]. Please provide information regarding any activities to seek insurance from other companies since 2008, including the name of the company, type of insurance and the quoted premium.

3. During 2010, Sandwich Isles [REDACTED] its affiliate ClearCom, which was recorded as Corporate Operations Expense. Provide details on the nature and purpose of this expense. In addition, please provide copies of all contracts or agreements, if any, between Sandwich Isles and ClearCom.

4. Provide the name, position, and annual compensation of the ten highest paid employees of ClearCom and [REDACTED] for 2009, 2010, and 2011. In addition to salary, include as part of compensation any benefits, dividends, increases in equity, sales of equity, or any other non-salary forms of compensation.

5. Provide details on the ownership of Paniolo, including the names of all owners, the percentage ownership of each, and the relationship to the owner of Sandwich Isles. In 2009, in addition to lease payments, Sandwich Isles paid [REDACTED] to the Paniolo Network. Please specify the reason for [REDACTED], the financial justification for the [REDACTED], the extent to which the [REDACTED] are useful to any other entity, and the contractual potential for recovery of the [REDACTED] in the event of a change in the contract between Sandwich Isles and Paniolo. Please provide copies of all contracts and agreements between Sandwich Isles and Paniolo.

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[7] We note that Sandwich Isles projects payments from Sandwich Isles to Paniolo for the years 2012 to 2016 of approximately [REDACTED] annually for expenses found by the Bureau not to be "used or useful" for provision of service to the Hawaiian homelands. *See* Apr. 16 Response at 14; *Sandwich Isles Communications, Inc., Petition for Declaratory Ruling*, WC Docket No. 09-133, Declaratory Ruling, 25 FCC 13647, 13650, para. 9 (Wireline Comp. Bur. 2010).

6. Please provide detailed financial statements for Waimana, ClearCom, and [REDACTED] for the years 2007 through 2011. Indicate any other entities for whom Waimana and ClearCom provide management services and, in the cases of any individuals who work on more than one project, the percentage of time and expense allocated between Sandwich Isles and other projects. In addition, provide copies of the employment agreements of the top four executives of Waimana and each of its affiliates. Please quantify the percentage of compensation for each of these executives that were allocated to or otherwise recovered from Sandwich Isles in 2009, 2010, and 2011.

7. In its response to the Bureau letter, Sandwich Isles projected approximately [REDACTED] additional average capital expenditure (capex) each year for the years 2012 through 2016. Please provide the number of new voice customers and the number of new broadband customers for each of the past three calendar years. Please detail the major components of Sandwich Isles' additional projected capex for each of the projected years. Please separately identify additional projected capex in each of the following categories:

    a. Transport: (a) capex, if any, associated with the Paniolo network, (b) capex, if any, associated with the water mains, and (c) other transport-related capex, if any;
    b. Loop: (a) capex, if any, associated with the addition of new customers in the study area, (b) capex, if any, associated with the maintenance of loops for the existing customers in the study area, and (c) other loop-related capex, if any;
    c. Other, if any.

8. Sandwich Isles uses abandoned water mains from ClearCom, Inc., which leases the abandoned water mains from the Board of Water Supply for the City and County of Honolulu.[8] Please quantify the amount of abandoned water mains utilized in ClearCom's network (excluding the usage in Sandwich Isles' network) in terms of miles used, customers served, and revenue earned. Please provide copies of any agreements between Sandwich Isles and ClearCom and the lease agreement between the Board of Water Supply and ClearCom for the abandoned water mains.

9. Sandwich Isles did not list Sandwich Isles Wireless as an affiliate in either its initial petition or in its response to the Bureau's March 13, 2012 letter. Please provide information about the ownership of Sandwich Isles Wireless. In addition, please provide information on the nature of relationship, payments, and investments (if any) for the periods 2009 through 2012 (year-to-date) between Sandwich Isles Communications and Sandwich Isles Wireless. In addition, please provide documentation showing how Sandwich Isles Wireless will have sufficient funds to meet its 5-year build-out obligations to the Hawaiian Public Utilities Commission

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[8] HB 2267, HD 1, Relating to Issues of Special Purpose Revenue Bonds to Assist ClearCom, Inc., in the Development of Broadband Infrastructure in Hawaii, Session 2012 (Feb. 23, 2012) (statement of Albert S.N. Hee, President of ClearCom, Inc. to the House Committee on Finance, Hawaii State Legislature); *available at* http://www.capitol.hawaii.gov/session2012/Testimony/HB2267_HD1_TESTIMONY_FIN_02-23-12_3_.PDF.
SB 2236, HD 1 Relating to Information Technology, Session 2012 (Mar. 28, 2012) (statement of Ed Pukini, Regional Vice President, Mid-State Consultants to the House Committee on Finance, Hawaii State Legislature), *available at* http://www.capitol.hawaii.gov/session2012/Testimony/SB2236_HD1_TESTIMONY_FIN_03-28-12_1_.PDF

without federal high-cost universal service support. Please provide documentation showing Sandwich Isles Wireless's current and planned access to spectrum, including any contracts with other providers to resell their service.

10. We note that Sandwich Isles has stated that it is "subject to competition from multiple mobile wireless carriers and to digital voice service provided by a cable company."[9] Please provide a list of Sandwich Isles' competitors (both wireline and wireless) and indicate to what extent those competitors overlap Sandwich Isles' study area.

If Sandwich Isles believes that any information or documents responsive to this letter be treated in a confidential manner, it may file the information in accordance with the Bureau's *Protective Order* in this proceeding.[10]

If you have any questions please call Gary Seigel at (202) 418-0879.

Sincerely,

Sharon E. Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission

cc: Frederick M. Joyce
Counsel for Sandwich Isles
Venable, LLP

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[9] Letter from Frederick M. Joyce, Counsel for Sandwich Isles Communications to Patricia Quartey, FCC (dated Jan. 23, 2012).
[10] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Protective Order, 25 FCC Rcd 13160 (Wireline Comp. Bur. 2010).

Exhibit "C"

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June 12, 2012

Frederick M. Joyce

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VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Sharon Gillett, Chief, Wireline Competition Bureau

Re: Sandwich Isles Communications, Inc.
Petition for Rule Waiver/Ex Parte Notice
CC Docket No. 01-92, WC Docket Nos. 05-337, 07-135 and 10-90 and
GN Docket No. 09-51

Dear Ms. Gillett:

Sandwich Isles Communications, Inc. (SIC), through counsel, and pursuant to Section 1.1204(a)(10) of the Commission's Rules, hereby submits this *ex parte* notice in this rule waiver proceeding. On behalf of Sandwich Isles Communications, thank you and the staff of the Wireline Competition Bureau for taking the time to meet with Al Hee, President of SIC, Janeen Olds, General Counsel of SIC, and me on June 6. As you know, we have repeatedly been in touch with the Bureau and Chairman Genachowski's office since SIC first filed its Petition for Waiver (December 30, 2011) to answer questions, provide additional documents, and determine if you or your colleagues had any concerns related to the Waiver. Indeed, Wednesday's meeting was arranged at our request, not at the Bureau's instigation, to determine the status of SIC's Petition for Waiver and answer any remaining questions from the Bureau. Consequently, we are deeply puzzled and disappointed by the Bureau's suggestion at that meeting, and in its June 6 letter to SIC, that SIC has "failed to be forthcoming" in its dealings with the Bureau.

At the June 6 meeting you informed us that the Bureau had planned on sending SIC additional written inquiries and that you would not make any commitments about when a decision would be reached on the Waiver. Later that afternoon the Bureau sent me a copy of its letter with ten more areas of inquiry. This letter was apparently published by the FCC in "redacted" form and made available to the press before I had any opportunity to see it. Prior to receipt of the Bureau's June 6 letter, no one at the Commission had ever informed me that they

had any concerns about SIC's degree of cooperation. As it has previously, SIC will promptly and thoroughly respond to all of these new questions; however, the answers to many of the questions asked by the Bureau are already well-known to the FCC. For instance, Paniolo Cable's ownership structure was reviewed and approved by the FCC in 2009. SIC's cable lease payment obligations were reviewed by your Bureau several years ago, and addressed at length in the Bureau's September 29, 2010 Declaratory Ruling.

If the Bureau is unable to act on SIC's Waiver prior to the July 2 effective date of the new rules, the record should clearly reflect that it will not be SIC's fault. Here are the pertinent facts: SIC's Petition for Waiver was filed on December 30, 2011. The Bureau made no attempt to meet with SIC or ask any questions about SIC's Waiver until well past expiration of the 45 day "shot clock" established in the Connect America Fund order. On March 13, 2012, we heard from the Bureau for the first time when it sent SIC a letter with a list of questions. SIC immediately began accumulating data and documents in response to the Bureau's letter, at considerable expense notwithstanding FCC testimony to Congress to the contrary. SIC's counsel then offered to meet with the Bureau to discuss the Bureau's questions to ensure that SIC's responses would be thorough and responsive. That meeting was held on April 11; at that meeting the Bureau's staff posed several more questions. On April 16 and April 17, SIC responded in writing to all of those questions; that filing contained over 200 pages of documents and detailed written answers to each and every one of the Bureau's questions. In the weeks following SIC's document submissions, SIC's counsel contacted the Bureau and the Chairman's office on numerous occasions to determine if the FCC had any more questions concerning SIC's Waiver. The only response we received came from the Chairman's office, and that was to the effect that the Bureau was reviewing all of SIC's information. At no time did any member of the Bureau inform SIC or SIC's counsel that SIC had been uncooperative or "less than forthcoming."

The timing of the Bureau's June 6 letter was particularly troubling given that the C.E.O. of SIC was scheduled to testify the next day before the Senate on the FCC's Universal Service reform measures. It is far from clear why it would have taken the Bureau close to two months to determine that SIC's previous submissions were in some way lacking. Nevertheless, SIC has already begun to assemble all of this additional information and will submit it to the Bureau as soon as possible prior to the July 2 effective date of the new rules.

Given that the Bureau has not previously handled any waivers of this sort, and that SIC is the first petitioner to have to deal with the FCC's new Universal Service waiver procedures, it is understandable that the process might not be as smooth or expeditious as everyone would prefer. Still, I can discern no reason at all for the Bureau to accuse my client of having been anything but cooperative and diligent in its efforts to achieve a resolution of its Waiver that will be in the best interests of telephone customers in the Hawaiian Home Lands. Going forward, should the Bureau have any questions or need additional information from SIC, you should not hesitate to contact me right away; the FCC's rules and procedures do not require that this waiver process be subject to infrequent public notices and formal inquiries. We appreciate your cooperation and assistance and look forward to a favorable resolution of this matter in the public interest.

Sincerely,

/s/ Frederick M. Joyce

Frederick M. Joyce

cc: Michael Steffen (Office of the Chairman)

The CHAIRMAN. Thank you.
Now, Ms. Bloomfield?

STATEMENT OF SHIRLEY BLOOMFIELD, CEO, NATIONAL TELECOMMUNICATIONS COOEPRATIVE ASSOCIATION (NTCA)

Ms. BLOOMFIELD. Thank you very much, Chairman Akaka and Committee members. It is a pleasure to be here today and to par-

ticipate in this discussion that you are having regarding the changes to the essential Universal Service and the related cost recovery mechanisms that are going to affect in the future the availability and the affordability of advanced communications services on Tribal lands.

The focus of the hearing also on sustainability of the connections is a really critical and so often overlooked component of what is going on with the reform debate.

I am the CEO for the National Telecommunications Cooperative Association. We have about 580 small rural telecommunication providers. We have NTCA members that are nine Tribally-owned entities and we also have at least 27 other companies that serve Tribal lands. So we have the opportunity to see this from the very global Federal perspective.

As you have already heard from my colleagues here at the table today, these are businesses that hold a really deep commitment to the consumers and the communities that they serve. They are the creators of these rural jobs and certainly the fuel for their rural economy.

But broadband-capable networks and the benefits that they bring to the Tribal lands and beyond really just don't materialize from thin air. The sparse populations and the large distances in these rural areas make these programs that we have heard about this morning, like RUS, so essential to promoting broadband deployment. Such programs can only help promote the deployment of rural networks, however, if those networks can actually be maintained and upgraded, and if the services offered over them can remain affordable for all consumers.

Unfortunately, the success story of sustainable rural network development is at risk because of certain USF and inter-carrier compensation reforms that you have been discussing today and additional reforms that are certainly under consideration right now by the FCC. So while RUS and a number of these private lenders may provide capital to actually build a rural network, the network is actually of little use if it can't be upgraded over time or if the services on that network are unaffordable for the consumers they serve.

USF provides essential cost recovery for ongoing operation and maintenance of these rural networks, and USF makes sure that the prices that consumers pay for these services in these rural and Tribal areas are affordable. That really goes back to the reasonably comparable rates that were mandated in the 1996 Communications Act.

By law USF is required to be predictable and sufficient. These principles encourage sustainability and are particularly important to the lenders and to the carriers who are actually investing in these networks, where the cost recovery path is frankly very long. Without committed carriers of last resort, which these carriers are, where they are committing to serve that last customer out there, wherever they may be, without these folks there would be even more unserved areas of rural America. So if we look at misplaced USF or inter-carrier comp changes that may require these small carriers to raise their prices substantially, cut back on their service quality, cut back on jobs or abandon their most remote areas, including Tribal lands altogether, that could be a real outcome.

The FCC released their order on USF and inter-carrier compensation in November. And I commend the FCC for the work that they did in issuing an order after decades of debate on this. Some of the changes may hopefully promote broadband in some of the rural areas where it is currently unavailable today. Those are primarily, as we have heard, areas where some of the larger carriers had very little incentive or interest or motivation to invest when compared to the larger markets that they are currently serving.

But even assuming the best of intentions, a number of answers in the order absolute miss the mark for rural America. The focus cannot simply be on making sure that the unserved become served. That is very important. But that is only one piece of a much more complex puzzle. The focus also has to be on making sure that those who have service stay served.

Unfortunately, the FCC's order didn't create a Connect America fund for small carriers devoted to serving these rural areas. Instead, the small carriers like NTCA members, the FCC maintained a legacy USF funding mechanism and had additional USF and inter-carrier compensation reductions. So while there have been some transitions and adjustments made, some of these small carriers face severe reductions in their support in the very near term. These carriers will not only stop investing or upgrading, but they will be compelled to increase their consumer rates in absence of relief. In the Tribal areas, which we have been discussing how important broadband adoption is, you already have adoption rates that are very low and unemployment that is very high. So it is hard to see how this kind of action will actually promote real broadband access or economic opportunity.

Perhaps the greatest concern is the regulatory uncertainty for the entire industry. For example, the FCC has adopted a new cost model that changes the rules of USF cost recovery mid-stream for the investments made in the past and contains erroneous data and is subject to unpredictable changes. So the carriers can't determine if a new network grid or an upgrade might actually trigger the cap, even if they are not under the cap today.

It is all the more troubling that these inter-carrier comp rate reductions now and in the future actually accrue to the benefit of the larger carriers without any corresponding obligation for them to reinvest those savings in rural broadband or past them along to the consumers. It is hard to see how these changes, cuts and caps will help chart a course for sustainable rural broadband.

However, there are several ways to actually break this logjam. Rural and Tribal providers sincerely hope the FCC will respond to the recent calls of more than 70 members of Congress, including members of this Committee, to expressly decline to act on several aspects of its further notice and allow the dust to settle on the changes that have already been made in the order.

And moreover, since carriers cannot undo loan commitments or tear out existing networks, the FCC should make it clear that these changes will only apply prospectively. The FCC should take steps to dispel the regulatory uncertainty created by unworkable regression analysis cap model and small businesses operating in these high cost, capital intensive businesses need more straight-

forward rules of the road that will promote reasonable and responsible broadband investment.

Finally, as it has done for consumers in other areas, the FCC should adopt a Connect America fund that will provide additional funding for sustainable broadband-capable deployment in areas served by rural providers, including on Tribal lands.

With that, I would like to thank you very much and I would be more than happy to answer any questions. Thank you, Mr. Chairman.

[The prepared statement of Ms. Bloomfield follows:]

PREPARED STATEMENT OF SHIRLEY BLOOMFIELD, CEO, NATIONAL TELECOMMUNICATIONS COOEPRATIVE ASSOCIATION (NTCA)

Introduction

Chairman Akaka, Vice Chairman Barrasso, thank you for the opportunity to participate in today's discussion regarding how changes to essential universal service and related cost recovery mechanisms will affect the availability and affordability of advanced communications services on tribal lands. As I will outline, this hearing's focus on the sustainability of connections is a critical and often overlooked component of the reform debate.

I am the Chief Executive Officer of the National Telecommunications Cooperative Association (NTCA), which represents more than 580 small, rural community-based telecommunications providers. These small businesses hold a deep commitment to the consumers and communities they serve. They have been the very models of what policymakers are in search of and what America is in such need of today—the creators of rural jobs, the fuel of the rural economy, and the conduit between citizens and their government and the wider world.

NTCA members and their counterparts across the rural telecommunications industry serve approximately 5 percent of the nation's population, but approximately 40 percent of the nation's land mass. NTCA members include both tribally owned telecommunication companies such as Gila River Telecommunications, Inc. owned by the Gila River Indian Community in Chandler, Arizona, as well as companies that are owned by non-natives but serve substantial portions of tribal lands such as Golden West Telecommunications headquartered in Wall, South Dakota. NTCA has at least 36 companies who serve Native Nations.

I. Broadband Investments and Operations are Essential to the Well-Being of Rural and Tribal Communities, and They Contribute to Broader Economic Activity as Well

The debate over the importance of rural broadband, and the essential role that the federal Universal Service Fund (USF) and intercarrier compensation (ICC) mechanisms play in making broadband-capable networks available, is not academic. The American economy runs on broadband. As the Federal Communications Commission (FCC) stated in its February 2011 USF/ICC reform Notice of Proposed Rulemaking:

> Ubiquitous broadband infrastructure has become crucial to our nation's economic development and civic life. Businesses need broadband to start and grow; adults need broadband to find jobs; children need broadband to learn. Broadband enables people with disabilities to participate more fully in society and provides opportunity to Americans of all income levels. Broadband also helps lower the costs and improve the quality of health care. As important as these benefits are in America's cities—where more than two-thirds of residents have come to rely on broadband—the distance-conquering benefits of broadband can be even more important in America's more remote small towns, rural and insular areas, and Tribal lands. Furthermore, the benefits of broadband grow when all areas of the country are connected. More users online means more information flowing, larger markets for goods and services, and more rapid innovation.[1]

[1] *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up: Notice of Proposed Rulemaking and Further Notice of Proposed Rule-*

Continued

The numbers demonstrate that broadband is being deployed to and used in rural America. Fifty-one percent of small rural carrier customers purchased broadband services as of 2010,[2] and USDA's National Agricultural Statistics Service's August 2011 report on Farm Computer Usage and Ownership revealed that 62 percent of U.S. farms now have Internet access.[3]

At the same time, USDA's Economic Research Service reports that over the course of the past decade the rural population has grown at less than half the rate of the metropolitan population. Both broadband deployment and adoption in rural America must increase at a faster rate in order to reverse a trend of rural flight. As more and more commerce, government services, and education move over broadband, the availability of affordable and reasonably comparable broadband will be essential for rural areas to attract and retain more Americans. This would seem particularly important with regard to tribal lands, where the access that broadband allows to economic opportunities outside of tribal lands can be essential to promoting economic development within tribal lands.

The economic benefits of broadband are unmistakable. Studies indicate that every one percentage point increase in broadband penetration in a state increases overall employment by 0.2 percent to 0.3 percent a year.[4] Such a dynamic would be of great promise in helping tribal areas where unemployment often far outpaces other locations. An Economic Policy Institute study found that unemployment on tribal lands in the first half of 2010 was 15.2 percent but the unemployment rates vary depending on the region, finding Alaska Natives and Native Americans living in the Northern Plains had the lowest employment rates.[5] Yet the National Telecommunications and Information Administration's *State of Broadband Report* indicates that at least 1.1 million Native Americans living on tribal lands do not have access to the target broadband speeds established by the FCC.

Broadband also provides wider benefits. In fact, not only does broadband hold the promise of stimulating job creation and economic development on tribal lands and in other rural areas, but it has a payback to the national economy as a whole. Small, rural community-based telecommunications providers alone contributed $14.5 billion to the economies of the states in which they operated in 2009.[6] The rural telecommunications sector supported 70,700 jobs in 2009, both through its own employment and the employment that its purchases of goods and services generated.

Thus, rural broadband is a true "win-win" proposition, in that residents of tribal and other rural areas obtain economic opportunities that would otherwise be inaccessible or difficult to reach, while those in urban areas realize the benefits of broader markets, more business partners and the economic activity generated by rural broadband deployment.

II. A Public-Private Partnership Is Essential to Promote and Sustain Broadband in Hard-to-Serve Tribal Lands and Other Rural Areas

But these broadband-capable networks and the benefits they can bring to tribal lands and beyond will not materialize from thin air. The sparse populations and large distances in rural areas make rural development programs, such as those administered by the Rural Utilities Service (RUS), essential to promote broadband deployment.

The RUS telecommunication programs have been a great success story for decades, helping to provide voice and broadband service to millions of Americans where it would not otherwise be available, including on tribal lands. Since the 1990s in particular, these programs have looked to a data-driven future and helped to advance the deployment of state-of-the-art networks to rural Americans who otherwise faced the significant likelihood of being left behind by providers unable or unwilling to serve low population density markets. It is also worth noting that RUS telecommunication loan program projects are paid back with interest—creating yet an-

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making, 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, FCC 11–13, at para. 3 (2011) (NPRM).

[2] NECA *Trends 2010—A Report on Rural Telecom Technology*, at 5 (available at *https://www.neca.org/cms400min/NECA*_Templates/PublicInterior.aspx?id=100).

[3] (n.d.). Retrieved from website: *http://usda01.library.cornell.edu/usda/current/FarmComp/FarmComp-08–12–2011*_new_format.pdf.

[4] (n.d.). Retrieved from website: *http://www.brookings.edu//media/Files/rc/papers/2007/06labor*_crandall/06labor_crandall.pdf.

[5] Austin, Algernon. *Different Race, Different Recession; American Indian Unemployment* retrieved from website *http://www.epi.org/publication/ib289/*.

[6] Kuttner, H. Hudson Institute, (2011). *The Economic Impact of Universal Telecommunications: The Greater Gains.*

other "win-win" situation for rural broadband consumers and for American taxpayers.

Such programs can only help promote the deployment of rural networks, however, if those networks can also be maintained and upgraded over time in response to consumer demands and business needs, and only if the services offered over those networks remain affordable even where the costs of operating are so high. This is why it is so important to recognize the key complementary role that other programs, such as the statutorily-mandated USF, play in allowing rural consumers to have access to telecommunications services that are reasonably comparable in terms of price and quality. In short, it takes a continuing public-private partnership—one that recognizes the costs of both building and operating networks in high-cost areas—to enable access to affordable, sustainable, high-quality access in tribal lands and other economically hard-to-serve regions of rural America. Again, the title of this hearing says it all. The goal must be not just to connect rural America, but to make sure those essential connections are sustainable so that the communities themselves are sustained and can prosper.

Unfortunately, the story of sustainable rural network development is at risk due to certain USF and ICC reforms now being implemented and additional reforms now being considered by the FCC. As I noted earlier, while RUS and other private sector lenders may help provide the capital needed to build a rural network in economically challenging markets, that network is of little use if it cannot be upgraded over time or if services on that network cost so much that no consumer can afford them. USF addresses this distinct part of the rural problem. It provides essential cost recovery for the ongoing operation and maintenance of rural networks, and helps to ensure that the prices consumers pay for services in rural areas are affordable—that is, "reasonably comparable" to those in urban areas as required by law. Put another way, USF helps make sure that consumers can both afford to "adopt" service and make continuing use of advanced, evolving networks over time.

By law, USF is required to be predictable and sufficient. Changes to the USF and ICC mechanisms must therefore be carefully calibrated. But if USF and ICC revenues are reduced without careful consideration and in the absence of a longer-term plan for sustaining rural broadband through other means, this will undermine the work of RUS and put the affordability and availability of rural voice and broadband services at great risk. Indeed, the Secretary of Agriculture met recently with the FCC Chairman to discuss the consequences of USF and ICC reform on RUS borrowers and rural communities. Among other things, a U.S. Department of Agriculture letter reporting on that meeting noted:

> Changes to the federal USF and ICC can have a direct impact on the ability of existing RUS borrowers to repay their outstanding loans and complete the construction of wireline broadband systems . . . The Secretary noted that the RUS makes loans to finance the construction and upgrade of high capacity broadband networks whose terms can exceed 20 years. He noted these investments were made under then-current rules with the understanding that the revenues would be necessary to recover costs and repay loans to lenders including RUS. He noted that consumers and lenders need certainty and predictability in their investment horizon.[7]

Predictability is particularly important to lenders and to carriers investing in a network where the cost recovery path is 20-plus years long. Rural telecom is not a business where quick payback on investment can be expected. The addressable markets are small, and in many cases, carriers are tasked with serving not only the population centers (often only several hundred or a few thousand people) but also the surrounding countryside. Without committed carriers-of-last-resort such as Golden West or Gila River reaching out into the "country" outside the towns with the help of this public-private partnership, we would have even more unserved consumers in rural America and on tribal lands—and the challenge of achieving universal broadband would be greater than it already is. If this public-private partnership is undermined by misplaced USF or ICC changes, then small rural telcos may have no choice but to substantially increase rates, cut back on service quality, or abandon the "countryside" and other outlying areas, including portions of tribal lands, altogether. Instead, these carriers may retreat to serve only the "in-town" areas where at least some business case might be made in the absence of predictable and sufficient USF and ICC cost recovery mechanisms.

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[7] Ex Parte letter from RUS Administrator Jonathan Adelstein, filed June 1, 2012, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10–90, et. Al., dated May 31, 2012.

III. Course Corrections Are Needed to Sustain This Successful Public-Private Partnership and Keep Tribal Lands and Other Areas Served

The FCC released its USF/ICC reform order on November 18, 2011, with the aim of transitioning the program to explicitly support broadband service in rural America.[8] NTCA worked extensively with other industry and rural groups and organizations leading up to that order, attempting to make sure it struck a careful balance that made progress toward a broadband future while preserving the essence of the public-private partnership referenced earlier. Indeed, NTCA and dozens of other stakeholders with interests in rural and tribal areas, including the National Tribal Telecommunications Association (NTTA), filed a series of joint comments with the FCC pointing out the flaws of a number in the agency's earlier reform proposals and providing detailed alternatives for its consideration.

The FCC's November 2011 order took many steps to update the USF program for a "broadband world," and the FCC deserves to be commended for achieving the issuance of an order after a decade of debate. Some of the changes may promote broadband in rural areas where it is unavailable today—areas where larger carriers had little incentive or interest to invest when compared to other, larger markets they serve. Hopefully, consumers in those unserved areas will now start to realize the benefits of broadband based upon these reforms.

But even assuming all of the best intentions, a number of the answers in that order miss the mark for rural America. The focus cannot simply be on making sure that the unserved become served. That is important, but it is only one piece of a more complex puzzle. The focus also has to be making sure that those who obtain service because of the successful public-private partnership that I described earlier ultimately stay served. Here yet again, sustainability is the key consideration—and that is in serious question at this point.

Unfortunately, the FCC's November 2011 USF/ICC reform order did not create a broadband oriented "Connect America Fund" for smaller carriers devoted to serving rural areas. Instead, for smaller carriers like NTCA members, the FCC maintained the legacy USF funding mechanisms, introduced a series of new reductions to those USF mechanisms, and also mandated reductions to ICC rates.

While several of these reductions are subject to transitions and the FCC has already recognized the need for adjustments based upon input from NTCA and other stakeholders, some small rural carriers still face the prospect of severe reductions in support in the relatively near term. These carriers will not only stop investments or upgrades they planned to make, but they will also be compelled to increase consumer rates in the absence of relief. In tribal areas where broadband adoption is low and unemployment is high, it is hard to see how this will promote rural broadband access or economic opportunity.

Of perhaps greater concern, however, is that even carriers not as adversely affected by the FCC's changes face in the near term still face substantial uncertainty and the potential for significant declines in coming years. For example, the FCC has adopted a new statistical "regression analysis" cost model that changes the rules of USF cost recovery "mid-stream" for investments made in the past. Changing the rules in this manner has chilled lender and investor interest in rural telecom generally and made access to capital even more challenging for these small businesses.

Moreover, this new "regression analysis" cost model contains admittedly erroneous data and is subject to frequent and unpredictable changes that provide no clear "rules of the road" by which a carrier can determine whether a new network build or upgrade might trigger new USF caps and lose support. As the general manager of Mescalero Apache Telecom, which serves over 700 miles of tribal land in New Mexico, recently explained in a declaration supporting a FCC filing by NTCA and its rural allies, his company has curtailed capital expenditures despite being only slightly affected by the new model, precisely because no one can tell where the model might strike next. Unfortunately, this is hardly an isolated case.

Finally, while the FCC provided a "transition" for regulatory-mandated reductions in ICC rates, its replacement of those lost revenues is subject to an automatic wind-down regardless of cost, and a further notice of rulemaking threatens additional ICC rate reductions. It is all the more troubling that these ICC rate reductions accrue to the benefit of larger carriers without any corresponding obligation for those carriers to reinvest such savings into rural broadband or even to pass them through to consumers.

It is hard for smaller carriers to see how such aspects of reform help to chart a course toward sustainable rural broadband. This is all contributing to a general sense among NTCA members that further investment in rural broadband will be

[8] *See* Final Order.

difficult to justify, at least until "the dust settles" on the FCC's reforms. Rural and tribal providers sincerely hope that the FCC will respond to the recent calls of well over 70 members of Congress, including members of this committee, to expressly decline to act on several aspects of its further notice and instead signal to service providers, lenders, investors and consumers that it will allow adequate time for adjustment to the changes already made in its order.

Moreover, since carriers cannot "undo" loan commitments or "tear out" existing networks, the FCC should make clear that any caps or other limitations on cost recovery already adopted in its order will be applied prospectively. The FCC should also take steps to dispel the massive and paralyzing uncertainty created by its confusing, error-ridden and otherwise unworkable "regression analysis" cap model, adopting in its place more straightforward "rules of the road" that promote reasonable and responsible broadband investment.

Finally, as it has done for consumers in other areas, the FCC should adopt a broadband oriented Connect America Fund that will provide additional funding for sustainable broadband-capable deployment in areas served by rural providers, including tribal lands.

We continue to engage actively with the FCC in seeking a more proper balance on all of these fronts, and the FCC has continued to discuss all of these matters with us. But time is already short to remedy these concerns, with reductions beginning to take effect in only a matter of weeks—and the chilling uncertainty that hangs overhead is already stifling investments in rural broadband. It is critical that these issues be resolved soon for the benefit of those living on tribal lands and other rural consumers.

IV. Rural Providers Face Additional Challenges in Delivering Service to Tribal Areas

NTCA members include 9 tribal entities and 27 other companies that serve tribal lands. These companies face similar regulatory pressures to other small rural providers in NTCA's membership. Tribal telcos are not exempt from major data issues in the model, for example, and they face many of the same support reductions as non-tribal telcos. But there are also unique challenges to deploying networks and delivering high-quality services on tribal lands.

Indeed, tribal lands are among the least connected areas of the country, and multiple barriers hinder the ubiquitous deployment of broadband-capable networks in such areas. First, tribal lands are typically located in the most remote areas of the country and usually have large land mass with low population density. These factors can impede development because of the expense of laying fiber to reach customers or enable wireless coverage in these areas.

Second, while network construction is never an easy task, carriers can face significant burdens when they attempt to deploy networks on tribal lands due to the maze of permits generally required. Companies not only have to seek permits from the tribal government, but they must obtain permits from the Bureau of Indian Affairs (BIA). For example, John Badal, the chief executive officer of Sacred Wind Communications—a company devoted to serving portions of the Navajo Reservation in New Mexico—testified before the Senate Commerce, Science and Transportation Committee in April 2011 that the process to receive the right of way permits from BIA and other agencies added two years to the time it took to complete a recent project on federally managed lands.[9]

Unfortunately, in addition to being time-consuming, these approval processes do not always take a straight line to the desired destination. There are areas where companies will have to work with a variety of governments, sometimes facing the uncertain question of which governmental entity even has jurisdiction over the land at issue. This confusion can cause delay or permanent halting of a project when permits cannot be issued in a reasonable amount of time.

Even with these delays and difficulties in serving remote areas and tribal lands, NTCA members observe a duty to serve under their "carrier of last resort" obligations and pursuant to their commitment to the communities in which they live and operate. Small, rural carriers take this responsibility seriously and do what they can to try to overcome the hurdles to deploy broadband in such areas. This includes not only the network deployment challenges already mentioned, but also working to ensure that the price for consumers to procure broadband is not out of reach for areas where the unemployment rate can reach 80 percent and 90 percent. The broader

[9] Badal, John Testimony before the Senate Committee on Commerce, Science, and Transportation, Delivered April 2011 *http://commerce.senate.gov/public/?a=Files.Serve&File*__id=24bf8511-d9d6–4901-aae4-c914ac90aec1

economic conditions on tribal lands are one of the biggest hurdles facing broadband providers and those making network investment decisions.

Of course, the costs of serving rural and remote areas, and particularly tribal lands, are often quite high, and this is once again where the USF and ICC cost recovery mechanisms both play such an important role. USF and ICC enable both network operations and consumer adoption in high-cost rural areas, including tribal lands. Without these mechanisms, small rural carriers—which have few, if any, "profitable" large markets to help support operations—would be unable to recover their costs over the useable life of the networks they build. Furthermore, without USF and ICC, the prices for services would be astronomical. USF and ICC thus promote both the availability and affordability of services on tribal lands and in other rural areas.

To date, small rural companies, such as NTCA members and their counterparts, have done a commendable job investing in broadband-capable networks in recent years. The NTTA has previously cited in particular the efficient work of small rate-of-return carriers in providing high-speed broadband to their areas.[10] Despite claims from some uninformed corners of inefficiency or rampant growth in the USF, small rural companies have deployed at least basic levels of broadband to over 92 percent of their consumers with a miniscule 3 percent per year growth in their USF receipts—and even as their ICC revenues have been declining.

So small rural companies truly have done more with less. They have put valuable USF resources to work, and the communities in which they live and work are the beneficiaries. But the job of these small companies is also not done—while they may have over 92 percent broadband penetration, as of 2010, 72 percent of those rural and tribal customers can only receive broadband below the FCC's targeted 4 Mbps (down)/1 Mbps (up) broadband speed.[11] Moreover, our members indicate that broadband adoption on tribal lands is particularly low—and reductions in USF and ICC revenues will only compel small carriers to pass through price increases to consumers that are likely to deter rather than promote adoption.

Although the USF and ICC mechanisms needed updating, they were clearly enabling progress in the delivery of broadband in tribal lands and other rural areas by small, rate-of-return-regulated carriers. But rather than build upon and sustain that progress through carefully calibrated and well-targeted reforms, and rather than striking a balance between the need to reach unserved areas and also ensure that services in all rural areas are sustainable once deployed, certain of the FCC's reforms run the risk of undermining the progress already made and appear to be bringing broadband deployment to a standstill in wide swaths of rural America.

This is why it is so important that hearings like this examine what can be done to ensure that residents of tribal lands and rural areas across the country can realize and participate in the broadband world. The focus of this hearing on sustainability is essential—we must not have the debate limited to what it takes to get broadband to rural America. Instead, we have to focus on what it takes to keep broadband in rural America, and what it takes to make sure that broadband for tribal residents and other consumers is reasonably comparable in price and quality to what is available elsewhere in America.

V. Conclusion

NTCA members have worked hard to provide 21st century infrastructure in high cost areas of the country. But the work is far from over, and it will only become more difficult to achieve if the predictability and sufficiency of USF and ICC support are in question. It is essential to restore regulatory certainty to encourage investment in these hard-to-serve rural markets, and it is important to define what the sustainable broadband future will be for these small carriers and the millions of rural and tribal consumers they serve. It is critical to make sure that we strike a better balance between getting broadband to rural America and sustaining broadband in rural America.

The CHAIRMAN. Thank you very much, Ms. Bloomfield, for your testimony.

Mr. LAPAZ.or Mr. Enjady, how have the new FCC reforms affected future plans for broadband deployment in your community, especially larger capital investments?

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[10] Comments filed by Eric Jensen, National Tribal Telecommunications Association, April 18, 2011, WC Docket No. 10–90, et. Al, accessed here *http://apps.fcc.gov/ecfs/document/view?id=7021239931*

[11] NECA Trends 2010—A Report on Rural Telecom Technology, at 5 (available at *https://www.neca.org/cms400min/NECA*__Templates/PublicInterior.aspx?id=100).

Mr. ENJADY. Mr. Chairman, Senator Udall, thank you for graciously letting me come today before you and speak. MAGI is a company that we started back in 2001, that was the first day we opened our doors. The Tribe was very excited, in fact, I was there, built every bit of nuts and bolts of the company, from the ground up. As a Tribal member of the Mescalero Apache Tribe, I am very proud that we have this ability to do this.

Everything that the FCC has put before us today has been very cumbersome, very difficult. It is a tough thing to try to go through all these different rules and waivers that we have talked about. And earlier we had a meeting today to that effect, that provided some insight of what we have to do to jump over the hoops like Mr. Hee was talking about earlier. This is a very cumbersome and very difficult process to go through, for Tribes like ourselves. We are very poor. We have 5,000 members in the whole world, of Mescalero Apache members. That is all that is left, that is who we are.

But we built our own phone company. And with this, we wanted to provide the best services to our members in Mescalero. And with the new order that is in place right now, it prevents us from providing new buildouts in areas. We are very dependent upon the government in providing homes for our children, for my aunts, my uncles, these are my own relatives that we are providing services to. If I have to build out to them with the new caps in place, that are going to be coming in July 1st, it prevents me from actually building out fiber optic services to those areas.

When they are your own family, you want to provide the best services that you can. When they are your kids, you want to provide the best services you can. You have never denied anything for your own kids, so do we as a Tribe. So we want to build the best type of system for them so they can learn, we are giving them the tools to be able to provide education.

These are some of the things that are preventing us, the FCC's order that is very harmful to us. We are probably one of the only Tribes that is really being affected by it.

The CHAIRMAN. Thank you.

Mr. Merriam, can you explain more about how the new reforms may threaten public safety in rural Alaska?

Mr. MERRIAM. Thank you, Mr. Chairman.

The extent of the reductions in support will have an effect on the network over time. And everything runs on the network, public safety, broadband, data traffic, economic development. Everything is impacted when that infrastructure is impacted.

We are one of the two companies in Alaska that were outliers and were affected by the regression analysis. We found where we could observe the inputs and understand them that there were some significant errors. We are putting together our final analysis and are going to meet with the FCC before the end of the month to try to get those corrected.

That will help us for the time being. But the unknown is in late 2013 they are going to run another regression and there is no predictability of how that, because we don't understand the model, how that might affect us in the future. It makes the five-year buildout plan that we are being required to provide very difficult to predict, when you don't know what your revenue looks like.

The CHAIRMAN. Thank you.

Mr. Hee, what are some of the most unique and expensive challenges about providing service to our Native Homelands in Hawaii?

Mr. HEE. Mr. Chairman, as you are well aware, providing utility services to any part of Hawaii is very challenging, not only because of the transportation costs, but because of the other utility costs. Our electricity is three times the national average.

But it is especially challenging on Native Hawaiian Home Lands, because the Hawaiian Home Lands, currently made up of approximately 80 non-contiguous parcels spread out over all of the islands, all of which need network because they have not, the incumbent has not built out sufficient network into these rural areas.

I think the most telling fact is that of the four wire line carriers that have tried to do business in Hawaii, including the incumbent, two have gone bankrupt, one has left the State because they couldn't do business and we are the remaining one headed for bankruptcy because of the changes in the Universal Service Fund.

That statistic alone should be very telling as to how difficult it is for not only a Native company but for any company to build out communications infrastructure in Hawaii.

The CHAIRMAN. Thank you.

Ms. Bloomfield, apart from predictability, do you have any concerns about where the companies will be able to keep up with inflation and other future expense increases related to long-term broadband infrastructure investment?

Ms. BLOOMFIELD. Mr. Chairman, we are very concerned about that. When you look at the high cost portion of Universal Service Fund, it has only grown at about 2 or 3 percent a year, which is a very small increase. So these caps are going to have a really chilling effect on these companies in terms of making decisions. Not only are you talking about inflation, but you are talking about a really capital-intensive business here.

As you are talking about moving to a broadband world, particularly when you have these remote areas, and you are not sure in terms of your adoption rates, it is not like you can put the plan out there and know that you are going to get 90 percent of your customers taking that service. These companies are making their own gambles.

So that is going to be very, very difficult moving forward. That is why I think that lack of predictability is really going to slow down and absolutely chill investment.

In addition to that, you have that unpredictability. These carriers won't know, the best analogy I have heard is that it is like everybody in this hearing room today puts their salary into a hat and then we all go off and we buy a house and we have a mortgage and we take out loans and do whatever we do. And at the end of the year, we all pull out a new number. So these companies are essentially operating without knowing when they are going to trigger these caps and what is going to happen.

What I am seeing most clearly is, we work a great deal with outside lenders. They are simply not lending to this sector of the industry right now. They don't know if those loans can be repaid. And even RUS and USDA, with a $5 billion loan portfolio, is, as Jonathan Adelstein referenced earlier in his testimony, is really

taking a look and having carriers come back and give a lot more data before they are putting any money out the door.

Without that capital investment, none of these companies are going to be able to make the upgrades that we know that you want consumers to have.

The CHAIRMAN. Thank you.

Senator Udall, anything further?

Senator UDALL. Thank you very much, Chairman Akaka.

Secretary LaPaz, or Mr. Enjady, could you describe for the Committee the service territory that Mescalero Apache Telecom covers and why it costs more to bring broadband to your communities than less rural areas?

Mr. LAPAZ. Our reservation is 460,000 acres. And a lot of mountainous terrain and a lot of the systems we have dead areas. Our people, many years ago, were brought together, moved back into one community due to hardship and other problems. They have been that way in this community for many years. Our Tribe has grown and we have a housing issue that we are currently working on.

A lot of our young people are moving back into these rural areas. And they don't have availability in telecommunications. Mr. Enjady and his group are working very hard to make this possible to where we are able to get back into some of these places.

We have DRMP, Department of Resource Management and Protection, and the Forest Service. They work in these areas where they have no contact, and many occasions they have had some problems, even injuries where they have no contact with their main offices. These are some of the things that we are faced with and it is a big area, like I said, mountainous areas. So it is really hard on us. It is a safety hazard, and healthwise, we have a lot of elderly that live in these rural areas. So with the work of Mr. Enjady and his crew, we hate to see this type of thing going on. We want him to continue in the work that they have done for many years for our people. That is why I am here in support of what they are doing.

Senator UDALL. Mr. Enjady, if you would like to expand on that, that would be fine.

Mr. ENJADY. Mr. Chairman, Senator Udall, yes, I do. I do want to expand on the point of our area. If you can look at the collage of photos that we have here, our area is not very flat. It is not like around here, you dig a couple feet down and you hit water. We are very dry. But we also have a lot of granite rock underneath and our bedrock is very tough.

So when I am digging in a mile of fiber optic cable, I try to put it in some inter-duct. That is costing me anywhere from $60,000 to $80,000 a mile. And that is probably three, four years ago. I don't know what the cost is today because I haven't been able to borrow any money. My forward-looking ability to predict the future costwise is uncertain now because of the changes that are happening.

Those are some of the things that we are looking at, to ensure a stay at least for the Tribal folks. Let's take a look at this again to be sure that we can sustain this, services that we have provided for our reservation. We are trying to do the best we can. Like I said, we have put every bit of our dollars into our network. If you look at the pictures, it is very remote, there are houses, we Apaches don't like to live very close together. We like to live far

apart. We don't like to bother anybody, we just like our sense of being alone.

And that is very true, in fact, Secretary LaPaz here lives at the very end of one of our lines. He lives all the way at the end, I mean, close to the bottom of the reservation. That is how far he wants to get away from everybody.

[Laughter.]

Mr. ENJADY. But it was not difficult to provide him the services, because we had enough capacity and fiber optic cable going all around the reservation. Now, we have not gold-plated our system. We have fiber to the curb and from there, from those boxes, it is copper. This is a 1999–2001 network that we built. Since then, I have not been able to get fiber optic all the way to the home. That is something that we are sitting on, we are depreciating that part of our plant slowly.

But like I said, going forward, I am not sure we are going to be able to provide that. Hopefully with the Senator's and the Chairman's help, we can turn this tide around, especially for Mr. Hee.

Senator UDALL. Thank you. And you emphasized, we all love our wide open spaces in the west. Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Udall, for your questions. Do you have any further questions?

Senator UDALL. Yes, I do.

The CHAIRMAN. Please proceed.

Senator UDALL. To Secretary LaPaz and also Mr. Enjady again, USF support is meant to go precisely to the types of high cost areas Mescalero Apache serves. You discussed the severe impact on Mescalero Apache Telecom if the USF reform order moves forward without changes.

Yet my understanding is that there is a waiver process, and you all were here and heard them talk about it, to ensure that companies like Mescalero Apache's Telecom situation are fully addressed. If necessary, will you seek a waiver from what you have heard and will you be able to continue to serve customer and bring service to those who do not have broadband? Are there specific concerns raised with applying for a waiver as you understand the waiver process so far?

Mr. ENJADY. Mr. Chairman, Senator Udall, yes, I think we are going to have to be forced to. Like Mr. Hee there, he has gone through that process and I don't want to go through the process that he has gone through, especially getting portions of answers back, even especially through the news.

But the biggest part of that waiver process that Mescalero Apache Tribe is worried about is the process that they might ask sensitive financial information of the Tribe. They say they are not going to, but it is still not written down anywhere in the reform order that they are not going to ask this type of question. That could be any of our hospitality, our casino proceeds, any of this stuff.

If you look at the FCC order itself, it does talk about it, it cautions petitioners that, we intend to subject such requests to a rigorous, thorough, and searching review comparable to a total company earnings review and its subsidiaries. And that subsidiaries

portion is the portion that we are not too sure about and we would like to get some clarification from the FCC. We have posed this question to them, too. So we are still waiting for an answer on that, as you saw today when Commissioner Clyburn was answering questions. They are still having to figure this whole thing out.

So it is a process that is not, the whole framework of it has not been laid out in a map. This is a process that seems very, if we ran our government in Mescalero that way, I don't think there would be a lot of people who would be very happy with us. So we are looking for some clarification.

Senator UDALL. Thank you, and I have one more question. Then I will wrap up here.

Ms. Bloomfield, I really appreciate your testimony today and for the work your member companies do on Tribal lands and throughout New Mexico. I know that rural telephone cooperatives in my State are doing a good job of bringing service to their communities. In fact, the areas that seem to be the least served are often where there is no rural telecommunications provider. So I want to ensure continued good service in rural areas that have broadband. But I want to see unserved areas finally linked up to the internet. And I have a couple of questions here.

How can we target USF support to unserved Tribal areas while not endangering service to those rural communities that are already served well by their local telephone cooperative? Is the solution for each unserved Tribal area to form its own telephone cooperative? Is that a feasible approach given the challenge of setting up cooperatives in the overall fiscal constraints of USF support?

Ms. BLOOMFIELD. Let me take that piece by piece, senator. In terms of when you talk about the unserved, and that is a really important part of the population base, and as I have mentioned, the large companies primarily serve a lot of that land mass as well and have not invested.

One of the things that I think would have been really intriguing for the FCC to have taken a look at, and obviously it is never too late, is over the course of, this is both USF and inter-carrier compensation reform, on the inter-carrier compensation reform, that is the access that the carriers pay back and forth and that is going, those payments the large carriers pay to the smaller carriers is going to decrease significantly over time.

If this effort was really a broadband deployment effort as well, there will be about a $9 billion savings to the larger carriers from that. What a great way to actually create some policy around taking some of those savings and ensuring that those go back into building broadband facilities or potentially rate reductions to those areas to provide some of that motivation to build in the areas where, I understand, it is hard to build a business model. You have three or four customers per mile, you don't recover a lot of the cost. I think that is something that would have been well worth folks looking at.

The other thing is the way USF is structured, there is a USF high cost portion for the smaller carriers. What the FCC has also done is created one for the price capped carriers, which are the mid-size and larger carriers. So there are different pockets of money. I know they are all kind of struggling with how they are

going to actually use some of those resources to build out whether they will have the resources.

So I think that is a question that some of the larger companies will be able to better answer.

In terms of your question about setting up a cooperative, one of the things that I think folks find is that it is a really intriguing prospect until you get into it, and realize it is really complicated, it is really capital-intensive. And I think the key is really that dialogue and that partnership with the carriers out there. I think our members have had a great relationship, those that are not the Tribal entities themselves but those who serve Tribal lands, really working hard with the Tribal areas to kind of work through what the needs are, where the builds need to be. There is a lot of different regulatory proceedings that have to go back and forth, State proceedings, Bureau of Indian Affairs proceedings, rights of way.

It is one of those things that, I think if somebody were to look at the landscape for telecommunications today and say, it would be a great idea to start up a new company, I am not sure this would be, given all the USF and inter-carrier comp reforms, the first thing somebody would want to jump into. But I do think there is a way for companies to work together and to better make sure that they are kind of dialoguing with each other about what the needs are.

Senator UDALL. Thank you very much for that answer. I thank the entire panel today and I want to tell the Chairman I very much appreciate his persistence and hard work on these kinds of issues, as our Chairman. Thank you, and I have concluded.

The CHAIRMAN. Thank you very much, Senator Udall, for your deep interest in all of this. I do have further questions that I will submit to the record to you.

But I want to say mahalo, thank you so much to all the witnesses as well. This, for me, and for the Committee, this has been an informative discussion. And I look forward to working on these concerns.

I can't stress enough how important this issue is to our Native communities across the Country. In this new era, access to internet service is now a basic need. The funds provided through Universal Service make a difference in how our elders receive critical health care services. They pave the way for successful and affordable education opportunities for our young people at home and in the communities, and to give our business owners, large and small, real economic opportunities to participate in the global economy.

I hope that the Federal agencies here today will take this to heart as they proceed with reforms to the Universal Service Fund. Not only are Native communities severely underserved, they are owed, owed a special duty as part of the Federal Government's trust relationship, which must be honored and respected. We must work together to ensure that the proposed USF reforms address the special needs of the Native communities.

Federal agencies must also work to ensure equal access to high quality, high speed and reliable broadband services and not a second class system. More importantly, Congress needs assurance that Native communities won't be left with companies shutting their

doors due to these reforms, leaving them with no service at all. We can't afford that.

And again, thank you all, to our witnesses today. I would like to remind everyone that the hearing record will be open for two weeks after today. So please, if you need to, please use that time to let us know what you think.

But again I say, this has been informative, I think we have learned a little bit more about our concerns. And I am glad and commend the two departments for working together. We need to continue to do that to resolve these problems and to try to avoid the calamity that is really possible here.

So with that, again, mahalo nui loa, all of you, thank you very much. And to many of you who are traveling, a safe trip home.

This hearing is adjourned.

[Whereupon, at 4:34 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF NELSON N. ANGAPAK, SR., SENIOR VICE PRESIDENT, ALASKA FEDERATION OF NATIVES (AFN)

Introduction

Mr. Nelson N. Angapak, Sr., Senior Vice President, Alaska Federation of Natives (AFN), hereby submits the following comments to the U.S. Senate Committee oversight hearing on" Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities" on behalf of AFN.

AFN was formed in 1966 to address Alaska Native aboriginal land claims. From 1966 to 1971, AFN devoted most of its efforts to passage of a just land settlement in the U.S. Congress. On December 17, 1971, Congress recognized those efforts with the passage of the Alaska Native Claims Settlement Act (ANCSA). Today, AFN is the largest Native organization in Alaska. Its membership includes 178 villages (both federally recognized tribes and village corporations), 13 regional for-profit corporations (established pursuant to ANCSA), and 11 of the 12 regional Native nonprofit tribal consortia that contract for and run a broad range of state and federal programs for their member villages. The overall mission of AFN is to enhance and promote the cultural, economic, and political voice of the Alaska Native community.

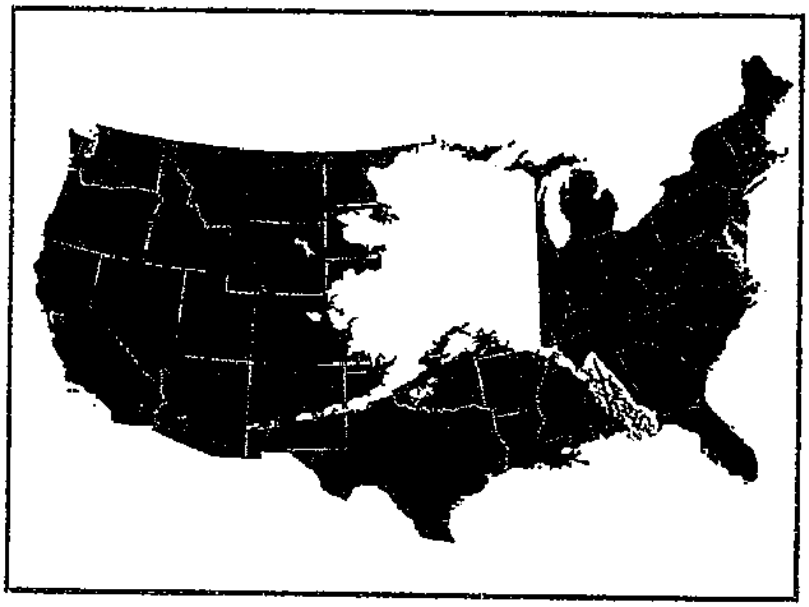
There are at least three stakeholders impacted by the Universal Service Fund Reform the Federal Communications Commission, the service providers, and the customers of those service providers. This written statement reflects some of the concerns of customers impacted by FCC's decision regarding the deployment of broadband in rural and remote villages in Alaska.

Rural villages in Alaska are geographically remote from urban areas and are "rural" in every respect, as there are no interconnecting roads or genuine broadband connectivity on which to base employment, improved health care, and expanded educational opportunities. Internet and other telecommunications in rural Alaska are provided through satellite links. Satellite service has a small throughput, and can barely handle audio streaming, much less video streaming, which is essential for robust and effective telemedicine, distance learning, and economic development. This is in sharp contrast to urban America, where reliable, state-of-the-art fiber allows for these applications directly—or from hubs. Not only is current satellite-based Internet service inadequate to handle broadband applications of today and tomorrow, but it is subject to weather fluctuations, sun spots and other frailties, and can be afforded by only a few.

Rural Alaska contains the most remote and isolated communities in the United States. Many villages and communities are, in some respects, still emerging from third World conditions. Teenage male suicide rates are alarmingly high, caused in great part by lack of job opportunities and the self-esteem that comes from hard work. In villages of 100 to 800 people, there are usually only a handful of paying jobs, resulting in unemployment rates in such areas ranging from 20 percent to 90 percent. Rural Alaska has some of the highest poverty rates of any place in the nation. There is nowhere else in America that faces the combination of such high unemployment, poverty, near absence of paying jobs, and geographic and telecommunications remoteness as rural Alaska . . . NOWHERE!

To gain proper perspective of the immensity of the task that Federal Communications Commission (FCC) is charged with as it develops the broadband needs of the nation, and in particular, the broadband needs of the Alaska Native villages, it is helpful put into perspective the size of Alaska relative to size of the United States. Our nation is about half the size of Russia, roughly 3/10th the size of Africa, about ½ the size of South America, just slightly larger than Brazil and China, and about 2½ times the size of Western Europe. Within the United States, Alaska is the largest state, about 2.3 times the size of Texas and about 115th the size of the lower 48 states.

On this map, the tip of the Aleutian Chain is located in the State of California; and the tip of the panhandle of Southeast Alaska reaches all the way to Northwest part of Florida.



The Northern most part of the State of Alaska reaches the USA and Canadian border and the most Southern part of the mainland Alaska reaches all the way to the State of Texas.

Alaska has one of the largest Native populations in the United States. Alaska Natives make up about 22 percent of the total population in Alaska and our people are scattered across the entire breadth of the state. Our Native cultures are land-based, and our occupation and use of our land predates Plymouth Rock and the pyramids. [1]

Two hundred thirty-one of the 565 federally recognized tribes are located within the boundaries of the State of Alaska. [2]

It is important for the committee to review the comments of AFN as the committee considers addressing the issue of "Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities." For the record, AFN recommends that the committee keep the customers located in rural America—particularly those in rural Alaska and the Native Hawaiian Homelands—in mind when it takes corrective action, if any, on this matter in the future.

The customers in rural Alaska and Native Hawaiian Homelands have some similarities; including but not limited to the fact that there are no interconnecting roads or genuine broadband connectivity on which to base employment, improved health care, and expanded educational opportunities. The Native Hawaiian Homelands have no interconnecting roads between themselves as they are separated by the Pacific Ocean; the Alaska Native communities located in remote and rural parts of the State of Alaska have no interconnecting roads as the huge land mass and the mountain ranges separate them. They both are also customers of the service providers in their respective regions.

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[1] Testimony of Julie Kitka, President, Alaska Federation of Natives, June 21, 2006, Joint Hearing on Government Reform and Committee on Small Business on *Northern Lights and Procurement: The Effect of the ANC Program on Federal Procurement and the Alaska Native Corporations. pp 4 and 6.*

[2] *http://en.wikipedia.org/wiki/Federally*__recognized__tribes.

Broadband Communications Needs in Native Communities

The American Recovery and Reinvestment Act of 2009 (ARRA) provided two major categories of funding for broadband infrastructure, $2.5 billion to the US Department of Agriculture Rural Utilities Service (RUS), and $4.7 billion to the National Technology and Information Administration (NTIA) within the Department of Commerce, of which $3.8 billion is directly available for broadband infrastructure development. ARRA mandated the Federal Communications Commission (FCC) prepare a broadband plan for the United States of America by February 17, 2010.[3]

Advances in technology have already significantly affected rural Alaska and promise to do even more in the near future. Communicating with friends and family is easier and less expensive. News, information, and entertainment are widely accessible through the Internet from every comer of the state. Distance education has grown more sophisticated and interactive. Yet, large areas of Alaska lack broadband access and risk lagging further behind economically and in other ways without such access.

The Knight Commission on the Information Needs of Communities in a Democracy detailed just a few of the things that increased higher-speed or "broadband" Internet access means:[4]

- People can apply online for jobs, college admissions, and loans.
- They can keep track of their children's homework assignments and school lunch options.
- They can research health websites before they go to the doctor and be prepared to discuss ideas and information.
- They can manage their bank accounts and pay bills quickly and efficiently.

Expanding higher speed broadband service to rural Alaska (and other rural parts of the country) is an important step towards ensuring that technology continues to benefit all of the state's population and not just the urban areas.

- A 2007 report from the Brookings Institution found that each one-percentage point increase in broadband penetration can yield a 0.2 to 0.3 percent increase in employment.[5]
- A study by the New Millennium Research Council determined that a nationwide broadband network would create 1.2 million new, permanent jobs in the United States.[6]
- As of2007, 73 percent of urban/suburban households had broadband services compared to 55 percent of rural households.[7]
- A recent California study found that 83 percent of parents of children with special health care needs drive more than one hour to visit a specialist.[8]
- Broadband can eliminate geographic barriers and increase access to health care for patients living in remote and rural areas.
- In education, broadband also offers great promise for rural Alaska where the small number of students often makes it impractical to have teachers with specific expertise in the wide range of subjects taught in the upper grades. Teachers can use video conferencing, interactive online lessons, music, and educational gaming programs to expand what they can offer their students.[9]

Although enhanced broadband access cannot solve all of the challenges of living in rural Alaska and making villages sustainable economically—as the basic issues of expensive transportation costs, both for people and for goods and services, and high energy costs remain—it can play an important part in making it possible for people to live in isolated, remote areas without giving up their ability to communicate, work, and interact with the rest of the world.

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[3] *2009 Federal Priorities Alaska Federation of Natives,* p 3.

[4] The federal Communications Commission (FCC) defines broadband as "advanced communications systems capable of providing high-speed transmission of services such as data, voice, and video over the Internet and other networks."

[5] *The Effects of Broadband Deployment on Output and Employment: A Cross-sectional Analysis of U.S. Data*, The Brookings Institution.

[6] *Building a Nationwide Broadband Network: Speeding Job Growth,* New Millennium Research Council.

[7] *Home Broadband Adoption 2007,* Pew Internet & American Life Project, June 2007.

[8] California Broadband Initiative, *The State of Connectivity: Building Innovation Through Broadband*, Final Report of the California Broadband Task Force, January 2008.

[9] National Governors' Association Center for Best Practices Issue Brief: State Efforts to Expand Broadband Access, May 2008.

We applaud the February 22, 2012 letter that Alaska's Congressional Delegation wrote to the Honorable Julius Genachowski, Chairman, Federal Communications Commission in which it jointly informed the FCC Chairman of the challenges FCC must consider as it moves forward in creation of in its implementation of Connect America. A copy of this letter is attached to my statement for the benefit of the members ofU. S. House Subcommittee on Indian and Alaska Native Affairs.

For the record, Mr. Chairman, AFN recommends the following:

FCC's first priority should be proposals that serve unserved areas. "Unserved" should be defined as an area without any broadband service, or having access only to dial-up service or service that is dependent on a satellite connection. "Underserved" should mean an area with broadband that is not comparable to what is available in urban areas. This includes almost, if not all of rural and remote parts of this nation, and particularly rural Alaska.

FCC should establish a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

FCC program should recognize that, although a plan to deploy broadband to rural Alaska should be realistically designed to meet the statutory requirements, Alaska's unique geography, climate, and lack of infrastructure could present unforeseen challenges. For instance, because there are no inter-connecting roads between the metropolitan and rural Alaska, the most cost-effective means of delivering material and goods needed for broadband deployment is by ship and barge during the months of June, July, August, and September in Western Alaska.

Broadband capability will not, by itself, resolve overnight the many health, social, and economic challenges that people face in the most rural and remote regions of our nation. However, reliable, robust, easily accessible broadband alone holds the most promise for making a real impact in terms of the opportunities that are so acutely needed.

Rural Alaska is Remote and Unique, and Broadband is Essential to Educational, Health Care, and Job Opportunities

Life in rural Alaska is unlike that of any other region in the United States of America's mainland. In rural Alaska, subsistence hunting, fishing and gathering is still a predominant way of life and provides a crucial means by which rural Alaskans put food on the table. As previously mentioned, communities there have the highest rates of poverty and unemployment of any group of people in America largely because Native villages and communities are not connected, unlike the rest of the country, by major state highways or the interstate highway system.

In addition, unlike many communities in the lower-48, the Alaska Native villages are not served by power grid systems for the purposes of distributing electricity. Power is produced locally, usually at great cost. Rural Alaskan villages and communities are not connected to one another or the rest of the nation through high-speed, reliable broadband, let alone any major city in Alaska. They are isolated, remote, and face an exceedingly harsh and unforgiving climate and challenging terrain. The high-speed, fiber optic-based broadband-based service available to most of the American public in the lower-48 is simply not available in rural Alaska.

Internet and other telecommunications in rural Alaska are provided through satellite links.[10] Satellite service has a small throughput, and can barely handle audio streaming (much less video streaming), which is essential for robust and effective telemedicine, distance learning, and economic development. This is in sharp contrast to urban America, where reliable, state-of the-art fiber optic allows for these applications directly or from hubs. In addition, not only is current satellite-based Internet service inadequate to handle today's broadband applications as well as tomorrow's, but also satellite links are prohibitively expensive. Non-health organizations in Alaska's regional centers have been quoted prices for T1 connectivity as high as $16,000 per month per site (as of2009), or about 70 times the rate in Seattle. This is simply unaffordable.

As the bandwidth demands of common web applications increase, rural Alaska is falling further behind the rest of the United States, whether measured by jobs, education, or health care. Absent some form of intervention such as the construction of fiber optic cable backbones, rural Alaska will have no meaningful chance to par-

[10] Although individual satellite dishes are a partial solution for households and business that can afford them, these services are not available everywhere and they suffer deficiencies similar to those of other satellite-based systems. Alaska is at the edge of the coverage area for these providers. Even if this were not the case, because of limitations on upload rates, they are inadequate for web-based businesses, offices with multiple users, and other high-use consumers.

ticipate in the global economy, educational, or health care systems and will be simply left behind as it has been for so long.

There are number of factors to consider in addressing the broadband needs of the Alaska Natives and rural Alaskans. These include the population trends, economic well-being, social and health trends, and educational trends. Those factors, described as follows, are included in a draft report being developed for the Alaska Federation of Natives (AFN).

Population Trends

The state's Alaska Native population is younger and faster-growing than the non-Native population. Consequently, Alaska Natives are an increasing share of the state's population. With Alaska Native birth rates well above average, this trend is expected to continue well into the future. Most Alaska Natives live in Alaska's larger communities, and migration from rural to urban appears to be continuing slowly but steadily, especially among young people.

- In 2009, there were 125,200 Alaska Natives living in Alaska. The Alaska Native population has grown at an annual rate of 1.9 percent since 1990 and 1.3 percent since 2000. These growth rates are slightly faster than the overall Alaska population, which has increased by 1.2 percent annually since 1990 and 1.1 percent annually since 2000. [11]

Economic Well-Being

Though the income gap has shrunk slightly in recent years, per capita income for Alaska Natives remains well below the statewide average, partially the result of very limited employment opportunities in rural Alaska. Meanwhile the rising cost of living (especially fuel) continues to eat away at the purchasing power of Alaska's rural population.

- Per capita income for Alaska Natives was $16,550 over the 2006–2008 period compared to $29,913 for all Alaskans and $27,466 for all Americans. [12]
- The gap between per capita income for Alaska Natives and the state's overall population has shrunk somewhat since 1980: in 1980, per capita income for Alaska Natives was 50 percent as much as for the state's total population; in both 2000 and the 2006–2008 periods, it was 55 percent.
- Over the two decades from 1960 to 1980, Alaska Native per capita income grew significantly faster than the state's overall per capita income, erasing a substantial portion of a much bigger gap (Alaska Native per capita income was about 33 percent as much as the state's overall average in 1960).
- On average over the 2006–2008 period, 51 percent of Alaska Native males between 16 and 64 were employed compared to 76 percent for the overall statewide male population. The percentage for Alaska Native males employed rose significantly from 1960–1990, but has remained about the same since then.
- Among female Alaska Natives, 59 percent were employed versus 70 percent for the overall state female population. Since 1960, the percentage of Alaska Native females has increased dramatically and consistently. Fewer than 15 percent of Alaska Native females were employed in 1960.
- About one in five (20 percent) Alaska Natives had income below the poverty level in 2008, greater than the Alaska average of eight percent. This does not necessarily mean that these Alaska Natives live in poverty. Quality of life and standard of living for Alaska Natives, and others, are affected by many factors in addition to cash income, such as use of subsistence resources.
- The percentage of Alaska Natives with income below the poverty level is down slightly from 22.4 percent measured in the 2000 Census. [13]
- Over one-quarter of Alaska Native families use the food stamp program to supplement their income, compared to eight percent of all Alaskan families.

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[11] McDowell Group, *Alaska Demographics*, p 1.

[12] The most current income data available by race is from the U.S. Census' American Community Survey (ACS). The most accurate ACS estimates available are a three-year average of survey responses from 2006–2008. The income data shown here is the average of the three years adjusted for inflation to 2008 dollars.

[13] These are general comparisons only because of the methodological differences between the full decennial Census and the sample-based ACS.

Social and Health Trends

Indicators of health and social welfare often reflect symptoms of underlying economic or cultural dislocation. Still, recognizing and addressing such symptoms is critical.

- From 2001 to 2008, Alaska Native suicide death rates have been higher than Whites and Alaska as whole. In 2008, the Alaska Native suicide rate was 40.9 per 100,000, almost twice the rate for Alaska Whites, at 22.0 per 100,000.
- Alaska Native suicide death rates recently peaked in 2004 at 50.8 per 100,000, almost twice the 2001 rate of28.1. The rate of40.9 per 100,000 in 2008 marked an increase from 2006 (34.9 per 100,000) and 2007 (37.1 per 100,000).
- In 2008, Alaska Native infant death rates, at 12.0 per 100,000 were higher than for whites (3.1 per 100,000) and for Alaska as a whole (5.9 per 100,000).
- Alaska Native infant death rates have ranged been between 9.3 and 12.2 per 100,000 since 2001, while White Alaskan infant death rates have declined steadily, from 6.3 to 3.1 per 100,000 during the same period.

Education Trends

While some progress is evident, Alaska Natives continue to lag non-Natives in terms of high school graduation rates and attainment of college degrees.

- Educational attainment among Alaska Natives is low relative to statewide and national averages. Only 4.8 percent of Alaska Natives hold a Bachelors degree or advanced degrees, compared to 26.5 percent of the general Alaska population (over age 24).
- At near 5 percent, however, this rate of college degree attainment reflects progress. In 2000, 4 percent of Alaska Natives held a Bachelors degree or higher, and only 3 percent did in 1990.
- Alaska Native graduation rates are consistently about 20 percentage points below graduation rates for White students. This differential has not measurably changed since 2003 (the earliest year examined in this study).

One of the most important expectations resulting from broadband deployment in rural Alaska is its use in the capacity building of the minds of our Alaska Native youth. That is, enabling youth living in rural and remote Alaska tribal communities to access broadband in the same manner as youth living in urban settings. Broadband deployment in rural Alaska will likely foster the development of one of the most important, if not, the most important resource Alaska Natives have: the Alaska Native youth!

Economic Opportunity/Standard of Living

Very little progress has been made in closing the per capita income gap between Alaska Natives and non-Natives over the past 30 years. The subsistence way of life is still very important to many Alaska Natives and although not a cash-generating activity (and therefore not reflected in government reports on economic conditions), subsistence clearly enriches people's lives.

Geography also plays a role in the Native/non-Native income divide; residents of rural areas have fewer employment opportunities than urban residents, often limited to seasonal or other temporary jobs. Full-time jobs in smaller rural communities are rare, and generally pay less than comparable jobs in larger communities. Nevertheless, the income discrepancy between Alaska Native and non-Native exists in urban Alaska, and likely is the result of lower levels of educational attainment and other issues related to workforce preparedness.

FCC has set aside $50 million dollars for the purposes of creating Internet connections in rural America. This amount, Mr. Chairman, may sound as a sufficient amount if Alaska and Hawaii are taken out of the picture; but if in fact, it is the goal of FCC to create an absolute Internet connectivity across this great nation this amount is totally insufficient! Our recommendation is to increase this amount by tenfold. Even then, it may not be enough.

We agree with Alaska's Congressional Delegation's recommendation, as written in the second bullet, *Underfunding Remote Alaska* on page two of the February 22, 2012 letter to Chairman Genachowski, regarding the underfunding of FCC's implementation plan for Remote Alaska insofar as deployment of broadband in rural Alaska is concerned.

FCC should also consider grandfathering the tribally owned companies that deploy broadband to the Indian Country, including the tribes in the State of Alaska. The issue of grandfathering of such services was addressed by the tribally owned service providers, thus, this statement is silent on that.

Tribal Coordination—Outreach to the Tribes in the State of Alaska

As stated earlier, 231 of the 565 federally tribes of this great nation are located within the State of Alaska. The FCC, as any other federal agency, is mandated to hold consultation with the federally recognized tribes with all the tribes in this nation, including the tribes located within the boundaries of the State of Alaska. Logistically speaking, it would be difficult at best to contact every federally recognized tribe in Alaska for consultation by FCC. However, there are 12 regional tribal consortia operating within the State of Alaska operating on behalf of the tribes located within their boundaries. Each tribal consortium operates its programs after it receives resolutions from each of the tribes within their boundaries authorizing them to act on behalf of the tribes.

It seems logical that insofar as tribal consultation is concerned in the State of Alaska; FCC should consider consulting, at the very least, with each of the 12 nonprofit tribal consortia in its tribal consultation process as well as the 12 regional corporations located within the boundaries of the Alaska. The regional corporations are the ANCSA regional corporations pursuant to the terms of the Alaska Native Claims Settlement Act of December 18, 1971.

Thank you for giving me an opportunity to testify in front of your committee. If you have any questions regarding my statement, I would be willing to entertain them at this time.

Attachments

CONGRESS OF THE U.S.
Washington, DC, February 22, 2012

Hon. JULIUS GENACHOWSKI,
Chairman,
Federal Communications Commission,
Washington, DC

Dear Mr. Chairman:

We write to raise several significant Alaska-specific concerns regarding the Federal Communication Commission's (FCC) reform of the high-cost Universal Service Fund. We appreciate the time :and serious considerations you gave in addressing the unique and challenging Alaska communications market through various mechanisms within the USF/ICC Transformation Order. However, as the FCC and carriers work through the market shifts that accompany such a high-impact change, we remain concerned on a number of points, some of which we note below. We believe addressing our additional concerns is important to maintaining, but also expanding the incomplete telecommunications network in Alaska. Further steps must be taken in short order to fulfill the critical mission and the statutory obligation of providing universal service to our constituents in some of the farthest reaches of our country, including rural Alaska.

As you know, the lack of roads, extreme distances, topographical and climatic challenges in rural Alaska result in extraordinarily high construction and operational costs. To bring the most advanced services possible to our rural areas, the companies providing those services assumed extremely high burdens of debt. The networks built meet Rural Utilities Services standards and requirements, but now these companies are faced with uncertainty about their ability to maintain a satisfactory level of debt coverage, and have little opportunity for obtaining the necessary financing to upgrade their networks.

The FCC's recent reform of the High-Cost Universal Service Fund and creation of the Connect America Fund acknowledged the unique challenges and extreme expense of serving rural Alaska, in part by creating an interim Remote Alaska mechanism. The Commission has said it is intended to "preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds." This goal represents how we believe all carriers in Alaska should be treated under Section 254(b) of the Telecommunications Act of 1996, which is intended to establish universal service at comparable rates. Specifically, we would like to directly address several core issues:

- *Middle Mile Infrastructure:* As we have mentioned in the past, the costs of maintaining and expanding middle-mile connections in Alaska are extremely high. To meet the FCC's goal of bringing broadband to all Americans, we request more be done to assist and create incentives for companies to build out and develop telecommunication networks capable of delivering broadband services to rural Alaskans at comparable and affordable prices. Specifically, we request the CAF be modified to include an Alaska-specific middle mile formula to offset Alaska's extremely and unavoidably high middle mile costs.

- *Underfunding Remote Alaska:* It appears the Remote Alaska mechanism designed to preserve support and facilitate investment will be underfunded by more than $20 million, contrary to our expectations and the FCC's purpose in establishing this fund. Without adequate funding, we have little expectation for progress in deploying wireless and broadband service in rural Alaska. Petitions for reconsideration are before you that seek modest, yet critical, revisions to the FCC's implementation plan for Remote Alaska. We urge you to immediately adopt these recommendations and make the revisions necessary to restore anticipated funding levels and fulfill the dual goals of the FCC's Remote Alaska mechanism: preserving newly initiated services and facilitating additional investment in rural Alaska.
- *Two-Year Delay for Both CETCs and ILECs:* We appreciate the implementation delay the FCC gave to the reduction of identical support funding. However, we remain concerned about the competitive impact on our state's telecommunications market and request you expand the two-year delay to all Alaska carriers, including incumbent local exchange carriers (ILECs) and competitive eligible telecommunications companies (CETCs). Given Alaska's uniqueness in climate, topography, and geography, much of which the FCC has already recognized, the additional time for both CETCs and ILECs will help both wireless and wireline sides better adjust to the FCC's order.
- *Improved Waiver Process:* As the reform order was being developed, we spoke extensively on the importance of allowing waivers to the delivery standards in an expedited manner to carriers in rural high-cost areas. We remain concerned that the process laid out is still too burdensome and slow. Additionally, questions remain about whether the realities of the costs of middle-mile connections are included in the waiver process. You have before you suggestions from multiple carriers in our state, as well as the Regulatory Commission of Alaska (RCA), on how to address this issue. We encourage you to consider them in a timely manner.
- *Carriers of Last Resort:* We request you work with the RCA on issues relating to carriers of last resort in Alaska. We believe state commissions are in the best position to make accurate and timely local determinations regarding the overlap of service areas and abilities of providers to serve areas without continued support.
- *Tribal Clarifications:* We applaud the inclusion of tribal consultations in FCC rulemaking. However, we request you work with the tribal groups, carriers and the State of Alaska to clarify the tribal consultation requirements included in the reform order. Alaska is home to more than 200 federally recognized tribes, only one of which is on a reservation similar to the system in place in the Lower 48. This means service often crosses multiple Native villages, tribal regions, and Native corporation lands. By working with Alaska stakeholders to clarify which tribal organizations qualify tor consultation, we hope harmony between tribes and providers will continue to bring telecom services to our State's Native communities.

Your quick action is critical. Because of Alaska's short summer construction season, these issues must be addressed by March 7, 2012, so that providers serving the remote areas of Alaska can finalize and execute summer construction plans in a timely manner. Providers need time not only to order equipment, but to transport that equipment to remote locations. Neither can occur until we know with certainty that the full support amount will be available for additional deployment to remote Alaska Native villages. At best, this means denying rural Alaska comparable services for at least another year, or at worst, far longer, depending on how the Commission implements the transition to replacement funding mechanisms. Any delay in deciding the Petitions for Reconsideration could result in the loss of the entire four-month construction season. In this case, a decision delayed truly is a decision denied. This would be unfair to our rural constituents, many of whom still have no wireless service today.

As you move forward, we highly encourage you to consider these Petitions for Reconsideration and related comments concerning the future of telecom service in rural America, particularly Alaska. We hope and expect that your timely action will prevent the disruption of the forward momentum of building a nationwide telecommunications network.

We look forward to continuing to work with you and welcome the opportunity to meet for further discussions about the unique telecommunications challenges facing Alaska.

Sincerely,

SENATOR MARK BEGICH, SENATOR LISA MURKOWSKI, AND CONGRESSMAN DON YOUNG

ALASKA FEDERATION OF NATIVES
August 25, 2011

Hon. JULIUS GENACHOWSKI,
Chairman,
Federal Communications Commission,
Washington, DC

Dear Chairman Genachowski:

Thank you for taking the time to visit Alaska and holding a Roundtable discussion on broadband as it applies in Alaska. It is our hope that you visit rural communities while you are in Alaska.

Introduction

The Alaska Federation of Natives (AFN) is the largest statewide Native organization in Alaska. Its membership includes 178 villages (both federally-recognized tribes and village corporations), 13 regional Native corporations and 12 regional nonprofit and tribal consortiums that contract and run federal and state programs. AFN is governed by a 37-member Board, which is elected by its membership at the annual convention held each October. The mission of AFN is to enhance and promote the cultural, economic and political voice of the entire Alaska Native community.

American Recovery and Reinvestment Act

The American Recovery and Reinvestment Act of 2009 (ARRA) provided two major categories of funding for broadband infrastructure, $2.5 billion to the US Department of Agriculture Rural Utilities Service (RUS), and $4.7 billion to the National Technology and Information Administration (NTIA) within the Department of Commerce, of which $3.8 billion is directly available for broadband infrastructure. The ARRA also charged the Federal Communications Commission (FCC) with preparing a national broadband plan, which has since been completed and submitted to Congress.

As part of the implementation of the ARRA, the Obama Administration awarded a last-mile grant to Rivada Sea Lion of a $25.3M Grant Award.[1] Rivada Sea Lion is a Joint Venture comprised of Sea Lion International (SLI) of Anchorage, AK and Rivada Networks of Colorado Springs, CO. SLI is a subsidiary of Sea Lion Corporation, an Alaska Native Village Corporation of Hooper Bay, Alaska. The award, as we understand it, is to provide 4G wireless high-speed broadband Internet service to approximately 30,000 residents in 53 unserved, subsistence level communities in Southwestern Alaska Native villages and was issued on December 18, 2009, the 38th Anniversary date of the enactment of the Alaska Native Claims Settlement Act (ANCSA). Rivada will design, engineer, and construct a multi-mode 4G last-mile remote network that spans 90,000 square miles and connects homes and businesses as well as anchor institutions such as health clinics, schools, and tribal government facilities. By using wireless and satellite technology rather than copper or fiber, the project hopes to provide the first broadband services to these Native Alaskan communities at relatively low cost.[2]

Mr. Myron Naneng, a shareholder of Sea Lion Corporation and the President and CEO of the Association of Village Council Presidents, recently advised the Human Resources Committee, a standing committee of the AFN Board of Directors, that while this award was issued on December 18, 2009, the Rivada Sea Lion joint venture has yet to be reimbursed by FCC for the expenses they have incurred on the implementation of this award. The billings have been submitted in accordance to the terms and conditions of this award remain unpaid. AFN recommends the FCC reimburse this joint-venture for the expenses incurred pursuant to the award and billings submitted to the FCC since the award was issued.

Broadband Deployment Recommendations

AFN supports broadband deployment in remote and rural parts of Alaska with hopes that it will lead to affordable communications at service and quality levels

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[1] *http://www.einpresswire.com/article/63460-rivada-sea-Jion-joint-venture-wins-arra-grant-award-for-alaska*

[2] *http://www.aspenwireless. net/2009/12/17/a-winner-rivada-sea-lion-a warded-rus-bip-funds/*

comparable to communication services available to the majority of American communities. AFN recommends the FCC consider the following as it moves forward with broadband deployment in Alaska:

- FCC should approach broadband deployment as a national endeavor comparable to building the interstate highway system in the 1950s and 1960's, and encourage large scale projects—such as deploying fiber optic cable up the coast of Western Alaska, Interior Alaska, and any remaining areas where this technology is absent—as well as the development or immediate upgrading of microwave networks that will link large geographic areas and thousands of rural residents to the fiber optic connectivity in Anchorage and beyond.
- FCC's first priority should be to serve unserved areas. "Unserved" should be defined as an area with no broadband service, having access only to dial-up service, or having service that is dependent on a satellite connection. "Underserved" should mean an area with broadband not comparable to what is available in urban areas.
- FCC should establish a comprehensive nationwide inventory map of existing broadband service capability and availability that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider.
- FCC must recognize that a plan to deploy broadband to rural Alaska, in order to be realistically designed to meet the statutory requirements, must consider Alaska's unique geography, climate and lack of inter-connecting roads between the metropolitan and rural Alaska, all of which will present unforeseen challenges. For example, the most cost-effective means of delivering material and goods needed for broadband deployment in Western Alaska is by ships and barges during the months of June, July, August and September.

One of the most important net results of broadband deployment in rural Alaska will be its use in the developing the minds of our Alaska Native youth. That is, enabling the abilities of the Alaska Native youth living in rural and remote Alaska tribal communities to access broadband (Internet) in the same manner as youth living in urban settings through expansive broadband deployment. Youth are one of the most important, if not the most important, resources Alaska Natives have and they deserve access to educational resources at least on par with their urban counterparts.

AFN understands that broadband capability/capacity development will not by itself resolve the many health, social, economic and other challenges common in remote and rural parts of Alaska and in the most rural and remote regions of our nation. However, reliable, robust, and easily accessible broadband provides one of the most promising hopes for making a "sea of change" in terms of the opportunities that are so acutely needed in rural Alaska.

Finally, the goals of broadband deployment in rural and remote communities in Alaska are consistent with goals set by the White House Executive Order that established the White House Rural Council in the areas of job creation, economic development, *expansion of telecommunications*, renewable energy and new markets for rural communities, increased access to quality health care, education, housing and particularly in persistent poverty counties and tribal areas.

Thank you for your consideration.

Sincerely,

NELSON N. ANGAPAK,
Sr. Senior Vice President

PREPARED STATEMENT OF JOHN BADAL, CEO, SACRED WIND COMMUNICATIONS, INC.

Sacred Wind Communications, Inc. thanks the Senate Indian Affairs Committee for its interest in studying the forthcoming changes to the Federal Communications Commission's (FCC) Universal Service program as they affect America's Indian tribes. The FCC has successfully managed universal service programs since its inception to the extent that nearly every home in the United States, off tribal lands, has had basic telephone services available for the last half century; and, more recently—since its Tribal Order adopted in 2000, in fact—the FCC has turned its attention to achieving ubiquitous telecommunications services on tribal lands.

In November 2011, the FCC released a watershed decision reforming the federal Universal Service Fund (USF) program. A central intent of that reform was to eliminate or reduce waste and inefficiencies in the USF program. To its credit, the FCC arrived at a comprehensive and sound plan that portends to reduce waste and ineffi-

ciencies in the USF fund's support of at least one large segment of the telecommunications industry, and has the promise of expanding more broadband to the harder to reach rural areas. Unfortunately though, the FCC's reform may bring harm to a number of the smallest rural local exchange carriers (RLECs) that serve some of the most neglected rural areas of our country. Essentially, rural local companies with some of the highest per capita investments in plant and operating expenses are threatened with significant reductions in federal USF support.

The very nature of the more neglected areas of our country, however, causes the higher investments and higher operating costs incurred by telecommunications carriers, with little potential for a return on investment. Low population densities, high poverty rates, large land masses encompassing difficult terrain are common components of a tribally-serving telecommunications company.

Sacred Wind Communications, serving a portion of the Navajo Nation in New Mexico, for example, operates in an area the size of Delaware and does not have a single incorporated town or village in its entire service territory.

Sacred Wind purchased the "last mile" assets on Navajo Lands from Qwest Corporation in 2006, at which time less than 25 percent of Navajo homes had access to basic voice telephone services and less than 1 percent had access to broadband in the home. Thanks to its receipt of a USDA–RUS low interest loan, Sacred Wind has built a new telecommunications infrastructure well suited for the terrain and the community it serves, at a cost of $40 Million. Even though Sacred Wind's network is not yet complete, the company has increased telephone availability to over 70 percent of homes and now makes broadband available to 99 percent of its voice customers.

Sacred Wind's network infrastructural costs and its operating costs are higher on a per subscriber basis than non-rural telecommunications carriers and even many rural carriers that serve more dense populations and flatter terrain. This is a simple matter of fact in a vast service territory where population densities are low and the amount of network infrastructure needed to cover the entire area—flatlands, foothills and canyons—is high. No single technology is appropriate for the entire area—where the distance between communities and the population density make landline deployment unaffordable, where the mountains and canyons within its territory, which separate hundreds of Navajo homes in small clusters many miles from each other, make mobile wireless communications unworkable in considerable parts of Navajo Lands.

In the FCC's pursuit within its USF reform order of cost efficiencies in telecommunications systems, a generalization that mobile wireless service is often better suited for low density areas seems to have been accepted. Such generalization does not work well where mountain ridges framing canyon lands and setting high desert homes apart from their neighbors demand that residents hunt, sometimes for miles, for a mobile signal in order to make a call. All Navajos are familiar with the hunt for a wireless signal. Sacred Wind, on the other hand, has developed a system that sends a signal directly to a person's house, enabling residents to have 911 service available for emergencies at all times. Sacred Wind's costs are different from a more neglectful mobile wireless alternative, but they are not inefficient.

On April 25th of this year, the FCC issued an amendment to its November 2011 USF reform order, making certain adjustments to its analysis of rural carriers' costs. That amendment reduced the financial impact for many rural carriers, including Sacred Wind. For that, we thank the FCC for hearing our concerns and responding. Nonetheless, Sacred Wind and many other rural carriers are still uncertain about the full impact of a multifaceted reform program and still have questions about whose calculations—the FCC's or the industry's consultants—are the most accurate. The consequence of such uncertainty is played out daily in our industry in delayed construction projects, job loss, hiring freezes, and postponed plans for future investment.

Ironically, the larger telecommunications carriers in the country are to be benefitted by these reforms. In its drive to reform the USF program, the FCC has made changes in every aspect of a rural carrier's source of revenues, including in the area of Inter-Carrier Compensation (ICC). Historically, long distance carriers and Internet providers have had to compensate the local exchange companies for their traffic's use of the local companies' systems. Without the local companies' continued investment in their networks, those long distance companies and Internet providers would not find capacity enough to transmit all of their traffic. For some reason, the FCC feels that rural local exchange carriers cannot justify charging carriers for the use of the local companies' networks. But, the reverse is true: rural local exchange carriers must build networks that are more costly to operate on a per subscriber basis than those found in urban areas and require appropriate compensation from

the larger carriers for their larger use of the rural carriers' networks than the rural carriers require for their own subscribers.

In such remote areas as Navajo Lands in New Mexico, Arizona and Utah, only the rural local exchange carriers possess the infrastructure that the long distance carriers, the mobile wireless carriers and the Internet providers need to carry their traffic. Without Sacred Wind's infrastructure, in other words, Internet services, mobile services, and long distance services would be bottlenecked in northwest New Mexico. The FCC's ICC reform plan, though, would effectively require the rural carriers to provide the larger carriers nearly free access to our investments. Each year the amount the rural carriers charge the larger carriers for terminating their traffic in our systems would be reduced by 5 percent, and then be eliminated altogether in 9 years. Meanwhile, the rural carriers' bank payments for the investments they have made remain the same.

Since such intercarrier reform is to begin only at the terminating end of a telecommunications transmission, the most vulnerable rural carriers may be forced to raise their fees to long distance companies on the originating side of the call, which would disadvantage everyone—including the rural carriers' themselves—in rural areas.

Tribally Serving Carriers Have Depended on the USF to Reach Their Customers' Goals

The achievements of tribally owned telecommunications companies, and of a few locally-based carriers uniquely serving tribal communities, in surmounting the digital divide on tribal lands have been well noted. An easy comparison can be made of the availability of telecommunications services on tribal lands as provided by tribally-oriented rural carriers versus larger, out-of-state carriers. Whether tribally owned or not, however, certain expenses above those common to all rural carriers are incurred on tribal and federally managed lands. Those involve the need and the requirement to operate within the culture of the tribe and demands placed by the tribe and/or the Federal Government to comply with the appropriate land use and other authorization procedures.

An acceptable use of USF support should be the additional personnel and other operating expenses required to acquire rights of way on federally managed lands, to acquire rural addressing for remote tribal customers' access to 911 emergency service, and additional expenses necessary to reach, inform and educate our customers on the availability of services.

Sacred Wind, for example, assigns a bilingual employee to work with the 22 local Navajo Chapters (local communities and political subdivisions) for support for rights of way applications and to affirm the company's operating in culturally acceptable ways. Even the company's broadband offering is designed to assure its customers of privacy and security (a Navajo principle related to Hozhõ and K'e or K'e nisiin, a person's pursuit of harmony through respect of others) and to feature as part of its services special applications that are of supreme relevance to its culture, such as its history, traditional medicines, native language training, etc.

For a rural carrier serving a tribal area, the acquisition of right of way on federally-managed lands can represent up to 20 percent of a project's construction costs. Not only does this affect the finances of a rural carrier operating on tribal lands, but it distorts the carrier's operating costs as they are compared to other telecommunications companies. It also points to an uncoordinated mission at the federal level: does the federal government want broadband and voice telecommunications services established quickly on tribal lands or not? Do the FCC and Department of Interior have common goals? Do the state highway and land departments coordinate infrastructural development with their Federal Government counterparts?

Said in another way, a significant piece of federal grant, loan or USF monies used today for telecommunications expansion in the West is spent wastefully on a government-driven, heavily bureaucratized right of way process, and some of that money goes right back to the federal government in payment of its fees. If the federal government is unable to resolve this policy paradox, it should at least take into account the additional effort needed to properly serve the largely unserved tribal areas and the additional work to stimulate broadband usage as it develops its new Connect America Fund budget.

Implication of RLECs' Loss of USF Support

Many RLECs today operate in areas of the country where no sound business case could be made for the provision of basic or broadband services without significant USF support. According to a study conducted in 2003, a typical RLEC received 22 percent of its revenues from interstate long distance carrier access charges, 18 percent from intrastate access charges, 40 percent from federal universal service fund-

ing support and only 20 percent from their customers.[1] From testimony delivered to Congress in 2004 by a rural Texas carrier, 31 percent percent of the carrier's revenues were derived from carrier access charges, 60 percent from the FCC's USF, and only 9 percent from customers.[2] Sacred Wind's financial structure is not much different. Today, with carrier access support reduced through reforms enacted at the federal and state levels since these reports were made, USF support for Sacred Wind's customer base is absolutely critical. Further ICC reforms and other reductions to USF funding can be easily and appropriately described as just more nails in a coffin.

A Connect America Fund Can Meet Its Broadband Objectives While Sustaining Rural Carriers

Because we firmly believe that the locally based rural carriers, and notably the tribally owned and tribally serving rural carriers, have proven their worth in building advanced infrastructures and delivering quality voice and Internet services to their customers, we recommend that a reformed USF program be built around them and not around the national carriers that have neglected rural America. Sacred Wind's and several tribally owned companies' newness in the rural telecommunications community has advantaged their customers in terms of having access to the most affordable and best available equipment for their voice and broadband needs. Many rural carriers, including all tribally owned and tribally serving carriers, exemplify the benefits of "localizing" telecommunications services for their customers—that is, replacing the negligent national carriers with a locally owned solution. The optimum strategy for the FCC in its drive to expand broadband across the nation, therefore, would be to support the rural carriers' improvements to their local telecommunications systems rather than reinventing a universal service program that returns this country to an unworkable past effort—one led by the national landline and mobile wireless carriers.

The USDA–RUS's low interest loan program and the FCC's USF program have worked well for Sacred Wind and our customers. We are proud of the work we have done to resolve the digital divide within our service territory on Navajo tribal lands. As a recently formed company, having built a new telecommunications infrastructure that is just now attracting scores of new customers every month, we ask the FCC and this Committee to further support our efforts to serve the unserved. Thanks to the USDA's low interest loan program and support mechanisms under the FCC's USF program, which included consideration for a return on a rural company's investment, many companies as ours have taken up the federal challenge to improve service to rural America.

Even that investment is at risk as the FCC is considering reducing the amount of return on investment *after* the investment has already been made. How can the federal government encourage more tribes or other private companies to develop new telecommunications solutions for tribal customers when the tribal model that has been succeeding is set for change? When universal service—built from models developed from current federal programs by a handful of tribally-serving companies in the country—is just now within reach of many other tribes, why now amend the model?

Can we not simultaneously reform the USF and continue to incent growth of telecommunications systems on tribal and remote lands? Our fear is that the uncertainty built into the current plans would do the opposite. We thank the Committee for its attention and consideration.

PREPARED STATEMENT OF GAYLA HALINIAK-LOYD, PRESIDENT, KALAMAULA HOMESTEAD ASSOCIATION

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee, thank you for holding this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund Order (Order) on native communities across the country. My name is Gayla Haliniak-Loyd and I am the President of Kalamaula Homestead Association. The Kalama'ula Homesteaders Association (KHA) was established to . . .

. . . challenge and inspire youth who live on homestead land to achieve their full potential by providing support and opportunities for advancement in education;

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[1] "Economic Efficiency and the Support of Universal Service in Rural Markets," Parson, Steve G., Ph.D., June, 2003.

[2] Wendell Taylor, Central Texas Telephone Company, before the U.S. Senate Commerce Committee, May 12, 2004.

. . . promote better health for our Kalama'ula community and homesteaders outside of Kalama'ula through education; and

. . . preserve and protect Hawai'i's natural environment, including Kiowea Park in Kalama'ula in particular, through the stewardship of our lands consistent with Hawaiian culture and values and traditional methods of resource management.

I appreciate the opportunity to provide testimony on this critical issue that could have devastating impacts on our operations and ability to serve our Native Hawaiian constituents. When no one else would, SIC owned and run by Native Hawaiians, provided and continues to provide us with affordable and reliable telecommunications services.

We humbly request your assistance to ensure SIC's investment in desperately needed telecommunications infrastructure in our underserved indigenous communities continues. We have tremendous hopes for our future as native people of this great nation and believe that our ability to compete in an increasingly global economy is directly tied to our ability to access broadband communications infrastructure. Once complete, SIC's robust and reliable statewide fiber optic network will expand broadband capabilities and provide affordable access for community anchor institutions, like ours. This will result in substantial benefits for the entire state, but especially our rural and remote communities, delivering improved education, healthcare, and economic development opportunities in a way only broadband can provide.

As Hawaii's only Rural Local Exchange Carrier (RLEC), SIC is the only carrier that has consistently demonstrated its commitment to ensuring Hawaii's rural and remote areas have access to broadband infrastructure. SIC has and will continue to, if given the opportunity, provide broadband access in Hawaii's most rural and remote areas, squarely in line with the spirit and intent of Universal Service. Plainly put, we strongly believe the future broadband capabilities of our organization and our community hinge on SIC's ability to continue to fund critical infrastructure investments in our rural communities.

We respectfully request your assistance to ensure that SIC continue to receive adequate funding to fulfill Congress's vision of Universal Service for ALL Americans, and to ensure that native communities, like ours, are not left behind.

PREPARED STATEMENT OF JAMES J. KAIL, EXECUTIVE COMMITTEE MEMBER, SMALL COMPANY COALITION (SCC); PRESIDENT/CEO, LAUREL HIGHLAND TELEPHONE COMPANY (LHTC) & YUKON-WALTZ TELEPHONE COMPANY

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee:

Introduction

Thank you for the opportunity to submit testimony regarding USF reform and its impact on Tribal telecommunications carriers as well as small rural companies serving Tribal lands. My name is James J. Kail and I am writing on behalf of the Small Company Coalition (SCC) of which I am an Executive Committee Member. Our Coalition was founded earlier this year in direct response to the concerns of many in the industry that the FCC's USF/ICC Reform Order will have a destructive impact on small rural carriers, Tribal and non-Tribal, as well as the rural and Tribal communities that they serve. Among those tribally-affiliated carriers, the SCC represents Mescalero Apache Telecom, Inc. (MATI), for whom Alfred Lapaz and Godfrey Enjady have testified at this hearing, as well as Sacred Wind Communications, a rural New Mexico carrier serving Tribal lands.

Similar to the Tribal service offered by MATI (information which may be gleaned from their oral and written testimony now on record), Sacred Wind Communications (SWC) provides advanced telecommunications and broadband to Navajo communities with service currently available to 70 percent of 6,800 homes across the region. At present, Sacred Wind serves 2,850 access lines, a figure that has seen steady monthly growth, with 79 percent of residential customers on the Tribal Lifeline program for low-income tribal members. SWC has received national attention for its work, as it won the American Express/NBC Universal-sponsored "Shine a Light" competition, which recognized the company's vital role in providing advanced technology to the Navajo nation; service crucial to the Tribe's modernization and progression.

Unfortunately, many of the reforms discussed in the June 7th hearing create an industry-wide atmosphere of uncertainty and thereby imperil the ability of well-run, community-oriented carriers such as MATI and SWC to invest in their networks

and continue reaching out to those customers who, absent predictable and sufficient USF support, will remain unserved.

General Comments on Hearing

Many of the questions and arguments presented at the hearing warrant further investigation and response. In the interest of providing additional dialogue on the urgent matters discussed, I would like to offer direct engagement with many of the written and verbal statements now on record with the Committee.

A primary motif of the Commission and its representatives is that the regulatory process has thus far been "open and engaging," that their "doors are open," and that they have worked with and will continue to work with the industry to take our concerns into account. Incidentally, I have personally been a party to this "open and engaging" process.

At a recent telecommunications conference in New Mexico, following a presentation by FCC Chief of the Office of Native Affairs and Policy, Geoffrey C. Blackwell, I expressed fundamental concerns with various regulatory mechanisms implemented by the Order and the nature with which the Commission treats the USF itself. At this meeting, the Commission went on record as declaring the USF to be "federal money"—a strange notion, considering that not a dime of taxpayer money is involved, but rather, it is comprised entirely of user fees. That is to say, those who use the nationally-connected telecommunications network pay to do so. While I hoped for an adequate response, I was ultimately instead told to formally voice these thoughts on the record with the Commission so they could properly be addressed. This would indeed be an encouraging statement if one had not already done so—as a board member of the Organization for Promotion and Advancement of Small Telecommunications Companies (OPASTCO), I have long been involved in the process and noted that in the Order itself, rural and Tribal input are routinely rejected or altogether ignored.

To this end, Paragraph 796 of the Order offers a lesson in dismissiveness, as it addresses state objections to the national regulatory approach adopted by the Commission:

> "Some commenters argued that the uniform approach we take today is inappropriate because states should be allowed to pursue tailored intrastate access reforms. **We appreciate and respect the expertise and on-the-ground knowledge of our state partners concerning intrastate telecommunications** [bold added] [. . .] With respect to the ultimate ICC framework and the intervening transition, *however, we find that a uniform national approach will best create predictability for carriers and promote efficient pricing and new investment to the benefit of consumers* [b.a.]."

As an active leader within the Associations and the Coalition for whom I offer this testimony today, I may say that the consideration we as an industry have received is similar. Though our collective "expertise and on-the-ground knowledge" might seem to suggest that we know best how to run our businesses, the FCC ultimately deemed their own experience in boardroom discussions to be more pertinent. Not surprisingly, a lawsuit is now pending in the 10th Circuit Court in Denver, of which my own Pennsylvania Public Utility Commission (PUC) and Gila River Telecom, a Tribal LEC, are both filing parties. In addition, valuable members of the rural and Tribal telecommunications industry have now testified before the Committee, giving voice to a common sentiment: the Commission heard us, but did not listen.

With this in mind, some quick work in Microsoft Word reveals that "reject/rejected" appear 75 times throughout the Order, while reading the context in which they appear shows that they are typically used in relation to suggestions made by representatives of the Tribal providers and small rural industry at large. In short, "open and engaging" rarely equates to "adoption," at least in relation to the interests of the rural and Tribal carriers in this case.

Similarly, word searches for "Verizon" and "AT&T" will net 465 matches, while two of the largest trade associations for the rural industry, NTCA and OPASTCO (both of whom represent Tribally-affiliated carriers and those serving Tribal lands), garner less than 49. This is not an attack upon the larger carriers; on the contrary, it is expected that their voice should be well-heard in a matter of national regulation. However, the sheer disparity of accepted input should raise a considerable red flag in regard to how effective the "open door" process is when it comes to actually putting ink to paper.

The Waiver Process as Post-Modern Epic

In the tradition of Frodo's march into Mordor, the Biblical Jacob's pursuit of Rachel, and the quest for the Golden Fleece, any company wishing to obtain a waiver

from the immanent damage within the Order, as currently written, must first complete a series of daunting tasks and trials. To follow this metaphor, Commissioner Clyburn's remarks (subsequently echoed by Mr. Blackwell's oral testimony in the June 8 Natural Resources hearing in the House) that prospective waiver applicants need not hire outside experts and consultants to assist in the process is equivalent to telling Jason to leave the Argonauts at home as he's required to yoke the fire-breathing oxen, sow the field with dragon teeth, defeat the army, slay the dragon and so on and so forth.

Senator Murkowski raised these concerns about the onerous nature of the waiver application, as well as the projected $100K–$180K cost that relief applicants may incur in order to complete the process, and the ultimate reality that even after such effort, it still remains unlikely that many companies will be granted the waiver. As a matter of fact, the FCC themselves state in paragraph 540 of the November Order that:

> "**We do not, however, expect to grant waiver requests routinely** [bold added], and caution petitioners that we intend to subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review. In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well."

Alarmingly, by the Commission's own admission, any entity seeking a waiver is already facing an up-hill battle, as the stated expectation to not "grant waiver requests routinely" may be paraphrased quite simply as: "We declare many of you to be 'inefficient' and know that these reforms will put you out of business, but if you still want to try your luck, go ahead."

Continuing in Paragraph 540, the Commission states:

> "We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing *voice* [italics added] services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported *voice* [i.a.] service."

One of the most striking contradictions of the entire Order, the stated purpose of which is to connect 18 million Americans to *broadband*, is that a waiver will only be granted if *voice* service is rendered unavailable.

Paragraph 542 reiterates the call for proof of very specific, severe harm, stating that "Conclusory assertions that reductions in support will cause harm to the carrier or make it difficult to invest in the future will not be sufficient." In other words, though a company may perfectly well be harmed and/or inhibited in future investment, that "conclusory assertion" alone is worthless until proven beyond a shadow of a doubt by providing all requested information to complete the waiver process. On top of that, the impact must be so severe as to "put consumers at risk of losing voice services," a tremendously high threshold which bears no relation whatsoever to the Commission's National Broadband Plan goal of ensuring high-speed Internet connectivity to all Americans. Sufficient demonstration of such impact on small carriers leaves them no choice but to turn to outside consultants for assistance, and indeed, as Mr. Hee of Sandwich Isles Communications stated in his testimony, it perversely parodies the American judicial doctrine of "innocent until proven guilty."

It should be noted that included in this mandatory information are demands for access to "specific details on the make-up of corporate operations expenses such as *corporate salaries* [italics added]" among other things. In case one is tempted to not take the letter-of-the-law seriously here, the Commission reminds us in Paragraph 543 that "**Failure to provide the listed information shall be grounds for dismissal without prejudice** [bold added]. In addition to the above, the petitioner shall respond and provide **any additional information as requested by Commission staff** [b.a.]." Under this rigid structure, it is entirely conceivable for a redlining company to be denied waiver relief for not having provided the proper paper, or for paying a corporate salary viewed as too high by the Commission—an example of the Order's oft-cited "wastefulness" and "inefficiency."

Ms. Clyburn, in her oral testimony before the Committee, consistently relied upon the assertion that all companies practicing GAAP (Generally Accepted Accounting Principles) should, by default, possess the Commission-requested information in totality. That is to say, that companies going about their daily business, in the course of such business, would have and/or should have accumulated material adequate to satisfy all demands of the Commission, in addition to having an in-house ability to

fully comprehend the impacts of the new reductions, cuts, and transitions contained within the Order. These include, but are not limited to:

- Quantile Regression Analysis (QRA) Revision—roughly 100 companies still exceed the Commission's arbitrarily imposed cap (the oft-quoted 90th percentile cap), even after the revision.
- 2011 "Frozen Baseline" (comprised of traffic-sensitive interstate revenue requirement, terminating state access revenues, and reciprocal compensation revenue) is still reduced by 5 percent annually for 9 years.
- Local Switching Support (LSS)—an explicit USF mechanism included in the "frozen baseline," eliminated entirely, effective July 1, 2012. Reduced 5 percent annually thereafter. No offsetting revenue recovery mechanisms are introduced.
- Safety Net Additive (SNA)—a program which rewarded investment in building out infrastructure, many RUS loans were taken out with this support factored into the decision. SNA, like LSS, is eliminated in its entirety with no offsetting revenue recovery mechanisms introduced.
- $250/line/month ($3,000/line/year) cap remains in place, despite its completely arbitrary nature. There is absolutely no empirical data sufficient to support such a one-size-fits-all approach. This cap applies equally to Arctic Slope Telephone Cooperative, Inc., as it does to an urban carrier serving the heart of New York City even though cost models, the nature of expenses, and ability to recover revenue (in which population density is paramount) are completely dissimilar. Under *no circumstance* can a carrier receive more than $250/line/month without losing support dollar-for-dollar for each dollar over the cap. Additionally, very little is known about where this cap will fall in the coming years, a shock of uncertainty certain only to paralyze investment.
- Many other rulemaking issues are still pending: Interstate Common Line Support (ICLS) Regression, Rate of Return (RoR) represcription, and the Unsubsidized Competitor Rule, among others.

It should be noted that none of these measures described above, those implemented or still nascent, aim to give extended support to Tribal or small rural carriers, but rather unequivocally remove it. Ms. Clyburn's contention, then, that the small rural carriers and Tribal carriers under the weight of these new regulations, and those on the horizon, do not need to hire experts and consultants to evaluate the impact on their companies would be downright laughable if it came from an outside observer. The fact that such a calloused statement comes from one of the very individuals who will arbitrate the waiver process is utterly chilling.

It must also be mentioned that the very process of understanding the impact such complex formulas as the QRA alone—which creates *annually changing caps* (a concept referred to within the industry as a "moving target")—employed by the Commission is a significant burden in and of itself, as many of these Tribal and small rural carriers simply are not staffed with economists and mathematicians able to quickly decipher the effect of the reforms. Other revenue cuts and program eliminations, such as SNA and LSS, as well as the transition to bill-and-keep (the practice of reducing Inter-Carrier Compensation, or ICC, to zero), produce such a profound effect of unpredictability that even well-staffed, experienced companies must turn to consultants and specialists to gain a better grasp for the financial positions of their businesses. The cynic may find his proverbial "cherry" on top in the form of the acknowledged erroneous data used in the creation of the now-authoritative QRA model, a point to which Ms. Shirley Bloomfield testified and on which Senator Barrasso questioned Commissioner Clyburn, who could only respond that "[the FCC's] doors are open."

Finally, to touch upon the testimony of the most experienced waiver veteran (a matter still pending, one half-year after initial application, despite the FCC's assurance of a 45-day "shot clock"), Mr. Hee, similar to the assertion presented here, described in his opening remarks the FCC's treatment of small rural companies as "guilty until proven innocent." In fact, the Commission's manner of addressing small rural carriers seems to demonstrate systematic disdain. In a Notice of Proposed Rulemaking (NPRM) from February of 2011, the Commission seems to encourage mergers, as it seeks comment on "Streamlining the study area waiver process to eliminate barriers to consolidation and rationalization of service territories." [1] Natu-

[1] Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service,

Continued

rally, eliminating barriers to consolidation and rationalization of service territories eliminates barriers to the consolidation of the providers to those territories. If the NPRM of February may be seen as a prophecy of things to come, the November Order works to promptly fulfill it.

The June 8 Natural Resources Committee hearing in the House featured a performance by Chairman Young in which he began stacking waiver applications each thick enough to make the most thorough study Bible envious. This has come to be known in the industry as the "waiver race," in which companies, fueled by post-regulatory uncertainty and in panicked anticipation of the lobotomy to come, have begun jockeying for position to be one of the few (according to the FCC's own admission) to claim exemption from the ruthless rules.

Paragraph 542 of the November Order, directed toward mobile providers, offers more support of the "guilty until proven innocent" concept:

> "To the extent that a mobile provider makes arguments in its waiver petition based on the profitability of specific cell sites, petitioner must explain why its cost allocation methodology is *reasonable* [italics added]."

In essence, whoever stands before the Commission in the hope of obtaining a waiver does so from a position of presumed inefficiency; in this case, their cost allocation methodology will inherently be assumed unreasonable, which necessitates an explanation on the applicants' behalf as to why it is, in fact, "reasonable." Naturally, such a subjective assessment is treacherous when the applicant is already standing in a shadow of doubt.

Though at this point it is mere speculation, it does not require much insight to make a marriage of the Commission's stated proclivity for consolidation and the November Order mayhem—small rural carriers may indeed find themselves walking down the aisle in the near future.

Conclusion

When Chairman Young of the House Natural Resources Committee asked the FCC's Geoffrey Blackwell, "Who supported [the Order]?" he was met with the response that the Commission gave unanimous approval. To this, Congressman Young replied "Who is the Commission?" This exchange resonates because it is indicative of a problem rooted deeply in the rulemaking process behind this Order. While Ms. Clyburn, Mr. Blackwell, and other FCC representatives are quick to recite the party line of "open doors" and "engagement," the first phase of this Order is timed to commence July 1 of this year, yet the Tribal carriers, carriers serving Tribal lands, and the rural telecommunications industry at large are still scrambling for a halt and revision.

According to the National Broadband Plan, "Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding." However, though this Order provides Tribal funding, the combined effect of the previously mentioned cuts and reductions, in actuality, leaves the Tribes with less support than before. If this truly has been a good-faith negotiation, as the Commission will readily contend, why is it that the regulated are in virtually unanimous disapproval of the resulting regulation?

On behalf of the Small Company Coalition, representing rural independent telcos, Tribal companies, and those serving Tribal lands, I implore you, Chairman Akaka, Vice Chairman Barrasso, and members of the Committee to reciprocate the FCC's call for "accountability and transparency," a loaded challenge misapplied to the small carriers such as MATI and SWC with impeccable track records of superior service to Tribal and insular areas, and demand that this mechanically broken and logically bankrupt regulation be remanded to the Commission for meaningful revision and equitable return.

PREPARED STATEMENT OF MEAHILAHILA KELLING, EXECUTIVE DIRECTOR, KAI LOA INC.

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee, thank you for holding this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund Order (Order) on native communities across the country. My name is I. Meahilahila Kelling and I am

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Lifeline and Link-Up: Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 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, FCC 11–13, at paragraph 21 (2011) (NPRM).

the Executive Director of Kai Loa, the non-profit support organization of Ke Kula ʻo Samuel M. Kamakau, LPCS. In honor of Kamakau's legacy as a "great Hawaiian historian who also served his community as an outstanding writer, scholar, jurist, and legislator, in 2000 a Hawaiian *immersion charter school* was formed in his name. In July of this year we are opening our new site in Haiku Valley, Kāneʻohe on Oahu.

I appreciate the opportunity to provide testimony on this critical issue that could have devastating impacts on our operations and ability to serve our Native Hawaiian constituents. Sandwich Isles Communications, Inc. (SIC), owned and run by Native Hawaiians, provided and continues to provide us with affordable and reliable telecommunications services. We will soon have their telecommunications and DSL services in July of this year at our new campus located in Ha'ikū Valley on the island of Oahu. Ke Kula 'o Samuel M. Kamakau, a laboratory public charter school, is a Pre- School through 12th grade Hawaiian-Medium Education Program with an enrollment of 127 students. This school is a program of choice with special requirements for participation, the primary one being enrollment as a family. As a laboratory school program of the Hawaiian language college of the University of Hawai'i Ka Haka 'Ula o Ke'elikolani, we are committed to the improvement of Hawaiian language education. This includes the development of innovative ideas in research, curriculum development, teacher training, and program development. We are gravely concerned that if nothing is done to stop the calamitous effects of the FCC's new Order, we will lose the service we rely on to serve our students and families. Access to affordable and reliable telecommunications is critical to ensuring we can keep costs down so we can focus on our educational philosophy, which integrates high standards in language, culture and values into the daily lives of participants as a community. Without service from SIC, we could not talk about all the needs that they usually provide to help serve Native Hawaiians.

We humbly request your assistance to ensure SIC's investment in desperately needed telecommunications infrastructure in our underserved indigenous communities continues. We have tremendous hopes for our future as native people and believe that our ability to compete in an increasingly global economy is directly tied to our ability to access broadband communications infrastructure. Once complete, SIC's robust and reliable statewide fiber optic network will expand broadband capabilities and provide affordable access for community anchor institutions, like ours. This will result in substantial benefits for the entire state, but especially our rural and remote communities, delivering improved education, healthcare, and economic development opportunities in a way only broadband can provide.

As Hawaii's only Rural Local Exchange Carrier (RLEC), SIC is the only carrier that has consistently demonstrated its commitment to ensuring Hawaii's rural and remote areas have access to broadband infrastructure. SIC has and will continue to, if given the opportunity, provide broadband access in Hawaii's most rural and remote areas, squarely in line with the spirit and intent of Universal Service. Plainly put, we strongly believe the future broadband capabilities of our organization and our community hinge on SIC's ability to continue to fund critical infrastructure investments in our rural communities.

We respectfully request your assistance to ensure that SIC continue to receive adequate funding to fulfill Congress's vision of Universal Service for ALL Americans, and to ensure that native communities, like ours, are not left behind.

Mahalo no ka hoʻolohe ʻana mai.

PREPARED STATEMENT OF ALVIN PARKER, PRINCIPAL, KA WAIHONA O KA NAʻAUAO PCS

Chairman Young and distinguished members of the Subcommittee, thank you for holding this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund Order (Order) on native communities across the country. My name is Alvin Parker, Principal of Ka Waihona o ka Naʻauao Public Charter School (PCS). Ka Waihona o ka Naʻauao PCS is located on the island of Oahu and has over 600 students enrolled in grades K through 8. Our enrollment continues to increase and we will soon expand our facilities to have the first ninth grade class in the school year 2015–2016. We've also secured a 35-year lease with the Department of Hawaiian Home Lands (DHHL) and are reassured knowing our students and staff at Ka Waihona o ka Naʻauao PCS will continue to receive the same high-level of services from Sandwich Isles Communications, Inc. (SIC) throughout our lease agreement.

I appreciate the opportunity to provide testimony on this critical issue that could have devastating impacts on our operations and ability to serve our Native Hawai-

ian students and families. When no one else would, SIC owned and run by Native Hawaiians, provided and continues to provide us with affordable and reliable telecommunications services. We currently have (14) landlines from SIC and will receive DSL service from SIC soon. We are gravely concerned that if nothing is done to stop the calamitous effects of the FCC's new Order, we will lose the service we rely on to serve our Native Hawaiian communities. Affordable and reliable telecommunications access is critical to ensuring we can keep costs down so we can focus on our educational philosophy which integrates high standards in language, culture and values into the daily lives of participants as a community. Without service from SIC, we could not talk about all our current and future needs that would help serve our Native Hawaiian students and families.

We humbly request your assistance to ensure SIC's investment in desperately needed telecommunications infrastructure in our underserved indigenous communities continues. We have tremendous hopes for our future as native people of this great nation and believe that our ability to compete in an increasingly global economy is directly tied to our ability to access broadband communications infrastructure. Once complete, SIC's robust and reliable statewide fiber optic network will expand broadband capabilities and provide affordable access for community anchor institutions, like ours. This will result in substantial benefits for the entire state, but especially our rural and remote communities, delivering improved education, healthcare, and economic development opportunities in a way only broadband can provide.

As Hawaii's only Rural Local Exchange Carrier (RLEC), SIC is the only carrier that has consistently demonstrated its commitment to ensuring Hawaii's rural and remote areas have access to broadband infrastructure. SIC has and will continue to, if given the opportunity, provide broadband access in Hawaii's most rural and remote areas, squarely in line with the spirit and intent of Universal Service. Plainly put, we strongly believe the future broadband capabilities of our organization and our community hinge on SIC's ability to continue to fund critical infrastructure investments in our rural communities.

We respectfully request your assistance to ensure that SIC continue to receive adequate funding to fulfill Congress's vision of Universal Service for ALL Americans, and to ensure that native communities, like ours, are not left behind.

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)

INTRODUCTION

The National Congress of American Indians (NCAI) is the oldest, largest, and most representative congress of American Indians and Alaska Natives in the United States. NCAI was created by tribal leaders in 1944 as a response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while ensuring that Indian people may fully participate in the political system. As the most representative organization of American Indian and Alaska Native tribes, NCAI serves the broad interests of tribal governments across the nation.

THE UNIVERSAL SERVICE INITIATIVE AND ITS EFFECT IN INDIAN COUNTRY

In 1996 Congress enacted the Telecommunications Act, which created the Universal Service Fund (USF) to provide support mechanisms for telecommunications carriers to buildout to unserved and underserved areas. The USF is comprised of the High Cost Program, Low Cost Program (Lifeline and Link Up), the Schools and Libraries Program (E-Rate), and the Rural Healthcare Program.

The programs under the USF were intended to provide funds to deploy ubiquitous telecommunications services throughout the country. USF funds raised the telephone availability rate to 96 percent of households in the United States.[i] However, tribal lands and many rural communities across the country received limited to no benefits of connectivity.

While a majority of the country received the benefit of universal telephone service, the latest data illustrates a dismal picture for tribal lands experiencing a telephone service penetration rate of about 68 percent.[ii] While the telephone service penetration rates in Indian Country are considerably lower than the rest of the country, there have been some successful outcomes of the USF.

For instance, the Tribal Lifeline and Link Up programs experienced a significant increase in subscribership from 2000 through 2011. Eligible Telecommunications

Carriers (ETCs) reported in 2011 that there were 24 times as many people subscribed to Tier 4 Tribal Lifeline than there was in the year 2000.[iii] Similarly, ETCs reported there were 90 times as many people that utilized the Tribal Link Up program in December 2011 than had in 2000.[iv]

TRANSITION TO THE CONNECT AMERICA FUND

The Federal Communications Commission (FCC) recognized that with the constantly changing environment of technology, the fund was becoming archaic in its mission. While funds were specifically targeted at providing ubiquitous analog telephone service, it did not necessarily meet the growing broadband technology needs of the United States.

Traditional plain old telephone service (POTS) relying on a fixed wireline infrastructure gave way to an explosion of advanced broadband technologies that supported Voice over Internet Protocol (VoIP) and other high-speed internet based applications. Fixed terrestrial networks such as Dial-Up internet became unable to support these advancements and paved the way for development of Digital Subscriber Line (DSL) and high-speed fiber services.

A complete overhaul of telecommunications regulations was needed to shift USF resources from POTS to broadband capable devices. On November 18, 2011 the FCC released a Report and Order and Further Notice of Proposed Rulemaking overhauling the USF and substantially revising its intercarrier compensation (ICC) mechanisms.[v] This Order adopted a new Connect America Fund (CAF), and a new Mobility Fund including a set-aside 'Tribal Mobility Fund'. This FCC Order, 759 pages in length, represents a significant overhaul of telecommunications regulation in nearly a century.

THE MOBILITY FUND AND TRIBAL MOBILITY FUND

On May 26, 2012 the FCC released a Public Notice designating the procedures for the Mobility Fund Phase I auction to occur on September 27, 2012. Known as Auction 901, this reverse auction will award $300 million in one-time support to carriers committed to providing 3G or better mobile services in unserved areas. Phase I Mobility Funds are aimed at maximizing the number of road miles covered by mobile services and carriers must commit to the provision of 3G services within two years, or 4G services within three years.[vi]

Although tribally owned or controlled providers will be eligible to participate in the Mobility Fund Phase I auction, and receive a 25 percent bidding credit for this auction, there will be an additional $50 million allocated specifically for tribes that will go to auction in 2013.[vii] The rules and regulations have not been released for the Tribal Mobility Fund Phase I auction as the FCC has yet to release a Notice soliciting comments. There will also be subsequent awards of the Mobility Fund and Tribal Mobility Fund. The Mobility Fund Phase II auction will consist of $500 million, while there will be an additional $100 million set aside for a Tribal Mobility Fund Phase II.[viii]

SUPPORT FOR THE CAF 'TRIBAL ENGAGEMENT PROVISIONS'

In this Digital Age, broadband has become essential to any legitimate notion of equal opportunity; last year the United Nations announced that access to the internet is a basic human right and we firmly believe this to hold true for American Indians and Alaska Natives.[ix] According to the National Broadband Plan 95 percent of the U.S. total population resides in housing units that have access to terrestrial broadband infrastructure,[x] while an estimated less than ten percent of tribal lands have access to terrestrial internet services.[xi]

Unfortunately, many of us who live and work in Indian Country have experienced first-hand this disadvantage of insufficient access to high-speed and affordable wireless and wireline broadband services. Access to broadband services on tribal lands is vital to health services and first responders, education facilities, and growing and creating new businesses and jobs for tribes and their membership. Broadband access also offers the opportunity for tribes to stimulate state and local economies.

Recognizing the need for broadband in Indian Country, NCAI is pleased that the FCC has included much needed 'Tribal Engagement Provisions' for ETCs receiving CAF Funds. Paragraph 604 of the CAF Order states that:

> ETCs serving Tribal lands must include in their reports documents or information demonstrating that they having meaningfully engaged Tribal governments in their supported areas. The demonstration must document that they had discussions that, at a minimum, included: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing service 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.[xii]

Through these provisions the FCC has increased accountability measures for USF fund recipients, ensured preservation of the USF for the future, and recognized tribal sovereignty and the federal trust relationship. Establishment of these requirements for ETCs serving tribal lands will enable tribal governments to exercise their sovereign right to self-determination.

Oppositions to Petitions for Reconsideration on 'Tribal Engagement Provisions' Although there have been Petitions for Reconsideration filed against the Tribal Engagement Provisions, NCAI and Native Public Media (NPM) have responded with Opposition filings. For instance, a group of 'Rural Incumbent Local Exchange Carriers Serving Tribal Lands' submitted a Petition for Reconsideration stating that the Tribal Engagement Provisions were not supported by the record of filings with the FCC; inconsistent with the Telecommunications Act, state, and federal law; 'unconstitutional'; and unduly burdensome for ETCs serving tribal lands.[xiii]

NCAI and NPM filed a Joint Opposition to this Petition for Reconsideration stating that, "The CAF Order takes a major positive step toward fulfilling the FCC's obligations to empower Native Tribes to help guide the deployment of high speed broadband in Indian Country, by recognizing certain sovereign rights of Tribes over their internal affairs."[xiv] Similarly, NCAI and NPM addressed each of the oppositions filed by the 'Rural Incumbent Local Exchange Carriers Serving Tribal Lands' stating that:

> None of these arguments are persuasive. The FCC's actions in this regard are fully supported by the record in these proceedings and consistent with sound, historic constitutional principles. This Petition is a throwback to a time before Tribal sovereignty rights had been recognized by the Commission. It is too late to turn back the clock, however. Petitioners should not be allowed to seek to reap the benefit of their incumbent status, and the economic support provided by USF or CAF funding, while ignoring the sovereign right of Tribal governments to determine the needs of Native peoples.[xv]

NCAI, NPM, and numerous other tribal governments, telecommunications companies, and organizations have participated in over a decade of proceedings with the FCC to gain these important engagement provisions that tribes have obtained through the CAF Order. The FCC's National Broadband Plan included unprecedented input from the aforementioned tribal entities and, "[a]fter recognizing the dire situation in Indian Country...the FCC opened several proceedings and received hundreds of comments related to the special telecommunications needs of Tribes."[xvi] The results of that input have resulted in the FCC's declaration and support of the 'Tribal Engagement Provisions'.

CONGRESS SHOULD ESTABLISH A NATIVE NATIONS BROADBAND FUND

While the CAF Order has included over a decade of tribal input and has resulted in 'tribes' and 'tribal entities' referenced throughout the 759 page order, there is still work to be done for broadband deployment in Indian Country. Establishment of the Mobility Funds and Tribal Mobility Funds were a good initial step to bringing broadband services to Indian Country, however, Congress should act on recommendations provided in the National Broadband Plan (NBP). For instance, as specified in the NBP, "Recommendation 8.18: Congress should consider establishing a Tribal Broadband Fund to support sustainable broadband deployment and adoption in Tribal lands, and all federal agencies that upgrade connectivity on Tribal lands should coordinate such upgrades with Tribal governments and the Tribal Broadband Fund grant-making process."[xvii]

This Tribal Broadband Fund, or Native Nations Broadband Fund, would provide grants to tribes to connect anchor institutions, conduct planning and feasibility studies, business development and implementation, and—most importantly—digital literacy and technical assistance training.[xviii] As a consensus based organization, NCAI's membership has passed numerous Resolutions calling for the creation of a Native Nations Broadband or Tribal Mobility Fund including Resolution# RAP-10-006,[xix] Resolution# RAP-10-009,[xx] and Resolution# ABQ-10-061.[xxi]

SUPPORT A DEDICATED BUDGET FOR THE FCC'S OFFICE OF NATIVE AFFAIRS AND POLICY

NCAI is pleased that the FCC created the Office of Native Affairs and Policy. The NPB's recommendation 9.14 stated that the FCC should create an Office of Tribal affairs to, "...consult regularly with Tribal leaders, to develop and drive a Tribal agenda in coordination with other FCC bureaus and offices..."[xxii] This Office has served as the focal point of the FCC's consultation efforts and the results of this have been witnessed in numerous rulemakings that have proceeded since the Office's creation.

However, a dedicated budget for the FCC's Office of Native Affairs has yet to be established. The Office relies on a Continuing Resolution for funding as the sole point of contact and consultation for tribes. It must receive a dedicated budget to become fully staffed and continue its vital operations. NCAI's membership has passed Resolution #MKE-11-006 calling for full funding of the Office in the amount of $2 million.[xxiii]

CONCLUSION

While there have been strong concerns regarding the FCC's April 25, 2012 Benchmarks Order, complete Congressional overhaul of the Connect America Fund Order would be detrimental to tribes. There are important provisions that have been included in the FCC's Connect America Fund Order that include tribes, their members, and their governments. Since creation of the FCC's Office of Native Affairs and Policy there has been increased inclusion and reference to tribes in FCC

rulemakings and notices. However, to ensure full tribal inclusion there must be established a dedicated budget for the FCC's Office of Native Affairs and Policy to carry out consultations with tribes across the country and further build a record of broadband disparities in tribal communities. NCAI will continue to work with tribes across the nation to ensure that meaningful consultation and inclusion is occurring. We must all work in a coordinated effort to bring broadband services to tribal and rural communities across the country for the benefits of telemedicine, long distance learning, and economic development.

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[i] *See* Telephone Subscribership in the United States (Data through July 2010). Federal Communications Commission. Released May 2011. Accessed June 6, 2012. *Available* at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306752A1.pdf.

[ii] *See* Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands. WT Docket No. 11-40. Notice of Proposed Rulemaking. Federal Communications Commission. Released March 3, 2011. Accessed June 6, 2011. *Available* at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-29A1.pdf.

[iii] *See* Low Income 2011 Verification Results (WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45). Universal Service Administrative Company. Posted to the FCC's Electronic Comment Filing System on January 24, 2012. Accessed June 6, 2012. *Available* at http://apps.fcc.gov/ecfs/document/view?id=7021755073.
Note: Tribal Link Up subscribers increased from 2,038 in 2000 to 184,803 in 2011. Tribal Lifeline Tier 4 subscribers increased from 17,923 in 2000 to 444,515 in 2011.

[iv] *Id.*

[v] *See* the Connect America Fund Report and Order and Further Notice of Proposed Rulemaking. Federal Communications Commission, Electronic Comment Filing System, WC Docket No. 10-90. Adopted by the Commission October 27, 2011, released November 18, 2011. Accessed June 6, 2012. *Available* at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.

[vi] *See* Federal Communications Commission Public Notice DA 12-641. Mobility Fund Phase I Auction Scheduled for September 27, 2012: Notice and Filing requirements and other Procedures for Auction 901. Published May 2, 2012. Accessed June 6, 2012. *Available* at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0502/DA-12-641A1.pdf.

[vii] *See* the Connect America Fund Report and Order and Further Notice of Proposed Rulemaking. Federal Communications Commission, Electronic Comment Filing System. WC Docket No. 10-90. Paragraph 430. Adopted by the Commission October 27, 2011, released November 18, 2011. Accessed June 6, 2012. *Available* at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.

[viii] *Id.* Paragraph 497.

[ix] *See* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, The United Nations, Human Rights Council, Seventeenth session. Distributed May 16, 2011. Accessed June 6, 2012. *Available* at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf.

[x] *See* the National Broadband Plan, page 20. Federal Communications Commission. *Available* at http://download.broadband.gov/plan/national-broadband-plan-chapter-3-current-state-of-the-broadband-ecosystem.pdf.

[xi] *See* the National Broadband Plan, page 23. Federal Communications Commission. *Available* at http://download.broadband.gov/plan/national-broadband-plan-chapter-3-current-state-of-the-broadband-ecosystem.pdf.

[xii] *See* the Connect America Fund Report and Order and Further Notice of Proposed Rulemaking. Federal Communications Commission, Electronic Comment Filing System. WC Docket No. 10-90. Paragraph 604. Adopted by the Commission October 27, 2011, released November 18, 2011. Accessed June 6, 2012. *Available* at http://transfers.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.

[xiii] *See* Petition for Reconsideration, Rural Incumbent Local Exchange Carriers Serving Tribal Lands. Submitted and posted to the Federal Communications Electronic Comment Filing System on December 29, 2011. WC Docket No. 10-90. Accessed June 6, 2012. *Available* at http://apps.fcc.gov/ecfs/document/view?id=7021752110.

[xiv] *See* Opposition of Native Public Media and the National Congress of American Indians. Submitted to the Federal Communications Electronic Comment Filing System on January 9, 2012, posted January 10, 2012. WC Docket No. 10-90. Accessed June 6, 2012. *Available* at http://apps.fcc.gov/ecfs/document/view?id=7021753060.

[xv] *Id.* Page 3.

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[xvii] *See* the National Broadband Plan, page 152. Federal Communications Commission. *Available* at http://download.broadband.gov/plan/national-broadband-plan-chapter-8-availability.pdf.

[xviii] *Id.*

[xix] *See* Resolution# RAP-10-006, "Call for Congressional Funding of Tribal Broadband Fund and FCC Tribal Programs". Passed by NCAI's membership at the 2010 Mid-Year Session of the National Congress of American Indians, Rapid City, SD, June 20-23, 2010. *Available* at http://www.ncai.org/attachments/Resolution_XEsYONukRAWPfyYalJRIeOvCuoalGiMoDTnDyIL YGAinvkIBHXGM_RAP-10-006.pdf

[xx] *See* Resolution# RAP-10-009, "Ensuring Future Universal Service Support in Indian Country and Existing Telephony during the Broadband Transition". Passed by NCAI's membership at the 2010 Mid-Year Session of the National Congress of American Indians. Rapid City, SD. June 20-23, 2010. *Available* at http://www.ncai.org/attachments/Resolution_PRgvVlwGXempechTBriZnmGKeptexqquepWDqG7ZNnoDT1PFs_RAP-10-009.pdf.

[xxi] *See* Resolution #ABQ-10-061, "Congress and Federal Agencies Must Create the Native Broadband Fund, and Devote and Prioritize Funding and Resources to Provide Broadband in Native Communities and Include Native Governments in All Native Telecommunications Infrastructure and Broadband Policy Initiatives". Passed by NCAI's membership at the 2010 Annual Convention of the National Congress of American Indians. Albuquerque, NM. November 14-19, 2010. *Available* at http://www.ncai.org/attachments/Resolution_JxntzMKXvEeZdOuAIXXTMGuxhkNlanYOvOIDosiKYSmgxaxkeDso_ABQ-10-061_rev_updated.pdf.

[xxii] *See* the National Broadband Plan, page 184. Federal Communications Commission. *Available* at http://download.broadband.gov/plan/national-broadband-plan-chapter-9-adoption-and-utilization.pdf.

[xxiii] *See* Resolution# MKE-11-006, "In Support of the Office of Native Affairs and Policy's (FCC ONAP) Tribal Initiatives and Budget". Passed by NCAI's membership at the 2011 Mid-Year Session of the National Congress of American Indians. Milwaukee, WI. June 13-16, 2011. *Available* at http://www.ncai.org/attachments/Resolution_mLniuICGwwtDZghg1JGxidErvdlseAmPQYrmbaCHEQHFa5ZvOeQ_MKE-11-006.pdf.

PREPARED STATEMENT OF THE OFFICE OF HAWAIIAN AFFAIRS (OHA)

Aloha e Committee Members. The Office of Hawaiian Affairs (OHA) thanks the committee for providing indigenous communities the opportunity to comment on this important issue. OHA is deeply concerned by the Federal Communications Commission's (FCC) order that would "reform" the Universal Service Fund (USF) by July 1, 2012. This "reform" would actually stifle efforts to provide equal access to telecommunications in native Hawaiian communities and ultimately exacerbate the digital divide in America.

As background, OHA is a unique, quasi-independent state agency established by the Hawai'i State Constitution and state statutes. Our purpose is to better the conditions of all Native Hawaiians, regardless of blood quantum. Guided by nine trustees elected by the voters of Hawai'i, OHA advances the interests of Native Hawaiians and serves as a fiduciary for Native Hawaiian public trust funds and other resources.

As our society becomes increasingly dependent on technology, it is critical that residents of native communities—such as our Department of Hawaiian Home Lands (DHHL) communities—have equal access to telecommunication services. In many ways, telecommunication services, such as telephone, broadband and wireless technologies, empower these often-isolated native communities to maintain their distinct character and cultural traditions while keeping them connected to the rapidly changing world around them.

The unique nature of DHHL communities presents challenges for telecommunication service providers. Enacted in 1921, the federal Hawaiian Homes Commission Act established a trust of 200,000 acres of land to provide for the rehabilitation of the "native Hawaiian" people through a government-sponsored homesteading program. The act defined native Hawaiian as any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778. Today, these DHHL homestead communities are located on six of the eight main Hawaiian Islands and are found primarily in remote, rural areas—with a few in urban areas—and are separated by both private- and government-owned properties and the open ocean. These communities have geographic accessibility issues that create the kind of high costs that are unattractive to most carriers. Sandwich Isles Communications, Inc., (SIC) was created to serve these communities when large carriers would not.

The FCC's new "reform" rules would result in funding cuts to SIC that will severely reduce its ability to finance its telecommunication services and could bankrupt the company, potentially leaving 6,400 native Hawaiians without telecommunication services.

The USF was established to encourage telecommunications companies to provide access to telecommunication services to all Americans—the universal service concept. We respectfully request that Congress continue its active role in supporting the universal service concept by ensuring that USF reforms do not disproportionately affect native Hawaiians and other native populations.

Thank you for the opportunity to comment.

PREPARED STATEMENT OF HON. TERRY RAMBLER, CHAIRMAN, SAN CARLOS APACHE TRIBE

Introduction

Good afternoon, Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee. My name is Terry Rambler and I am the Chairman of the San Carlos Apache Tribe. Thank you for the opportunity to submit this testimony about the impacts of the Federal Communications Commission's (FCC) Universal Service Fund (USF) and Intercarrier Compensation (ICC) reforms on the San Carlos Apache Tribe (Tribe) and the San Carlos Apache Telecommunications Utility, Inc. (SCATUI), a tribally owned provider.

We are greatly concerned that the FCC Connect America Fund Order (Order), which is scheduled to take effect on July 1, 2012, will cause substantial harm to SCATUI and the telecommunications services provided to tribal members on the San Carlos Apache Reservation (Reservation). The Order provides for comprehensive reforms of the USF and ICC support mechanisms. The stated goals of the Order are to prevent waste, fraud, and abuse and to address the broadband gap in rural and underserved communities. Our hope is that the Order will do what it is intended to do and actually help SCATUI and the Tribe instead of hindering our progress or our ability to provide telecommunications services to our residents.

Background

The Tribe entered into the Apache Treaty of Santa Fe with the United States in 1852. The Treaty promised the Tribe a permanent homeland in its aboriginal territory. In exchange, the Tribe agreed to end hostilities with the United States. The aboriginal territory of the Tribe included the western part of Texas, the current states of Arizona and New Mexico, and part of Mexico.

The Reservation was established by executive order on November 9, 1871. As a result of removal policies of the United States, various bands of Apache were forcibly removed to the Reservation. These bands included the Coyoteros, Mimbrenos, Mongollon, Aravaipa, Yavapai, San Carlos, Chiricahua, Warm Springs and Tonto Apaches. Famous Apache leaders who were located on the Reservation included Geronimo, Cochise, Loco, Eskiminzin, Nachie, Chatto, and others. The United States diminished the Reservation several times by executive orders due to the discovery of silver, copper, coal, water and other minerals and natural resources.

The Reservation is located within part of our aboriginal territory, and spans 1.8 million acres in southeastern Arizona. The Reservation is isolated and rural with difficult terrain. The Reservation lacks infrastructure due to the deep stands of timber, jagged outcroppings, and rocky canyons. The Reservation is home to approximately 11,000 tribal members.

The socioeconomic status of the Tribe is comparable to many reservations. The unemployment rate on the Reservation is about 68 percent. Approximately 72 percent of Reservation residents live at or below the poverty line. In addition, 75 per-

cent of SCATUI's customers are recipients of FCC's Lifeline program, which provides monthly discounts to low-income customers.

Throughout the 1900s, the Reservation had limited telecommunications and information services. The service provider from approximately the 1960s to the mid-1990s was US West (now Century Link). US West charged thousands of dollars for basic phone service that left a vast majority of tribal members without any service. Mild rainstorms would shut down our old system, and it would take US West an average of three weeks to come to the Reservation to fix the system. As late as 1995, US West's system served only 28 percent of the residents and businesses on the Reservation. The system served 607 access lines, which encompassed 122 residential customers.

During this time, public phone service on the Reservation was generally limited to the police department, the health clinic, and the mission church. The few tribal members who had phone service shared a party line with neighbors. The police department also had one pay phone at this time. As a result, most residents would collect coins and line up outside of the pay phone to wait for the opportunity to speak to relatives and loved ones that were traveling, working off reservation, or serving in the military.

To address this wide gap in phone services, the San Carlos Apache Tribal Council established SCATUI in 1994 and bought out US West in 1995. SCATUI is a telecommunications provider wholly owned by the Tribe. SCATUI's mission is to develop, finance, construct and operate a telecommunications company on the Reservation. Today, SCATUI serves approximately 2,436 access lines throughout the Reservation, which includes 1,662 homes. Increasing residential telecommunications service on the Reservation twelve-fold during SCATUI's eighteen years of existence is a remarkable achievement.

In addition to traditional voice services, SCATUI provides Digital Subscriber Line Broadband, Cable Television, Internet Protocol Television (IPTV), and managed IT services. SCATUI is the only tribal telecom in the Nation that provides IPTV. More than 207 miles of copper and fiber optic lines on the Reservation ensures quality service is being provided to tribal members. SCATUI operates with remarkable proficiency despite numerous barriers that are common in Indian country. For example, the Tribe is located on mountainous terrain, faces considerable distances between communities with geographically scattered housing, and has a high volume of low-income residents. These factors, combined with high infrastructure costs and limited access to capital, make providing telecommunications services on the Reservation challenging. These circumstances provide little to no incentive for other providers to serve our Reservation. Without SCATUI, our Reservation could easily return to the days of extremely limited service.

SCATUI relies significantly on two federal programs—the USDA's Rural Utilities Service (RUS) lending program and the FCC's USF and ICC programs. SCATUI based its business model on the consistent interaction of these programs. SCATUI sought, and USDA approved, RUS loans to build out infrastructure for our system. These loans were based on the anticipated funding from FCC's support programs (USF and ICC) as they existed at the time. Because of RUS, SCATUI was able to build the service network that is in use today. Through the FCC support programs, SCATUI's customers have been able to access affordable telecommunications services on our Reservation that were unimaginable just 15 years ago.

FCC's Proposed Reforms Will Harm Telecommunications Services on the Reservation

The Tribe supports the goal of limiting waste while expanding broadband to rural and underserved communities. However, if the Order is implemented without any changes, the Tribe will quickly return to the days of limited connectivity, which is at odds with the FCC's goals. This result is also contrary to the goals in the National Broadband Plan, which acknowledges that tribes "need substantially greater financial support than is presently available to them, and accelerating tribal broadband deployment will require increased funding."

Unfortunately, the Order has the potential to harm tribally owned providers like SCATUI. For example, the Order contemplates reducing the interstate rate-of-return, which is currently set at 11.25 percent. The FCC believes that the current rate does not reflect current market realities and is considering rates between 8–10 percent. FCC's preliminary analysis determines "that the authorized rate-of-return should be no more than 9 percent." The effect of decreasing the rate-of-return will lead to a massive reduction for SCATUI. SCATUI estimates that a 9 percent rate-of-return will lead to an annual loss of $335,481. An 8 percent rate-of-return would negatively impact SCATUI $463,171 annually.

Even at the current rate of 11.25 percent, SCATUI is operating at a deficit and is experiencing serious difficulties in meeting its RUS loan repayment and other obligations. This proposed scheme would seriously undermine SCATUI's ability to continue as a viable business. Without broadband Internet access and reliable voice service, SCATUI's plans for expansion and upgrades of services would cease. This situation would be detrimental to the tribal government's plan for economic growth on the Reservation. We urge the FCC to carefully consider the unique challenges of tribally owned providers like SCATUI as it continues to make decisions about implementation of the CAF Order. Furthermore, we urge the FCC to keep the 11.25 percent rate-of-return in place until the impact of the other reforms on Indian country can be assessed.

To mitigate the adverse impacts of the Order, the FCC offers the waiver process. This process is available to providers who face significant financial impacts as a result of the Order. At this point, SCATUI does not plan to apply for a waiver; however, if the rate-of-return percentage decreases, then SCATUI will be forced to apply. If a waiver ends up needing to be filed, we have several concerns about the waiver process itself. According to the Order, the waiver application will be subjected to a "rigorous, thorough and searching review comparable to a total company earnings review." The Tribe is concerned that this process may require disclosures of proprietary and sensitive information about the tribal government and tribal government-owned enterprises. Further, even though the FCC has told us that consultants are not needed to file a waiver application, SCATUI does not have sufficient staff nor the expertise in-house to do so and, thus, would need to hire experts to prepare and file the waiver. Also, the FCC's $8,000 waiver application fee alone—not to mention all the costs that we would incur to put the application together—is a tremendous cost for SCATUI, which is already struggling to meet its financial obligations. Moreover, the process is uncertain and there is no guarantee that the FCC would grant our waiver request. We urge the FCC to consider streamlining the waiver process for tribally owned telecommunications providers to establish certainty in the process, to address the cost burdens on filing a waiver, and respect tribal sovereignty and the federal government's treaty and trust obligations to Indian tribes.

The current environment of uncertainty has prevented SCATUI from moving forward to expand service to cover the many "dead zones" on our Reservation. These delays, in turn, pose significant health and safety threats to our people. In 2010, an American Recovery and Reinvestment Act of 2009 (ARRA) Broadband Initiatives Program (BIP) grant—loan was awarded to SCATUI through RUS. A sizeable portion of the funds has been allocated to build towers in an unserved area to alleviate dead zones in areas where residents conduct ranching and outdoor recreation activities. However, because of the uncertainty about the impacts of the Order and its perceived reduction of revenue streams, SCATUI's build out has stalled.

The lack of phone service in the dead zones causes delay in getting emergency help to tribal members. The nearest phone is often 30 minutes away. The Tribe is concerned that delays in medical treatment may actually make medical conditions worse. These impacts are unacceptable. Telecommunications can mean the difference between life and death.

The Tribe is also concerned that the FCC failed to conduct meaningful consultation with tribal governments on the Order. Tribal consultation is clearly contemplated in the FCC's Statement of Policy regarding its relationship with tribal governments. Moreover, meaningful consultation during which affected tribal governments engage with senior officials falls within the spirit of Executive Order 13175, "Consultation and Coordination with Tribal Governments," which requires all federal agencies to consult on matters that have significant impacts on tribes. The Tribe urges the FCC to recognize its own policy and engage in government-to-government consultation with all federally recognized Indian tribes that will be impacted by the Order prior to its full implementation. We were encouraged to hear recently though that the FCC plans to travel to Arizona to meet with us and other tribes to discuss the Order and its impacts on us.

Conclusion

The San Carlos Apache Tribe is still assessing the impacts of the Order on SCATUI and on our Reservation. Without adequate support and relief mechanisms in place, SCATUI will be left behind as FCC moves the rest of the country into the 21st century. We urge the Committee to assist us in ensuring that SCATUI is not negatively impacted by the Order and that it has adequate resources to continue providing necessary telecommunications services on our Reservation in all the places that it is needed.

Thank you for the opportunity to submit this testimony on behalf of the San Carlos Apache Tribe.

PREPARED STATEMENT OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

This statement is being presented on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon as written testimony addressing " Universal Service Fund Reform: Ensuring a Sustainable and Connected Future for Native Communities". We appreciate the Senate Committee on Indian Affairs' attention to this matter and its willingness to accept tribal community comment and testimony.

Last month, the Confederated Tribes of Warm Springs, in Oregon, became the 9th tribally owned, operated and certificated telecommunications company to offer telephone service and high-speed, broadband Internet to our reservation. It has taken many years and a lot of hard work to get to this point in the development of our company. However, we are now beginning the process of serving every home, business and government agency on the reservation with these services. Someday, we hope to also offer video services.

Like many other tribal nations, Warm Springs lacked basic telecommunications services throughout much of the reservation. With only about 60 percent of our members having a telephone and limited Internet access, school teachers couldn't call parents to tell them about their sick child, a son couldn't call anyone to report that his father had a heart attack and needed emergency medical care, and students couldn't come home from high school to do their homework on-line like their counterparts in the neighboring town, where our tribe's students attend school.

In addition, Warm Springs has 60 percent unemployment in our community. Jobs, especially good jobs, are hard to come by. We have tried to get companies to move to our reservation and build new industry, but without fiber optic cable capacity and broadband availability, businesses were not interested.

In 2002, we started telecommunications planning with a needs assessment, then followed by a telecommunications strategic plan, that identified the lack of telephone, Internet, television but probably most importantly, public safety radio capabilities. Our police and fire two-way radio network was so limited that we only had one frequency to be shared by both the police and fire to use at the same time. After working with consultants, we received nearly $2 million from FEMA, Homeland Security grants, to build out this very important network in a phased approach. The work continues as we add new towers, frequencies, a new dispatch console, and new computer aided dispatch equipment to use with this network to meet federal standards for interoperability.

The biggest challenge has been to improve the telephone and Internet services on the reservation. After many years of working with the incumbent phone company to try to secure enhanced services, it became clear that the local phone company could not justify the cost of the substantial capital investment necessary to upgrade the legacy network. Even securing basic phone service has been a challenge, with remote residents being asked to pay $1,000 line extension fees. The only way to ensure the quality and capability of service that tribal members deserved was to take matters into our own hands and create a tribally owned telephone and Internet company. This mirrors the experience of the other tribally owned telephone companies.

Building our own phone company has been a very long, tedious project. We received grant money from RUS and EDA for strategic planning. After years of determining the best plans, we were exceedingly lucky that as we were ready to go to pursue funding options when broadband funding from the American Recovery and Reinvestment Act became available, and we received $5.6 million in grants and loans.

Getting the funding was only part of the process. We formed a tribally recognized enterprise corporation and then filed with the state of Oregon as a foreign corporation. We worked hard to receive all the regulatory authority certifications. After a number of years working with the Oregon Public Utility Commission and the FCC, we were able to receive all the needed regulatory certifications. Once all these elements were in place, we signed an interconnect agreement with the local telephone provider and found other companies that would transport our signal off the reservation. We then hired an engineering company with great experience, who not only has designed our network, but has helped with purchasing all the necessary equipment to create a carrier-class telecommunications company, Warm Springs Telecom.

Ten staff have since been hired and, except for some people with specialized technical expertise, all are from Warm Springs. Eventually we will fill up to 19 posi-

tions, which may not sound like a lot of jobs, but these are good jobs, educated jobs, jobs with a future for our young people. We also believe that this state-of-the-art telecommunications network will attract new businesses to the reservation, creating more jobs and raising the overall quality of life for tribal members.

This is just a very quick overview of our new Telco. But the message the Confederated Tribes of Warm Springs want to leave with this Committee is that telecommunications infrastructure is critical for everyone, including tribal nations. Without telecommunications, including fiber based broadband networks, there is no way to create jobs, improve healthcare and offer new educational opportunities for our people. But it is a very hard, long road to travel down, as Warm Springs has discovered.

It is important that this Committee work to ensure that tribal lands are not neglected once again. As this is a complicated and expensive process, it is necessary to help with funding and regulations that will enable tribal lands to serve their people in a way that each Tribe sees fit and that respects tribal sovereignty. Tribes have been overlooked and unserved by the incumbent companies that were selected to serve them. It is time for Tribes to be able to get these services to their people. This committee must consider the options available. This includes:

- regulations that will help facilitate this process at the federal and state levels;
- financial support for poor tribal communities; and,
- technical expertise to help tribes understand and work with the consultants and engineers who are needed to make this a reality.

Thank you for consideration of our comments and recommendations.

PREPARED STATEMENT OF KALI WATSON, CHAIRMAN, ECONOMIC DEVELOPMENT AND HOUSING COMMITTEE, SOVEREIGN COUNCILS OF THE HAWAIIAN HOMELANDS ASSEMBLY

Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee, thank you for holding this hearing to address the impacts of the Federal Communications Commission's (FCC) Connect America Fund Order (Order) on native communities across the country. My name is Kali Watson and I am the Chairman of the Economic Development and Housing Committee for the Sovereign Councils of the Hawaiian Homelands Assembly, formerly the State Council of Hawaiian Homestead Associations, which was founded in 1987 about 25 years ago to unite homestead communities and to advocate for the beneficiaries of the Hawaiian Homes Commission Act of 1920. The SCHHA is the oldest statewide advocacy organization representing the interests of more than 30,000 beneficiaries and families residing in the communities of the Hawaiian Home Land Trust. Its mission is to promote the self-determination of native Hawaiians and the well-being of the people within the various homestead communities. The SCHHA has over 30 homestead associations as members, and also includes the Association of Hawaiians for Homestead Lands (AHHL), which is composed of individuals who have applied for and are waiting to be awarded a lease. According to the DHHL 2011 Annual Report, there are over 41,000 eligible applicants waiting for a residential, agricultural or pastoral lease. As a collective group, we understand the important role SIC has in providing affordable telecommunications and broadband services to homesteads.

I appreciate the opportunity to provide testimony on this critical issue that could have devastating impacts on our operations and ability to serve our Native Hawaiian constituents. When no one else would, Sandwich Isles Communications, Inc. (SIC) owned and run by Native Hawaiians, provided and continues to provide us with affordable and reliable telecommunications services. After several years of intensive community-based planning, the *Nanakuli Hawaiian Homestead Community Association (NHHCA)* is developing a major "village center" project that will include a multi-purpose cultural community center, a 48-unit affordable rental housing complex, commercial retail spaces with a CVS Store as the major anchor tenant, and the *Waianae Coast Comprehensive Health Center*. This exciting community development project which will be located on a 13.57 acre site centrally located in the Nanakuli community (adjacent to the *Nanaikapono Elementary School* and the new *YET Boys & Girls Club*), was awarded a long-term 65-year lease from *Department of Hawaiian Home Lands*.

We will soon have landlines and DSL from SIC. We are gravely concerned that if nothing is done to stop the calamitous effects of the FCC's new Order, we will lose the service we rely on to serve our Native Hawaiian communities. Affordable and reliable telecommunications access is critical to ensuring we can keep costs down while providing the necessary services to our clients on all islands. Without

service from SIC, we could not talk about all our current and future needs that would help serve our Native Hawaiian clients.

We humbly request your assistance to ensure SIC's investment in desperately needed telecommunications infrastructure in our underserved indigenous communities continues. We have tremendous hopes for our future as native people of this great nation and believe that our ability to compete in an increasingly global economy is directly tied to our ability to access broadband communications infrastructure. Once complete, SIC's robust and reliable statewide fiber optic network will expand broadband capabilities and provide affordable access for community anchor institutions, like ours. This will result in substantial benefits for the entire state, but especially our rural and remote communities, delivering improved education, healthcare, and economic development opportunities in a way only broadband can provide.

As Hawaii's only Rural Local Exchange Carrier (RLEC), SIC is the only carrier that has consistently demonstrated its commitment to ensuring Hawaii's rural and remote areas have access to broadband infrastructure. SIC has and will continue to, if given the opportunity, provide broadband access in Hawaii's most rural and remote areas, squarely in line with the spirit and intent of Universal Service. Plainly put, we strongly believe the future broadband capabilities of our organization and our community hinge on SIC's ability to continue to fund critical infrastructure investments in our rural communities.

We respectfully request your assistance to ensure that SIC continue to receive adequate funding to fulfill Congress's vision of Universal Service for ALL Americans, and to ensure that native communities, like ours, are not left behind.

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