

**Written Statement of
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**Oversight Hearing on *GAO Reports Relating to Broadband Internet Availability
on Tribal Lands***

**Committee on Indian Affairs
United States Senate
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Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, thank you for the opportunity to testify today about the recently released GAO reports on the state of broadband on Tribal lands.

As you know, I testified before this Committee twice during my tenure as the founding Chief of the Federal Communications Commission's ("FCC") Office of Native Affairs and Policy. Having returned to work in Indian Country, it is my pleasure to appear before you again today. I am here again in the spirit of the unique trust relationship that Tribal Nations share with the United States federal government, and again from the Tribal side of that important relationship.

I work as the Chief Strategy Officer and General Counsel of AMERIND Risk Management Corporation ("AMERIND Risk"). AMERIND Risk, located on the Pueblo of Santa Ana, is a federally chartered and Tribally-owned corporation, organized and incorporated by the United States Department of Interior under Section 17 of the Indian Reorganization Act, 25 U.S.C. § 5124, as amended, and has certain powers, privileges, and immunities granted by that statute.

AMERIND was created in 1986 to address the housing crisis and the inability of Tribal Nations to secure insurance for their housing on the open market. Today, AMERIND Risk does

business across seven business lines, with hundreds of Tribes and Tribal businesses, in 38 states. AMERIND Risk generates and supports economic development across Indian Country by offering insurance products for Tribal housing, Tribal governments and businesses, and Tribal workers compensation, for example, and living up to its motto of *Tribes Protecting Tribes*.

AMERIND Risk now protects almost \$14 billion in Tribal physical infrastructures – homes, headquarters buildings, and other structures. A vast majority of these structures are on the wrong side of the digital divide. So, almost three years ago, in an effort both to diversify business and to “give back” to Indian Country, the AMERIND Risk Board of Directors created AMERIND Critical Infrastructure (“ACI”). With ACI’s motto of *Tribes Bringing Tribes Broadband*, this groundbreaking division provides a wide range of services across Indian Country, including strategic planning for sovereign Tribal broadband deployment; broadband subsidy, grant, and loan application management; regulatory management and compliance; and social impact funding.

AMERIND Risk is also making investments in Indian Country. In 2018, our Board of Directors made a multi-million dollar loan to the First Nations Oweesta Corporation (“Oweesta”) for Tribal projects. The Board’s investment will allow Oweesta to leverage larger amounts of lending capital for Native Community Development Financial Institutions, or CDFIs. Our intention with this investment is to see it magnified many times to fund housing and all manners of infrastructure in Indian Country.

I also serve as Chairman of the Board of Directors of Native Public Media; Co-Chair of the National Congress of American Indians’ (“NCAI”) Economic, Finance and Community Development Committee; Co-Chair of NCAI’s Telecommunications and Technology

Subcommittee; and Vice Chairman of the Board of Directors of Arizona State University's American Indian Policy Institute.

While there has been incremental improvement in recent years, residents of Tribal lands continue to disproportionately lack access to broadband. Beginning in 2015, the FCC defined a benchmark speed of 25 Mbps downstream/3 Mbps upstream (25 /3) as necessary to support the “advanced telecommunications capability” that Congress identified in Section 706 of the Telecommunications Act of 1996. Yet, according to the Commission’s *2018 Broadband Deployment Report*,¹ released in February, Tribal lands continue to be left far behind from receiving these advanced services envisioned by Congress. For example, 36 percent of residents on Tribal lands lack access to fixed broadband service at the benchmark speed of 25/3, as compared to 7 percent nationwide. And the disparity grows even more striking on Tribal lands in rural areas, where 59 percent of residents lack access to what has become the high-speed Internet lifeblood of our 21st century economy, educational opportunities, health care, and public safety.

A more detailed breakdown of the FCC’s most recent data on the state of broadband access in different regions of Indian Country is provided below.

¹ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket No. 17-199, 2018 Broadband Deployment Report, 33 FCC Rcd 1660 (2018) (*2018 Broadband Deployment Report*).

Deployment (Ten Thousands) on Tribal Lands with Access to Fixed Terrestrial 25 Mbps/3 Mbps Services and Mobile LTE with a Speed of 5 Mbps/1 Mbps

	2012		2013		2014		2015		2016	
	Pop.	%	Pop.	%	Pop.	%	Pop.	%	Pop.	%
All Tribal Lands	111.653	28.8%	138.505	35.5%	221.177	56.2%	225.788	57.0%	254.954	63.9%
Rural Areas	14.228	7.2	28.306	14.1	59.658	29.5	61.377	30.1	84.452	40.9
Urban Areas	97.425	51.5	110.198	57.9	161.519	84.5	164.412	85.6	170.502	88.5
Alaskan Villages	0.022	0.1%	7.126	28.2%	11.329	44.4%	11.027	42.7%	13.483	51.5%
Rural Areas	0.013	0.1	2.113	13.1	4.214	25.8	3.920	23.7	6.096	36.2
Urban Areas	0.010	0.1	5.013	54.9	7.115	77.4	7.107	76.7	7.387	79.0
Hawaiian Homelands	2.850	89.8%	2.924	90.6%	3.169	96.9%	2.955	88.9%	2.961	88.6%
Rural Areas	0.250	50.9	0.235	45.0	0.455	83.0	0.246	43.9	0.250	43.5
Urban Areas	2.600	96.9	2.688	99.4	2.715	99.8	2.709	98.0	2.711	98.0
Lower 48 States	21.111	19.9%	32.069	30.0%	41.861	38.8%	45.187	41.5%	49.278	44.6%
Rural Areas	5.680	8.1	13.364	18.9	18.512	25.8	20.668	28.4	23.360	31.6
Urban Areas	15.432	43.0	18.705	51.9	23.349	64.8	24.519	67.8	25.918	71.2
Tribal Statistical Areas	87.669	34.6%	96.386	37.8%	164.818	64.2%	166.619	64.5%	189.232	73.0%
Rural Areas	8.285	7.4	12.594	11.2	36.477	32.1	36.542	32.0	54.746	47.6
Urban Areas	79.384	56.1	83.793	58.8	128.341	89.7	130.077	90.3	134.486	93.3
Pop. Evaluated	387.603	100%	390.508	100%	393.310	100%	396.401	100%	399.114	100%

Source: 2018 Broadband Deployment Report, Table 5

While these numbers are alarming, taking into account the most recent GAO study on the matter, they grossly overstate the levels of broadband access on Tribal lands. The accuracy and

reliability of the data itself is questionable. The FCC Form 477 data, from which these statistics were generated, is carrier-reported data that receives some review by the FCC and no review by Tribal governments. Moreover, the manner in which deployment is measured is not necessarily based on *actual* deployment but, in many instances, on *potential* deployment. That potential is meaningless if it cannot be achieved, and the achievement of broadband deployment on Tribal lands is importantly related to additional factors not currently taken into account. This current approach results in a skewed and overstated depiction of broadband deployment in Indian Country.

And these statistics paint only part of the picture – behind them lurks a stark reality. In my life and career, I have been fortunate to set foot on over 200 federal Indian reservations nationwide, on dozens of Alaska Native Villages, and on Hawai’ian Homesteads throughout the Hawai’ian Islands – and my experiences are that the data simply does not reflect the reality. A potential service offering to as little as one household within a census block or tract does not equate to deployment, and therefore does not reflect the reality of the digital divide in Indian Country. Plain and simple. The data must be improved and Tribal Nations are more than willing to help.

Tribal lands continue to suffer from the historical negative impacts of how, when, and where they were created. Aspects of this history resulted in an endemic lack of critical infrastructures, which persists today. In fact, almost no critical infrastructure has come to Tribal lands without federal investment, oversight, and regulation. Broadband opportunities can do much to overcome this negative history by bringing health care, education, jobs, and the opportunities of hope to Indian Country. But broadband must be available, accessible, and affordable to meet its promise.

It was in the context of the persistent disparity in communications services on Tribal lands that GAO initiated a series of engagements on the persistent challenges facing broadband deployment across Indian Country. The first GAO report, entitled “Broadband Internet: FCC’s Data Overstate Access on Tribal Lands,” was released on September 7, 2018, and examines issues associated with carrier-provided data measuring broadband access on Tribal lands and its impact on broadband deployment across Indian Country. The second GAO report, entitled “Few Partnerships Exist and the Rural Utilities Service Needs to Identify and Address and Funding Barriers Tribes Face,” was released on September 28th and examines the use of partnership arrangements between Tribal entities – Tribal governments and telecommunications providers owned by Tribes – and other entities, and their impact on broadband funding and deployment across Indian Country.

Broadband Deployment Data on Tribal Lands

Again, the current FCC data on broadband availability on Tribal lands does not reflect the reality of Indian Country. While there has been incremental improvement in broadband access in Indian Country, we still have much to do. Indian Country stands ready to help all those that will be involved in a process that will collect and clarify the data, and create a reliable path forward for mapping legislative, regulatory, and on the ground projects. Data driven solutions have been the mantra of governments – federal, state, and Tribal – throughout the enduring lifespan of the digital divide.

This is as true today as it was in 2011, when this Committee articulated this same concern and when I had the privilege of testifying before you in my previous role as Chief of the FCC’s Office of Native Affairs and Policy. I relayed at that time that a major concern of Tribal leaders involved the accurate measurement of the actual state of broadband availability on Tribal lands –

specifically, the depth and accuracy of the data on the state of services on their lands. I described the 2011 Native American Summit in Salt Lake City, during which my staff and I witnessed representatives of the Goshute Confederated Tribes explain to the Utah broadband mapping manager that the gross overestimation of wireless broadband coverage on the Goshute Reservation actually precluded the Tribe from applying for federal grants and loans for a Tribal project that would address their lack of services.

And this was not an isolated incident, but rather stands as but one example of many about which I learned first-hand during my tenure at the FCC and continue to learn now that I have returned to work in Indian Country. This is a cycle that can – and must – be changed if the goal of universal broadband across Tribal lands is to be realized. Comprehensive Tribal-specific, quantifiable, accurate, and reliable data is the predicate upon which investment – be it federal, Tribal, state, or private – depends. And it is also the foundation upon which universal broadband deployment across Tribal lands will be realized.

How will this be accomplished? As this Committee understands so well, there is no “one size fits all” approach in Indian Country. Rather, “one size fits none” is a more accurate characterization, which is why data specific to individual Tribal lands is so very critical. And, as reflected in GAO’s Tribal broadband data recommendations, this will require both a dedicated process to collect broadband data specific to Tribal lands and a dedicated process to substantively involve Tribal Nations in the review of carrier-reported data. These processes are two sides of the same coin and, in many ways, interrelated. That is, both processes share the same goal – the collection of comprehensive and accurate data reflecting the actual state of broadband on Tribal lands. They are also inherent in the FCC’s trust relationship with Tribal

Nations and are a critical component of the agency's *2000 Tribal Policy Statement*.² And both processes will require substantive Tribal government involvement and the full support, cooperation, and partnership of the federal government.

This is not an easy task – but bridging the digital divide in Indian Country has certainly proven to be far from an easy task. Partnerships, policies, and rules are not created in a vacuum, but instead are rooted in real world experience and analysis. Indian Country stands ready to work in partnership with the FCC to determine the best approaches, the best vehicles, and the most culturally appropriate ways in which to collect this critical data.

And there is something important here to understand about the data, to ensure that it is meaningful. Data on the digital divide in Indian Country must take into account everything – every condition – that contributes to it. In addition to the census blocks that take into account remoteness or terrain, Indian Country data must also account for the factors that contribute to adoption, such as affordability and availability. The thesis here is simple – get more broadband deployment where it is needed. Make resources effective and available, so that broadband offerings are affordable and available. We all need to coordinate on things that comport with that thesis – and stop doing things that are antithetical.

I would like to share with you two examples of comprehensive quantitative and qualitative Tribal broadband studies produced in recent years. Both studies focused on deployment (accessibility) and adoption (uses) of broadband in Indian Country. The first study, released in 2009, is entitled “New Media, Technology and Internet Use: Qualitative and Quantitative Analyses” and was produced by Native Public Media and the New America

² See *Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000) (*Tribal Policy Statement*).

Foundation.³ It was the first study of its kind, and contained groundbreaking data on the state of broadband in Indian Country. The second study, due to be released shortly, is entitled “Tribal Technology Assessment: The State of Internet Service on Tribal Lands” and is produced by the American Indian Policy Institute of Arizona State University.⁴ This is an update on the 2009 study, and both studies are Tribal-centric and contain compelling data on the deployment and adoption of broadband in Tribal communities. Both studies confirm that quantifiable, accurate, and reliable Tribal-specific broadband data can be collected, compiled, and analyzed – in other words, it can be done. Improving Indian Country’s broadband data can be done, and it must be done.

The FCC’s Tribal Government Engagement Obligation

As I stated when I testified before this Committee in 2011, Tribal engagement is a critical component of broadband deployment. That concept is as true today as it was in 2011. The best approach to developing and coordinating well thought-out solutions is to work together to identify and remove barriers to solutions and build models with Tribal Nations that engage their core community or anchor institutions. As Tribes govern with a unique understanding of their communities, their vested and active involvement is critically important to finding lasting solutions in their communities. Tribal Nations need to be at the center of those solutions, whether it is through self-provisioning or through other new “Tribal-centric” methods of engagement and deployment with industry, public, or private partners. These models must

³ TRACI L. MORRIS, NATIVE PUBLIC MEDIA, & SASCHA D. MEINRATH, NEW AMERICA FOUNDATION, NEW MEDIA, TECHNOLOGY AND INTERNET USE IN INDIAN COUNTRY (2009) (NPM/NAF *New Media Study*).

⁴ TRACI MORRIS & BRIAN HOWARD, ARIZONA STATE UNIVERSITY, AMERICAN INDIAN POLICY INSTITUTE, TRIBAL TECHNOLOGY ASSESSMENT: THE STATE OF INTERNET SERVICES ON TRIBAL LANDS (release pending) (*Tribal Technology Assessment*).

respect the cultural values and sovereign priorities of Tribal Nations and be infused with the local knowledge that will lead to better opportunities for successful deployment in Tribal communities.

It was upon this foundation that the FCC adopted a Tribal government engagement obligation in 2011, as part of the reform of the universal service High-Cost program and the transition to the Connect America Fund (“CAF”).⁵ The FCC agreed with commenters that engagement between Tribal governments and communications providers is vitally important to the successful deployment and provision of service on Tribal lands. The FCC therefore required, at a minimum, that eligible telecommunications carriers (“ETC”) demonstrate on an annual basis that they have meaningfully engaged with Tribal governments in their universal service supported areas, and that such discussions must include, at a minimum:

- 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, and environmental and cultural preservation processes; and
- Compliance with Tribal business and licensing requirements.

In addition, also in the context of High-Cost/CAF reform, the FCC required ETCs to provide a wide range of data on telecommunications and broadband services and deployment to

⁵ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663,17868-69, para. 637 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.* In *re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

the FCC, state commissions, the Universal Service Administrative Company (USAC), and Tribal governments.

It is fair to say that the Tribal government engagement obligation has not lived up to its intended potential. While some providers have taken the obligation seriously, many more have viewed it as a “check the box” requirement for the receipt of millions of dollars in universal service funding. Both during and since my tenure at the FCC, Tribal leaders have relayed innumerable situations in which they simply receive a template letter once a year from their providers as their sole effort to comply with the Tribal government engagement obligation.

Perhaps even more disturbing, Tribal leaders have relayed that the data ETCs are required to provide to them annually more often than not is heavily redacted and, as a result, unintelligible. This is data about service on their own Tribal lands. In other instances, Tribal leaders are presented with non-disclosure agreements with the demand that they be signed if the Tribes want access to their own broadband data. There is no provision in the FCC’s rules that allows these practices, yet they continue nonetheless. As a result, not only do Tribes not have the opportunity to substantively review data before it is used to make decisions with respect to federal funding and policy priorities, they are, in many instances, not even given the opportunity afforded them in the FCC’s rules to review data about service on their own lands.

Now that several years’ worth of data and experience is available, it is time to seriously evaluate compliance and develop best practices going forward. These processes will require substantive consultation with Tribal Nations pursuant to the FCC’s trust relationship with Tribes. They will also require a deep commitment from all parties involved, including providers, Tribal Nations, inter-Tribal organizations, and the FCC – all with the shared goal of making broadband universally available across Indian Country.

Partnerships

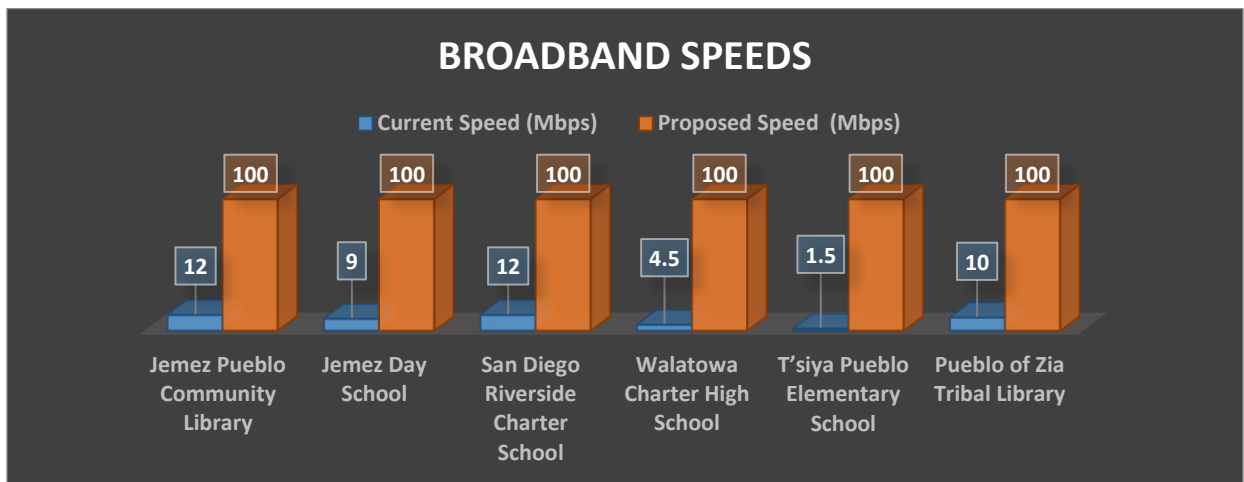
Regulatory investment solutions that have seen incremental success in the past two decades have also created more recalcitrant strains of the digital divide in areas where those regulatory solutions have not driven deployment and adoption. Many Tribal Nations recognize the reality that they are part of the solution not only for achieving good data on broadband access, but also part of the solution in Tribally-driven projects that will bring connectivity to their communities. In an environment where few outside and non-Tribal entities are willing to make the investment and confront the potential debts of deploying on Tribal lands, Tribes themselves are confronting the challenges and opportunities of becoming their own providers – in whatever form that may take.

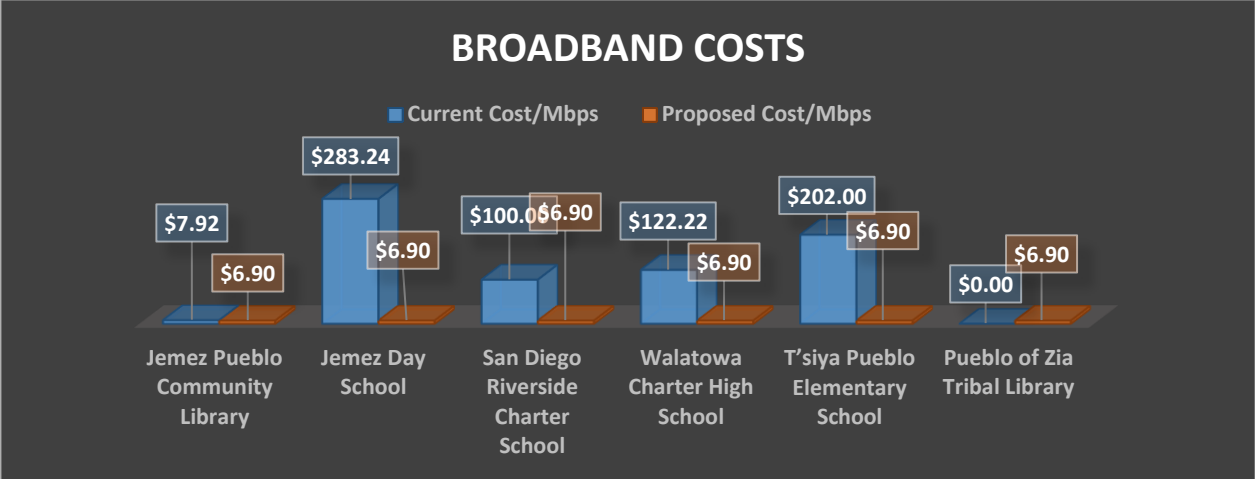
Tribal Nations are having to analyze the “ownership economics” of their own projects that would bring broadband to their own corners of Indian Country. Those who are willing to take on the challenge and face the debts as de facto providers of last resort need help. They need all of our help. It is high time that everyone involved in this challenge acknowledge this reality and the potential of Tribal projects developed by Tribal Nations.

AMERIND is located on the Pueblo of Santa Ana, in north central New Mexico about 30 miles from Albuquerque, the state’s largest city. We only received broadband service within the last couple of years when a water project nearby brought fiber down the road adjacent to our building. This is an all too common occurrence on Tribal lands, and is exacerbated in the most remote parts of Indian Country. Often the incumbent’s fiber is just across the road from Tribal lands – or is even running across Tribal lands – and yet the incumbent will not provide service to the Tribe.

This is the very situation facing many of the Tribes in New Mexico. Knowing that there was strength in numbers and that incumbents and other providers would never provide the level of service that the Tribes both wanted and needed, two separate consortia formed to leverage the federal E-rate program and finally bring broadband to Tribal schools and libraries on six Pueblos. With the expertise, guidance, and advocacy of the ACI team, the two Tribal consortia secured almost \$8 million in federal E-rate subsidy dollars to bring Tribally-owned fiber networks to their Pueblo communities.

Together, the Middle Rio Grande E-rate Consortium – comprised of the Santa Ana, San Felipe, Santo Domingo, and Cochiti Pueblos – and the Jemez-Zia E-rate Consortium – comprised of the Jemez and Zia Pueblos – built 60 miles of Tribally owned and controlled fiber at a 95 percent discount afforded by the E-rate program. These networks are now providing a dramatic increase in broadband speeds (from 3 Mbps to 100 Mbps and beyond) and an equally dramatic decrease in cost (from over \$100 per megabit per month to less than \$7 per megabit per month) – all for the benefit of Tribal schools and libraries. Both networks were “lit,” or operational, in the summer of 2018.





These two first of their kind Tribal projects represent what can be done to bring broadband to communities in Indian Country through effective partnerships. Such efforts are few and far between now, but these partnerships provide hope, a foundation, and a potential model upon which to build.

In conclusion, the ubiquitous lack of access to broadband services over Tribal lands continues to create a divide preventing residents of Tribal lands from accessing information and services critical to our 21st century economy. Community-oriented and truly effective deployment of communications technologies within Indian Country, however, has the potential to level the negative social, cultural, and economic impacts that history has caused Tribal Nations to endure. New commercial, educational, and health care opportunities, as well as social stability and quality of life issues, can genuinely be improved through broadband. And most importantly, extending broadband across Indian Country will achieve a more equal opportunity for *all* Americans – opening the door for *every* citizen to become a part of the digital future of our country and ensuring that Tribal Nations enjoy a secure and enduring place in that future.

The FCC is obligated to undertake this effort pursuant to its mandate in the Communications Act that “access to advanced telecommunications and advanced services should

be provided to *all* regions of the Nation.”⁶ They are also obligated to undertake this effort pursuant to the trust relationship and trust responsibility they share with Tribal Nations. They owe this effort to consumers nationwide, who pay for the universal service subsidy programs. But most of all, they owe it to Tribal Nations, who have waited so very long for digital equity and stand ready to work together as equal partners, pursuant to their trust relationship with the federal government, to finally make it a reality. Because, however precious federal funds are targeted, rules are developed, and definitions are created, they must be rooted in the reality of Indian Country.

Mvto, and thank you again for the opportunity to testify this afternoon. I look forward to answering any questions you may have.

⁶ 47 U.S.C. § 254(b)(2) (*emphasis added*).