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**OVERSIGHT HEARING ON GAO REPORTS RELATING TO BROADBAND INTERNET
AVAILABILITY ON TRIBAL LANDS**

**BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

OCTOBER 3, 2018

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, thank you for the opportunity to testify today about the recently released GAO report on the Federal Communication Commission's (FCC's) collection and reporting of broadband data for Tribal lands. I'm Patrick Webre, Chief of the FCC's Consumer and Governmental Affairs Bureau (CGB).

Before addressing the report, I'd like to provide the Committee with a brief background on CGB and its work on Tribal matters. CGB oversees the FCC's rulemaking efforts regarding consumer policy issues, including disability rights, and administers the FCC's consumer information, education, and outreach programs to enhance the public's understanding of telecommunications matters and compliance with the FCC's regulatory requirements. CGB also directs the FCC's collaborative partnerships with and outreach to state, local, and Tribal governments and organizations. CGB further manages the agency's consumer complaints, inquiry processes, and call center operations.

In 2010, the Commission established the Office of Native Affairs and Policy (ONAP) within CGB. In so doing, the Commission stated its expectation that ONAP would bring "the benefits of a modern communications infrastructure to all Native communities by, among other things, ensuring robust government-to-government consultation with Federally-recognized Tribal governments and other Native organizations; working with Commissioners, Bureaus, and Offices, as well as with other governmental agencies and private organizations, to develop and implement policies for assisting Native communities; and ensuring that Native concerns and voices are considered in all relevant Commission proceedings and initiatives."¹

Establishment of ONAP within CGB has promoted administrative efficiencies, management oversight, and synergies with the Bureau's intergovernmental responsibilities, while providing a home for dedicated Commission staff with specialized experience to serve as official Commission liaisons for ongoing consultation, engagement and outreach to the American Indian, Alaska Native Village, Hawaiian Homelands, and other Native communities. Most importantly, the creation of ONAP has fostered Commission dialogue and engagement with Tribes, Tribal governments, and inter-Tribal organizations, furthered the Commission's trust relationship with Tribal Nations, and demonstrated its ongoing commitment to its 2000 *Tribal Policy Statement*.² In 2018 alone, ONAP has already facilitated over 90 forms of Tribal outreach and engagement.

Also this year, the FCC announced the renewal of the Native Nations Communications Task Force. The Task Force will be comprised of elected or appointed leaders from federally recognized Tribal governments and senior Commission staff. It is intended to provide the Commission guidance on

¹ *Establishment of the Office of Native Affairs and Policy in the Consumer and Governmental Affairs Bureau*, Order, 25 FCC Rcd 11104 (2010).

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

such matters as identifying barriers to broadband deployment unique to Tribal lands and ensuring that Tribal concerns are considered in all Commission proceedings related to broadband and other Commission undertakings that affect Tribal interests.³ The Commission is currently selecting Tribal members and hopes to announce its membership and first meeting in the near future.

GAO Reports and FCC Response. The GAO released two reports on Tribal broadband last month. The first report, titled *FCC's Data Overstate Access on Tribal Lands*, examined the FCC's approach to collecting broadband availability data and obtaining Tribal input on the accuracy of that data for Tribal lands. This report, to which the FCC responded, contains three recommendations for the Commission, which I will address in this testimony. The GAO released a second report late last week entitled *Few Partnerships Exist and the Rural Utilities Service Needs to Identify and Address Any Funding Barriers Tribes Face*. That report examined the use of partnership arrangements between Tribal entities and other entities and contains a recommendation for the Rural Utilities Service. The second report has no recommendations for the Commission.

Bringing the benefits of broadband to all Americans is the Commission's top priority. But that is not an easy task in many parts of this country, particularly Tribal lands. The Commission has long recognized the particular challenges associated with deploying broadband infrastructure and providing services on Tribal lands, and agrees with GAO that accurate, comprehensive data are vital to the Commission's efforts to bridge the digital divide, including on Tribal lands. The digital divide is all too real, especially in Indian Country. That is why the Commission has primarily relied on Form 477 data for a limited purpose—identifying the too-many census blocks where “no” Internet service provider has deployed fixed broadband infrastructure, and thus the areas that unambiguously need federal funding through the Connect America Fund to get broadband. This divide is especially stark on Tribal lands, as GAO recognizes, with more than 35% of Tribal residents lacking “any” access to fixed broadband.

The Commission already has efforts underway to ensure that we collect the best possible data and is working to address each of the three recommendations advanced by the GAO.

Methods to Collect and Report Data on Broadband Access to Specific Tribal Lands. GAO's first recommendation is that the FCC Chairman “develop and implement methods—such as targeted data collection—for collecting and reporting accurate and complete data on broadband access to specific tribal lands.” The Commission agrees with the importance of having access to quality data and has efforts underway to enhance its understanding of unserved Tribal areas through better data. More granular data will be needed in the future. As our policies help deliver broadband to wholly unserved blocks, it will be more important to understand availability in partially served blocks.

For this reason, the Commission last year opened a rulemaking on this issue⁴ and remains dedicated to moving forward with this proceeding, including exploring ways to collect more granular data without unnecessarily burdening those who are deploying on Tribal lands and often have few resources to spare. In that proceeding, the Commission sought comment on a wide variety of issues related to making the Form 477 collection as efficient and effective as possible. Recognizing the potential benefits of increasing the granularity of deployment data the Commission collects, the agency sought public input on many issues associated with revising its methodology. The Commission is currently analyzing the potential efficiencies, usefulness, and burdens associated with various options. If an appropriate method for such a collection can be identified, this may address many of the concerns GAO raises in its report by providing the Commission with a more precise picture of broadband deployment on Tribal lands.

³ Public Notice, *FCC Seeks Nominations for Tribal Government Representatives to Serve on Renewed FCC Native Nations Communications Task Force* (DA 18-127) (rel. Feb. 8, 2018).

⁴ *Modernizing the FCC Form 477 Data Program*; Further Notice of Proposed Rulemaking; WC Docket 11-10 (2017).

Also relevant to GAO's first recommendation is the requirement in the *Consolidated Appropriations Act of 2018* that the Commission conduct an assessment regarding the availability of broadband services in Indian Country and report on the results by March 23, 2019.⁵ Based on the results of that assessment, the legislation directs the Commission to conduct a rulemaking proceeding to address the unserved areas identified in the report. We have begun work on that effort and will work with Tribal officials and stakeholders to develop a clear picture of broadband deployment on Tribal lands and address unserved areas.

Process to Obtain Tribal Input on Provider-Submitted Broadband Data. The report's second recommendation is that the Chairman of the FCC "develop a process to obtain tribal input on the accuracy of provider-submitted broadband data that includes outreach and technical assistance to help tribes participate in the process." The Commission agrees that Tribal input on the accuracy of provider-submitted broadband data is important. Indeed, the FCC currently has in place a number of informal means by which Tribal officials and stakeholders can raise any concerns. For example, Tribal officials can, and do, raise concerns and questions about the data to the Commission's ONAP, which shares them with the relevant agency bureaus.

In addition, the Commission has given Tribes a direct role in evaluating and challenging providers' claims of service coverage in the ongoing Mobility Fund Phase II (MF-II) proceeding. ONAP and the Commission's Rural Broadband Auctions Task Force have cooperated on a number of initiatives to make Tribal leaders and others aware of the challenge process for the Mobility Fund II auction eligible areas and the importance of participating in that process. These efforts have included sending information in emails to the leaders and IT managers of all 573 federally recognized Tribes; conducting outreach, including conference calls and webinars open to all Tribes; formal presentations at multiple inter-Tribal conferences around the country; and a session at a July 31 Tribal workshop conducted at the Lac du Flambeau Reservation in Wisconsin that was open to all Tribes.

The Commission agrees that, in addition to these mechanisms, implementing a formal process for continuing Tribal engagement could have significant value in helping the FCC understand both the extent of, and the specific issues that drive or hinder, broadband deployment on Tribal lands. We plan on tasking the Native Nations Communications Task Force with recommending a process on this very issue. Our efforts to improve Tribal engagement will include doing even more to help Tribes participate in existing processes, through technical and other outreach, as well as looking for additional avenues and methods for receiving Tribal input on deployment issues.

Feedback from Tribal Officials and Providers on Providers' Tribal Engagement Requirements. Finally, the report recommends that the FCC Chairman "obtain feedback from tribal stakeholders and providers on the effectiveness of the FCC's 2012 statement to providers on how to fulfill their tribal engagement requirements to determine whether the Commission needs to clarify its tribal engagement statement." We agree that seeking additional feedback on the overall effectiveness of the 2012 Tribal Engagement Further Guidance Public Notice is desirable.

We note that ONAP solicits and receives feedback from Tribes on whether and how providers are fulfilling the requirements of the rule, the effectiveness of the Commission's guidance, and any problems encountered in the engagement process. ONAP regularly includes presentations on the Tribal engagement obligation at its Tribal workshops, which it conducts at different locations around the country throughout the year. Additionally, ONAP solicits and receives feedback on the engagement requirements from Tribes and other participants at inter-Tribal conferences and similar events. As a result of feedback concerning the availability of compliance reporting, the Commission has made changes to its filing requirements, and Tribal Nations will soon be able to obtain providers' reports on their Tribal engagement efforts directly through a Universal Service Administrative Company online portal. We will continue to

⁵ *Consolidated Appropriations Act, 2018*, H.R. 1625, 115th Cong., Division P, *RAY BAUM'S Act*, § 508 (2018).

seek additional informal and formal feedback from Tribal officials, as well as feedback from providers, regarding the effectiveness of the guidance provided by the Commission thus far on how providers may fulfill their Tribal engagement requirements. We also plan on asking the Native Nations Communications Task Force to assist the Commission in gathering Tribal feedback.

In addition to these efforts, the Commission has been taking other important actions to help bring broadband to Tribal lands. In August, the Commission concluded the Connect America Phase II auction to allocate support for fixed broadband deployment to certain eligible rural areas across the United States. Our preliminary review shows that about 80,000 winning locations are in Tribal areas. In addition, we are currently planning for the Tribal Mobility Fund II auction, in which a portion of the Mobility Fund Phase II auction's \$4.5 billion budget will be dedicated to funding mobile coverage in Tribal lands. And earlier this year, in recognition of the unique challenges carriers on Tribal lands face, the Commission raised the limits on operational expenditures for carriers serving these areas. It is also my understanding that staff is considering a petition for reconsideration from Mescalero Apache Telecom, Inc. related to this action which, if granted, would bring even more support to Tribal areas.

Chairman Hoeven, Vice Chairman Udall, and the Members of the Committee, thank you once again for the opportunity to testify this afternoon, and I look forward to the opportunity to answer your questions.