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THE GAO REPORT ON TELECOMMUNICATIONS: ADDITIONAL COORDINATION AND PERFORMANCE MEASUREMENT NEEDED FOR HIGH-SPEED INTERNET ACCESS PROGRAMS ON TRIBAL LANDS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

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CONTENTS

WITNESSES

APPENDIX

THE GAO REPORT ON TELECOMMUNICATIONS: ADDITIONAL COORDINATION AND PERFORMANCE MEASUREMENT NEEDED FOR HIGH–SPEED INTERNET ACCESS PROGRAMS ON TRIBAL LANDS

WEDNESDAY, APRIL 27, 2016

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

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good afternoon. I call this hearing to order. I ask the witnesses to please take their seats.

Today we are going to examine the January 2016 Government Accountability Office Report on Access to Broadband Service on Tribal Lands.

Quick and effective internet access is vital for many purposes, such as commerce, public safety, education, and health. This Committee has received concerns from people living in rural Indian lands, including my home State of Wyoming, regarding unreliable internet service and significant barriers to improving access to even basic internet services in their communities. The Government Accountability Office report describes how unreliable internet can be and how it can affect business development, education and health.

In 2010, at the direction of Congress, the Federal Communications Commission issued the National Broadband Plan to achieve access to high-speed internet for everyone. Between fiscal years 2010 and 2014, the Federal Government spent approximately $33 billion on the national goal of universal high-speed internet access. It is somewhat troubling that quite a bit of money has been spent on this national goal and Indian tribal governments and communities still struggle to access internet services.

In many instances, networks cannot accommodate multiple users on Indian lands. The GAO has highlighted one tribal example where connection problems cause significant problems with heavily congested networks. According to the Federal Communications

Commission, in 2016, 41 percent of the people on tribal lands still do not have access to high-speed broadband. This figure should be much lower.

The GAO report sheds light on why this figure may be significantly higher than other parts of the Nation. The GAO found that two agencies with responsibility for broadband-related programs, the Department of Agriculture and the Federal Communications Commission, do not coordinate well in programs, in outreach, or in training.

In addition, the GAO found that as of December 2015, the Federal Communications Commission has not established performance measures or goals for broadband availability on tribal lands. The GAO made several recommendations for improvement, including developing goals and measures to track progress.

We will hear today how both agencies are moving forward to increasing broadband services for Indian communities.

With that, I would like to welcome the witnesses. We look forward to your testimony.

Senator Tester, do you have an opening statement?

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. I do. Thank you, Mr. Chairman.

I want to thank all the witnesses who are here today. I look forward to your testimony.

Mr. Chairman, I appreciate you holding a hearing on a topic that is vitally important to tribal communities which, quite frankly, doesn't get enough attention, so this hearing is important.

Telecommunications in Indian Country and, in particular, broadband, often appears to be an afterthought, as we are dedicating our time to other major issues in tribal communities, things like health care, education, economic development, public safety, among all others; all important, but broadband is important too. We overlook that fact and the fact that broadband plays a key component in economic development in Indian Country.

The longer Indian Country lacks robust broadband, the harder it is going to be for Tribes to effectively provide crucial services needed in their communities. As these services become more dependent on interconnectivity, Tribes will continue to lag further and further behind.

Opportunities such as providing telemedicine services to remote Native communities that lack doctors and reliable modes of transportation, online resources and distant learning for classrooms, more effective and streamlined communications for public safety, and new markets for Native businesses who have often been effectively shut out are all examples of the potential broadband has to address the critical needs in tribal communities.

We have a couple tribal witnesses here today who can speak to this potential, and I look forward to hearing from them about the impact it has in their communities.

I look forward to hearing from our Federal witnesses, as well, and learning more about their efforts to increase access and adoption of high-speed internet access across Indian Country. Our Administration's goal of connecting everyone, including rural and Na-

tive America, is imperative for the welfare and security of not only tribal communities, but for our entire Nation.

The FCC and the USDA need to listen to Tribes, they need to sharpen their tools and find ways to get more Tribes connected. Access to high-speed internet should not be a luxury. There is no way that we could do our jobs here without the ability to connect, and we can't expect Tribes to do their job either.

Thank you to all the witnesses for testifying here today and for the work that you do in Indian Country. I look forward to a fruitful discussion that will help us find solutions on an issue that is becoming more and more important as we move further into a world that relies on connectivity.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Tester.

Would any other members like to make an opening statement? Senator Udall.

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

Senator UDALL. Thank you, Chairman Barrasso. Thank you for calling this hearing today on what I believe is a very important topic.

I also want to thank all the witnesses for being here. I am especially pleased to welcome Mr. Godfrey Enjady from the Mescalero Apache Tribe. He has made impressive progress in tacking the digital divide facing his community in New Mexico. Universal service investments and rural utility service loan support has been vital to his success, so I look forward to his testimony today on behalf of the National Tribal Telecommunications Association.

In my home State, 80 percent of those living on tribal lands do not have access to broadband, four out of five people without broadband access. This is truly appalling. But the statistics do not convey the real hardships and lost opportunities that are a consequence of the digital divide facing Indian Country.

Not having wireless reception can mean the difference between life and death in an emergency. A man outside Gallup, New Mexico missed two opportunities for a life-saving kidney transplant because he lacked telephone service at home and could not be contacted in time.

When FCC Chairman Tom Wheeler visited the Acomo Pueblo with me, we stopped by the Tribe's community library. It has free wi-fi that the librarian keeps on 24–7. That way folks without internet at home can come to the parking lot after hours and still get online from outside the building. That really bothers me in the situation where we don't have that connectivity, as Vice Chairman Tester talked about.

Our Nation's rural areas and tribal lands should not be bypassed when broadband and wireless networks are built out across the Nation. Although they are among the least connected, these areas are precisely where broadband technology can help the most, and I hope we will hear some of that from our witnesses today.

By overcoming physical distances and geographic isolation, broadband can help improve economic development, education, and access to health care, so we need to do much more. This hearing

is an opportunity to identify where the FCC, the RUS, and Congress should focus our efforts to tackle the digital divide facing Indian Country.

Thank you so much.

The CHAIRMAN. Thank you.

Would any other Senators like to make a statement?

Senator Franken.

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Mr. Chairman, I will submit my opening statement for the record. I just want to say thank you to the witnesses and how important this is. The digital divide in Indian Country is enormous. This is a rural electrification issue of the 21st century.

Everyone should be wired; every kid should be able to access high-speed broadband for educational purposes. Broadband is a necessity in the 21st century and we have to do this. And if we are going to attract good teachers and good doctors and business to Indian Country, they have to have broadband.

So I will submit my official statement for the record. Thank you, Mr. Chairman.

[The prepared statement of Senator Franken follows:]

PREPARED STATEMENT OF HON. AL FRANKEN, U.S. SENATOR FROM MINNESOTA

Thank you, Chairman Barrasso, for holding this oversight hearing on broadband issues in Indian Country, and thank you to our witnesses for your work in this area. I look forward to hearing your perspectives on some of the challenges involving increasing access to broadband in Indian Country as well as some of the successes.

Access to reliable high speed Internet is critical to growing our economy. People living in Indian Country are just as entitled to access to broadband as those living in our cities and towns.

Unfortunately, as I travel around Minnesota, I have seen first-hand how access to high speed Internet varies significantly depending on where you live. This digital divide is a real problem for schools, families, and entire communities.

Without reliable Internet, how can we expect our children to do their homework? And how can we expect our students to be ready for the 21st century economy? That's why I've made the deployment of rural Broadband a bipartisan priority of mine during my time in the Senate. I'll continue to press for the build out of high-speed Internet to every corner of our state, including our tribal communities, because it's critical for both education and for local economies.

Thank you again to Chairman Barrasso, Ranking Member Tester, and to all of our witnesses today. I look forward to hearing your testimony.

The CHAIRMAN. Thank you very much, Senator Franken.

I want to remind the witnesses that we will include your complete statements for the record, so please try to keep your statements to five minutes or less so that we will have some time for questioning. Thank you for being here today.

We will first hear from Mr. Brandon McBride, who is the Administrator for the Rural Utilities Service for the Department of Agriculture; then from Ms. Gigi Sohn, who is the counselor to the Chairman of the Federal Communications Commission; Mr. Mark Goldstein, who is the Director of the Physical Infrastructure Issues of the Government Accountability Office; Ms. Julie Kitka, who is president of the Alaska Federation of Natives, from Anchorage; and

Mr. Godfrey Enjady, who is the President of the National Tribal Telecommunications Association, from New Mexico.

Welcome. Thank you very much. And if we could begin with you, Mr. McBride.

STATEMENT OF BRANDON MCBRIDE, ADMINISTRATOR, RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. MCBRIDE. Chairman Barrasso, Vice Chairman Tester, and members of the Committee, I appreciate this opportunity to discuss the recent Government Accountability report focusing on improving internet access on tribal lands.

The Rural Utilities Service is one of three rural development agencies at USDA. The Rural Housing Service offers housing and community facilities programs; the Rural Business and Cooperative Service offers both business development and finance programs; and RUS makes loans and grants available to finance rural electric, telecommunications, and rural water infrastructure. Together, these agencies work together to help communities build stronger economies, create jobs, and improve the quality of life in rural America.

Our efforts at RUS to encourage broadband deployment to rural and Native communities have helped deliver broadband service that has improved access to health care and educational programs, and opened the door to job opportunities. These services help strengthen economies in American Indian, Alaskan Native, and Native Hawaiian communities. This funding assistance is vital and we are fully committed to improving investment in tribal lands and underserved areas.

Thanks to the leadership of this Committee and your colleagues in the Senate, RUS has placed special emphasis on financing critical infrastructure services to unserved and underserved Native communities.

Since 2009, RUS has funded broadband deployment through five distinct programs. We are focused on the need to improve access for Native and rural communities. These grant and loan programs have invested over $425 million in projects serving tribal lands, tribal organizations, American Indians, and Alaskan Natives. RUS programs have provided internet access to communities for the first time, supported the acquisition of equipment needed to expand access to education and health care services, and financed the construction of infrastructure that has improved broadband access.

Given our history, RUS has a solid understanding of the costs and the challenges of building out rural telecommunications systems. We understand how critical broadband access is and we also understand the magnitude of work that remains to be done in rural and tribal areas.

Since the start of this Administration, RUS has expanded outreach and service across tribal communities. To make our programs more accessible to those serving and living in tribal areas, RUS has implemented the Substantially Underserved Trust Area provisions of the 2008 Farm Bill.

The SUTA rulemaking was crafted following a two-year tribal consultation effort that involved more than 30 government-to-government consultations. As a result, SUTA provisions provide three

tools for most RUS loan programs. These tools include loans with interest rates as low as 2 percent, a waiver of non-duplication restrictions, and giving highest priority to projects in substantially underserved trust areas.

RUS is committed to using the tools at its disposal to provide broadband access for tribal communities and we are consisting looking for ways to improve. This GAO report makes several recommendations to help enhance and measure the availability and adoption of high-speed internet. One of GAO's recommendations was that USDA and the FCC work towards better coordination in this regard.

To address GAO's recommendation, RUS and the FCC are currently working to closely coordinate outreach efforts to better assist tribal areas. Included in these discussions is the development of joint outreach materials that explain how programs can be interrelated and how available funding options may be leverages. Our work with the FCC has also resulted in productive conversations about the financial and policy implications of a changing universal service fund landscape.

RUS's work with other Federal agencies has resulted in stronger coordination and outreach efforts that improve broadband access and adoption in tribal areas. As a part of the President's Broadband Opportunity Council, RUS is working with the Department of Commerce on the Community Connectivity Initiative. This partnership can assist communities with their broadband self-assessment, recommendations, planning, and implementation support.

RUS is also partnering with the Department of Interior in planning a Tribal Broadband Summit, as well as on the FCC's five upcoming tribal broadband workshops. All of these are scheduled for later this year.

RUS is proud of its investments in tribal communities and we will continue to work with the FCC to use the tools that Congress has given us to help bring broadband to every corner of America, including rural and tribal areas.

Thank you for your interest in USDA's Rural Utilities Service and thank you for your support of our agency and its mission.

[The prepared statement of Mr. McBride follows:]

PREPARED STATEMENT OF BRANDON MCBRIDE, ADMINISTRATOR, RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Chairman Barrasso, Vice Chairman Tester and Members of the Committee, I appreciate this opportunity to discuss the Government Accountability (GAO) report entitled "Telecommunications: Additional Coordination and Performance Needed for High-Speed Internet Access Programs on Tribal Lands."

Efforts of the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) to encourage broadband deployment to rural and native communities have been critical in bringing broadband to tribal areas. Our work with tribal stakeholders and other state and federal agencies, including the Federal Communications Commission (FCC), plays a major role in financing broadband projects to deliver quality, affordable high-speed Internet service to strengthen economies, improve access to health care and educational programs, and open the door to job opportunities in American Indian, Alaskan Native and Native Hawaiian communities.

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 housing and community facilities programs. The Rural Business and Cooperative Service offers both business development programs and finance programs. Together, RD agencies work to help communities build stronger economies, create jobs and improve the quality of life in rural areas.

Nowhere is this RD assistance more vital than in America's native communities. RD is fully committed to improving investment into tribal lands and underserved areas. Our President, Secretary and Undersecretary place a high priority on improving program delivery to native communities, and our programs are designed for communities with the greatest need. Thanks to the leadership of members of this Committee and your colleagues in the Senate, RUS has placed special emphasis on financing critical infrastructure services to underserved native communities.

RD agencies have a long history of investing in tribal economies. Since 2009, total RD investments benefitting tribal areas have exceeded $2.9 billion. One reason for this success is because our USDA RD state offices maintain Native American Tribal Coordinators to assist tribes by providing technical assistance and programmatic knowledge throughout the application process for these programs.

RD agencies and staff also work in cooperation with tribal governments and partner with other federal agencies, including the FCC. It is important to note that USDA's Office of Tribal Relations and RD have participated with the FCC's Office of Native Affairs and Policy on outreach efforts in Indian Country.

RUS often works directly with tribal communities. Since 2009, RUS has provided nearly $1.5 billion for tribal areas to fund electric utilities, water and waste water systems and telecommunications projects, including broadband. Also since 2009, RUS Telecommunications programs have invested over $157 million in projects serving Tribal Lands, Tribal Organizations, American Indians, and Alaska Natives.

RUS has several standing programs which support broadband deployment. Since 2009, USDA has awarded $6.7 billion for almost 550 projects to improve telecommunications infrastructure in rural communities. This includes $2.9 billion through the Recovery Act to build out more than 250 successful broadband projects already having a positive impact in rural areas, and $77.4 million in Community Connect grants for 74 broadband projects in rural areas that previously did not have broadband service.

Our traditional telecommunications infrastructure loan program, authorized in 1949, was created to ensure rural areas had access to reliable and affordable telecommunications systems. Since 1995, RUS has required that these networks facilitate broadband service. Through this program, 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 that offer services to tribal communities. Since 2009, telecommunications infrastructure funding totaling over $91 million has assisted tribal areas.

RUS has long focused on the need to connect native and rural communities to a broadband future. The Community Connect grant program, which awards grants to communities with no access to broadband service, since 2009 has provided nearly $14 million to assist tribal communities lacking access to high-speed Internet.

RUS' Broadband Loan Program, authorized under the Farm Bill, provides broadband network financing to build high capacity systems in rural underserved areas. Since 2009, Farm Bill broadband loans of nearly $10 million increased tribal connectivity to global markets, and opened the doors to educational, health care and social services during this same period.

Another RUS telecommunications program helping tribal areas meet essential needs is the Distance Learning and Telemedicine (DLT) grant program. Since 2009 this program has financed nearly $43 million in equipment to expand access to education and health care services in tribal areas.

With a combined portfolio of over $6.7 billion in telecommunications investments, which includes our grant programs as well as $4.3 billion in telecom loans, RUS has a solid understanding of the costs and the challenges of distance, density and geography to build out rural telecommunications systems. We understand how broadband connectivity transforms lives, enlivens communities and creates sustainable economies that offer jobs and increase the quality of life when these services finally arrive.

Our history shows that RUS understands the importance of relationship with tribal elected officials, and is committed to consulting, coordinating with, and 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.

Since the start of this Administration, RUS has worked to expand outreach and service across tribal communities. To make its utility loan and grant programs more accessible to those serving and residing in tribal areas, RUS implemented the Substantially Underserved Trust Area (SUTA) provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

The SUTA rulemaking was crafted following 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. These provisions include three discretionary tools for most RUS loan programs: RUS may make loans and guarantee loans with interest rates as low as 2 percent and with extended repayment terms; RUS may waive non-duplication restrictions, matching fund requirements, or credit support requirements to facilitate construction, acquisition or improvements of infrastructure; and RUS may give highest priority to designated projects in substantially underserved trust areas.

Among telecommunications projects RUS has funded that benefit tribal areas include:

- $279,106 Distance Learning and Telemedicine grant to Eastern Aleutians Tribes, Inc. in Alaska to purchase video conferencing equipment and CPR mannequins capable of recording and quantifying performance to improve training in local communities.
- $10.5 Million Broadband Initiatives Program loan/grant combination to the San Carlos Apache Tribe in Arizona to provide Fiber-to-the-Premises to five new communities, a hospital, and several clinics.
- $5.4 Million Infrastructure loan to Mescalero Apache Telecom, Inc. to upgrade its telecommunications system and provide fiber optic Internet to half of its service territory in New Mexico. This loan was the first RUS Telecommunications Program loan provided with SUTA consideration.

As noted previously, RUS has partnered with other federal agencies, including the FCC. Most recently our extensive efforts have involved the Connect America Fund, the FCC's reform order, which implements Universal Service Fund (USF) reforms. RUS has a significant interest in the reform effort, and has been engaged in a continuing and productive dialog with the FCC about the financial and policy implications of the changing USF landscape.

The GAO report "Telecommunications: Additional Coordination and Performance Needed for High-Speed Internet Access Programs on Tribal Lands," makes several recommendations to help improve and measure the availability and adoption of high-speed Internet on tribal lands. One of those GAO recommendations was that USDA and the FCC work towards better coordination on improving Internet availability and adoption in tribal communities.

To address the GAO's recommendation, USDA's RUS and the FCC are currently working to closely coordinate outreach efforts to better assist tribal areas in providing high-speed Internet access. Included in these discussions will be development of joint outreach materials that explain how programs can be interrelated, and how available funding options may be leveraged.

Both the USDA and the FCC offer programs to improve Internet availability and adoption on tribal lands. Examples of recent USDA telecommunications projects specifically benefitting tribal areas include not just broadband funding, but funding for equipment to improve access to quality health care and educational services.

As part of the Broadband Opportunity Council (BOC) efforts RUS is working with the Department of Commerce's National Telecommunications and Information Administration (NTIA) on the Community Connectivity Initiative. This is a partnership intended to provide communities a broadband self-assessment, a report and recommendations, planning and implementation support directed to developing a national community of practice. RUS is also partnering with the Department of Interior's (DOI) BOC recommendation in a Tribal Broadband Summit scheduled for later this year. Earlier RUS participation with the FCC in the DOI's Listening Session was very productive.

RUS and the FCC have participated in a number of outreach events that each organization has held. In the future, RUS will work closely with the FCC to develop joint outreach events focused on providing high-speed Internet access to tribal lands.

For example, the FCC has five workshops scheduled this fiscal year. RUS is planning to participate in these:

1. Montana: end of May
2. Seattle, Washington: late June
3. Wisconsin or Minnesota: early August
4. Arizona or New Mexico: early September

5. Oklahoma: Mid November

Providing sustainable broadband service in tribal areas can be challenging, which is why many of these programs exist. RUS is proud of its investments in tribal communities and will work with the FCC to use the tools the Congress gave us to help bring broadband to every corner of America—including rural and tribal communities.

Thank you for your interest in USDA's Rural Utilities Service and thank you for your support of our agency and its mission.

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

Ms. SOHN.

STATEMENT OF GIGI B. SOHN, COUNSELOR TO THE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Ms. SOHN. Chairman Barrasso, Vice Chairman Tester, members of the Committee, thank you for the opportunity to testify today about the recently released GAO report on the status of broadband on tribal lands.

While there has been incremental improvement in recent years, residents of tribal lands continue to disproportionately lack access to broadband. According to the FCC's 2016 Broadband Progress Report, 41 percent of residents on tribal lands lack access to fixed broadband services at our benchmark speed. While this represents a 22 percent increase since 2015, this digital divide is unacceptable.

In recognition of the persistent disparity in access to communication services on tribal lands, the Commission's Office of Native Affairs and Policy was created in 2010. The Commission charged ONAP with facilitating delivery of the benefits of modern communications infrastructure to all Native communities. Our work with Tribal Nations is a strategic partnership, one in which we effectuate the trust relationship that the Commission shares with Tribal Nations.

Last year, GAO was asked to review the status of broadband on tribal lands. GAO made four recommendations which I will address in turn. The FCC agrees with all the recommendations.

Recommendation 1: Develop joint training and outreach with USDA.

The Commission agrees that coordination with USDA is vitally important. From 2012 to 2015, the two agencies developed and implemented consultation, training, and outreach for Tribal Nations on multiple occasions, including 15 regional tribal consultation and training workshops. The Commission has invited USDA to participate in all of the five regional consultation and training workshops being planned for 2016, the first of which will be held in Montana in late May or early June.

At the same time, we recognize that our coordination with USDA must be more strategic and routine. For example, staff should meet on a regular basis to share data and funding plans to ensure that taxpayer dollars are having the greatest impact on tribal lands.

Recommendation 2: Develop performance goals and measures for tribal areas for improving broadband availability to households.

The Commission agrees on the importance of such performance goals and measures. The Commission has established a specific performance goal for our Connect America Fund to bring broadband to rural insulated high-cost areas, including tribal

lands. The Commission has also adopted an outcome measure for this goal: the number of homes, businesses, and community anchor institutions that newly gain access to broadband service as a result of the Connect America Fund support.

Twice a year, through its Form 477, the Commission collects broadband availability data for each census block, including on tribal lands. The Commission uses that data to publish statistics on the availability of broadband service on tribal lands and to monitor progress towards its goal of ensuring universal availability of broadband to all Americans.

Recommendation 3: Improve the reliability of FCC data related to institutions that receive E-rate funding by defining "tribal" on the program application.

The FCC agrees with the GAO about the importance of collecting more reliable data both on schools and libraries on tribal lands, and on schools and libraries that serve Native students, whether on or off tribal lands. Beginning in funding year 2017, the FCC intends to amend directions to the E-rate application to offer guidance in applicant self-reporting of tribal affiliation.

Recommendation 4: Develop performance goals and measures for improving broadband availability to tribal schools and libraries.

The Commission agrees, which is why the agency adopted goals and measures in its 2014 First E-rate Modernization Order. In that Order, the FCC adopted a goal of ensuring affordable access to high-speed broadband sufficient to support digital learning in all schools and robust connectivity in all libraries.

The Commission adopted specific measures and targets to determine whether we are successful in achieving that goal. In addition, the FCC directed USAC to create a comprehensive and efficient data reporting structure to develop information technology tools that facilitate analysis of E-rate data and to increase public availability of such data.

The recommendations advanced by GAO will help to improve and measure the availability and adoption of high-speed internet on tribal lands, which will in turn give the Commission a deeper understanding of where and how to direct resources. Through increased coordination with our tribal and Federal partners, as well as this Committee, the FCC will continue to address the persistent lack of access to broadband services on tribal lands. Together we are committed to ensuring that all Native communities have access to the economic, educational, health care, and civic opportunities that broadband enables.

I look forward to your questions.

[The prepared statement of Ms. Sohn follows:]

PREPARED STATEMENT OF GIGI B. SOHN, COUNSELOR TO THE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Chairman Barrasso, Vice Chairman Tester, and Members of the Committee, thank you for the opportunity to testify today about the recently released GAO report on the status of broadband on Tribal lands.

The Status of Broadband on Tribal Lands

While there has been incremental improvement in recent years, residents of Tribal lands continue to disproportionately lack access to broadband. Beginning in 2015, the Commission defined a benchmark speed of 25 Mbps downstream/3 Mbps upstream 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 *2016 Broadband Progress Report,* Tribal lands continue to be left behind from receiving these advanced services envisioned by Congress. For example, 41 percent of residents on Tribal lands lack access to fixed broadband service at the benchmark speed, as compared to 10 percent nationwide. While this figure represents a 22 percent increase in services available on Tribal lands since the *2015 Broadband Progress Report,* the fact remains that broadband access on Tribal lands remains far below the national average. This digital divide in Indian Country remains unacceptable.

An example of the challenges associated with bringing broadband to Tribal lands is the experience of the Standing Rock Sioux Tribe. The Tribe's present day homeland is the Standing Rock Reservation, which encompasses approximately 2.3 million acres on the borders of North Dakota and South Dakota. In an effort to address the state of communications services on the Reservation, the Standing Rock Sioux Tribe created Standing Rock Telecommunications, Inc. (Standing Rock Telecom) to provide mobile voice and data services within the entire Reservation. As a successful bidder in the FCC's Mobility Fund Phase I auction—resulting in $3.3 million in total assigned support and coverage for up to 1,290 road miles on the Standing Rock Reservation—Standing Rock Telecom has the opportunity to use universal service Mobility Fund support to expand the critical services it is providing on the Reservation.

Recognizing the persistent disparity in access to communications services on Tribal lands, the Commission's Office of Native Affairs and Policy (ONAP) was created in 2010. Acting on a recommendation in the National Broadband Plan, the Commission charged ONAP with facilitating delivery of the benefits of 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 government 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. There is a new way of doing Tribal business at the Commission. Our work with Tribal Nations is a strategic partnership, one in which we effectuate and exercise the trust relationship that the Commission shares with Tribal Nations.

FCC Initiatives to Bridge the Digital Divide in Indian Country

In the last eighteen months, the Commission has modernized two universal service programs that hold the potential to help bridge the digital divide in Indian Country. The first of these programs is the E-rate program, which is the country's largest educational technology program. In June 2014, at the invitation of Senator Udall, Chairman Wheeler traveled to the Pueblo of Acoma in New Mexico, meeting with then-Governor Vallo and other senior Tribal officials to discuss the state of connectivity on the Pueblo. During this trip, Chairman Wheeler and Senator Udall visited the Acoma Learning Center, the Pueblo of Acoma's Tribal library, where they discussed the library's connectivity challenges and its experiences with the E-rate program. Later that year, the Commission adopted two Orders that comprehensively modernized the E-rate program by setting specific, ambitious goals for the broadband capacity delivered to schools and libraries, refocusing funding rules for Wi-Fi and fiber deployment, and increasing the E-rate cap to meet the program's connectivity goals. To ensure that Tribal schools and libraries such as the Acoma Learning Center are able to participate effectively in the program, the FCC directed the Universal Service Administrative Company to create an USAC Tribal liaison to assist with Tribal-specific outreach and training.

Last month, the Commission adopted an Order to modernize a second universal service program, the Lifeline program. For more than 30 years, the Lifeline program has helped tens of millions of low-income Americans afford basic phone service. Recognizing the unique and dire economic circumstances many Tribal Nations face, the Commission provides enhanced levels of Lifeline support of up to $34.25 per month to low-income residents of Tribal lands. Not surprisingly, Lifeline is an extremely important program to low-income residents on Tribal lands. Yet, before last month's vote, Lifeline support was limited to basic telephone service. Under the new modernized rules, low-income residents of Tribal lands will soon be able to apply up to $34.25 per month toward the cost of broadband service. This change will significantly reduce the cost of broadband for low-income Tribal residents while also incentivizing businesses to deploy broadband infrastructure on Tribal lands.

Yet, we recognize that our work is far from finished. For example, the Commission recently adopted a Further Notice of Proposed Rulemaking seeking comment

on measures to increase broadband deployment on Tribal lands served by rate-of-return carriers. Chairman Wheeler publicly committed to bringing forward a proposal addressing this challenge before the end of the year.

Broadband technology is critical for Tribal communities to participate in the 21st century economy and to advance community development, health delivery, and education. We can, and will, do better.

GAO Report and FCC Response

In its engagement letter, GAO outlined three primary issues or objectives: (1) what data exist related to access to telecommunications services on Tribal lands and how might that data be improved; (2) what public and private sector programs exist to promote access to telecommunications on Tribal lands, and what actions could be taken to reduce barriers to access; and (3) what challenges exist to increasing telecommunications services on Tribal lands, and what actions could be taken to reduce barriers to access.

The GAO report, entitled "Additional Coordination and Performance Measurement Needed for High-Speed Internet Programs on Tribal Lands," was released on February 3, 2016. The report examines: (1) perspectives of selected Tribes and providers on the importance of high-speed Internet access for Tribes and any barriers to increasing this access on Tribal lands; (2) the level of interrelation and coordination between federal programs at the Commission and the U.S. Department of Agriculture (USDA) that promote high-speed Internet access on Tribal lands; and (3) existing data and Commission performance goals and measures related to access to high-speed Internet service on Tribal lands and for Tribal institutions.

The report contains four recommendations for the Commission, and the agency was given an opportunity to review the draft report and respond in writing to the recommendations prior to its release. A letter from the Chiefs of the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, agreeing with each of the recommendations, is contained in the report as Appendix III. In addition, Chairman Wheeler reported in writing to Congress on further efforts by the Commission in response to GAO's recommendations within 60 days of release of the report (March 31, 2016).

As discussed below, the Commission has executed, or is prioritizing, a broad range of initiatives to help improve and measure the availability and adoption of high-speed Internet on Tribal lands. But we recognize at the same time that there is much more to be done. The Commission is committed to facilitating the expansion of 21st century communications to Tribal Nations across the United States.

Recommendation 1: GAO recommends that the Commission develop joint training and outreach with USDA whenever feasible to help improve Internet availability and adoption on Tribal lands.

The Commission agrees with GAO that coordination with USDA is important and desirable in these areas. In fact, the Commission has partnered with USDA on multiple occasions since 2012 to cooperatively develop and implement consultation, training, and outreach for Tribal Nations. For example, from 2012 through 2015, staff from USDA headquarters in Washington, DC and USDA regional offices across the country have presented and participated at many of the Commission's fifteen (15) interactive 2½ day regional Tribal consultation and training workshops across Indian Country. USDA has provided information to workshop attendees on programs including Community Connect Grants, Distance Learning and Telemedicine Grants, and the Computers for Learning Program. Most recently, in September 2015, a representative from USDA presented on the Computers for Learning Program at the FCC Tribal Broadband, Telecom, and Broadcast Consultation and Training Workshop in Rapid City, South Dakota. All of this information and training provided by our colleagues at USDA has complemented information that the Commission has provided on, for example, the four universal service programs and the Tribal Priority in broadcast radio.

Moreover, the Commission has invited USDA to participate in each of the five regional Tribal consultation and training workshops being planned for 2016. The first of those workshops will be held in late May or early June in Montana. This workshop comes on the heels of a meeting last fall between Chairman Wheeler and the leaders of the Tribal Nations in Montana in which Chairman Wheeler committed to greater consultation and coordination. The remaining four consultation and training workshops are in the process of being scheduled and will take place in Oklahoma and in the Great Lakes, Southwest, and Pacific Northwest regions of Indian Country. The Commission is committed to working with our Tribal partners and with USDA to ensure that the 2016 Tribal consultation and training workshops, as well as those in future years, provide as comprehensive and coordinated an approach as possible.

While joint participation with USDA in consultations and training workshops is a good start, we recognize that our coordination with USDA must be more strategic and routine. For example, staff should meet on a regular basis to share data and funding plans. This will help ensure that RUS loans and Connect America Fund dollars are having the greatest impact on tribal lands. Commission staff has begun working collaboratively with USDA staff to this end.

Recommendation 2: GAO recommends that the Commission develop performance goals and measures using, for example, data supporting the National Broadband Map, to track progress on achieving its strategic objective of making broadband Internet available to households on Tribal lands.

The Commission agrees with GAO on the importance of such performance goals and measures. In fact, the Commission has performance goals and tools in place that can be used to track progress in meeting this strategic objective, and the available data shows that the Commission is already making progress.

With respect to performance goals, the Commission's strategic goal of maximizing broadband availability on Tribal lands is fulfilled in part through its universal service programs established pursuant to its obligations under Section 254 of the Communications Act and Section 706 of the Telecommunications Act of 1996. In its 2011 order initiating reform of the universal service high-cost program, for example, the Commission stated that its Section 254 obligations ensured universal availability of broadband networks to all Americans, including those living on Tribal lands. To that end, the Commission has established a performance goal for the high-cost subsidy program of bringing broadband at speeds of at least 10 Mbps downstream/1 Mbps upstream to high-cost areas, including Tribal lands. The Commission has also adopted an outcome measure for this goal: the number of homes, businesses, and community anchor institutions that newly gain access to broadband service as a result of high-cost/Connect America Fund support.

With respect to performance measures, the Commission collects and publishes data regarding progress towards its strategic objective of maximizing broadband availability on Tribal lands and overall. Twice a year, through its Form 477, the Commission collects broadband availability data for each census block across the country, including those on Tribal lands. The Commission uses that data both to publish statistics on the availability of broadband service on Tribal lands in its annual broadband progress report, and to monitor progress towards its universal service goals of ensuring universal availability of broadband networks to all Americans and promoting broadband adoption. In fact, in its *2016 Broadband Progress Report,* the Commission quantified the increasing numbers of subscribers on Tribal lands that have access to broadband capable networks and that are adopting broadband, indicating progress towards its strategic objective. The *2016 Broadband Progress Report* was adopted and released just prior to release of GAO's report and, therefore, the most recent broadband data is not reflected in the GAO report.

Later this year, the Commission will begin collecting geocoded location information regarding new broadband deployment from the larger incumbent carriers that receive Connect America Fund Phase II support, and it recently adopted a similar reporting requirement for the smaller rate-of-return carriers, which will be implemented in 2017. This information will be updated annually, which will enable us to track progress in making broadband available to Tribal lands over time.

Recommendation 3: GAO recommends that the Commission improve the reliability of FCC data related to institutions that receive E-rate funding by defining "Tribal" on the program application.

The Commission agrees with GAO on the need for clarity and will work with the Universal Service Administrative Company to provide guidance to applicants about the term "Tribal" on E-rate applications. Today, applicants check a box and self-identify as Tribal without any guidance as to what that term encompasses. Commission rules do not define "Tribal" for purposes of the E-rate program, nor is there any additional discount under the rules for Tribal schools and libraries. The Commission does agree, however, on the importance of collecting data both on schools and libraries on Tribal lands and on schools and libraries serving Native students, whether on or off Tribal lands. Beginning in funding year 2017, therefore, the Commission intends to amend directions to the E-rate application to offer guidance in applicants' self-reporting of Tribal affiliation.

Recommendation 4: GAO recommends that the Commission develop performance goals and measures to track progress on achieving its strategic objective of ensuring that all Tribal schools and libraries have affordable access to modern broadband technologies.

The Commission agrees with GAO on the importance of goals and measures to track progress on achieving strategic goals, which is why the agency adopted goals and measures in its *2014 First E-rate Modernization Order*. In that Order, the Commission adopted three goals for the E-rate program: (1) ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries; (2) maximizing the cost-effectiveness of spending for E-rate supported purchases; and (3) making the E-rate application process and other processes fast, simple, and efficient. For each of these goals, the Commission adopted associated performance measures and targets to determine whether we are successfully achieving these goals. These performance measures and targets encompass all schools and libraries, including Tribal schools and libraries.

Further, as part of the development of a robust performance management system, the Commission directed USAC to take a number of important steps: to create a comprehensive and efficient data reporting structure; to develop information technology tools that facilitate analysis of all program data; and to increase public availability of such data. The Commission intended these actions to increase transparency and enable beneficiaries and other stakeholders to assess progress by schools and libraries in obtaining access to high-speed broadband connectivity.

Conclusion

The lack of access to broadband services over Tribal lands continues to prevent 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, therefore, are critical. New commercial, educational, and health care opportunities, as well as social stability and quality of life issues, can be significantly improved through broadband. When implemented in concert, the recommendations advanced by GAO will help to improve and measure the availability and adoption of high-speed Internet on Tribal lands, giving the Commission a deeper understanding of where and how to direct resources. Through increased coordination among our Tribal and federal partners, the Commission will continue to address the persistent lack of access to broadband services on Tribal lands. Together, we are committed to bringing advanced communications services to Tribal lands, and we look forward to working with this committee to make broadband a reality for all Native communities.

Thank you again for the opportunity to testify this afternoon. I look forward to answering your questions.

The CHAIRMAN. Thank you so much, Ms. Sohn.

Mr. GOLDSTEIN.

STATEMENT OF MARK GOLDSTEIN, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. GOLDSTEIN. Thank you, Mr. Chairman and members of the Committee. Thank you for the opportunity to testify today on GAO's recent work examining telecommunications issues on tribal lands. High-speed internet service is viewed as a critical component of the Nation's infrastructure and an economic driver, particularly to remote tribal communities.

My testimony examines perspectives of Tribes and providers of high-speed internet access and barriers to increasing this access, the level in coordination between Federal programs that promote high-speed access, and existing data performance measures related to high-speed internet on tribal lands. My statement is based on our January 2016 report on this issue.

Based on a recent report, GAO found that although all 21 Tribes that GAO interviewed have some access to high-speed internet, barriers to access remain. Tribal officials and internet providers said that high poverty rates among Tribes and the high cost of connecting remote tribal villages to core internet networks limit high-speed internet availability and access. About half of the Tribes we interviewed also said that the lack of sufficient administrative and

technical expertise among tribal members limits their efforts to increase high-speed internet access.

We also found that the Federal Communications Commission's Universal Service Fund subsidy programs and the U.S. Department of Agriculture's Rural Utilities Service grant programs are interrelated. The programs seek to increase high-speed internet access in unserved areas, including tribal lands. Our previous work on overlap, duplication, and fragmentation has shown that interagency coordination on programs can help ensure efficient use of resources and effective programs.

However, FCC and USDA do not coordinate to develop joint outreach and training, which could result in efficient use of Federal resources and missed opportunities for resource leveraging. For example, USDA and FCC held separate training events in the Pacific Northwest Region in 2015 when a joint event could have saved limited training funds, reduced costs, and allowed for better coordination among all parties.

Finally, we found that FCC has placed special emphasis on improving internet access on tribal lands following the issuance of the National Broadband Plan in 2010, which called for greater efforts to make broadband available on tribal lands. However, FCC has not developed performance goals and measures for improving high-speed internet availability to households on tribal lands.

FCC could establish baseline measures to track their progress by using the National Broadband Map, which includes some data on internet availability on tribal lands. FCC also lacks reliable data on high-speed internet access and performance goals and measures for high-speed internet access by tribal institutions such as schools and libraries.

Specifically, FCC's E-rate program provides funds to ensure that schools and libraries have affordable access to modern broadband technologies, but FCC has neither defined "tribal" on its E-rate application nor set any performance goals for the program's impact on tribal institutions. Without these goals and measures, FCC cannot assess the impact of its efforts.

In January 2016, GAO recommended that FCC take the following actions on tribal areas: one, to develop joint training and outreach with USDA; two, to develop performance goals and measures for improving broadband availability to households; three, develop broadband measures for improved broadband availability to schools and libraries; and, four, to improve the reliability of FCC data related to institutions that receive E-rate funding by defining "tribal" in the program application. FCC has agreed with all these recommendations.

Thank you, Mr. Chairman. That concludes my statement. I would be happy to respond to questions.

[The prepared statement of Mr. Goldstein follows:]

PREPARED STATEMENT OF MARK GOLDSTEIN, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

TRIBAL INTERNET ACCESS: INCREASED FEDERAL COORDINATION AND PERFORMANCE MEASUREMENT NEEDED

Why GAO Did This Study

High-speed Internet service is viewed as a critical component of the nation's infrastructure and an economic driver, particularly to remote tribal communities. This testimony examines: (1) perspectives of tribes and providers on high-speed Internet access and barriers to increasing this access; (2) the level of interrelation and coordination between federal programs that promote high-speed Internet access on tribal lands; and (3) existing data and performance measures related to high-speed Internet on tribal lands. This statement is based on GAO's January 2016 report (GAO–16–222). For this report, GAO visited or interviewed officials from a non-generalizable sample of 21 tribal entities and 6 service providers. GAO also reviewed FCC and USDA fiscal year 2010 through 2014 program data, funding, and materials and interviewed federal officials.

What GAO Recommended

In January 2016, GAO recommended that FCC take the following actions in tribal areas: (1) develop joint training and outreach with USDA; (2) develop performance goals and measures for improving broadband availability to households; (3) develop performance goals and measures for improving broadband availability to schools and libraries; and (4) improve the reliability of FCC data related to institutions that receive E-rate funding by defining "tribal" on the program application. FCC agreed with the recommendations.

What GAO Found

In January 2016, GAO found that, although all 21 tribes GAO interviewed have some access to high-speed Internet, barriers to increasing access remain. Tribal officials and Internet providers said that high poverty rates among tribes and the high costs of connecting remote tribal villages to core Internet networks limit high-speed Internet availability and access. About half of the tribes GAO interviewed also said that the lack of sufficient administrative and technical expertise among tribal members limits their efforts to increase high-speed Internet access.

The Federal Communications Commission's (FCC) Universal Service Fund subsidy programs and the U.S. Department of Agriculture's (USDA) Rural Utilities Service grant programs are interrelated. The programs seek to increase high-speed Internet access in underserved areas, including tribal lands. GAO's previous work on overlap, duplication, and fragmentation has shown that interagency coordination on interrelated programs can help ensure efficient use of resources and effective programs. However, FCC and USDA do not coordinate to develop joint outreach and training, which could result in inefficient use of federal resources and missed opportunities for resource leveraging. For example, USDA and FCC held separate training events in the Pacific Northwest Region in 2015 when a joint event could have saved limited training funds and reduced costs.

FCC has placed special emphasis on improving Internet access on tribal lands following the issuance of the National Broadband Plan in 2010, which called for greater efforts to make broadband available on tribal lands. However, FCC has not developed performance goals and measures for improving high-speed Internet availability to households on tribal lands. FCC could establish baseline measures to track its progress by using, for example, the National Broadband Map which includes data on Internet availability on tribal lands. FCC also lacks both reliable data on high-speed Internet access and performance goals and measures for high-speed Internet access by tribal institutions—such as schools and libraries. Specifically, FCC's E-rate program provides funds to ensure that schools and libraries have affordable access to modern broadband technologies, but FCC has neither defined "tribal" on its E-rate application nor set any performance goals for the program's impact on tribal institutions. Without these goals and measures FCC cannot assess the impact of its efforts.

Chairman Barrasso, Ranking Member Tester, and Members of the Committee:

I am pleased to be here today to discuss the state of broadband access and adoption on tribal lands as well as the government programs that promote access and adoption on tribal lands. High-speed Internet service is viewed as a critical component of the nation's physical infrastructure and a driver of economic growth. The Internet is particularly useful to tribal communities—which are generally located in remote, rural locations—as access to it offers new opportunities for growth, produc-

tivity, and innovation. According to 2013 Census estimates, more than 640,000 American Indians and Alaska Natives reside on tribal lands.[1] There are more than 300 Indian tribes in the continental United States and more than 200 federally recognized Alaska Native Villages. Native Americans are among the most economically distressed groups in the United States and, according to the Census' 2014 American Community Survey (ACS), about 28.3 percent live in households with incomes below the federal poverty level—compared to 15.5 percent for the U.S. population as a whole. In addition, Federal Communications Commission (FCC) data indicates that, as of December 2013, high-speed Internet was available to 37 percent of households on tribal lands—compared to 47 percent of U.S. households in rural areas and 92 percent of U.S. households in urban areas.

The communications infrastructure that supports Internet access is, by and large, built and operated by private industry. Advances in technology, attained through the use of fiber optics and new wireless technologies have allowed providers to offer high-speed Internet that supports new services and applications such as streaming video. In 2010, FCC stated that every household and business in America should have access to affordable advanced telecommunication service with a speed of at least 4 megabits per second (Mbps) download and at least 1 Mbps upload and that this target should be re-set every four years. In January 2015, FCC adopted a speed benchmark at download speeds of at least 25 Mbps and upload speeds of at least 3 Mbps.

From fiscal years 2010 to 2014, the federal government provided over $33 billion in assistance to telecommunications service providers and municipalities to build or improve networks in order to further the national goal of universal high-speed Internet access. The federal government has provided this funding through the FCC's Universal Service Fund (USF) and the U.S. Department of Agriculture's (USDA) Rural Utilities Service (RUS). RUS's programs focus on rural telecommunications development, while USF's programs focus on providing support for areas where the cost of providing services is high, as well as for low-income consumers, schools, libraries, and rural health care facilities.

My statement today is based on our January 2016 report (GAO–16–222) on tribal high-speed Internet access.[2] My statement, like the report, examines (1) perspectives of selected tribes and providers on the importance of high-speed Internet access for tribes and any barriers to increasing this access on tribal lands; (2) the level of interrelation and coordination between federal programs at FCC and USDA that promote high-speed Internet access on tribal lands; and (3) existing data and FCC performance goals and measures related to access to high-speed Internet service on tribal lands and for tribal institutions.

To conduct this work for our January 2016 report, we interviewed officials from 18 tribal governments covering 10 of the continental states, Alaska Native regions, and 6 service providers operating on tribal lands.[3] We also identified and interviewed industry stakeholders such as research groups and telecommunications associations on their views regarding the barriers to increasing high-speed Internet access to broadband on tribal lands. In addition, we evaluated USF and RUS program coordination based on criteria for implementing interrelated programs developed in previous GAO work on fragmentation, overlap, duplication, and interagency coordination within the federal government.[4] Finally, to determine what data and FCC performance goals and measures exist related to access to high-speed Internet service on tribal lands and to tribal institutions, we analyzed fiscal year 2010 through 2014 data from USF programs providing assistance, reviewed applications and the

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[1] For this testimony, GAO has defined tribal lands as lands that include any federally recognized Indian tribe's reservation, off-reservation trust lands, pueblo, or colony, and Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act, Pub. L. No. 92–203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. § § 1601 et seq.). Tribal lands do not include Oklahoma Tribal Statistical Areas (OTSA), and the population figure of 640,000 does not include the 401,000 Native Americans living on OTSAs.

[2] GAO, *Telecommunications: Additional Coordination and Performance Measurement Needed for High-speed Internet Access Programs on Tribal Lands,* GAO–16–222, (Washington D.C.: January 29, 2016).

[3] For reporting purposes, we developed the following series of indefinite quantifiers to describe the tribal responses from the 21 tribal entities we interviewed: 5 of the 21 is described as "a few"; 5 to 9 is described as "some"; 10 to 12 is described as "about half"; 13 to 16 is described as "many"; and 17 or more is described as "most".

[4] GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide,* GAO–15–49SP, (Washington, D.C.: April 14, 2015); GAO, *Managing for Results: Barriers to Interagency Coordination,* GAO/GGD–00–106, (Washington, D.C.: March 29, 2000); and GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms,* GAO–12–1022, (Washington, D.C.: September 27, 2012).

guidance materials for those programs, and the agencies' performance reports. Finally, we reviewed performance goals and measures for USF programs according to criteria established in the Government Performance and Results Act of 1993, as amended [5] and in federal standards for internal control. [6] More detailed information on our scope and methodology for that work can be found in the issued report. We conducted the work on which this statement is based in accordance with generally accepted government auditing standards.

Selected Tribes and Providers Identified Opportunities and Barriers Related to Increasing High-Speed Internet Access

Tribal officials we interviewed for our January 2016 report said they place a high priority on institutional and personal Internet access because of the numerous benefits, including the following:

- Economic Development: Officials from most tribes said high-speed Internet is essential for economic development such as finding employment or establishing online businesses. FCC also found that community access to Internet services is critical in facilitating job placement, career advancement, and other uses that help to stimulate economic activity.
- Education: Officials from many tribes stated that high-speed Internet access at schools supports educational success. For example, access can allow students to conduct online testing or to watch online lectures.
- Health: About half of the tribes said that high-speed Internet access to support telemedicine was important to the tribe, particularly in rural or remote areas.

Officials from all 21 tribes we interviewed said that Internet service existed on at least some of their lands at varying connection speeds, ranging from less than 1 Mbps to over 25 Mbps. Some of the tribes we interviewed had at least some fiber optic high-speed Internet connections while others had slower copper lines, only mobile service, or only satellite service. Many of the tribal lands where we held interviews had some level of mobile Internet service but only a few had 4G mobile high-speed Internet services. Others had no mobile service. Further, officials from about half of the tribes we interviewed described important limitations to their Internet services, including higher than usual costs, small data allocations, slow download speeds, and unreliable connections.

Rugged Terrain, High Poverty, and a Lack of Capacity Were the Most Cited Barriers to Increasing Access to High Speed Internet in Tribal Areas

In January 2016, we found that the barriers to improvements in high-speed Internet service on tribal lands are interrelated. The rugged terrain and rural location as well as tribal members' limited ability to pay for high-speed Internet service were tribes' and private providers' most commonly cited impediments. Many tribal officials and all six providers we interviewed said these barriers can deter private investment in infrastructure needed to connect remote towns and villages to a service provider's core network—known as the middle-mile. Middle-mile infrastructure may include burying fiber optic or copper cables, stringing cable on existing poles, or erecting towers for wireless microwave links, which relay wireless Internet connections from tower to tower through radio spectrum. Tribal lands, located far from urban areas, may not have the middle-mile infrastructure necessary for providers to deploy high-speed Internet.

Tribal officials and providers we interviewed also cited limited financial resources as a barrier to high-speed Internet access. Of the 21 tribes we interviewed, many reported poverty and affordability as drivers of low subscribership to existing Internet services or as a barrier to broadening the availability of services. Poverty rates among the tribes we interviewed varied, but many were well above the 2014 national average of 15.5 percent. Two of the providers we interviewed discussed non-payment among tribal households as a disincentive to Internet service provision. One provider said that the customers it serves on tribal lands had non-payment rates double that of other customer groups, and that these rates often follow seasonal employment patterns.

About half of the tribes we interviewed told us that a lack of tribal members with sufficient bureaucratic and technical expertise was a common barrier to increasing high-speed Internet access on tribal lands. Tribal officials said that tribal members

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[5] Pub. L. No. 103–62, 107 Stat. 285 (Aug. 3, 1993) as amended by GPRA Modernization Act of 2010, Pub. L. No. 111–352 (2010).

[6] GAO, *Standards for Internal Control in the Federal Government,* GAO/AIMD–00–21.3.1, (Washington, D.C.: November 1999).

do not always have the bureaucratic expertise required to apply for federal funds, which can lead to mistakes or the need to hire consultants. A lack of technical expertise also affects tribes' ability to interact with private-sector Internet providers. For the seven tribes we interviewed that either had a tribally-owned provider or were in the process of establishing one, three of them said that the lack of expertise in the tribe was a challenge to establishing a tribally-owned telecommunications provider for high-speed Internet deployment. To address this, in the early 2000s, FCC held a number of Indian telecommunications initiatives, regional workshops, and roundtables. In fiscal year 2012, the FCC's Office of Native Affairs and Policy consulted with about 200 tribal nations, many during six separate one- to three-day telecommunications training and consultation sessions on tribal lands. These included the Native Learning Labs, where attendees could, for example, learn about data the FCC has available on spectrum licensing and USF programs, among other things. The Office held seven training workshops in fiscal years 2014 and 2015, and plans to offer more in fiscal year 2016. The goal of this new series of sessions is to provide tribal officials with information about funding opportunities and policy changes with respect to high-speed Internet, USF programs, and spectrum issues.

Interrelated Federal Programs Promoting High-Speed Internet Access on Tribal Lands Are Not Always Well Coordinated

FCC and USDA High-Speed Internet Programs are Interrelated

In January 2016, we found that FCC and USDA implement mutually supportive, interrelated high-speed Internet access programs that offer funding to either tribal entities or service providers to achieve the goal of increased access. Tribal officials we interviewed said that both FCC's and USDA's programs were important for the expansion of high-speed Internet service on their lands. Tribes sometimes qualify for benefits from more than one of these programs, either directly or through private-sector Internet providers. Eligibility requirements are based on the need of an area as well as deployment requirements. Table 1 identifies three universal service programs that subsidize telecommunications carriers and services to areas that include tribal lands and two RUS grant programs.

Table 1: FCC and RUS Programs That Provide High-Speed Internet Services to Areas that Include Tribal Lands

FCC Programs	Description	Recent funding
The Connect America Fund (CAF)—Formerly the High Cost Program	CAF provides subsidies to Internet providers to supplement their operating costs for providing high-speed Internet in unserved or high-cost areas.	The High Cost and CAF distributed about $20 billion in subsidies to providers between 2010 and 2014, portions of which went to providers that serve tribal lands.
The USF Schools and Library Support Program (E-rate)	E-rate provides discounts to eligible schools and libraries on telecommunications services, Internet access, and internal connections.	E-rate provided about $13 billion in discounts to schools and libraries between 2010 and 2014, portions of which went to schools and libraries on tribal lands.
Healthcare Connect Fund (HCCF)	HCCF provides assistance to ensure eligible rural health care providers have access to high-speed Internet services. Assistance may be provided to a service provider that serves tribal lands.	HCCF provided about $52 million to healthcare facilities in fiscal year 2014, a portion of which went to tribal lands.
RUS Programs		

Table 1: FCC and RUS Programs That Provide High-Speed Internet Services to Areas that Include Tribal Lands—Continued

FCC Programs	Description	Recent funding
Distance Learning and Telemedicine program	The Distance Learning and Telemedicine program provides grants to rural communities to acquire technologies that use the Internet to link educational and medical professionals with people living in rural areas.	The Distance Learning and Telemedicine program provided about $128 million in grants and loans between 2010 and 2014, almost $3 million of which went to tribal lands.
Community Connect Program	The Community Connect Program provides grants to rural communities to provide high-speed Internet service to unserved areas.	The Community Connect Program provided about $53 million in grants between 2010 and 2014, almost $3 million of which went to tribal lands.

Source: GAO analysis of FCC and USDA data. GAO–16–504T

Outreach and Training Efforts for Interrelated FCC and USDA Programs Are Not Always Well Coordinated

While FCC and USDA programs that promote high-speed Internet access on tribal lands are interrelated, we found that they are not always well coordinated. Our body of work has shown that interagency coordination can help agencies with interrelated programs ensure efficient use of resources and effective programs.[7] Agencies can enhance and sustain their coordinated efforts by engaging in key practices, such as establishing compatible policies and procedures through official agreements.[8] Agencies can also develop means to operate across agency boundaries, including leveraging resources across agencies for joint activities such as training and outreach.[9]

One area lacking coordination between FCC and USDA is their outreach and technical assistance efforts. FCC and USDA independently conduct outreach and training efforts for related programs promoting Internet access. For example, while FCC officials said they invite USDA officials to FCC training workshops and are sometimes invited to USDA training workshops, they said that they do not coordinate to develop joint outreach or training events. Synchronizing these activities could be a resource-saving mechanism, which could result in a more efficient use of limited federal resources, an opportunity for resource leveraging between the two agencies and a cost-savings to the tribes attending training events. For example, USDA held a training event in Washington State in fiscal year 2015 and FCC hosted a training event in Oregon the same year. The two agencies could have planned a joint training event in the Pacific Northwest Region—each contributing to the cost of the event—that would have reduced the cost burdens for tribes. Tribal members with limited budgets would not have had to travel twice or choose between the two training events. Better coordination on conferences, as feasible, could help FCC and USDA reach a broader audience and increase the value of their outreach to tribes.

To this end, we recommended in January 2016 that FCC develop joint outreach and training efforts with USDA whenever feasible to help improve Internet availability and adoption on tribal lands. FCC concurred with our recommendation and summarized the areas in which it coordinates with USDA and said that it will continue to work with USDA to ensure more strategic and routine coordination. For example, FCC invited USDA officials to participate in all tribal consultation and training events planned for 2016.

[7] GAO, *Managing for Results: Barriers to Interagency Coordination,* GAO/GGD–00–106, (Washington, D.C.: March 29, 2000).

[8] GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms,* GAO–12–1022, (Washington, D.C.: September 27, 2012).

[9] GAO, *Fragmentation, Overlap, and Duplication: An Evaluation and Management Guide,* GAO–15–49SP, (Washington, D.C.: April 14, 2015).

Federal Government is Gathering Data, but FCC Lacks Performance Goals and Measures for the Internet on Tribal Lands

The Federal Government is Gathering Data on Internet Availability and Adoption in Households on Tribal Lands

FCC defines Internet availability as the presence of Internet service in an area, and Internet adoption as the number of people in the area subscribing to Internet service. In 2006, we found that data on the rate of availability and adoption of Internet on tribal lands was unknown because no federal survey had been designed to capture this information. We recommended that additional data be identified to help assess progress towards providing access to telecommunications, including high-speed Internet, for Native Americans living on tribal lands.[10] Since then, as discussed in our January 2016 report, the federal government has started collecting data on Internet availability and adoption. However, as of December 2015, FCC has not identified the performance goals and measures it intends to achieve for broadband availability or adoption on tribal lands.

Data on Internet Availability in Households on Tribal Lands

In 2011, The National Telecommunications and Information Administration (NTIA), in cooperation with FCC and the states, began publishing the National Broadband Map, an interactive website that allows users to view information on high-speed Internet availability across the United States, including on tribal lands. The data to support the National Broadband Map is collected from service providers, including those offering service to federally recognized Indian tribes, including Alaska Native villages. The National Broadband Map website provides data on Internet availability on approximately 318 federal Indian reservations and associated trust lands, including upload and download speeds for both wireline and wireless service, technology for Internet delivery, and the number of Internet service providers.

While the National Broadband Map provides information about high-speed Internet availability, according to NTIA officials, the map is based on Census blocks.[11] If a service provider reported any availability of high-speed Internet in a Census block, the entire block was counted as served. This could create misrepresentations of service in rural areas, which generally constitute large Census blocks. Because much of tribal land is rural, the reported broadband service is shown to be greater than the actual service available on tribal lands, according to NTIA officials. Some tribal officials agreed that certain areas on the Broadband Map were inaccurate. For example, the map showed the Lac du Flambeau reservation in Wisconsin as covered because two providers reported that they provide Internet service on the reservation. However, according to tribal officials, the National Broadband Map exaggerated the level of service on their reservation making them unable to compete for some USF and RUS programs despite their efforts to document coverage problems to correct the map. One provider indicated that in rural areas, it is more difficult to get accurate data because in some cases addresses are not used, making it difficult to link service to a census block. However, in the future, this provider indicated that it planned to utilize GPS information to provide more accurate data. Five of the six providers we interviewed said that the reliability of the National Broadband Map has improved over time.

Data on Internet Adoption by Households on Tribal Lands

In 2008, Congress passed the Broadband Data Improvement Act,[12] which required the Bureau of the Census to collect information from residential households, including those on tribal lands. Census captured three aspects of Internet adoption: (1) whether a computer is owned or used at the residence, (2) if the household subscribes to Internet service, and if so, (3) whether that service is dial-up or a high-speed connection.

Census began collecting the required data on Internet adoption beginning with the 2013 American Community Survey (ACS). According to Census officials, five years of ACS data must be collected to provide data for areas with smaller populations. Census officials said that this data will be available in late 2018 and will provide an estimate for Internet adoption nationwide, including the first estimates for hard to reach populations such as Native Americans.

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[10] GAO, Telecommunications: Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands, GAO–06–189 (Washington, D.C.: January 11, 2006).

[11] Census blocks are the basis for all geographic boundaries for which the Census Bureau tabulates data. Census blocks are statistical areas bounded by visible features such as roads, streams, and railroad tracks, and by nonvisible boundaries such as property lines, city, township, school district, county limits, and short line-of-sight extensions of roads.

[12] Pub. L. No. 110–385, 122 Stat. 4096 (2008).

FCC Has Not Established Performance Goals and Measures for Internet Availability or Adoption on Tribal Lands

Agency performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly towards pre-established goals. Performance measurement allows organizations to track progress in achieving their goals and provides information to identify gaps in program performance and plan any needed improvements. The GPRA Modernization Act of 2010 requires annual performance plans to include performance measures to show the progress the agency is making in achieving its goals. Further, we have identified best practices in articulating goals that include:

- showing baseline and trend data for past performance, and
- identifying projected target levels for performance for multi-year goals. [13]

Making high-speed Internet, including broadband Internet, available to all Americans is FCC's stated long-term objective, but we found in January 2016 that FCC has not set goals to demonstrate or measure progress toward achieving it. The National Broadband Map is currently the best tool for setting goals and measuring progress toward increasing the availability of high-speed Internet on tribal lands. Map data are widely used by FCC to describe the availability of broadband nationwide. For example, FCC uses data gathered for the National Broadband Map in its annual Broadband Progress report provided to Congress as required by the Telecommunications Act of 1996. [14]

To improve performance management, we recommended in our January 2016 report that FCC develop performance goals and measures using, for example, data from the National Broadband Map, to track progress on achieving its strategic goal of making broadband Internet available to households on tribal lands, and FCC agreed with our recommendation.

Data Collected Does Not Allow FCC to Measure Outcomes of its E-rate Program for Tribal Institutions

Although Census is gathering baseline information on household Internet adoption, and the National Broadband Map provides data on high-speed Internet availability across the country, we found that FCC lacks the specific information it needs to measure the outcomes of its E-rate program at tribal schools and libraries. The E-rate program provides assistance to schools, school districts, and libraries to obtain telecommunications technology, including high-speed Internet. E-rate does not specifically target tribal schools and libraries, although some are eligible and receive benefits. Since 2010, E-rate has committed more than $13 billion in service provider customer fees to schools and libraries, and according to data provided by FCC, at least $1 billion of that amount supports tribal institutions.

FCC's E-rate program has a stated goal of ensuring that all schools and libraries have affordable access to modern broadband technologies. Communicating what an agency intends to achieve and its programs for doing so are fundamental aims of performance management and required under the GPRA Modernization Act of 2010. Specifically the act requires an agency to have measurable, quantifiable, outcome-oriented goals for major functions and operations, an annual performance plan consistent with FCC's strategic plan and a means to communicate the outcomes of its efforts. However, FCC has not set any quantifiable goals and performance measures for its E-rate efforts to extend high-speed Internet in schools and libraries nationwide or on tribal lands.

According to federal internal control standards, government managers should ensure there are adequate means of obtaining information from external stakeholders that may have a significant impact on the agency meeting its goals. To that end, FCC collects information on E-rate recipients nationwide through questions on its application for E-rate assistance. Several different types of institutions on tribal lands can qualify for E-rate funding, including schools operated by the tribe or Bureau of Indian Education, private schools operating on a reservation, and public school districts that serve the reservation. [15] On FCC's E-rate application, applicants

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[13] GAO, *Agency Performance Plans: Examples of Practices that Can Improve Usefulness to Decision-makers,* GAO/GGD/AIMD–99–69, (Washington, D.C.: February 1999). While the Government Performance and Results Act is applicable to the department or agency level, performance goals and measures are important management tools applicable to all levels of an agency, including the program, project, or activity level, consistent with leading practices and internal controls related to performance monitoring.

[14] Pub. L. No. 104–104, § 706, 110 Stat. 56, 153 (1996).

[15] The Indian Self-Determination and Education Assistance Act of 1975 (ISDEA), Pub. L. No. 93–638 (1975), as amended, directs the U.S. Department of the Interior, at the request of a

receiving service may self-identify as tribal, but in this instance, the application provides no definition of "tribal." We found that not all schools and libraries on tribal lands identify themselves as such during the application process. FCC provided us with information on E-rate recipients between 2010 and 2014 that self-identified as tribal, and the amounts committed to those recipients. These data may understate the amount of funds supporting schools on tribal lands. Specifically, we identified more than 60 additional school districts, private schools, and public libraries on the lands of the 21 tribes we studied that received E-rate assistance but were not included in FCC's information on tribal recipients. Consequently, FCC does not have accurate information on the number of federally recognized tribes, including Alaska Native villages, receiving E-rate support, or the amount being provided to them. Without more precise information and direction from FCC, the extent to which E-rate assistance is provided to tribal institutions cannot be reliably determined, nor can FCC rely on the information to develop quantifiable goals and performance measures for improving high-speed Internet access in tribal schools or libraries. It is important to understand how these programs affect tribal institutions because FCC has made improving high-speed Internet access in tribal institutions a priority following the National Broadband Plan, with the establishment of the Office of Native Affairs and Policy in 2010, and its current Strategic Plan.

To address these concerns, in January 2016, we recommended that FCC:

- improve the reliability of data related to institutions receiving E-rate funding by defining "tribal" on the program application. FCC agreed with our recommendation and intends to provide guidance to applicants in fiscal year 2017.
- develop performance goals and measures to track progress on achieving its strategic objective of ensuring that all tribal schools and libraries have affordable access to modern broadband technologies. FCC also agreed with this recommendation, indicating that goals and performance measures, among other things, will substantially improve the accessibility of modern broadband technologies for tribal schools and libraries.

Chairman Barrasso, Ranking Member Tester, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

The CHAIRMAN. Thank you so very much for your testimony.

Ms. KITKA.

STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Ms. KITKA. Good afternoon. My name is Julie Kitka and I have the honor of serving as President of the Alaska Federation of Natives, which is the largest statewide Native organization serving the Native people in the State. I have submitted written testimony and ask that it, in its entirety, be included into the record.

For brevity, I want to basically highlight a couple things. One, Alaska Natives are very interested in helping ourselves. We are very interested in public-private partnerships to accomplish goals. We know that it is extremely difficult to get the resources that we need to do everything that we need to, but we really urge that there is consideration by this Committee to try to help us locate those resources that we need to pull in private capital in this whole area of telecommunications.

In my testimony I used one example of the New Markets Tax Credits. As an example, in Alaska, when we look at how that was used, that helped expand broadband in the State by incentivizing private companies in order to produce that. If you look at the New Market Tax Credits, which the inception was 2000 and there were 836 different competitive awards over $40.5 billion in credit au-

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tribe, to contract with Indian tribes or tribal organizations to carry out the services and programs the federal government provides to Indians.

thority that was allowed, in the last two funding cycles of that, not one Native Community Development Financial Institute received any resources.

The current round that is going on in resources, in which they were projecting to award $3.5 billion in new New Market Tax Credits, most of the people in Alaska didn't even apply for it because they didn't view that as an area that would be productive. We received word yesterday that they are looking at combining the award cycle in the New Market Credits. Instead of awarding $3.5 billion, they are going to combine and do $7 billion.

Again, it is a missed opportunity for Native people that create these community financial institutions that are trying to leverage in private capital into this, and use the example in the history of that $40 billion that has been awarded, the Congress so smartly set up, we are probably, since its inception, received $109 million in tax credits that we could leverage with private sector funding. Wyoming, for example, Mr. Chairman, I think has only received $3 million in its whole inception. Montana, same thing. Just miniscule amounts.

I really urge this Committee to take on this issue to allow Native people to help ourselves using these tax credit systems on that that we can go and we can match up with private sector partners, that we can help fund these things that we need. We cannot be left behind in the digital divide. Everything from our businesses that do government contracting, many of our villages are really doing a lot of work trying to build up the capacity to compete in the Federal marketplace.

There isn't a chance in heck that they can compete if they don't have high-speed internet in order to do work on behalf of the government, let alone our schools, our education. From the Alaska Native perspective, which I am sure is similar with many of the other Native populations, over half of our population are very young, and if we don't create the opportunity for the young people growing up on that, again, their life opportunities are going to be shrunk.

So I really urge you to focus on the financing sector of this. We support the recommendations in the GAO report, but we think that the big elephant in the room is the lack of resources to do it. And we do think that these tax credits is one of those funding mechanisms with some targeted attention, and we hope that that could occur in this year or, at the very least, set it up for next year. Again, it is helping us help ourselves.

We also think, taking a look at the Universal Service Fund for schools and libraries, a minor tweak for expansion for Head Start, GED programs, and online computer college classes on that would reach out to greater areas on that. And then also the need to create a special program in the BIA to lower the cost of broadband for Tribal and Native serving institutions we think is helpful.

I would be glad to answer any questions. Thank you.

[The prepared statement of Ms. Kitka follows:]

PREPARED STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Good afternoon. My name is Julie Kitka, and I serve as the President of the Alaska Federation of Natives (AFN). AFN is the largest statewide Alaska Native organization in Alaska. Our membership includes over 130,000 Alaska Natives and their

institutions set up to serve our people. AFN's membership includes federally recognized tribes, regional tribal consortiums, regional non-profit organizations, and Alaska Native Claims Settlement Act (ANCSA) village and regional corporations.

Bottom Line recommendations:

- Restore funding for RUS grant programs for broadband deployment and target that money for deployment on tribal lands as defined by the FCC.
- Expand the USF Schools and Libraries program to include Head Start, GED programs, and online college courses.
- Create a new program within BIA to lower the cost of broadband for tribal and Native serving institutions, funded in part through the USF program.
- Set aside ten percent of the New Market Tax Credit program for projects benefitting Indians, Alaska Natives, and Native Hawaiians for ten years, with half that amount being dedicated to broadband deployment.

Background

AFN's broad mission includes supporting sustainable economies in our Native villages and towns; and increasing economic opportunity for our people. In so many ways we are still marginalized and the investment climate in our rural communities is terrible for solid economic development and growth. Federal policies can change this. High-level Congressional interest and focused efforts can help us overcome the barriers and create an investment climate of real economic growth and innovation. A changed investment climate, which supports more public-private partnerships and creates real incentives for private investment of capital, can change the economic forecast for rural Alaska and the futures of Alaska Native peoples. With a young, growing Native population, we must continually remove the barriers to creating life opportunities, which are taken for granted in urban areas all across the country. We need efforts to lift our Native people out of poverty and stagnation. This is especially critical in a time of economic and fiscal crisis in the State of Alaska due to low oil prices and reduced oil output, when the rural areas of Alaska will see dramatically reduced state support.

Only 35 years ago, the majority of Alaska's 200 plus Native villages did not have the most basic telephone service available. We've come a long way since then. Through the combination of private investment and federal support programs, including the Universal Service program enacted by Congress in 1996, telecommunications service to many Alaska Native communities has drastically improved. But, challenges remain before all Alaska Natives have the communications services necessary to access the economic opportunities found elsewhere in the country, while maintaining their culture and way of life on their own land. Ongoing federal support will be necessary to achieve that goal. Thus, while AFN supports the recommendations in the GAO Report, we believe there is an elephant in the room that must be addressed if we are to make meaningful progress in bringing American Indian and Alaska Native communities the same kinds of innovative services that other Americans enjoy. It all comes down to money.

Because many of us live in remote locations, unconnected by roads, deploying broadband infrastructure to Alaska Native lands is often cost prohibitive. The prospect of recovering costs is further diminished by the fact that, commonly, Alaska Natives are sparsely disbursed throughout a wide geographic area, significantly increasing costs of deployment per household; additionally, there are very few large commercial customers, so-called anchor institutions, able to provide economic stability. In many Alaska Native communities, wages are low and unemployment rates and costs of living are so high, resulting in local economies that alone are unable to support the private investment necessary to effect meaningful change. Without federal incentives, companies simply can't invest in Indian country.

Federal programs are available, but they are not always targeted in a way that is helpful to tribal areas. Congress enacted the Universal Service Fund to ensure telecommunications services are affordable for rural schools and libraries, for health care facilities, and for Alaskans living in high cost areas. The theory behind the program was that rural and poor communities should not be debilitated by the disparity in prices that exist for basic telephone service between rural communities and their urban counterparts. And those programs have helped make the business case necessary for private investment in infrastructure on Tribal Lands. The Lifeline Program, another component of Universal Service, provides funding so that low income individuals have access to a basic level of service, important for securing employment and safety.

Lifeline is a demonstrable success in Alaska, with telephone subscribership among low-income households increasing from 62 percent [1] in 1984 to 91 percent [2] in 2014. And we commend the FCC for recently expanding the Lifeline program to include support for broadband, in the hopes that it will have similar effects on broadband subscribership. Lifeline has been especially useful on Tribal Lands, where residents receive an enhanced subsidy in part because of the typically lower incomes and the typically higher costs of providing service to tribal lands. But there are those at the FCC and on the Hill seriously discussing the abolishment of this important subsidy. We ask this Committee to express its continued support for this enhanced tribal supplement and ask that no changes be made in the appropriations process without first consulting the Indian Affairs Committee.

In addition to the Universal Service Fund, the Stimulus Bill adopted in the midst of the financial crisis in 2009 grant and loan money for broadband to both the Department of Agriculture's Rural Utility Service (RUS) and to a new program housed at the Department of Commerce's National Telecommunications and Information Administration. The RUS program provided private sector companies with loan and grant packages that enabled the deployment of broadband to dozens of Native villages, giving them for the first time, not only access to broadband, but also cell phone service. Thousands of Alaska Natives now have state of the art service because of these programs.

Unfortunately, the RUS grant money ran out long ago. The Alaska Federation of Natives recommends that grant funding be restored to the RUS broadband program and targeted to address the unique needs of un-served and under-served Native communities. The President should request funding in the Department of Agriculture budget that will be delivered to Congress in February, hopefully with the strong encouragement of this Committee. The Congressional budget and the Agriculture Appropriations bill should also include funding to restore these grant funds, in this appropriation cycle if possible, or commit to this in next years process.

While IHS clinics and hospitals, as well as schools and libraries, are eligible for broadband support, a number of other Indian programs are not eligible for USF operating subsidies. For example, Kawarek, the non-profit regional tribal consortium providing services in the Bering Straits coastal region, including Nome and the surrounding 19 villages, reports that even when Head Start operates within a school that receives USF Schools and Libraries funding, it is not allowed to use the Internet in the building without the school risking its USF eligibility. Likewise, students who need to take an online GED test or want to take college classes online, cannot use the school's Internet connections. The Schools and Libraries program should be expanded to include Head Start programs operated by tribes as well as online GED and college courses taken by students who have dropped out or graduated from high school.

In addition, the Committee should consider establishing a telecommunications grant program within the BIA to support tribal organizations or other Native serving institutions such as Native corporations and Native non-profits which provide services ranging from housing to domestic violence counseling to village public safety activities.

Another federal program that has been extremely successful in promoting deployment of broadband in Alaska is the New Market Tax Credit Program. It provides tax credits to private companies who invest in minority and disadvantaged communities. In Alaska, this program has been used to leverage private investment in order to build healthcare facilities and to deploy broadband to the most remote Native communities.

AFN recommends the Committee introduced legislation to set aside ten percent of the New Market Tax Credit program for projects benefitting Indian, Alaska Native, and Native Hawaiians communities with half of that amount dedicated to deploy broadband. Over ten years, this would provide $3.5 billion in tax credits, which in turn would leverage an additional $7 billion in private investment for a total of $10 billion. If half of that was allocated to build out broadband to Indian communities, it would bring Native people not only into the 21st century but would open up a range of economic opportunities, would improve education and health care, and would give us the same kinds of opportunities that other Americans enjoy.

In summary AFN has four recommendations:

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[1] Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Telephone Penetration by Income by State at 10, Table 2 (March 2000) available at *https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_*Link/IADpntris99.pdf.

[2] Federal and State Staff for the Federal-State Joint Board on Universal Service, Federal Communications Commission, Universal Service Monitoring Report at 50, Table 6.8 (2014) available at *https://apps.fcc.gov/edocs_public/attachmatch/DOC–330829A1.pdf.*

- Restore funding for RUS grant programs for broadband deployment and target that money for deployment on tribal lands as defined by the FCC.
- Expand the USF Schools and Libraries program to include Head Start, GED programs, and online college courses.
- Create a new program within BIA to lower the cost of broadband for tribal and Native serving institutions, funded in part through the USF program.
- Set aside ten percent of the New Market Tax Credit program for projects benefitting Indians, Alaska Natives, and Native Hawaiians for ten years, with half that amount being dedicated to broadband deployment.

The CHAIRMAN. Thank you very much, Ms. Kitka. We appreciate your traveling all the way from Alaska to be with us.

Mr. ENJADY.

STATEMENT OF GODFREY ENJADY, PRESIDENT, NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION

Mr. ENJADY. Thank you, Mr. Chairman.

Chairman Barrasso, Ranking Member Tester, and members of the Committee, thank you for this opportunity to testify as President of the National Tribal Telephone Association. I am Godfrey Enjady, General Manager of Mescalero Apache Telecom, Incorporated, located in Mescalero, New Mexico. I also serve as Chairman of NTTA's Tribal Affairs Committee and serve on the FCC's Native Nations Broadband Task Force.

NTTA is comprised of nine tribally-owned and operated telecommunications companies that provide voice, broadband, and other communications services to their communities. I would like to thank the members of Congress that requested the study and the GAO for its examination of these issues. Thank you.

The report concludes that access to internet on tribal land varies, but challenges to access and adoption remain. The high costs of infrastructure buildout on tribal lands, which tend to be remote and rugged terrain, work in tandem with tribal member poverty to create a barrier to high-speed internet expansion on tribal lands. Even though the GAO's purpose was not to provide recommendations as how to increase broadband availability and adoption in tribal areas, it does highlight some of the challenges being faced today.

The GAO report demonstrates that providers serving tribal areas face many unique challenges in bringing broadband services to Native Americans. The GAO correctly notes that broadband is vital in tribal areas for education, economic development, and health care. Most tribal areas consist of some of the highest cost to serve areas in the United States, which in turn increases the infrastructure costs. Therefore, in addition to challenges to availability, broadband providers in tribal areas also face significant affordability and adoption challenges.

The issues raised in the study comes as no surprise to those of us that work in this arena. The problems in serving remote, sparsely populated communities has been thoroughly discussed in congressional testimony and on the record at the FCC and with RUS.

Access to capital is also a major roadblock to network growth and viability. Since tribally-owned carriers cannot collateralize trust lands, RUS is our only lender, and I appreciate the work that they have done for us over there.

The study points out that there needs to be better coordination between the FCC and RUS. We all agree that RUS has done a great job, especially on the SUTA portion. We are one of the first recipients of SUTA, and that was part of the 2008 Farm Bill. Thank you. RUS loans and USF support go hand-in-hand. Reliable and predictable cash flow is required to get any sort of loan, including RUS loans.

The study notes that the National Broadband Plan, in numerous instances, outlines the need for greater efforts to make broadband available on tribal lands. The study points to the lack of FCC development on broadband performance goals and measurements on tribal lands. Once again, NTTA agrees.

While highlighting challenges faced in bringing viable and affordable broadband services to tribal communities, the GAO study also made some recommendations which include training, mapping, data collection, and performance goals and measures. NTTA concurs with these recommendations; however, they do not go far enough.

Middle mile costs for NTTA members is extremely high and this is very problematic in bringing affordable, robust broadband services to Indian Country. This high cost to reach the outside internet world inhibits the broadband take-rate, thus putting a real damper on consumer adoption.

The arbitrary budget cap that has been stablished for the Universal Service Fund high-cost program does not allow for adequate funds to build and maintain the broadband networks that are demanded by regulators, policymakers, and consumers alike. Networks require a viable and predictable funding source. An examination and reform of the USF contribution regime is long overdue and may eliminate any need for the arbitrary budget cap.

On June 19th of last year, NTTA went on record at the FCC with a proposal to adopt a Tribal Broadband Factor. This Factor is part of a reform of the USF for rate-of-return carriers. The TBF targets support on tribal lands and has specific obligations for any carrier, tribally owned or not, that uses the program. We call on the FCC to adopt the TBF in a timely manner. Further, NTTA requests that members of the Committee weigh in with the FCC to act on the TBF and work to bring stability and predictability to USF support for tribal communities.

As noted in the report, adoption of available broadband services by Native Americans is also challenging due to the poverty rates on tribal lands. The Federal Lifeline program is critical in allowing many Native Americans to subscribe to voice services with the addition of broadband service to the Federal Lifeline program. NTTA has advocated for an increase to the Tribal Lifeline credit in order to recognize the higher costs of retail broadband services.

NTTA also believes that the letter of credit required by lenders, including RUS, has become burdensome and has, in many instances, become a roadblock to getting needed financing. In addition, NTTA believes the irrevocable letter of credit required to participate in the FCC's reverse auctions prevents NTTA members from using that program. This issue must be addressed.

Mr. Chairman, I want to extend my appreciation to the members of this Committee and to your staff, and thank you to Senator Udall, too, on my behalf. Thank you.

[The prepared statement of Mr. Enjady follows:]

PREPARED STATEMENT OF GODFREY ENJADY, PRESIDENT, NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION

Chairman Barrasso, Ranking Member Tester and members of the committee, thank you for this opportunity to testify as President of the National Tribal Telecommunications Association (NTTA). I am Godfrey Enjady, General Manager of Mescalero Apache Telecom, Inc. (MATI) located in Mescalero, New Mexico. I also serve as Chairman of NTCA's Tribal Affairs Committee and am on the Federal Communications Commission's (FCC) Native Nation's Broadband Task Force.

NTTA is comprised of the nine Tribally owned and operated telecommunications companies that provide voice, broadband and other communications services to their communities. Those companies are Cheyenne River Sioux Telephone Authority (SD), Fort Mojave Telecommunications, Inc. (AZ), Gila River Telecommunications, Inc. (AZ), Hopi Telecommunications, Inc. (AZ), Mescalero Apache Telecom, Inc. (NM), Saddleback Communications (AZ), San Carlos Apache Telecommunications Utility, Inc. (AZ), Tohono O'odham Utility Authority (AZ), and Warm Springs Telecom (OR).

Mescalero Apache Telecom serves the entirety of the Mescalero Apache Reservation located in the remote South Central Mountains of New Mexico. Prior to MATI purchasing its service area and building its network in 2001, 52 percent of the Mescalero Apache Tribe received no service, and 48 percent received only basic voice service. Nearly 100 percent of the Tribe now has access to some level of broadband service. MATI provides services in what is considered a rural, high-cost area and serves an average population density of two customers per square mile. This situation causes the average cost per line to substantially exceed the national average. In addition, 90 percent of the Tribe is eligible for Lifeline Support, compared to the national average of 21.8 percent.

First of all, I would like to thank the Members of Congress that requested this study and the Government Accountability Office for its examination of these issues. The report concludes that "access to Internet on tribal lands varies but challenges to access and adoption remain. The high costs of infrastructure buildout on tribal lands, which tend to be remote and rugged terrain, work in tandem with tribal member poverty to create a barrier to high-speed Internet expansion on tribal lands." The GAO goes on to recommend some joint outreach and training efforts between the Federal Communications Commission (FCC) and United States Department of Agriculture (USDA), and that the FCC develop some performance goals and measures related to broadband availability and adoption. Even though the GAO's purpose was not to provide recommendations as how to increase broadband availability and adoption in Tribal areas, it does highlight some of the challenges being faced today.

The GAO Report demonstrates that providers serving Tribal areas face many unique challenges in bringing broadband services to Native Americans. The GAO correctly notes that broadband is vital in Tribal areas for education, economic development, and health care, not unlike the rest of the country. Most Tribal areas consist of some of the highest cost to serve areas in the United States, which in turn increases the infrastructure costs. In addition, according to the GAO Report, "Native Americans are among the most economically distressed groups in the United States. According to the Census' 2014 American Community Survey (ACS), about 28.3 percent of Native Americans live in households with incomes below the federal poverty level—compared to 15.5 percent for the U.S. population as a whole." Therefore, in addition to availability challenges, broadband providers in Tribal areas also face significant affordability and adoption challenges.

That being said, the issues raised in the study come as no surprise to those of us that work in this arena. The problems in serving remote, dispersed communities situated in hard to serve, rough terrain has been thoroughly illuminated in Congressional testimony and on the record at the FCC, and with USDA's Rural Utilities Service (RUS). For example, the FCC's National Broadband Plan (NBP) states "Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding." In addition, the FCC's Office of Native Affairs and Policy said in 2012 that "the lack of communications services in Indian country—be it high speed Internet or broadband, traditional wireline phone service, mobile service, radio broadcast, or TV broadcast service—is well known." Finally, the FCC itself, in the landmark USF

Transformation Order, stated "Tribally-owned and operated carriers serve cyclically impoverished communities with a historical lack of critical infrastructure." The GAO's most recent report serves to reinforce these statements, as does the fact that NTTA members exist solely due to the lack of communications service historically available on their respective reservations.

Recent FCC Broadband Progress Reports demonstrate the substantial digital divide that exists between Tribal areas and the rest of the United States. For example, the latest (2016) report, while noting some progress in the availability of 25 mbps (down)/3 mbps (up) fixed broadband services, makes the Tribal gap painfully clear:

	Population	Percentage of Population Without access to 25/3
United States	33.982	10%
Rural Areas	23.430	39%
Urban Areas	10.552	4%
Tribal Lands	1.574	41%
Rural Areas	1.291	68%
Urban Areas	0.283	14%
U.S. Territories	2.628	66%
Rural Areas	1.078	98%
Urban Areas	1.550	54%

Access to capital is also a major roadblock to network growth and viability. Because most Tribally owned carriers cannot collateralize their assets, RUS is our only lender and I appreciate the work that they do. Last year, my company received the first RUS loan under the 2008 Farm Bill's Sustainably Underserved Trust Area (SUTA) provision. The GAO study points out that there needs to be better coordination and communication between the FCC and RUS. NTTA agrees. RUS loans and FCC Universal Service Fund (USF) support go hand-in-hand. Reliable and predictable cash flow is required to get any sort of loan, including RUS loans.

The study notes that the National Broadband Plan, in numerous instances, outlines the need for greater efforts to be made to make broadband available on Tribal lands. The study points to the lack of FCC development of broadband performance goals and measurements on Tribal lands. Once again, NTTA agrees.

The study details the short falls of the E-rate program in Tribal communities. Better coordination and performance goals are needed. However, in some instances, there are other complications. The Bureau of Indian Education (BIE) operates the schools on my reservation and they have a nation-wide contract with a large communications carrier that prohibits me from serving area schools. This is inefficient and blocks MATI from E-rate funding. I understand that there are Senators examining ways for the E-rate program to better support not just schools and libraries, but also Boys and Girls Clubs, and other institutions serving youth. NTTA applauds these efforts.

While highlighting some challenges faced in bringing viable and affordable broadband services to Tribal communities, the GAO study also made some recommendations which include training, mapping, data collection, and performance goals and measurements. NTTA has no objections to these recommendations. However, they do not go far enough.

Middle mile costs for NTTA members is extremely high and this is very problematic in bringing affordable, robust broadband services to Indian country. This high cost to reach the outside Internet world inhibits the broadband take-rate, thus putting a real damper on consumer growth.

The arbitrary budget cap that has been established for the Universal Service Fund high-cost program does not allow for adequate funds to build and maintain the broadband networks that are demanded by regulators, policy makers and consumers. There continues to be a debate about broadband capacities and speeds, no matter what the platform of delivery. Fiber optic networks as the anchor, with the compliment of wireless and satellite technologies, delivers the most rewarding Internet experience to consumers. And that network requires a viable and predictable funding source, especially in areas that are remote, sparsely populated and hard to serve. An examination and reform of the USF contribution regime is long over-due, and may eliminate any need for the arbitrary budget cap.

On June 19 of last year, NTTA went on record at the FCC with a proposal to adopt a Tribal Broadband Factor (TBF) as part of the reform of the long term USF for rate-of-return carriers currently being considered by the Commission. The TBF includes a multiplier for targeted support on Tribal lands, and has specific obliga-

tions for any carrier, tribally owned or not, that uses the program. The proposal is straightforward and easily understood, and is narrowly-tailored to address the specific need to promote broadband while causing very little impact on the overall USF mechanism. We call on the FCC to adopt the TBF in a timely manner. Further, NTTA requests that members of this committee weigh-in with the FCC to act on the TBF and work to bring stability and predictability to USF support for Tribal communities.

As noted in the GAO report, adoption of available broadband services by Native Americans is also challenging due, in large part, to the poverty rates in Tribal lands. The federal Lifeline program, which provides direct credits to low-income consumers, has helped in allowing many Native Americans to subscribe to voice services. The FCC recognized the importance of Lifeline services in Tribal areas when it adopted an "enhanced" Lifeline credit for low-income consumers that calls for as much as $25 in monthly service credits. However, with the addition of broadband services to the federal Lifeline program, NTTA has advocated for an increase to the Tribal Lifeline credit in order to recognize the higher costs of retail broadband service. While the FCC has adopted an order addressing this and other Lifeline issues, the text of the order has yet to be released, and thus NTTA does not know whether the Commission accepted NTTA's proposed increase to the Tribal Lifeline credit or not.

Other issues that the NTTA would like to examine in the future are the access and economic rights of spectrum over Tribal lands, and the establishment of a USF Tribal Broadband Fund.

NTTA also believes that the letter of credit required by lenders, including RUS, has become burdensome and has, in many instances, become a roadblock to getting needed financing. In addition, NTTA believes the irrevocable letter of credit required to participate in the FCC's reverse auctions prevents NTTA members from using that program. This issue must be addressed.

Finally, NTTA would like to acknowledge the efforts by the staff at the FCC's Office of Native Affairs and Policy to bring a voice to native peoples at the Commission. However, this effort may not be enough. Congress should examine the establishment of a Native American Bureau at the FCC that has specific authority to provide support for broadband networks in Tribal communities.

Mr. Chairman, I want to extend my appreciation to members of this committee and your staff. Much more work needs to be done on infrastructure growth in Tribal areas, most importantly in the area of broadband deployment.

Thank you.

The CHAIRMAN. Thank you very much for your testimony to you, as well as to everyone on the panel.

We will now start with a round of five-minute questions, starting with Senator Hoeven.

STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA

Senator HOEVEN. Thank you, Mr. Chairman. I appreciate all the witnesses being here today and I would like to start with Mr. Enjady.

In 2012, an FCC report notes that in North Dakota, my State, 79 percent of tribal areas do not have access to broadband services that meet the FCC speed benchmark. You talked about the high cost. So my first question goes to are there legal or regulatory roadblocks that make it difficult to provide affordable broadband in Indian Country?

Mr. ENJADY. Senator, that is a very broad question that could take a long time to really answer, but I do really appreciate that question. It is tough, especially for myself, starting a telephone company in New Mexico. It is one thing that I started at the very beginning. I worked for a company named CONTEL GTE, which is Verizon.

I had to go back to the Tribe. I went back to the Tribe and worked for them. And in building this company it was one thing

to get through the regulators of the State. Once you have that ETC status, then you go on to the FCC and get your ETCs there.

Once you establish that and be able to buy the area from a local provider like Windstream or any of the bigger CenturyLinks now, most of the areas in North Dakota might be provided by that. NTCA is a good example of one that represents a lot of the smaller companies that do provide services to Indian Country in those areas. It is a barrier right now that is a tough one to break.

There are not any new tribal telephone companies lately. There are only nine of us, the oldest one being Cheyenne River Sioux in South Dakota. There are no tribally-owned telephone companies in North Dakota. And I do believe that there are providers that are co-ops that do provide those services.

Senator HOEVEN. So now Microsoft and Verizon have both announced some programs that partner with private entities to provide internet services for more Native American students, so that is one area where some of the larger companies are looking for partnerships. Sounds to me like you feel there is a need for those kind of partnerships. Can you talk about how we accomplish that to bring more of this internet connection into Indian Country?

Mr. ENJADY. Those are great programs. The problem there is the sustainability of it, something that needs to be paid for as it keeps moving on. A lot of these computers that I know the Gates Foundation left computers on Navajo Nation, a lot of them are out of date and broken down. I don't know, it is just a one-time influx of money that needs to be sustained some way, somehow.

The FCC has established a great program for companies like ours to sustain and receive funding for our capital expenditures and operating capital to be able to provide these services over the years, and that is one of the greater return reforms that is happening right now that is going to be for the next 10 years. So that is key, sustainability.

Senator HOEVEN. Right. And it seems to me that we need more of these partnerships with entrepreneurs like yourself and with companies that are willing to go on the reservation. And whether it is setting up the broadband internet, computers in schools, all of the above, we have to find ways to create some partnerships to do that.

Mr. ENJADY. I welcome any of them that come to New Mexico to help our other tribal members there in New Mexico.

Senator HOEVEN. I want to shift to Mr. Goldstein. In your study, does the GAO have some recommendations on how we foster that, those partnerships?

Mr. GOLDSTEIN. Senator, we didn't really focus on that in this report; however, we did in a previous report, and we found that, unfortunately, the kinds of barriers that we are talking about today existed years ago as well. We simply did not find very many examples where private companies were willing to partner on the reservation for many of the reasons we have talked about today, not just the amount of funding that that it would take, but as well the sustainability that the gentleman was just talking about.

Senator HOEVEN. That is what I mean. What is your recommendation on how to create these partnerships to get the larger

companies to come in to get the public-private partnerships? How do we get that going, how do you do it?

Mr. GOLDSTEIN. It is not something we have looked at, unfortunately. It is something that we could, hopefully, try to do in the future, but to this date this report, sir, was really on some of the barriers to the existing conditions, not so much on how public-private partnerships could be developed.

Senator HOEVEN. Did you find barriers at the State level that Mr. Enjady referred to?

Mr. GOLDSTEIN. I am sorry, sir?

Senator HOEVEN. Did you find some of the same barriers at the State level that Mr. Enjady referred to?

Mr. GOLDSTEIN. Yes. The kinds of barriers we saw were everything from long distances, rural terrain, poverty, a lack of expertise, administrative and technical, to form some of the ETCs. And then even when the ETCs were formed, there were additional kinds of challenges and barriers related to them being able to get spectrum for their use. Sometimes it was already encumbered by other providers who weren't interested in relinquishing it. There are a number of regulatory and legal barriers that you referred to that exist throughout Indian Country.

Senator HOEVEN. Thank you.

The CHAIRMAN. Thank you, Senator Hoeven.

Senator Udall.

Senator UDALL. Thank you very much, Mr. Chairman, and thank you to Mr. Enjady for that answer there.

I would like to ask my first question to Ms. Sohn. Section 254 of the Communications Act charges the Commission with ensuring that consumers in all regions of the Nation have access to telecommunications and information services that are "reasonably comparable to those in urban areas." The latest FCC data show that 96 percent of Americans in urban areas have broadband access. This compares to just 59 percent of those on tribal lands.

Given this gap, has the FCC failed to live up to its duties under Section 254 of the Communications Act?

Ms. SOHN. Thank you, Senator Udall. Without a doubt, we could do a lot better. And we want to work with you and we want to work with our partners in the Federal Government to try to close that gap. I think I was quite clear in my opening statement that the digital divide that we have today is unacceptable, and we can be doing a lot more.

I would like to actually address one of the things that Mr. Enjady talked about, and that was the Tribal Broadband Factor. In fact, we are looking right now, we have a further notice of proposed rulemaking that is seeking comment not only on the Tribal Broadband Factor proposal that NTTA put out, but on any other reforms that might promote broadband deployment for rate-of-return carrier lands.

So we really, really want to move forward with getting more broadband out there and we are looking at many ways of doing it. We are actually moving forward with this further notice of proposed rulemaking and Chairman Wheeler has said that he will act on a proposal before the end of the year.

Senator UDALL. In 2010, the FCC chairman, Julius Genachowski, stood up an agency, the Office of Native Affairs and Policy, or ONAP. This tribal liaison office is vital, I think, for ensuring that robust tribal consultation occurs and you have better input from the Tribes on important FCC actions that impact them.

So I am very disappointed by that the FCC did not provide ONAP even the modest $300,000 in funding that Congress directed for tribal consultation in fiscal year 2015. Will you assure me that the FCC will not repeat this mistake for the current fiscal year?

Ms. SOHN. Sir, we will not repeat that mistake, yes. I will give you that assurance.

Senator UDALL. That is good. That is good. And how much funding for ONAP and tribal consultation is the FCC's fiscal year 2017 budget request?

Ms. SOHN. Well, we do have overages. As you mentioned, we did not spend all the money. We spent most of the money in fiscal year 2014. We did not spend most of the money, probably about half, in fiscal year 2015.

But I want to take a step back and look at the reason that you appropriated that money to ONAP. That was to ensure that ONAP went out and did government-to-government consultations with the tribal communities, did trainings, did workshops on broadband and spectrum and broadcast, and they did that. They did 33 in 2014; they did 39 in 2015.

So in the year where we only spent half the money, they actually did more consultations than in the year where they almost spent all the money. So the goal of appropriating that money is being accomplished.

In the first four months of 2016, there have already been 20 consultations, and there is going to be a lot more. We will probably exceed the 39 by the end of this year. So we will spend the money. We are planning on it. But, more importantly, the goal that you set out when you gave ONAP that money has been accomplished, and I hope the Tribes, and I do believe the Tribes do appreciate the effort that ONAP has made. It is a critical part of our agency.

Senator UDALL. But the real answer to the question is that in 2017 your budget request is zero, and I don't think that is the way we should be headed.

Just a quick question to Mr. Enjady. My understanding is that the Tribal Broadband Factor proposal before the FCC would direct $25 million per year to accelerate broadband deployment on tribal lands. This amount is offset by savings elsewhere in the Connect America Fund. Could you elaborate on how the Tribal Broadband Factor would help telcos deploy service to underserved and unserved areas?

Mr. ENJADY. Thank you, Senator Udall, I appreciate that question. The way things go, funding is going down either way. That is one thing that is happening to Indian Tribes, especially when it comes to running our telephone companies. I am one of nine tribally-owned telephone companies in the Nation right now. We are facing a lot of decreased funding in order to build our networks, operation caps that are put on top of us, capex caps that might becoming here soon. These are some of the things that are tough.

So TBF was formed in order to offset that. A lot of that notion obviously can tell that it is hard to provide services on Indian reservations. We do not have sidewalks like anywhere else, like in America, like where we have a fund where we build roads and whatever else. I live on a dirt road myself; it is going up a hill. How do we get services up there? I have to string it up where the REA guys put up their telephone lines.

These are some of the real life things that are happening on reservations. We don't have improved services like this, so we don't have mapping, GIS mapping that is very accurate at times. I would like to have a lot of those things, and it takes funding to do that. So those are some of the things that we are looking at and hopefully TBF can bridge that gap for us here in the future.

Senator UDALL. Thank you for your good work.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Udall.

Senator Murkowski.

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

Senator MURKOWSKI. Thank you, Mr. Chairman.

And thank you, Ms. Kitka, for being here, making the long trip. You are not a stranger to this Committee and we appreciate the contributions that you provide on behalf of Alaska Natives throughout our State.

I want to focus a little bit about your suggestion that we need to expand the universal service schools and libraries program to include Head Start, GED programs, and online college courses. It strikes me, as I go around the State, you go out to some of these very small villages and the school is the only place that has access to internet.

Well, the school is not open on the weekend; the school is not open at night; and the school is not open during the summer. And in most of our small villages we don't have libraries.

So what happens on the weekend, at night, and during the summer? Where is the access for not only the children, but if you don't have a public library, there is no access in these communities.

Am I over-exaggerating or overstating the case?

Ms. KITKA. No. I think you are exactly right. I think that there is a lack of access to many of our residents in our villages, especially our small villages, and that is part of the reason why we want the schools and library program expanded, because even if they provide that for the GED or other things, they are actually in violation; and common sense is that doesn't make sense.

But also there really is a need for the BIA to set up a special program to lower the cost on that. In some of the villages we have the school with the program, you have a tribal entity providing social services, things for children on that that don't qualify for the lower rate, so they are paying double the amount. So we need to lower those costs in the other areas.

Senator MURKOWSKI. One of the things that I hear as I am going around, also, is in many of our schools we have a Head Start program within the school itself, and yet you have this firewall here where the Head Start program cannot avail itself of the capabilities

that the school has, which makes no sense to me. You would think that we ought to be able to resolve that.

Ms. Sohn?

Ms. SOHN. Senator Murkowski, my understanding is that Head Start, if they do hold classes in an E-rate school, they are permitted to use that connectivity unless the State says otherwise. And USAC actually has a list on its Web site of States that permit Head Start and GED classes to use when they use the facilities of a school. So it actually goes State by State, it is not an overarching rule against it.

Senator MURKOWSKI. That would be something to look into, then, if you have a situation where, if you have job training, GED, or Head Start and the States can make that determination.

Let me ask about your recommendation with regard to the New Market Tax Credit program and effectively setting aside 10 percent of New Market Tax Credits for projects that would benefit Alaska Natives and American Indians with a focus specifically to the Broadband, because I think you have identified what our biggest impediment is.

Everybody recognizes that we need to have this broadband access. The real question is, okay, how do you make it happen? Where does the financing come from? So the idea of greater public-private partnerships I think is something worth considering.

As you know, we have not fared well in the State, but, again, if there were a greater opportunity to be competitive with a carve-out that would focus on an area where we have extraordinary need when it comes to our ability to access broadband amongst our Native American and Alaska Native communities, the question to you in terms of how far we have gotten with this proposal of kind this 10 percent carve-out or set-aside, is this something that you have been working with NCAI on? Where are we in just moving the idea forward?

Ms. KITKA. Well, we have had discussions with the White House. As many people know, President Obama traveled to Alaska at the end of August of last year and early September and saw some of the great needs in our State and made some commitments of some critical things that needed to be taken care of by the Federal Government. The whole issue of focused New Market Tax Credits as one way to tackle some of those commitments of the national imperative in the Arctic on that was something that they were very interested in talking about. We have had conversations with the New Markets program manager within Treasury. We do think that there is an interest and a willingness to use that program to expand and meet the needs.

That is why we put it forward as far as a set-aside that includes half of that set-aside for telecommunications and half of it for other things such as other infrastructure needs. We have tremendous infrastructure needs and we believe that the Congress really needs to make that a national priority next year, when new administration and a new session of Congress on that, and include Native Americans' infrastructure needs and telecommunications needed in that.

In the interim, I think what is an immediate question mark to us is what they are doing in combining the $3.5 billion to do the

$7 billion. And if that goes on, it is a huge lost opportunity for Native Americans in that whole cycle. We understand we don't want to slow down what they are doing, but if there is a way that they could carve out in that $7 billion some portion of it for Alaska Natives and Native Americans on that for us to have an opening to put together proposals in there for broadband and other infrastructures, that is something that could be done this year.

I really urge the Committee to develop legislation that is totally focused on Native American needs on infrastructure with a focus on broadband and consider either in the appropriations process or in the omnibus bill this year, but really tackle that. It is a lost opportunity for Native Americans not being able to access that.

Senator MURKOWSKI. I appreciate you leading on this and look forward to working with you and the Committee on this.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Cantwell?

STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. You know, on the docket we had a bill that Senator Tester and I sponsored, trying to take a lot of the mystery out of Indian school funding and where things are, and I guess my question to you, Ms. Sohn, is similar when it comes to broadband and exactly what the FCC does.

Do we need better metrics to measure the deployment of broadband in Indian Country? I know that you maintain a broadband map of the U.S. and what speeds in wireless are available, but are those maps coordinating with Indian Country? Is there a better way to review these?

Are there implementing issues about data sharing across agencies? What do we need to do? What kind of metrics do you currently use and what else do we need to do so that we get a crisp and clear picture of this challenge?

Ms. SOHN. Thank you, Senator Cantwell. So we do have performance goals and we have outcome goals. Whether we have specific metrics, not so much; and we could do a lot better in that regard. But we have speed goals both for schools and libraries and also for high-cost areas; we have outcome measures in high-cost areas, the number of new schools and libraries and homes and businesses that get connected.

Senator CANTWELL. On tribal land? Are you talking in general?

Ms. SOHN. In general.

Senator CANTWELL. Okay. I am asking what kind of metrics you have on tribal land.

Ms. SOHN. We don't have specific metrics for tribal lands. And one of the reasons for that is that tribal lands, as you know, are very, very different. There are tribal lands in the suburbs and there are tribal lands in the bottom of the Grand Canyon. So we are concerned that if you have one-size-fits-all metrics for tribal lands, it may actually do some of the lands a disservice.

Be that as it may, I think we still would like to work with the GAO and work with you to figure out whether some metrics make sense.

Senator CANTWELL. Well, I don't know any problem that I have ever solved without measuring it first and getting a good understanding of what we think the problem is. And I know every member up here I am sure has Indian Country within their States and wants it to be a vibrant economic development area, and everybody, as the panelist just did an articulate job of saying, it is a key tool to economic development.

So I guess what I think is always challenging for us is to get a clear and crisp picture of exactly where these programs are reaching and where they are not reaching, because we just keeping talking and talking about how there are these available programs, and then we don't even know what they are actually accomplishing.

So I guess, I don't know, Mr. McBride, do you have a kind of metrics that you are using? Is there any challenge with coordinating data between agencies that we need to clear up?

Mr. MCBRIDE. Actually, thank you for the question. Congress actually helped us with this with some direction in the 2014 Farm Bill. One provision of the Farm Bill required us to share reporting on our loans with the FCC, and we are working with them to share data that we have so they can update broadband maps.

We also are required to include unserved populations in our Farm Bill loan program, and that information is posted online when an applicant submits an application so the public can see which areas would be served. And we do have that unserved requirement within the Farm Bill, so we are trying to target our resources to unserved areas.

Senator CANTWELL. Ms. Sohn?

Ms. SOHN. I think I would like to clarify what I said before. So we do measure deployment all over the Country and on tribal lands. We ask the carriers to submit twice a year on their Form 477 where they deploy broadband. And we do need to share that data more with USDA so we can have greater impact for our funding. We need to share funding plans, we need to share data without a doubt. But we do measure deployment.

Let me talk about the broadband map for a moment.

Senator CANTWELL. So, on that point, do you know what percentage of Indian Country has access to broadband services?

Ms. SOHN. Yes. Fifty-nine percent. So 41 percent does not, by our benchmark.

Senator CANTWELL. Fifty-nine percent of Indian Country has broadband service?

Ms. SOHN. According to our latest broadband progress report.

Senator CANTWELL. You mean some coverage or you mean 59 percent of tribal land has broadband access?

Ms. SOHN. Fifty-nine percent. So 41 percent of tribal lands do not have access to our benchmark speed. But if I could just address the broadband map for a moment, because we have never actually updated the broadband map because we have never gotten the resources to do so. So what we do is we have created our own interactive map and we update that pursuant to our broadband progress report.

Senator CANTWELL. Mr. Goldstein, did you want to add something here?

Mr. GOLDSTEIN. Thank you, Senator. Just briefly. To the extent that the broadband map is accurate, I think those numbers are fine. The problem with the broadband map is that in many places, the way it is being measured is not terribly accurate, it is being done with a very large cudgel, if you will, because it is being done by census block; and out in a lot of Indian Country, as you know, census blocks are very large.

Senator CANTWELL. So the Colville Reservation in Washington might be one census block.

Mr. GOLDSTEIN. It could be one citizen, even, one small portion of a census block and the rest of that census block does not have access. And the problem particularly out in Indian Country is we talk to a number of Tribes in which they tried to protest the accuracy because they were being denied funding because they, according to the map, had broadband, when in fact they did not.

So that is still a problem that is not fully rectified. It is getting better slowly, but in the meantime we are not that certain how accurate it is.

Senator CANTWELL. Well, I definitely think we need to talk about what data we can collect to get the accurate picture. We are not going to solve this problem unless we have an accurate assessment of what the problem exists today. That somehow there is 59 percent of Indian Country, I don't know if anybody up here on the dais thinks that 59 percent of anything in their State has broadband access. I don't think there is 59 percent in my State, and we are a pretty wired State. But hopefully I am wrong, but let's get data and measurements and work together on it.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Tester.

Senator TESTER. I just want to tack on to what she said, and that is that there is a cellular map that shows Montana fully covered for cellular service. It is total BS, and I can tell you what BS means, but it is total wrong. So I just want to confirm what Maria just said.

The CHAIRMAN. Senator Franken.

Senator FRANKEN. In Montana, that is buffalo, the BS thing is buffalo something.

[Laughter.]

Senator FRANKEN. Well, we have gotten into a good thing here, which is how we measure, because the 41 percent, I don't know what that means. Ms. Sohn, you said we don't have metrics and then toward the end you said we do have metrics; and that seems imprecise testimony to me. That is just me. So we heard a figure, 96 in urban settings.

But I don't know what 41 percent means in a tribal area. Does that mean that let's say you have a huge reservation and there is connectivity at the school. What percentage of the people are counted as having connectivity, then? How is that figured out? How is that calculated?

Ms. SOHN. So we calculate connectivity by census block. We do not use a broadband map because we agree that there are inaccuracies, but we do measure by the census block. And if there is service at our benchmark speed at the census block, then we do count that as served.

Senator FRANKEN. Okay, I don't know what that means, then, again. So let's say a census block has the only connectivity is at the school, okay? What does that mean in terms of the percentage of people who have access to internet broadband.

Ms. SOHN. Well, it means it is not the most accurate way to measure and, unfortunately, we have been advised by our counsel that going much more granular than that could have some privacy implications. I mean, without a doubt, our data is not perfect, although our staff does spend a lot of time trying to verify the data.

Senator FRANKEN. Okay, I just want to know what 41 percent means, because it is a number that is thrown around all the time, right? And I know why you said there is 59 percent connectivity, because 59 and 41 equal 100.

Ms. SOHN. Right.

[Laughter.]

Ms. SOHN. So 41 percent of the census blocks in tribal lands do not have connectivity, do not have connectivity at our benchmark speed of 10:1.

Senator FRANKEN. Yes. And I am trying to figure out what that means. Do you understand that?

Ms. SOHN. Yes, I do.

Senator FRANKEN. Okay. So let's say there is a big reservation, and let's say they have two schools they are so big, and both schools have broadband that is fast enough to qualify. What if you live 40 miles from the school? Do you have connectivity?

Ms. SOHN. Not necessarily, no. I mean, 477—let me just clarify.

Senator FRANKEN. Are you counted as having connectivity?

Ms. SOHN. No.

Senator FRANKEN. No.

Ms. SOHN. The 477 data does not go to schools and libraries, okay? It goes to individual households.

Senator FRANKEN. Okay.

Ms. SOHN. The schools and libraries, that is separate.

Senator FRANKEN. So it is individual households. So that helps me now. Okay, so I understand that a little bit better. Some of us have become more reliant on mobile devices to access the internet, and we are going to have a spectrum auction, right? What is the FCC doing to ensure that tribal communities have access to that very finite, of course, resource?

Ms. SOHN. Well, there is a tribal lands bidding credit that is available to both the tribal carriers and carriers that want to serve tribal lands. So, in other words, it is a 25 percent bidding credit.

Senator FRANKEN. Bidding?

Ms. SOHN. Bidding credit, yes.

Senator FRANKEN. Okay, a bidding credit.

Ms. SOHN. It is a bidding credit that essentially gives them a leg up in obtaining spectrum in the incentive auction.

Senator FRANKEN. Okay. Well, that is good to know.

Ms. Kitka, thank you for your testimony. You say that money is the elephant in the room. I think it is. Are there any other elephants in this room that anybody would like to identify?

Ms. KITKA. I was going to respond to the Chairman's question about what can be done to further partnerships, public-private partnerships on this. I think that we can ask the Administration,

either the current President or the next president, to convene a high level kind of a matching party, if you will, with Native American leaders and business leaders on that and the private sector on that.

Part of the partnership is the lack of opportunity for introduction and meeting people on that. If there was an opportunity where you had a chance to meet your counterparts in the telecom world on that, I think that there could be a lot of creative partnerships furthered that don't necessarily cost money; it is just a matter of pulling people together. So that is a suggestion I had.

Senator FRANKEN. Okay.

Mr. Enjady?

Mr. ENJADY. I would like to answer that question. The parts that you are asking about, the schools there actually under the E-rate program, which is not quite part of some of the regular providers that provide services there, so for like my reservation, on the Mescalero Apache Reservation, we have an E-rate program which we are qualified to provide services to that school.

But because of the BIE, Bureau of Indian Education, they have a national contract with Verizon to provide those services, so I cannot compete against them because they are under a national contract because they provide those services. So I, as a local provider, cannot provide that service.

Now, if we look at the rest of the reservation like in Mescalero, at one point we were at like 54 percent no service. But because the Tribe took the initiative to build out its telecom company, we are up to about 98 percent. So we are doing very well at the copper line level.

Now, we have different forms or ways to get to the house from our offices. We can do it over copper or we can do it over fiber optic cable, which is glass. We can send lasers down that line and get all the broadband that we need.

So I am in that transition point right now, which I was fortunate enough to receive a SUTA loan from RUS and be able to provide those services. So we are going to start attempting doing that pretty quickly. Hopefully in the next six months we will start laying the first fiber lines to the home. So with that we should get up to 2 gigabytes of connectivity to every home on our reservation. Those are some of the things, the accomplishments that we are going to do.

Now, if we can do that in all reservations across the Nation, that would give us 100 percent coverage or close to it, depending if they are wired or not.

Senator FRANKEN. That is what we need.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Senator Heitkamp.

STATEMENT OF HON. HEIDI HEITKAMP,
U.S. SENATOR FROM NORTH DAKOTA

Senator HEITKAMP. Thank you, Mr. Chairman.

Just kind of to clarify, I think that when we hear 59 percent, what we assume that means is that every person who is within that territory that you have identified as having access could in

fact connect at the speeds that you measure. Is that what 59 percent means?

Ms. SOHN. Unfortunately, I can't say that it does.

Senator HEITKAMP. I think that is a problem, because that number is unreliable. So we are kind of down to that doesn't mean anything to me. So I need to know what the current condition is.

I held a meeting on this in North Dakota and I can tell you that the issue that Senator Franken just raised, which is the cellular issue, I had people talking about typing a paper, putting it on their cell phone, then driving out to the highest point in the reservation and holding their cell phone up and hoping that that paper transmitted to the professor at UND. Standing out there on the high hill, because so many people in this demographic area or this census block, they connect wirelessly.

They are fairly mobile. We have a huge problem with Indian housing, so they don't have a home that is consistent for a lot of them; they move around. Their only connection to the internet is on a cell phone or on a mobile device. So we have to figure out how we fashion a solution for the population that exists and make sure that we are not building fiber to places where no one is going to use it. They need cell towers. So we have to figure out with RUS what is the direct need that folks have.

And we have done a pretty good job, actually, in providing broadband access in North Dakota, even in Indian Country. North Dakota is one of the most connected rural States in the Union because of the great help of RUS. But we still have gaps in coverage. I can't stress upon everyone enough the need to collaborate all the Federal information, whether it is BIE, whether it is Indian health, whether it is RUS, whether it is FCC, to find out what the needs actually are.

Because having this kind of communication support into the future is absolutely essential. It is essential for education and it is essential for life and death, and I will tell you why. Because we can't recruit a health care workforce in Indian health facilities in North Dakota; we have to rely on telemedicine. And if we don't have reliable backbone in telemedicine, we don't have health care, especially in the area of behavior and mental health.

So my question, Mr. McBride, is really, what more can be done and, compared to the applications that you get, how much unfilled need is there in Indian Country as it relates to support from RUS?

Mr. MCBRIDE. Well, thank you for the question. With regard to unmet needs in Indian Country, we are reliant on folks coming in and making application. And certainly with the SUTA provisions we try to look at those applications and give those priority as we are working through the stack of applications that we have. Our goal is to make sure that we are meeting the most underserved areas, and certainly tribal areas are included in that.

But one of the things that we have also tried to do, to the point that you were just making with regard to coordination, under the Broadband Opportunity Council, we are trying to work across agencies to make sure that we are leveraging resources that we do have; not requesting new money, but finding ways to use the programs and resources that we have already been given to expand access.

Senator HEITKAMP. Well, in many cases isn't it true that RUS does do public-private partnerships? I mean, you are partnering with the rural telecoms in providing a lot of this service or with some of the Indian-owned telecommunications companies.

Mr. MCBRIDE. Yes, ma'am. And as you are probably aware, Secretary Vilsack has the Rural Opportunity Initiative where we have been trying to work with the private sector to leverage our resources with theirs to meet the infrastructure needs in rural areas.

Senator HEITKAMP. I think one of the most critical things that can come out of this hearing is an understanding that we are frustrated by the lack of data. We are frustrated that we don't know where the gaps are and we don't know how to fill those gaps. And we are frustrated that everybody doesn't seem to be kind of in the same space, trying to solve the problem working together.

So I hope that going into the future, when you go back to collaborate and you do it in consultation with the people who are actually being served, so you are not building fiber where nobody is going to use fiber, when you could build cell phone towers where people could actually get access, that we actually begin to close the gap, because this will create economic hardship and a lack of economic development for generations to come if we don't fix this problem, and that is a place where, in all of our States, we desperately need an economic opportunity.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Heitkamp.

Senator Tester.

Senator TESTER. Thank you, Mr. Chairman, and thank you for your courtesy of going last. I appreciate that.

Thank you for your testimony, folks.

This is for you, Mr. McBride. One of the barriers that GAO identified was a lack of tribal members who have necessary technical and bureaucratic expertise to navigate the application process and to interact with prospective providers. What is the agency doing to support Tribes' administrative and technical capacity?

Mr. MCBRIDE. Thank you for the question. I actually grew up in a rural community in Arkansas with a small town mayor who had an executive assistant and needed a lot of help trying to identify the different opportunities, so I am sensitive to the issue that you have raised.

We try to do outreach with all rural communities, in particular tribal, and we are also fortunate to have State offices with State directors and program folks on the ground who can go and meet with people in their communities and talk to them about their needs and the opportunities under rural development to meet those.

Senator TESTER. Good. We have talked about money, and this is for you again, Mr. McBride. Other than money, what is the biggest obstacle to the deployment of high-speed internet?

Mr. MCBRIDE. A lot of it is simply the difficulty of building out. The terrain can be tough. Those who are looking to provide service in the hardest to reach areas have to deal with different permitting, different issues at the local and State level. So there is a lot of work that goes into putting together a successful project aside from just finding the funding.

Senator TESTER. Okay. Thank you.

Ms. Sohn, Chairman Wheeler was out in Montana last fall and hosted a roundtable with Native American Tribes from Montana and talked about the barriers to improving internet access, and it was a very successful visit.

I certainly appreciate the Chairman's time because it really was beneficial to me and to the Tribes. The Chairman promised to the Tribes that he was going to send a team of folks to Montana. I think that is going to happen very, very soon, and I hope to be there when they show up to spend a few days consulting with the Montana Tribes. Could you talk about the value of face-to-face consultations and what the success has been for the FCC in this?

Ms. SOHN. ONAP has worked tirelessly to build relationships, government-to-government relationships with the Tribes and honor our fiduciary duty, our trust relationship with the Tribes to ensure self-sufficiency and economic development. As I mentioned before to Senator Udall, in 2014 we had 33 such consultations, 39 in 2015. We have already had 20 in the first four months here.

So the value is enormous. It is not only consultation, it is not only input from the Tribes as to what our policies should be and how we can be helpful, but it is also training; it is digital literacy training, it is technical training. So it is a wide variety and it is very much an interactive partnership between our agency and the Tribes.

Senator TESTER. Okay.

Mr. MCBRIDE. this is back to you. It was brought to our attention that BIE-operated schools cannot access USDA broadband funding because of statutory provisions about interagency funding. Is that true?

Mr. MCBRIDE. I am not aware of the issue that you have raised. I would be happy to look at the specific concern. I know that there might be an issue if you were using Federal funds to match other Federal funds or something of that nature, but if it is a partnership through distance learning, for example, I wouldn't be aware of the concern.

Senator TESTER. Could you do me a favor? And we might be able to save you some footsteps. Get hold of my staff and check into this.

Mr. MCBRIDE. Absolutely.

Senator TESTER. Because as it is written here it doesn't make a lot of sense to me. Okay?

Mr. MCBRIDE. Absolutely.

Senator TESTER. I don't think it makes a lot of sense to you either.

Mr. Enjady, one of the obstacles we have seen in getting agencies and telecom groups to recognize the unique rights of the way in Indian Country, it has been a challenge, trust, responsibilities, plus sovereignty and all that. It is a sensitive topic, but we have seen some big projects fall through the cracks because of issues about right-of-ways that just stretch out too long and it got too late.

I was talking to a rural telephone cooperative that does much of the broadband in Eastern Montana and they were saying they were having a hard time getting right-of-ways across Indian Country to be able to provide Native Americans with broadband.

I just want to get your perspective on this. Is this an issue we should be paying some attention to as a Committee or, if it is a problem, how do we solve it?

Mr. ENJADY. It is a huge problem. Right now I just went through that same problem with a tower lease with Verizon. We submitted it to the BIA. It took two years for them to approve it. In the meantime, Verizon was sitting there. They were paying their lease agreement, but it was a two-year agreement and it took two years to get it, and the first day of their lease commenced when BIA finally signed off on it, so they actually got four years for actually two years.

Like I said, that was difficult to try to do it. I am not sure if there are enough people to really take care of the situation. Putting it back in the Tribe's hand might be one way of doing this, where we are able to do the realty part of this. That could be one way. I am not sure. That is an area that is very sensitive.

I know how I would do it myself. I would just do it and take care of it, then, here, write it down and take care of it for us, because, like I said, Indian Tribes, when my president asked me to provide services, I do it; and we have to try to do it the best way, and we will ask BIA to forgive us afterwards.

Senator TESTER. Yes. Well, I am on a co-op. I get my telephone and my electricity from a co-op. I get my internet service from the co-op, and I can just tell you it is a sensitive issue, okay, but part of my getting access to the internet and telephone and power lines is that I give them a right-of-way. I give them a right-of-way. I don't get one damn nickel for it other than the fact that if I didn't give them the right-of-way I wouldn't get the service, and I need that service to run my business and be successful.

I would love to be able to work with you and other folks moving forward to try to get this issue tapped down because there has to be a solution for this. I think in Indian Country, where the economy and especially a lot of the large land-based Tribes, where it is expensive to lay cable, lay fiber, it is critical if we are going to get them out of poverty. I think it is just critical. If we don't do it, we are going to be fighting an uphill battle.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Mr. Enjady, just following up. We talked a lot about if you couldn't get it done, you would do it yourself and ask forgiveness later. It is interesting. The FCC has dedicated itself, it says, to having robust consultation with Indian Tribes. I would just like you to comment a little bit about their current policies for communicating along this robust consultation. Is it working? Are there things that could be done better?

Mr. ENJADY. Tribal engagement is one thing that the FCC has tried to do very well. When Geoffrey Blackwell was there, consultation was very good. I cannot cite the fact that the FCC is trying to do the best they can in that arena. They have done a very good job in that they have had numerous listening sessions across the Country. The last one I was in was last year, when we were in Phoenix. They invited quite a few tribal folks and they did do a very good job.

The part is that Tribes have a lack of knowledge in what telecoms really are. It is a very, very complicated arena. It is something that obviously you can see that we have had the toughest time just trying to figure out what the percentages are of what is served and not served only because it is so complicated.

It is not easy anymore. The 1996 Telecommunications Act said that we will provide services all across the land, and that is something that sure needs to be done, and I hold the FCC's feet to that for some of the things that we, as providers, want to do throughout our whole reservation.

As a part for all of Indian Country, some of the big carriers take care of that, like Windstream, CenturyLink. I am not sure exactly where they are. I mean, they are a for-profit business; they are publically owned and they do have shares, so their shareholders come first, and I am not sure where Indian Country fits into that picture yet. That is something that I am sure the FCC is addressing, but, as a whole, there are a lot of problems out there.

When Senator Heitkamp said that wireless might be the way, that is true, it could be the way, but obviously we have to build fiber optic networks to get to those towers in order to provide the high bandwidths that they need just so you can use your smart cellphone to be able to get on the internet and do what you need to do. You still need fiber optic cables to deliver the huge amounts of data, and wireless cannot do that right now at this time.

The CHAIRMAN. Following up on that, Ms. Sohn, we were talking about the issues of 41 percent, 59 percent, what does it all mean, and could you just flip the numbers, in terms of actual service. According to the GAO, between 2010 and 2014, about $33 billion has been spent on universal high-speed internet access. The FCC has implemented several programs to aid in ensuring that all people have access. When do you expect that all tribal communities that want access to broadband might have access to broadband?

Ms. SOHN. Well, I am reticent to make a prediction. All I can say is that that is our goal and we are working hard to make that happen. Can our data be better? Absolutely. I do want to mention, though, just to say that the FCC didn't start collecting this data until 2014.

So before that it was the NTIA and the States doing it together. So we are kind of like a toddler in that regard and we need to do a better job, without a doubt. We may well need Congress's help in order to collect more granular data.

The CHAIRMAN. I want to just follow up a little bit on that because we hear about the worry that when you look at the national broadband map it can exaggerate service in local areas, and that was the comment you heard from many members of this Committee today. So if a service provider provides availability to a portion of a census block unit, that whole census block may be counted. We understand that, we have that agreement.

This leads to a misconception sometimes that providers are providing to a larger area than may actually be delivered. So that is, like you said, like a toddler just trying to learn. I wonder is there some enticement for carriers to purposefully overstate their coverage of an area in terms of either additional payments, additional incentives that they can say, yeah, we have covered this? Are there

incentives out there, inducements that would help explain to us why they may want to overstate what is actually covered?

Ms. SOHN. Well, I don't want to speak for the carriers, but I will say this. If they do overstate their coverage, the Tribes have two options: number one, the carriers that serve tribal lands must engage with the Tribes, and that is a place where the Tribes can deal with the carriers' overstatement there; or they can come to us, they can come to ONAP. So we will enforce those kinds of overstatements. But I really don't want to get into what the carriers were thinking.

The CHAIRMAN. So, Mr. Goldstein, one of the recommendations has to develop performance goals and measurements to track progress to achieve, including tribal lands. The FCC stated in the response to the GAO report the agency already had performance measures for in-home access. Are there further actions that the FCC should be taking?

Mr. GOLDSTEIN. Mr. Chairman, the kinds of performance measures that the FCC has are not, as Ms. Sohn said, related to tribal lands, they are very broad in nature; they cover rural areas generally, the Nation in general. They are for in-home access, as well as for the E-rate program.

With E-rate program itself, I would add that this is a program that has been around for many, many years, and unlike, like Ms. Sohn said, where they are just getting involved in terms of trying to understand data for in-home access, in the E-rate program we have been writing reports for more than a decade which have criticized the FCC's inability to develop performance measures in that program. So the fact that they still don't have them for Tribes, even though they have in the last couple years developed them more broadly, is of some concern.

The CHAIRMAN. You had also focused in the report on the Department of Agriculture, the FCC. Other agencies like the Department of Commerce, the Department of the Interior are mentioned in the report, but they are not really included in the report's recommendations. Anything you would like to add about the Department of Commerce or the Department of the Interior?

Mr. GOLDSTEIN. We have written a number of reports in the last couple of years taking a look at the Recovery Act programs of BIP and BTOP and the like, and we have made recommendations, sadly, that are very similar to the ones we made here today regarding a lack of performance measures. Too many of these kinds of programs where we are spending billions of dollars, the money is being sent out the door without any adequate oversight of exactly what it is being used for and, even before that, what the goals are that the agencies are trying to achieve and how they are going to measure when they are achieved.

So, therefore, it is difficult to determine what is being achieved, what kind of overlap might exist, how money might be targeted better, things like that. So without these kinds of measures in all of these programs, we don't get as much progress as we probably could.

The CHAIRMAN. And, Mr. McBride, the Community Connect grants were part of the $33 billion spent improving access to universal high-speed internet access. The Community Connect grants

were awarded to rural communities, including tribal communities, to provide high-speed internet service. The GAO report states that between 2010 and 2014 $53 billion, as we have talked about, had been spent. Of that, approximately $3 million was awarded to tribal lands, by my math in this. Is there a dedicated stream of funding for tribal broadband and is it something that needs to come from Congress?

Mr. MCBRIDE. Tribal areas are prioritized under Community Connect and DLT. I am not sure which statistics you are referencing. Since 2009 we have funded $77 million in Community Connect grants, and $14 million of that has been targeted to tribal areas. Last year we were able to fund five projects and four of them were to tribal areas. So we are trying to target them.

The CHAIRMAN. There are a number of examples of interagency issues between tribal carriers that they face. I don't know if rural utility services have a way to help tribal communication carriers when interagency issues arise between, say, the rural utility service, the FCC, other Federal agencies. Do mechanisms exist?

Mr. MCBRIDE. Certainly for our borrowers, if there are issues, we are happy to work with them and coordinate with other agencies and help in any way we can to facilitate conversations that help them achieve their goals.

The CHAIRMAN. Well, I want to thank all of you for your testimony today. We appreciate your taking the time to answer the questions, to be patient as the questions continued.

The hearing record is going to remain open for the next two weeks. There is a possibility you may receive written questions from some of the members who thought of additional questions after your testimony or who weren't able to be here. But I want to thank all of you for being here.

This hearing is adjourned.

[Whereupon, at 4:05 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)

Introduction

The National Congress of American Indians (NCAI) is the oldest and largest representative organization of American Indian and Alaska Native tribal governments. NCAI represents the broad interests of tribes and their citizens to promote the advancement of tribal sovereignty and self-determination. On April 27, 2016, the Senate Committee on Indian Affairs held a hearing on, "The GAO Report on, 'Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands'". The hearing focused a report released by the Government Accountability Office (GAO) on February 3, 2016, which highlighted programmatic and interagency issues to deploy telecommunications services on tribal lands. The report determined that the Federal Communications Commission (FCC) and the U.S. Department of Agriculture (USDA) did not coordinate well in telecommunications programs, outreach, and training to tribes. In addition to the need for joint outreach and training efforts between the FCC and USDA, the GAO recommended that the FCC develop performance goals and measures to track progress on Internet availability in households on tribal lands; improve reliability of data regarding institutions receiving funds under the Schools and Libraries (E-rate) Program by defining "tribal" on the program application; and develop performance goals and measures to ensure tribal schools and libraries receive affordable Internet services.

While the focus of the Hearing was on the findings and recommendations highlighted in the GAO report, a number of issues were also raised including requests for legislative action to increase access to private capital and regulatory action to preserve the Universal Service Fund (USF) for carriers serving tribal lands. A number of Committee Members also raised concerns over how the FCC collects information for broadband availability on tribal lands, and how reliable that information is since carriers self-report U.S. Census blocks they receive USF support for. GAO also acknowledged that certain inaccuracies with different maps illustrating broadband availability on tribal lands have prevented some tribes from accessing federal funding for broadband projects. The FCC responded that it could not collect granular level data on tribal lands because it could have privacy implications and recommended that Congress look at what actions to take regarding the issue.

NCAI respectfully submits this testimony for the record of the Senate Committee on Indian Affairs hearing on, "The GAO Report on, 'Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands'".

Telecommunications In Indian Country

The primary law governing our telecommunications sector is the *1934 Communications Act,* which was last amended in 1996 due to early and rapid advances in wireless and cable technologies. Section 254(b) of the *1996 Telecommunications Act* established six universal service principles to meet the goals of providing affordable and quality telecommunications services across the country. In order to reach these universal service objectives the *1996 Telecommunications Act* created the Universal Service Fund (USF), and required carriers providing interstate telecommunications services to contribute a fee to the fund to support telecommunications deployment across the country.

In the 2000 U.S. Census, it was estimated that less than ten percent of tribal lands had access to the Internet, and that less than 69 percent of tribal households had access to basic landline telephone service. During the following decade tribal leaders and organizations like NCAI held numerous meetings with the FCC. These meetings sought to educate the FCC on ways it could change its regulatory priorities to be more inclusive and receptive to telecommunications deployment on tribal lands. However, change came slowly as tribes quickly found challenges with navigating the complex regulatory framework of the FCC. Additionally, the constant re-

lease of technical and lengthy policy changes stretched tribal budgets for advocacy efforts. It is during this period that tribes advocated for the creation of a tribal office at the FCC that could directly consult with tribal nations and act as a channel to receive tribal input. After a decade of these discussions the FCC created the Office of Native Affairs and Policy in 2010, and since then consultation and engagement with tribal nations has reached heightened levels.

While the FCC has released numerous regulations over the past 15 years to bridge the "Digital Divide" in Indian Country many tribal lands across the country are still lacking access to modern communications technologies and services. Many tribes have received first-time connections to the Internet through the Indian Healthcare Service, or other federal programs that have connected tribal schools, public safety facilities, and government buildings. However, residential service remains an area of challenge as the drive of "market forces" have not connected the majority of tribal lands. Additionally, services such as those provided through IHS and other federal programs often operate within closed networks to ensure appropriate bandwidth is available for the services they need to provide. While a majority of tribes have established IT networks to connect facilities on tribal lands, just ten of the 567 federally-recognized tribes have established telecom companies to provide residential phone and Internet services.

Tribal Lands Continue to Remain the Most Disconnected Areas of the Country

As aforementioned, for well over a decade tribes and the federal government have referenced a 2000 Census finding that less than ten percent of tribal lands have access to the Internet. That same data also proclaimed that less than 69 percent have access to analog wireline telephone networks. Today there are conflicting reports regarding broadband availability and adoption in Indian Country between the FCC, Department of Commerce, and the U.S. Census, thereby making it difficult to determine where targeted funding for tribal lands is needed.

According to the FCC's *2016 Broadband Progress Report,* 41 percent of residents on tribal lands lack access to advanced telecommunications services, compared to 10 percent of the overall U.S. population as highlighted below:

Americans Without Access to Fixed Advanced Telecommunications Capability (Millions)[1]

	Population Without Access	Percentage of Population Without Access
United States	33.982	10%
Rural Areas	23.43	39%
Urban Areas	10.552	4%
Tribal Lands (Overall)	1.574	41%
Rural Areas	1.291	68%
Urban Areas	0.283	14%

See Federal Communications Commission. *2016 Broadband Progress Report*. Jan. 29, 2016. FCC 16–6. Table 1. Pg. 34. Available at *http://transition.fcc.gov/Daily__Releases/Daily__Business/2016/db0129/FCC–16–6A1.pdf.*

These statistics are based on the FCC's current speed benchmark of terrestrial services provided at speeds of 25 Mbps download/3 Mbps upload (25 Mbps/3 Mbps), which the FCC determined was required to use high-quality video, data, voice, and other broadband applications in a household with multiple users. This data is further disaggregated below:

Tribal Lands Without Access to Fixed Advanced Telecommunications Capability[2]

	Population	Percentage of Population
Tribal Lands	1,573,925	41%
Rural Areas	1,291,330	68%
Urban Areas	282,595	14%
Alaskan Villages	128,638	49%
Rural Areas	113,706	70%
Urban Areas	14,932	15%
Hawaiian Home Lands	367	1%
Rural Areas	307	7%
Urban Areas	60	0%

Tribal Lands Without Access to Fixed Advanced Telecommunications Capability[2]—Continued

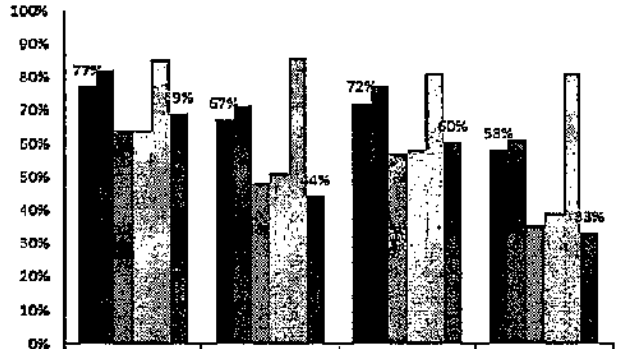
	Population	Percentage of Population
Tribal Lands in the Lower 48 States	588,324	58%
Rural Areas	469,818	72%
Urban Areas	118,506	33%
Tribal Statistical Areas	856,596	34%
Rural Areas	707,499	66%
Urban Areas	149,097	10%

Id. Table 2. Pg. 35.

The FCC explained that this information is collected biannually when carriers receiving USF support report Census block service data on FCC Form 477. Numerous Members of the Committee asked questions regarding the collection of this information, and specifically how this information can be used to identify which areas of tribal lands lack access to broadband service. In response the FCC raised concerns with the collection of more granular level data as it could have privacy implications and that it may take an act of Congress to mandate such collection of data. Nonetheless, GAO noted issues with data collection and specifically referenced that inaccuracies with the National Broadband Map have precluded some tribes from accessing federal funding for telecommunications projects on tribal lands.

Additionally, the National Telecommunications & Information Administration (NTIA) collects data on broadband Internet adoption. A study conducted by NTIA was released in 2013 and found that broadband adoption rates among urban American Indians and Alaska Natives hovers around 60 percent, while a 33 percent broadband adoption rate for rural tribal households ranked the lowest among all ethnic groups. The survey also found rural American Indian and Alaska Native groups had the lowest computer ownership rates compared to their urban counterparts. It is also important to note that NTIA and the FCC's definition of "broadband" high-speed Internet in 2013 was 3 Mbps/768 Kbps.

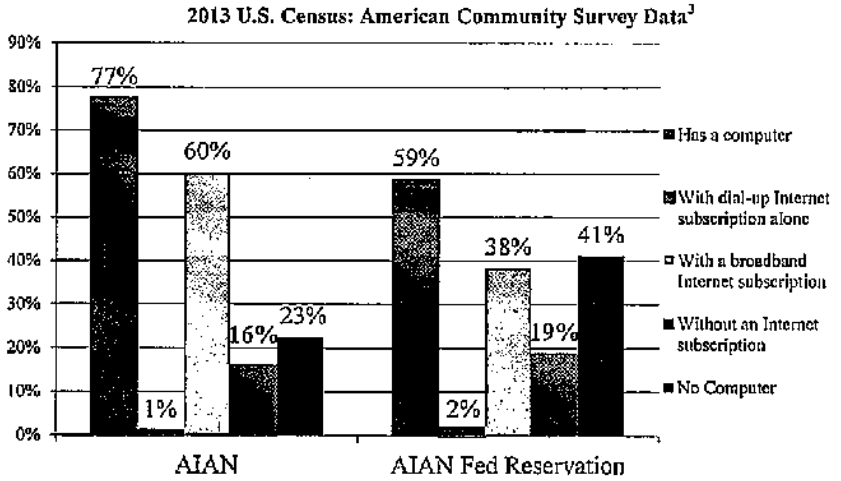
Household Computer Ownership and Broadband Internet Adoption by Urban/Rural Location, Race, Ethnicity, Percent of Households, 2011



	Computer Ownership		Broadband adoption	
	Urban	Rural	Urban	Rural
All Households	77%	67%	72%	58%
White	82%	71%	77%	61%
African American	64%	48%	57%	35%
Hispanic	64%	51%	58%	39%
Asian American	85%	86%	81%	81%
American Indian and Alaska Native	69%	44%	50%	33%

Source: *Exploring the Digital Nation: America's Emerging Online Experience.* June 2013. Department of Commerce National Telecommunications & Information Administration and the Economics and Statistics Administration

Finally, 2013 Census American Community Survey (ACS) data similarly found that American Indians and Alaska Natives overall, have higher rates of computer ownership and broadband Internet subscription rates compared to those residing on reservation and trust lands. However, according to the overall 2013 Census ACS data, American Indians and Alaska Natives overall continue to have the lowest broadband Internet subscription rates and the highest group without an Internet subscription when compared to other ethnicities. It was difficult to ascertain what the Census defined as 'broadband' high-speed Internet, but it is assumed that it would have coincided with the FCC's definition of 4 Mbps/1 Mbps during this time period.



3 Reporting overall American Indian/Alaska Native Alone (AIAN): 2,439,080. Reporting on Reservation and Trust Lands: 559,491.

While all these data collection efforts over the years have demonstrated increases in broadband availability, computer ownership, and broadband adoption rates, there are still significant deficiencies in other areas. For instance, there are no reliable sources of data for wireless services and pricing on tribal lands. The Native Nations Broadband Map was meant to provide an ideal snapshot of a broad range of wireline and wireless services on tribal lands but it has failed to fulfill these goals. Much of the data that is used to populate the map is collected either through telecom carriers self-reporting areas they serve and the types of service(s) they offer, or through data collection efforts through state agencies or third-party contractors.

Originally the National Broadband Map initiative was created through the *American Recovery and Reinvestment Act of 2009* (P.L. 111–5) and offered grants through the State Broadband Initiative Program for the purposes of collecting telecommunications data. However, there was a major oversight in the legislation as the grants awarded were directed to the 50 states, five territories, the District of Columbia, or their designees-thereby effectively excluding direct tribal eligibility for data collection on tribal lands.[4] While state agencies, or their contracted designees, were expected to collect data on tribal lands some tribes refused to share data or allow outside entities onto tribal lands to collect this information.

According to a 2012 U.S. Department of Commerce Performance Progress Report, the Gila River Indian Community of Arizona, and their tribally-owned and operated telecommunications carrier refused to share information with the State of Arizona and the National Telecommunications & Information Administration.[5] Although the Report didn't specify the reasons for the Gila River Indian Community's refusal to participate in the data collection efforts, similar instances of tribes refusing to share their data or information with outside entities can be found in other areas. Data collection and retention has more recently been held as an exercise of tribal sov-

[4] *See* BroadbandUSA: Connecting America's Communities. State Broadband Initiative. Available at *http://www2.ntia.doc.gov/SBDD.*

[5] *See* U.S. Department of Commerce, Performance Progress Report. Arizona—Government Information Technology Agency. February 24, 2012. Available at *http://www2.ntia.doc.gov/files/grantees/04–50-m09045–*arizona*__department__of__administration__-__adoa__ppr2012__q1.pdf.*

ereignty since many tribes have historic and deep-seated issues with sensitive information being exploited by non-tribal individuals or entities. A key example of this infringement dates back to the early anthropological and archaeological publishing of religious and cultural practices, or seizing of sacred cultural items by non-tribal researchers. Nevertheless, Congress must empower tribes to collect this information for their own uses and purposes. Enabling tribes to determine how they collect this information, either through partnerships or through their own efforts, will advance tribal sovereignty and self-determination.

Congress Should Fund and Elevate the FCC Office of Native Affairs and Policy

In recognition of the disparate levels of telecommunications service on tribal lands the FCC established its Office of Native Affairs and Policy (FCC–ONAP) to provide technical assistance and engage in government-to-government consultation with tribal nations. The office was created without dedicated funding and it was not until passage of the FY 2014 Omnibus that FCC–ONAP received $300,000 to support its tribal consultation and training directives. FCC–ONAP did not receive a Congressional appropriation in the FY 2016 budget and the FCC has not requested funding in its Annual FY Budget Requests to Congress since FY 2014. NCAI has previously advocated that Congress and the FCC authorize and appropriate a dedicated annual budget of $500,000 for FCC–ONAP to facilitate meaningful and productive consultations with tribal governments and to support the office in hiring additional staff. It came as a surprise to learn that the FCC has previously failed to fully use the $300,000 appropriated by Congress in recent years.

While the FCC testified that they have been holding increased consultations with tribes without fully expending their consultation budget, it was not specified how and where those consultations were taking place. If these consultations were being conducted when a tribe visits the FCC offices to discuss an issue or rulemaking, then that is very different than the FCC actually visiting Indian Country or holding its regional consultations, trainings, and workshops. Additionally, funds should be used to hire additional staff and other telecommunications experts to provide technical assistance to tribes.

The FCC and Congress should also elevate the FCC–ONAP as a stand-alone office. The FCC has already established a procedural framework for stand-alone offices, such as the Office of General Counsel and Office of Engineering and Technology to name a couple. These offices were created to directly advise the FCC Chair and Commissioners as specific subject matter experts. When FCCONAP was established it was place under the Consumer & Governmental Affairs Bureau with the intent to report to, and work directly with the FCC Chair, Commissioners, and across the Bureaus and Offices at the Commission. Elevating FCC–ONAP to operate as a stand-alone office will ensure that it has the unfettered access needed to address tribal concerns and advise the FCC Chair, Commissioners, and the Commission's Bureaus and Offices on all tribal matters.

Preserve High Cost Subsidies for Broadband Deployment: Adoption of a Tribal Broadband Factor in the High Cost Fund

Section 254 of the Telecommunications Act of 1996 ensures that all Americans, regardless of where they live, will have access to communications services at reasonable and affordable rates. The Universal Service Fund (USF) has provided financial support to telecommunications companies providing service to rural and insular areas, where the cost of providing service to consumers could not otherwise be achieved at affordable rates. The FCC has established rules to provide this support through various mechanisms including High Cost Loop Support (HCLS) and the National Average Cost Per Loop Support (NACPLS), which both provide critical ongoing capital and operating support to price cap and rate of return telecommunications companies. However, regulatory changes at the FCC have not always taken into consideration the depth of telecommunications services needed in rural and tribal lands. For instance, as part of its ongoing *USF/ICC Transformation Order,* in June 2014 the FCC initiated a Further Notice of Proposed Rulemaking (FNPRM) to seek comment on reforms to the HCLS mechanism. The FNPRM proposed reforms to the HCLS mechanism, which included a proposal to freeze the NACPLS—a reform that was estimated to drastically reduce support for approximately half of all tribal and nontribal providers serving tribal lands.

In response to the FNPRM proposals, in September 2014 Alexicon Consulting submitted a white paper that analyzed what effects the proposed NACPLS freeze would

have on carriers receiving HCLS.[6] Using available data from the National Exchange Carrier Association (NECA) for the reporting years 2010 through 2012, the White Paper recalculated the HCLS for over 600 study areas based on the NACPLS freeze and adjusted HCLS recovery percentage proposals put forward by the FCC. The data illustrated potential decreases in HCLS support for a number of the tribally-owned and operated telecommunications providers and non-tribal carriers serving tribal lands.[7] On November 14, 2014, the Wireline Competition Bureau (WCB) submitted a Staff Report on the impact of the FCC's proposed reforms to the HCLS mechanism.[8] The Staff Report showed an increase in the number of study areas receiving support and a projected "zero" for study areas losing all HCLS compared to a proposal submitted by NTCA. However, the overall data set compiled by the WCB staff also illustrated that nine of the ten tribally-owned and operated telecommunications providers would receive decreases in their HCLS support of an estimated $865,000 under the FCC proposals.[9] Despite these findings by the WCB Staff Report, and analysis submitted for the record, on December 18, 2014 the FCC released a Report & Order in which it adopted its proposed reforms to HCLS on an interim basis, while indicating that it intended to act on long-term reform in 2015.[10] The FCC also adopted its proposals to freeze the NACPLS absent any consultation with affected tribes to determine how it would affect HCLS and other USF High Cost support mechanisms.

Tribal consultation followed the FCC's decision, and after a year the FCC initiated a Further Notice of Proposed Rulemaking to solicit input on the development of a Tribal Broadband Factor (TBF) within the USF High Cost Fund.[11] This rulemaking is still ongoing, but NCAI does support the establishment of a TBF within the High Cost Fund to maintain or provide increased USF subsidies to support the deployment and maintenance of telecommunications infrastructure in Indian Country. This proceeding, however, has highlighted the need for prior and informed consultation with tribal nations since it took a year for the FCC to develop these proposals after deciding to freeze NACPLS support. As aforementioned the FCC has stated it did not expend its tribal consultation budget in recent years, which is troubling given the issues that were raised as a result of the HCLS/NACPLS proceeding. Moving forward the FCC must develop rules that will provide parity for carriers that require ongoing capital and operating support to connect tribal lands to broadband services. Ongoing reforms to the universal service High Cost program must take into consideration how regulatory and financial changes could adversely affect tribal carriers and those serving tribal lands.

Congress and the FCC Should Recognize Tribal Authority to Designate Libraries on Tribal Lands

In June 2013, President Obama announced the ConnectED initiative to connect 99 percent of America's students to high-speed broadband and services by 2018. Shortly after this announcement, the Federal Communications Commission (FCC) initiated rulemakings to modernize its $2 billion Schools and Libraries program (E-rate)—the federal government's largest educational technology program. In the Final Order adopted by the FCC in August 2014, many tribal concerns were addressed, such as the need for training on various programmatic aspects of the E-rate program and the need for a Tribal Liaison at the Universal Service Administrative Company. However, the Final Order missed taking action on several key recommendations to increase tribal participation in the program. Additionally, the Final Order focused on prioritizing funding to support Wi-Fi deployment, which does not address the critical need for new hardline, and in many cases first-time, connections to the nation's schools and libraries.

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[6] *See* Federal Communications Commission. *Alexicon Consulting, "White Paper: Adjusting Recovery Percentages to Cap Total High Cost Loop Support*". Sept. 19, 2014. Available at *http://apps.fcc.gov/ecfs/document/view?id=7522902861*

[7] *Id.*, App. B–E.

[8] *See* Federal Communications Commission. *Letter for the Record from Mark Walker, Legal Advisor to the Chief of the Wireline Competition Bureau, to FCC Secretary Marlene H. Dortch, WC Docket Nos. 10–90 and 14–58.* Nov. 24, 2014. Available at *https://prodnet.www.neca.org/publicationsdocs/wwpdf/112514fcc.pdf.*

[9] *Id.*

[10] *See* Federal Communications Commission. *HCLS Reform Report and Order, WC Docket Nos. 10–90, 14–58, 14–192.* Dec. 18, 2014. FCC 14–190. paragraph 100, pg. 36. Available at *https://apps.fcc.gov/edocs__*public/attachmatch/FCC–14–190A1.pdf.

[11] *See* Federal Communications Commission. *Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10–90 and 14–58, and CC Docket No. 01–92.* FCC 16–33. Released March 30, 2016. Available at *http://transition.fcc.gov/Daily__Releases/Daily__Business/2016/db0504/FCC–16–33A1.pdf.*

Congress should enact statutory changes to enable tribal authority to designate what constitutes a "library" on tribal lands. Tribal 'libraries' are usually located in multi-service buildings that provide programs and services to tribal members, which may not constitute a formal 'stand-alone' library or necessarily be attached to a primary or secondary education institution. When the 1996 Telecommunications Act passed it recognized the Library Services and Construction Act, which provided tribes the ability to designate their own libraries. However, just months after passage of the '96 Telecom Act, the LSCA was rescinded and replaced by the Library Services and Technology Act (LSTA). Under the LSTA tribes must receive approval from a State Library Administrative Agency to designate a "library" as eligible for receiving funds for various library functions-including eligibility for participation in the E-rate program. The FCC should include this recommendation in their reports to Congress to support the need to amend the LSTA, or remove the requirement that tribal libraries be eligible for LSTA under state programs and instead restore them to being treated as agencies of sovereign tribal nations. NCAI's membership also adopted Resolution #ANC–14–049, "Support for the Creation of a 'Tribal Priority' in E-rate Funding for Tribal Libraries and Schools" (enclosed), which called for the FCC to exercise forbearance on any laws or regulations that would prevent tribal libraries from accessing E-rate funds.

Increase Tribal Nation Access to Spectrum Licenses

As the demand for commercial mobile services increases the federal government is working to free up more spectrum to support and expand wireless networks nationwide. However, due to previous auctions of spectrum licenses by the FCC many non-tribal telecommunications providers hold spectrum licenses over tribal lands but don't necessarily serve all tribal lands within a license area. In past and present circumstances tribes are unable to participate in spectrum auctions due to the vast amount of capital the telecommunications industry leverages to bid on these licenses. This has resulted in a comprehensive spectrum grab by industry without any new deployment or improvements to existing networks supporting wireless services over tribal lands. As the government continues to free up government held spectrum for commercial mobile use, tribes must receive a priority to licenses over tribal lands.

On March 3, 2011, the Federal Communications Commission (FCC) adopted a Notice of Proposed Rulemaking (NPRM), WT Docket No. 11–40, in the Matter of *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands.*[12] This was a major step in further recognizing disparate spectrum access issues experienced by tribal nations. However, since the FCC adopted this NPRM, there has been no action to initiate a next phase of rulemaking in WT Docket No. 11–40. In the WT 11–40 NPRM, the FCC recognized proposals in the *National Broadband Plan* (NBP) to extend a tribal licensing priority to commercial wireless spectrum. Recommendations from the NBP called for the development of rules for re-licensing unused spectrum to tribes and encouraging the use of secondary markets to facilitate broadband deployment to unserved or underserved tribal areas.[13] However, the inactivity and dormancy that has been the subject of WT 11–40 has stifled the promise of increasing tribal access to commercial wireless spectrum licenses.

Congress should urge that the FCC initiate a next phase of rulemaking on WT 11–40 to increase tribal nation access to spectrum licenses. Due to regulatory changes and implementations since the release of WT 11–40, the FCC should revisit the proposals included in the rulemaking and request further comments to reflect the current state of telecommunications both regulatory and technologywise. The FCC should also implement a "Tribal Priority" in the rules inclusive of commercial mobile radio services, and wireless spectrum that can be utilized to deploy critical important and robust broadband services. Regulatory rules should also strengthen the structure of negotiations with existing licensed companies and strengthen the ability of tribal nations to initiate and participate in these negotiations. Access to currently licensed spectrum is absolutely necessary as many communities and tribal nations have never received the full benefit of services that could and should be pro-

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[12] See Federal Communications Commission. *In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands.* Notice of Proposed Rulemaking. WT Docket No. 11–40. Available at *http://apps.fcc.gov/ecfs/comment/view?id=6016822908.*

[3] *See* Federal Communications Commission. *In the Matter of Improving Communications Services for native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands.* Notice of Proposed Rulemaking. WT Docket No. 11–40. Paragraph 12, page 6. Available at *http://apps.fcc.gov/ecfs/comment/view?id=6016822908.*

vided on these licenses. Adoption and utilization of broadband services cannot occur until these services are available on tribal lands.

Finally, the FCC should adopt rules that ensure there is good faith, responsiveness, and continuity in negotiations between tribal nations and service providers. As part of the fiduciary trust responsibility that exists between the federal government and tribal nations, it is critical that the FCC act in accordance with the best interest of tribes. While NCAI supports FCC initiatives to ensure that industry entities must "meaningfully engage" with tribal governments, the FCC should remain involved in these negotiations to ensure tribes are receiving fair treatment and deployment of broadband infrastructure is occurring in accordance with tribal sovereignty and community needs. NCAI's membership has also adopted a number of Resolutions calling upon the FCC to adopt regulations that would increase access to spectrum licenses including Resolution #MKE–11- 007, "In Support of a Tribal Priority for the Utilization of Spectrum on Tribal Lands (enclosed); Resolution #SAC–12–034, "Promoting Tribal Nation Access and Use of Spectrum for Communications Service" (enclosed); and Resolution #SD–15–037, "Urging the Federal Communications Commission to Improve Access to Spectrum Licenses for Tribal Lands" (enclosed).

Congress and the FCC Should Establish a Stand-Alone Tribal Broadband Fund

One of the recommendations from the National Broadband Plan (NBP) that Congress or the FCC has yet to consider is the establishment of a Tribal Broadband Fund. Chapter 8.4 of the NBP provides recommendations to Congress that would provide additional financing solutions beyond USDA RUS programs and USF support:

> 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. [14]

The NBP specified that the creation of a Tribal Broadband Fund would provide grant funding to bring high-capacity broadband services to tribal anchor institutions; conduct feasibility studies, planning and infrastructure deployment; and provide business plan development, implementation, and digital literacy training. [15] In recognition of the low access and adoption rates prevalent on tribal lands, the NBP also recommended that a portion of the Tribal Broadband Fund would provide targeted grant funding for Internet access and adoption programs. [16] While many discussion draft bills have been circulated regarding the creation of a Tribal Broadband Fund, no bill has been formally introduced.

Congress Should Establish a Tribal Seat on the Federal-State Joint Board on Universal Service

The Federal-State Joint Board on Universal Service provides recommendations on how to implement and provide critical USF investments. On June 11, 2010, NCAI sent a letter to Congressman Jay Inslee in support of legislative changes to Section 410 of the Communications Act (enclosed). In that letter, NCAI referenced recommendations from the National Broadband Plan citing, ". . .Congress should consider amending the Communications Act to establish a Tribal seat on the USF Joint Board." [17] During the 111th Congress legislation was introduced on December 16, 2010 to provide amendments to Sections 254(a) and 410(c) of the Communications Act to create a tribal seat on the Federal-State Joint Board on Universal Service. [18] Following the bill's introduction, NCAI's membership adopted Resolution #MKE–11–005, "In support of Tribal Positions on Universal Service Reform" (enclosed). To the

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[14] *See* the National Broadband Plan. *Chapter 8.4: Other Government Actions to Promote Availability*. Mar. 17, 2010. Page 152. Available at *http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf.*

[15] *Id.*

[16] *Id.*

[17] *See* the National Broadband Plan. *Chapter 9.7: Coordinating with Tribes on Broadband Issues.* Page 184. Released March 17, 2010. Available at *http://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf.*

[18] *See* H.R. 6530, *To amend the Communications Act of 1934 to establish a position for a representative of Indian Tribes on the Joint Board overseeing the implementation of universal service, and for other purposes.* 111th Congress, 2nd Session. Introduced December 16, 2010. Available at *https://www.govtrack.us/congress/bills/111/hr6530.*

extent that Congress determines the continued use of other Federal-State Joint Boards, tribal interests and representation must be included.

Attachments

THE NATIONAL CONGRESS OF AMERICAN INDIANS__RESOLUTION #ANC–14–049

TITLE: SUPPORT FOR THE CREATION OF A "TRIBAL PRIORITY" IN E-RATE FUNDING FOR TRIBAL LIBRARIES AND SCHOOLS

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the tribal communities in the U.S. have the lowest broadband deployment and adoption rates of any group of Americans, and often rely on tribal libraries and school computer labs to obtain access to the Internet; and

WHEREAS, the Universal Service Fund (USF) E-Rate program has provided more than $2.25 billion in support each year for schools and public libraries, and today 61 percent of the nation's public libraries benefit from E-Rate discounts, and more than 95 percent offer free public Internet access, up from only 28 percent in 1996; and

WHEREAS, recent studies by the Association of Tribal Archives, Libraries & Museums (ATALM) found that 10 percent of tribal libraries do not offer Internet access, 38 percent are the only source of free public Internet access in their communities, and only 17 percent of tribal libraries have ever applied for E-Rate discounts, with 15 percent actually receiving E-rate funds; and

WHEREAS, the Department of the Interior, Bureau of Indian Education (BIE) reported 130 to 140 BIE schools applying for and receiving E-rate funds over the last nine years—out of a total 183 BIE entities. However, of the E-rate funds committed for these BIE schools over the past nine years, only 60 percent was actually spent. Furthermore, many eligible BIE schools did not apply because they did not meet the 80 percent threshold to receive a discount. These statistics illustrate persistent gaps in E-rate adoption among BIE schools that are similarly prevalent in other Native-serving institutions due to their geographical isolation and inability to meet Universal Service Administrative Company (USAC) guidelines; and

WHEREAS, E-rate funding is critically important to the development and maintenance of Internet-based services to tribal schools and libraries, and without a 90 percent discount rate tribal schools and libraries are detrimentally impacted through reduction in teachers and student programs creating further distress in the most economically challenged tribal communities; and

WHEREAS, NCAI Resolution REN–13–064 called on the FCC to place the highest priority on tribal schools and libraries in efforts to modernize the E-Rate Program as part of the President's ConnectED initiative; and

WHEREAS, the definition of Tribal Schools From the National Indian Education Association is as follows:

TRIBAL PRIORITY ELIGIBILTY FOR E–RATE FUNDS
LOCAL EDUCATION AGENCIES

(1) Where Indian children eligible under Section 7117 of the No Child Left Behind Act (Public Law 107–110) [20 U.S.C. 7427] are served by local education agencies located on, or adjacent or contiguous to, an Indian reservation, any other lands held in trust by the United States for Indians, or former Indian reservations in Oklahoma, such local education agencies and Indian tribes shall be eligible and have priority for funds distributed under the Universal Service Fund (USF) E-Rate program for any fiscal year.

(2) If one or more Indian tribes represent Indian children eligible under section 7117, the Indian tribe that represents a majority of the eligible Indian children shall have priority to receive such funds under the Universal Service Fund (USF) E-Rate program for any fiscal year.

BUREAU OF INDIAN EDUCATION

(1) A school funded by the Bureau of Indian Education, including a school operated under a contract or grant with the Bureau of Indian Education, or a consortium of such schools shall have priority to receive such funds under the Universal Service Fund (USF) E-Rate program for any fiscal year.; or

(2) a school funded by the Bureau of Indian Education in consortium with an Indian tribe, institution of higher education, tribal organization or community organization, shall have the same eligibility for and be given the same consideration as a local educational agency with regard to such program.

TRIBAL PRIORITY SPECIAL RULE

(1) If an eligible local educational agency or school funded by the Bureau of Indian Education that is otherwise eligible for funds but does not apply for such funds, an Indian tribe that represents not less than ½ of the eligible Indian children who are served by such eligible entity may apply for such funds; and

(2) The Universal Service Fund (USF) E-Rate program shall treat each Indian tribe or consortium of Indian tribes applying for funds as if such Indian tribe or such consortium were a local educational agency, except that any such tribe or consortium is not subject to section 7114(c)(4), section 7118(c), or section 7119 of the No Child Left Behind Act (Public Law 107–110) [20 U.S.C. 7427]; and

WHEREAS, 85 percent of tribal libraries do not receive E-Rate funding due to eligibility restrictions, lack of awareness, and application complexities, and current statutory eligibility requirements make the majority of tribal libraries ineligible for E-rate participation; and

WHEREAS, according to ATALM, tribal libraries receive less than $3 per capita per year in contrast to public libraries which receive an average of $45 per capita per year, and the majority of Tribal libraries often do not receive services or state certification from state library agencies and are thus not eligible for Library Services and Technology Act funding, which FCC rules currently require; and

WHEREAS, the FCC has a trust obligation to Indian Country and to meet that obligation a 'Tribal Priority' to E-Rate should be developed for tribal libraries and schools to provide these institutions with targeted funding for digital broadband services, so they do not fall further behind mainstream America in terms of digital access, adoption, and applications.

NOW THEREFORE BE IT RESOLVED, that NCAI calls on the FCC and its Office of Native Affairs and Policy (FCC–ONAP) to increase awareness and remove tribal-specific barriers by: (1) Conduct outreach to tribal libraries and schools, especially those having not participated in the E-rate program previously; (2) Provide tribal specific training modules for the E-Rate program; (3) Attend national and regional tribal meetings where tribal school and library administrators are present; (4) Develop educational materials that will be part of the FCC–ONAP's Native Learning Lab and provide these materials directly to tribes via web portal or physical hard copy; (5) Provide assistance to tribal school and library awardees to comply with E-rate regulations; (6) Ensure accessibility to tribes during critical times of the annual funding cycle to answer questions and provide additional assistance as needed; and (7) grant forbearance from all applicable laws precluding tribal library participation in E-rate; and

BE IT FURTHER RESOLVED, that the FCC consult with tribal nations to accelerate deployment of high-capacity broadband to tribal libraries and schools by creating a 'Tribal Priority' so they can better serve tribal citizens by qualifying these institutions for both Priority 1 and Priority 2 E-Rate funding; and

BE IT FURTHER RESOLVED, that the FCC create new eligibility criteria that more effectively targets tribal communities for E-rate funds, such as those proposed by the 'Tribal Commenters' filing (WC 13–184) to the FCC on April 7, 2014; and

BE IT FURTHER RESOLVED, that the FCC preserve the 90 percent funding E-rate for tribal schools and libraries and re-instate Priority 2 funding for tribal communities; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8–11, 2014 in Anchorage, Alaska, with a quorum present.

THE NATIONAL CONGRESS OF AMERICAN INDIANS__RESOLUTION # MKE–11–007

TITLE: IN SUPPORT OF A TRIBAL PRIORITY FOR THE UTILIZATION OF SPECTRUM ON TRIBAL LANDS

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the 1996 Telecommunications Act provides for telecommunications infrastructure and information technology to be developed and utilized in a manner that meets the social, civic, economic, educational, and cultural needs of American Indians and Alaska Natives; and

WHEREAS, while competitive market forces have spurred robust wireless communications services in many areas, connectivity on tribal lands remains at significantly lower levels necessitating robust 'tribal centric' build out comparable to the national average; and

WHEREAS, NCAI supports the establishment of a tribal priority, similar to the current 307(b) tribal priority for broadcast licenses, for the licensing of fixed and mobile wireless telecommunications services, and ensuring its availability to qualifying tribal entities that provide service to unserved or underserved tribal lands, when such lands are within the geographic area covered by an unallocated Wireless Radio Services license; and

WHEREAS, NCAI supports increased "tribal-centric" build out requirements for carriers, including tribally operated providers of first resort or tribal joint ventures based on consultation with tribes; and

WHEREAS, NCAI supports a tribal licensing priority for tribal governments, tribal consortia, and entities that are more than 50 percent owned and controlled by a tribe(s). This is consistent with FCC rules governing the tribal priority in the broadcast radio licensing context, and the legal foundation for providing opportunities to tribes for access to spectrum is based on the federal government's trust relationship with tribal governments; and

WHEREAS, tribal governments, residents, and first responders have critical communications needs that remain unmet; carriers maintain a stronghold on wireless telecommunications licenses and have failed to meet these tribal needs.

THEREFORE BE IT RESOLVED, the NCAI strongly supports FCC rule modifications requiring carriers to immediately engage with tribal governments and either divest themselves of their FCC licenses over tribal areas or provide services to tribal lands within on an mutually agreed deployment schedule; and

BE IT FURTHER RESOLVED, the NCAI urges the FCC to support tribal efforts to use spectrum services and allocations on tribal lands should be managed in deliberated consultation with tribal governments on deployment of services, rights of way, business and tribal regulatory permissions, and tribal governments should be a part of the licensing approval and renewal process for non-tribal licenses; and

BE IT FURTHER RESOLVED, that the FCC must provide as much and sufficient spectrum to meet the public needs of Native communities. As a matter of sovereignty and trust responsibility, such vital spectrum should be provided free to Native communities. Tribal service areas should be a single service area for the entire community. If there needs to be payment for spectrum licensing, then Native governments should be given the priority to serve themselves with reserve costs calibrated (and thus, the first right of refusal for license ownership); and

BE IT FURTHER RESOLVED, that NCAI urges all spectrum policy impacting Native communities be deliberated in consultation with tribal governments; and

BE IT FURTHER RESOLVED, that the NCAI urges termination of the existing tribal bidding credit program and any reformed tribal bidding credit or tribal priority program must have the two key components: (1) such program or priority must result in tribes actually attaining licensing in their communities; and, (2) that every Native community and tribal government be able to use spectrum over their lands or communities for public interest needs; and

BE IT FURTHER RESOLVED, that the NCAI supports the establishment of a Tribal Priority for licensing Wireless Radio Services, thereby expanding the current tribal radio broadcast licensing priority and creating opportunities for access to unlicensed or unallocated Wireless Radio Services licenses to increase access to communications services; and

BE IT FURTHER RESOLVED, that the NCAI supports ensuring that this new tribal priority be available to qualifying tribal entities for spectrum access, and a qualifying tribal entity for these purposes would be an entity designated by the tribal government(s) having jurisdiction over particular tribal land for which the spectrum access is sought, or the tribal government(s) for a tribe residing in a single identifiable geographic unserved area; and

BE IT FURTHER RESOLVED that the NCAI supports the FCC requiring new licensees to consult with tribal governments for deployment of services over tribal lands and to build or divest a geographic area covering unserved or underserved Tribal lands within its license area within three years of receipt of a construction permit from the FCC, thereby promoting the availability of services to residents in the affected tribal areas within a reasonable length of time and to compel current licensees to immediately consult with tribal governments and either divest themselves of their FCC licenses over tribal areas or provide services to tribal lands within a mutually agreed deployment schedule; and,

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Mid-Year Session of the National Congress of American Indians, held at the Frontier Airlines Center in Milwaukee, WI on June 13–16, 2011, with a quorum present.

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #SAC–12–034

TITLE: PROMOTING TRIBAL NATION ACCESS AND USE OF SPECTRUM FOR COMMUNICATIONS SERVICES

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, approximately 90 percent of Native Americans living in Indian Country do not have access to Internet connectivity and the economic, cultural and human significance of that fact cannot be underestimated; and

WHEREAS, connecting Indian Country to broadband with the rest of the world can reverse centuries of neglect and isolation and enable Tribal Nations to shape the future health and welfare of their communities with critical communications infrastructure; and

WHEREAS, broadband has the potential to assist Native American people in securing their rightful place in a world economy of ideas and opportunities; and

WHEREAS, access to currently licensed spectrum is absolutely necessary as many communities and entire Tribal Nations have not seen the full benefit of the services that could and should be provided on these licenses; and

WHEREAS, the Federal Communications Commission (FCC), Office of Native Affairs and Policy (FCC–ONAP) is well positioned and respected throughout Indian Country to consult and coordinate with Tribal Nations as the FCC acts on important proceedings that impact Tribal Nations; and

WHEREAS, with the creation of the Tribal Mobility Fund together with the Connect America Fund provisions requiring engagement with Tribal Nations on many important broadband deployment issues, Tribal Nations are still waiting for the promulgation of important rules to increase tribal access to spectrum; and

WHEREAS, the attached letter dated July 19, 2012, NCAI President Jefferson Keel filed a letter to the FCC under WT Docket No. 11–40, highlighting critical issues for the FCC to act to increase tribal access to commercial wireless spectrum.

NOW THEREFORE BE IT RESOLVED, that in order to fully understand the true availability of communications service on tribal lands, the FCC must, as a threshold matter, consult with Tribal governments to ensure Tribes are receiving good faith, responsive, fair treatment and deployment of broadband infrastructure in accordance with tribal sovereignty; and

BE IT FURTHER RESOLVED, that NCAI reaffirms Resolutions MKE–11–007 and LNK–12–007, and calls for the FCC to implement a Tribal Priority in the rules inclusive of commercial mobile radio services and wireless spectrum that can be used to deploy critical important and robust broadband services; and

BE IT FURTHER RESOLVED, that NCAI, by our membership, adopts the comments made in the attached letter from NCAI President Jefferson Keel to the FCC; and BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21–26, 2012 in Sacramento, California, with a quorum present.

July 19, 2012

The Honorable Julius Genachowski,
Chairman,
Federal Communications Commission,
Washington, DC.

RE: EMPHASIZING THE IMPORTANCE OF A TRIBAL PRIORITY TO SPECTRUM LICENSES (IMPROVING COMMUNICATION SERVICES FOR NATIVE NATIONS BY PROMOTING GREATER UTILIZATION OF SPECTRUM OVER TRIBAL LANDS, WT DOCKET NO. 11–40) DEAR CHAIRMAN GENACHOWSKI,

On behalf of the National Congress of American Indians (NCAI), I would like to extend to you my gratitude for speaking with NCAI's Board during our 2012 Executive Council Winter Session in early March. At that time I expressed how important and critical the need throughout Indian Country is for fully licensed wireless spectrum. As your Commission has acknowledged, wireless services are sorely lacking in many parts of Indian Country. In many places, wireless services are not a matter of convenience, but a matter of necessity, and often life or death.

NCAI appreciated the Commission launching the Spectrum for Tribal Lands Rulemaking. Tribal Nations need access to spectrum that was licensed long ago to companies that have failed to build out to communities on Tribal Lands. Much needed rule changes will serve tribal needs in these least connected regions of the country.

It is not only a matter of need but also a matter of efficiency in the use of this important resource, and especially in those many instances where the spectrum is not being used for the benefit of our communities. Having a wireless license is not the same as ownership of property, and such licenses should be utilized by those who are willing and able to deploy wireless services for the public good.

FCC Docket No. 11–40—In the Matter of Improving Communications and Utilization of Spectrum Over Tribal Lands

NCAI and Native Public Media (NPM) submitted joint reply comments under WT Docket No. 11–40, "Improving Communication Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands" on June 20, 2011.(i) In the joint reply comments, NCAI and NPM highlighted a variety of measures the FCC could take to promote the deployment of wireless services over Tribal Lands, which included:

1) Expanding the Tribal Priority to advanced wireless services;

2) Establishing a build or divest process for spectrum use over Tribal Lands;

3) Establishing a formal and mandatory negotiation process between both current and future licensees and Tribal governments;

4) The inclusion of a demonstration of service requirement as part of any Tribal-lands safe harbor;

5) Significant modification of the Tribal Lands Bidding Credit; and

6) The adoption of well defined eligibility criteria for Tribes to obtain spectrum, as set forth in the Notice of Proposed Rulemaking.(ii)

I respectfully submit this letter to reemphasize certain requirements for success that were previously addressed in NCAI's and NPM's joint reply comments to Docket No. 11–40. It has been well over a year since the FCC released its Notice of Pro-

posed Rulemaking on this issue, and many tribes across the country are still waiting for the promulgation of these important rules to increase tribal access to spectrum.

Reemphasizing the Need to Increase Tribal Access to Spectrum

With the creation of the Tribal Mobility Fund together with the Connect America Fund provisions requiring engagement with Tribal Nations on many important broadband deployment issues, many pieces are in place to address the Digital Divide in Indian Country. Now is the time to put the most important piece in place—Spectrum priority.

With this in mind, I urgently encourage you to take the next steps and promulgate rules that the FCC has proposed to create new opportunities for Tribal Nations to access spectrum. Specifically, I urge you to take immediate action to:

1. Implement a Tribal Priority in the rules inclusive of commercial mobile radio services, and wireless spectrum that can be utilized to deploy critical important and robust broadband services. We look forward to future licensing actions or auction opportunities to license areas that support tribal lands and governmental priorities.

2. Create rules that strengthen the structure of negotiations with existing licensed companies, and strengthen the ability of Tribal Nations to initiate and participate in these negotiations. Access to currently licensed spectrum is absolutely necessary as many communities, and indeed entire Tribal Nations, have never seen the full benefit of the services that could and should be provided on these licenses. Adoption and utilization of broadband services cannot occur until these services are available on tribal lands.

3. Ensure that there is good faith, responsiveness, and continuity in negotiations. As part of the fiduciary trust responsibility that exists between the federal government and Tribal Nations, it is critical that the FCC act in accordance with the best interest of tribes. While NCAI supports FCC initiatives to ensure that industry entities must 'meaningfully engage' with tribal governments, the FCC should remain involved in these negotiations to ensure tribes are receiving fair treatment and deployment of broadband infrastructure is occurring in accordance with tribal sovereignty, FCC expectations, and community needs.

4. Minimize the ability of parties to present ultimatums in negotiations, and one-sided demands. In accordance with Executive Order 13175, "Consultation and Coordination with Tribal Governments",(iii) and President Obama's recent Executive Order, "Accelerating Broadband Infrastructure Deployment",iv the FCC should develop and implement mechanisms for tribal recourse when and if negotiations with industry entities deteriorate.

5. Create opportunities for these negotiations to recognize the unique geography, economies, and multiple-use needs of many Tribal Nations. Coordinated efforts between tribes, their respective governments, and industry entities are essential to bridging the Digital Divide in Indian Country. Planning and feasibility studies for infrastructure deployment should take into consideration the needs of the community. The recent Connect America Fund "Tribal Engagement Provisions" provide a foundation for this to occur by requiring eligible telecommunications carriers (ETCs) to meaningfully engage with tribal governments in their service areas. NCAI supports these provisions and encourages the FCC to enforce these provisions on ETCs serving tribal lands.

6. Further investigate Best Practices based on stronger rules and experiences surrounding negotiations and tribal engagement under the Connect America Fund. The new build out measures for Tribal Lands should be evaluated in coordination with Tribal Nations, and involve the carriers who are only now beginning to address tribes within their service areas. These measures should be tailored specifically to the needs of different regions and address the unique aspects of tribal governments and lands, while taking into consideration the needs of each individual Tribal Nation.

7. Implement a "Build or Divest" program in the context of close coordination and consultation between Tribal Nations and the FCC. We recognize this is a controversial point, but until the Commission takes action to enforce actual build out onto tribal lands, we will not solve the specific issues in each corner of Indian Country. Recipients of CAF funds should be legally obligated to address these specific issues and needs. Additionally, the concept of "Build or Divest" is similar to the incentive auctions authorized by Congress in the Middle Class Tax Relief and Job Creation Act of 2012 as a way to encourage the voluntary relinquishment of currently licensed spectrum.

Implementation of Tribal Priority to Spectrum Would Benefit Tribal Nations Today

In closing, I reiterate our offer to assist in any further outreach efforts to tribes for the purposes of consultation and coordination with Tribal Nations as the Commission acts in this important proceeding. With the FCC Office of Native Affairs and Policy well-positioned and well-respected throughout Indian Country, the Commission's presence across Indian Country is deeply appreciated and much needed. With the many new opportunities for Tribal Nations that the Commission has created, it is time to implement a tribal spectrum priority and bring meaningful robust wireless services to tribal lands.

Therefore, the Commission should act now to increase access to spectrum over tribal lands. A Tribal Priority to spectrum would enable American Indian tribes and Alaska Native villages to develop their own robust wireless services if they so choose or to empower tribes to develop their own regulatory authorities to engage with industry officials in the planning and deployment of robust wireless services.

Sincerely,

JEFFERSON KEEL
President, National Congress of American Indians

(i) *See* Joint Reply Comments of Native Public Media and the National Congress of American Indians. WT Docket No. 11–40. "In the Matter of Improving Communication Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands." Submitted to the FCC Electronic Comment Filing System on June 20, 2011. Posted on June 21, 2011. Available at *http://apps.fcc.gov/ecfs/document/view?id=7021688922.*
(ii) *Id.*
(iii) *See* Executive Order No. 13175, "Consultation and Coordination with Tribal Governments. 65 Federal Register 218. November 9, 2000. Available at *http://www.gpo.gov/fdsys/pkg/FR–2000–11–09/pdf/00–29003.pdf.*
(iv) *See* President Obama Executive Order, "Accelerating Broadband Infrastructure Development". June 14, 2012. Available at *http://www.whitehouse.gov/the-press-office/2012/06/14/executive-order-accelerating-broadband-infrastructure-deployment.*

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #SD–15–037

TITLE: URGING THE FEDERAL COMMUNICATIONS COMMISSION TO IMPROVE ACCESS TO SPECTRUM LICENSES FOR TRIBAL NATIONS

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, tribal lands remain the most disconnected areas across the country, and as the nation continues its shift to wireless based services tribal access to spectrum licenses is absolutely critical; and

WHEREAS, tribal areas contain complex geographies where coverage may be up to or exceed 85 percent within the more urban markets, while residents of rural and remote regions are not covered and it is often in these more rural/remote places where coverage is critical for economic development, education, healthcare, and public safety; and

WHEREAS, while NCAI supports Commission efforts to encourage competition in the marketplace tribes experience regulatory and financial barriers preventing them from participating in commercial wireless markets; and

WHEREAS, current licensing mechanisms aren't responsive to tribal needs and would incentivize the deployment of telecommunications services by smaller, more market sensitive carriers on tribal lands; and

WHEREAS, a spectrum license assigned to a tribal nation would incentivize the deployment of telecommunications services through further structured financial arrangements; and

WHEREAS, in recognition of these issues, on March 3, 2011, the Federal Communications Commission (FCC) initiated a Notice of Proposed Rulemaking under WT Docket No. 11–40 in the matter of "Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands" (WT Docket No. 11–40); and

WHEREAS, WT Docket No. 11–40 included proposals to implement a "Tribal Priority" to commercial mobile radio services and wireless spectrum to deploy robust broadband services; strengthening negotiation structures between tribes and companies holding spectrum licenses and ensuring good faith in the negotiation process; reforms to the Tribal Land Bidding Credit program; and whether a "build or divest" rule should be exercised over licensees failing to deploy to tribal lands within their service area; and

WHEREAS, since 2011, the FCC has not initiated any further rulemaking on WT Docket No. 11–40, yet the Commission has continued its implementation of the Connect America Fund to support wireless deployment through the Mobility Fund and Tribal Mobility Fund auctions; and WHEREAS, one of the primary and common barriers referenced by tribes excluding their participation in the Mobility Fund and Tribal Mobility Fund auctions is the lack of access to spectrum licenses; and

WHEREAS, since 2011, numerous tribes, tribal telecommunications providers, and tribal organizations have submitted comments to WT Docket No. 11–40 proclaiming support for the creation of a "Tribal Priority" to spectrum licenses; and

WHEREAS, NCAI's membership adopted Resolution #SAC–12–034, "Promoting Tribal Nation Access and Use of Spectrum for Communications Services" during its 2012 Annual Convention in Sacramento, CA that urged the FCC take action on WT Docket No. 11–40; and

WHEREAS, the FCC has a legal foundation for providing tribal access to spectrum licenses, which is in accordance with its federal trust responsibility and the Communications Act of 1934.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) reaffirms Resolution #SAC–12–034, which supports the establishment of a "Tribal Priority" to spectrum licenses, and urges the Federal Communications Commission (FCC) to revisit and act upon tribal proposals in WT Docket No. 11–40, in the matter of "Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands" (WT Docket No. 11–40); and

BE IT FURTHER RESOLVED, that NCAI supports the establishment of a structured secondary market negotiation process triggered by the tribal nations requiring good faith and fair market value negotiations, as well as considered reasons, as per the proposal in WT Docket No. 11- 40; and

BE IT FURTHER RESOLVED, that the Commission's tribal government engagement obligation provisions in the Connect American Fund and Mobility Fund rules be applied to carriers involved in the secondary markets agreements with tribal nations; and

BE IT FURTHER RESOLVED, that a tribal lands safe harbor buildout provision in which a licensee would be deemed to have met its construction obligations for its entire service area if it provides a specified level of service to tribal lands within the geographic area of its license with service levels in parity with the three most proximate of the top 20 Metropolitan Statistical Areas; and

BE IT FURTHER RESOLVED, that this Resolution urges NCAI to facilitate a coalition of tribes, tribal telecommunications providers, tribal task forces, tribal organizations, and non-tribal entities and associations to gather input and submit joint comments to the FCC urging action on WT Docket No. 11–40; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18–23, 2015, with a quorum present.

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION # MKE–11–005

TITLE: IN SUPPORT OF TRIBAL POSITIONS ON UNIVERSAL SERVICE REFORM

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are en-

titled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, a 2006 Government Accountability Office report found that only about 69 percent of households on tribal lands had telephone service in 2000 compared to the national rate of 98 percent. The report identifies four specific barriers to deployment: (1) the rural, rugged terrain of tribal lands; (2) limited tribal resources; (3) lack of technically trained tribal people; and, (4) rights of way issues; and

WHEREAS, the Universal Service Fund (USF) currently administers the Link-Up, Lifeline, and High Cost programs which provide much needed telephone discounts to qualified subscribers on tribal lands, and ensures that all consumers have access to affordable pay rates for telecommunications services; and

WHEREAS, in light of a limited regulatory definition of "library" as defined by the FCC, tribal libraries are often ineligible for 'E-rate' support as many do not qualify for state library funds, a fact that was specifically noted by the U.S. Government Accounting Report (GAO–06–189), in January 2006. Tribal libraries, serving as community anchor institutions, are frequently the only access point for Internet services in some tribal communities, and the lack of broadband services at these institutions impedes education, individual self-determination, social discourse and participation for tribal membership; and

WHEREAS, there needs to be a tribal seat on the USF Federal-State Joint Board to include an American Indian/Alaskan Native representative to make recommendations on implementing USF programs to provide critical investments and expand telecommunications services on tribal lands.

NOW THEREFORE BE IT RESOLVED, that the federal government should support tribal sovereignty by removing all regulatory and market barriers, and by supporting all tribal nations' efforts to attain parity of telecommunications service and technology with non-Native communities; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC, the President, and Congress to not take any action on any policy that would harm tribal efforts to serve its own communities, and that the aforementioned should do everything within federal capacity to fund tribal efforts to provide its own regulatory telecommunications solutions; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC, the President,' and Congress to support the requirement for direct consultation with tribal governments on federal policies directly impacting tribal lands and communities; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC, the President, and Congress to support the requirement for regulated commercial telecommunications entities to directly consult with tribal governments and Native community organizations on providing full service to tribal communities; and

BE IT FURTHER RESOLVED, that NCAI recognizes the path and the model that tribes have embarked upon to become their on regulatory telecommunications providers to meet the needs of their communities and these efforts should continue to be fully supported by the Connect America Fund and by the revised Universal Service Fund; and

BE IT FURTHER RESOLVED, that the NCAI strongly urges the joint support of the President, the FCC, and Congress create a tribal seat on the USF Federal-State Joint Board to be filled by an American Indian or Alaska Native so that tribes will have representation and effective input regarding the overhaul and future management of the Universal Service Fund; and

BE IT FURTHER RESOLVED, by the NCAI that Indian Country can overcome the digital divide through meaningful collaboration and consultation on USF reform through strong, engaged, and consistent dialogue with the federal government including the FCC Office of Native Affairs and Policy, and the Wireless Telecommunications and Wireline Competition Bureaus; and

BE IT FURTHER RESOLVED, during the modification of the USF, and transition to the Connect America Fund, that the USF continue to provide the much needed support of legacy technology through the Lifeline, Link-Up, and High Cost programs, which provide telephone discounts to qualified subscribers on tribal lands, ensuring all consumers have access to affordable rates for telecommunications services; and

BE IT FURTHER RESOLVED, that the NCAI strongly urges Congress to direct the FCC to permit tribal governments to determine what constitutes a "library" in

Indian Country so that the tribally designated location is eligible for 'E-rate' support; and BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Mid-Year Session of the National Congress of American Indians, held at the Frontier Airlines Center in Milwaukee, WI on June 13–16, 2011, with a quorum present.

PREPARED STATEMENT OF THE AFFILIATED TRIBES OF NORTHWEST INDIANS (ATNI)

Chairman Barrasso, Ranking Member Tester, Members of the Committee:

Thank you for this opportunity to offer our observations and recommendations on improving availability and adoption of voice and broadband communications services on Tribal lands. The plight of Indian country's communications has been well documented for many decades now. This most recent GAO Report simply continues to confirm our story of unserved or underserved Tribal lands.

The Affiliated Tribes of Northwest Indians (ATNI) was formed in 1953 by a far-sighted group of tribal leaders in the Northwest dedicated to promoting tribal sovereignty and self-determination. Today, ATNI is a nonprofit organization comprised of American Indians/Alaska Natives representing 57 northwest tribal governments from Oregon, Idaho, Washington, southeast Alaska, northern California, and western Montana.

ATNI is an organization whose foundation is composed of the people it is meant to serve—the Indian peoples. ATNI is focused on preserving for its people and their descendants the rights secured under Indian Treaties, Executive Orders, and the benefits to which they are entitled under the laws and the constitution of the United States.

Our comments are primarily directed at FCC policy, rules, and regulations. Certainly ATNI believes there is much more to be done by the FCC in assisting tribes with the deployment of broadband infrastructure on Tribal lands and sustaining fiber-based and wireless services.

With that said and with that goal in mind, Sections 254 and 706 of the 1996 Telecommunications Act were enacted by the Congress to ensure that all Americans, regardless of where they live, have access to voice and advanced communications services at reasonable and affordable rates. These universal service principles have been reflected in FCC policies and support mechanisms and have proven valuable in bringing voice and broadband communications services to some Tribal lands. However, although much remains to be done, we are concerned that the Commission has lost sight of this Congressional mandate.

The GAO recommends that data collections, performance goals, and measurements be undertaken to better understand our plight. However, that will simply continue to prolong lack of broadband deployment on Tribal lands and development of solutions that can be undertaken now to begin a positive process in compliance with the goals and objectives apparent to Congress and codified in the Telecommunications Act of 1996 twenty years ago.

Why Poor Service In Indian Country

Willing providers of communications services are not available to serve Indian country. The economics of serving Indian country do not justify the private sector involvement, even with FCC funding, which currently is declining as a result of Universal Service Reform. It appears that tribes have been left to their own means to provide adequate service, especially in more remote reservation areas. For tribes to provide their own communications will require better hands on assistance from government agencies to plan, engineer, design, train, educate, partner, and bring in private partners to construct and operate broadband communications systems.

The existing tribally-owned communications providers (essentially the 9 members of the National Tribal Telecommunications Association) should be encouraged to provide regional communications platforms. Technical resources and skills are limited to these carriers at this time. Favorable FCC policy can facilitate sharing of broadband technology, technical resources and skills, as well as back office and other administrative services. Essentially by creating the possibility of "scope and scale" for this nucleus of carriers, the Commission can fulfill on its model for rural America, including Indian country. Favorable regulatory policy must be adopted to incentivize willing service providers.

Generally speaking, there are some very fundamental issues that stand in the way of many ATNI tribes entering the process of applying for funds to deploy broadband infrastructure on Tribal lands.

- *The lack of funds available to rural communities from federal or state sources leave native communities with little means for broadband development.* The limited resources that are available fund only a portion of the infrastructure necessary to serve the entire community. For example, funds are generally available only to provide one aspect of the broadband network or service, e.g. middle mile, last mile, equipment, adoption, training or ongoing monthly service fees. This creates a very confusing and disjointed process for rural/native community development.
- *The USDA Community Connect program funds are insufficient to meet the need.* For example, the total budget for the current round of funding is only $10 million. Applications for over $100,000 million of funds were submitted during the previous round. Only eight organizations qualified for funds and none of the grants went to ATNI member tribes.
- *In addition to the lack of available funding options, existing grants are difficult to secure.* Application processes are complex, especially for tribes and small communities that do not have the local technical staff needed to prepare an application. Many funding programs require sophisticated, expensive engineering studies or research, as well as local matching funds to successfully develop a competitive application. The inaccuracy of data used to determine eligibility (i.e., National Broadband Map, Census Tract/Bloc data) often limits applications from tribes which have the greatest need. The federal agencies need to do a better job of coordinating and communicating with each other so policy and procedures do not conflict between various agencies. Everyone has a stake in this final success.
- *Technical assistance from federal agencies to identify and complete funding applications is extremely limited and does not provide the level of help needed for many tribal and rural communities.* Obstacles arise from the inconsistency in definitions (broadband, rural, etc.) across agencies. This makes it even more difficult to be successful in securing necessary funds to deploy infrastructure and provision broadband services. Specific funds are needed to support local and regional capacity building and training around technology. Deals are done locally with local private/public partnerships and a few successes are building a sustainable self-help network.
- *ATNI respectfully submits that there exists a need for both (1) capital funding via Tribal Resources and Economic Growth Act (TREGA) legislation to construct broadband infrastructure and (2) additional operations support via FCC USF*[1] *to make the cost of broadband services more affordable for tribal members.* If the FCC will adopt a "Tribal Broadband Factor," the effect will be to increase tribal USF payments by 25 percent. This will keep the existing tribally-owned carriers in a better position to grow and add needed infrastructure and services. The "TBF" also works to the advantage of ATNI tribal members by keeping a nucleus of tribally-owned carriers financially viable and in place. It is our hope that one day these carriers may assist ATNI tribes by sharing network facilities and operating resources with ATNI members, making it easier for us to take responsibility for our own broadband services.

In addition to the concerns identified above, the following additional points will be discussed within these comments in more detail. Our comments are intended to shed light on how access to quality broadband services can be improved on ATNI member Tribal lands:

- Large price cap carriers designated as incumbent Local Exchange Carriers are responsible for underserving much of Indian country, including ATNI Tribal lands;
- Fiber/significant bandwidth capacity in the network is required to adequately meet the broadband needs of ATNI native communities;
- Lifeline voice and broadband rates are important for ATNI peoples, and
- Quality broadband could be expanded more rapidly throughout ATNI Tribal lands if broadband service providers had favorable regulation that promoted sharing of infrastructure.

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[1] The FCC is currently seeking comment and considering adoption of a "Tribal Broadband Factor" in its proceeding to Reform USF for Rate-of-Return Carriers. The "TBF" should be adopted to facilitate a long-term deployment of broadband beyond Tribal lands served by existing tribally-owned carriers.

ATNI Tribes are Underserved by Large Price Cap Carriers

The ATNI tribal members generally reside on reservations that are remote, sparsely populated, and high-cost to serve. The support funds provided to large price cap carriers that serve much of Indian country have not been used to bring fiber networks and robust broadband to Tribal lands.[2] Tribal lands are underserved. And, as yet, the penalties levied by the FCC for underservice are not stiff enough to cause these carriers to walk away from Tribal service areas, which leave the Tribes without access to federal universal service funds (USF).

The FCC National Broadband Plan released in 2010 acknowledged that Tribal lands were underserved and more support funds would be needed to deploy needed broadband infrastructure. Fast forward 5 years and another report, the FCC 2015 Broadband Report, confirms that nothing has changed to improve access to broadband services on Tribal lands. More support funds have not been directed to these areas. In fact, rather than address this recognized need more specifically within FCC rules and regulation, Tribal lands continue to be subject to the same regulatory policies and programs that apply to all of rural America. The result is that we now have a "rural-rural" divide that is getting wider in rural America between non-tribal and Tribal lands.

Providing additional funds to large price cap carriers would not solve this problem. These large carriers are focused on maintaining or increasing market share in urban markets and new markets, because they represent a long-term financial incentive. Managerial resources are committed to these lucrative markets that have the potential to generate significant earnings for shareholders. Realistically, the national policy to enhance competition in a communications marketplace of converged technology has ensured that Tribal lands will remain forever underserved by large price cap carriers.

Proposed Corrective Action: To improve the quality of broadband, service providers must be truly interested in engaging the ATNI tribes to identify and meet the specific communications needs of ATNI native communities and peoples. The FCC should adopt new programs to incentivize small rural local exchange carriers, new entrants, or the tribes themselves to take up the challenge of providing reasonably comparable broadband service on Tribal lands. Reformed USF programs should provide a specific fund, a "Tribal Broadband Fund," to be used exclusively for the build-out of Tribal lands.

The FCC should also adopt new rules through a proposed rulemaking that establishes an expedited process for the removal of an incumbent eligible telecommunications carrier (ETC) that has not demonstrated its willingness to adequately serve an ATNI member. Rules should be established by the FCC that allow the tribe, or another ETC designated by the tribe, to replace the incumbent ETC and embark on a mission to improve broadband service for the tribe. Putting in a new service provider would allow the tribe to gain access to universal service funds that will finally be used for the intended purpose of bringing the benefits of broadband to the members of ATNI.

Fiber Is Necessary in the Network to Serve Native "Anchor Institutions"

The primary goals of ATNI are promotion of health, education, welfare, public and personal safety, and economic and employment opportunities for its people. From a communications network perspective, all of these basic needs are associated with high bandwidth requirements, i.e. Gigabit speeds. The large price cap carriers have linked their expansion of service in rural areas to deployment of 4G wireless networks. This is an important step in moving out broadband to rural America, but wireless has its limitations, and the FCC speeds that have evolved in recent years, i.e. 4/1, 10/1, and 25/3 Mbps are keyed only to robust residential application. To serve the bandwidth need of "anchor institutions" a fiber connection offering Gigabit speed is required.

The "anchors" are the source of quality-of-life in any community. ATNI has formed committees within the organization to maintain a continual focus on these the basic needs of the tribes. It has become very apparent to ATNI that broadband brings with it the promise of improving the tribe's ability to make significant advancement in all of these areas. In this 21st century a robust broadband network has become the platform for sharing information and applying new technology. To participate in the gains resulting from the rapid development of broadband applications, investment in fiber backbone is essential. The large carriers have crisscrossed

[2] As a contrast, NoaNet is a non-profit wholesale broadband provider in Washington State that works through public utility districts to connect underserved areas of the state with fiber optic networks. The E-rate program is utilized to bring high capacity broadband to libraries, higher education, and medical providers.

the nation with such networks reaching into urban Northwest locations, including the Seattle/Puget Sound corridor, the Spokane Inland Empire, and the Portland Metropolitan vicinity. But none found their way to Warm Springs, Oregon, until the Confederated Warm Springs Tribes tackled its communications needs. We need more success stories like this one.

Proposed Corrective Action: Constructing fiber networks on Tribal lands will require access to capital. Corporate charters of federally recognized tribes typically contain a provision restricting the tribe from mortgaging property. This is an obvious hurdle that prevents borrowing of funds from banks. Thus, the USDA Rural Utilities Service (RUS) has essentially become the only lender available to tribes. To enable the tribes to move forward in establishing their own telecommunications companies, RUS regulations should include specific provisions to ensure access to and extension of low interest federal government loans to tribes. RUS has at its discretion the ability to use the Substantially Underserved Trust Area (SUTA) provisions incorporated within the Farm Bill to grant 2 percent loans.

Another opportunity to obtain capital funding occurred with the recent FCC Rural Broadband Experiments. Unfortunately, the FCC bidding rules were designed to shut out tribal bidders. Unreasonably expensive Letters of Credit (LOC) were required from a Top 100 bank that were to remain in place for over 10 years and offset the total amount of funds awarded by the FCC. Tribes were unable to obtain a LOC. In addition, start-up companies were disqualified from participating because they could not produce 3 years of audited financial statements, a requirement literally impossible to meet.

The FCC did not grant waivers of these requirements. One provisionally selected company that intended to serve Tribal land was disqualified for not meeting the above requirements, even though the 4 principles of the company had over 120 years of combined telephony and business management experience, including building out Atlanta, Georgia for the 1996 Olympic Games.

With the CAF II Auctions on the horizon, the FCC should utilize bidding rules that do not shut out tribal bidders, including the 3 years audited financials and the LOC. The Tribal Bidding Credit should remain available, since this additional incentive should help to attract broadband providers interested in serving Tribal lands.

Deep Discount Tribal Lifeline Rates Should Apply to Both Voice and Broadband Services

Most tribal lands are home to a high percentage of poverty level income households. This is true for the ATNI tribes, as well. Consequently, the affordability of voice and broadband service, if available, is a key factor in determining the service penetration level on Tribal lands. For example, several tribally owned telecommunications companies report that 75–80 percent of their tribal residents qualify for and receive Lifeline service.

Proposed Action: The FCC should not disrupt the application of its Lifeline program for the tribes. The current poor level of voice and broadband penetration speaks to the importance of retaining Lifeline rates. If these discounted rates were taken away, the already documented low subscription rates on Tribal land would undoubtedly suffer severely.

As the FCC contemplates whether to establish, or at what level to establish broadband Lifeline rates, it should consider the lack of penetration and adoption levels on Tribal lands. Granted, this poor performance is actually a function of lack of broadband infrastructure deployment and uneducated tribal members that do not understand the power of broadband or know how to use it. Nonetheless, the issue of poverty level income should not be lost in an FCC rulemaking. Bringing broadband to Indian country and pricing it at extremely discounted rates will be necessary if penetration and adoption levels on Tribal lands are to see reasonable movement toward nationwide averages.

Infrastructure Sharing Among Tribes Could Improve Broadband Penetration

The communications business is becoming more complex and sophisticated as technology convergence drives change in the industry. The business remains highly capital intensive, as well. The result is shorter useful lives for each generation of technology, and an increasingly higher demand for capital to keep up with technological innovation. A competitive communications industry, even in rural America, amplifies the effects of technological advance. All of these factors create a tremendous need for funding in the most high-cost to serve areas of the nation, especially on Tribal lands.

Interestingly, as these pressures for capital mount, the FCC has determined that budgeted USF funds should be capped annually at about $8 billion. This puts a strain on the distribution mechanisms in place to adequately fund service providers in rural America. There the challenge remains to keep up the pace with the rest of America, while support funds are frozen or declining.

Keeping up the pace is necessary for rural American communities to survive and thrive. The socio-economic health of rural America is tied to the level of communications advancement and adoption in urban America. It is there that the national quality-of-life and economic opportunity "standards" for communications/broadband networks are set.

The dilemma for ATNI tribes is even more critical. The urban-rural divide is emerging because access to communications services on Tribal lands has not kept pace. And now when FCC policies require cost containment and consolidation of operations, the future of broadband on already underserved ATNI Tribal lands becomes cloudier.

Technology advance can be viewed as a blessing in this instance. For example, soft-switch technology has opened the way for remote management of gateways to the network. Established service providers, including NTTA members, can use this switch technology to provide operational support for start-up companies located in neighboring states. Start-up companies can actually avoid the cost of a soft switch (over $250,000) by electing to have a "neighbor" company perform the service. Such a decision introduces "scope and scale" immediately into the operation of a remote, start-up communications provider.

Proposed Corrective Action: An outdated FCC rule in the NECA Interstate Access Tariff FCC No. 5 requires that outsourced switching services be acquired from a service provider located in the same LATA. The reason for this rule was to avoid the Interexchange Carrier (IXC) from incurring costs to rehome its switch locations. However, in a "greenfield" situation, the opposite is true. The IXC is able to avoid cost by utilizing existing connection points in the network, rather than building out to a new switch location. This is a win-win solution for all parties. An ATNI member stepping up to provide needed communications services for its tribe could establish its own tribally-owned carrier, and by agreement utilize the infrastructure and technical expertise of one of the existing tribally-owned companies to provide switch functionality.

The cost benefit of this arrangement extends beyond the initial start-up of service. A start-up service provider not only avoids the initial capital cost of a switch, but it also avoids future upgrade costs and change out of technology. Operating costs are avoided too, since specially trained technicians are not required in-house to maintain a switch.

The FCC should revisit the existing tariff rules and allow rural service providers to share infrastructure without regard to LATA location.

Conclusion

When one considers the daunting task of deploying broadband in rural America, the challenges only become greater for the ATNI member tribes. If the existing universal service programs were not in place, it is unlikely that any native communities on Tribal lands would have the quality of communications service they have today. And what has been accomplished is small, when compared with the need that continues to exist today. Lack of infrastructure is the primary reason the FCC and RUS must coordinate needed corrective action to facilitate ATNI tribes and all of Indian country attaining a reasonable parity with the rest of America. In addition to other steps outlined in these comments, the Commission should create a new universal service program, a "Tribal Broadband Fund," specifically and exclusively for the dual purposes of (1) funding broadband infrastructure deployment on Tribal lands, and (2) sustaining affordable broadband services for the residents of native communities on Tribal lands.

PREPARED STATEMENT OF THE CHEROKEE NATION

On behalf of the Cherokee Nation, we write regarding the oversight hearing held on April 27, 2016. The Committee considered a GAO Report entitled *"Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands."* We greatly appreciate the Committee's attention to matters of accessing the Internet in Indian country.

Cherokee Nation is headquartered in Tahlequah, located in northeast Oklahoma. Our tribe is the largest federally recognized American Indian tribe with more than 330,000 citizens. Nearly 75,000 of those citizens reside in rural communities within

our jurisdictional boundaries across northeast Oklahoma. Similar to the many tribal governments across the Unites States, Cherokee Nation provides the basic needs of life like housing, food, and employment for many citizens who are impoverished in our communities.

Increasing Internet access through federal programs designated specifically for Internet is critical in Oklahoma. The map used to describe tribal lands in the report does not show Cherokee Nation and many other tribes that exist in Oklahoma that do not have exterior boundaries, but are included as a footnote under the Census term Oklahoma Statistical Areas. Services provided through USDA's Rural Utility Service (RUS) and FCC's Universal Service Fund (USF) to the 39 Oklahoma tribes remain very helpful to our citizens and facilities.

The recommendations raised in the GAO report are valuable to improving the success of Internet deployment in Indian country. As stated by Sen. Franken (D–MN), growing Internet availability in the 21st Century's rural infrastructure is akin to expanding the telephone network in the 20th Century. Internet is imperative to being competitive in research, education, commerce, and healthcare. Internet access for all is achievable.

Below are Cherokee Nation's comments regarding the recommendations provided in the GAO Report 16–222 and in response to discussion during the hearing.

1. The GAO proscribes greater coordination in outreach and programming efforts between the FCC's Office of Native American Policy/Universal Administrative Service Company tribal liaisons and USDA's Rural Utility Service offices as each programing effort often overlaps and where one program may not provide the right solution for a tribe, as products slightly differ. We agree such coordination will disseminate information in a more efficient manner during visits to Indian country and benefit tribes.
2. The GAO Report 16–222 recommends improving the National Broadband Map and data points used to show Internet deployment. Much discussion was provided during the hearing in building out the metrics of assessing access and deployment beyond large census blocks and instead using more meaningful metrics. The Cherokee Nation recommends further developing such metric tools for assessment and that the metadata disclose the amount of federal funding spent on areas in Indian country for Internet adoption and deployment.
3. The GAO Report 16–222 recommends creating measurable goals to increase adoption as key to all programing success. During the oversight hearing, discussion about this recommendation reverted to gaining a better understanding of our current status. Visionary goals will leverage improved metric tools in order to create a better assessment and an accurate benchmark.

   In creating these goals, Cherokee Nation hopes continued consultations or potential advisory committees are supportive of dialogue and representative of tribal nations that result in communication between tribes and the federal agencies overseeing programs that deploy and provide Internet. Realistic goals that meet the needs of tribes are critical to develop together, rather than one-sided strategies filled with assumptions and errors. Items to keep in mind while developing goals include, but are not limited to, finding sustainable funding mechanisms, providing room for tribal telecommunications company development, continuing the availability of spectrum in Indian country, and providing cost benefit analysis of technologies prior to deployment and construction.
4. Lastly, the GAO report recommends defining "Tribal Programs" in the Schools and Libraries Program, commonly known as the E-Rate application. Cherokee Nation agrees this would be beneficial. We recently submitted an E-Rate application this past month.

Thank you for accepting our comments on behalf of Cherokee Nation to be included in the record for the oversight hearing held on April 27, 2016, entitled *"The GAO Report on, Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands."* We greatly appreciate your attention to matters of accessing the Internet in Indian country.

Wado (Thank you).

PREPARED STATEMENT OF THE LEECH LAKE TELECOMMUNICATIONS COMPANY, LLC

Under tribal corporate code, the Leech Lake Band of Ojibwe established its own telecommunications company in 2013. The Leech Lake Telecommunications Company launched its fixed wireless broadband services to citizens in the tribal lands of the LLBO in February of 2015. The broadband needs in the tribal lands of the Leech Lake Band of Ojibwe (LLBO) were not met by local ILEC/CLEC telecommunication carriers. The Leech Lake Telecommunication Company provides wireless fixed broadband services because it is the most cost efficient means to rapidly deploy broadband services to all areas of the tribal lands.

Lack of broadband in LLBO tribal lands still exist and are extraordinary:

1) Distance learning is nearly non-existent.
2) Where fiber exists, the costs are out of reach for low-income households. Poverty in LLBO lands is displayed by 53.8 percent of households below poverty level (American Community Survey 2007–2011) and reside in extremely rural locations.
3) A trespass dispute between the Leech Lake Band of Ojibwe and a local telecommunication company has resulted in the withholding of broadband services to Band members in tribal lands since 2008.
4) Broadband services do not exist in 9 of 15 of the Bands' communities today (See table 1)
5) Health factors for elderly and ill are high with distance to get to medical care are great.
6) Unaffordable broadband has stifled economic growth with small businesses in LLBO tribal lands.

Table 1—LLBO tribal lands Pop. Housing Unit

	Population	Housing Unit
1. Cass Lake	3885	1904
2. S. Lake	308	278
3. Inger	466	430
4. CutFoot	238	168
5. Ball Club	746	276
6. Bena	339	230
7. Kego Lake	954	1326
8. Onigum	2685	2071
9. Tower Hill/OakPt.	1278	987
10. Noopiming	140	97
11. Mission/BuckLake	837	399
12. Prescott	316	113
13. Federal Dam	133	150
14. Boy River	191	156
15. Sugar Point	172	185
	12688	8770

Most communities are small (less than 500 residents) and isolated. The tribal council headquarters are located in Cass Lake, which is also home to the Leech Lake Tribal College, Cass Lake Service Unit-Indian Health Service hospital/outpatient clinic, and headquarters of the Minnesota Chippewa Tribe, and the Chippewa National Forest.

Conclusion

The Federal Communications Commission Office of Native Affairs and Policy 2012 Annual Report stated "The lack of communications services in Indian Country—be it high speed Internet or "broadband" , traditional wireline phone service, mobile service, radio broadcast, or TV broadcast services—is well known. As the Commission has observed previously, "[b]y virtually any measure, communities on tribal lands have historically had less access to telecommunications services than any other segment of the population." (Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99–266, Report and Order Further Notice of Proposed Rule Making, 15 FCC Rcd 11794, 11798 (2000). The lack of robust communications services presents serious impediments to Tribal Nations' efforts to preserve their cultures and build their internal structures for self-governance, economic

opportunity, health, education, public safety, and welfare." (*Improving Communications Services for Native Nations*, CG Docket No. 11–451, Notice of Inquiry, 26 FC Rcd 2672, 2673 at para. 1 (2011) (Native Nations NOI).

The economic value that broadband will bring to the tribal lands is great. Job creation is expected with home-based businesses, local service establishments, telemarketing centers, increased heath care options, and an arts cooperative.

The Leech Lake Band of Ojibwe seeks grants each year to expand its fixed wireless telecommunications and with this testimony seeks an Indian set-aside with the legislature's broadband plan.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO GODFREY ENJADY

Question. Have tribes contacted you about the inaccuracies of the National Broadband Map? What have their concerns been?

Answer.

Background

The National Broadband Map was originally instituted via the American Recovery and Reinvestment Act (ARRA) of 2009 and the National Telecommunications and Information Administration's (NTIA) State Broadband Initiative (SBI). The SBI program ended with the June 2014 data collection, at which time the FCC assumed responsibility through its Form 477 data collection program. I will refer to the FCC's administration through the Form 477 data collection program for the remainder of this response.

The FCC's revised Form 477 program (done so in order to assume responsibility for the National Broadband Map) is an imperfect mechanism. For Indian Country, the flaws are even more pronounced due to the general lack of reliable data, such as roads, street addresses, and housing information. In turn, while carriers providing broadband services and reporting on Form 477 may be reporting data as best they can, the inherent limitations of the data available. As a result, the broadband mapping results reflected for Indian Country are sometimes substantially inaccurate.

Compounding the problems with the Form 477 data is the FCC's increased reliance on the produced data. Recently, the FCC has adopted rules and procedures in the areas of universal service reform, Lifeline program reform, and other areas that rely upon Form 477 data and that assume, by virtue of reporting carrier's attestation, that the data is accurate. Thus, it is in all stakeholders' interests to ensure the Form 477 data is as accurate as possible.

Inaccuracies in Tribal Areas

In general, Tribes, especially those with their own telecommunications providers, are aware of the Form 477 limitations. For example, in a proceeding to determine if small carriers were completely overlapped with unsubsidized (by federal USF support) competition, Fort Mojave Telecommunications, Inc. (FMTI), a carrier owned and operated by the Fort Mojave Tribe in Arizona, found numerous flaws related to the Form 477 data relied upon by the Commission.

Tribal entities also agree with statements regarding the limitations and inaccuracies of the Form 477 data, such as stated by NTCA—The Rural Broadband Organization in comments related to the FCC"s 100 percent overlap determination process:

> ". . .reliance on Form 477 deployment data, which formed the foundation of determinations of 100 percent competitive overlap identified in the Public Notice, is all but certain to lead to "false positives" in identifying unsubsidized competition. Indeed, comments filed by purported unsubsidized competitors in response to the Public Notice shine a spotlight on the limits of Form 477 deployment data. For example, at least one commenter attempts to dodge the very question of whether they serve specific locations, effectively reaffirming nothing more than that they serve "in the area" as stated on their Forms 477."

In conclusion, I believe that in order to put Form 477 data to uses adopted by the FCC in Tribal areas, much work needs to be done, and opportunities for adjustment must be provided. If this is not done, then we risk making the broadband connectivity problem in Tribal areas much worse due to reliance on inaccurate data.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO BRANDON MCBRIDE

Question. To date the primary extent of coordination between the Rural Utilities Service (RUS) and the Federal Communications Commission (FCC) has been through joint workshops. Do you believe that simply having the RUS present at the FCC's workshops is enough to be considered meaningful interagency cooperation? How will the RUS better coordinate with the FCC in the future to minimize duplication of funds and efforts and maximize results for broadband deployment in Indian County?

Answer. RUS agrees that participating in workshops with the FCC, in a vacuum, is not meaningful interagency cooperation. However, it is a step in the right direction. RUS staff participated in the FCC Tribal Broadband, Telecom and Broadcast Training and Consultation workshop in Great Falls, MT on May 31st through June 2nd, 2016. Not only did the workshop provide the opportunity to share RUS program information regarding our telecom and broadband programs, but just importantly the workshop closed with a consultation and listening session to hear the concerns and recommendations of Tribal leaders and Tribal telecom professionals. This type of direct input from the Tribes will inform future collaboration between the FCC and RUS. The U.S. Department of Agriculture Office of Tribal Relations Programs (OTR) and RUS will continue to build on the traditional partnering activities with the FCC's Wireline Competition Bureau and will open new lines of communications with Tribal leaders, stakeholders, providers and residents in Tribal areas who benefit every day from RUS and FCC programs. RUS staff are planning on participating in additional FCC Tribal workshops later this year in Washington, Wisconsin and Arizona.

In addition, great progress has resulted from the ongoing work as part of the Broadband Opportunities Council, which includes the Department of Commerce's National Telecommunications Information Administration and RUS, as the two lead agencies, along with the Department of the Interior, the FCC, and FirstNet, is currently working with tribal leaders to develop a Tribal Broadband Summit designed to build on the work that has been completed to date. This summit will culminate in a collaborative effort with tribal representatives to develop a blueprint for broadband deployment and use.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO GIGI SOHN

Question 1. As laid out in your 2011 Transformation Order creating the Connect America Fund, do you believe that all high-cost support for the deployment of middle mile and last mile facilities should be tied to specific obligations? If so, should the obligations for publicly-financed middle mile facilities address the adequacy of capacity, affordability, or competitive access to the facilities?

Answer. The Commission has taken significant steps to continue the implementation of the landmark reforms to the federal universal service high-cost program unanimously adopted by the Commission in 2011. A core component of the 2011 reforms was the creation of the Connect America Fund to preserve and advance voice and robust broadband services in high-cost areas of the nation that the marketplace would not otherwise serve. With each step, the Commission has adopted defined obligations of carriers to deploy broadband-capable facilities. Service providers may use support to construct the facilities required for them to meet their deployment obligations, including using support for improved backhaul and middle mile. However, while recipients of high-cost support may invest in middle mile to bolster their last-mile offerings, this support is not directly linked to specific obligations regarding middle-mile offerings. The Commission's overarching goal is to preserve and enhance the provision of broadband service to consumers in rural and high-cost areas.

Question 2. According to the Telecommunications Act of 1996, low-income and rural consumers, and those in high-cost areas, should have access to telecommunications services which are comparable to the services and rates in urban areas. What steps are you taking to ensure that tribal lands are receiving the necessary support to receive comparable services and rates, particularly where there is little competition and public money is being used to build out?

Answer. The Commission is committed to facilitating the expansion of 21st century communications to Tribal Nations across the United States.

In the last two years, the Commission has modernized two universal service programs that hold the potential to help bridge the digital divide in Indian Country. The first of these programs is the E-rate program, which is the country's largest

educational technology program. The E-rate program provides discounts for the cost of broadband services to eligible elementary and secondary schools and libraries. In order to ensure all schools and libraries can afford broadband services, the highest discount rates are provided to schools and libraries in high poverty areas, including schools and libraries in high poverty Tribal areas. In 2014, the Commission took decisive steps to modernize our E-rate system and refocus it on the broadband connectivity needs of 21st Century schools and libraries. As a part of those reforms, the Commission directed Universal Service Administrative Company (USAC) to designate an E-rate Tribal liaison and to conduct E-rate trainings tailored to the unique needs of Tribal applicants. Commission staff work closely with the Tribal liaison to enhance awareness of the program and to provide assistance in navigating the application process for representatives of Tribal Nations and Tribal communities. The 2014 reforms also include an opportunity for an additional discount for special construction charges for last-mile facilities supporting high-speed broadband to Tribal schools and libraries when funding is matched by states, Tribal governments, or other federal agencies.

In March of this year, the Commission adopted an Order to modernize a second universal service program, the Lifeline program. For more than 30 years, the Lifeline program has helped tens of millions of low-income Americans afford basic phone service. Recognizing the unique and dire economic circumstances many Tribal Nations face, the Commission provides enhanced levels of Lifeline support of up to $34.25 per month to low-income residents of Tribal lands. Not surprisingly, Lifeline is an extremely important program to low-income residents on Tribal lands. Yet, before last month's vote, Lifeline support was limited to basic telephone service. Under the new modernized rules, low-income residents of Tribal lands will soon be able to apply up to $34.25 per month toward the cost of broadband service. This change will significantly reduce the cost of broadband for low-income Tribal residents while also incentivizing businesses to deploy broadband infrastructure on Tribal lands.

In addition to the recent modernizations of the Lifeline and E-rate programs, the Commission adopted an Order and Further Notice of Proposed Rulemaking earlier this year to modernize high-cost support for rate-of-return carriers. In the Further Notice of Proposed Rulemaking, the Commission specifically sought comment on additional reforms to further promote broadband investment and deployment on unserved and underserved Tribal lands. Staff is currently reviewing the record of that Further Notice and the Chairman has committed to taking action on this important issue by the end of the year.

The Commission also has adopted initiatives to drive investment in mobile broadband on Tribal lands. For example, in 2014 the FCC's Tribal Mobility Fund Phase I reverse auction made up to $50 million in one-time funding available to Tribal lands to accelerate mobile broadband availability. In addition, both the Tribal Mobility Fund Phase I and the general Mobility Fund Phase I made a 25 percent bidding credit available for Tribally-owned or controlled providers seeking support.

In addition, since 2000 the Commission has administered a Tribal Land Bidding Credit program in wireless spectrum auctions. The credit serves as a discount for a qualified winning bidder proposing to deploy wireless facilities on a Tribal land. The Tribal Land Bidding Credit was used by a bidder in our recent AWS–3 Auction and is available to bidders participating in the Incentive Auction.

An important part of the Commission's work toward ensuring that Tribal lands have access to comparable telecommunications services is robust Consultation with Indian Country. In 2016, the Commission will ultimately hold five regional Tribal consultation and training workshops. Three have already been conducted, including events in Great Falls, MT; Keshena, WI (Menominee Tribe); and Bothell, WA (Affiliated Tribes of Northwest Indians). The United States Department of Agriculture (USDA) participates in each of these workshops. The Commission is committed to working with our Tribal partners and with USDA to ensure that the Commission's Tribal consultation and training workshops, now and in the future, provide a comprehensive and coordinated approach to drive investment into Indian Country.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO GIGI SOHN

Question 1. **Lack of data about broadband on tribal lands.** According to the GAO, there is a lack of data about how much money from the universal service fund goes toward broadband access on tribal lands specifically. How can we improve the FCC's collection of universal service data so that we can have a better idea about how native communities are being served by each of the four programs within the

universal service fund (Connect America Fund, Schools and Libraries (E-Rate), Lifeline, and Rural Health Care)?

Answer. The GAO report recommended that the FCC improve the reliability of its data related to institutions that receive E-rate funding by defining "Tribal" on the E-rate program application. The FCC agrees with this recommendation, and beginning with funding year 2017, the E-rate forms will include guidance about when a school or library should identify itself as on Tribal lands.

While not a GAO recommendation, the Commission plans to similarly improve the reliability of its data related to institutions that receive Rural Healthcare (RHC) Program support. Specifically, subject to approval under the Paperwork Reduction Act, Tribal affiliation will be tracked across all sub-programs of the RHC program—Healthcare Connect Fund, Telecommunications Program, and Pilot Program—starting on January 1, 2017.

In addition, the Commission will soon begin collecting in the high-cost program specific information about the locations that are newly served with broadband by price cap carriers and rate-of-return carriers. Beginning this year, we will start to collect from the price cap carriers that accepted Connect America Fund Phase II support geocoded location information for locations that are newly served by the carrier. This data will enable us to determine for each recipient, how much of that support is associated with census blocks that are categorized as Tribal lands according to the U.S. Census. Once Paperwork Reduction Act approval from OMB is obtained, we expect to start collecting similar information from rate-of-return carriers.

Finally, as you know, the Commission's rules provide enhanced levels of Lifeline support of up to $34.25 per month to low-income residents of Tribal lands. As a result, the Commission already collects data on the disbursement of Lifeline support to residents of Tribal lands.

Question 1a. According the FCC's 2016 Broadband Report, 41 percent of households on tribal lands do not have broadband available to them. Do you have data on the percentage of community institutions like schools, libraries and health care facilities that have broadband service available on tribal lands?

Answer. Though E-rate does not specifically earmark funds for Tribal schools and libraries, they are eligible for the highest levels of support available via the E-rate program based on their rural locations and the financial needs of their students. Many schools, libraries, and rural health care facilities serving residents of Tribal lands are not necessarily located on Tribal lands, but nearby to Tribal lands. As a result, developing one universal definition for "Tribal" is a complex and challenging task when trying to gather data on the E-rate and Rural Healthcare support that squarely benefits those living on Tribal lands. With that said, the FCC believes that collecting such Tribal-specific data would help contribute to the Commission's goal of making broadband Internet available on Tribal lands; thus, beginning with funding year 2017, the E-rate forms will include guidance about when a school or library should identify itself as on Tribal lands. We look forward to improving the reliability of the data we have regarding the E-rate program and its impact on broadband Internet availability on Tribal lands.

With regard to the Rural Healthcare Program, as discussed above, the program does not currently track whether healthcare providers participating in all of its subprograms (*i.e.,* Healthcare Connect Fund, Telecommunications Program, and Pilot Program) have Tribal affiliations. Subject to approval under the Paperwork Reduction Act, Tribal affiliation will be tracked across all sub-programs starting on January 1, 2017.

Question 1b. Do you collect data on the percentage of households that subscribe to broadband on tribal lands? If not, why not?

Answer. The Commission collects residential broadband subscription data that allows it to estimate the broadband adoption rate on Tribal lands. Specifically, the Commission collects data on residential broadband subscription at the census-tract level. Broadband services with a speed of at least 25 Mbps/3Mbps are included in this data collection. The Commission then segments areas into Tribal lands and non-Tribal lands groupings for purposes of estimating broadband adoption on Tribal lands. The Commission's most recent estimate of the broadband adoption rate on Tribal lands can be found in the 2016 Broadband Progress Report. [1]

In addition, as noted in the GAO Report, the Census Bureau is in the process of collecting information about household Internet adoption on Tribal lands. Specifi-

[1] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended,* GN docket No. 15–191, 2016 Broadband Progress Report, 31 FCC Rcd 699, Table 10 and n. 290 (2016).

cally, the Broadband Data Improvement Act of 2008 requires the Bureau of the Census to collect information from residential households, including those on Tribal lands, on Internet adoption, if the household subscribes to Internet service, and if so, whether that service is dial-up or a high-speed connection. This data will provide the Commission with information about residential Internet subscriptions (of all speeds) on Tribal lands over a long period of time.

Question 1c. Do you collect data on the percentage of schools, libraries and health care facilities that subscribe to broadband service on tribal lands? If not, why not?

Answer. The Commission does not currently collect data on the percentage of schools, libraries and health care facilities that subscribe to broadband service on Tribal lands. However, as noted in my earlier response in 1(B), the Commission has committed to improving the reliability of its data related to health care facilities that receive Rural Healthcare Program support and the reliability of its data related to schools and libraries that receive E-rate support.

Question 2. **FCC commitment to performance metrics** In the study, the GAO recommends setting goals and performance measures for broadband deployment on tribal lands. The FCC's current goal for broadband is "universal access for all Americans." What type of performance measures could the FCC develop and use that may help improve deployment of broadband to more households on tribal lands?

Answer. The Commission agrees with GAO about the importance of performance goals and measures for broadband deployment on Tribal lands. The FCC's strategic objective of maximizing broadband availability on Tribal lands is fulfilled in part through its universal service programs established pursuant to its obligations under Section 254 of the Communications Act, and Section 706 of the Telecommunications Act of 1996. In order to meet its Section 254 obligations, in its *2011 USF/ICC Transformation Order*, the Commission specifically expressed that its section 254 obligations ensured universal availability of broadband networks to all Americans living on Tribal lands. To that end, the Commission has established a performance goal of bringing broadband at speeds of at least 10/1 Mbps to high-cost areas, including Tribal lands. The Commission is in the process of considering whether and how additional Tribal-specific performance goals and measures could complement the existing programmatic-wide goals.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO GIGI SOHN

Question 1. The FCC measures access of advanced telecommunications to Internet and mobile services around the country by Census block. Is the use of Census blocks to gather data on tribal lands the most effective way to measure tribal accessibility? At the recent Indian Affairs Committee hearing, the use of Census block data was portrayed as being overly expansive and uncharacteristic of actual connectivity for individuals. What alternatives exist, if any, for ensuring quality data collection that might be more applicable to and representative of tribal connectivity at the local level? What barriers exist inhibiting the FCC from using other data collection methods?

Answer. In 2013, the FCC unanimously adopted the Form 477 Modernization Order, which requires facilities-based broadband providers to submit mobile and fixed broadband deployment data directly to the Commission.

While the Commission previously measured mobile broadband deployment by census block, we plan to measure deployment on a much more granular basis in the near future. As a result of the 2013 Order, mobile broadband and voice providers must submit shapefiles showing their network coverage areas and certify the accuracy of their submissions. Using this new and improved data, we are working to identify where mobile broadband service is available within each census block. In other words, we are utilizing our new data to produce "actual coverage area," at the sub-block local level. This allows the Commission, amongst other things, to identify local areas where, for instance, 4G–LTE service may not be available.

With respect to fixed broadband deployment data, the Form 477 Modernization Order concluded that requiring providers to report fixed broadband deployment data by census block appropriately balanced the burdens of reporting this information to the Commission with the level of granularity required by the Commission to carry out its statutory duties. However, Commission staff continues to discuss possibilities and proposals with providers, including those serving Tribal lands, to develop the most accurate and granular data set possible.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO GIGI SOHN

Question 1. Would you support streamlining applications for rights-of-way on tribal land?

Answer. While the Commission supports reasonable measures to expand broadband deployment, it is important to recognize the limits on our jurisdiction. Access to rights-of-way on Tribal land is subject to federal law through the Bureau of Indian Affairs (BIA) and to Tribal law (to the extent not inconsistent with federal law). Rights-of-way requests submitted to BIA involve an application process, and we would support any BIA effort to streamline its processes for granting access to rights-of-way for broadband infrastructure.

Question 2. Have you heard concerns throughout the Federal Communications Commission's (FCC) tribal outreach that the application process has been an impediment to completing broadband deployment projects on tribal land?

Answer. While the 2006 GAO Report entitled "Challenges to Assessing and Improving Telecommunications for Native Americans on Tribal Lands" identified the process of obtaining rights-of-way as a barrier to broadband deployment on Tribal lands, this is not an issue that is regularly raised during FCC Tribal outreach. Nonetheless, as addressed above, the Commission supports reasonable measures to expand broadband deployment.

An example of this support can be seen in recent actions the FCC has taken to facilitate wireless infrastructure deployment. In October 2014, the FCC unanimously adopted rules bringing new efficiencies to wireless infrastructure deployment. Since then, FCC staff has continued to work closely with our preservation partners—including Tribal Nations, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO)—to revise the siting review process in situations where a project has limited potential to cause significant adverse effects. As recently as August of 2016, the Commission, ACHP, and NCSHPO amended an agreement between the three parties that governs the review process for collocating small wireless facilities throughout the country, including on Tribal lands. This amendment further simplifies the process for deploying small cells, distributed antenna systems, and other small-scale wireless broadband infrastructure.

Our priority is to develop policies and rules that encourage responsible deployment. Thus, while we are committed to facilitating infrastructure deployment to meet booming demand, we also respect the critical role of subject matter experts, including Tribal Nations. State, local and Tribal governments play essential roles in this process, and we value their input.

Question 3. Has the Office of Native Affairs and Policy successfully completed any broadband deployment projects on tribal lands? If so, how is the FCC using those as a model to bring service to unserved tribal lands?

Answer. The Office of Native Affairs and Policy (ONAP) does not manage individual broadband deployment projects. In its work in Indian Country, ONAP, as the FCC's liaison with Tribal Nations, has promoted broadband deployment in Indian Country. To this end, FCC staff has supported the development of cutting edge broadband deployment efforts from Tribes and Tribal entities such as the Coeur d'Alene Tribe's Red Spectrum Communications (Red Spectrum). Red Spectrum uses a hybrid microwave and fiber system to provision customers both on and outside of the Reservation. ONAP is currently working to seed ideas and lessons learned from entities like Red Spectrum across Indian Country to help unserved and underserved Tribes more easily find a path forward to broadband deployment.

Question 4. The National Broadband Map is currently the FCC's best tool for measuring broadband coverage, including on tribal lands, and yet it is widely known to contain misleading data. When it was being created, were you aware of the inaccuracies of the National Broadband Map? Regardless, when did you become aware of its inaccuracies? What steps have you taken and will you take to rectify the map's inaccuracies?

Answer. The data underlying the National Broadband Map are no longer the best tool for measuring broadband coverage. Those data were collected by National Telecommunications and Information Administration through a state block grant program. Funding for this data collection ended in June 2014. Consequently, the data reflected on the Broadband Map is now two years out of date.

Recognizing the need to improve our mobile broadband coverage data, the Commission adopted an Order in 2013 that required mobile wireless data collection from one of the most reliable sources available-the mobile wireless carriers themselves. As a result, the Commission is now collecting coverage data directly from wireless

carriers through the Commission's Form 477. Each carrier that submits data must certify to its accuracy. We expect the data wireless carriers provide through these submissions to be more accurate than our previous data because it comes directly from the entity that is deploying the wireless facilities. We are in the relatively early stages of collecting this new coverage data from wireless carriers through the revised FCC Form 477, and Commission staff are currently analyzing these filings.