



Ben Shelly, Navajo Nation President

**Before the Senate Committee on Indian Affairs:
"Deficit Reduction and Job Creation: Regulatory Reform in Indian Country"**

Washington, DC – December 1, 2011

Mr. Chairman and Members of the Committee,

Ya'at'eeh. Good afternoon. I am Ben Shelly, President of the Navajo Nation. There are several efforts taking place on the Navajo Nation regarding job creation. Since there are multiple topics for discussion, I will first provide testimony with an emphasis on our mutual efforts between the Federal Government and the Navajo Nation to create jobs through our Broadband development. Additionally, I will touch on the Environmental Protection Agency regulatory impacts on job creation and further tourism efforts over the Grand Canyon.

ARRA Support

The Navajo Nation has a long range, sustainable Broadband plan for all regions of the Navajo Nation. The official project name is the Navajo Nation Middle/Last Mile Project: Quality Broadband for the Navajo Nation. One of the keys to our initial development of the project was funding provided under the American Recovery and Reinvestment Act (ARRA) through a \$32.2 million grant to the Navajo Tribal Utility Authority (NTUA). NTUA is an enterprise of the Navajo Nation. NTUA also provided a \$14 million co-match on the ARRA grant.

The Nation understood that the ARRA grant required a sophisticated internal financial management system and strong experience with environmental compliance review before construction could begin, especially given the context of tribal lands. That is why the Navajo Nation chose NTUA to spearhead the project, with its decades' long experience in building utility infrastructure and providing critical utility services to the Navajo People. NTUA's performance under the ARRA grant has demonstrated to various federal agencies, and Congress, that the Navajo Nation has the capacity to administer and manage a massive broadband project.

Project Progress

The territory of the Navajo Nation lies across the three states of Arizona, New Mexico and Utah. Although we are a sovereign Nation, as a project on Navajo trust land, and where the build out was initiated with federal funds, rights-of-way, and even tower permits, require federal approval and compliance with NEPA. The project therefore required Environmental Assessments (EAs) for the entire project, a project covering over half of the Nation's entire 27,000 square mile territory (approximately the size of West Virginia). The initial line includes a 550-mile Fiber optic route, with 20 miles of lateral lines; 32 new microwave towers; multiple sites housing technical equipment; and an NTUA Data Center built to house electronic equipment and software.

NTUA has worked hard to meet all of the U.S. Department of Commerce's requirements and has also worked successfully with the Department of Interior, Bureau of Indian Affairs, to complete the EAs. Recently, the Department of Interior issued a finding of No Significant Impact (FONSI) for this project. NTUA is now constructing the project and has made significant progress on the overall construction of the project, including the installation of 14 new microwave towers, construction of the Data Center, and installation of over 150 miles of fiber.

The project will build upon NTUA's existing microwave network and provide broadband access to 15,120 square miles within the Navajo Nation. Hundreds of jobs are being created in construction and maintenance of the network. The broadband network will provide 4G connectivity and high-speed internet services, similar to broadband applications in urban America. The project is a first step to cover the entire Navajo Nation, but will initially support fixed and mobile services to 30,000 households and many businesses in 15 of the largest communities on the Navajo Nation. Additionally, the project will provide an additional capacity to connect 49 tribal communities.

Health, Public Safety and Education Benefits of Broadband

The project is critical to the Navajo Nation's anchor institutions, and will bring telemedicine services to physicians and health care personnel at schools, hospitals and tribal agencies throughout the entire Navajo Nation. Public Safety will benefit through the additional 911 notification network. Educators will reach digitally to areas not feasible in the recent past. Our project will make a large dent into the digital divide on the Navajo Nation, but further efforts are needed.

Eligible Telecommunications Carrier

NTUA has recently formed a last mile telecommunications carrier, NTUA Wireless, with a minority partner, Commnet Wireless. NTUA Wireless has petitioned the Federal Communication Commission (FCC) for Eligible Telecommunications Carrier (ETC) status for the entire territory of the Navajo Nation, as a majority owned tribal telecommunications carrier. Through the Navajo Nation Telecommunications Regulatory Commission (NNTRC), the Navajo Nation formally participates in proceedings before the FCC, and is in support of the NTUA Wireless' petition. Importantly, NTUA Wireless understands that it must fully comply with the regulatory authority of the Navajo Nation and the NNTRC. The Nation therefore greatly appreciates and fully supports the FCC's recent Order to ETCs operating in tribal territory that they will hereafter be required to fully engage with tribes and certify, on an annual basis, that they have complied with tribal licensing and other jurisdictional requirements. It has been particularly galling to the Navajo Nation, and to its sovereignty, that there are licensees of radio spectrum on the Nation who do not meet their responsibilities to the Navajo People. Carriers operating on the Nation must engage the sovereign Navajo Tribe in determining appropriate build out on the Nation, in order to serve its vital institutions and community needs. Those licensees who completely fail to build out infrastructure and to provide services on the Nation should be required to turn radio spectrum over to the Nation.

Future Efforts

A recent housing needs assessment found that the Navajo Nation has a 52% unemployment rate. Accordingly, many households cannot afford access to the new broadband efforts. The Navajo Nation supports Lifeline and Linkup programs (\$1 dollar phone for low-income participants) for future ETCs to help bridge the digital divide. The Nation would also like to participate in any pilot efforts by the FCC to add broadband services to these programs.

Tribal Energy Development

The Navajo Nation is blessed with abundant natural resources and cursed with unemployment levels reaching 52 percent. Our natural resources can help to alleviate unemployment on the Navajo Nation while we preserve our air, water and land. Unfortunately, the recent actions of the US Environmental Protection Agency to impose costly and unnecessary regulation on power plants would effectively kill tribal energy development, and deprive the Navajo Nation of economic stability and much needed jobs and revenue.

The *Clean Air Act* was designed to improve air quality while promoting a strong American economy. That balance was essential to the bill's passage 40 years ago. Today that balance is at

risk in New Mexico and Arizona. The *Clean Air Act's Regional Haze Rule* set a long-term, achievable timetable for improving visibility in national parks and wilderness areas, including those in and near New Mexico, Arizona and the Navajo Nation. Under the *Regional Haze Rule*, States are tasked with developing implementation plans to limit emissions from major contributors to regional haze. Importantly, states are allowed to consider many factors in determining what is the best available retrofit technology (BART) for existing coal plants, including non-air impacts and the costs of compliance on critical local and regional industries.

In accordance with the Rule's requirements, New Mexico considered these factors, and approved and submitted to US EPA a thoughtful, comprehensive plan that addressed a variety of contributors to haze while minimizing the negative impact to our already vulnerable economy. However, instead of approving the state plan, EPA ignored it and put forward its own plan, one that calls for technology that is significantly more expensive than is required by law.

EPA's first implementation plan in New Mexico is for the San Juan Generating Station west of Farmington, and would impose the most expensive technology available, selective catalytic reduction or SCRs. This is not necessary technology for phase one of the Regional Haze Rule, which only requires reasonable progress to the goal of pristine conditions by 2065. . Moreover, in finalizing its own plan, EPA mistakenly asserted that its more expensive approach would not adversely affect the Navajo Nation – a finding that ignores reality. While San Juan is not located on Navajo land, that does not mean there will not be negative impacts to our economy and people. On the contrary, hundreds of our people are employed at the plant and the mine next door that produces its fuel. The wages they earn help to feed, house and clothe an even greater number of Navajo people.

Concerned about the EPA's rule impact on Navajo workers, contractors and subcontractors as well as the entire region, we have held government-to-government consultation with EPA to urge them to reconsider their plan and instead adopt the state plan. That plan would improve visibility through new controls on San Juan Generating Station, and it would meet federal standards for a fraction of the cost of EPA's plan. Unfortunately, these meetings have not yet convinced EPA to reconsider its decision.

The Navajo Nation is now facing similar edict from the EPA concerning BART for both the Four Corners Power Plant, on the Navajo Nation in New Mexico, and the Navajo Generating Station, located on the Navajo Nation in Arizona. US EPA again intends to impose harsh new standards on both plants, which together, utilizing Navajo coal, provide most of the revenue of

the Navajo Nation's general funds, and further jeopardize economic development and sustainability on the Navajo Nation.

The Navajo people care deeply about our natural world; and the Navajo Nation has worked through our Navajo Nation Environmental Protection Agency to preserve the air, the water, and the land around us. We also understand the need to balance environmental considerations with the economic impact on our people and our neighbors.

Where the Navajo Nation has a substantial interest in an off reservation project, the Tribe and the State should work together under the Clean Air Act and the Regional Haze Rule to set standards that are achievable and reasonable. On the Navajo Nation, until the Tribe has established its own tribal implementation plan for its coal plants, US EPA should be working with the Navajo Nation in a government-to-government relationship, and considering its trust responsibility, in setting standards that are reasonable and achievable, and not threatening to destroy the Nation's already extremely fragile local economy, or to empty its government coffers.

FAA Flyover Exemption

A recent resolution was passed by the Navajo Nation Tribal Council seeking to exempt air tour operators flying to or from the reservation from having to use allocations required for commercial air tours at the Grand Canyon. A similar exemption was extended to the Hualapai Tribe. The Navajo Nation is committed to working with the Federal Aviation Administration and the National Parks Service to create such an exemption, which would support economic development on Navajo land.

The Navajo Nation faces difficulties trying to attract businesses and extreme economic hardships. It is because of these problems that the Navajo Tribal Council is taking a proactive stance to serve the interests of the Navajo people, looking to draw in more business and opportunity as a means to assist in the future total self-sufficiency of the Navajo Nation.

Conclusion

Congress' federal support, through ARRA funding, has been a catalyst to develop broadband efforts that will bring positive economic change through future business development on the Navajo Nation. In addition, Congress' support for tribally owned or controlled carriers achieving ETC status and gaining additional incentives and access to licensed spectrum on tribal lands is of critical importance to tribal sovereignty and self-determination, as well as meeting the mandates of the Universal Service Fund for the equivalent of urban communications services reaching all rural Americans as well. Current FCC regulatory reform

that requires meaningful engagement by telecommunications carriers with Tribes will ultimately provide better services to the Navajo people and facilitate economic development. Tribes have the potential to greatly benefit from the recent actions of the FCC, and we hope that Congress will be fully supportive of the FCC's efforts to revamp the Universal Service Fund to meet all of our contemporary communication needs.

We have given you a picture of what is working and what is not working on the Navajo Nation. Congress should continue to support NTUA efforts regarding broadband development. Congress should continue to closely monitor EPA and FAA regulatory authority to foster greater economic development.

We appreciate the Senate Committee on Indian Affairs for holding this worthwhile hearing on this important topic.

Ahe'hee, thank you.