

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

**COMMENTS OF  
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

The National Tribal Telecommunications Association (NTTA) provides these comments in response to the Federal Communications Commission’s (Commission or FCC) Notice of Proposed Rulemaking released in the above-captioned proceeding.<sup>1</sup>

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom, as well as associate members Nez Perce Tribe and Sacred Wind Communications. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and assistance to members who are working to provide modern telecommunications services to Tribal lands.

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<sup>1</sup> *In the Matter of Universal Service Contribution Methodology*, Notice of Proposed Rulemaking, WC Docket No. 06-122 (FCC 19-46, rel. May 31, 2019) (*NPRM*)

## **I. SUMMARY**

In these comments, NTTA expresses its opposition to the FCC's proposal to cap the overall federal Universal Service Fund (USF) program. Capping the program, even as described in the *NPRM* with an apparent mechanism to raise the cap when necessary, assumes a certain level of finality in meeting the goals for which the USF programs were created. In Tribal areas, this goal – universal broadband service availability and service affordability – is far from complete, as NTTA will document below, and as it has numerous times in the past. With the USF capping proposal, however, the FCC is contemplating a new level of contentiousness within the USF programs – contentiousness between programs, providers, customers, carriers, governments and other stakeholders – that simply is not necessary. NTTA's members serve customers and areas that rely on all facets of the USF program, and to implement a contentious process at this time, for no good reason, is against all that the USF stands for, or should stand for in Tribal areas.

## **II. WIDESPREAD OPPOSITION TO THE FCC'S USF CAP PROPOSAL**

NTTA signed a letter, along with 64 other parties, that was filed with the Commission on June 11, 2019.<sup>2</sup> The statement contained in the letter bears repeating in full:

“When Congress codified the concept of universal service by enacting the Telecommunications Act of 1996, it called for the creation of different programs tailored to promote affordable communications services for those most in need, from students, library patrons and rural hospitals to low-income and rural communities. Grouped under a single umbrella of the Universal Service Fund, these programs are intended to work in concert to address the “digital divide” and ensure that all consumers have access to high-

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<sup>2</sup> Letter from Schools, Health and Libraries (SHLB) Coalition, filed June 11, 2019 in WC Docket No. 06-122 (*SHLB Statement*)

quality and affordable communications. Indeed, our nation's economic well-being and the well-being of people and businesses in rural and low-income communities require universal access to affordable, quality, high-speed broadband.

The parties...believe that placing an overall cap on the USF puts at risk the comprehensive mission of universal service as Congress intended and articulated it. An overall USF cap, even if sized to meet current overall demand or the sum of authorized levels plus inflation, could still end up pitting these essential programs against each other in the future and undermine efforts to solve the 'digital divide.' By contrast, the 1996 Act specifically directs the FCC to ensure that the Universal Service Fund has 'sufficient' funding, and the FCC must therefore evaluate and size each program to suit its unique and essential universal service mission. An overarching cap would thus undermine efforts to ensure that funding for each program is and will remain "sufficient" to satisfy Congress' mandates for universal service for all.

For these reasons, the organizations and associations listed here respectfully oppose the imposition of an overall cap on the Universal Service Fund."

It is worth noting the sheer diversity of interests represented in the 64 signatories of the SHLB Statement, from NTTA to Asian Americans Advancing Justice; the NAACP to the National Hispanic Media Coalition; and from NTCA to the ACLU. This diversity of interests, and the concise statement opposing the USF cap, speaks volumes as to how implementation of the cap would be viewed by various stakeholders – even beyond those signing the statement – and how contentious the process for implementing and maintaining the cap could potentially be.

### **III. BROADBAND AVAILABILITY IN TRIBAL AREAS**

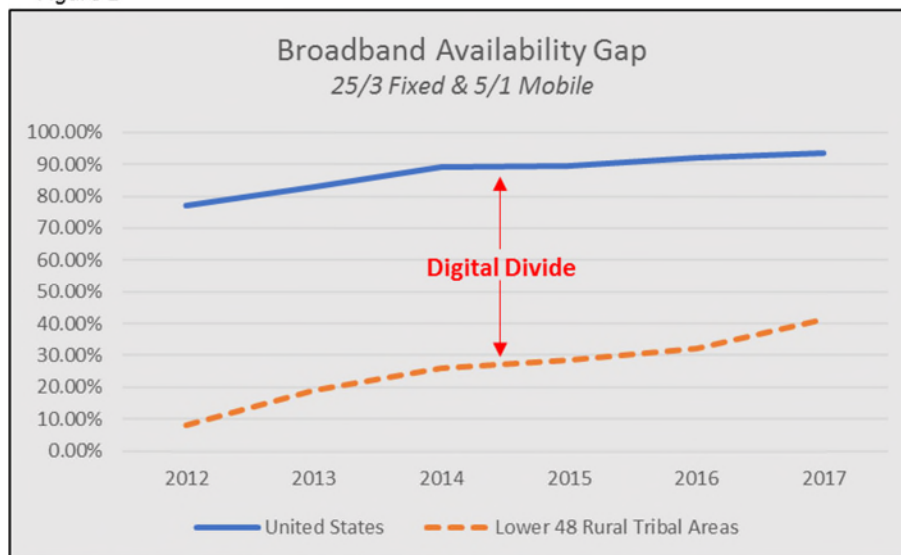
NTTA notes that the FCC's USF cap proposal comes at a time when (1) the digital divide between rural Tribal areas and the rest of the United States still exists, and (2) serious and legitimate questions have been raised about the reliability of the data used to measure

broadband availability. Because of these, and many other factors, the timing of the USF cap proposal is unreasonable, at best, and suspect at worst.

#### A. The Digital Divide Still Exists

With the release of the 2019 Broadband Deployment Report, the Commission once again declared victory over the lack of broadband availability in the United States, stating “with this compelling evidence before us, we find, for a second consecutive year, that advanced telecommunications capability is being deployed on a reasonable and timely basis.”<sup>3</sup> While NTTA appreciates the steps the Commission, and others, have taken to narrow the digital divide, the fact remains that it still exists as shown in figure 1 below.

Figure 1



Source: FCC Broadband Deployment Reports

<sup>3</sup> In the Matter of Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, 2019 Broadband Deployment Report (FCC 19-44, rel. May 29, 2019) at 4

While the FCC does acknowledge “the need to promote and encourage access to broadband on Tribal lands that do not have sufficient access today” the fact is not enough has been done to directly address this problem. NTTA has offered the FCC, on numerous occasions, actions that could be taken to narrow the broadband availability and affordability gaps, but other than minor changes, no substantive action has been taken.

#### **B. Broadband Availability Data is Unreliable**

Perhaps more troubling than the stubborn persistence of the digital divide between rural Tribal areas and the rest of the country is the very likely risk that current broadband availability data actually overstates what is available in Tribal areas. The GAO recently concluded that the FCC’s data on broadband availability (Form 477) overstates availability in Tribal areas.<sup>4</sup> This means the data used and as summarized above in Figure 1 to determine broadband availability in rural Tribal areas, which paints a bleak picture of Tribal broadband availability on its face, understates the problem.

The fact that the already bleak data regarding Tribal broadband availability is overstated leads to one of NTTA’s main concerns about the Commission’s push to cap the USF – potentially limiting funding before the digital divide has been addressed. As stated above, part of the problem lies with broadband availability data, which the Commission is attempting to address, but until (1) the availability data problem is solved, and (2) the digital divide is substantively

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<sup>4</sup> GAO Report: Broadband Report, *FCC’s Data Overstate Access on Tribal Lands*, GAO-18-630, September 2018

addressed, any effort to cap the USF is premature. Or as Commissioner Starks put it “the FCC should be focused on mapping not capping.”<sup>5</sup>

#### **IV. BROADBAND AFFORDABILITY IN TRIBAL AREAS**

Also of vital concern to NTTA’s members is the affordability of broadband services in Tribal areas. This is an issue that cuts across all aspects of Tribal economies, including individual freedom to communicate with the rest of the world on equal terms, the ability to participate in the global economy, school children access to online resources to close the so-called “homework gap” and participate in online learning, and access to life-saving telehealth services. A universally-available broadband network is of little use if those in the most need cannot afford to use it.

The problem of affordability and its consequence – low adoption rates – has been noted by the Commission and the Congressional Research Service (CRS) as recently as January 2019. In a January 2019 update of a previously-released report, the CRS notes that broadband adoption rates for fixed terrestrial services of 25/3 Mbps or greater was 34.5% for those living in non-urban Tribal areas compared to 59.8% for the United States as a whole.<sup>6</sup> The same report also shows that Internet use at home is lower for American Indians or Alaska Natives – 51.5% - as compared to the United States as a whole – 71.9%.<sup>7</sup>

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<sup>5</sup> *NPRM*, Dissenting Statement of Commissioner Geoffrey Starks

<sup>6</sup> *Tribal Broadband: Status of Deployment and Federal Funding Programs* (Updated January 9, 2019), Congressional Research Service Report R44416, at p. 5, Table 4 (references 2018 FCC Consolidated Marketplace Report, p. 144)

<sup>7</sup> *Id.*, at Table 5 (references Digital Nation Data Explorer, National Telecommunications and Information Administration, November 2017 data)

NTTA has advocated for changes to the FCC's enhanced Tribal Lifeline credit.<sup>8</sup> While the Commission has, in the past, recognized the additional needs in Tribal areas for ensuring universal service affordability, the Tribal credit was not increased to acknowledge the addition of more expensive broadband services to the list of services to be universally available. It is, or should be, intuitive that when higher-priced services are added to the list of universal services that the accompanying Lifeline credit should increase, as NTTA argued. To not increase the Tribal Lifeline credit risks isolating those who cannot afford broadband services in a voice-only world.<sup>9</sup> At some point, the FCC will have to reckon with the lack of attention paid to affordability of broadband services in rural Tribal areas by increasing the enhanced Tribal credit. When that time comes, NTTA can foresee a substantial argument regarding the proper cap and priority of funding as Native Americans continue to suffer the consequences of the lack of affordable services.

Native Americans living in rural Tribal areas also rely heavily on the Rural Health Care (RHC) and Schools and Libraries (E-Rate) programs to ensure affordable access to quality broadband services. Without specific, targeted support for vital online education and telehealth services, Tribal areas risk becoming further divided from the rest of the country.

From the above discussion on affordability issues, it is clear that by capping the overall fund, the FCC will be causing conflicts among parties advocating for the different programs, but in Tribal areas, the conflicts will be impossible to prioritize. The choice will have to be made between availability and affordability, and in the realm of affordability, how to prioritize between

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<sup>8</sup> See NTTA comments filed in WC Docket No. 11-42, et. al., on February 21, 2018 at 8-12

<sup>9</sup> And even in this case, the FCC decided to phase-down Lifeline credits for voice-only service

the low-income Native Americans, school children, and the sick. NTTA urges the Commission to not force this choice and reject adoption of an overall USF cap.

## **V. THE FCC SHOULD INSTEAD ADDRESS CONTRIBUTIONS REFORM**

The third quarter 2019 USF contribution factor is at a record high of 24.4%<sup>10</sup> and represents a significant increase over the previous factor. While addressing the numerator – total fund demand – is clearly important to the Commission, it is the denominator – USF contribution base – that needs to be significantly changed. Considering the proceeding in which the *NPRM* is included was opened in 2006 to address USF contributions reform, it appears this current iteration of the docket is a prime place to try again.

Since 2006 – the year this proceeding was initiated – the USF contribution base as declined precipitously: for the fourth quarter of 2006 the contribution base was approximately \$19.4 billion<sup>11</sup>, and for the third quarter of 2019, the contribution base is approximately \$11.5 billion.<sup>12</sup> This represents a 41% decrease in assessible revenues, which of course contributes significantly to the rise in the USF assessment rate.

The Commission has two basic ways to expand the USF contribution base. First, a revenue-based method can be retained, but the types of revenues assessed can be expanded. The current revenue base subject to USF assessment consists of interstate end user revenues, which comprise a small percentage of the typical customer's monthly spending on

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<sup>10</sup> *Proposed Third Quarter 2019 Universal Service Contribution Factor*, Public Notice CC Docket No. 96-45, rel. June 12, 2019 (DA 19-559)

<sup>11</sup> *USAC Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Fourth Quarter 2006* at 4

<sup>12</sup> *USAC Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Third Quarter 2019* at 4



telecommunications services. The Commission could investigate whether expanding this base to include, for example, broadband internet access service revenues is a reasonable method to address contributions reform.<sup>13</sup> Another method for reforming USF contributions would be to base the assessment on another metric, such as “connections”, that recognizes the reality of today’s telecommunications marketplace and that does not depend on an ever-shrinking base of “interstate end user” revenues.

## **CONCLUSION**

NTTA strongly opposes the imposition of an overall USF cap as discussed in the *NPRM*. Customers and providers in rural Tribal areas are still struggling with addressing and closing the digital divide, in terms of both availability and affordability, that stubbornly continues to exist between these areas and the rest of the country. Considering these circumstances, now is not the time to place an arbitrary cap on the USF and force recipients of support from the four programs argue against themselves for “priority” when the cap is reached. Instead, the Commission must adequately address the needs, especially those in rural Tribal areas, for support to close the digital divide. Finally, the Commission should take this opportunity to reform the USF contributions methodology and take pressure off the current assessment rate.

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<sup>13</sup> NTTA notes the introduction of HR 2929 on May 22, 2019, the *Rural Broadband Network Advancement Act*, that addresses the lack of support for certain costs incurred by rural broadband providers, but from a different angle. The legislation proposes to assess certain “edge providers” for costs incurred by rural broadband providers but not recovered via other mechanisms (e.g., federal USF). This bill and overall contributions reform represented in this docket are attempting to address a similar issue – the lack of funding for broadband services in rural, and Tribal, areas.

Respectfully Submitted,

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July 29, 2019