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Secretary Marlene Dortch
Federal Communications Commission
445 12th St SW
Washington, DC

RE: CATG Opposition to Restoring Internet Freedom Order (WC 17-108)

Dear Members of the Commission,

On behalf of the California Association of Indian Tribal Governments (CATG), the California state-wide inter-tribal association of Indian Indian Tribal Governments, we write to oppose the Declaratory Ruling, Report and Order and Order titled “Restoring Internet Freedom.” For the Commission to uphold its trust responsibility to Tribal Nations, the FCC must preserve Net Neutrality indefinitely and should not vote this item forward.

The Commission has a Trust Responsibility to Tribal Nations to act in the best interests of those Nations. It is not in the best interests of Indian Tribal Governments to be charged higher premiums for “internet fast lanes” or to access specific content. It is also not in the best interests of Indian Tribal Governments to have corporate monetary interference in the Government-to-Government Relationship that Tribal Nations share with the United States. This Order would create a system where the Government-to-Government relationship could become “pay to play” for Tribal participation at the discretion of Internet Service Providers.

In addition, this Order, if adopted, will hinder Tribal Self-Determination. Tribal Nations reserve the right to determine for themselves the best future for their communities. A self-determined future requires a free and open internet full of possibilities for Tribal Nations and Tribal Citizens to share ideas, access knowledge and to use technology to protect trust resources.

Lastly, the financial implications of this order on Indian Country cannot be understated. Tribal Nations’ budgets are focused on spending resources wisely to provide the best outcomes for their local communities. This action by the FCC will create an irresponsible misuse of Federal Funds to help pay for the increased costs of internet service. Tribal Nations’ budgets and associated Federal Funds should not be used to pay multibillion dollar corporations more money to access the internet.

Creating “Fast Lanes” and “Slow Lanes” creates an uneven playing field. Several CATG member tribes have no broadband service on their reservation, and almost all have broadband services inferior to communities adjacent to their reservation boundaries. Most of Indian Country is already in the “Slow Lane” and this would leave more people on the wrong side of the Digital Divide. According to the FCC, 68% of rural Tribal Lands and 41% of all Tribal Lands lack broadband access. Over 1.5 million people in Indian Country still do not have broadband access. At NCAI’s Mid-Year Convention, Chairman Pai announced his commitment to work with Indian Country to bridge the Digital Divide. This action will do just the opposite of that promise.

Corporate Interference in the Government-to-Government Relationship

If approved, this order will allow Internet Service Providers to interfere with the Government-to-Government relationship. Repealing Net Neutrality will give Internet Service Providers (ISP) the opportunity to charge Tribal Nations more money to access the internet and to participate in the Government-to-Government relationship. At this point, it is unknown if ISP's will charge more or slow down service to access federal websites, but allowing the opportunity to do so is a threat to the Government-to-Government relationship.

In 2017, most official correspondence between Tribal Nations and the Federal Government happens online: through email, electronic public comments and electronically noticed formal consultations. This Order gives ISP's free reign to charge Tribal Nations and Tribal Citizens more money to access Federal websites, including Regulations.gov and the FCC's own Electronic Comment Filing System.

If an ISP opposed a Tribal view on a Government proceeding, under this order that ISP could charge the Tribe more money or slow down service to access that public comment. This not only violates the First Amendment's right to free speech and petitioning the government, but also profits off of the special relationship between Tribes and the Federal Government. For example, the Wireless Industry and Tribal Nations did not agree on many issues in the FCC NPRM titled "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment."¹ In this scenario where the corporate communications industry and Tribal Nations are in disagreement, the communications industry could charge Tribal commenters more or slow down speeds for access to the FCC's Electronic Comment Filing System, therefore limiting input to only Tribal Nations who can afford the price hikes. Pricing out Tribal comments on Federal policies fails to uphold the trust responsibility.

Tribes should not have to pay a premium to corporations to access the federal government. The Government-to-Government relationship should never be "pay to play." The FCC has an obligation to provide an open and free communicative relationship between the Federal Government and Tribal Nations, and this order will most definitely damage that relationship across all Federal agencies. CATG asserts that the internet/broadband infrastructure and services is an obligation within the FCC's trust responsibility to Indian tribal governments within the government-to-government relationship. The FCC's proposal would violate that trust.

Self-Determination

A free and open internet is necessary for Tribal Self-Determination. Tribal Nations reserve the right to determine for themselves how their Tribal government and their citizens move into the future. An open internet is necessary for Tribal Nations to provide the best possible future for their citizens, free of high cost "fast lanes" and limited content. This would hinder all aspects of self-determination including emergency services, management of trust resources, access to educational resources and advanced healthcare technology.

Rural Tribal Communities have adapted to the technological difficulties their remote areas face, especially for emergency services. Often times, social media, email or other internet websites are the only way to communicate in emergency situations because no other option exists in the area. If the FCC allows ISP's to charge more for "Fast Lanes" for social media, Tribal emergency response could be negatively affected. For the areas where 911 services are not an option, communications

¹ WT 17-79 "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment"

through other internet means is sometimes the only way reach First Responders. People could die because they cannot afford the price hikes and fast lanes that will indefinitely reach rural Tribal communities because of this order.

This Order would have major implications on the management of Trust Resources. Tribal Nations use the internet to monitor and manage their homelands and natural environment throughout Indian Country. Tribal Natural Resources Departments need unfettered access to online resources and programs to carry out their duties to manage their natural environments. Advanced mapping and data requires substantial bandwidth which could become much more expensive for these government departments.

Education is a top priority across Indian Country, and the potential to lose access to educational resources online will be detrimental to the promise of Tribal Self-Determination. Many Native people access their education online through online classes, research, videos and other sites that require a lot of bandwidth. If ISP's are able to charge more for educational videos, many Native people will have no other options to attain their education.

Lastly, this order would significantly limit the promise of telehealth in Indian Country. Advanced telehealth solutions and videoconferencing has seen great success in rural Tribal Communities. However, these high data video conferencing programs are specifically the type of services this order targets for price increases. ISP's could also deliberately slow down one telehealth service in favor of another that may be supported by the company. The ISP could throttle one service in an effort to entice a Tribal healthcare provider to switch telemedicine programs. Companies should not be making the healthcare choices for Tribal communities; Tribes should be making the healthcare choices for their communities.

Financial Impacts on Indian Tribal Governments and Tribal Citizens

Many commenters have highlighted the detrimental financial impacts this order will have across the country, and Indian Country is no different. Indian Tribal Governments operate on strict budgets with very little room for increased costs this order would inevitably incur. Similarly, American Indians have some of the highest poverty rates in the country, nearly double the national average.² Among the disparities that hinder Tribal economic development and social development, lack of broadband infrastructure and lack of access to internet services is perhaps the most pervasive because it diminishes nearly all key service areas (government, education, public safety, health care, economic development), and would be exacerbated by the FCC proposal.

Broadband infrastructure and service are essential if Indian Tribal Governments are to maintain essential services with limited, and diminishing, financial resources, and to maintain and improve their communities. Incurring more costs for access to substandard internet access will strain tribal budgets and further injure communities they serve. Tribes will have to make tough financial choices between full access to the internet and necessary programs for their community. In addition, since Federal money funds many Indian Tribal Governments, federal funds will likely be used to cover these increased costs. This not only strains the communities' limited resources but also is a misuse of federal funds. Ironically, most federally funded programs now require reporting through the internet, which, if available, and if sufficiently reliable, may not be affordable under the FCC proposal.

² American FactFinder, "Poverty Status in the Past 12 Months by Sex by Age: 2012 American Community Survey 1-Year Estimates, Table B17001," available at <http://1.usa.gov/1jmLtWg> (last accessed June 2014); American FactFinder, "Poverty Status in the Past 12 Months by Sex by Age (American Indian and Alaskan Native Alone): 2012 American Community Survey 1-Year Estimates, Table B17001C," available at <http://1.usa.gov/1pNq8KF> (last accessed June 2014).

American Indian and Alaska Native people have some of the highest poverty rates in the country. The rate of American Indian and Alaska Native poverty is almost double the national average. Unemployment rates on Indian Reservations tower above those for the overall population (12.3% for American Indians and 8.1% overall in 2012). The FCC has taken action to address the low income rates in Indian Country by enhancing the lifeline subsidies on Tribal Lands. Universal Service programs would inevitably see more demand from Indian Country because of the devastating financial impacts of this order. The FCC is very aware of the impacts that low income people in Indian Country face and should not move this order forward.

Conclusion

There are many unknowns about the extent to which this order, if passed, will impact CATG member tribes and all Tribal Nations. Indian Tribal Governments would not have the same access to online programs that help manage Trust Resources. Indian Tribal Governments would not have the same access to online solutions they have employed to run their governments. Indian Tribal Governments would be charged more to access online federal resources, thereby allowing corporations to interfere with the Government-to-government relationship that exists between Tribal Nations and the US Government. Rural Tribal Citizens could be charged more to access emergency services, educational resources, business and commerce. If Tribes are charged more for fast lanes or any other premium cost schemes, the economic impact for Indian Country would be significantly adverse to our Indian Tribal Governments and their citizens.

There has been much speculation about the real life effects this order may have. One thing is certain: Indian Country will be worse off if the FCC repeals Net Neutrality.

If rates increase or "fast lanes" are created, more Indian citizens would be further disadvantaged for access to the Internet. This is in direct conflict with the mission of the FCC Office of Native Affairs and Policy and with the mission Congress tasked to the FCC. The 1934 Communications Act that created the FCC tasked it with carrying out principles of Universal Service. Universal Service means that all Americans should be able to access telecommunications services. We ask the FCC to remember its authorizing language and preserve a free and open Internet for all, and its trust responsibility to Indian Tribal Governments through our government-to-government relationship.

The FCC exists to protect the rights of all Americans to communicate. The Net Neutrality Title II protections meet that goal of the FCC perfectly. Passing the "Restoring Internet Freedom" order will directly oppose the mission of the FCC. CATG asks the Commission to weigh these comments, to preserve a free, open, and neutral Internet, and to reject the Restoring Internet Freedom Order, WC 17-108. Keeping Net Neutrality preserves the rights of Native Americans and all Americans to access the Internet. For the sake of the health of America, and the education of American students, CATG asks the FCC to uphold Net Neutrality.

Respectfully,



Will Micklin, Executive Director