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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation	)	
Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF THE SAN CARLOS APACHE TELECOMMUNICATIONS UTILITY INC.

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COMMENTS OF
THE SAN CARLOS APACHE TELECOMMUNICATIONS UTILITY INC.

The San Carlos Apache Telecommunications Utility, Inc. (SCATUI) is a Tribally owned telecommunications company serving the San Carlos Apache Reservation in eastern Arizona. For the many reasons described below, SCATUI respectfully requests that Tribal telecommunications companies, such as SCATUI, be exempted from the universal service and intercarrier compensation reform provisions that the Commission may adopt in this proceeding.

I. Executive Summary

SCATUI's service territory, like the service territories of most Tribal telecommunications companies, is extremely rural and very costly to serve. Low populations densities, long distances, and low incomes have historically combined to leave Native American Reservations among the most poorly served regions in the Nation, with shamefully low levels of telephone service penetration. One of the key provisions of the Telecommunications Act of 1996 is that consumers in "rural, insular and high-cost areas" of the Nation should have affordable access to telecommunications services comparable to those available in lower-cost urban areas.

Since its inception in 1994, SCATUI has used universal service funding to build and upgrade its telecommunications infrastructure to deliver state-of-the-art telecommunications services throughout its service area. The way that SCATUI and other similarly situated Tribal companies have been able to successfully use universal service funds to bring previously unserved Native American citizens and communities into the information age is a shining tribute to the noble visions of the 1996 Act. The impact on the economic vitality and quality of life on these Reservations has been significant, profound, and overdue. However the job is not yet finished, and much more needs to be done. Many of the "reforms" proposed in the three Attachments to the Commission's November 5, 2008 Further Notice of Proposed Rulemaking (FNPRM) would cripple ongoing efforts to ensure that Americans, on remote Indian Reservations, enjoy affordable access to telecommunications services, including advanced broadband services.

The Commission has previously recognized its unique relationship with Indian Tribes, and articulated a policy of promoting tribal self-sufficiency, economic development, and increased telephone penetration. SCAUTI has used universal service funding to expand telephone penetration from 28% in 1995 to over 94% today.

The Commission's May 1, 2008 Order capping high-cost support to competitive ETCs specifically exempted "tribal lands and Alaska Native regions" from the provisions of the CETC cap. It did so because it recognized that "many tribal lands have low penetration rates for basic telephone service." In their Joint Statement issued with the Commission's November 5, 2008 Order and FNPRM, Commissioners Copps, Adelstein, Tate and McDowell expressed their consensus regarding the need for "special consideration" for Alaska Native regions and tribal lands in the implementation of universal service and intercarrier compensation reform the Commission may now undertake.

Each of the reform proposals in the FNPRM, contain specific language exempting "Alaska, Hawaii, and any U.S. Territories and possessions" from the intercarrier compensation and/or universal service reform provisions of the respective proposed "reforms" due to "very different attributes and related cost issues." For the reasons more fully described in the remainder of this filing, tribal lands have at least as compelling "attributes and related cost issues" as the exempted areas – if not more so.

For all of these reasons, SCATUI thus respectfully requests that areas served by tribal telecommunications companies be exempted from the USF and ICC reforms that the Commission may develop in this proceeding.

II. USF Funding Has Allowed SCATUI to Increase Telephone Penetration From 28% in 1995 to over 94% Today

SCATUI operates as an incumbent local exchange carrier (ILEC) on the San Carlos Apache Reservation covering approximately 2,854 square miles in portions of the Gila, Graham and Pinal Counties in eastern Arizona. The Reservation ranges from low plains and rolling desert hills in the south, to pine forested high mountain country in the north. SCATUI serves approximately 2,700 customers, for an average serving density of less than one customer per square mile.

The San Carlos Apache Tribe established SCATUI by Tribal resolution on March 8, 1994. The Tribe's main objective was to develop, own, finance, construct and operate a telecommunications company to provide quality service for its members. Only 28% of the Tribe's members had telephone service in 1995 when SCATUI purchased the U S WEST (now Qwest) facilities that previously had served the Reservation. By the time of the 2000 Census, 79% of the Tribe's members had telephone service.[1] Today, SCATUI provides basic telephone service to over 94% of Tribal member households. SCATUI is currently in the process of rolling out advanced broadband services to its residential customers.

These accomplishments did not come easy. When SCATUI took over the U S WEST facilities in 1995, the switching equipment and outside plant was old and dilapidated, reflecting many years of underinvestment and neglect. Most of it needed to be replaced, and much of the service territory had no facilities at all, requiring significant outside plant construction. Since taking over operations in 1995, SCATUI has invested over $25 million in its network facilities.

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[11] The 2000 Census showed that nationwide, that 68.6% of Native American households had telephone service vs. 97.6% for the nation as a whole.

While the Tribe has invested significant amounts of its own funds to build and operate its network, none of this would have been possible without the financial support that SCATUI receives from the federal universal service fund (USF) and intercarrier compensation (ICC). SCATUI currently receives approximately $2.5 million annually in high-cost USF.[2] To put our reliance on USF in perspective, USF represents 53% of SCATUI's $4.7 million of estimated revenues for 2008. State and interstate access charges provided an additional $913 thousand of revenues in 2008, or 19% of total revenues. Thus, taken together, USF and ICC provide approximately 72% of the revenues that allow SCATUI's network to serve its customers.

Since much of this network investment has been made with borrowed funds, secured on the reasonable assumption of continued USF and ICC revenues, any significant disruption of these cash flows would place SCATUI's continued ability to operate and serve its customers in serious jeopardy. In the event that SCATUI becomes unable to continue operations, it is doubtful that another telecommunications provider would come in to serve, due to the remote and extremely high-cost nature of our territory.

SCATUI is not alone in demonstrating the ability of Tribal communities to deliver state-of-the-art broadband services to previously unserved or underserved customers on their Reservations. Seven other Tribal telephone companies are now in existence nationwide[3], and based on SCATUI's and their success, other Tribes are considering similar self-help ventures. By bringing advanced telecommunications to their

[2] Source USAC Report HC01 for the fourth quarter of 2008, annualized.

[3] The other companies are Cheyenne River Sioux Telephone Authority (SD), Fort Mohave Telecommunications, Inc. (AZ), Gila River Telecommunications, Inc. (AZ), Hopi Telecommunications, Inc. (AZ), Mescalero Apache Telecom, Inc. (NM), Saddleback Communications (AZ) and Tohono O'odham Utility Authority (AZ). Together the eight Tribal companies receive approximately $21 million in annual high-cost USF.

communities, Native American consumers are now enjoying the fruits and benefits of the information economy/society. Our schools are now able to offer a world-class education to our children. Advanced telecommunications capabilities provide the opportunity to attract high-tech industries to our Reservations, so that when our young people graduate, they do not have to leave their community to pursue good-paying and meaningful jobs. The difficulties of distances and loneliness are reduced, and our quality of life is enhanced by instant access to a world of information, entertainment and communication – just like in urban areas. Isn't this exactly what Section 254 of the 1996 Act envisioned?

III. The Commission Has a Unique Relationship With Indian Tribes and Tribal Telecommunications Companies

On June 23, 2000, the Commission released a Policy Statement in which it "reaffirms its commitment to promote a government-to-government relationship between the FCC and federally-recognized Indian Tribes."[4] The preamble to this Policy Statement states "[T]he Commission has recognized that certain communities, particularly Indian reservations and Tribal lands, remain underserved, with some areas having no service at all.[5] Summarizing the relationship between the Commission and Indian Tribes, the Policy Statement says:

> The Commission recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependant nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting

[4] Policy Statement, In the Matter of : Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, FCC 00-207, released June 23, 2000.
[5] Id, at page 1.

tribal self-sufficiency and economic development as embodied in various federal statutes.[6]

In the Policy Statement, the Commission proceeds to reaffirm its commitment to certain goals and principles, among which are:

- The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to communication services;

- The Commission, in accordance with the federal government's trust responsibility, and to the extent practicable, will consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources;

- The Commission will work cooperatively with other Federal departments and agencies, Tribal, state and local governments to further the goals of this policy and to address communication problems, such as low penetration rates and poor quality services on reservations, and other problems of mutual concern;

- The Commission will welcome submissions from Tribal governments and other concerned parties as to other actions the Commission might take to further the goals and principles presented herein.[7]

SCATUI and other Tribal telecommunications companies appreciate the support that the Commission has provided in the past, and look forward to working with the Commission on a government-to-government basis in the future to continue to find innovative ways to improve the availability of basic telephone service and advanced broadband services on Tribal lands.

6 Id, at page 3.
7 Id, at pages 4-5 (emphasis added).

IV. The Proposed "Reforms" Would Be Harmful to Tribal Telephone Companies and Tribal Members.

Many of the "reform" proposals contained in the NPRM, including proposals to cap or restrict USF and reduce ICC to uniform ultra-low levels, would seriously threaten the ability of Tribal companies' to continue operating for the benefit of their members. Specifically:

- Tribal companies operate in some of the most remote and rural areas of the Nation that are often characterized by low population density, long distances, and hostile terrain.[8] As a result, these companies experience network costs at the extreme high end of the rural ILEC universe.
- Tribal companies have used universal service funding to make significant, and otherwise uneconomic, investment in network facilities and infrastructure to deliver telecommunications services throughout their high-cost service territories. These investments have allowed dramatic improvements in telephone penetration and service quality for Tribal members.
- Tribal companies have been able to finance this investment based upon the reasonable expectation of "specific, predictable and sufficient"[9] universal service support, and cost-based intercarrier compensation charges. Policy "reforms" such as capping or otherwise restricting the high-cost universal service fund, or mandating arbitrary, uniform, low, non-cost-based intercarrier charges without adequate replacement revenues, could severely threaten the ability of these Tribal companies to continue to serve their customers.

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[8] When the federal government divided up the land over a century ago, the Indian Tribes did not exactly get the prime real estate.

[9] Telecommunications Act of 1996, Section 254(b)(5).

- Consumers on many Reservations generally have very low income, and would be unable to afford the very high end-user rates that would be required to sustain the Tribal network in the absence of sufficient USF and ICC support.[10]
- Due to the extreme high-cost nature of the service territories, it is unlikely that an alternative service provider would be able or willing to take on Provider of Last Resort responsibilities should the Tribal company be unable to continue operations.
- The Commission's Policy Statement makes clear its commitment to work with Indian Tribes on a government-to-government basis, to promote Tribal economic self-sufficiency, and to improve the availability of telecommunications service on Tribal lands.

Because of these unique facts and circumstances, the Commission should exempt Tribal telecommunications companies from the USF and ICC reforms that may emerge from this proceeding.

V. The Commission Has Exempted CETC Support on Tribal Lands From Capping, and Should do Likewise For the Wireline Incumbent

On May 1, 2008 the Commission released an Order capping high-cost support to competitive ETCs (CETCs).[11] That Order contained several limited exemptions to this cap, including one that exempts "competitive ETCs that serve tribal lands or Alaska Native regions." In justifying this exception, the Commission states "Because many tribal lands have low penetration rates for basic telephone service, we do not believe that competitive ETCs are merely providing complementary services in most tribal lands, as they generally do." While SCATUI remains concerned about the manner in which

[10] The high-cost universal service fund, alone, contributes $76.99 per line per month of support.
[11] Order in WC Docket No. 35-337 and CC Docket 96-45, FCC 08-122, released May 1, 2008.

CETCs currently receive support[12], we are pleased that the Commission acknowledges that penetration rates on Tribal lands still remain a serious problem, and that it is taking actions that it believes will address this problem. SCATUI makes two observations regarding the impact of the Commission's Order in the CETC proceeding, and several of the proposals to cap ILEC support that are contained in the FNPRM:

1. For the same reasons that the Commission believes it would be bad public policy to cap high-cost support to CETCs serving Tribal lands, it would be doubly bad policy to cap high-cost support to incumbent Tribal telecommunications companies.
    a. It would limit the ability of existing Tribal companies to continue investing in their networks to bring advanced services to more of their members.[13]
    b. It would be impossible for Tribes that currently may be considering forming their own Tribal telecommunications company to do so.
2. Capping Tribal company high-cost support but not capping CETC support on tribal lands would be illogical and anti-competitive. Since the Commission has acknowledged that penetration rates on Tribal lands remains a problem, capping support only for wireline incumbent would give wireless carriers an

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[12] SCATUI believes that the identical support rule is not in the public interest, that it has contributed to unnecessary growth in the high-cost fund, and that all ETCs should receive support based on their actual cost for achieving defined policy goals.

[13] SCATUI would note that certain of the proposals to cap high-cost support to ILECs would be harmful to rural consumers in general, and especially harmful to Tribal company consumers. For example, Appendix A proposes to cap ILEC high-cost support at 2008 levels. The problem is that under the rules for the High Cost Loop fund, carriers receive payment two years in arrears. That is, in 2008, carriers are receiving reimbursement for investments made in 2006 and prior years. There would be no reimbursement for investments made in 2007 and 2008, meaning that a carrier's customers would be on the hook for the costs associated with those investments. This would be especially bad for Tribal consumers, as they generally tend to be low-income, and least able to pay higher rates. Appendix B would cap support at 2007 levels, placing consumers on the hook for investments made 2006 – 2008.

> unfair advantage in expanding service into currently unserved regions. It would also have the unintended consequence of delivering lower broadband speeds (if broadband is delivered at all), since wireline networks typically have much more available bandwidth for broadband applications than wireless networks, particularly over long distances.

At the same time that the Commission released the instant FNPRM, Commissioners Copps, Adelstein, Tate and McDowell released a Joint Statement in which they identified a number of issues where they believed "there is a tentative but growing measure of consensus."[14] One of the identified issues was "clarifying the implementation of the Alaska Native regions and tribal lands exception to the CETC cap adopted on May 1, 2008, and the need for special consideration for such areas."[15]

SCATUI appreciates the interest that the Commissioners are taking in ensuring that the issue of low penetration rates on Tribal lands is properly addressed. As stated throughout these comments. We believe that this can be best addressed by exempting Tribal telecommunications companies from the reforms that the Commission may be adopting in this proceeding – just as it is doing for other telecommunications providers in similarly unique geographic regions and situations.

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[14] Joint Statement of Commissioners Michael J. Copps, Jonathan Adelstein, Deborah Taylor Tate and Robert McDowell, FCC 08-262, released November 5, 2008.
[15] Id.

VI. Tribal Companies Should be Exempt From the USF and ICC Reforms the Commission Adopts in This Proceeding – Similar to Alaska, Hawaii, U.S. Territories and Possessions

Each of the reform proposals contained in the FNPRM contains the following statement:

> The requirements that we adopt for disbursement of high cost support [or intercarrier compensation] do not apply to providers operating in Alaska, Hawaii, or any U.S. Territories and possessions. We find that these areas have very different attributes and related cost issues than do the continental states.[16]

In justifying the exception from the universal service provisions, the Commission cites several ex-parte letters. One letter asks the Commission to "recognize the higher costs and lower income levels in Puerto Rico in any reform efforts that it may take."[17] Another asks that the Commission "recognize that Guam's costs are higher than the continental United States, and that Guam should be treated separately, along with Alaska and Hawaii, for reform purposes."[18] It is informative to look at facts and data to determine how the income and cost levels on the San Carlos Apache Reservation compare with those in Guam and Puerto Rico.

The 2000 Census shows median household income nationwide of $41,994. Data from this same Census shows median household income in Puerto Rico was only $14,412 (34% of nationwide average), while on the San Carlos Apache Reservation it was $16,894 (40% of national average). Thus, Puerto Rico and the San Carlos Apache Reservation both have reasonably comparable income levels, substantially lower than the nationwide average.

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[16] The universal service exception can be found in Appendices A, B and C at paragraph 13. The intercarrier compensation exception can be found in Appendix A at paragraph 191, and Appendix C at paragraph 186.

[17] Appendix A, at footnote 42, Appendix G, at footnote 40, and Appendix C, at footnote 42.

[18] Id.

There are several ways, short of conducting a full cost study, to compare the relative costs of Guam, Puerto Rico and SCATUI. One approximation would be to compare the average subscriber density in the three service areas:

Area	Subscribers per Sq. Mi.
Guam	299.7
Puerto Rico	303.9
SCATUI	0.9

On average, SCATUI is **significantly** less dense that either Guam or Puerto Rico. Lower density generally correlates with higher costs. Another way to approximate relative costs would be to compare the amount of universal service support received by the three companies:

Company	USF per Line per Month
Guam Tel. Auth.	$7.72
Puerto Rico Tel.	$5.33
SCATUI	$76.97

Thus, SCATUI receives substantially more support, again suggesting higher costs.[19] While neither of these methods is definitive, they both suggest that SCATUI is at least as much of an outlier from the norm for the continental United States as Puerto Rico and Guam – if not significantly more so.

Other ex-partes that the Commission cites as justification for these exceptions discuss the costs and market environment in Alaska.[20] For the 24 rural telephone companies operating in Alaska, the average high-cost support is $31.31 per line per

[19] Both the Guam Telephone Authority and SCATUI are "rural" telephone companies, so their USF is computed in the same manner, and a direct comparison is appropriate. Puerto Rico Telephone is a "non-rural" telephone company, and support is calculated in a different manner.

[20] Footnote 43 to Appendices A&C and Footnote 40 to Appendix B reference high operating costs in Alaska.

month.[21] Thus, in aggregate, Alaska rural carriers receive less than half of the $76.99 per line per month received by SCATUI. For the eight Tribal telecommunications companies (including SCATUI), the average high-cost support is $94.15 per line per month, with individual company support ranging from a low of $44.14 to a high of $292.42 per line per month.[22] Clearly SCATUI and the other Tribal telcos are as much of an outlier from the norm for the continental United States as Alaska – if not more so.

VII. Conclusions

For all of the reasons discussed, above, the public interest will be best served by exempting Tribal telecommunications companies, such as SCATUI, from the USF and ICC reforms that the Commission may adopt as a result of this proceeding.

Respectfully submitted,

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[21] Source, USAC Reports HC01 and HC05 4Q08, annualized. Individual company per-line support for rural Alaska carriers ranges from a low of $3.88 to a high of $721. Ten rural companies serving 20,336 lines have per line support levels above SCATUI's $76.99, and fourteen rural companies serving 214,576 lines have per line support below this level. Since all of these companies are rural telephone companies, high-cost support is computed in a similar manner.

[22] Source, USAC Reports HC01 and HC05 4Q08, annualized.