Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF THE
NATIVE TELECOM COALITION FOR BROADBAND

The Native Telecom Coalition for Broadband ("NTCB") files its Comments in this proceeding pursuant to the Public Notice issued by the Commission on February 9, 2011 (FCC 11-13).[1] In the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking at paragraph 211, the Commission invites comments on whether there should be an exception from a cap on the total annual support per line for carriers serving Tribal lands in addition to carriers operating outside the continental United States.

[1] The NTCB is composed of the entities listed on Appendix A. Each of these entities represents entities interested in improving the availability, quality and adoption rates of voice, mobile, broadband and Internet Access services on Tribal lands, Alaska Native Regions or the Hawaiian Home Lands.

The Comments of NTCB state that there are unique circumstances justifying not just an exception from the cap, but demanding a more complete resolution of universal service funding for Native Americans. A "hundred years" of geographic isolation on Tribal lands and related income disparity are real barriers prohibiting Native Americans from experiencing quality of life enhancements and economic opportunities that have become available to most Americans through advanced communications technology. The consequent outcome of low penetration levels for voice and broadband services on Tribal lands deserves the immediate attention of this Commission.

In expedient fashion the Commission should undertake corrective action and create a new universal service program for Native Americans, that is, a separate Native Broadband Fund within the Universal Service Fund for the dual purposes of 1) ensuring extension of broadband networks/connectivity to Tribal lands – Indian Country, Alaska Native Regions, and Hawaiian Home Lands, and 2) sustaining the continued efforts of carriers that deliver voice and emerging/evolving broadband services to these native groups, i.e. American Indians, Alaska Natives, and Native Hawaiians.

I. INTRODUCTION

The following quote is an insightful, common sense observation made by United States Senator, Daniel K. Inouye, which provides direction to this Commission for reform of the Universal Service Fund (USF). "I recognize that the FCC has begun the long-term process of comprehensive universal service fund reform. I also understand that the National Broadband Plan proposes to reform the high-cost fund. However, the purpose of my letter is . . . to

underscore the fact that a "one size fits all" approach to universal service fund reform is unrealistic . . ."[2] The nation will be well served, if the Senator's words are heeded.

The National Broadband Plan, if implemented as written, is focused on deploying a wireless broadband network, under a duopoly of ownership, throughout rural America – "one size fits all." Undoubtedly (said with some trepidation), the 4 Mbps download speed, and 1 Mbps upload speed will be firmly in place in rural America by 2020. However, also looking out to the year 2020, what will the rest of the nation, that is urban America, tout as their broadband speed? What will the rest of the globe hold up as their standard for high-speed Internet and e-commerce connectivity? And, also by way of comparison, in 2020 what quality of life enhancements will the residents of Little Diomede, Alaska[3] experience as a seamless part of their daily life, resulting from their high-speed broadband connectivity? This, of course, presumes they have high-speed connectivity, and . . . that there is a Little Diomede, Alaska in 2020, since we as a nation expect our livelihood and economic survival to be tied closely to the quality of our broadband connectivity.

A cynic might ask the question, "Does it really matter whether there is a vibrant, thriving rural America?" There are a multitude of GDP and other economic indicators that tell us, yes, it would matter. However, here is a plain English statement that we might all ponder for a moment: without rural America, we city dwellers would run out of fuel for the 4x4 SUV's we drive on paved roads – we would no longer be able to heat and light our homes – we would not have access to pristine mountain areas, fresh water, and a variety of trees, fish and wildlife that

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[2] Letter from United States Senator, Daniel K Inouye, to the Honorable Julius Genachowski, Chairman Federal Communications Commission, dated November 22, 2010.

[3] The Russian coastline can be seen from Little Diomede, and just a little beyond that "the Ends of the Earth." See Appendix B attached.

we all like to enjoy when we can get away from city life – and, in short, we would quickly starve to death.

Rural America is the last "Great Frontier." Initially there were concerns expressed about an urban-rural divide, the broadband "haves and have-nots." Now the concern has escalated to a further level of disparity - an emerging rural-rural divide. Interestingly, the National Broadband Plan purports to achieve for rural Americans, with "scope and scale," precisely that which "scope and scale" have failed to achieve for rural Americans to this day. It appears that what we are likely to see, if the plan is implemented as written, is a widening urban-rural divide – becoming a "chasm" by 2020. The National Broadband Plan implemented as written will be a huge step backward for rural America and the nation.

Communications giants are going to serve rural America – this is the vision presented by the National Broadband Plan. However, these giants lack local presence, lack local leadership, lack local participation, and lack local accountability; all reasons why "scope and scale" have failed in much of rural America today. These corporations are accountable primarily to shareholders that are far removed from the rural communities they are obligated to serve. Alas, the National Broadband Plan does argue for consolidation and commoditization to achieve greater efficiencies in serving rural America. But small, rural Local Exchange Carriers (RLECs) that have successfully deployed broadband in rural America express a concern that essential communications, which are integral to rural economic development and quality of life enhancements in small rural communities, if commoditized will not equate to an effective and productive broadband solution for rural America.

The RLECs have been tacitly praised for their accomplishments in bringing broadband infrastructure and services to their service areas in rural America. More often than not, however,

the public also hears unsupported concerns expressed by the federal government about "waste, fraud, and abuse" in connection with this tremendous accomplishment. Nonetheless, the small RLECs are the "go to guys" that keep rural-rural America connected. Granted, it comes for a price, but are we not a nation standing "Indivisible." The National Broadband Plan should be designed and implemented in a way that recognizes this Constitutional fact of Oneness, and preserves the USF programs that have clearly resulted in successes for rural America.

II. THE RURAL-RURAL-RURAL DIVIDE – TRIBAL LANDS

When we consider the daunting task of deploying broadband in rural America, the challenges only become greater for Native Americans on Tribal lands, including the Hawaiian Home Lands.[4] Voice and broadband service penetration levels are lower for American Indians, for example, than any other demographic. The penetration rate for basic voice service lags the national average by 30%. And the explanation for these results begins with lack of infrastructure.

Lack of infrastructure (lack of multiple communications technologies) is the reason that this Commission should take quick action to facilitate Native Americans catching up with the rest of the nation. This will require the Commission to fashion a universal service program unique to the needs of Native American communities that adequately recognizes and addresses Native challenges, and allows continued deployment of broadband infrastructure on Tribal lands.

It is readily apparent that Native communities tend to be geographically remote. In Alaska and Hawaii, extreme separation from the lower 48 amplifies the cost factors and build-out times to reach unserved and underserved Native developments/villages. Where Tribal lands are or were once served by larger ILECs, there is generally a history of neglect and minimal

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[4] Sandwich Isles Communications, Inc. and Mescalero Apache Telecom Inc., Comments in the Matter of Connect America Fund, WC Docket No. 10-90, filed July 12, 2010, pp 2-13.

infrastructure deployment because initial and ongoing costs are very high to reach these areas far removed from urban/suburban networks.

Tribal sovereignty issues have also complicated the ILEC decisions to deploy infrastructure in Indian country. Alaska Regional Corporations and villages, the State of Hawaii, Department of Hawaiian Home lands and Hawaiian Homes Commission are all similar sets of unique native governmental interfaces. The special needs of these groups must be taken into consideration to adequately plan broadband networks that truly serve Native communities. Which fact underscores the reason why tribally owned telecommunications companies and small non-tribal RLECs with a local presence and a Native community focus – and a commitment to getting the job done – are the providers of choice.

Another intuitively obvious challenge for small pockets of Native American populations on Tribal lands is that they do not represent a significant source of revenue to the broadband provider. Consequently, commercial financing to construct the needed infrastructure and an ongoing source of operating revenue to maintain the network cannot be justified within a typical, market-based business plan. Entities that might be deemed to have "sufficient" resources to get the job done are not interested in building-out to these remote areas, nor do they have an appreciation for the local needs and level of commitment that is needed to fully serve Native communities (the tribe's cultural, spiritual, economic, personal and public safety, and other unique factors to these remote areas are an integral aspect not only of network planning, but also of the continuing provision of appropriate/necessary communications services and customer interface).

III. TODAY'S UNIVERSAL SERVICE FUNDS ARE A "SAFETY-NET"

If the existing universal service programs were not in place, it is unlikely that any

Native American communities on Tribal lands would have the quality of communications service they have today. And what has been accomplished is small when compared to the need that exists throughout Tribal lands. There are only eight tribally owned and operated communications companies serving the whole of Indian country – there are over 565 Indian tribes, only 311 of which possess Tribal lands. Much remains to be done.

Therefore, universal service programs must be maintained at existing levels to benefit Native American communities, and these programs must become "fixed in place" – that is, the regulatory uncertainty that is prevalent in the current environment must be replaced with long-term federal regulatory policy that is needed to attract capital. Only then can communications infrastructure be deployed on Tribal lands and communications parity be achieved. Lenders will not make loans for needed infrastructure without such certainty. Native American groups on Tribal lands that are underserved will not be able to step forward with more aggressive demands for "comparable" communications services without such regulatory policy.

The eight tribal members of the National Tribal Telecommunications Association have been held up as a model for other tribes to follow in their quest for a quality communications platform on Tribal lands. Tribal governance and operation of these companies has allowed them to truly identify and meet the needs of their native peoples. However, the start-up efforts of these eight tribes will be for naught, if they are not supported with sufficient USF. If these eight are allowed to fail, other American Indian tribes will have no model of success to follow, and consequently the vision of a future in which the tribe cares for its own communications needs will disappear like the mist.

This Commission and our industry recognize that the promise of broadband communications is critical to the survival of the nation. Certainly the criticality for Native

American groups that are now struggling to obtain economic parity and quality of life enhancements to be enjoyed by future generations on Tribal lands is much greater, and possibly, much more final. Over the past "hundred years" the rhetoric has bubbled forth, but little has been done to bring communications parity to Native Americans. The time to deliver on trust responsibilities in this critical area of communications is well beyond past due.

IV. A NEW UNIVERSAL SERVICE PROGRAM – "NATIVE AMERICANS"

Returning to the thoughts of Senator Inouye, a "one size fits all" approach for universal service reform as outlined in the National Broadband Plan is not workable for the disadvantaged group comprising Native Americans, i.e. American Indians, Alaska Natives, and Native Hawaiians. An exemption from the transition to the Connect America Fund is justified.

In addition, an even more specific "safety-net" feature for Native Americans should be put in place by this Commission to ensure continued access to capital, whether the broadband providers serving Tribal lands, including Hawaiian Homelands, are subject to a CAF transition or made exempt. Access to capital is fundamentally based upon an assurance that the lender will be repaid, if the loan is made. A true "safety net" USF program for Native Americans, which would be perceived favorably by its primary lender, the USDA-RUS, would ensure that government loan covenants, mainly financial performance requirements are met. The "times interest earned ratio" (TIER) is the primary metric evaluated annually by RUS. A "safety-net" feature that assured this target result would provide RUS with the confidence it needs to make further loans to build-out broadband infrastructure on Tribal lands.

The Commission should adopt a separate USF program entitled, "Native Americans." This program would be added to the existing universal service programs included in the Commission rules that support rural Local Exchange Carriers, including the High Cost Loop

Fund, Local Switching Support, and Interstate Common Line Support. USAC would administer this new program and it would be funded by the USF contribution mechanism.

Existing USF program support funds, i.e. High Cost Loop Fund, Local Switching Support, and Interstate Common Line Support would be distributed to those existing and future Eligible Telecommunications Carriers (ETCs) serving Native Americans on Tribal lands. In addition to these support funds, an explicit "safety-net" payment from a Native Broadband Fund would be paid-out to ensure that "sufficient" USF funds (net gap approach) are received by each eligible ETC, meeting the cash flow and net income requirements of lenders. Only after such regulatory certainty is achieved through new Commission policy and rules specific to Native Americans will capital be made available for continued infrastructure deployment on Tribal lands, including the Hawaiian Home Lands.[5]

V. CONCLUSION

When we consider the daunting task of deploying broadband in rural America, the challenges only become greater for Native Americans on Tribal lands, including the Hawaiian Home Lands. If the existing universal service programs were not in place, it is unlikely that any Native American communities on Tribal lands would have the quality of communications service they have today. And what has been accomplished is small, when compared to the need that continues to exist throughout Tribal lands. Lack of infrastructure on Tribal lands is the primary reason this Commission must take quick action to facilitate Native Americans catching up with the rest of the nation. The Commission should undertake corrective action and create a new universal service program specifically for the dual purposes of 1) funding broadband

[5] A detailed description of the "safety-net" concept is attached as Appendix C.

infrastructure on Tribal lands and 2) sustaining affordable broadband services for Native Americans settled on those lands.

Respectfully submitted,

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April 18, 2011

Appendix A

NATIVE TELECOM COALITION FOR BROADBAND

April 18, 2011 Comments in WC Doc. No. 10-90 et al.

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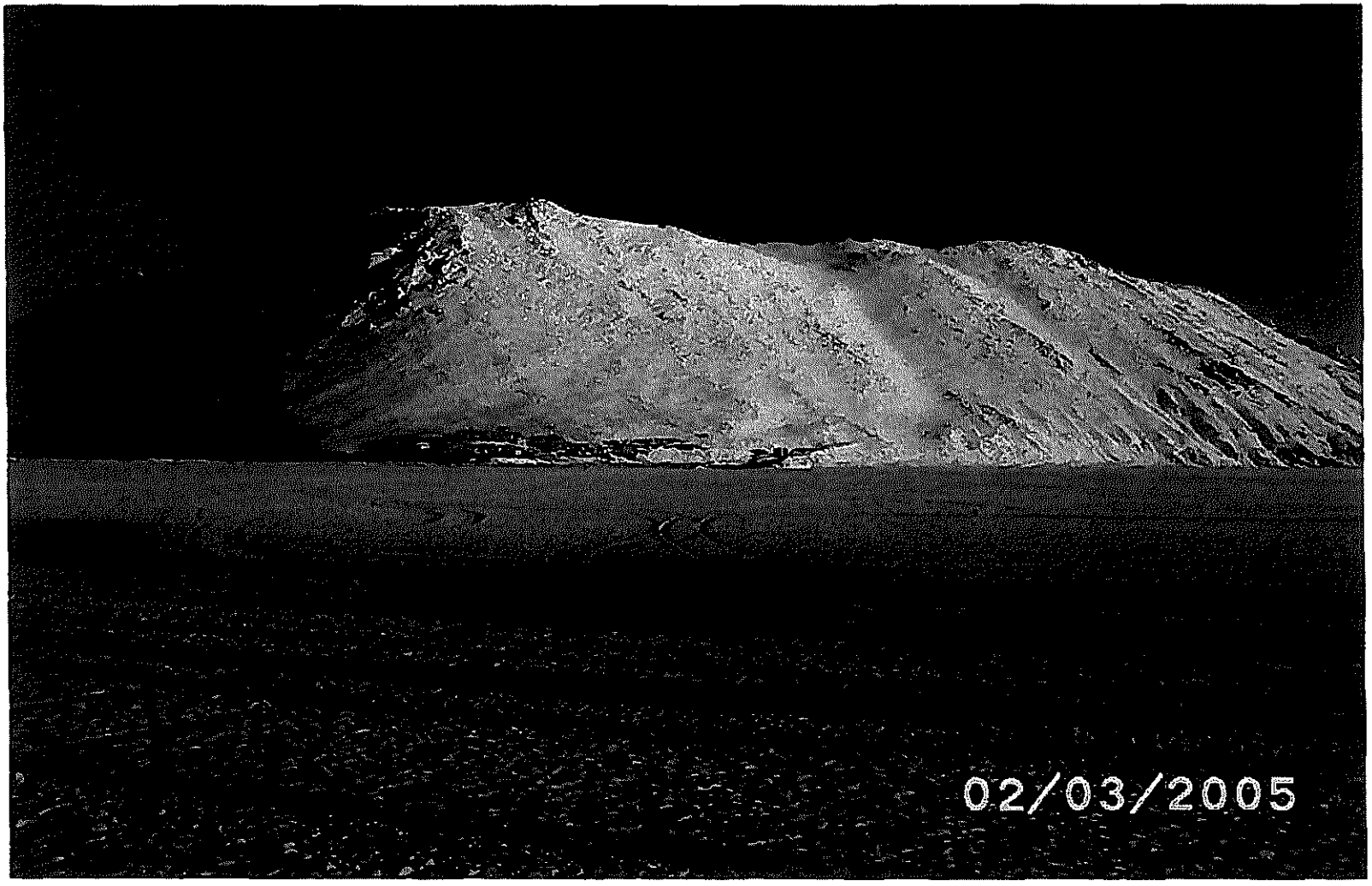
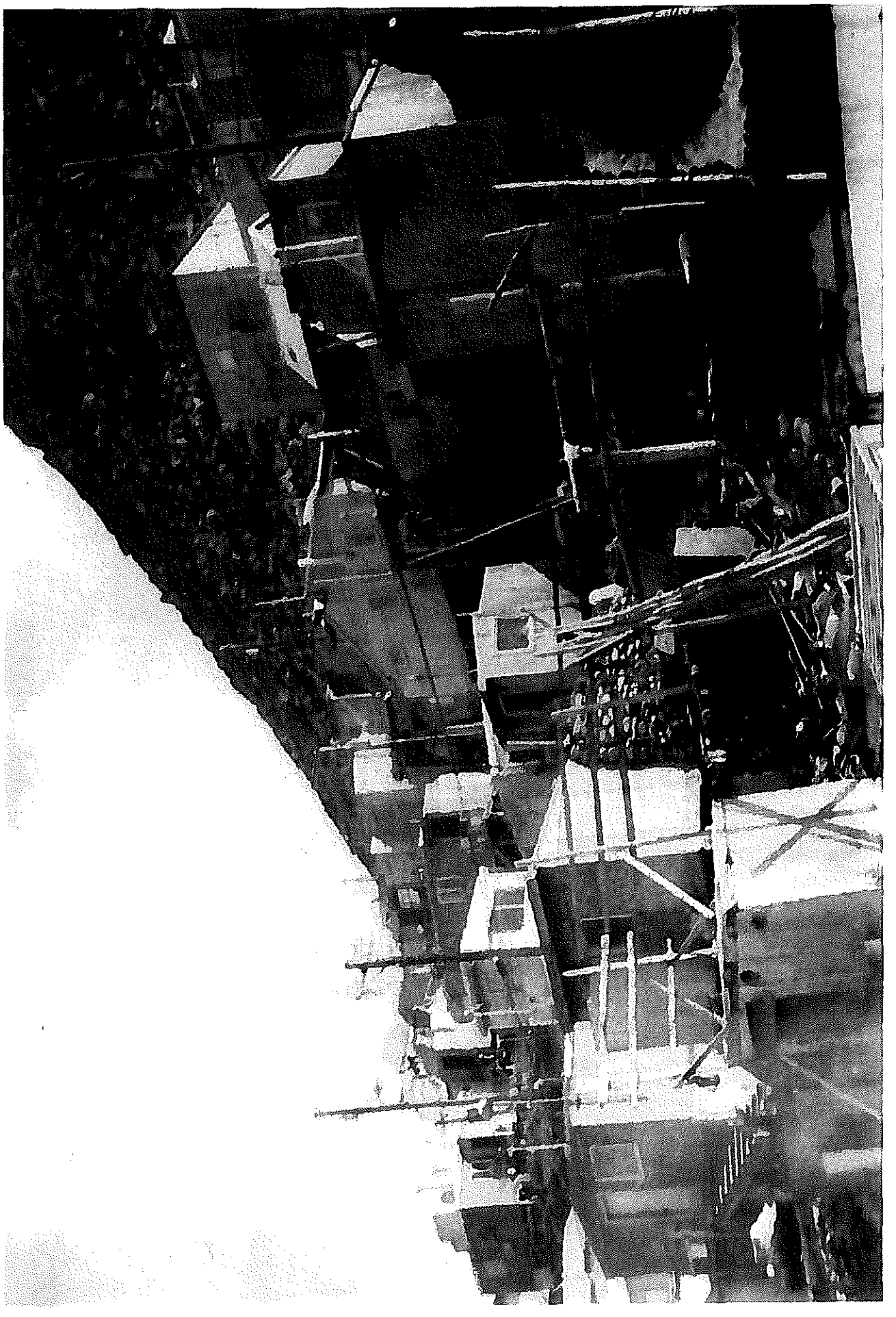
APPENDIX B



The Native Alaska community of Little Diomede, accessible by fixed wing aircraft only when the sea ice is solid. The Shenandoah Valley is described as rural. Little Diomede is not the Shenandoah Valley.

02/03/2005



NATIVE TELECOM COALITION FOR BROADBAND

April 18, 2011 Comments in WC Doc. No. 10-90 et al.

APPENDIX C

NATIVE BROADBAND FUND CONCEPT

FCC NATIONAL BROADBAND PLAN TEXT (Box 8-4, pg 152)

"Many tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning . . . Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband deployment will require increased funding."

THE CONCEPT

The Native Broadband Fund includes a proposal for a Universal Service Fund program designed to provide increased USF funding, but only as needed, to ensure that broadband service providers have a continuing financial ability to meet the broadband communications needs of Native Americans they serve.

The plan incorporates a "safety net" mechanism which removes regulatory uncertainty and encourages lenders to make loans to those qualified providers building out to and serving Native Americans on Tribal lands, including the Hawaiian Home Lands.

- The "safety net" ensures the continued financial viability of eligible broadband service providers on Tribal lands. The FCC may choose to exempt qualified providers from Connect America Fund provisions and retain the existing USF rural carrier programs (i.e. HCLF, LSS, and ICLS) or implement a new regulatory regime, i.e. the Connect America Fund. However, the proposed "safety net" will become a permanent feature of the new Native Broadband Fund, and once adopted, will provide the financial stability needed to attract capital.

The FCC will establish and oversee a new universal service support program to be known as the Native Broadband Fund ("NBF"). The NBF will provide support exclusively to eligible providers of voice and broadband services delivered to American Indians and Alaska Natives on Tribal Lands and Native Hawaiians on the Hawaiian Homelands. The NBF will be established pursuant to Sections 214 and 254 of the Communications Act[1] and the implementing rules will be a subpart of Part 54 of the FCC rules.

[1] Subject to FCC determination that it has sufficient existing authority, or, if necessary, Congressional action granting such authority.

The NBF will provide Eligible Telecommunications Carriers ("ETCs") with "net gap" support sufficient to recover any shortfall resulting from a comparison of:

1. The projected annual revenue requirement (unseparated, no interstate/intrastate cost allocation necessary) for the provision of native communications services with

2. The projected annual revenues to be received from such services, subject to an annual true-up adjustment comparing actual revenue requirement with actual revenue received.

Communications services include voice and high-speed broadband services, and other additional services designated by the FCC.

NBF payments made to all eligible NBF ETCs will be funded by the Universal Service Fund (USF) Contribution Mechanism.[2]

Each eligible NBF ETC that applies to the Administrator for NBF support will certify that it provides all its Native American customers with access to broadband speeds meeting the FCC minimum requirements (currently at least 4Mbps down and 1Mbps up)[3].

The annual revenue requirement study should be adapted, as much as is reasonably possible, from other annual filings the eligible NBF ETC currently provides for the RUS (Form 479) and USAC (other USF program data submissions). The NBF requirement for each eligible NBF ETC is the overall revenue shortfall, if one exists, to provide communications services to American Indians, Alaska Natives, and Native Hawaiians.

- A shortfall results if the NBF ETC unseparated revenue requirement exceeds all revenues collected from communications services at end-user rates not less than national benchmark rates. The FCC will provide a schedule of national benchmark rates for communications services, which will be used by the Administrator to impute revenue amounts where the eligible NBF ETC end-user rates are determined by the Administrator to be less than national benchmark rates.

[2] A new and expanded contribution base, including broadband providers/services, should be adopted by the FCC as a necessary step toward sustaining all current and future USF programs.

[3] Until Alaska villages and other Tribal lands have access to affordable Middle Mile transport with sufficient bandwidth capacity, Alaska and other NBF ETCs must be exempted from the FCC minimum requirement.

- Revenues will be all revenues collected from communications services, including but not limited to end user revenues, other USF support amounts, and revenues received from FCC or state public utility commission approved individual tariffs or revenue pooling arrangements.

- The unseparated revenue requirement will be calculated incorporating part 32 operating expenses, including taxes, plus a net income amount. The unseparated revenue requirement will include a net income amount necessary for the eligible NBF ETC to achieve its "Times Interest Earned Ratio" (TIER), which is required of the carrier by the Rural Utilities Service (default TIER of 1.5 in the event no RUS prescribed TIER).

The addition of the TIER mechanism described above is necessary to keep companies financially viable during the transition of the current USF to a Connect America Fund (CAF) or other regulatory regime.[4] The transition will be phased in over 8 years (or as directed by the Commission), allowing the Commission necessary time to fully implement the CAF while providing NBF ETCs with the necessary funding to assist in the continued deployment of broadband-capable networks.

Except for the State of Alaska, if the eligible NBF ETC serves non-tribal customers exceeding 50% of its total customer base in its study area, the calculated NBF shortfall, <u>if it exists</u>, will be adjusted downward to an amount reflecting only the pro-rata share of its tribal operations (may use an average ratio for the Native investment, revenue, and number of customers within the study area).[5]

To remain an ETC eligible for NBF, all recipients are required to provide the Administrator with a copy of its annual ETC recertification report filed with its state public utility commission. The recipient will also provide a copy of the state public utility commission certification letter provided to the FCC and USAC. If the recipient does not file a recertification with a state public utility commission, it must provide a copy of the recertification filed with the FCC.[6]

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[4] The FCC may choose to exempt NBF ETCs from CAF provisions. The "safety net" mechanism must be a permanent feature of any regulatory regime proscribed for NBF ETCs.

[5] This is an important provision for non-tribally owned companies, since many tribes are served by RBOCs/RLECs that serve native and non-native service areas. Alaska NBF ETCs, however, are exempted from the pro-rata apportionment of an NBF shortfall. The FCC classifies "Tribal land" as a "reservation" as defined by the Bureau of Indian Affairs. Title 25 of the Code of Federal Regulations, Section 20.1(v) is used by the Bureau of Indian Affairs to define "reservation" and it incorporates all Alaska.

[6] In recognition of American Indian Tribal sovereignty, Tribal governments should play an integral role, including consultation with the FCC, in the process for designating Eligible Telecommunications Carriers to provide communications services to the reservation and receive universal service funds.

SUPPORTING USF NOI REPLY COMMENTS FILED AUGUST 2010

Specific to the extreme plight of Native American populations that are geographically isolated on Tribal lands, the Associations ". . . agree the Commission should give special consideration to improving broadband deployment and adoption levels in Tribal lands, including areas such as the Hawaiian Homelands. Tribal lands are typically located in geographically-isolated areas, where small pockets of Native American groups are served. The costs associated with delivering broadband services to these consumers are very high even when compared to other rural areas." (NECA, NTCA, OPASTCO, WTA, the Rural Alliance, and 38 concurring Associations at pg. 8)

The Alaska Telephone Association (ATA) not only supported inclusion of native Hawaiians with the other two Native American groups, i.e. American Indians and Alaska Natives, but also suggested another important pricing consideration for broadband services on Tribal lands. ATA states, "the tremendous cost of . . . transport . . . often prohibits the local provider from offering its customers reasonably priced broadband services. Those high costs are due to factors specific to each locale, but all are aspects of vast distances, extreme terrain and weather, and small populations." ATA then suggests that a USF pricing discount program, similar to that for Rural Health Care services, be applicable for Tribal land areas. The result would be truly comparable pricing for broadband services on Tribal lands. (ATA at pgs. 13-14)