Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 11-13

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

National Tribal Telecommunications Association

I. Introduction

The National Tribal Telecommunications Association ("NTTA") hereby submits these comments in response to the Notice of Proposed Rulemaking (NPRM) and Further Proposed Rulemaking (FNRPM) released on February 9, 2011.

NTTA is a national trade association representing tribally owned telecommunications companies and their customers. The eight regulated tribal telecommunications companies and associate non-regulated Tribal telecommunications companies comprise NTTA. NTTA members serve and are a part of their respective tribal communities. These comments address the concerns of NTTA.

The NPRM addresses the fundamental funding mechanism for rural telecommunications companies and the communities they serve. The Commission outlines broad potential reforms to the federal universal service support fund ("USF") included in a far-reaching National Broadband Plan (NBF) through a proposed Connect America Fund (CAF).

The FCC's proposed Connect America Fund is driven by the Commission's desire to modernize the nation's telecommunications infrastructure (by evolving all networks to high-speed broadband capacity), promote fiscal responsibility, embrace accountability by all stakeholders, adhere to market-based solutions to telecommunications challenges, and get the future right.

NTTA proposes a series of solutions aimed at altering the plight of America's Native communities. The FCC has the ability to shape the future of Native communities by taking a leadership federal role and by honoring the sovereignty of Tribal nations and empowering Tribal and Native governments with a simple concept of choice over the regulatory provider to serve their community. The FCC must support Tribal and Native government efforts to guide regulatory provisioning within its community.

NTTA proposes a 10-title Native Broadband plan to meet the broadband needs of Tribal and Native communities (page 32).

Responses to specific FCC questions about rule proposals affecting Tribal lands begin on page 38.

II. Executive Summary

- Native communities are the worst-connected communities in America.
- Tribal governments and communities should be treated uniquely by the FCC because of their status as sovereign nations, because the FCC has a trust responsibility to Tribal governments, and, because Tribal and Native communities are "historically underserved" and the least connected communities in the United States.
- Because of their unique status, Tribal and Native governments should be accorded priority for federal telecommunications resources.
- Because of their unique status, Tribal and Native governments should be empowered with the delegated option of choosing the regulatory provider for its community.
- The FCC should support all efforts by Tribal governments and Native communities to serve its own community.
- Because of their unique status, Tribally-owned ETCs should be protected from cuts to high-cost support to enable the ETCs to continue to provide essential broadband service to their communities.
- The measurement of high-cost support efficiency should be gauged by "quality of service" and households, businesses, and public institutions "connected" —not by cheapness of the network.

- The Universal Service Fund is not broken and has keyed quality service and connectivity in remote rural areas.
- Small and independent rate-of-return telecos have been efficient providers of telecommunications and broadband service.
- Reverse auctions are untenable, will engender greater USF costs, trigger catastrophic results for small businesses, create investment insecurity, stifle investment and reverse telecom market gains.
- Tribal and Native communities should be exempted from reverse auctions.
- Reverse auctions only make sense in price-cap territories to stimulate network investment.
- Native communities have a critical need for broadband
- Four critical networks need to be supported in rural and Native-America: 1) the third-rail foundation for all telecommunications service, the Public Switched Telephone Network (PSTN); 2) the public-safety network; 3) community public media network; 4) an emergency safety-net mobile broadband network.
- In the uncertain world of broadband Carrier of Last Resort (COLR) service where broadband subscriber take-rate and adoption is unpredictable, cost recoveries, and operational and administrative cost support will be the difference between sustainability and failure.
- Public interest requires the Connect America Fund to connect Tribal and Native public institutions to broadband.
- Because of high poverty and unemployment rates, consumers in Tribal and Native communities will need broadband Lifeline and Linkup support.

- Every American, especially Native Americans, needs access to 911 dial-tone.
- Broadband deployment will not necessarily provide 911 dial-tone in Native America.

III. The USF versus Connect America Fund: is it Broken?

While NTTA applauds efforts to increase the efficiency of support for and incentives to expand broadband networking to unserved and underserved rural communities, NTTA has grave concern that elimination of the high-cost support mechanism will cause greater harm and fail to achieve the intended benefit of efficient and rapid deployment of broadband service in rural areas.

A. Perceptions drive the regulatory reform effort.

Many of the large-scale regulatory proposals are based on incorrect policy assumptions. Foremost is the assumption the existing high-cost support mechanism has been Inefficient. Yet as Rate of Return carriers have entered into isolated rural areas without existing networks and market competition, independent carriers have grown the Public Service Telecommunications Network and increased broadband deployment while meeting all the carrier of last resort responsibilities to rural customers. Cost support based on actual network and service investment has proven an efficient model for evolving networks in market vacuum areas. Financing for these efforts requires a financing method that reflects real costs and a long-term, stable and predictable method of recoveries to sustain broadband expansion. A mechanism predicated on cost realities,

financial certainty and long-term investment recovery is essential to financing broadband deployment in rural areas.

Another erroneous policy assumption is there are two different technologies being deployed in rural America: infrastructure technology or legacy PSTN systems and broadband networks. They are one and the same. Informal estimates by rural small carrier companies indicate that 92 percent of small rural networks have already added advanced technology components. With each evolution of equipment upgrade, from hard to soft switches, convergence of technology is driving networks toward broadband capacity--under the current Rate of Return support model. Conversely, neither advanced technology nor wireless networks can be employed without supporting and expanding the underlying PSTN network.

From an economic standpoint, Rate of Return carriers inhabit service areas where market competition and private investment is absent or unlikely to occur without substantial high-cost support. This market reality will remain pervasive until the underlying PSTN system is expanded and capacity is increased by the rural ETC. In that economic reality, the current support system is not broken. It can be improved with additional incentive to increase the pace of network expansion and technology evolution. Eliminating Rate of Return actual cost support represents catastrophic upheaval of cost recoveries without certainty of financially sustainable broadband expansion.

A final assumption driving the elimination of the high-cost support mechanism and moving away from Rate of Return support model is the predicate that the Universal Service Fund must be capped and should not be expanded. If, however, the Commission were to expand the size of the Universal Service Fund (or its successor the Connect America Fund) by increasing contribution to the Universal Service Fund using PSTN usage as a touchstone of contribution,

the existing high-cost mechanism can be preserved and improved upon to meet the National Broadband Plan mission.

B. Efficiency and Cost Considerations

Small and independent carriers have made significant strides in expanding PSTN infrastructure throughout rural America.

The FCC's proposed strategies to eliminate complexities, inefficient cost proxies, and duplicative funding of multiple technologies competing for the same customer should be supported and applauded.

However, the quest for efficiency comes with a general assumption that Rate of Return companies are gold-plating their networks while failing to expand broadband networks in rural areas. This could not be further from the truth. Because over 90 percent of independent rural networks have added advanced technology components to their networks--while meeting their carrier of last resort responsibilities--small and independent telecos are examples of successful high-cost support market stimulation strategies.

Yet building networks in unprofitable markets, where large price cap carriers have withdrawn from, is not cheap. Generally, there will not be competition in many of these rural markets and the proposed option for reverse auctions is will remain purely hypothetical. Costs will be high for broadband expansion in these high-cost and low investment-return areas. A tragic consequence of proposed measures to eliminate high-cost support, in the pursuit of efficiency, will be the elimination of small carriers from rural markets. This will reverse service and network gains in very hard to reach markets.

NTTA underscores the important principle that efficiency in connecting remote customers is not synonymous with lowest cost strategies. Nor do the cheapest networks meet the standards of parity and reasonable rates envisioned in section 254 and Section 706. Remote costs are inherently high. For Tribal communities that have been the least connected communities in America the prospect of a regulatory system that will underpay the cost necessary to attain network parity adds concern that Native communities' isolation will continue.

By contrast, tribally owned and managed telecos are the models of efficiency. In 1990, 6 of the 8 Tribes that became their own regulated service providers had less than 10 percent service penetration in their communities. At the time of their decision to become regulated services, these 8 Native tribes felt they had no choice but to provision the communications needs of their communities. Today, each of these communities has seen 300 to 800 percent increases in service penetration accompanied by similar broadband access increases. By any measure, these Tribal build-outs have been the epitome of service and investment efficiency. But their network expansion and attainment of parity with urban and non-Native communities did not come cheaply nor were their networks the cheapest technologies support funding could provide. Yet, tribal network expansion in these communities met both the standards of parity and the standards of efficiency.

C. Flawed Regulatory Support Solution: Reverse auctions

Commission proposes a method of awarding support funding to carriers that propose providing broadband service at the cheapest cost. This process will result in lowering the quality of networks, lower quality of service; encourage cutting corners and potentially passing costs on

ratepayers to make up revenue shortfalls. This would be a recipe for disaster for Tribal and Native communities.

Tribes and Native communities have already experienced network providers cutting corners on cost and scrimping on network quality and build-out. A reverse auction mechanism would further the digital and analog divide for Native communities. Tribes need the full funding and resourcing commitment to meet the requirement of the Communications Act mandate for parity of service and quality —and affordable rates—compared to urban and non-Native communities.

Holding reverse auctions not only would drive incumbent small telecos out of business, but would increase USF or CAF costs as the losing incumbent bidder would be bankrupted and the network would be scrapped or overbuilt with the debt being assumed. RUS has made it clear the consequences of a reverse auction would be devastating to loan portfolios and create uncertainties about the ability of note-holders being able to repay their loans. Many telecos will be in equity court or bankruptcy court over the demise or forced sale of incumbent's certification and network assets. In addition, the CAF will have to pay additional amounts to overbuild networks in remote areas.

Reverse auctions should only be implemented in price cap territories where incumbent LECS have stopped investing in rural networks. Unfortunately, 80 percent of Native populations live in price cap territories. Reverse auctions might be the only tool to inject newer investments into stagnant investment markets.

NTTA proposes that Tribes be exempted from any effort to allocate high cost support through reverse auctions. The cost for deploying broadband networks in remote areas at parity with urban and non-Native areas is inherently high. To balance this out, NTTA projects support

for Tribal broadband build-out will have only a moderate impact on the Universal Service (or Connect America or Tribal Broadband) Fund. In the recent round of applications for Broadband stimulus funding, only 21 tribes submitted applications for funding. In addition, only two tribes in 14 years have become their own regulated telecos and ETCs.

D. Unintended Consequences of dismantling the USF

The success of the high-cost mechanism supporting Rate of Return carriers should not be minimized in order to shift nearly $1.8 billion to price cap or other technology based services. Eliminating the Rate of Return actual cost model would threaten the stability and predictability of future infrastructure investments. Both public and private financial investors have expressed concerns that movement to price cap forward looking models would threaten long-term investments because of uncertainty of return on investments. Rate of Return actual cost model is a rational method of re-investing in infrastructure and technology upgrades on an incremental and sustainable commercial platform.

NTTA questions how commercially sustainable new broadband networks will be once the underlying actual cost mechanisms and access charge revenues are eliminated. Commercial sustainability is certainly contemplated when the NPRM asks whether revenues should be included with costs in forward looking model allocations. An unintended consequence may be the Federal government (under the Connect America Fund) may be forced to provide far greater subsidies to broadband providers who replace independent carriers after the rural carriers are driven out of business. (A predictable consequence since termination of access charges will eliminate up to 60 percent of the revenues for many Rate of Return carriers operating efficiently in high-cost marginal markets.)

Beyond the uncertainty caused by shifting from the high-cost to the forward looking models is the time projection for transitioning a support system for expansion of broadband networks. The FCC project a transition between 6-10 years to evolve to the Connect America Fund into an operative broadband funding mechanism. NTTA posits that if the FCC preserved the current actual cost support method, expanded the support contribution base, conservatively increased the Universal Service funding level, enhanced investment incentives, and implemented accountability efficiencies, broadband deployment could be attained in the same time frame projected under the Connect America Fund proposal. But it would not require the upheaval of eliminating currently successful support and re-investment methods that have proven to be commercially sustainable. The public and private financial sectors regard these elements of sustainability and predictability as bottom-line calculations in their investment decisions.

IV. Analysis of the NPRM from a Tribal perspective.

The NPRM seeks response to proposed Universal Service rule changes. In the context of the National Broadband Plan and the proposal to establish a Connect America Fund, the Commission seeks to control the growing demand on the USF. Using several devices, the Commission attempts to cap the growth of the USF, limit which carriers might receive high-cost support, define efficient allocation of support, and extend Universal Service funding to broadband deployment by changing funding models and severing large portions of current support revenues.

NTTA not only represents the eight tribal communities that have established their own regulated telecommunications services, but also the interests of 556 other tribal communities that have not been able to provision their own services. Native communities are the worst-served in

the United States, with an average service rate twenty to thirty-five percent below non-tribal communities. What this means is twenty to thirty five percent of Native Americans, including nearly 50 percent of Navajos, lack the ability to call 911 for help.

A significant fact is 80 percent of native communities are located in price cap service areas. Therefore, regulatory broadband solutions must encompass price cap incentives to connect remote rural and tribal communities.

NTTA applauds the Commission for proposing targeting and defining "Unserved" areas for broadband services, but it does not define "unserved areas" for infrastructure services. The Communications Act of 1934 (the "Communications Act") requires universal access in infrastructure services,[1] a requirement that is not yet been met for the whole of the country. NTTA reasserts its call for both a definition of "Unserved" areas encompassing infrastructure services and a policy of ensuring a voice dial-tone safety-net for Indian America, the communities most aptly called the "last-reached communities."

NTTA notes that a policy reform providing support to Lifeline and Linkup customers for broadband services pre-supposes that appropriate PSTN infrastructure is available in rural Native communities. However, as the Commission is aware, for at least twenty to thirty five percent of Native households, this is simply untrue. The NPRM proposes to change the delivery of infrastructure support to broadband support in these "unserved" communities. It does not, however, insure that Native communities be guaranteed a 911 dial-tone safety-net to enable families to call 911, regardless of the pace of broadband deployment. A broadband policy leveraging new or continued high-cost funding in areas where current high-cost funding is not reaching certain communities will not impact these communities--particularly where there might

[1] 47 U.S.C. 151

be slippage in pace of broadband deployment--without a specific commitment for 911 dial-tone to every American family.

Current incentives for expansion of broadband infrastructure do not provide reimbursement for Voice over Internet Protocol service. In addition, Internet based voice service does not have the same quality of reliability or lifeline capability as public network based voice service. In the proposal to expand broadband service to rural communities, the Commission must address the issue of VOIP and IP protocol contributions as well as parity of quality in lifeline services to rural and Native communities. Remote and at-risk communities should not accept lesser quality and service commitment than urban and non-Native communities.

Unique Status of Native Communities

The Commission has historically called for unique policy treatment for Native American tribes because of historic under-service, the Federal Trust Responsibility, the Universal Service mandates of the Communications Act, and the Commission's own adopted Tribal Trust Policy. The FCC has given special accord to Tribal governments: "we are mindful of our obligation to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance" (Mescalero Apache Telecom, Inc. Order, FCC 01-13) The Commission also recognized the public interest need to assist Native communities: "The Commission has recognized that Native American communities have the lowest reported level of telephone subscribership in America" (Sacred Winds Communications Inc. Order, DA 06-1645).

The Commission can be applauded for taking particular attention to the status and plight of Native communities in America. While the NPRM has no specific recommendations to

address Native lands or the failure of both market and regulatory incentives to connect tribal communities, the FCC invites tribal participation on developing regulatory solutions for Native communities. The NPRM addresses the Enhanced Lifeline and Link Up programs, which NTTA asserts must be preserved and expanded through additional funding, resource and educational support.

Imposing a cap on the high-cost fund for carriers operating in underserved or unserved areas where costs are the highest, imposes a ceiling on universal service support for areas with the greatest infrastructure need. This suggests an inherent lack of understanding about and lack of commitment to solving a fundamental economic barrier for tribal communities. For instance, by imposing a reverse auction mechanism, the Commission will assure that communities with the greatest need and highest costs will receive the cheapest technological solutions with the least amount of resources committed to the highest-cost barriers. Tribes hoping for parity of advanced technology and 911 dial-tone safety-net will never see that parity under a reverse auction mechanism. In its attempt to reform the Universal Service rules, the Commission, with the adoption of this NPRM and any of the proposed National Broadband Plan strategies, will only further reduce market incentive to meet the needs of Native communities.

In addition, for the 8 Tribal communities that have committed to provisioning their own telecommunications needs—with dramatic results—will take a 33 percent revenue hit and the initial reduction of nearly $643,450 average per Tribal Carrier of Last Resort. This would harm the efforts of Tribes to meet the needs of their previously unserved members. (Because of high unemployment and high poverty rates, the Tribal COLRs are the line between being unconnected and being able to reach the outside world. For instance, Gila River Teleco has 86% of its subscribers on Lifeline support, San Carlos has 47% of its subscribers (900 subscribers) on

Lifeline support, and the Hopi telecommunications company has 700 subscribers on Lifeline support.)

A final note of concern: The proposed shift of $1.8 billion to price cap carriers and wireless carriers will undermine ongoing efforts of tribal carriers to continue efforts to bring parity of technology and broadband service. Will the proposed reforms and broadband expansion, largely focused on rate-of return carriers and the competitive ETC counterparts help any of these tribal communities? NTTA is concerned that no regulatory incentives included in these proposals will improve access in tribal communities. In addition, under the CFR 54.305 regulations (referred to as the parent trap rule), there is no guarantee that an independent LEC purchasing a price-cap service area will be obligated to improve service or provide broadband to tribal last-reached communities.

Unresolved issues between States and Tribal and Native communities

In the NPRM and NPRM the Commission has given significant recognition to the unique status of and barriers for tribal communities. However, historically Tribes and Native governments have been precluded from State Joint Board policy deliberations. This highlights the separation in regulatory stature and problem solving between Tribal and Native governments and state regulatory bodies. For example, in recommendations by the Joint Board, its recommendations are suffused with proposals to strengthen the role of state governments in the administration and distribution of federal universal service funds. However, the Joint Board neglects to discuss tribal sovereignty and tribal authority over their land and infrastructure services. The Commission must sufficiently modify the Joint Board's Recommended Decisions to preserve tribal governments' authority and the unique legal relationship between the

Commission and tribal governments by excluding tribal communities from the proposed Universal Service funding policy.

The 2009 Joint Board recommendations include dividing the current federal universal service high-cost fund into three separate funds: The Broadband Fund; the Mobility Fund and the Provider of Last Resort Fund.[2] For two of the proposed funds, the Broadband Fund and the Mobility Fund, the Joint Board recommends that states distribute the specific support amounts.[3] States are also tasked with determining rates of broadband and mobility access. As indicated above, it is the *tribal* land areas in this country that are vastly underserved in these two areas. Of particular significance is the fact there is no accurate data regarding the provisioning of either of these services on Native lands. Because of the lack of clarity about the jurisdiction of states and tribal governments, as well as the lack of data about provisioning of service in tribal areas, states should not be the decision-maker on providing universal service funding to tribes.[4] To allow the states to wholesale administer the funds where jurisdiction is unclear would arguably signal a contrary new jurisdictional policy that was not intended and create further confusion about the jurisdictional rights of tribal governments and states.

The heart of all tribal assertions of sovereignty is the separation of tribes from the jurisdictional rule or control of states. The Commission should directly administer the funds to tribes and should consult with tribal governments on the implications of the Universal Service proposals being considered by the Commission. This direct administration of funds and consultation process would strengthen the sovereign standing of tribal governments before the Commission.

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[2] Joint Board Recommended Decision, paragraphs. 12-23.
[3] Joint Board Recommended Decision, pararaphss 14, 17-18
[4] Tribes may, as sovereign entities, specifically elect to permit a state to make that determination.

Under both federal law and sovereignty principles, a tribal government has standing equal to that of a state government. The Joint Board's Recommended Decision must be modified in the following manner: Any allocated monies from either the Broadband Fund or the Mobility Fund to a state that includes federally-recognized tribal land should reflect a funding authority for tribal governments and a funding level to meet the needs of tribal build-out within that state.

Just as states are "best suited to identify unserved areas,"[5] tribal governments are best suited to identify the unserved and underserved areas of *their* land. Due to cultural and religious sensitivities, certain areas of a reservation may be not accessible to anyone outside the tribe. The Joint Board's recommendation of states determining the unserved areas must be modified to allow tribal governments their right and equal role. Determining unserved areas on their land is the role of the tribal government, not the state government.

V. Regulatory reforms require all communities be served.

Seventy-four years after the federal government promised "to make available, so far as possible, to *all people of the United States*, …a rapid, efficient, Nation-wide…wire and radio communications service with adequate facilities and reasonable charges,"[6] communications services on Native lands lag far behind that of the rest of the county. According to the 2000 decennial census, the telephone subscribership rate of Native American households on Native lands was 68.6 percent.[7] The national penetration rate for the same year was 97.6 percent. The

[5] Joint Board Recommended Decision, paragraph. 46.
[6] 47 U.S.C. 151 (emphasis added).
[7] *Challenges to Assessing and Improving Telecommunications for Native Americans on Native lands*, United States Government Accountability Office, Report to Congressional Requesters, Telecommunications, January 2006, GAO-

thirty point gap between an average American community and an average community located on a federal reservation is more than startling; it is a national shame. On certain reservations, the situation is dire. For example, in the Navajo community, the largest tribal community in the United States, only thirty-four percent of Navajo families have access to telephone service.

This failure of regulatory policy is also reflected in advanced information and wireless voice services. Specifically, the General Accountability Office ("GAO") reported to Congress that '[t]he status of Internet subscribership on Native lands is *unknown* because no federal survey has been designed to track this information."[8] In contrast, as of December 2006, the Commission reported that more than fifty percent of U.S. households subscribed to broadband-speed Internet services.[9] In 2006, the Commission reported 217 million wireless voice lines in 2006. However, as NTTA recently noted in comments filed with the Commission, there is very little reliable data regarding provisioning of wireless services on Native lands.[10]

There are eight bright spots in what is an otherwise bleak picture of telecommunications on Native lands. Eight tribes, out of the 564 federally-recognized tribes within the United States, have met the goal of owning their own telecommunications company, a Commission-recognized *sovereign* right.[11] These eight carriers range from Cheyenne River Sioux Tribe Telephone Authority celebrating its fiftieth year of service to the Cheyenne River Sioux Tribe, to the newest-founded Hopi Telecommunications, Inc. which received its ETC designation in 2006 to

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06-189, p. 11 ("GAO Report"). Many tribal leaders dispute the data gathered by the Census Bureau as being inaccurate.

[8] GAO Report, p. 15 (emphasis added).

[9] *Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, Recommended Decision, FCC 07J-4, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Nov. 20, 2007), paragraph. 59 ("Joint Board Recommended Decision").

[10] *Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Comments of the National Tribal Telecommunications Association, WT Docket No. 08-27, and WT Docket No. 07-71 (filed Mar. 26, 2008).

[11] *Matter of Federal-State Joint Board on Universal Service*, Report and Order, FCC 05-46, CC Docket No. 96-45 (rel. March 17, 2005), paragraph. 66 (emphasis added).

serve the Hopi Tribe. The other six carriers are: Fort Mojave Telecommunications, Inc. serving the Fort Mojave Indian Tribe of Arizona, California and Nevada; Gila River Telecommunications, Inc. serving the Gila River Indian Community; Mescalero Apache Telecom, Inc. serving the Mescalero Apache Tribe; Saddleback Communications, Inc. serving the Salt River Pima -Maricopa Indian Community; San Carlos Apache Telecommunications Utility, Inc. serving the San Carlos Apache Tribe; and Tohono O'odham Utility Authority serving the Tohono O'odham Nation. All serve exclusively on their own lands, as designated by the federal government. By significantly increasing consumer access to an advanced communications network, these unique carriers demonstrate that universal service can be brought to all citizens of the country.

NTTA is concerned that the proposed elimination of the high-cost support mechanism and the movement of Rate of Return carrier support to a Price Cap support mechanism will harm the 8 regulated tribal telecommunications companies. These 8 Tribes have taken a substantial and difficult path to becoming their own regulated carriers. As noted elsewhere in these comments, these communities have experienced from 300 percent to 800 percent increase in subscribership and broadband network enrollment as a result of the Tribe forming its own regulated provisioning services. These tribal telecos are the models of efficiency. Yet in the midst of changing the fate of their communities by bringing comparable technology and connectivity to their communities, the underlying high-cost model that has opened the door for these communities may be eliminated. NTTA is concerned ending the high-cost support model funding mechanism will put these tribal telecos out of business and thus reverse the network and access gains attained by the tribal telecos, at a time when their communities' needs have not been fully met.

NTTA argues that closing the door to high-cost actual cost support will close out the opportunity for 556 other tribal communities to attain what these pioneering 8 tribes have been able to bring to their communities. Without explicit regulatory support or reform, 556 tribes are left to their own devices to promote their sovereign right to provide for the communications needs of their peoples. For that reason NTTA has been consulting with the National Congress of American Indians, the Affiliated Tribes of Northwest Indians, the Great Plains Chiefs' association, the United South and Eastern Tribes, and several Alaskan corporation associations to find a way to ensure that Native communities and tribal telecos will continue to be able to rely on the underlying funding mechanisms of the high-cost model to continue to connect and bring the hope of broadband service to their communities.

It is important also to note that since the passage of the 1996 Telecommunications Act; only two Tribes have become regulated telecommunications providers. Two new regulated tribal providers in 14 years, when the Native communities are the worst-served communities in the United States. True, not every community needs to own and manage their own telecommunications needs—two other tribes have recently created their own non-regulated services, Warm Springs and Standing Rock—but it has proven effective in bringing profound change in regions where market forces and non-tribal telecos has not brought broadband to their communities.

The Commission is making substantial effort in this proceeding to honor the government-to-government relationship with tribal governments. The FCC must continue to follow the full spirit of this aspiration as it goes forward with the Universal Service reform, with Connect America Fund proposals, and with implementation of the National Broadband Plan.

In 2000, the Commission pledged that it would, in cooperation with tribal governments, "address communications problems, such as low penetration rates and poor quality services in Native communities, and other problems of mutual concern."[12] It specifically set a goal to "work with Indian Tribes on a *government-to-government* basis consistent with the principles of Tribal self-governance to ensure…that Indian Tribes have adequate access to communications services."[13] The Commission sought to achieve this goal through various principles including:

> 2. 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.
>
> 3. The Commission *will strive to develop working relationships with Tribal governments,* and will endeavor to identify innovative mechanisms to facilitate Tribal consultation in agency regulatory processes that uniquely affect telecommunications compliance activities, radio spectrum policies, and other telecommunications service-related issues on Native lands.[14]

While the Commission did consult with many Tribal Governments and organizations, while preparing the NPRM, no Tribal group knew the details of the FCC's proposed rules affecting Native communities. NTTA is hopeful that the FCC will seriously engage tribal entities and governments in shaping regulatory reforms and broadband policy affecting Native communities.

Tribal and other Native Communities

[12] *Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207 (rel. June 23, 2000) p. 4 ("FCC Policy Statement").
[13] FCC Policy Statement, p. 4 (emphasis added).
[14] FCC Policy Statement, p. 3 (emphasis added).

NTTA supports all Native communities in their efforts to attain full parity of connectivity with non-Native communities.

For purposes of defining Tribal lands and communities, in the NPRM, the Commission stated:

> For the purposes of this NPRM, we define "Tribal lands" as any federally recognized Indian tribe's reservation, Pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments. The term "Tribe" means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community which is acknowledged by the Federal government to have a government-to-government relationship with the United States and is eligible for the programs and services established by the United States. *See Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4080 (2000). Thus, "Tribal lands" includes American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, and Alaska Native Village Statistical Areas, as well as the communities situated on such lands. This would also include the lands of Native entities receiving Federal acknowledgement or recognition in the future. Although Native Hawaiians are not currently members of federally-recognized Tribes, we also seek comment on whether there are any unique circumstances that would warrant an alternative approach in Native Hawaiian homelands.

The Commission has stated that the respective insular areas have "very different attributes and related cost issues than do the continental states"[15] Nearly 4.5 million Native Americans live in isolation in the continental United States. Based on FCC estimates, 31.4 percent of households on federal reservation lands have no access to basic voice services. A comparison of the latest census data (2000) shows that 6.3 percent of Alaskan households and 4.5 percent of Hawaiian households lack telephone service.[16]

In the proposed 2009 NPRM, CC Docket 96-45, the Commission exempted application of regulatory funding caps and regulatory reforms for ETCs in Alaska, Hawaii and U.S. territories. This was in recognition that these communities had higher need for continued cost support. In that proposed rulemaking, the FCC failed to address federal reservation Native communities. [17] NTTA is hopeful that the Commission will be pre-disposed to exempting

[15] NPRM and NPRM, Appendix A, paragraph. 13 (footnote omitted).
[16] U.S. Census Bureau Data Sets, www.factfinder.census.gov (last accessed on November 24, 2008).
[17] See NPRM, Appendix A, paragraph. 13 and NPRM, Appendix C, pararagraph. 13.

Tribal and Native communities from the drastic overhaul of the high-cost model and Rate of Return status to buttress the high cost of network expansion and to ensure investors be able to predict and rely on infrastructure investments in Native markets.

In moving ahead with any comprehensive reform, the Commission must take all necessary steps to ensure that the promise of universal voice service is finally achieved in *all* areas of the country, particularly in Native sovereign communities. The recommendation by the Joint Board that the five elements of the federal high-cost fund be capped at their 2010 levels[18] would harm Tribal communities.

As noted above, telephone penetration rates on Native lands lag twenty to thirty five points behind the rest of the country. If the Commission adopts a cap to expenditures in Indian country and does not exempt Tribal areas, then it is sentencing these unserved areas to an uncertain and isolated future.

For tribes that are planning on self-provisioning service but have not yet completed the necessary regulatory process, 2010 levels will most likely be insufficient in the face of antiquated facilities, underserved and unserved areas, and price cap status. A cap on high-cost support in tribal areas, areas that are a full twenty to thirty five points behind the rest of the country, does not "preserve and advance universal service."[19] Given the historic under-service in tribal areas, the Commission must accommodate the build-out costs in Tribal and Native areas by exempting Native lands from a cap on federal support.

NTTA requests that Tribally-owned Carriers of Last Resort be exempted from FCC efforts to eliminate the current high cost mechanism and from the shift from Rate of Return to Price Cap designation as Safe-Harbor to preserve their ongoing efforts to serve their

[18] Joint Board Recommended Decision, paragraph. 32.
[19] Joint Board Recommended Decision, paragraph. 26.

communities. NTTA, however, does propose a forward looking Native Safety-Net mechanism to promote future Tribal broadband service efforts by supporting differentials between Tribal broadband service costs and COLR revenues. NTTA looks forward to working with the FCC to refine this model.

The FCC Should extend the mass media Tribal Priority to all Telecommunications Services for Tribal communities.

The FCC's well applied Section 307(b) Tribal Priority chartered in the Commission's *Tribal Priority and FNRPM*[20], got it right stressing Section 1 of the Communications Act of 1934's emphasis that "Indian Tribes have adequate access to communications services." In light of the sovereignty of Tribal Nations, the FCC's trust responsibility, the Act's mandate for universal service access, and the historic "under-service" and failure to connect America's first communities, NTTA urges the FCC to extend the Section 307(b) Tribal Priority to all services within the mandate of the Communications Act of 1934. NTTA calls on the FCC to prioritize all federal resources available to meet the needs of Native communities and to look out-side of the regulatory box to target strategies at Tribal and Native communities. NTTA calls for specific initiatives later in these comments.

Linking Support Priority to both PSTN and Broadband under-service in Indian America.

As noted above, proposed federal Universal Service policy appears to be expanding the use of the USF toward providing advanced services to all parts of the country. An unwanted result of this expansion would be focusing additional USF dollars on communities that have

[20] 75 Fed. Reg. 9797 (March 4, 2010)

already attained 90% voice connectivity but do not have broadband. Funding broadband in a community with commercial knowledge of how to attain public and private funding would undermine the intent of Universal Service under the Communications Act. Therefore, the Commission should first look to prioritizing support for communities without PSTN infrastructure and without broadband service.

The Commission should define "Unserved Area" for infrastructure services.

As the Commission appears intent on including the provision of broadband service within the umbrella of universal service policy,[21] it should first define the term "unserved area," especially regarding voice services. The FCC has only been charged by the ARRA to define unserved area for advanced services, the Commission should immediately adopt a definition of "Unserved Area" as an area where the penetration rate for all communication services, including basic and advanced services, is fifteen percent below the nationwide average for that service.[22] Further, in order to accurately measure the progress of Universal Service policy in the unserved areas of the country, the Commission should issue an annual report linking support for and solutions linking unserved infrastructure areas (PSTN) and the progress made, or lack thereof, and broadband service.

The Communications Act and the federal trust responsibility to tribes require the adoption of a voice dial-tone safety net for tribal communities.

The FCC should only embrace a broadband universal service mechanism if every rural and Native resident has access to basic 911 dial-tone.

[21] NTTA recognizes that none of the 2009 Draft Orders include "broadband Internet access service" as an USF supported service.
[22] See Attachment A, pp. 4-5.

Tribal communities continue to be the worst-served communities in America, whether the consideration is of basic, advanced or mobile services. The Commission is required, both by the mandate contained within the Communications Act as well as the Commission-acknowledged federal trust responsibility, to make every possible effort to address the needs of tribal areas. It should address these needs before providing even more federal dollars to those communities with an abundance of services.

Tribal Empowerment: the rights of consumers and sovereign nations

NTTA proposes putting the power of choice in the hands of the third stakeholder in the regulatory design for universal service: the customer. In Native communities a twin policy imperative mandates the NTTA proposed option to Native governments the right to choose their ETC providers. First, Tribes have been the victims of historic under-service in America and continue to be the worst-served communities in our nation. Second, Tribal Sovereignty and the Federal Trust responsibility compels the FCC to defer to Tribal and Native governments for choice of regulatory providers, especially if providers previously have not consulted with the government and have not connected the community to the PSTN and broadband networks.

In addition, when a class or group disparity of voice dial-tone access and broadband service is identified, the Commission is compelled to apply innovative solutions to deal with the barrier, here, the analog and digital divide in Native America. The Commission should implement a Voice Dial-Tone Safety Net policy that would re-align its decisions on the requirements of ETCs to meet the needs of unserved tribal areas. This proposal would also give the victims of under-service a stronger participation in and use of mechanisms to drive service outcomes. Due to the unique federal relationship and respect for the sovereignty of Tribal and

Native communities, the FCC should give Native governments the option to choose their ETC providers. This will close the gap between providers and consumers and establish the basis for consultation between tribal governments and the regulated providers. This proposed option to choose both recognizes and promotes tribal sovereignty and is in keeping with the Commission's willingness to revoke incumbent support in order to auction universal service support for service areas.

The Commission should therefore mandate that all ETCs serving on Native lands consult with the respective tribal government on plans to connect all residents in the tribal service area. The tribal government should be notified on every federal filing made by an ETC serving the Native lands. The ETC should consult with the affected tribal government *prior* to any substantial network build out or on regulatory proceedings that affect the tribe's communications and land resources.

The Commission should stand ready to enforce any failure of an ETC to fully connect all geographic areas in tribal land areas. These actions may be invoked by the Tribe or any party acting on behalf of public interest. The Commission may—in consultation with the Tribal government—remove the carrier from its ETC status and the Tribe may exercise its ETC choice.

The Commission should require ETCs serving Tribal communities to file an annual connectivity report with the tribal government and the Commission documenting the level of connectivity and service progress bringing universal service to the tribal community. The annual progress report should specify efforts to consult with and strategies applied to improve service and connectivity on Native lands.

NTTA calls on the Commission for innovative policies and incentives to connect residential customers in unserved areas.

Tribal governments should be able to attain designation as separate Native study areas.

NTTA urges the adoption of Native lands as separate study areas. This regulatory assertion, based on public convenience and necessity, would simplify carrier obligations to a Native community and streamline tribal access to telecommunications services. Moreover, this would help focus USF support where it is most needed. It would also clarify the authority of tribal governments over their land.

As the experiences of all eight tribally-owned carriers prove, by classifying the tribal land as a separate and unique study area, USF support is tightly focused on those areas that require the most support – the unserved areas.

If the Commission is willing to promote reverse auctions—a competition for the lowest cost infrastructure deployment—the Commission should be able to support the Tribe's ability to leverage ETC support to attain connectivity. Due to their nature as sovereign entities, tribes hold sovereign rights only over their own land. Therefore, a tribe seeking to self-provision communications services can do so on their own land. Requiring Native communities to accept larger study areas, the Commission inadvertently undercuts tribal sovereignty by subjecting carriers serving tribal communities to state regulation when a tribal government may not find consistent support for the Tribe's service and community needs. The Commission can enhance tribal sovereignty and remove this issue by permitting Tribes to seek their own service areas on Native lands.

VI. NTTA proposes specific measures designed to address the current disparity in telecommunications services.

NTTA outlines specific steps that could be taken to promote both universal infrastructure and broadband expansion to aid tribal governments in achieving their sovereign right to provide for their nations. NTTA reasserts thirteen of these points provided within its comments in November and April, 2009 in the FNRPM and NPRM before the FCC. [23] Several of these points are central to the promotion of Universal Service on Native lands. Specifically, NTTA calls on the Commission for innovative measures including:

1. Giving Tribal lands a carve-out from any cuts on USF support, a permanent waiver of the parent trap rule, and a waiver from any reverse auction proceedings. These measures will enable communities in the most economically challenged and high-cost areas a hope that they, too, will be connected.
2. Giving Tribal regulated Carriers of Last Resort a Safe-Harbor protection from the changes in the USF/CAF rules that will eviscerate nearly 34 percent of current cost recoveries and harm populations that were "unserved" just 20-30 years ago, and reside in communities with high poverty and unemployment rates.
3. Consulting with NTTA on a proposed long-term Native Safety-Net mechanism that will support Tribal and Native carrier of last resort's future broadband service efforts.
4. Permitting Tribal and Native governments to choose the regulatory provider for the community's service area. This simple paradigm shift will 1) give Tribal and Native governments a direct choice of providing regulatory service to its own community, or 2) to consult with an incumbent or new carrier of last resort to connect the community.

[23] NTTA again notes that none of the thirteen points or any mention of the current and severe disparity between tribal and non-tribal communities was substantively discussed in the NPRM or the three Draft Orders.

5. Defining the term "Unserved Areas" within voice and broadband infrastructure so as to create a trigger for extraordinary governmental intervention and application of regulatory waivers and funding priorities to help "unserved areas.
6. Supporting the Tribal or Native government over state governments in conflicts involving jurisdictional matters on a Tribal or Native land, including designation of ETCs and service areas.
7. Easing and streamlining certificates of convenience and permitting new Tribal or Native service area designations that comprise a Tribal or Native community.
8. Re-evaluating the notion of "efficiency" as applied to accountability and condition of attaining and retaining Connect America funding. Efficiency should be a gauge of quality of service metrics and connectivity outcomes. Connectivity should be defined as broadband connection to households, businesses, public institutions, and public internet sites.
9. Re-evaluating the definition of broadband. For Tribal and Native communities, the threshold for broadband should not be 4 megabit down and 1 megabit up but 100 megabits symmetrical speeds. Similarly, the wireless speeds should not be 3G standard but 4G. The broadband capacity needs of rural and Native communities are no different, if not more urgent for rural communities. While cost is the manifest reason for lower broadband thresholds, it gains no long-term benefit if the technology is obsolete before Tribes and native communities can even deploy broadband technology. The lower capacity threshold has in mind wireless technology which is at best a short-term solution and at worst, not the lifeline reliability network one would impose on Tribal and Native communities. A fiber network will outperform wireless networks by magnitudes of scale and be more secure. The long-term costs arguably are not exponentially higher.

10. Enforcing failure to fully connect all geographic areas in tribal areas, or for connecting a non-Tribal area better than the tribal community. Similarly, the FCC must enforce failure to advertise Broadband Lifeline and Linkup support or to advertise its public interest obligations to a Tribe or Native community.
11. Promoting consultation between Tribal and Native governments and CAF ETCs serving Native areas and states, when states have overlapping interest or implement policies with a material impact on Tribal and Native communities.
12. Increasing contributions to the USF and CAF from all sources that touch and use the PSTN system. And in doing so, increasing the cap on the USF/CAF fund.
13. Supporting NTTA's Native Broadband Fund proposal (see below).
14. Assisting with a Native Broadband Mapping and Inventory project. (see comments below on broadband mapping)
15. Issuing an annual report regarding the state of unserved areas with a specific emphasis on unserved tribal areas to be made public by the Commission.
16. Initiating an interagency taskforce to develop resources and remove regulatory barriers—such as permitting multi-public mission use of telecommunications capacity funding.
17. Coordinating with RUS and NTIA to provide broadband adoption resources, education and strategies, including technical assistance funding for tribal telecommunications feasibility studies.
18. Re-assessing selling off spectrum over Native lands and push for pilot or permanent open spectrum use for Native communities.
19. Removing the "parent trap" rule ("Section 54.305") for Tribal purchases. Under Section 54.305, a buyer inherits the regulatory status of the selling LEC.

NTTA proposes a Native Broadband Fund

To meet the Broadband need of Tribal and Native Communities, NTTA proposes support and funding for a variety of platforms and activities essential for delivering and adapting broadband in Tribal and Native communities. Not all the titles will be funded from the Connect America Fund, but will have to be funded through RUS grant or loan auspices. (NTTA is working on cost projections for the Fund.) NTTA calls on the FCC to support these vital Broadband service and resourcing goals and to initiate interagency efforts to meet the needs of Tribal and Native communities.

NTTA calls on the FCC to mandate requirements for commercial carriers, states and responsible federal agencies to consult with Tribal and Native governments on implementing the broadband services of tomorrow in Tribal and Native communities.

Eligibility: all Native American governments and Alaska Native Corporations or Hawaiian Homeland entities representing a Native community.

Title I: Provide Technical and Financial Assistance for Native Regulatory Service Launch (help Native governments to assess and plan regulated and Broadband service). Funds to come from RUS and/or NTIA

Discussion: There is a major barrier to Native communities becoming their own providers: only 3 tribes have become their own regulated carriers since the 1996 Telecom Act.

Tribes need to understand the underlying requirements and outcomes of providing their own regulated telecommunications service.

Proposal: The FCC should work with RUS and NTIA to direct funding to help Tribes and Native communities attain sufficient funding to assess whether to become a regulatory broadband carrier with an assessment of costs, revenues, regulatory requirements, sustainability, client base and needs, cost structures, and financing options.

Title II: Support Administrative and Operational Costs in High-Cost Areas: (help native communities to sustain key broadband and infrastructure service in their communities.) Funding from CAF

Discussion: the most difficult aspect of rural economics is the ability to sustain commercial services in high-cost, low-revenue, and low-income areas. This portion of the Fund would focus specifically on helping providers with costs to administer and operate networks in Native communities. This support could be the difference between sustainability and failure to maintain broadband service.

Proposal: the FCC should permit operational and administrative (corporate expenses) in the Connect America Fund.

Title III: Connect "Under" and "Unserved" Native Areas (Helping Native Communities attain parity of service and technology through regulated support): Funding from CAF/RUS

Discussion: this takes the successful components of the existing recovery and support mechanism for high-cost areas investment and expense to support network construction for

"under" and "unserved" Native communities. It continues a tested means of spurring new infrastructure deployment for targeting expansion in Native communities.

Proposal: this fund would support the startup of Tribal and Native regulatory telecos (an RUS function) and continue broadband services in Native communities (CAF cost recovery funding.)

Title IV: Sustain Current Tribal Regulatory Services—Native Safety Net mechanism (Helping tribal governments to continue with regulatory telecommunications service to their communities.) Funding from CAF

Discussion: Tribes that have embarked on self-provisioning regulatory services have made dramatic turn-around in their economic future. 8 Tribes have become regulatory providers and on average have improved infrastructure and broadband connectivity in their communities by 300 to 900 percent! NTTA has devised a broadband service recovery mechanism to enable tribal broadband COLRs to continue expanding broadband services in their once "unserved" communities, with a minimal impact on the proposed Connect America Fund.

Proposal: the adoption of a Native-Safe Harbor rule within CAF to permit Tribal and Native Communities to continue its current levels of funding applying the same high cost support mechanisms. NTTA is proposing a second "Native Safety-Net mechanisms to offset all the costs of conducting a broadband COLR service within a Tribal or Native community against all the revenues that COLR earns.

Title V: Provide Native Broadband Lifeline & Linkup Support (Helping Native consumers be able to afford residential broadband service.) Funding from CAF

Discussion: The lifeline and Linkup program has proven critical to supporting household access to essential safety-net dial-tone to reach 911 for help. The next generation of infrastructure will bring broadband and embedded voice service as baseline communications connectivity. Many poor subscribers need assistance to attain the new generation of broadband "connectivity."

Proposal: The FCC needs to implement a broadband low-Income program for Tribal and Native residents. With unemployment hovering near 90 percent and poverty nearing 40-50 percent in some communities, very few Tribal or Native households will be able to afford residential broadband.

Title VI: Support Native Public Safety Networks (Helping Native Governments meet life & death situations.) Funding from CAF/RUS/Homeland Security

Discussion: Native communities must have state-of-the-art public safety networks to meet life and death needs of their community; link with regional first-responder networks, and support homeland security strategies. Federal government should therefore support construction of linked safety radio networks, 911 PSAP re-configuration and resourcing, and E-911 mapping in Native communities.

Proposal: The FCC should take the lead along with Homeland Security on reshaping and coordinating public safety planning and response efforts in Native and rural communities. Two-way radio networks should be constructed. 911 PSAP routing be re-planned, resources found for call dispatch, and funds, equipment and software purchased that will coordinate various emergency frequencies. Finally, communities should be provided sufficient funding (RUS?) to attain E-911mapping within the community.

Title VII: Connect Key Native Public Institutions (Helping Native Governments to connect critical public institutions to Broadband) Funding from CAF

Discussion: Public interest requires addressing the broadband disparity for connecting Native public safety, health, and educational institutions. Because Native governments are responsible for meeting community needs, the Federal government must support Native Nations' delivery of public service.

Proposal: create a template and a plan to require public interest obligation to fund connection of community public institutions and public broadband access points.

Title VIII: Support Native Local Public Media Access (Helping Native governments to provide essential public and local information to Native residents.) Funding from RUS/NTIA

Discussion: Because Native communities suffer a high disparity of public network and broadband connectivity, and the need for public safety information is amplified in rural communities, the Federal government must support universal access to public information in Native communities.

Proposal: following the Commission's adoption of a tribal public media licensing policy, the FCC should make efforts to put more media licenses in the hands of Native communities. But the funding for broadcast station build-out may come from RUS and NTIA resources.

Title IX: Native Broadband Mapping: a separate broadband mapping project for Native governments (Helping Native Governments attain essential data for Broadband deployment and public-safety planning) Funding from NTIA

Discussion: Broadband mapping—much like census impact--is essential to targeting funding and resources to Native communities. The Federal government should provide funding and technical assistance to help Native governments to map broadband connectivity, inventory available infrastructure, identify barriers, and include tribal consultation in the planning of Native mapping.

Proposal: The FCC should coordinate with NTIA and Tribal and Native governments to undertake a Native Broadband mapping project that would look at inventory of available and non- traditional telecommunications infrastructure, identify barriers, and route a next step for broadband service startup.

X. Safety-Net Broadband Mobility Network (Helping Native Governments supplement lack of infrastructure, broadband or public-safety networks with a broadband mobility safety-net 911 access network) Funding from CAF

Discussion: Because Native communities lack basic public switched network availability and broadband is not available (and wireless service is seldom reliable), Native communities should receive support for a Mobility Broadband Network to buttress public safety and public switched networks as a safety-net network.

Proposal: The FCC can start with the one-time mobility fund to target Tribal and Native communities that have been bypassed regarding wireless service to design an emergency mobile fixed wireless network to fill in where PSTN network has not reached.

VII. FCC specific Questions regarding Tribal and Native issues

101

Q: How Should the FCC (government) Best Coordinate Efforts to Ensure that all Americans Have Access to Modern Communications Networks?

A: In paragraph 13 the FCC acknowledges the role of states and the efforts by the National Telecommunications and Information Administration (NTIA) and RUS to assist broadband efforts in hard-to-serve areas. NTTA urges the FCC to participate in an interagency effort to marshal federal resources to meet the need to expand networking and mission of broadband utilization in hard-to-serve areas.

The joint agencies should inventory the available delivery capacity, federal and state resources available, examine their current use, identify federal and state barriers to cooperation in implementing networks and to promote more comprehensive use of broadband capacity—for instance permit multi and mixed-purpose use of public funded networks, combining resources with differing mission purposes to fund and deploy open-access public and wholesale broadband networks. The joint federal response should also examine the alternative of public or federal/municipal or public or federal/tribal strategies to sustain broadband networks as equity partners.

A vital element of multi-governmental or coordination strategy regarding Native communities requires both federal and public supported providers engage in both governmental

and commercial consultation with targeted Native communities. The consultation should include resource targeting, metrics and adoption strategies in Native communities.

Because public and private investors play an essential role in the future of rural broadband deployment, NTTA, strongly urges the FCC to promote only deployment strategies that promote commercial predictability, transaction transparency and long-term equity security. Recurring support auctions and uncertainty of equity status make it very difficult to promote investment in rural and high-cost broadband markets.

Lastly, as joint federal and state efforts proceed, NTTA urges an emphasis on efficiency tied to outcomes rather than the element of "cheapness." Because middle-mile and broadband commercial deployment in high-cost and low-income rural markets are inherently expensive, without market competition, and commercially unproven, NTTA urges the FCC to apply metrics and incentives that are tied to connectivity, subscriber take-rate and capacity utilization as opposed to traditional one-dimensional litmus of low-cost expenditures. As Chairman Genochowski has emphasized, the FCC wants to see the "best bang for the buck". The proof and test will be how to interpret and promote the concept of "the best bang." Native communities indeed deserve the "best bang for the buck" in federal commitment and outlays.

<u>101 and 130</u>

Q: How can we create incentives for states to re-evaluate and harmonize the requirements they impose on the ETCs that they designate to be consistent with any new federal requirements? We also seek comment on whether the Commission could or should adopt any measures to provide incentives to states to eliminate state COLR obligations for any company that relinquishes its ETC designation or no longer receives universal service support. Should there be

any additional obligations imposed on recipients serving areas in which the telephone penetration rate historically has been substantially lower than the national average (e.g., on tribal lands and in Native communities.)

A: The Federal Communications Commission must take greater leadership and responsibility for effecting change in "substantially lower penetration areas." NTTA has consistently called for the FCC to define "unserved areas", replete in the Communications Act, for both infrastructure and broadband. In previous comments, NTTA has strongly urged the FCC, Department of Agriculture and the Department of Commerce to prioritize resources for rural areas that have a high level of "unserved" infrastructure and broadband service. Tribal areas and Native communities are predominate "underserved" communities by PSTN and broadband access.

Insofar as tribal communities have historic jurisdictional issues with states' regulatory authority over the tribal nations, states can help address the severe under-service of telecommunications service to Tribal and Native communities. However, the solution is more aligned with determining the need of the tribal and native communities than in regulating the Native communities. All due deference must be paid to the sovereignty of tribal and Native governments.

Both federal government and states need to support the choice of tribal and native communities in managing telecommunications services rendered in the tribal and Native communities. Elsewhere in this docket, NTTA is urging the FCC to support the bottom-line choice of a tribe or Native community either to serve itself or to determine which carrier will be providing (in consultation with the Tribe) COLR service.

If a Tribe or Native community wishes to serve itself, both the Federal and state government must do whatever it can to support the regulatory process—including removing regulatory obstacles--of the Tribe becoming its own regulatory provider, and provide the resourcing necessary to become a tribal ETC. (NTTA points to the efforts of its 8 regulated carriers as models of efficiency serving the needs of long-term underserved and unserved communities.)

On the other hand, if the Tribe is not asserting the desire to serve itself, it should determine (in consultation with the carrier) which carrier will honor the obligation to use regulatory support to connect the community to broadband and essential life-line services. The Federal government and states can assist monitoring and invoking incentives to support these efforts to bring connectivity to a Native community.

In any circumstance where a carrier of last resort in a "historically underserved" tribal or native areas wishes to cede ETC status, the State and FCC should engage the tribal or Native government In the process of determining a COLR willing to meet the service needs of the community. Failure to make that determination or secure that end result will not release a COLR from its obligations to a tribal or Native community. States can play a material role in incentivizing COLR to improve service to "underserved" tribal and Native communities. However, these incentives should have predictable and measure outcomes and should also entail consultation with the tribe or Native government.

136

Q. The Commission asks for specific milestones and measures for build-out in tribal and Native communities under the CAF.

A. The Commission would do well to engage first the tribal and Native government and the Rural Utility Service which has a deep base of knowledge and experience financing network build-out in rural areas to determine benchmark milestones for CAF funding for broadband networks in tribal and Native communities. The FCC should engage the Bureau of Indian Affairs in a direct interagency compact to create timelines and resourcing commitments to accelerate and remove rights-of-way and any regulatory hurdles that stand in the way of speedy tribal and Native community broadband build-out. The FCC may convene an advisory group—to include at minimum tribal and Native officials, RUS, NTIA and BIA officials--to develop procedures and recommend milestone determinations in CAF directed tribal and Native community network build-out

151

Q: The Commission asks if public interest requirements should include engage with Tribal governments on providing broadband to tribal and Native community institutions.

A: This is a very important element of broadband adoption that the Commission has properly identified. First, tribal governments are responsible for public service that other service clients are not charged with. This is recognition that public institutions within a community, public safety, health, education, governmental service and economic development entities require broadband service.

Second, connecting broadband to public institutions is essential to Tribal and Native residents who cannot afford residential broadband service. And, finally, the goal of providing ubiquitous and essential broadband service is met sooner when public institutions are primary first-stage targets. While the public institution public interest add-on is a welcome out-of-the-

box and cutting-edge regulatory requirement, NTTA deems it reasonable that broadband COLRs should receive fair-share incentives on top of their cost recoveries to achieve these first-stage outcomes.

And, as in all features of a Tribal and Native targeted CAF public interest requirement, consultation between the COLR and the targeted tribal or Native government is essential. USAC should include a certification consultation and the public-institution broadband connectivity has been fulfilled as a condition of or evaluation for CAF funding.

155

Q: Role of States and Tribal Governments. The FCC asks about the role of states and Tribal governments in enforcing compliance with these federally defined public interest obligations.

A: In NTTA's comments on paragraph 101 and 130, we demarcate the relationship between states and tribal and Native governments. Tribal and Native governments must be consulted regarding any aspect of regulatory service in their communities.

Reinforcing the sovereignty of Tribal and Native nations, in States where non-tribal broadband COLRs are responsible for serving Tribal and Native communities, the state should consult with tribal and Native governments on quality of service to the community and the grounds for enforcement of CAF compliance. *However, in this area of jurisdictional delegation--public interest policy setting and enforcement--the Federal Communications Commission must assert and manifest its primary authority under the mandates of the Communications Act and its Indian Trust responsibility to act on behalf of and protect the interests of Tribal and Native governments, not on behalf of states as it has been perceived to do.*

This is even more essential when a tribal government asserts its choice to become a regulatory broadband COLR—serving its own nation. In such circumstances, the tribal and Native government can seek the direct regulatory relationship with the federal government or, by Tribal choice, the state government. The FCC must manifest its public interest role in promoting and honoring the jurisdictional choice and rights of Tribal and Native sovereignties. Even with that choice, the responsibility for enforcing public interest obligations in or for a Tribal or Native community resides ultimately with the Federal Communications Commission.

156

Q: The FCC asks whether states or Tribal governments may impose additional obligations on funded providers. If so, should the state or Tribe bear the costs associated with those obligations? Does the FCC have the authority to direct states or tribal governments to impose and enforce additional obligations under existing precedent? And what are the role of state commissions

A: NTTA believes the FCC can delegate its authority through the Communications Act to states to implement COLR obligations under section 214, 254 and 706 mandates. However, regarding Tribal and Native governments, the FCC has a direct federal responsibility to Tribal and Native governments and in that respect, the FCC has manifest and primary responsibility for regulating service and enforcement of public interest requirements in Tribal and Native communities.

Any state effort to enforce or regulate public interest in a Tribal or Native governmental jurisdiction should only occur in consultation with and with the permission of the Tribal and Native governments. On a practical scale, this failure to include tribal participation on the policy

setting and enforcement of public interest requirements is why commercial and regulatory services are disparately poor in Tribal and Native communities.

NTTA believes that state and Tribal governments can ask for obligations that result in parity of service with non-tribal and non-Native service communities. The carriers of last resort under the CAF should bear the costs of obligations to provide parity of service with non-Tribal and non-Native communities. Should there be a *Native-additive mechanism* to fund these service disparities? Yes. But only if the COLR can demonstrate it has not discriminated against Tribal and Native communities in the deployment of its broadband service. That Native additive mechanism, however, must be invoked with Tribal and Native-government consultation and consent and with strict FCC oversight.

211

Q: the Commission asks if in the process of transforming the high-cost fund into the Connect America Fund, it would be prudent to adopt as an interim step a cap on total annual support per line, with a rebuttable presumption that the costs above the cap are ineligible for recovery through universal service. Should there be an exemption for carriers serving tribal lands?

A: NTTA's regulated carriers would have no difficulties meeting the suggested $3,000 per line annually under current cost recoveries.

However, with the uncertainty of future broadband COLR mandates, scale and scope of network build-out, subscriber take-rate and broadband adoption challenges, NTTA urges the FCC to permit regulated tribal telecos to continue for an indefinite time current recoveries (under existing cost recovery mechanisms) as a floor to their costs under a Safe-Harbor rule for Tribal

ETCs until such time as the tribal ETCs can choose to opt into a Native Broadband Safety-Net recovery mechanism. (see our response to paragraph 254)

At this point in time, eight tribal telecommunications companies are providing essential regulatory service in their communities, including broadband service. To support tribal sovereignty and to promote self-sufficiency of tribal governments, particularly in historically under-served Native communities, NTTA proposes two crucial regulatory strategies to promote last resort service to Native communities.

NTTA first proposes that the FCC waive proposals to alter, cap or eliminate current high cost support for tribal ETC networks.

In Native communities the tribal telecommunications service is essential for economic development, education, community services, and public safety. 6 of 8 of these communities had less than 10 percent penetration in 1990. Yet today, because of the efforts of tribal carriers of last resort, these 8 tribes enjoy at least 85-99 percent service penetration, an improvement of 750 to 900 percent. However, the communities are still hard-to-serve due to high unemployment rate, high poverty rate, difficult topographies, remoteness and lack of market incentives. Tribal providers are faced with steep cost of deployment and steep costs of administering advanced services in remote labor markets.

Moreover, service to the community is fragile due to high numbers of at-risk families relying on telecommunications service. As an example, 85 percent of Gila River's subscribers are on Lifeline and Linkup support. About 900 of San Carlos' 2000 subscribers are on Lifeline and Linkup Hopi Telecommunications Inc. has increased Lifeline subscribership from 70 to over 700 since they began operations five years ago.

Because of the inherent weakness of the tribal markets described above, the at-risk communities being served, and the recent advent of tribes serving their own communities, tribal telecos should be protected from the dramatic changes being proposed by the FCC. The impact of the FCC's proposed changes to high cost support will have catastrophic impact on tribal carriers of last resort. With data from 5 of the 8 tribes, NTTA has determined that tribal telecos will sustain an initial average loss of 32.96 percent of their current support, averaging $643,450 loss of support revenues in year one alone.

NTTA asks that the FCC protect the efforts of tribal communities to continue to serve themselves by permitting tribal carriers of last resort to continue to use current cost recovery mechanisms and receive recoveries with a floor of support tied to 2011 cost-settlements. This would permit tribal ETCs to maintain essential service in their communities as they transition to broadband carrier of last resort service.

As Native carriers of last resort transition to Broadband Carriers of Last Resort, NTTA proposes shifting to a different mechanism to ensure Native Broadband Carriers are able to meet the responsibility of providing advanced technology services to their communities. To prepare for the uncertain cost of providing broadband services for the future, NTTA also proposes a Native Safety-Net mechanism to support the disparity between the revenue support the Connect America Fund promulgates and the Tribe's total costs for providing broadband carrier of last resort service. Native broadband carriers of last resort will include all provider revenues in their "safety-net" calculations. On the other side of the ledger, all costs of providing broadband service shall be included.

Because of the high cost of deploying ubiquitous rural advanced networks, and because a variety of investments is required to finance rural broadband services, NTTA proposes inclusion

of the 11.25 percent federal ICC base rate as essential cost for the Native Safety-Net mechanism. This base rate reflects a company's debt and return on equity costs, recognizing the importance of meeting financing costs in order to sustain essential service.

As for non-tribally owned telecommunications carriers, NTTA would support cost-recoveries on rate of return model if the non-tribally owned telecommunications carriers can demonstrate that maintaining current recoveries or use of current recovery methods would be used to make incremental improvements for broadband connectivity in a community. A targeted tribal community government would have to be consulted about plans to improve service quality and connection in that community and the tribal government would need to certify each year that such gains in quality service and connectivity did occur.

In addition, community and subscriber complaints to the state Public utility commission, to the FCC to the attorney general, and to the tribal utility or governmental authority should be weighed before permitting non-tribal ETC's a regulatory waiver from FCC transition rules for support.

242

Q: The FCC asks whether eliminating funding for competitive ETCs (which are mainly mobile providers) under the identical support rule will help address efficiency in the CAF. FCC asks if redirecting all available competitive ETC funding, over five years, to CAF for redistribution through new market-driven funding mechanisms to provide support for mobile and fixed broadband—with possible exceptions, such as for Tribal lands and Alaska Native regions.

A: NTTA supports the FCC goal of eliminating funding for competitive ETCs under the identical support rule. There is no reason why identical providers or dual technologies should

compete for the same customer using the USF or CAF in a single rural service area. NTTA has submitted comments on the Mobility Fund one-time disbursement of funding for a fixed mobility broadband network in Native communities (a minimum of 30 percent targeting due to the 30 percent lack of parity for voice-dial-tone service in tribal and Native areas.) Such funding should be made available to Tribal and Native communities on a permanent basis as a "safety-net" emergency system in Tribal and Native areas to support their shortage of basic PSTN and broadband networks.

Several tribes, because the landline service certification was not available for purchase by the tribe, have launched their CETC's as an interim step to providing full service within their tribes. Therefore, NTTA supports the exception for the elimination of the identical support rule where the CETC applicants and providers are Tribal or Native governments. In these circumstances, the FCC should support efforts by these CETCs to become the primary ETC for all support within the Tribal or Native service area. (see NTTA's support for Tribal single-community service areas in our Standing Rock Petition comments.)

<u>254</u>

Q: The FCC asks how support would be calculated if a waiver is granted or an exception is applicable. One option would be to continue applying the identical support rule, on an uncapped basis, much as the interim cap exception for Tribal lands and Alaska Native regions has been implemented. Another option would be to freeze per line support as of a specific date. With regard to the date of the per-line support freeze, we note that certain proposals in this Notice, such as the proposal to target high-cost support, to phase down IAS, or to reform the support mechanisms for rate-of-return and rural carriers, would have an impact on the per-line

amount. For either option, we would propose capping support on a carrier-specific basis, after implementation of the other reforms. We seek comment on these options.

259

Q: The FCC asks if there should be an exception to the interim cap reductions for transition to the CAF for Tribal Lands and Alaska Native Regions. Under this proposal, all competitive ETCs on Tribal lands or in Alaska Native regions would not be subject to the interim cap phase down. Should any exception include Hawaiian Home Lands? If commenters believe that unique circumstances on Tribal lands and in Alaska Native regions and Hawaiian Home Lands require a different approach, are there changes we should consider to the proposals for the longterm CAF and/or first phase of the CAF that would better address those unique circumstances than would creating an exception to the proposed phase out of competitive ETC support? If unique circumstances justify providing an exception, are there any additional limitations or conditions that that should apply to the exception? Should support be maintained for competitive ETCs owned, operated, or engaged in joint ventures with Tribal governments? What conditions should be imposed under such an approach, to ensure that the goals of universal service are met in areas with such low telephone penetration rates?

A: In paragraph 211 comments NTTA asserts its views on interim caps and sought exclusion of Tribal ETCs from the interim rule changes to the CAF and proposes a longterm Native Broadband Safety-Net Mechanism to protect tribal COLR serving their own communities.

In paragraph 242 response, NTTA addresses the exemption of Tribal CETCs from the identical support rule. Here, the FCC asks if all competitive ETCs on tribal lands or in Alaska

Native regions should be exempted. Unless the CETCs are tribally owned, NTTA would be opposed to identical support for multiple ETCs or for CETCs in a tribal area. Ideally, when a Tribe or a Native governmental entity applies for ETC status, the FCC would support that effort for self-sufficiency and the Tribal or Native government would not have to become an interim CETC to gain purchase as a Tribal or Native governmental service provider.

A Tribal or Native governmental COLR should be at least 51 percent owned by the Tribal or Native government or Native owned institution.

The key condition of USF and CAF support (under the NTTA proposed Native Safe-Harbor proposal or the long-term Native-Safety Net mechanism) is the provision of broadband service as demonstrated through connectivity metrics in the Tribal or Native community.

292

Q: The FCC asks about NTIA data whether broadband providers should report their coverage as part of the State Broadband Data and Development program. The Commission also seeks comments if there is something the Commission can do more to encourage states, territories, and Tribal governments to verify that areas for which there is no reported broadband service are, in fact, unserved. Are there other ways we could ensure that an area reported as unserved is actually unserved? The Commission also seeks comment on whether the value of such verification outweighs its cost, given that providers will have an incentive to report their coverage if the failure to report means that a potential competitor could receive a federal subsidy to deploy broadband to that same area. Does this incentive mean we should be more concerned about overstatement of coverage rather than understatement of coverage? If so, how should we address such concerns?

A: NTTA believes broadband providers should report their coverage as part of the State Broadband Data and Development program since it has already been funded. However, the more important aspect of broadband data mapping and resource inventory gathering should be led by and housed within the Federal Communications Commission. Tribal and Native entities may have difficulties accessing or utilizing state-held data. Moreover, broadband mapping data will be crucial to policy development by the Federal Communications Commission (similar to how Industry Analysis Division data is used for a variety of policy and enforcement purposes.)

NTTA notes that the NTIA broadband mapping program has been a failure for Tribal and Native communities. States administered the broadband mapping and do have an accurate assessment of Tribal area coverage. In three states, New York, Washington, and Oregon, NTTA witnessed states describing tribes as having full broadband coverage when the tribes had little or no broadband service.

The inherent flaw of the NTIA broadband mapping for Tribal and Native communities is NTIA and states failed to include or consult with Tribes and Native governments in planning the broadband mapping. In Arizona, tribes refused to cooperate with the state mapping project because of concerns how the data was gathered and whether tribal proprietary data would be protected. NTTA proposes a separate Tribal and Native broadband mapping project that will be conducted by and within the control of Tribal and Native governments. (Title VII of NTTA's proposed Native Broadband Fund.)

Of greater concern is the exercise of mapping inherently unserved areas. A more useful tool for broadband mapping is gathering information on barriers to broadband deployment, gathering important information on rights of way, on power poles, water towers, utility

infrastructure, an inventory of telecommunications infrastructure and non-traditional infrastructure data relevant to preparing for broadband service in under and un-served areas.

The Commission is correct on the value of gathering, holding and making available broadband mapping data as a key aspect of government transparency, especially as the Industry will see CAF funding tied to metrics and outcomes. Whatever form the CAF NECA agency will take will need to be linked with broadband mapping data. Therefore, funding for broadband data gathering should be supported by the CAF.

294

Q: The FCC asks if census blocks are the most appropriate basic geographic unit (which would be subject to aggregation by bidders) for awarding support to expand coverage, or whether there are other basic geographic units that might better balance the need to identify discrete unserved areas for which we propose to require coverage with business plan requirements of the different types of providers that may seek to participate in the first phase of the CAF. Are census blocks the most appropriate basic geographic unit for us to use in relation to support for deployment on Tribal lands, or would some other basic geographic unit better serve our purposes?

A: The FCC's vantage point on census is an effort to both better tailor service areas to need, and, to maximize CAF funding efficiency. However, as pertinent to Tribal and Native communities, the notion of separate sovereignties is fundamental to the manner Tribes and Native governments conduct governmental and commercial relationships. The more the FCC hews to service and population configurations that reflect Tribal and Native community

boundaries, the more the FCC will enhance the sovereignty and the control by the tribe over telecommunications service quality.

NTTA lacks expertise on census issues. However, experience with the American Reinvestment and Recovery Act grant process, wireless auctions, and wireline service area issues point to ongoing issues on census data gathering in Tribal and Native communities, with frequent negative impact on communities from both flawed data and subversion of regulatory targeting.

NTTA urges the FCC to work with Tribal and Native governments, the Census Bureau of the Department of Commerce and the Bureau of Indian Affairs (and all grant resourcing federal auspices) to unify service population data for a more accurate and sensitive data base regarding Tribal and Native populations.

NTTA also urges the FCC to use Tribal and Native land and community boundaries to define service areas. Insofar as traditional FCC service areas were designed to aggregate costs and demand between urban and rural, and rural and remote-rural markets, NTTA posits Tribal and Native service areas should be treated as service areas to reflect their entire community. (Many Tribal and Native communities are occupied by multiple ETCs serving the community. This leads to uneven service to community members, lack of accountability, and increases the sense of Diaspora within the Tribal or Native community.)

The configuring of Tribal and Native community service areas becomes more crucial as Tribal and Native governments begin seeking regulatory self-provisioning and move toward controlling and managing spectrum and broadband service, and inventory within their jurisdictional boundaries. This is a regulatory barrier the FCC can help Tribal and Native communities to remove.

295

Q: The FCC asks about establishing unserved housing units as a baseline number of determining unserved units in each census block. In addition, the FCC asks whether it should further consider unserved businesses or community anchor institutions such as schools, libraries, other government buildings, health care facilities, job centers, or recreation sites in determining the number of unserved units in each census block to be used for assigning support. Would using such additional factors in determining the unserved units in each area better represent the public benefits of providing new access to broadband service? Are there additional or different types of anchor institutions in Tribal lands that should be considered in such an analysis? The commission asks how they should measure the factors being proposed, and how coverage for one type of unit, such as a work site, should compare with coverage for other units, such as housing units. The Commission asks how they would obtain the necessary data to be able to determine with a sufficient level of accuracy the number of businesses and other institutions in a given area.

A: NTTA applauds the acknowledgement that Tribal a and Native governments are responsible for providing broadband service to their communities as a basic tenet of basic and public service. This is even more crucial as Tribal and Native communities suffer from high levels of unemployment and poverty, high health and public-safety risk and remain isolated from mainstream communities and markets. Public institutions are key counter weights to all these community challenges and are the base-point of public service and information. Ensuring public institutions are connected by broadband should be an essential public interest obligation in Tribal and Native communities.

The answers to how public and essential anchor institutions should be included as public interest requirements can be found in the ground work provided by NTIA's administration of

three ARRA grant programs: public computer laboratories, broadband adoption and public-safety grant programs. In these programs, NTIA predicated service to public anchor institutions as key components of bringing broadband to rural communities.

The E-rate program and tele-health/distance learning USF programs similarly focused on the essential components of rural communities. NTTA recommends a minimum requirement of providing broadband connectivity to public-safety, health, economic development, education and training, utility, governmental service, and federal assistance programs, as well as public Internet access points as public interest requirement for CAF support in Tribal and Native communities.

To determine unserved or underserved measures, the FCC should include not only households (with a multiplier for average number of families per household) and public anchor institutions in the definition of "unserved" or "underserved " areas for purpose of broadband service to Tribal and Native communities.

297

Q: The FCC asks, since it seeks in the intercarrier compensation section comment on how to provide states with incentives to reform intrastate switched access rates, whether Tribal lands should be eligible for support irrespective of the actions of the states in which they are located to reform access charges.

A: NTTA urges the FCC to exempt Tribal COLRs to be exempt from FCC actions to curtail support to states that have not reformed their intrastate access line rates. Tribal and Native constituents should not be penalized for the lack of effort or actions of a state, particularly as states frequently do not hold themselves responsible for improving quality of service or connectivity to Tribal and Native communities.

As for non-tribal or non-native telecos serving Tribal and Native communities, while tribal and Native constituents should not be punished by the actions or lack of action by a state, non-native ETCs that receive favorable CAF incentives should show how enhanced CAF monies are being spent directly to improve broadband service quality and connectivity in a Tribal or Native community. Failure to show incremental improvement of broadband service quality or connectivity in a Tribal or Native community should be used to reduce a non-Tribal or non-Native carrier's CAF support.

298

Q: The FCC asks whether to prioritize support in the first phase of the CAF to states that have created high cost programs to support broadband deployment and should Tribal lands, as federal enclaves, be eligible for support irrespective of the actions of the states in which they are located?

A: NTTA's response to this same as to paragraph 297. NTTA urges the FCC to exempt Tribal COLRs to be exempt from FCC actions to curtail support to states that failed to prioritize their high-cost support for broadband deployment. Tribal and Native constituents should not be penalized for the lack of effort or actions of a state, particularly as states frequently do not hold themselves responsible for improving quality of service or connectivity to Tribal and Native communities.

As for non-tribal or non-native telecos serving Tribal and native communities, while tribal and Native constituents should not be punished by the actions or lack of action by a state, non-native ETCs that receive favorable CAF incentives should show how enhanced CAF monies are being spent directly to improve broadband service quality and connectivity in a Tribal or

Native community. Failure to show incremental improvement of broadband service quality or connectivity in a Tribal or Native community should be used to reduce a non-Tribal or non-Native carrier's CAF support.

302

Q: The FCC asks it should reserve a defined amount of funds in the first phase of the CAF to award to bidders that will deploy broadband on Tribal lands that are unserved. In the USF Reform NOI/NPRM, we sought comment generally on whether unique circumstances on Tribal lands warrant a different approach to high-cost support for broadband service. Several commenters asserted that a different approach was appropriate for Tribal lands.

A: The FCC asks two separate questions here: whether an amount of funds should be awarded to "bidders" that will be deploy broadband on Tribal lands that are unserved It asks a second question whether unique circumstances on Tribal lands warrant a different approach for broadband service.

NTTA will address the second question first: whether a different approach is appropriate for Tribal lands.

In our earlier remarks, NTTA notes:

> Native communities are the worst-served in the United States, with an average service rate twenty to thirty-five percent below non-tribal communities. What this means is twenty to thirty five percent of Native Americans, including nearly 50 percent of Navajos, lack the ability to call 911 for help.

In addition, because broadband subscriber take-rate and adoption will be unknown due to high cost of deployment and high cost of subscription, NTTA is concerned those Tribal and Native households without voice dial-tone may fall further behind the analog divide without

sufficient regulatory incentive to prioritize broadband service to these "unserved" Tribal and Native residents.

NTTA notes further:

> that a policy reform providing support to Lifeline and Linkup customers for broadband services pre-supposes that appropriate PSTN infrastructure is available in rural Native communities. However, as the Commission is aware, for at least twenty to thirty five percent of Native households, this is simply untrue.

The NPRM proposes to change the delivery of infrastructure support to broadband support in these "unserved" communities. It does not, however, insure that Native communities be guaranteed a voice dial-tone safety-net to enable families to call 911, regardless of the pace of broadband deployment. A broadband policy leveraging new or continued high-cost funding in areas where current high-cost funding is not reaching certain communities will not impact these communities--particularly where there might be slippage in pace of broadband deployment--without a specific commitment for voice dial-tone to every American family.

NTTA notes that conversion from analog voice dial-tone to VOIP systems still has regulatory and life-line quality challenges to it. (For instance, if the power goes out, the ability to call 911 on VOIP goes out also.)

> Current incentives for expansion of broadband infrastructure do not provide reimbursement for Voice over Internet Protocol service. In addition, Internet based voice service does not have the same quality of reliability or lifeline capability as public network based voice service. In the proposal to expand broadband service to rural communities, the Commission must address the issue of VOIP and IP protocol contributions as well as parity of quality in lifeline services to rural and Native communities. Remote and at-risk communities should not accept lesser quality and service commitment than urban and non-Native communities.

NTTA's has long asserted that the FCC has failed to meet the mandate of universal service and its trust responsibility to Tribal nations who are the least connected communities in America. The FCC's willingness to apply the term "unserved" to broadband has not matched its

effort to define and resolve "unserved areas" challenges under Section 214 of the Communications Act. Therefore, using "unserved areas" mandate under Section 214 or 254 for CAF transition, the FCC must apply unique solutions for Tribal and Native lands.

To that end, NTTA strongly supports a definable amount of funds for broadband conversion in Tribal and Native communities. NTTA has proposed a Native Broadband Fund (see…) that is targeted at bringing necessary resources to bear on 4 major platforms in Tribal and Native areas: the Public Switched Telephone Network, the public-safety network, the local mass-media network, and a safety-net mobile broadband network to deliver full broadband service to Tribal and Native communities. Additional elements of the NTTA Native Broadband Fund proposal include specific funding to plan Native "regulatory" service design; operational and administrative (corporate expense) cost recovers; funding for Native regulatory self-provisioning startups; Native broadband mapping; and Native public institutions connection.

NTTA is conflicted about supporting a specific funding for non-Tribal or non-Native carriers efforts to provide service in Tribal and Native communities. With the knowledge that Tribal and Native communities are the worst served communities in the United States, should current providers who have not honored their universal service obligations to Tribal or Native communities receive additional support for failing to provide adequate service?

The other troublesome component of the FCC proposal is in the term "bidder." NTTA elsewhere has parsed the enormous flaws, if not catastrophic unintended consequence of reverse auctions. Re-stated: Tribal and Native communities should not get the least amount of support for providing the "cheapest" network possible. This is the legacy economic model that has relegated Tribal and Native communities to their current plight. (Looking at the Mobility Fund standard of 3G wireless technology and the 4 megabit down and 1 megabit up standard for

broadband service, Tribal and Native communities will be behind the technology parity curve as other communities leapfrog ahead of Tribal and Native communities.)

NTTA, therefore, strongly opposes the use of revere auctions in Tribal and Native service areas and seeks a specific exemption from that flawed method of incentivizing broadband conversion. In fact, NTTA proposes that Tribal and Native governments be giving the authority to hold "quality and connectivity" auctions to bid out high-cost (USF and CAF) support to carriers willing to honor COLR obligations of full connectivity to tribal and native communities.

How much such a fund would comprise to finance broadband build-out and conversion is still being studied. NTTA will be providing FCC with proxy models to ascertain costs for support to convert from USF to CAF outcomes. (As a minimum, NTTA will be asking enough funding under a Safe-Harbor exemption that will make-whole current support levels of the 8 regulated tribal telecos as a floor.)

303

Q: The FCC asks in light of historically lack of access to telecommunications services than any other segment of the population and in light of the high costs attributed to these remote areas and since broadband adoption will be a very large challenge in the Tribal and Native communities whether Tribal and Native communities will require even higher support than is allocated under current technology deployment. In addition, the FCC asks how monies in this reserve will be treated in the event reverse auctions do not use up any such reserves.

A: NTTA applauds the FCC recognition that costs in the Tribal and Native areas will be inherently higher due to the lack of access to capital, to skilled workforce, to topological, remote

and distance geographic challenges, and the costs of planning and adoption for broadband service—and to connect public institutions, which are an inherent aspect of service in Tribal and Native communities.

NTTA's proposed Native Broadband Fund touches on these aspects of costs in real terms (see page 32) : Title I: the need to help communities plan for regulatory broadband service and network deployment; Title II: the need for administrative and operational cost support in the uncertain broadband service future (and rural corporate expense sustainability); Title III: the cost of supporting the 8 incumbent Tribal COLRs provisioning for their Tribal communities; Title IV: the cost of providing service to or supporting self-provisioning regulatory service by underserved Tribal and Native communities; Title V: supporting at-risk consumers through a Tribal and Native residential Broadband Lifeline and Linkup program; Title VI: supporting a public-safety network Tribal and Native communities (construction, interoperability, PSAP support and reconfiguration, and E-911 mapping); Title VII: supporting connectivity to key public (anchor) institutions, a Native E-rate program; Title VIII: support for Native local mass-media access; Title IX: support for a Native Broadband Mapping project; and Title X: support for safety-net Mobility Broadband networks to back-haul and fill in for lack of comprehensive PSTN and Public-Safety networks for emergencies.

As NTTA posited elsewhere in our comments, and in paragraph 302, reverse auctions is a severely flawed strategy in general and for Tribal and Native communities. If a reserve fund is established for support funds to accelerate broadband deployment and enhance adoption of broadband service, NTTA urges Tribal and Native governments be able to invite "quality and connectivity" bids to provide service to Tribal and Native communities. Any reserve funds

should remain available until Broadband deployment is ubiquitous and advanced technology parity has been reached between Native communities and non-Native communities.

304

Q: The FCC asks as an alternative to, or possibly in addition to, setting aside funds to support broadband bidding credits for providers proposing to deploy on Tribal lands.

A: NTTA re-emphasis its opposition to an FCC held reverse auctions in Tribal and Native communities. Tribal and Native governments should be given control to auction rights to serve their communities through a "quality and connectivity" bidding process to fully connect their communities. In this regard, Tribes and Native communities can choose to serve themselves. A bidding credit is not necessary if a Tribe or Native community controls which carrier serves the community.

305

Q: The FCC while recognizing that Tribes are inherently sovereign governments that enjoy a unique relationship with the federal government asks how the FCC and involve Tribal governments in the process of allocating auction service area rights.

A: In NTTA's preceding comments, paragraphs 302, 303, 304, and in the USF general section, has strongly opposed the use of reverse auctions in Tribal and Native communities. NTTA urges the FCC delegate rights to Tribal governments, as sovereign nations, to bid out "quality and connectivity" service arrangements with a COLR willing to connect the community to broadband.

This governmental deference not only is the right support for the sovereignty of tribal governments, but recognizes that a Tribes and Native communities as a consumer and a victim of historic under-service should have greater control over their regulatory provisioning. This is an auction that makes sense: by a sovereign government and supports consumer rights. All the added process challenges of attaining rights of way and land access permitting becomes less of a challenge with the Tribal government directly involved in the regulatory support decisions.

315.

Q: The FCC asks if CAF recipients can be asked additional public interest obligations—tied to auction bids.

A: In NTTA's responses to paragraphs 101 and 130, we supported the extension of public interest extension to COLRs to "unserved" areas and in paragraph 252 NTTA supported the addition of connecting public (anchor) institutions as public interest obligations in Tribal and Native communities.

320 & 342.

Q: The FCC if reverse auction bidders need prior agreements or permissions from Tribes before participating in the auction. Additional question is posed in paragraph 342 about bidding credits.

A: NTTA re-asserts: to implement a reverse auction in Tribal and Native communities would be a set-back for tribal sovereignty.

The FCC gives service area support to the bidder for the lowest bid to put in the cheapest network. And the only role the Tribal or Native government has is to assist the applicants to

reach a prior agreement or assist in permitting and rights of way? This is complex and cumbersome: agreements in advance with each and every bidder? Why would a Tribal or Native government work against their own interest: getting the highest quality network necessary to serve the community instead of assisting "cheapest" cost applicants with their regulatory position?

With the Tribe conducting an auction or bidding out a proposal for service based on "quality of service or connectivity" obligations, the tribe wins in being in control while increasing the chances the right technology and quality of service is attained. In addition, whether the provider is the Tribe or a bid recipient, the Tribe is more likely to assist—in consultation with the provider—permitting requirements. This makes so much more sense and strengthens the sovereignty of the Tribe—taking an equal regulatory position as the state.

322.

Q: The FCC asks if applicants for the auction can later augment data submission to the SBDD program.

A: NTTA is opposed to a reverse auction in Tribal and native communities.

411.

Q: The FCC asks To the extent we ultimately provide ongoing support to only one provider in each geographic area whether there should be exceptions to the rule for carriers serving Tribal lands. The Commission asks if the exception of funding more than one provider should remain after the CAF is fully implemented.

A: NTTA's comments for paragraph 242 apply here. We noted that "several tribes, because the landline service certification was not available for purchase by the tribe, have launched their CETC's as an interim step to providing full service within their tribes. Therefore, NTTA supports the exception for the elimination of the identical support rule where the CETC applicants and providers are Tribal or Native governments. In these circumstances, the FCC should support efforts by these CETCs to become the primary ETC for all support within the Tribal or Native service area. "

The key regulatory paradigm change NTTA advocates is: empowering every Tribal and Native Government-- as a matter of sovereignty—with the ability to choose its own regulatory provider. This is more compelling as Tribal and Native communities have been historically "underserved" and remain "unconnected."

In that regard, underscoring NTTA's comments in paragraph 259, Tribal governments choosing to become its own regulatory provider should be the due deference and support needed to achieve that end. In that future world, Tribes would not have to process through an interim CETC status to serve its own community with broadband service. In which case, a single provider for a Tribal or Native community should suffice and the CAF would be more efficiently served.

Until that point arrives, Tribal and Native CETCs should be permitted to be supported until it is able to purchase the land-line certification for the Tribal and Native service area to unify the CAF support.

415.

Q: The FCC asks what factors the Commission should consider in sizing the CAF. (There are many levers that could impact the level of financial commitment required from the federal universal service fund to achieve our goals, including: how we define affordability; the extent of broadband coverage; our benchmark for broadband capability; whether we fund more than one network per area; the level of financial co-investment from carriers and, potentially, states and localities; the existence of unsubsidized competition; the technologies used to deliver service; the respective roles of satellite and terrestrial technologies; prioritization for certain unserved areas (such as Tribal lands); and the timeframe for extending facilities to unserved areas.)

A: As NTTA has stated in other areas of comment, the assumption that the Universal Service Fund needs to be capped is what has driven the FCC to radically cannibalize the USF to shift funding to support broadband deployment. Yet, on an incremental level, NTTA argues 97% of existing networks already possess advanced technology elements and as evolutionary reinvestment occurs, soft switches replace far more expensive traditional hard switches and bring far greater capacity as digital platforms.

NTTA also notes reform on contributions could add additional funding for the USF. With efficiencies and removal of duplicate support and competing technologies for the same customer under the Identical Support Rule, and reform of HCLS, ICLS, LSS, and SNA, the USF can continue to support smaller rate of return companies' efforts to serve the more remote markets of the country.

From a Tribal and Native community standpoint, the definition of broadband is too shortsighted. The FCC should support a minimum of 100 megabits symmetrically for Tribal and Native communities. For telemedicine and distance learning, frequently broadband requirement

approaches 1 Gigabit. To give Tribal and Native communities 4 megabits down and 1 megabit up is to give Tribal communities and governments short-shrift on parity of technology with urban and non-Indian communities.

As NTTA proposes elsewhere in the comments, the FCC should 1) give tribal governments a priority on all federal resources related to delivering telecommunications service; 2) the FCC should prioritize broadband deployment to Tribal and Native communities because the mandates of the federal trust responsibility and universal service access requirements of the Communications Act compel the FCC to do so; and, 3) the FCC should prioritize scarce federal support for broadband to areas that are both unserved by broadband and underserved by voice-dial-tone infrastructure.

417.

Q: The FCC asks, in the transition from the high cost funds to the CAF, what are the alternative approaches for CAF for all remaining high-cost funding in stage two—including on tribal lands.

A: This is a very important bottom-line question for Tribal telecos and Native communities. NTTA will repeat a proposed two stage strategy (from paragraph 211) for adjusting to the underlying FCC desire to modernize the regulatory and technology underpinning for the United states, seeking accountability and efficiency for use of public dollars, and to get it right for all communities (here, NTTA emphasizes getting it right for Tribal and Native communities is vital to the survival of these communities).

However, with the uncertainty of future broadband COLR mandates, scale and scope of network build-out, subscriber take-rate and broadband adoption challenges, NTTA urges the

FCC to permit regulated tribal telecos to continue for an indefinite time current recoveries (under existing cost recovery mechanisms) as a floor to their costs under a Safe-Harbor rule for Tribal ETCs until such time as the tribal ETCs can choose to opt into a Native Broadband Safety-Net recovery mechanism. (see our response to paragraph 254)

At this point in time, eight tribal telecommunications companies are providing essential regulatory service in their communities, including broadband service. To support tribal sovereignty and to promote self-sufficiency of tribal governments, particularly in historically under-served Native communities, NTTA proposes two crucial regulatory strategies to promote last resort service to Native communities.

NTTA first proposes that the FCC waive proposals to alter, cap or eliminate current high cost support for tribal ETC networks.

In Native communities the tribal telecommunications service is essential for economic development, education, community services, and public safety. 6 of 8 of these communities had less than 10 percent penetration in 1990. Yet today, because of the efforts of tribal carriers of last resort, these 8 tribes enjoy at least 85-99 percent service penetration, an improvement of 750 to 900 percent.

However, the communities are still hard-to-serve due to high unemployment rate, high poverty rate, difficult topographies, remoteness and lack of market incentives. Tribal providers are faced with steep cost of deployment and steep costs of administering advanced services in remote labor markets. Moreover, service to the community is fragile due to high numbers of at-risk families relying on telecommunications service. As an example, 85 percent of Gila River's subscribers are on Lifeline and Linkup support. About 900 of San Carlos' 2000 subscribers are

on Lifeline and Linkup Hopi Telecommunications Inc. has increased Lifeline subscribership from 70 to over 700 since they began operations five years ago.

Because of the inherent weakness of the tribal markets described above, the at-risk communities being served, and the recent advent of tribes serving their own communities, tribal telecos should be protected from the dramatic changes being proposed by the FCC. The impact of the FCC's proposed changes to high cost support will have catastrophic impact on tribal carriers of last resort. With data from 5 of the 8 tribes, NTTA has determined that tribal telecos will sustain an initial average loss of 32.96 percent of their current support, averaging $643,450 loss of support revenues in year one alone.

NTTA asks that the FCC protect the efforts of tribal communities to continue to serve themselves by permitting tribal carriers of last resort to continue to use current cost recovery mechanisms and receive recoveries with a floor of support tied to 2011 cost-settlements. This would permit tribal ETCs to maintain essential service in their communities as they transition to broadband carrier of last resort service.

As Native carriers of last resort transition to Broadband Carriers of Last Resort, NTTA proposes shifting to a different mechanism to ensure Native Broadband Carriers are able to meet the responsibility of providing advanced technology services to their communities.

To prepare for the uncertain cost of providing broadband services for the future, NTTA also proposes a Native Safety-Net mechanism to support the disparity between the revenue support the Connect America Fund promulgates and the Tribe's total costs for providing broadband carrier of last resort service. Native broadband carriers of last resort will include all provider revenues in their "safety-net" calculations. On the other side of the ledger, all costs of providing broadband service shall be included.

Because of the high cost of deploying ubiquitous rural advanced networks, and because a variety of investments is required to finance rural broadband services, NTTA proposes inclusion of the 11.25 percent federal ICC base rate as essential cost for the Native Safety-Net mechanism. This base rate reflects a company's debt and return on equity costs, recognizing the importance of meeting financing costs in order to sustain essential service.

As for non-tribally owned telecommunications carriers, NTTA would support cost-recoveries on rate of return model if the non-tribally owned telecommunications carriers can demonstrate that maintaining current recoveries or use of current recovery methods would be used to make incremental improvements for broadband connectivity in a community. A targeted tribal community government would have to be consulted about plans to improve service quality and connection in that community and the tribal government would need to certify each year that such gains in quality service and connectivity did occur.

In addition, community and subscriber complaints to the state Public utility commission, to the FCC to the attorney general, and to the tribal utility or governmental authority should be weighed before permitting non-tribal ETC's a regulatory waiver from FCC transition rules for support.

421.

Q: The commission continues to ask questions tied to reverse auctions on use of bidding credits tied to higher technology thresholds and additional thoughts on how it might affect tribal lands with implications of tribal government involvement.

A: As NTTA has emphasized in paragraphs 302, 303, 304, 305, 320, 342, and 411, the only auction NTTA supports for Tribal and Native communities is not a reverse auction but an

auction or bid offer by Tribal and Native governments for a carrier (including the Tribe) to bring "quality service" or "connectivity" to a Native community.

This is how the FCC can involve Tribal and Native governments in determining their own fates and regulatory provisioning. In this scenario, if a "competitive bidder" fails to materialize, the Tribe or Native Government can than demand "quality service" and "connectivity" outcomes from the incumbent COLR as a condition of receiving support from the CAF. Failure to meet the terms of "quality service" or "connectivity" outcomes or failure to consult with a Tribal or Native government shall result in fines and abdication of the broadband ETC status with replacement of carrier choice by the Tribe or Native government.

443.

Q: The FCC asks if for the extreme high cost small populated areas whether costs can be capped to reflect the use of satellite technology to connect these areas with broadband service—with a view toward impacting tribal areas.

A: NTTA opposes the application of a ceiling for funding broadband to Tribal or Native communities. But depending on the population of Tribe or Native community and distance from the nearest wire-center, a Tribal or Native government e can be given an option of a transitional funding floor to support a satellite service that would bring 100 megabits to the community, but such support will have to be re-assessed every 2 years with necessary support adjustments and consultations made with the Tribal or Native government.

Realizing this is a matter of available funding within CAF to meet the needs of extreme isolated Tribal or Native communities (to whom a trust responsibility does not relinquished), the FCC should then look to the Rural Utility Service of the Department of Agriculture to link up

resources made possible through the RUS Substantially Underserved Trust Area (SUTA) program under section 6011 of Title VI of the Rural Electrification Act to collaborate on funding to bring broadband to these targeted extremely remote underserved Tribal or Native trust areas.

479.

Q: The Commission asks whether performance goals can be used under the CAF to induce public benefits that yield the appropriate result for which public funding is made available to accomplish—advancing broadband for all Americans. The commission seeks specific measures and goals that would enhance universal service while improving participant accountability

A: NTTA has recommended a series of measures paramount not only to the survival of Tribal and Native communities in the world of broadband, but tied specifically to outcomes and performance of meeting the goals of universal service and access for Tribal and Native communities. Paramount to these approaches is the FCC involvement of and delegation to Tribal or Native Government in choice of regulatory providers in a Tribal or Native community. This bidding out process utilizes a "quality of Service" and "connectivity" agreement with the provider to deliver broadband to a Tribal or Native community with specific measurable outcomes and enforceable consequences for failing to meet the obligations.

Whether the Tribe or Native government chooses to become its own regulatory provider or chooses a COLR to meet those community needs, these performance goals are negotiated between the Tribal or Native government and the provider, with the FCC as a key party to overseeing the outcomes of the broadband universal service.

484.

Q: The Commission asks about the efficiency and role of support for voice service in rural areas—particularly in Tribal and native communities.

A: NTTA asserts in Tribal and Native communities the underlying socio-economic conditions are as much a factor as the underlying barriers of supply side delivery of telecommunications infrastructure to remote areas. Failure of providing basic infrastructure to remote Tribal and Native communities coupled with the ability of families to pay for or maintain telecommunications (voice) service results in the lowest service penetration rates among all communities in the United States—a 25-35 percent disparity.

While NTTA has no statistical proof, it has received reports from numerous communities that the local providers and the state fails to inform Tribal residents about the availability of Lifeline and Linkup support. The major progress in informing and enrolling eligible subscribers have been the Tribal government.

Even in the 8 communities where the Tribe has built supply side infrastructure within the geographic regions of the Tribe, the need for Lifeline and Linkup subsidy is very high. For example, 86 percent of Gila River's subscribers are Lifeline supported; 900 of 1900 subscribers in San Carlos Apache Tribe is Lifeline supported, and 700 of Hopi Nation's customers are Lifeline supported.

In the era of broadband, Tribal and Native communities will need substantial low-Income support under the CAF to enable residents to attain broadband service residentially. Under previous comments, NTTA has asserted CAF support for broadband connectivity to public

(anchor) institutions is essential, particularly in communities where residential broadband service will be unaffordable.

492, 559, 565, 577, 584, 676

Q: The FCC asks how to structure recovery mechanism for providers with the new technology network configurations.

A: The world ahead with broadband COLR responsibilities is uncertain and proposed revenues removed under proposed FCC rules will have a dramatic impact on tribal carriers. NTTA is assessing the impact and carve-out options for tribes on revenue recoveries. Traditional recoveries and ICC calculations still have a crucial place in recovering costs of transport. The FCC is correct in acknowledging that high-cost Tribal areas will need explicit support to maintain service because there is simply no private business case to serve such areas and will need support from the CAF.

VIII. The Commission should take all necessary steps in pursuit of true Universal Service

As noted by Commissioner Michael Cops, "Universal Service is a critical pillar of the Telecommunications Act of 1996."[24] While the Commission through this proceeding proposes to build upon that ideal, for many residents on Native lands, the promise of universal service seems more relevant to other communities. However, the Commission can take steps in this proceeding to advance universal service "to all Americans, no matter whom they are or where they live."[25]

[24] Joint Board Recommended Decision, Statement of Commissioner Michael J. Copps, Approving in Part, Concurring in Part.
[25] *Ibid.*

The Commission's "choices in this proceeding will have a dramatic effect on the ability of communities and consumers in Rural America to thrive and grow…"[26] The Commission should sincerely examine the effect that past choices in Universal Service policy have had on Indian America while determining how the future will affect this part of our country.

Bringing true universal service to high-cost areas takes time, money and, most importantly, a diligent pursuit of a policy to benefit the whole of the country. As the past seventy-four years have proven, universal service is a policy that provides excellent returns.

NTTA urges the Commission to embrace the opportunity before it to address the mandate by the Communications Act that all Americans are connected to a communications network. NTTA also urges the FCC to preserve foundational mechanisms that have worked, while improving on strategies that will foster universal access for all in the future.

. Respectfully submitted,

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April 18, 2011

[26] Joint Board Recommended Decision, Statement of Commissioner Jonathan S. Adelstein, Approving in FCC 08-, 27Approving in FCC 08-4, Concurring in Part, Dissenting in Part in FCC 08-05.